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January 21, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Certain Polyester Staple Fiber from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2012-2013 Administrative Review

SUMMARY:

We have analyzed the comments submitted in the 2012-2013 administrative review of certain polyester staple fiber ("PSF") from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes from the *Preliminary Results*.¹ We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this review for which we received comments on the *Preliminary Results*.

- Comment 1: Surrogate Financial Ratios
- Comment 2: Surrogate Value for PET Chips & PET Flakes
- Comment 3: Surrogate Value for Truck Freight
- Comment 4: Surrogate Value for Brokerage & Handling
- Comment 5: Surrogate Value for Labor
- Comment 6: Value Added Tax
- Comment 7: Appropriate Comparison Method
- Comment 8: Ministerial Errors
- Comment 9: Programming Errors

¹ See *Certain Polyester Staple Fiber from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2012-2013*, 79 FR 43395 (July 25, 2014) ("*Preliminary Results*") and Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding Preliminary Results of the 2012-2013 Antidumping Duty Administrative Review: Certain Polyester Staple Fiber from the People's Republic of China, dated July 17, 2014 ("*Prelim Decision Memo*").



BACKGROUND:

The period of review (“POR”) is June 1, 2012, to May 31, 2013. On July 25, 2014, the Department published the *Preliminary Results*.² In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on our *Preliminary Results*.³ On August 4, 2014, Takayasu Industrial (Jiangyin) Co., Ltd. (“Takayasu”) requested a public hearing.⁴ On August 19, 2014, September 19, 2014, and October 7, 2014, the Department extended the briefing schedule for the final results.⁵ On October 21, 2014, Takayasu⁶ and DAK Americas LLC (“Petitioner”)⁷ submitted case briefs. On October 27, 2014, Petitioner requested that the Department strike portions of Takayasu’s case brief.⁸ On October 28, 2014, Takayasu⁹ and Petitioner¹⁰ submitted rebuttal briefs, and Takayasu requested a closed hearing.¹¹

On October 30, 2014, the Department fully extended the deadline for issuing the final results.¹² On November 4, 2014, the Department requested that Takayasu resubmit its case brief because it contained arguments from a submission that was previously removed from the record.¹³ On

² *Id.*

³ *Id.*

⁴ See Takayasu Requests for Hearing: Administrative Review of the Antidumping Duty Order on Certain Polyester Staple Fiber from the People’s Republic of China, dated August 4, 2014.

⁵ See Memorandum to the File through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office V, Enforcement and Compliance, from Steven Hampton, International Trade Analyst, AD/CVD Operations, Office V, Enforcement and Compliance, regarding 2012-2013 Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China: Extension of Briefing Schedule for the Final Results, dated August 19, 2014; Memorandum to the File from Steven Hampton, International Trade Analyst, AD/CVD Operations, Office V, Enforcement and Compliance, regarding 2012-2013 Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China: Second Extension of Briefing Schedule for the Final Results, dated September 19, 2014; and Memorandum to the File from Steven Hampton, International Trade Analyst, AD/CVD Operations, Office V, Enforcement and Compliance, regarding 2012-2013 Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China: Third Extension of Briefing Schedule for the Final Results, dated October 7, 2014.

⁶ See Takayasu’s Administrative Case Brief: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China, dated October 21, 2014 (“Takayasu’s Case Brief”).

⁷ See Sixth Administrative Review of Polyester Staple Fiber from the People’s Republic of China, dated October 21, 2014 (“Petitioner’s Case Brief”). The Department notes that “Polyester Staple Fiberfill” is a misidentification of the proceeding. The Department has corrected this reference throughout this memorandum to the name: “Polyester Staple Fiber.”

⁸ See Sixth Administrative Review of Polyester Staple Fiber from the People’s Republic of China – The Department Should Strike Portions of Takayasu’s Case Brief, dated October 27, 2014.

⁹ See Takayasu’s Rebuttal Brief: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China, dated October 28, 2014 (“Takayasu’s Rebuttal Brief”).

¹⁰ See Sixth (2012-2013) Administrative Review of Polyester Staple Fiber from the People’s Republic of China: Petitioner’s Rebuttal Brief for Takayasu, dated October 28, 2014 (“Petitioner’s Rebuttal Brief”).

¹¹ See Takayasu’s Rebuttal Brief.

¹² See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, from Steven Hampton, International Trade Compliance Analyst, Office V, Antidumping and Countervailing Duty Operations, regarding Certain Polyester Staple Fiber from the People’s Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review, dated October 30, 2014.

¹³ See 2012-2013 Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China: Takayasu’s Case Brief, dated November 4, 2014.

November 5, 2014, Takayasu submitted a redacted version of its case brief per the Department's request.¹⁴ On November 20, 2014, the Department declined Takayasu's request for a closed hearing because Takayasu's request was not timely filed pursuant to the Department's regulations.¹⁵ On December 16, 2014, Takayasu withdrew its public hearing request.¹⁶ On December 18, 2014, the Department met with Takayasu in response to its request for a meeting.¹⁷ On January 6, 2015, the Department met with Petitioner in response to its request for a meeting.¹⁸

SCOPE OF THE ORDER:

The merchandise covered by the order is synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The subject merchandise may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture.

The following products are excluded from the scope: (1) PSF of less than 3.3 decitex (less than 3 denier) currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 5503.20.0025 and known to the industry as PSF for spinning and generally used in woven and knit applications to produce textile and apparel products; (2) PSF of 10 to 18 denier that are cut to lengths of 6 to 8 inches and that are generally used in the manufacture of carpeting; and (3) low-melt PSF defined as a bi-component fiber with an outer, non-polyester sheath that melts at a significantly lower temperature than its inner polyester core (classified at HTSUS 5503.20.0015).

Certain PSF is classifiable under the HTSUS subheadings 5503.20.0045 and 5503.20.0065. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

¹⁴ See Takayasu's Redacted Administrative Case Brief: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China, dated November 5, 2014 ("Takayasu's Redacted Case Brief").

¹⁵ See 2012-2013 Antidumping Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China: Takayasu's Closed Hearing Request, dated November 20, 2014.

¹⁶ See Takayasu Withdrawal of Request for Hearing: Administrative Review of the Antidumping Duty Order on Polyester Staple Fiber from the People's Republic of China, dated December 16, 2014.

¹⁷ See Memorandum to the File from Steven Hampton, International Trade Compliance Analyst, Office V, Enforcement and Compliance, regarding Certain Polyester Staple Fiber from the People's Republic of China, dated December 18, 2014.

¹⁸ See Memorandum to the File from Steven Hampton, International Trade Compliance Analyst, Office V, Enforcement and Compliance: Meeting with Petitioner, dated January 6, 2015.

DISCUSSION OF THE ISSUES

Comment 1: Surrogate Financial Ratios

Petitioner:

- In the *Preliminary Results*, the Department used the financial statements from Angtai Co., Ltd. (“Angtai”) to value financial ratios and should continue to rely *solely* on these financial statements in the final results (emphasis added). Petitioner noted that there was a calculation error regarding repairs/maintenance costs and net financial expenses that had been excluded from selling, general, and administrative (“SG&A”) expenses, and provided revised calculations using Angtai’s financial statements.¹⁹ Petitioner argued that the Department should rely on those revisions for the final results by including “Assets-Repairs” and net financial expenses in the numerator for SG&A.
- The Department should not rely on the financial statements of Compass Corporation Co., Ltd. (“Compass”) because the information submitted by Takayasu does not establish that Compass was engaged in PSF production in 2012. For example, the website for Compass provided by Takayasu identifies a link that should take one to the company factory under “Compass Corporation Co., Ltd. Map”.²⁰ However, opening that link shows a ground level Google image of factory locations of a different plastic company (Boonnarong Plastic Industry) and a packaging company (Phan Thon Packaging).²¹
- Petitioner noted that the Compass webpage that Takayasu downloaded on June 6, 2014, states that Compass has a PSF production capacity of 500-700 tons per month.²²
- Petitioner argued that Takayasu submitted portions of Compass’s website which indicate that it produces other products.²³ Thus, Petitioner claims that it is unclear whether the production of these other products is related to Compass’s purported production of subject merchandise.
- Should the Department use Compass’s financial statements in the final results, Takayasu incorrectly included all employee expenses in Compass’s financial statements - both for factory labor and for sales, general and administrative staff - with production labor in the materials, labor and energy (“MLE”) denominator.²⁴ While wage labor costs and overtime wages relate to production labor hours, salaries and bonuses relate to the sales personnel, administrators, and general staff. Thus, salaries and bonuses for general staff should not be included as a part of total SG&A expenses.

¹⁹ See 6th Administrative Review of Polyester Staple Fiber from the People’s Republic of China –Surrogate Values, dated November 25, 2013, at Exhibits 12A-12C; and Sixth (2012/2013) Administrative Review of Polyester Staple Fiber from the People’s Republic of China - Supplemental Surrogate Value Information, dated June 16, 2014, at 2 and Attachment 2 (“Petitioner’s Supplemental SV Information”).

²⁰ See Second Surrogate Value Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China, dated June 17, 2014, at Exhibit 1C.

²¹ See 6th Administrative Review of Polyester Staple Fiber from the People’s Republic of China - Rebuttal of Takayasu’s June 17, 2014, Supplemental Surrogate Value Submission, dated June 30, 2014, at Attachment 1.

²² See Takayasu Case Brief, at 26.

²³ Such as, Plastic Resin, Plastic Food Ware, Plastic Bag, Foam Products, Chemical Products and Lubricants, Sheet Foam and Bumper Material, and Machines for Plastic. See Second Surrogate Value Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China, dated June 17, 2014, at Exhibit 1B (“Takayasu Second SV Submission”).

²⁴ See Takayasu Second SV Submission, at Exhibit 1A.

- The Department should not rely on the financial statements of Thai Win Fiber Industry Co., Ltd. (“Thai Win”) because the information submitted by Takayasu does not establish that Thai Win was engaged in the production of PSF during the POR (*i.e.*, Thai Win’s financial statements indicate that the *distribution* of fibers account for “100%” of its business) (emphasis added).²⁵ Moreover, Thai Win’s 2013 financial statements are less contemporaneous because they only cover five months of the POR.²⁶
- Should the Department use this financial statement in the final results, Takayasu incorrectly classified security costs in Thai Win’s financial statements as part of factory labor in MLE.²⁷ Petitioner contends that security costs include the purchase and maintenance costs for alarm systems, surveillance equipment, *etc.*, not only salaries. Furthermore, the factors of production (“FOPs”) do not include the employment costs of non-production labor (*i.e.*, security costs are a general cost to Thai Win). Thus, this cost should be included in total SG&A expenses.
- The Department should not rely on the financial statements of Asakowit Co., Ltd. (“Aswakowit”) because record evidence indicates that Asawakowit is only a textile trading company and not a producer of textiles (*i.e.*, “100 percent” of its activities involved the trade (import/export of textiles, including cotton).²⁸ Moreover, Asakowit’s financial statements indicate that the entire cost of goods sold is made of purchases, not MLE.²⁹ Furthermore, the depreciation in Asakowit’s financial statements is for office equipment and the installation of decorations, which is what one would expect of a trading company that only has sales offices and display centers. Takayasu did not even attempt to move such depreciation into factory overhead in its calculations.³⁰
- Should the Department use this financial statement in the final results, Takayasu’s calculation of surrogate financial ratios using Asakowit’s financial statements contain two errors. Takayasu placed all administrative personnel expenses into production labor in MLE.³¹ This is incorrect, as those administrative costs are stated as a line item *after* the cost of sales (emphasis added). Similarly the non-production utility costs are part of administrative costs reported as a line-item *after* the cost of sales (emphasis added). Both elements need to be included in total SG&A expenses to calculate this trading company’s financial ratios.
- Takayasu’s claim that Angtai’s factory overhead cost is “too high” is based on flawed comparisons. Takayasu includes in its benchmarking of factory overhead the 0.83 percent for Asawakowit, which is the result of allocating the depreciation of sales office equipment and decoration costs over the cost of purchasing goods, which distorts the entire analysis. When corrected for the SG&A employees and SG&A utility costs, Asawakowit’s overhead is still only 0.93 percent of the cost of sales but its SG&A percentage jumps to 31.82 percent. These corrections underscore that Asakowit operates as a trading company.
- Takayasu’s related claim that Angtai has “an aberrationally high amount of depreciation” is also incorrect. For example, even if all companies being compared have an equal emphasis on

²⁵ See Takayasu Second SV Submission, at Exhibit 2B.

²⁶ *Id.*

²⁷ *Id.*, at Exhibit 2A.

²⁸ *Id.*, at Exhibit 3B

²⁹ *Id.*

³⁰ *Id.*, at Exhibit 3A

³¹ *Id.*

production of the same class of product, a company using new factory equipment³² would be expected to have higher depreciation than would a company using much older factory equipment.³³ In comparison, Thai Win's brochure claims that it was founded in 1990 – if it purchased a combination of used and new equipment sixteen years ago, it would have very little left to depreciate.³⁴ As a result, by 2013, 85 percent of the Baht 95 million in capital assets were in use, but already fully depreciated.³⁵

- There has been no contention that Angtai's sole focus is the production of PSF. In contrast, the actual product mix of Compass and Thai Win for the periods covered by their financial statements is not certain. The fact that their financial statements have lower depreciation costs may reflect a greater emphasis on sales rather than production in Thai Win's case, and production of goods other than PSF in the case of Compass.

- Finally, Takayasu's claim that Angtai made too much profit is incorrect.³⁶ Takayasu relied on the November 25, 2014 calculations that were superseded by Petitioner's final SV comments.³⁷ Correcting these errors, particularly the inclusion of financial expenses, provides a profit before taxes of 2.34 percent, virtually the same as the average of the three companies that Takayasu proffers (but which do not produce PSF).³⁸

Takayasu:

- The Department's use of Angtai's financial statements is not supported by the record evidence. The three financial statements submitted by Takayasu - Asawakowit, Compass, and Thai Win - fall within the same range, corroborate one another, and are representative of the PSF industry in Thailand.³⁹

- Angtai's financial statements are an outlier due to high depreciation expenses for plant machinery which skewed the overhead ratio used in the *Preliminary Results*. The Department should continue to follow its policy of relying on multiple financial statements to derive surrogate financial ratios which may be representative of the production experiences of a broader segment of the industry.⁴⁰ Alternatively, should the Department continue to use Angtai's financial statements, it should value financial ratios based on an average of Angtai, Asawakowit, Compass, and Thai Win.

- Asawakowit, Compass, and Thai Win are suitable options to value financial ratios because they mirror the production and financial performance of Takayasu, are complete, include auditor's notes, and are undistorted by any countervailable subsidies.

- Record evidence establishes that "Compass Corporation Co., Ltd., found {sic} in the

³² Nine out of ten machines bought in the past five years.

³³ Eight out of ten machines bought between ten and thirty years ago.

³⁴ Thai Win's financial statements note: "The gross amount of the Company's full depreciated building and equipment that was still in use as at 31 December B.E. 2556 (2013) and 2555 (2012) amount to Baht 72,547,334.74 and 51,526,007.85. See Takayasu Second SV Submission, at Exhibit 2B.

³⁵ *Id.*

³⁶ See Takayasu's Case Brief, at 34-35.

³⁷ See Petitioner's Supplemental SV Information, at 2 and Attachment 2.

³⁸ See Takayasu's Case Brief, at 34.

³⁹ See Takayasu Second SV Submission, at Exhibits 1-3.

⁴⁰ See *Certain Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 29720, (May 27, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

year 2006, is one of the leading recycled polyester manufacturers in Thailand” with a “total production capacity of 500-700 tons per month.”⁴¹ As such, because Compass is a producer of identical merchandise, its financial statement mirrors the production and financial performance of Takayasu.

- Regarding Petitioner’s argument that a link on Compass’s website links to street view images of a plastic company and a packaging company, Petitioner fails to explain how they arrived at their claimed results which could not be reproduced by Takayasu. In any event, these results are irrelevant to the actual location of Compass. As such, the Department should reject Petitioner’s rebuttal arguments concerning Compass and apply its financial statement in the final results.
- Petitioner argues that the line item “Salary and Bonus” in Compass’s financial statements should be classified under SG&A instead of “labor,” since “salaries and bonuses relate to sales personnel, administrators, and general staff whose labor hours are not reported in Takayasu’s Section D questionnaire response.⁴² Compass Corporation’s financial statement contains three line items related to labor charges - “labor cost,” “overtime wage” and “salary and bonus.” As such, the financial {statements} do not separately account for production related bonuses, which is included under the hybrid line item “salary and bonus”. Since “bonus” is otherwise captured under the SV for labor charges in Thai NSO (labor) data applied in the *Preliminary Results*,⁴³ the expense attributable to “bonus” should be categorized under “labor,” in order to avoid double-counting. As such, the total amount reported in “salary and bonus” is properly classifiable under labor cost. The Department’s precedent supports the classification of bonuses under labor cost.⁴⁴
- The main products manufactured by Thai Win are “Regenerated Polyester Staple Fiber (Raw White & Colored Dope-Dyed Fiber)” and “Virgin Polyester A Grade Hollow Conjugate Polyester.” As such, Thai Win’s financial statements are another suitable option to value financial ratios.⁴⁵
- Petitioner argues that Thai Win is a trader rather than a manufacturer of goods, picking certain portions of Thai Win’s financial statements, which narrate in general terms the company’s business activities.⁴⁶ However, the financial statements contain breakouts for consumption of raw materials, labor, and energy.⁴⁷ Furthermore, the financial statements contain expenses related to depreciation incurred on machinery and the factory maintenance costs on machinery.⁴⁸ Thus, all of these expenses are clearly related to manufacturing operations.
- Petitioner further argues that “the information submitted by Takayasu does not establish that Thai Win {was} engaged in the production of PSF during the POR” since they were “unable to identify a website for the company - much less any information on its production processes - on

⁴¹ *Id.*, at Exhibit 1C.

⁴² See Petitioner’s Rebuttal Brief, at 37-39.

⁴³ See Memorandum to the File through Scot T. Fullerton, Program Manager, Office V, Enforcement and Compliance, from Steven Hampton, International Trade Compliance Analyst, Office V, Enforcement and Compliance, regarding Sixth Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China: Surrogate Values for the Preliminary Results, dated July 17, 2014 (“Prelim SV Memo”), at 4.

⁴⁴ See *Certain Steel Nails From the People’s Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316, 19319 (April 8, 2014).

⁴⁵ *Id.*, at Exhibit 2C.

⁴⁶ See 6th Administrative Review of Polyester Staple Fiber from the People’s Republic of China - Rebuttal of Takayasu’s June 17, 2014 Supplemental Surrogate Value Submission, dated June 30, 2014, at 3-4.

⁴⁷ See Takayasu’s Second SV Submission, at Exhibit 2B.

⁴⁸ *Id.*

the internet.”⁴⁹ However, Petitioner’s arguments are baseless because the Department’s practice does not mandate that a surrogate company host its own website or that the company information be published on the Internet.

- Petitioner failed to rebut Thai Win’s product brochure.⁵⁰ The brochure is stamped and signed by the Managing Director of the company and lists the company’s fax and telephone number.⁵¹ As such, Petitioner could easily have inquired directly whether Thai Win is engaged in the production of subject merchandise. In view of this, Petitioner’s arguments with respect to Thai Win are unpersuasive.
- Petitioner also argues that Thai Win’s 2013 financial statements are unsuitable because they only cover five months of the POR compared the 2012 Angtai financial statements, applied in the *Preliminary Results*, which cover seven months of the POR. When evaluating the contemporaneity aspect of financial statements, the Department’s policy is to ascertain whether the financial statements overlap *any portion* of the POR (emphasis added). When the record offers suitable financial statements of more than one surrogate company, the Department does not restrict itself to the most contemporaneous of all financial statements, because in selecting the SV (including financial ratios) the Department endeavors to select data which is representative of a broad-market average.
- Petitioner alleges that Asakowit is a trader rather than a producer of PSF because the line item “cost of sales” references only purchases of goods, instead of cost of raw materials, labor and energy. In addition, Petitioner points out that “examination of Aswakowit’s website reveals no mention of any production facilities, only its ability to trade internationally, and its supply offices in the PRC, Vietnam, Pakistan and India.”⁵² However, the fact that its financial statements also contain a basket category line item “cost of sales”⁵³ does not imply that Asakowit is a trader of goods. Plus, the absence of factory information on a surrogate company’s website cannot be interpreted as a lack of a company’s manufacturing activity *per se*. Based on record evidence, the Department should consider Asawakowit as a PSF producer, notwithstanding lack of certain itemized expenses in its financial statements, and absence the express listing of production activities on its website.
- The continued use of Angtai’s financial statements would lead to a skewed calculation of normal value (“NV”). The Department should adopt the average ratios from these three financial statements to value the overhead ratio in the final results.
- Petitioner’s claim that the line item “Assets-Repairs” should be included in SG&A is not consistent with the Department’s practice.⁵⁴ In order to be categorized under SG&A, the expenditure incurred by Angtai must be demonstrably proven to relate to the general operations

⁴⁹ See 6th Administrative Review of Polyester Staple Fiber from the People’s Republic of China - Rebuttal of Takayasu’s June 17, 2014 Supplemental Surrogate Value Submission, dated June 30, 2014, at 4.

⁵⁰ See Takayasu’s Second SV Submission, at Exhibit 2C.

⁵¹ *Id.*

⁵² See 6th Administrative Review of Polyester Staple Fiber from the People’s Republic of China - Rebuttal of Takayasu’s June 17, 2014 Supplemental Surrogate Value Submission, dated June 30, 2014, at 4.

⁵³ Which aggregates the cost of raw materials, as well as most of labor and energy expenses.

⁵⁴ See *Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485, 40492 (July 15, 2008) (“*Tires from the PRC*”) (“It is the Department’s practice to exclude income from long-term financial assets because such income is related to investing activities and is not associated with the general operations of the company.”).

of the company. The Department should continue to exclude this expense from the computation of financial ratios.

Department’s Position: In these final results, the Department has calculated surrogate financial ratios using the average of Angtai’s and Compass’s 2012 financial statements. Based upon the evidence on the record, the Department finds that Angtai and Compass are PSF producers, and as explained below, we find that Angtai’s and Compass’s financial statements represent the “best available” information within the meaning of the statute.

When selecting financial statements for purposes of calculating financial ratios, the Department’s policy is to use data from market economy (“ME”) surrogate companies based on the “specificity, contemporaneity, and quality of the data.”⁵⁵ In accordance with 19 CFR 351.408(c)(4), the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country to value manufacturing overhead, general expenses, and profit.⁵⁶ Although the regulation does not define what constitutes “comparable merchandise,” it is the Department’s practice to, where appropriate, apply a three-prong test that considers: (a) physical characteristics; (b) end uses; and (c) production process.⁵⁷ Additionally, for purposes of selecting surrogate producers, the Department examines how similar a proposed surrogate producer’s production experience is to the NME producer’s production experience.⁵⁸ However, the Department is not required to “duplicate the exact production experience of” an NME producer, nor must it undertake “an item-by-item analysis in calculating factory overhead.”⁵⁹

Angtai

The Department continues to find that Angtai is suitable to value surrogate financial ratios. Angtai produces a range of PSF including PSF that is included in the scope of the *Order* (i.e., PSF measuring 3.3 decitex (3 denier, inclusive) or more in diameter). Although Angtai also produces PSF that is excluded from the *Order* (i.e., PSF of less than 3.3 decitex (less than 3 denier), there is no information on the record to indicate how much of this out of scope PSF accounts for Angtai’s total production.⁶⁰

⁵⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People’s Republic of China*, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

⁵⁶ See *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 70163 (November 25, 2014), and accompanying Issues and Decision Memorandum at Comment 5.

⁵⁷ See, e.g., *Certain Woven Electric Blankets from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 38459 (July 2, 2010) and accompanying Issues and Decision Memorandum at Comment 2.

⁵⁸ See *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) and accompanying Issues and Decision Memorandum at Comment 13.

⁵⁹ See *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999); see also *Magnesium Corp. of Am. v. United States*, 166 F.3d 1364, 1372 (Fed. Cir. 1999).

⁶⁰ *Id.*

Takayasu has acknowledged that Angtai is a PSF producer.⁶¹ Takayasu claims that Angtai's financial statements are an outlier due to high depreciation expenses for plant machinery which skewed the overhead ratio in the *Preliminary Results*.⁶² However, Takayasu fails to note that Angtai was formed in 2007 (*i.e.*, just five years before the financial statements in question).⁶³ Therefore, a new company like Angtai with new factory equipment would be expected to have higher depreciation than a company with older factory equipment.⁶⁴

We agree with Petitioner's statement that the Department should revise the calculation of the surrogate financial ratios using Angtai's financial statements to include the line item "Asset-repairing"⁶⁵ under Angtai's SG&A expenses, instead of excluding this line item from the calculation. This line item is included in Angtai's financial statements under "Details of Selling and Administration" expense."⁶⁶ Therefore the Department will include "Asset-repairing" under SG&A in the calculation of surrogate financial ratios to accurately reflect Angtai's financial statements.

With respect to Takayasu's argument that including "Asset-repairing" under SG&A is inconsistent with the Department's practice, we disagree. Takayasu claims that *Tires from the PRC* established the Department's practice "to exclude income from long-term financial assets because such income is related to investing activities and is not associated with the general operations of the company."⁶⁷ However, the Department's analysis in *Tires from the PRC* pertained to the offset of interest revenue⁶⁸ while "Asset-repairing" is listed as an administrative expense in Angtai's financial statements (*i.e.*, not income or revenue).⁶⁹ Consequently, we have utilized Angtai's financial statements, with Petitioner's proposed revision for these final results.

We also agree with Petitioner that the Department should revise the calculation of the surrogate financial ratios for Angtai and include "financial expenses" in the numerator for SG&A. Prior to the *Preliminary Results*, the Department notes that Petitioner submitted its Petitioner's Supplemental Surrogate Value Submission, which provided surrogate financial ratio calculations using the FY 2012 Angtai financial statement that included "financial expenses" in the numerator for SG&A.⁷⁰ However, in the *Preliminary Results*, the Department did not include

⁶¹ See Takayasu's Case Brief, at 33.

⁶² *Id.*, at 2.

⁶³ See 6th Administrative Review of Polyester Staple Fiber from the People's Republic of China - Surrogate Values, dated November 25, 2013, at Exhibit 12B.

⁶⁴ The Department notes that like Angtai, Takayasu is a relatively new company (*i.e.*, "It was established as a producer of subject merchandise and construction on the factory was completed in July 2006."). See Takayasu Section A Response: Administrative Review of the Antidumping Duty Order on Polyester Staple Fiber from the People's Republic of China, dated September 24, 2013.

⁶⁵ The Department notes that Petitioner stated that this line item was "Assets-Repairs". However, this line item is described as "Asset-repairing" in Angtai's financial statements.

⁶⁶ *Id.*, at 12C.

⁶⁷ See *Tires from the PRC* and accompanying Issues and Decision Memorandum, at Comment 18D.

⁶⁸ *Id.*

⁶⁹ See 6th Administrative Review of Polyester Staple Fiber from the People's Republic of China - Surrogate Values, dated November 25, 2013, at Exhibit 12C.

⁷⁰ See Petitioner's Supplemental Surrogate Value Submission at Attachment 2.

“financial expenses” in the numerator for SG&A when calculating the surrogate financial ratios using the FY 2012 Angtai financial statement.⁷¹

Because we cannot go behind the financial statement to determine the appropriateness of including this item in the financial ratio calculations, it is the Department’s practice to look to information in each particular financial statement to determine the possible nature of the activity generating the expense to see if a relationship exists between the activity and the general operations of the company.⁷² The exception to our practice arises when the reported information and the information in the surrogate financial statement indicates otherwise, *i.e.*, the income has been reported as a factor of production (“FOP”), the income relates to a separate line of business, or the income relates to the disposal of non-routine assets.⁷³ In this instance, after further review of the FY 2012 Angtai financial statement, we have not found any information in Angtai’s FY 2012 financial statement or other record information to indicate that its “financial expenses” are not related to the general operations of the company or related to specific manufacturing or selling activities.^{74, 75} Accordingly, the Department finds that it should have included “financial expenses” in the numerator for SG&A when calculating the surrogate financial ratios using the FY 2012 Angtai financial statement. Therefore, for the final results, the Department will include “financial expenses” in the numerator for SG&A when calculating the surrogate financial ratios for the FY 2012 Angtai financial statement.⁷⁶

Compass

We also determine that Compass is a suitable option for valuing the surrogate financial ratios. Compass produced a range of PSF including PSF that is included in the *Order* (*i.e.*, PSF measuring 3.3 decitex (3 denier, inclusive) or more in diameter).⁷⁷ Although Compass also produces PSF that is excluded from the *Order* (*i.e.*, PSF of less than 3.3 decitex (less than 3 denier), there is no information on the record to indicate how much of this out of scope PSF accounts for Compass’s total production.⁷⁸

⁷¹ See Preliminary Surrogate Value Memo at Attachment 13.

⁷² See, *e.g.*, *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 79 FR 4875 (January 30, 2014) and accompanying Issues and Decision Memorandum at Comment 6.D.

⁷³ See *Wooden Bedroom Furniture From the People’s Republic of China: Final Results and Final Rescission in Part*, 76 FR 49729 (August 11, 2011) and accompanying Issues and Decision Memorandum at Comment 19; see also *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order*, 76 FR 77772 (December 14, 2011) and accompanying Issues and Decision Memorandum at Comment 9.

⁷⁴ See *Steel Wire Garment Hangers from the People’s Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review*, 77 FR 12553 (March 1, 2012) and accompanying Issues and Decision Memorandum at Comment 4.

⁷⁵ See 6th Administrative Review of Polyester Staple Fiber from the People’s Republic of China -Surrogate Values, dated November 25, 2013, at Exhibit 12.

⁷⁶ See Final Results Surrogate Value Memo at Attachment 13A.

⁷⁷ *Id.*, Compass produces PSF of 1.3 denier to 15 denier.

⁷⁸ *Id.*

In response to Petitioner’s argument that a link on Compass’s website shows street view images of factory locations for a plastic company and packaging company, and thus calls into question whether Compass produced PSF during the POR, we disagree. Compass’s audited and contemporaneous financial statements indicate that the company produced PSF during the POR (*i.e.*, “Identify Goods and Services Offered: Produces Polyester Staple Fiber”).⁷⁹ Moreover, the Department notes that Petitioner obtained these alleged images of a plastic company and packaging company on June 27, 2014 (*i.e.*, over a year after the conclusion of the POR).⁸⁰ With respect to Petitioner’s argument that portions of Compass’s website indicate that it produces other products and that it is unclear whether the production of these products is related to Compass’s production of PSF, we disagree. In weighing the evidence on the record, we find that the best available information is Compass’s financial statements, which are audited and contemporaneous, and not information on its website which may not be contemporaneous. Therefore, we weigh the evidence in favor of Compass’s financial statements, which indicate that 99.91 percent of Compass’s income is related to the production of PSF.⁸¹ Consequently, we have utilized Compass’s financial statements in the final results.

We disagree, in part, with Petitioner’s argument that the line item “Salary and Bonus” in Compass’ financial statements should be classified under SG&A instead of “labor,” since “Salary and Bonus” relate to sales personnel, administrators, and general staff. In *Labor Methodologies*, the Department addressed concerns of double-counting labor costs when it stated that it would adjust “the surrogate financial ratios when the available record information—in the form of itemized indirect labor costs—demonstrates that labor costs are overstated.”⁸² Given the nature of the information that serves as the source for financial ratio calculations in NME cases (*i.e.*, surrogate financial data from a company that is not a party to the proceeding), we cannot “go behind” a surrogate financial statement to determine precisely what each item includes or to what activity it relates.⁸³ Therefore, when assigning the various line items to particular categories for our financial ratio calculations, we prefer to rely on the classification of these items from the surrogate financial statement, unless there is good reason to believe the classification is not accurate.⁸⁴ Accordingly, it is the Department’s practice to treat labor in its financial ratio calculations in the same manner the surrogate company disaggregates its labor costs.⁸⁵

⁷⁹ See Second Surrogate Value Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China, dated June 17, 2014, at Exhibit 1B.

⁸⁰ See 6th Administrative Review of Polyester Staple Fiber from the People’s Republic of China - Rebuttal of Takavasu’s June 17, 2014 Supplemental Surrogate Value Submission, dated June 30, 2014, at Attachment 1.

⁸¹ See Second Surrogate Value Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China, dated June 17, 2014, at Exhibit 1B.

⁸² See *Labor Methodologies*, 76 FR at 36093-94.

⁸³ See, *e.g.*, *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010*, 78 FR 11143 (February 15, 2013) and accompanying Issues and Decision Memorandum at Comment 16.

⁸⁴ See, *e.g.*, *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 79 FR 4875 (January 30, 2014) and accompanying Issues and Decision Memorandum at Comment 6.D.

⁸⁵ See Preliminary Results Surrogate Value Memo at 9-10; see also *Stainless Steel Sinks* and accompanying Issues and Decision Memorandum at Comment 4.

Based on our review of the Compass financial statement, we find that the total value for “Employee Benefit Expenses,”⁸⁶ which includes “Salary and Bonus,” “Labor Cost,” “Overtime Wage,” “Welfare,” and “Social Security,” listed in the income statement should be adjusted because it includes SG&A labor that should be treated as a SG&A expense.⁸⁷ In *Labor Methodologies*, the Department indicated that it will make an adjustment to the financial ratios to avoid double-counting only when the financial statements allow such an adjustment and the record evidence demonstrates that the surrogate financial ratios are overstated.⁸⁸ As explained in *Wooden Bedroom Furniture 2012 Final Results*, the labor expenses included in the denominator of the surrogate financial ratios are direct and indirect expenses related to manufacturing labor.⁸⁹ Additionally, the Department notes that administrative and sales personnel are not employed in manufacturing products, and thus the wages, benefits, and expenses for these non-manufacturing personnel are appropriately considered SG&A expenses.⁹⁰

In reviewing the selected labor data source, the 2012-2013 NSO data,⁹¹ the Department finds that the 2012-2013 NSO data only include the data line items for “manufacturing” and do not include data from the “administrative and support activities” line items.⁹² Therefore, the Department finds that the 2012-2013 NSO data do not include SG&A labor and thus SG&A labor should be treated as a SG&A expense in the surrogate financial ratios. Accordingly, the Department will only treat the total value of “Employee Benefit Expenses”⁹³ listed in the “Cost of Sales” section of the Compass’ FY 2012 financial statement as direct labor because these expenses are related to personnel employed in manufacturing product.⁹⁴ Because the Department finds that only the total value of “Employee Benefit Expenses” listed in the “Cost of Sales” section of the Compass’ FY 2012 financial statement is related to direct labor, the Department will adjust the total value of “Employee Benefit Expenses” listed in the income statement to obtain the portion of “Employee Benefit Expenses” that relates to administrative and sales personnel not employed in manufacturing products.⁹⁵ Therefore, the Department will treat the portion of “Employee

⁸⁶ 7,436,074.00 Thai Baht.

⁸⁷ See Second Surrogate Value Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China, dated June 17, 2014, at Exhibit 1B.

⁸⁸ See *Labor Methodologies*, 76 FR at 36093-94.

⁸⁹ See *Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review: 2012*, 79 FR 51954 (September 2, 2014) (“*Wooden Bedroom Furniture 2012 Final Results*”) and accompanying Issues and Decision Memorandum at Comment 6.

⁹⁰ *Id.*; see also *Steel Hangers AR4 Final Results* and accompanying Issues and Decision Memorandum at Comment 7.

⁹¹ For further explanation of our selection of the 2012-2013 NSO data as the best available information for valuing labor, please see the Department’s Position at Comment 5.

⁹² See Prelim SV Memo at Exhibits 5A and 5B; *Certain Steel Threaded Rod from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71743 (December 3, 2014) and accompanying Issues and Decision Memorandum at Comment 3.

⁹³ The total value of “Employee Benefit Expenses” listed in the “Cost of Sales” section is 6,533,407.00 Thai Baht.

⁹⁴ See Second Surrogate Value Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China, dated June 17, 2014, at Exhibit 1B (page 2 of the Notes of the financial statement).

⁹⁵ The total value of “Employee Benefit Expenses” related to administrative and sales personnel is 902,667 Thai Baht (7,436,074 - 6,533,407). See Second Surrogate Value Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China, dated June 17, 2014, at Exhibit 1B (Income Statement and page 2 of the Notes of the financial statement).

Benefit Expenses” that relates to administrative and sales personnel in the Compass’ FY 2012 financial statement as a SG&A expense. This is also consistent with the Department’s treatment and classification of expenses, as reported in the FY 2012 Angtai financial statement, which no party contested in their briefs.⁹⁶

Thai Win

We find that Thai Win is not the best available information on the record and, therefore, we are not using its financial statements. Specifically, Thai Win’s financial statements indicate that the distribution of fibers accounts for 100 percent of its revenue and that Thai Win’s main business is “to distribute fiber.”⁹⁷ Takayasu argues that Thai Win’s financial statements contain breakouts for the consumption of raw materials, labor, energy, and machinery depreciation; and that this information is related to manufacturing operations. However, these breakouts contradict information in Thai Win’s financial statements about the distribution of fibers accounting for 100 percent of its revenue and that Thai Win’s main business is “to distribute fiber”.⁹⁸ There is no information on the record to confirm whether these claimed manufacturing operations are related to the production of subject merchandise (*i.e.*, what kind of PSF was produced, the denier of the PSF, the raw materials that were used, *etc.*). Furthermore, Thai Win’s level of integration is unclear. While Thai Win’s financial statements indicate that it purchases raw materials, there is no information to demonstrate if those raw materials are related to the production of subject merchandise (*e.g.*, PET Chips and PET Flakes, *etc.*).⁹⁹ Thus, we find that Thai Win is not a suitable option to value surrogate financial ratios because there is no evidence that Thai Win was engaged in the production of PSF during the POR. Therefore, it is not the best available information in light of the information available on the record pertaining to Angtai and Compass.

Asakowit

With respect to Asakowit, we also find that it is not suitable for valuing surrogate financial ratios. As described above for Thai Win, there is no evidence that Asakowit was engaged in the production of PSF during the POR. Asakowit’s financial statements state that 100 percent of its total income is derived from the “Trade, import, export, textile, *i.e.*, cotton”, and that “{t}he Company runs business in connection with trading yarn, textile, cotton, all fabrics, and broker’s service.”¹⁰⁰ Thus, we find that Asakowit is not suitable for valuing surrogate financial ratios because there is no information to indicate that Asakowit was engaged in the production of PSF during the POR. Therefore, it is not the best available information in light of the information available on the record pertaining to Angtai and Compass.

⁹⁶ See Prelim SV Memo at Exhibit 13; see also 6th Administrative Review of Polyester Staple Fiber from the People’s Republic of China - Surrogate Values, dated November 25, 2013, at Exhibit 12C (“salaries and overtime” from “Details of Selling Cost” sheet are classified as labor in the ratio calculation; and “salaries and overtime,” “welfare,” and “social security” expenses from the “Details of Selling and Administration Expenses” sheet are classified as SG&A expenses in the ratio calculation).

⁹⁷ *Id.*, at Exhibit 2B.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*, at Exhibit 3B.

Therefore, given the reasons outlined above, the Department will use an average of Angtai's and Compass's 2012 financial statements to calculate surrogate financial ratios in the final results along with the aforementioned revision to the line item in Angtai's financial statement.¹⁰¹

Comment 2: Surrogate Value for PET Chips & PET Flakes

Petitioner:

- The Department correctly relied on Thai import statistics under HTS 3907.60 to value PET Chips and PET Flakes.¹⁰² However, a more specific value may be found using the subcategories of HTS 3907.60. The Thai customs tariff system provides distinct subcategories by form, and that distinction permits an even greater degree of specificity for factors that have been reported by physical format (*i.e.*, chips versus flakes).
- According to Alibaba's website, PET Chips are synonymous with "PET granules" as this term refers to discrete shapes of extruded polyethylene terephthalate ("PET").¹⁰³ Moreover, the different terms for PET Chips (*i.e.*, chips, granules, and pellets) are used interchangeably by PSF suppliers in the PRC.¹⁰⁴ Therefore, PET Chips (*i.e.*, Granules and Pellets) should be valued under Thai HTS 3907.60.20000 "Polyethylene Terephthalate, Granules."¹⁰⁵
- With respect to PET Flakes, in 2003, U.S. Customs & Border Protection ("CBP") ruled that the correct tariff category for PET Chips (or pellets) and PET Flakes was HTSUS 3907.60.¹⁰⁶ This ruling, at the six-digit harmonized level, must be in conformity with international applications of the tariff code. Thus the applicability of HTS 3907.60 to both PET Chips and PET Flakes¹⁰⁷ should be familiar to any respondent in the PRC as the HTS 3907.60 tariff code that the PRC established for World Trade Organization accession covers both PET Chips and PET slices (*i.e.*, flakes).¹⁰⁸
- In 2010, CBP confirmed the 2003 ruling that HTUS 3907.60 covered PET flakes, and provided that the "other" subcategory which is HTSUS 3907.60.0070, is applicable to PET flakes, but not chips).¹⁰⁹ Therefore, PET Flakes should be valued under Thai HTS 3907.60.90000 "Polyethylene Terephthalate, "Other".¹¹⁰
- In response to Takayasu's arguments, Petitioner contends that Thai imports under HTS 3907.60 are not aberrant when compared to Thai import data and world export data. Petitioner

¹⁰¹ See Final SV Memo, at 1 and Exhibit 2.

¹⁰² See Prelim SV Memo, at 2 and Attachments 1-3.

¹⁰³ See 6th Administrative Review of Polyester Staple Fiber from the People's Republic of China - Surrogate Value Rebuttal, Correction and Clarification, dated December 16, 2013, at Attachment 2.

¹⁰⁴ *Id.*

¹⁰⁵ See 6th Administrative Review of Polyester Staple Fiber from the People's Republic of China - Commercial Information on Surrogate Values from Import Statistics, dated February 14, 2014, at 2 and Exhibit 1.

¹⁰⁶ See 6th Administrative Review of Polyester Staple Fiber from the People's Republic of China - Surrogate Values, dated November 25, 2013, at Exhibit 1B.

¹⁰⁷ "Slices" of PET materials such as bottles processed into a small feedstock format similar to chips.

¹⁰⁸ See 6th Administrative Review of Polyester Staple Fiber from the People's Republic of China - Surrogate Value Rebuttal, Correction and Clarification, dated December 16, 2013, at Attachment 3.

¹⁰⁹ See 6th Administrative Review of Polyester Staple Fiber from the People's Republic of China - Surrogate Value Rebuttal, Correction and Clarification, dated December 16, 2013, at Attachment 1; and Sixth Administrative Review of Polyester Staple Fiber from the People's Republic of China - Commercial Information on Surrogate Values from Import Statistics, dated February 14, 2014, at 2 and Exhibit 3.

¹¹⁰ *Id.*, at 2 and Exhibit 2.

provided Thai world trade data for HTS 3907.60, including Global Trade Atlas (“GTA”) data that mirrors imports by reporting the export data to Thailand for HTS 3907.60, as reported by Thailand’s trading partners.¹¹¹ Moreover, these data are for the time period May 2012 – April 2013, which incorporates a one month lag to adjust for time in transit of goods, as the date of exportation must precede the date of importation during the POR.

- Takayasu is trying to eliminate higher import prices when it argued that Thailand’s imports from Germany, Japan, and Malaysia are “distinctly different” from the export statistics of those countries to Thailand.¹¹² This comparison is inaccurate because (1) Takayasu focused on import values it selected as too high,¹¹³ thus ignoring imports from other countries which have lower values;¹¹⁴ (2) Takayasu fails to account for making comparisons at different levels of trade; (3) Takayasu fails to acknowledge that HTS 3907.60 covers both *virgin* PET chips, which are always more expensive, and *recycled* PET flakes, which are always less expensive than virgin PET chips (emphasis added);¹¹⁵ (4) Takayasu did not use the same reporting agency and currency, but used other reporting platforms;¹¹⁶ and (5) Takayasu cannot account for the volume and value of inputs imported into free trade zones.
- Takayasu’s export data do not undermine the credibility of the Thai import data, but rather support the accuracy of that data. For example, the volumes of raw material imports from Japan and Malaysia under HTS 3907.60 are significant.¹¹⁷ Moreover, it makes commercial sense that the FOB value for HTS 3907.60 at a Malaysian port of \$2.41 per kilogram (“kg”) is lower than the CIF value of imports from Malaysia at the Thai port, \$2.72 per kg.¹¹⁸
- Takayasu failed to recognize that in using the six-digit HTS data, the shipment lag factor means that for each country, the precise mix of shipments in Thai import data and the corresponding mix of shipments in partner countries’ data, cannot be identical.¹¹⁹ Takayasu’s overly simplistic analysis fails to take such natural variations into account.
- Takayasu claims that Thai imports “underreport” volumes in aggregate of PET materials from Germany, Japan, and Malaysia, and “underreport” values in aggregate from Japan and Malaysia.¹²⁰ Takayasu’s analysis ignores shipments that enter into Thai special trade zones but that do not obtain customs entry into the territory of Thailand for domestic consumption. It is no

¹¹¹ See 6th Administrative Review of Polyester Staple Fiber from the People’s Republic of China - Supplemental Surrogate Value Filing, dated January 17, 2014, Exhibit 1.

¹¹² See Takayasu’s Case Brief, at 8. (Takayasu claims that because the volume and value of PET *exported* from those countries during April 22 through May 2013 do not exactly match the volume and value of PET *imported* from those countries during those months, the Thai data cannot be correct.)

¹¹³ Germany, Japan, and Malaysia.

¹¹⁴ Australia, Ireland, South Africa, and Switzerland.

¹¹⁵ Takayasu’s case brief shows that PET chips purchased in the PRC are virgin PET and the PET flakes purchased in the PRC are recycled PET. See, e.g., Takayasu’s Case Brief, at Exhibit 2.

¹¹⁶ For example, Takayasu used Eurostat, which required the conversion between currencies and units.

¹¹⁷ See Takayasu’s Case Brief, at 8. See also Takayasu’s Surrogate Value Rebuttal Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China, dated December 16, 2014, at Exhibits 1 and 3.

¹¹⁸ *Id.*, at 8. See also Takayasu’s Surrogate Value Rebuttal Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China, dated December 16, 2014, at Exhibits 1 and 4.

¹¹⁹ Not only in terms of exact specifications of a good covered but even the particular monthly mix of PET forms (chips vs. flakes).

¹²⁰ See Takayasu’s Case Brief, at 8 and Exhibit 2.

more speculative to consider this phenomenon than it is for Takayasu to assume that any difference represents misreporting by the Thai authorities and/or errors in the GTA data. It is more reasonable to take all commercial activities into account to question the competencies of Thai Customs or GTA's reporting of their data.

- Takayasu's analysis compares the differences in certain export countries' average unit value ("AUV") data for exports in 2013 from a particular country to Thailand, as compared to the AUV for those countries' exports to the world. However, Takayasu ignored the highest volume in the 2013 trade data it submitted.¹²¹ Specifically, the FOB value of exports to the world, an indication of the world-wide market value of PET chips and flakes in 2013, was \$1.69/kg. Given that an FOB value should be lower than a CIF value, the \$1.80/kg CIF value of Thailand's total imports in the POR is reasonable and accurate.
- Takayasu has incorrectly compared its faulty analysis to prior cases. In *Steel Wire from the PRC*, the InfoDrive India data, if substantially complete, permitted the Department to analyze the actual product mix of merchandise in the Indian import statistics as reported by GTA, because when complete, the InfoDrive data may benchmark the Indian import data as they would reflect the "actual products that were imported during the POI" into India.¹²² Thus, the three-prong test referenced by Takayasu pertains to a completely different benchmark.
- Even if the three-prong test were equally applicable to export statistics, a review of those export statistics evidences that they do not generally impugn the reliability of the Thai import statistics.¹²³ Takayasu claims that since the volume of export data account for a representative proportion of Thai imports, and since the volume of exports for certain countries to Thailand under HTS 3907.60 during the same period is less than the volume of imports from those countries to Thailand, the import data are impeached in the same manner as comparison of imports to InfoDrive India.¹²⁴ However, Department would not use InfoDrive data to benchmark Indian import statistics when the InfoDrive data do not account for a significant proportion of the Indian import statistics total because the InfoDrive data generally consist of a sample of Indian imports, with greater details, of the same importing country (*i.e.*, India).
- Takayasu's has made several errors in relying on the ICIS data.¹²⁵ First, the data are for May 2013, a single month at the very end of the POR.¹²⁶ Second the country sources in the data are inappropriate – Taiwan is not among the surrogate countries found to be comparable to the PRC, and Takayasu does not argue that Taiwan should be a surrogate country. Third, Takayasu claims that the ICIS data for Southeast Asia "covers Thailand", but provides no record evidence to support this claim. Finally, the prices reflect FOB prices in Taiwan, Southeast Asia, and

¹²¹ See Takayasu's Surrogate Value Rebuttal Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China, dated December 16, 2014, at Exhibits 2-10.

¹²² See *Prestressed Concrete Steel Wire Strand from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 2850 (May 21, 2010) and accompanying Issues and Decision Memorandum at 15.

¹²³ As noted above, quantity and value differences can be explained by temporal differences, product mix differences, differences in levels of trade (FOB export versus CIF import pricing) and differences in types of entry (customs territory versus special trade zones), that exist between the two sources of trade data.

¹²⁴ See Takayasu Case Brief, at 11 citing *Zhengzhou Harmoni Spice Co v. United States*, 617 F. Supp. 2d 1281, 1325 (CIT 2009).

¹²⁵ See Takayasu's Case Brief, at 13. The Department notes that Takayasu has not provided the full name for the abbreviation ("ICIS").

¹²⁶ See Takayasu's Surrogate Value Rebuttal Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China, dated December 16, 2014, at Exhibits 12-14.

Northeast Asia; whereas the Thai import data reflect CIF prices for actual POR imports into Thailand, the primary surrogate country. Thus, the ICIS data points are made at a “lesser level of trade,” for inappropriate countries.

- Takayasu also argues that the Department should value PET flakes using July 2013 ICIS data because the data from “Commerce appear flawed.” However, the ICIS data is flawed because it is not contemporaneous with the POR. Furthermore, the ICIS PET flakes data represent PRC and Indian “cost and freight” pricing. If the data represents domestic Indian pricing, it represents pricing in a country that the Department did not find to be at the same level of economic development as the PRC. If the Indian value represents export pricing, it should not be used as a benchmark, as the Department considers Indian exports to be supported by widely available export subsidies and will not rely on such data.

Takayasu:

- The Department ignored record evidence that the Thai import data reported by GTA for HTS 3907.60 is unreliable and that PET Chips and PET Flakes should be valued based on Takayasu’s purchase price of PET Chips and PET Flakes from market economy countries.
- The Thai import data is unreliable because the corresponding export prices from Germany, Japan, and Malaysia differ significantly from other benchmark data on the record. Given these distortions, the Department should value PET Chips and PET Flakes sourced from the PRC using the average purchase prices for similar PET forms sourced by Takayasu from market economy countries.
- Alternatively, the Department could use contemporaneous price data of PET from several markets in the Asia Pacific region as published by ICIS, a publisher of information on chemicals and chemical-based products;¹²⁷ or the Department could adjust the Thai import data by removing the distortive prices from the three exporting countries.
- Petitioner’s arguments that certain Thai HTS subcategories are more specific are unpersuasive and contradicted by record evidence. There is no evidence to support the aberrationally high AUVs reported from these countries for HTS 3907.60.20000 and HTS 3907.60.900000. Should the Department still decide to apply the Thai import data, it should adjust it by removing all of the outliers and aberrationally high AUVs.
- PET Chips should be valued at \$1.09/kg, by applying Takayasu’s average market economy unit purchase price. Alternatively, PET Chips may be valued at \$1.35/kg, based on the ICIS NE Asia domestic market average unit price for fiber grade PET Chips. In the event, the Department applies the Thai HTS 3907.60.20000 import data, the agency should suitably adjust it by excluding all of the data other than from Taiwan and consequently value PET chips at \$1.37/kg.
- PET Flakes should be valued at \$1.07/kg, by applying Indian import data reported by ICIS. Alternatively, the Department may value PET Flakes based on Takayasu’s average market economy purchase prices, at \$1.09/kg. In case the Department applies the Thai HTS 3907.60.900000 import data reported by GTA, the Department should adjust it by excluding all of the data other than from Taiwan and consequently value PET Flakes at \$1.34/kg.

Department’s Position: Section 773(c)(1) of the Act instructs the Department to value the FOPs based upon the best available information from a market economy country, or countries,

¹²⁷ *Id.*

that the Department considers appropriate. As noted above, when considering what constitutes the best available information, the Department considers several criteria, including whether the SV data is contemporaneous, publicly available, tax- and duty-exclusive, representative of a broad market average, and specific to the input.¹²⁸

We find that Thai import data, as reported by GTA, under HTS 3907.60 and Thai HTS 3907.60.90.0000 provide the best available information for valuing PET Chips and PET Flakes, respectively.¹²⁹ The Department has previously found that country-specific import data, as reported by GTA, such as that on the record for the inputs at issue, is publicly available, represents a broad-market average, and is tax- and duty-exclusive.¹³⁰ Additionally, this import data for HTS 3907.60 and Thai HTS 3907.60.900000 are contemporaneous with the POR.¹³¹

In the *Preliminary Results*, we valued PET Chips and PET Flakes under HTS 3907.60 “Polyethylene Terephthalate, In Primary Forms.”¹³² With respect to PET Chips, Petitioner contends that information posted on Alibaba’s website indicates that PET Chips are synonymous with “PET granules” and “PET pellets,” and that these terms are used interchangeably by the PSF industry in the PRC.¹³³ While this one entry from Alibaba’s website states that the PET Chips on this webpage are in the shape of granules/pellets, there is no indication that this information is in any way reflective of the overall PRC PSF industry (*i.e.*, no indication that the terms chips, granules, and pellets are used interchangeably beyond the one supplier listed on the Alibaba website provided by Petitioner).¹³⁴ Because the Department does not find that PET chips are synonymous with granules or pellets, we continue to find that the Thai import data under HTS 3907.60 continues to provide the best available information for valuing PET Chips.

With respect to PET Flakes, we agree with Petitioner that Thai import data under Thai HTS 3907.60.90.0000 provides the best available information for valuing PET Flakes. Petitioner has provided evidence that CBP has ruled that PET Flakes are classified as “other” under HTSUS

¹²⁸ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People’s Republic of China*, 71 FR 53079 (September 8, 2006) (“CLPP”) and accompanying Issues and Decision Memorandum at Comment 3.

¹²⁹ See 6th Administrative Review of Polyester Staple Fiber from the People’s Republic of China - Supplemental Surrogate Value Filing, dated February 14, 2014.

¹³⁰ See, e.g., *Certain Preserved Mushrooms from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 55808 (September 11, 2012) (“*Mushrooms*”), and accompanying Issues and Decision Memorandum at Comment 3.

¹³¹ See 6th Administrative Review of Polyester Staple Fiber from the People’s Republic of China - Supplemental Surrogate Value Filing, dated February 14, 2014.

¹³² See Memorandum to the File, through Scot T. Fullerton, Program Manager, Office V, Enforcement & Compliance, from Steven Hampton, International Trade Compliance Analyst, Office V, Enforcement & Compliance, regarding 6th Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China: Surrogate Values for the Preliminary Results, dated July 17, 2014, at 2.

¹³³ See 6th Administrative Review of Polyester Staple Fiber from the People’s Republic of China - Surrogate Value Rebuttal, Correction and Clarification, dated December 16, 2013, at 5 and Attachment 2.

¹³⁴ *Id.*

3907.60.0070.¹³⁵ The Department recognizes that this U.S. CBP ruling applies to the U.S. HTS description regarding 3907.60 that the HTS subcategory 3907.60.0070 “other” applies to PET Flakes.¹³⁶ However, the Department finds that this is the only evidence on the record to indicate that PET Flakes are covered by the “other” subcategory. Moreover, the Department notes that the six-digit internationally harmonized tariff schedule conforms across countries. Thus, the Department finds that it is reasonable to assume that the Thai HTS number would cover the same material that applies to this CBP ruling on this HTS category and product. Additionally, the Department notes that Takayasu has not disputed that Thai HTS 3907.60 90.0000 “Polyethylene Terephthalate, Other” as PET Flakes are not provided for elsewhere in the Thai tariff code under HTS heading 3907.60.” should be used for valuing PET Flakes. Given that Thai HTS 3907.60.90.0000 covers “other” forms of PET (*i.e.*, flakes) not otherwise provided for as under the U.S. tariff code, the Department finds that the Thai import data under Thai HTS 3907.60.90.0000 is more specific and is the best available information for valuing PET Flakes.

In its FOP data, Takayasu reported six specific FOPs for PET Chips and PET Flakes. For the third through sixth of these FOPs, Takayasu provided MEPs for the super-majority percent of the consumption of these FOPs, and, thus, the Department has valued these four FOPs based on the prices for the corresponding MEPs. However, the Department disagrees with Takayasu’s argument that the Department should use an average of Takayasu’s MEP prices for these four FOPs to value the FOPs for PETCHIP and PETFLAKE, which were sourced from NME suppliers.¹³⁷ Takayasu has provided no information that the inputs represented by these two FOPs are sourced from ME suppliers. Therefore, there is no information on the record to support basing the SVs for PETCHIP and PETFLAKE on the prices of MEPs rather than on the appropriate Thai import data.

In fact, the PETCHIP and PETFLAKE FOPs may consist of material inputs which are similar or identical to the some of the material inputs represented by the other four FOPs except for the source of the supplier and which perhaps should be considered as part of the same FOP. However, the remaining alternatives on the record compare unfavorably to the HTS numbers listed above. Specifically, Takayasu proposes the Department should use an average of its MEP prices for PET inputs it deemed similar to value PET Chips and PET Flakes. However, not only are these products expressly not the FOPs themselves, but these proposed values fail the MEP standard. Specifically, the Department’s practice requires each distinct input to be valued at the weighted-average of SVs and MEPs, unless the overwhelming majority (85 percent or greater) of a specific input consumed was comprised of MEPs. Accordingly, reporting FOPs as Takayasu has done will result in the same proportional valuation of the FOPs following the Department’s normal practice.¹³⁸

¹³⁵ See 6th Administrative Review of Polyester Staple Fiber from the People’s Republic of China - Final Affirmative Surrogate Values, dated February 14, 2014, at Exhibit 3. (“The applicable subheading for the post-consumer PET bottle flakes will be 3907.60.0070, Harmonized Tariff Schedule of the United States (HTSUS), which provides for: poly(ethylene terephthalate): Other, in primary forms.”)

¹³⁶ *Id.*

¹³⁷ See Takayasu’s Section D Questionnaire Response, dated November 4, 2013, at Exhibit D-4.2.

¹³⁸ See *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013).

We also disagree that the Thai import data used in the *Preliminary Results* to value PET Chips and PET Flakes is aberrational and accordingly requires adjustment. Takayasu proposes that the Department should adjust the Thai import data under HTS 3907.60 by removing import data from Germany, Japan, and Malaysia from the calculation of the SVs for PET Chips and PET Flakes because these values are “outliers and aberrationally high AUVs.”¹³⁹ The Department shall make a determination regarding whether a given AUV is aberrant or unrepresentative based upon the evidence on the record of that case.¹⁴⁰ We disagree with Takayasu’s argument that imports from Germany, Japan, and Malaysia are unreliable simply due to their high AUVs in comparison to the other AUVs in the Thai import data. Takayasu has placed no historical data or benchmarking data on the record to support its allegation that the allegedly aberrational AUVs necessarily mean that the data is unreliable.¹⁴¹ For example, without additional reference points, a party can just as easily make the claim that either value is aberrational in comparison to the other, without sufficient evidence to draw a reasonable conclusion either way.¹⁴² When the Thai import data was obtained in the *Preliminary Results* from a wide range of countries as is the case here with Thai imports from nineteen countries (for PET Chips and PET Flakes under HTS 3907.60) with a wide range of quantity and value, it is not unusual to find a wide range of AUVs.¹⁴³ Therefore, we find Takayasu’s argument unpersuasive.

Finally, we believe that that the ICIS pricing data does not constitute the best available information. This data is not specifically associated with the primary surrogate country, and since we have appropriate data on which to base all the SVs from the primary surrogate country, the ICIS pricing data does not constitute the best available information. We note that Takayasu has not provided the methodology on how ICIS gathered this pricing data.¹⁴⁴ Specifically, the ICIS pricing data provided by Takayasu includes directions on how to obtain the methodology for the ICIS pricing data; however, Takayasu has not submitted this methodology on the record.¹⁴⁵ Thus, Takayasu has not provided any guidance on how ICIS obtained this pricing data (*e.g.*, whether the data are tax and duty exclusive, representative of a broad market average, *etc.*) or how the ICIS pricing would reflect accurate prices for PET Chips and PET Flakes. Consequently, we have not used the ICIS pricing data to value PET Chips or PET Flakes in these final results.

¹³⁹ See Takayasu’s Case Brief, at 8 and Exhibit 1.

¹⁴⁰ See *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 67337 (November 9, 2012) and accompanying Issues and Decision Memorandum at Comment 3d.

¹⁴¹ See *Camau Frozen Seafood Processing Import Export Corporation v. United States*, 929 F. Supp. 2d 1352, 1356 n.9 (CIT 2013).

¹⁴² See *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Affirmative Determination of Sales at Less than Fair Value*, 74 FR 16838 (April 13, 2009) and accompanying Issues and Decision Memorandum at Comment 5B.

¹⁴³ See *Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 49460 (August 13, 2010) and accompanying Issues and Decisions Memorandum at Comment 4; and Prelim SV Memo at Attachments 2 and 3.

¹⁴⁴ See Takayasu’s Surrogate Value Rebuttal Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China, dated December 16, 2014, at Exhibits 12-14.

¹⁴⁵ *Id.*

Therefore, for these final results, the Department will continue to utilize Thai import data as reported by GTA to value PET Chips under HTS 3907.60 “Polyethylene Terephthalate, In Primary Forms,” and Thai import data to value PET Flakes under the more specific Thai HTS 3907.60.90.0000 “Polyethylene Terephthalate, “Other.”¹⁴⁶ However, because PET Flakes is being valued under the more specific Thai HTS 3907.60.90.0000, which is a sub-category of Thai HTS 3907.60 that is being used to value PET Chips, the Department has adjusted the calculated surrogate value for PET Chips by subtracting the total volume and value of imports of PET Flakes from the total volume and value of imports reported under Thai HTS 3907.60 to obtain a PET Chip-exclusive surrogate value.

Comment 3: Surrogate Value for Truck Freight

Petitioner:

- The Department should continue to rely on *Doing Business 2013 – Thailand* (“*Doing Business*”) given that the *Dxplace* data is highly flawed, and has been rejected in recent reviews.¹⁴⁷ Specifically, the tables submitted by Takayasu indicate that the *Dxplace* data precede the POR by at least two or three years, with the print-outs submitted reflecting a copyright effective in 2009 and retrieval by Takayasu in 2010.¹⁴⁸
- Energy prices, a key element of truck freight charges, are notoriously volatile. Furthermore, the period between the price quotations and the POR saw increasing demand for freight services and shortages of qualified truck drivers in Thailand.¹⁴⁹ Petitioner has documented that it was not possible to update the 2010 values from the website provided by Takayasu.¹⁵⁰
- The *Dxplace* freight rates were for “back hauling” (*i.e.*, discounted rates for space in trucks that are returning from deliveries that would otherwise be empty).¹⁵¹ Furthermore, the alleged documentation of vehicle loads provided by Takayasu appears to be unconnected to the *Dxplace* freight rates, and originates from a website pertaining to trucks that haul soil (*i.e.*, not trucks used to move commercial merchandise).¹⁵²
- If the Department uses the *Dxplace* data, it should apply the “Trailer/Teller” rate that most closely matches the distance reported by Takayasu.¹⁵³

¹⁴⁶ See Final SV Memo, at 1 and Exhibit 3.

¹⁴⁷ 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 20.

¹⁴⁸ See First Surrogate Value Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China, dated November 25, 2013, at Exhibit 21.

¹⁴⁹ See 6th Administrative Review of Polyester Staple Fiber from the People’s Republic of China - Surrogate Value Rebuttal, Correction and Clarification, dated December 16, 2013, at Attachment 5.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*, at 2-3 and Attachment 6.

¹⁵² See First Surrogate Value Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China, dated November 25, 2013, at Exhibit 21B.

¹⁵³ *Id.*, at Exhibit 21A.

Takayasu:

- The Department’s use of *Doing Business* is unrepresentative of a broad-market average because it includes only one freight value for one route¹⁵⁴ and one type of transport vehicle. In contrast, the *Dxplace* freight data proposed by Takayasu¹⁵⁵ provides freight price points for three types of trucks from multiple companies and includes the cost to ship from Bangkok to 76 different cities throughout the country, yielding a total of 228 price data points.
- The *Dxplace* data better satisfies the specificity criterion. For example, the greater number of data points in the *Dxplace* data ensures a better broad-market average value to use as the SV. The Court has emphasized that the Department is required to select a SV “that most accurately reflects the . . . consumption patterns of producers in the relevant industry,”¹⁵⁶ and “product specificity is the most important of the Department’s criteria.”¹⁵⁷
- The *Doing Business* data is inferior because it involved assumptions of the critical parameter of distance travelled.¹⁵⁸ The Department’s practice supports using *Dxplace* over doing *Doing Business* because the Department prefers a broad-market average data source over a one-point data source.¹⁵⁹ Moreover, in *Hangers*, the Department selected *Dxplace* primarily on account of its broad-based data.¹⁶⁰
- *Doing Business* fails to comport with the statute, is not supported by evidence, and is inconsistent with the established judicial precedent. Therefore, the Department should apply the *Dxplace* data to value truck freight in the final results.

Department’s Position: The Department has determined to use *Doing Business* to value Takayasu’s truck freight in the final results. The value for truck freight in *Doing Business* is publicly available and contemporaneous with the POR because the data are current as of June 1, 2012, which is within the POR.¹⁶¹ As noted above, in selecting SVs for inputs, section 773(c)(1) of the Act directs us to use the “best available information.” In determining the “best available information,” it is our practice to consider the following five factors: (1) broad-market average;

¹⁵⁴ From the center of Bangkok to the Port of Bangkok.

¹⁵⁵ See First Surrogate Value Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China, dated November 25, 2013, at Exhibit 21.

¹⁵⁶ See *Hebei Metal & Minerals Imp. & Exp. Corp. v. United States*, 28 CIT 1185, 1195 (2004); see also *High Pressure Steel Cylinders from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 26739, 26742 (May 7, 2012) (“the Department prefers having as many data points and as much explanation of the details related to the prices of services as possible, *i.e.*, size of truck and price per weight of measure, which Della-ua.com does provide, and which Budmo.org do not.”).

¹⁵⁷ See *Taian Ziyang Food Company, Ltd. v. United States*, Slip Op. 13-80, 2013 CIT 82 (June 24, 2013) (“{O}f the five criteria set forth in Policy Bulletin 04.1, ‘product specificity’ logically must be the most important.”).

¹⁵⁸ See *High Pressure Steel Cylinders from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 26,739 (May 7, 2012) (“Furthermore, for the reasons listed above, we find that Della-ua.com is preferable to Budmo.org as we would not have to make assumptions, (*i.e.*, the size of the truck, rate per kilogram per kilometer, how exchange rate calculations were made, and if rates may vary if the starting city is other than Odessa), in order to use the data. Therefore, for the final determination, we will value truck freight using the data from Dellaua.com”).

¹⁵⁹ See *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 20112012*, 78 FR 70533, 70536 (November 26, 2013).

¹⁶⁰ See *Steel Wire Garment Hangers from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 2011-2012*, 79 FR 31298, 31301 (June 2, 2014) (“*Hangers*”).

¹⁶¹ See 6th Administrative Review of Polyester Staple Fiber from the People’s Republic of China -Surrogate Values, dated November 25, 2013, at Exhibit 13.

(2) public availability; (3) product specificity; (4) tax and duty exclusivity; and (5) contemporaneity of the data.¹⁶² In this review, we find that *Doing Business* is the best available information because it is contemporaneous with the POR and provides a publicly available, broad-market average freight rate. We prefer to value factors using prices that are broad market averages because “a single input price reported by a surrogate producer may be less representative of the cost of that input in the surrogate country.”¹⁶³ *Doing Business* contains data “collected from local freight forwarders, shipping lines, customs brokers, port officials and banks.”¹⁶⁴ Although *Doing Business* provides freight costs solely for the distance between the main city and the port, it reflects the freight costs of multiple vendors and users (*i.e.*, shipping lines, customs brokers, port officials and banks) and thus it is a broad-market average.¹⁶⁵ Based on these facts, we find that the quality of the data in this publication is the best available information on the record of this review.

We do not consider the *Dxplace* data to be the best available information on the record because, although the *Dxplace* data appear to be publicly available and provide multiple freight rates from multiple locations (*i.e.*, a broad-market average) in Thailand, these data are not contemporaneous with the POR (*i.e.*, the copyright is effective in 2009 and the data was retrieved by Takayasu in 2010).¹⁶⁶ Moreover, Takayasu did not provide a worksheet or source documentation demonstrating how it calculated the full cargo weights (15,075 kg for six-wheel vehicle, 23,000 kg for 10-wheel vehicle, and 42,150 kg for trailer teller) for the proposed SV for truck freight, or any information to indicate whether the *Dxplace* data are tax-and duty-exclusive.¹⁶⁷ Furthermore, Takayasu’s own SV submission questions the reliability of the *Dxplace* data.¹⁶⁸

Finally, as noted by Petitioner, the Department has previously rejected *Dxplace* as a proposed SV to value truck freight for similar reasons.¹⁶⁹ With respect to *Hangers*, the Department used *Dxplace* data because *Doing Business* was not submitted as potential SV by interested parties.¹⁷⁰

¹⁶² See *Fresh Garlic from the People’s Republic of China: Final Results of the 2009-2010 Administrative Review of the Antidumping Duty Order*, 77 FR 34346 (June 11, 2012), and accompanying Issues and Decision Memorandum at Comment 4.

¹⁶³ See *Honey from the People’s Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Order Administrative Review*, 71 FR 34893 (June 16, 2006).

¹⁶⁴ See 6th Administrative Review of Polyester Staple Fiber from the People’s Republic of China -Surrogate Values, dated November 25, 2013, at Exhibit 13.

¹⁶⁵ See *Certain Polyester Staple Fiber from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*; 2010-2011, 78 FR 2366 (January 11, 2013), and accompanying Issues and Decision Memo at Comment 3.

¹⁶⁶ See First Surrogate Value Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China, dated November 25, 2013, at Exhibit 21A.

¹⁶⁷ *Id.*, at Exhibit 21. Although Takayasu provided certain truck weights for different types of trucks in Exhibit 21C of its SV comments dated November 25, 2013, it did not provide narratives or worksheets explaining how it used the *Dxplace* data to calculate these three full cargo weights.

¹⁶⁸ See First Surrogate Value Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China, dated November 25, 2013, at Exhibit 21D (“Nevertheless {*sic*}, they have not had much data in connection with the trailer.”)

¹⁶⁹ See *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 20.

¹⁷⁰ See *Hangers* and accompanying Issues and Decision Memorandum, at Comment 6.

Moreover, the *Dxplace* data in *Hangers* was not contemporaneous, as it is in this review; therefore the Department had to inflate the data accordingly.¹⁷¹ Thus, for the above reasons, *Doing Business* provides specific and useable data whereas *Dxplace* does not. We find that *Doing Business* is the best available information on the record for calculating the SV for truck freight and the Department will continue to rely on this source in these final results.

Comment 4: Surrogate Value for Brokerage and Handling

Petitioner:

- The Department should reject Takayasu’s argument that *Doing Business* brokerage and handling (“B&H”) charges are based on a container weight of 10,000 kg and should be corrected to be based on a weight of 28,200 kgs.¹⁷²
- The Department’s B&H calculation reflects the *Doing Business* methodology by surveying businesses, including freight forwarders, to determine the cost of doing business in Bangkok based on the economic parameter of the shipment of 10 metric tons (“mt”). Petitioner documented this parameter, including the World Bank survey with that specification.¹⁷³
- Even if a respondent’s experience differs, the SV analysis should not be selectively deconstructed and revised to incorporate assumptions that the respondent considers more favorable. The Department has already rejected this argument in other proceedings, noting that the standard container weight of 10 mt is the most appropriate “because this is the weight used in the *Doing Business* publication and thus the {surrogate value} calculation must be internally consistent with the original data’s reporting basis.”¹⁷⁴

Takayasu:

- In the *Preliminary Results*, the Department valued B&H by applying charges incurred in exporting a standard 20-foot container load of goods, as reported by *Doing Business*.¹⁷⁵ However, in computing the average unit B&H charges, the Department applied a hypothetical weight of 10 mt.¹⁷⁶ This assumed weight is contradicted by record evidence and agency precedent where the Department applied a full load of 28.2 mt instead of 10 mt, while computing average B&H value.¹⁷⁷ Therefore, the Department should adjust B&H charges by applying the prescribed full container load of 28.2 mt.¹⁷⁸

Department’s Position: As noted above, in valuing FOPs, section 773(c)(1) of the Act instructs the Department to use the “best available information” from the appropriate ME country. Also

¹⁷¹ *Id.*

¹⁷² See Takayasu’s Case Brief, at 43-44.

¹⁷³ See 6th Administrative Review of Polyester Staple Fiber from the People’s Republic of China - Surrogate Values, dated November 25, 2013, at Exhibit 13.

¹⁷⁴ See *Certain Steel Threaded Rod from the People’s Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2011–2012*; 78 FR 66330 (November 5, 2013) and accompanying Issues and Decision Memorandum, at Comment 7.

¹⁷⁵ See Prelim SV Memo, at 8 and Attachment 16.

¹⁷⁶ *Id.*

¹⁷⁷ See First Surrogate Value Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China, dated November 25, 2013, at Exhibit 22.

¹⁷⁸ *Id.*, at Exhibit 2 {sic} Exhibit 1 (“Summary of Comparative SV Data”).

as noted above, the Department’s SV information is normally based on publicly available information and the Department considers several factors, including the quality, specificity, and contemporaneity when choosing the most appropriate data.¹⁷⁹ Further, the Department’s practice is to consider FOPs on a case-by-case basis wherein the Department makes product and case-specific decisions as to what constitutes the “best available information” to value each input.¹⁸⁰

The Department finds that it should continue to use the weight of 10 mt for a standard container because this is the weight used in the *Doing Business* publication and thus the SV calculation must be internally consistent with the original data’s reporting basis.¹⁸¹ The Department has previously found that, “{m}ixing different sources of data in the B&H calculation would add inconsistency to the ratio calculation, which would yield a distorted result.”¹⁸²

Comment 5: Surrogate Value for Labor

Petitioner:

- Contrary to Takayasu’s claim, the Department is not required to give greater weight to specificity or any other criteria in selecting the most appropriate SV. The Department has consistently confirmed that its SV criteria are not hierarchical, a fundamental position sustained under judicial review.¹⁸³
- In *Blue Field (Sichuan) Food Indus. Co. v. United States (Blue Field)*, the court stated that contemporaneity cannot be the sole reason for selecting a value but also did not preclude the Department from selecting a value that it decided was the most appropriate, specifically noting: “When asked to pass judgment on Commerce’s choice between two imperfect datasets, the court defers to Commerce.”¹⁸⁴ Moreover, the court ruled that, “lack of contemporaneity alone was not sufficient to disregard consideration of an alternative surrogate values for physical commodity, (e.g., straw).¹⁸⁵
- The 2006-2007 data is indisputably “imperfect” because it is not contemporaneous with the 2012-2013 POR. Even if it could be considered more specific, it is still not specific to the

¹⁷⁹ See, e.g., *Lined Paper* at Comment 3.

¹⁸⁰ See *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.

¹⁸¹ See Prelim SV Memo, at Attachment 14.

¹⁸² See, e.g., *Certain Steel Threaded Rod from the People’s Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2011–2012*; 78 FR 66330 (November 5, 2013) and accompanying Issues and Decision Memorandum, at Comment 7.

¹⁸³ See *Qingdao Sea-Line Trading Co. v. United States*, 766 F.3d 1378, 1386 (Fed. Cir. 2014) (Commerce has broad discretion to determine what constitutes the best available information, as this term is not defined by statute. Commerce generally selects, to the extent practicable, surrogate values that are publicly available, are product-specific, reflect a broad-market average, and are contemporaneous with the period of review); see also *Xiamen Int’l Trade & Indus. Co. v. United States*, 11-00411, 2014 WL 4495111 (CIT August 28, 2014) (Commerce applied the same analytical criteria to all three data sets in this case and found that the GTA data fit its policy preferences better than the other data. Although XITIC argues otherwise, Commerce neither elevated contemporaneity (or any other factor) above specificity nor accorded undue weight to a particular factor in its surrogate value analysis.).

¹⁸⁴ See *Blue Field*, 949 F. Supp. at 1331.

¹⁸⁵ *Id.*

manufacture of PSF. The 2012-2013 data is contemporaneous with the POR and “manufacturing” appears to be the most appropriate section among the 22 industry categories.¹⁸⁶

- Commodity inputs can reasonably be considered subject to arbitrage and general national inflationary pressures. Here the issue is labor costs, and labor, unlike physical commodities, is subject to the unique supply and demand factors for human services. As noted regarding inland freight, for example, the POR saw increasing demand for freight services and shortages of qualified truck drivers in Thailand, specifically impacting the value of labor separately from general national inflation.¹⁸⁷
- If, the Department nevertheless decides to use the 2006-2007 data, it must adjust that rate for inflation, as that adjustment, though imperfect can minimize the distortion from a noncontemporaneous SV source.

Takayasu:

- The Department relied upon 2012-2013 labor/wage data from the Government of Thailand NSO, “because the POR Manufacturing specific NSO Data are industry-specific and are contemporaneous with the POR.”¹⁸⁸ The NSO data provides an average labor rate only for the *general* manufacturing industry, instead of a sector-specific labor rate.
- The 2006-2007 NSO data supplied by Takayasu provides labor cost data for specific manufacturing sub-sectors, including ISIC Rev 3.1 2430 – “Manufacture of man-made fibres” which also includes the “manufacture of synthetic or artificial staple fibers.”¹⁸⁹ The superior specificity of the 2006-2007 NSO data is evidenced from the explanatory notes provided by Takayasu.¹⁹⁰
- Under settled Court precedent in *Blue Field (Sichuan) Food Indus. Co. v. United States*, the superior specificity of the 2006-2007 NSO data outweighs its non-contemporaneity vis-à-vis the 2012-2013 general manufacturing NSO data.¹⁹¹ The Department can remedy the non-contemporaneity of the 2006-2007 NSO data by applying a suitable inflator.

¹⁸⁶ The other sectors covered by the NSO survey include “agriculture, forestry and fishing,” “mining and quarrying”; “electricity, gas, steam and air conditioning supply”; “water supply, sewerage, waste management and remediation activities”; “construction”; “wholesale and retail trade, repair of motor vehicles and motorcycles”; “transportation and storage”; “accommodation and food service activities”; “information and communication”; “financial and insurance activities”; “real estate activities”; “professional, scientific and technical activities”; “administrative and support service activities”; “public administration and defence, compulsory social security”; “education”; “human health and social work activities”; “arts, entertainment and recreation”; “other service activities”; “activities of households as employees...”; “activities of extraterritorial organizations and bodies”; “unknown.” See, e.g., First Surrogate Value Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China, dated November 26, 2013, at Exhibit 17A.

¹⁸⁷ See 6th Administrative Review of Polyester Staple Fiber from the People’s Republic of China - Surrogate Value Rebuttal, Correction and Clarification, dated December 16, 2013, at Attachment 5.

¹⁸⁸ See Prelim SV Memo, at 3 and Exhibit 5.

¹⁸⁹ See First Surrogate Value Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China, dated November 25, 2013, at Exhibit 17A.

¹⁹⁰ *Id.*, at Exhibit 17B.

¹⁹¹ See *Blue Field (Sichuan) Food Indus. Co. v. United States*, 949 F. Supp. 2d 1311, 1331 (CIT 2013) (“Contemporaneity alone is an insufficient reason for dismissing alternative surrogates when Commerce’s own surrogate appears flawed. . . . Furthermore, Commerce might have fixed contemporaneity problems in the Indian data using a price multiplier, which Commerce applied to its energy, water, and land use surrogates.”).

Department’s Position: For these final results, the Department will continue to value labor using 2012-2013 Thai NSO data for “general manufacturing.”

In *Labor Methodologies*,¹⁹² the Department determined that the best source to value the labor input normally is industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (“ILO”) Yearbook of Labor Statistics. In *Labor Methodologies*, the Department decided to change to the use of ILO Chapter 6A data from the use of ILO Chapter 5B data, on the rebuttable presumption that Chapter 6A data better account for all direct and indirect labor costs.¹⁹³ The Department did not, however, preclude all other sources for evaluating labor costs in NME antidumping proceedings. Rather, we continue to follow our practice of selecting the “best information available” to determine SVs for inputs such as labor. As described in the *Preliminary Results*, the Department calculated the labor input using the 2012-2013 NSO data.¹⁹⁴ Although the 2012-2013 NSO data are not from the ILO, the Department finds that this does not preclude us from using this as a source for valuing labor.

In this review, the labor data from the ILO which is on the record of this review is the ILO Chapter 6A data for Thailand reported under ISIC Rev.3 which is the industry-specific data for the “manufacture of chemicals and chemical products” from 2000.¹⁹⁵ In addition, in its SV submission, Takayasu has placed on the record 2006-2007 labor rate information from the Thai NSO for “manufacture of man-made fibers.”¹⁹⁶ Further, the record includes the 2006-2007 labor rate information from the Thai NSO for general manufacturing.¹⁹⁷ In the *Preliminary Results*, the Department placed on the record and valued the labor FOP using the 2012/2013 labor rate information from the Thai NSO for general manufacturing.¹⁹⁸ Each of these data are for “fully loaded” labor costs, as represented in the ILO’s Chapter 6A, which is a primary factor in selecting the best available information as described in *Labor Methodologies*.¹⁹⁹

¹⁹² See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*Labor Methodologies*”).

¹⁹³ See *Labor Methodologies*, 76 FR at 36093.

¹⁹⁴ See Prelim Decision Memo, at 16-17 and Memorandum to the File through Scot T. Fullerton, Program Manager, Office V, Enforcement and Compliance, from Steven Hampton, International Trade Compliance Analyst, Office V, Enforcement and Compliance, regarding 6th Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China: Surrogate Values for the Preliminary Results, dated July 17, 2014, at Attachment 6.

¹⁹⁵ See First Surrogate Value Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China, dated November 25, 2013, at Exhibits 17E and 17G.

¹⁹⁶ *Id.*, at Exhibit 17.

¹⁹⁷ *Id.*

¹⁹⁸ See Preliminary Surrogate Value Memo at Attachments 5a through 5e.

¹⁹⁹ See *Labor Methodologies*, 76 FR at 36093.

In the *Preliminary Results*, the Department calculated the labor input using the 2012-2013 Thai NSO data.²⁰⁰ As discussed in the *Preliminary Results*, the 2000 ILO Chapter 6A from Thailand, which is from 2000, is so removed from the POR in comparison with the other labor rate data on the record that it does not constitute the best available information for the basis for a SV in this review.²⁰¹

As for the remaining data for valuing the Takayasu's labor FOP, Takayasu argues that the 2006-2007 Thai NSO sector-specific data for Manufacture of Man-Made Fibers is the best available information and Petitioner argues that the 2012-2013 Thai NSO data for general manufacturing is the best available information. In examining the data on the record, there is approximately a ten percent difference in the labor rates between "general manufacturing" and "manufacture of man-made fibers" in the 2006-2007 Thai NSO data.²⁰² However, there is no evidence or information on the record that suggests manufacturing sector and industry-specific wages were similarly close in 2012, *i.e.*, no basis to assume that the manufacturing sector wage rate in 2012 was a reasonable proxy for the industry-specific wage rate, as apparently was the case in 2006.

On the other hand, the 2006-2007 Thai NSO data requires an inflation adjustment over seven years to establish it as a usable basis for the labor SV, using a consumer price, not a wage, index. The Department normally views a specificity problem as more serious than a contemporaneity problem that requires an inflation adjustment over a relatively short period of time. But the 2006-2007 Thai NSO data requires an adjustment over a long time period, which raises the level of the contemporaneity problem to that of the specificity problem. Since the two competing data sources are equal in all other respects, the Department finds there is no factual basis on the record that clearly distinguishes one source as the best available information for the labor SV. Accordingly, for purposes of the final results, the Department will continue to use the 2012-2013 Thai NSO data for "general manufacturing" for the labor SV.

Comment 6: Value-Added Tax

Takayasu:

- Takayasu was subject to a 17 percent value-added tax ("VAT") on the purchase of inputs (domestic or imported) and electricity; a 13 percent VAT for the purchase of steam, and six percent VAT for the purchase of water. The VAT refund for the export sales of finished PSF products was 16 percent. Takayasu's 16 percent VAT refund clearly exceeded the combined 17

²⁰⁰ See Prelim Decision Memo, at 16-17; *see also*, Memorandum to the File through Scot T. Fullerton, Program Manager, Office V, Enforcement and Compliance, from Steven Hampton, International Trade Compliance Analyst, Office V, Enforcement and Compliance, regarding Sixth Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China: Surrogate Values for the Preliminary Results, dated July 17, 2014, at Attachment 6.

²⁰¹ See <http://laborsta.ilo.org/>. *See also*, First Surrogate Value Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China, dated November 25, 2013, at Exhibit 17G.

²⁰² *See also*, First Surrogate Value Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China, dated November 25, 2013, at Exhibit 17A.

percent, 13 percent, or six percent VAT on inputs.²⁰³ Thus, no VAT adjustment should be made to Takayasu's U.S. sales database because all VAT is recovered on a per-unit basis.

- The Act states that “the price used to establish EP shall be reduced by the amount if included in such price of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in 1677(6)(C) of this title.”²⁰⁴
- The Department does not have authority under section 1677a(c)(2)(B) of the Act to adjust for taxes that are not export taxes (*i.e.*, VAT). Specifically, the statute does not authorize the Department to deduct VAT from EP because VAT is not imposed on exports by the PRC government, and VAT is not an incurred expense on account of exports.²⁰⁵

Petitioner:

- The Department should reject Takayasu's arguments because steam and water are relatively minor FOPs and should not be weighted equally with materials, electricity and packing inputs.
- Moreover, Takayasu calculated the amount of VAT that it paid by “multiply {ing} the FOPs by the Unit VAT Input” to derive the “Unit VAT Input per KG of Subject Merchandise” for each control number.²⁰⁶ This calculation is erroneous because it mixes non-market internal transactions with ME export transactions. This comparison cannot be considered valid under the Department's NME methodology.
- Furthermore, this comparison fails to address the net loss to Takayasu of a less-than-full refund on VAT. The Department reduces EP by any portion of VAT that is paid upon export but not refunded in accordance with section 772(c)(2)(B) of the Act.²⁰⁷ In practice, the Department reduces the reported EP by the amount of tax that is charged but not rebated.²⁰⁸
- With respect to Takayasu, the VAT paid on the export transaction was 17 percent and the VAT refunded was 16 percent.²⁰⁹ Accordingly, the unrefunded amount was one percent of the EP and this amount was appropriately deducted in accordance with the revised methodology to comply with section 772(c)(2)(B) of the Act.

Department's Position: In 2012, the Department announced a change of methodology with respect to the calculation of EP and constructed export price (“CEP”) to include an adjustment of any un-refunded (herein “irrecoverable”) VAT in certain non-market economy (“NME”)

²⁰³ See Takayasu Supplemental Questionnaire Responses: Administrative Review of the Antidumping Duty Order on Polyester Staple Fiber from the People's Republic of China, dated May 27, 2014, at Exhibit SSSD-2.

²⁰⁴ See sections 1677a(c)(2)(B) and 772(c)(2)(B) of the Act.

²⁰⁵ See Takayasu Sections C and D Response: Administrative Review of the Antidumping Duty Order on Polyester Staple Fiber from the People's Republic of China, dated November 4, 2013, at 32-33 and Exhibit 5.

²⁰⁶ *Id.*, at 48.

²⁰⁷ 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) (“*Methodological Change*”).

²⁰⁸ See *Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 25572 (May 5, 2014) and accompanying Issues and Decision Memorandum, at Comment 1.

²⁰⁹ See Takayasu Supplemental Questionnaire Responses: Administrative Review of the Antidumping Duty Order on Polyester Staple Fiber from the People's Republic of China, dated June 13, 2014.

countries, in accordance with section 772(c)(2)(B) of the Act.²¹⁰ In this announcement, the Department stated that when a NME government has imposed an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EPs and CEPs accordingly by the amount of the tax, duty or charge paid, but not rebated.²¹¹

In a typical VAT system, companies do not incur any VAT expense; they receive on export a full rebate of the VAT they pay on purchases of inputs used in the production of exports ("input VAT"), and, in the case of domestic sales, the company can credit the VAT they pay on input purchases for those sales against the VAT they collect from customers.²¹² That stands in contrast to the PRC's VAT regime, where some portion of the input VAT that a company pays on purchases of inputs used in the production of exports is not refunded.²¹³ This amounts to a tax, duty or other charge imposed on exports that is not imposed on domestic sales. Where the irrecoverable VAT is a fixed percentage of the U.S. price, the Department explained that the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price by this same percentage.²¹⁴

Section 772(c)(2)(B) of the Act authorizes the Department to deduct from EP or CEP the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise. Although Takayasu argues that it pays no VAT tax upon export (*i.e.*, asserting that all VAT is recovered on a per-unit basis), it misstates what is at issue. The issue is the irrecoverable VAT, not VAT *per se*. Irrecoverable VAT, as defined in PRC law, is a net VAT burden that arises solely from, and is specific to, exports. It is VAT paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost.²¹⁵ Irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exportation of the subject merchandise to the United States. The statute does not define the term(s) "export tax, duty, or other charge imposed" on the exportation of subject merchandise. We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as a result of export sales. It is set forth in PRC law and, therefore, can be considered to be "imposed" by the exporting country on exportation of subject merchandise. Further, an adjustment for irrecoverable VAT achieves what is called for under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a net price received. This deduction is consistent with our

²¹⁰ 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) ("Methodological Change").

²¹¹ See *Methodological Change*, 77 FR at 36482-83; 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).

²¹² See, e.g., explanations in *Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2011-2012, 79 FR 35723 (June 24, 2014) and accompanying Issues and Decision Memorandum at Comment 6.

²¹³ See Takayasu's May 16, 2014, VAT Supplemental Questionnaire Response, dated May 16, 2014, at SSSD-1 through SSSD-4

²¹⁴ See *Methodological Change*, 77 FR at 36483.

²¹⁵ See *Small Diameter Graphite Electrodes From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2012-2013, 79 FR 57508 (September 25, 2014) and accompanying Issues and Decision Memorandum at Comment 7.

longstanding policy, which is consistent with the intent of the statute, that dumping margin calculations be tax neutral.²¹⁶

Our methodology, as applied in this review, consists of performing two basic steps: (1) determining the irrecoverable VAT tax on subject merchandise, and (2) reducing U.S. price by the amount determined in step one. Information placed on the record of this review by Takayasu indicates that, according to the PRC VAT schedule, the standard VAT levy on the subject merchandise is 17 percent and the VAT rebate rate for the subject merchandise is 16 percent.²¹⁷ For the final results, therefore, we removed from U.S. price an amount calculated based on the difference between these rates (*i.e.*, one percent) applied to the export sales value, consistent with the definition of irrecoverable VAT under PRC tax law and regulation.²¹⁸

Irrecoverable VAT is (1) the free-on-board value of the exported good, applied to the difference between (2) the standard VAT levy rate and (3) the VAT rebate rate applicable to exported goods.²¹⁹ The first variable, export value, is unique to each respondent while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in PRC law and regulations.²²⁰

The regulation under 19 CFR 351.401(c) requires that the Department rely on price adjustments that are “reasonably attributable to the subject merchandise.” The PRC’s VAT regime is product-specific, with VAT schedules that vary by industry and even across products within the same industry. These are product-specific export taxes, duties, or other charges that are incurred on the exportation of subject merchandise. Thus, our analysis is consistent with our current VAT policy and our treatment of VAT in recently completed NME cases.²²¹

Therefore, for the final results, the Department will continue to reduce Takayasu’s U.S. sales price by one percent, *i.e.*, the irrecoverable VAT for PSF exports, consistent with the *Preliminary Results*.²²²

²¹⁶ See *Methodological Change*, 77 FR at 36483, and *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27369 (May 19, 1997) (citing the SAA).

²¹⁷ See Takayasu Supplemental Questionnaire Response: Administrative Review of the Antidumping Duty Order on Polyester Staple Fiber from the People’s Republic of China, dated June 13, 2014 at Exhibit S5-1.

²¹⁸ See *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) (“*Prestressed Wire*”), and accompanying Issues and Decision Memorandum at Comment 1.

²¹⁹ *Id.*, at Comment 1, n. 35.

²²⁰ *Id.*, at Comment 1, n. 36.

²²¹ See, e.g., *Frontseating Service Valves from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review*; 2012-2013, 79 FR 71385 (December 2, 2014) and accompanying Issues and Decision Memorandum at Comment 5.

²²² See Prelim Decision Memo, at 13-14.

Comment 7: Appropriate Comparison Method

Takayasu:

- Takayasu submitted several comments regarding the inappropriateness of the Department's alternative comparison method in general and its application in this case.²²³

Petitioner:

- Petitioner submitted comments in support of the Department's differential pricing analysis.²²⁴

Department's Position: For the final results of this review for Takayasu, the Department has continued to use the standard A-A method to calculate Takayasu's weighted-average dumping margin.²²⁵ Therefore, the comments regarding the use of an alternative comparison method based on the A-T method are moot.

Comment 8: Ministerial Errors

A. Direct Materials

Petitioner:

- The Department failed to include all of the direct materials that Takayasu reported as MEPs.
- The Department also needs to include freight expenses for these MEPs and add an international freight surrogate value to these MEPs to fully capture the cost of these purchases.

Takayasu:

- Did not comment on this issue.

Department's Position: The Department agrees with Petitioner and has corrected this error in the final results.²²⁶ The Department notes that the FOP database had no freight distances reported for the MEPs.²²⁷ Therefore, the Department has added the freight distances reported by Takayasu in the MEP spreadsheet into the calculation of direct materials. The Department also added international freight and brokerage and handling surrogate values to the relevant MEPs to capture the full cost for these purchases from the supplier to the factory. Because this is business proprietary information, for further discussion, *see* the Analysis Memo.²²⁸

²²³ See Takayasu's Case Brief, at 55-65.

²²⁴ See Petitioner's Rebuttal Brief, at 58-66.

²²⁵ See Memorandum to the File, through Scot T. Fullerton, Program Manager, Office V, Enforcement and Compliance, from Steven Hampton, International Trade Compliance Analyst, Office V, Enforcement and Compliance, regarding Analysis of the Final Results of the Sixth Administrative Review for Certain Polyester Staple Fiber from the People's Republic of China: Takayasu Industrial (Jiangyin) Co. Ltd., dated January 21, 2015("Analysis Memo"), at 4.

²²⁶ See Analysis Memo for further discussion of the Department's treatment of Takayasu's market-economy purchases, calculation of the freight expenses, and treatment of international freight to these market-economy purchases.

²²⁷ *Id.*

²²⁸ *Id.*

B. Foreign Inland Freight

Petitioner:

- The Department added together the SV for export freight and the SV for input freight, each of which is a rate per kilogram per kilometer, and then added the raw SVs to the B&H SV.

Department's Position: The Department agrees with Petitioner and has corrected this error in the final results. Specifically, we have revised the inland freight calculation to apply the SV for export movement to the distances reported under foreign inland freight.²²⁹

C. U.S. Brokerage & Handling

Petitioner:

- Takayasu reported that for certain sales it “was responsible for expenses up to the port of offloading in the U.S. and paid for international freight and U.S. Brokerage & Handling.”²³⁰ Takayasu provided the Department with two different options to deduct U.S. B&H expenses to determine the net U.S. price: (1) the charge as incurred in dollars but paid in RMB, or (2) calculating this deduction using a SV.²³¹ If the Department determines that this B&H expense is a MEP, then this amount must be deducted as part of total international movement charges.

Department's Position: The Department agrees with Petitioner's comments and has corrected this error in the final results. The information provided by Takayasu indicates that for certain sales, its U.S. B&H expense was incurred in U.S. dollars and is thus a ME B&H expense.²³² Therefore, the Department has deducted this amount as a part of total international movement charges.²³³

Comment 9: Programming Errors

A. Freight Charges – Raw Materials

Takayasu:

- Instead of only multiplying the distance traveled by the truck freight SV, the Department multiplied the capped distance not only by the truck freight SV but also by another distance factor. The Department should correct this error.

Department's Position: The Department agrees with Takayasu. The Department's practice pursuant to *Sigma*,²³⁴ is to calculate surrogate freight costs using the shorter of the reported distances from the input supplier to the factory or the distance from the closest PRC port to the

²²⁹ See Analysis Memo, at 2.

²³⁰ See Takayasu Supplemental Sections A, C and D Response: Administrative Review of the Antidumping Duty Order on Polyester Staple Fiber from the People's Republic of China, dated March 11, 2014, at 2 and Exhibit SC-5.

²³¹ *Id.*, at 2-3.

²³² *Id.*

²³³ See Analysis Memo, at 2-3.

²³⁴ See *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997) (“*Sigma*”).

factory.²³⁵ Therefore, for the final results, we have applied the corrected distances capped at the distance to the closest port, as reported by Takayasu.²³⁶

B. Domestic Movement

Takayasu:

- Takayasu's U.S. sales database contains several entries with no domestic B&H expenses. However, the formula used in the *Preliminary Results* assigns a value for B&H expenses to such entries. Furthermore, the formula used in the *Preliminary Results* also fails to properly compute freight expenses incurred during the transportation of subject merchandise from the factory to the port. The Department should amend this formula.

Department's Position: The Department agrees with Takayasu. As noted above in Comment 8B, in the *Preliminary Results*, the Department failed to properly compute freight expenses incurred during transportation of subject merchandise from the factory to the port. Therefore, in these final results, the Department has amended this formula to accurately calculate freight expenses.²³⁷

C. International Movement

Takayasu:

- The Department's formula in the *Preliminary Results* for international movement charges is incorrect, because after defining international movement expenses, the Department made changes to the international freight calculation. Since international freight was not used later in the program, the Department applied the international freight SV to all of the transaction, including those where Takayasu's U.S. sales database evidence no charges for international freight. The Department should utilize the formula provided by Takayasu to avoid incorrect offsetting of the U.S. sale price.

Petitioner:

- Takayasu urges the Department to revise its international freight movement charge calculation to apply a single SV to sales using a conditional statement in the programming, and argues that the Department should use a one time charge for only one shipment route as the SV.²³⁸ This single value, however, is from Descartes, and includes NME carriers, including two of PRC's largest (*i.e.*, China Ocean Shipping Company and Sinotrans Container Lines Co.).²³⁹

²³⁵ See *Final Determination of Sales at Less Than Fair Value: Certain Cut to Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964, 61977 (November 20, 1997); see also *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, and Revocation of the Order in Part*, 76 FR 66036 (October 25, 2011) and accompanying Issues and Decision Memorandum at Comment 3

²³⁶ See Analysis Memo, at 3.

²³⁷ *Id.*

²³⁸ See Takayasu's Case Brief at 67-68 and Exhibit 2.

²³⁹ See 6th Administrative Review of Polyester Staple Fiber from the People's Republic of China - Surrogate Value Rebuttal, Correction and Clarification, dated December 16, 2013.

- The Department should rely instead on Petitioner’s separate route-specific freight rates quoted by MAERSK, which are for multiple carriers and do not include NME carriers.²⁴⁰

Department’s Position: The Department agrees with Petitioner. In the *Preliminary Results*, the Department valued international movement charges using Descartes Carrier Rate Retrieval Database (“Descartes”) provided by Takayasu.²⁴¹ However, as noted by Petitioner, this source data from Descartes includes data from NME carriers.²⁴² In contrast, there is no record evidence to indicate that the MAERSK data provided by Petitioner contains data from NME carriers.²⁴³ Moreover, the MAERSK data are more specific to the international freight routes reported by Takayasu in its U.S sales database.²⁴⁴ Therefore, in these final results, Takayasu’s international freight movement charges have been calculated using route-specific freight quotes from MAERSK.²⁴⁵ Additionally, the Department has corrected the error in calculating Takayasu’s international movement charges in the program and only applied the route-specific international freight SV to those U.S. sales that incurred this expense for the final results.

D. VAT Offset

Takayasu:

- The Department applied an incorrect formula to adjust the EP by the amount of allegedly unrefunded amount of VAT, computed at the rate of one percent of EP. The Department should utilize the correct formula provided by Takayasu.

Department’s Position: The Department disagrees with Takayasu. The Department’s calculation of unrefunded VAT Taxes in the *Preliminary Results* was correct. However, in order to clarify the calculation, we have added a VAT variable to the U.S. sales dataset to allow the program to automatically calculate VAT tax deductions using the Department’s default methodology.²⁴⁶

²⁴⁰ See 6th Administrative Review of Polyester Staple Fiber from the People’s Republic of China - Final Affirmative Surrogate Values, dated February 14, 2014, at Exhibit 4b.

²⁴¹ See Prelim SV Memo, at 7. See also, First Surrogate Value Submission: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China, November 25, 2015, at Exhibit 24.

²⁴² See 6th Administrative Review of Polyester Staple Fiber from the People’s Republic of China - Surrogate Value Rebuttal, Correction and Clarification, dated December 16, 2013, at Attachment 8.

²⁴³ See 6th Administrative Review of Polyester Staple Fiber from the People’s Republic of China - Final Affirmative Surrogate Values, dated February 14, 2014, at Exhibit 4.

²⁴⁴ *Id.* See also Takayasu Sections C and D Response: Administrative Review of the Antidumping Duty Order on Polyester Staple Fiber from the People’s Republic of China, dated November 4, 2013, at Exhibit C-1.

²⁴⁵ See Analysis Memo, at 3.

²⁴⁶ *Id.*, at 3-4.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation program accordingly. If accepted, we will publish the final results of review and the final weighted-average dumping margins in the *Federal Register*.

AGREE ✓ DISAGREE _____

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

27 JANUARY 2015
Date