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March 9, 2015

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

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

SUBJECT: Issues and Decision Memorandum for the Final Results of  
Antidumping Duty Administrative Review: Helical Spring Lock  
Washers from the People's Republic of China; 2012-2013

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## SUMMARY

We analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the antidumping duty order on helical spring lock washers (HSLW) from the People's Republic of China (PRC), covering the period October 1, 2012, through September 30, 2013. As a result of our analysis, we made changes to the margin calculations. We recommend that you approve the positions we have developed in the *Discussion of the Issues* section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments from parties.

### Surrogate Values

Comment 1: Whether the Department Used the Correct Surrogate Value and/or Time Period for Hot-Rolled Circular Silico-Manganese Steel Bar

Comment 2: Whether the Department's SAS Program Included a Value for Plywood

Comment 3: Whether the Department's SAS Program Properly Calculated TOTCOM

#### Financial Statements/Ratios

Comment 4: Whether the Department Should Use the Financial Statements of System 3

Comment 5: Whether the Department Should Use the Financial Statements of Mahajak Autoparts and Hitech Fasteners

Comment 6: Whether the Department's Should Adjust the Financial Ratio Calculations Based on the Financial Statements of Siam Anchor, System 3, and Bangkok Fastenings

#### Value-Added Taxes

Comment 7: Whether the Department Should Continue to Deduct from U.S. Price Irrecoverable Value-Added Taxes

### **BACKGROUND**

On November 7, 2014, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on HSLW from the PRC.<sup>1</sup> We invited interested parties to comment on the *Preliminary Results*. We received case briefs from Shakeproof Assembly Components Division of Illinois Tool Works Inc. (Shakeproof) and United Steel & Fasteners Inc. (US&F) on December 8, 2014.<sup>2</sup> Shakeproof and US&F also submitted rebuttal briefs on December 15, 2014.<sup>3</sup>

### **SCOPE OF THE ORDER**

The products covered by the order are helical spring lock washers of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. Helical spring lock washers are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

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<sup>1</sup> See *Helical Spring Lock Washers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 66356 (November 7, 2014) (*Preliminary Results*) and "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Helical Spring Lock Washers from the People's Republic of China; 2012-2013" (Preliminary Decision Memorandum).

<sup>2</sup> See letters from Shakeproof, "Case Brief of Shakeproof"(Shakeproof Case Brief) and US&F, "US&F Case Brief: Antidumping Duty Order on Helical Spring Lock Washers from the People's Republic of China" (US&F Case Brief), dated December 8, 2014.

<sup>3</sup> See letters from Shakeproof, "Rebuttal Brief of Shakeproof"(Shakeproof Rebuttal Brief) and US&F, "US&F Rebuttal Brief: Antidumping Duty Order on Helical Spring Lock Washers from the People's Republic of China" (US&F Rebuttal Brief), dated December 15, 2014.

Helical spring lock washers subject to the order are currently classifiable under subheadings 7318.21.0000, 7318.21.0030, and 7318.21.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

## **SEPARATE RATE/PRC-WIDE ENTITY**

For the *Preliminary Results*, the Department assigned the PRC-wide entity the rate of 128.63 percent, the highest rate determined for the PRC-wide entity in this proceeding.<sup>4</sup> As noted in the *Preliminary Results*, a change in practice with respect to the conditional review of the PRC-wide entity is not applicable to this administrative review and accordingly the PRC-wide entity remains under review.<sup>5</sup>

In the *Preliminary Results*, the Department determined that Suzhou Guoxin Group Wang Shun Imp. and Exp. Co., Ltd. (Guoxin), which discontinued its participation in this review prior to the *Preliminary Results*, did not demonstrate its eligibility for a separate rate. Thus, we determined that it is part of the PRC-wide entity.<sup>6</sup> We have not received comments regarding this finding and, therefore, we continue to find, for these final results of review, that Guoxin is part of the PRC-wide entity.

In the *Preliminary Results*, we also determined that, while the request for review had been timely withdrawn for Winnsen Industry Co. (Winnsen), Winnsen did not have a separate rate prior to this administrative review. Accordingly, the Department did not rescind the review with respect to Winnsen and it remained part of the PRC-wide entity.<sup>7</sup> No party commented on this finding and, therefore, for the final results, we continue to treat Winnsen as part of the PRC-wide entity.

Based on comments from interested parties in this administrative review, as discussed below, we have calculated a final margin for Jiangsu RC of 192.88 percent. This margin is higher than the highest rate previously determined for the PRC-wide entity, *i.e.*, 128.63 percent. As the PRC-wide entity remains under review, the Department has assigned the PRC-wide entity a rate of 192.88 percent, the highest rate determined for the PRC-wide entity in this proceeding, in these final results.

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<sup>4</sup> See *Antidumping Duty Order: Certain Helical Spring Lock Washers From the People's Republic of China*, 58 FR 53914 (October 19, 1993) and *Amended Final Determination and Amended Antidumping Duty Order: Certain Helical Spring Lock Washers From the People's Republic of China*, 58 FR 61859 (November 23, 1993).

<sup>5</sup> See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65964, 65969–70 (November 4, 2013).

<sup>6</sup> See *Preliminary Results* and Preliminary Decision Memorandum.

<sup>7</sup> See, e.g., *Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 47363, 47365 (August 8, 2012), unchanged in *Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010- 2011*, 78 FR 10130 (February 13, 2013).

For these final results, we continue to find that Jiangsu RC Import & Export Co., Ltd. (Jiangsu RC) has demonstrated its eligibility for separate rate status by demonstrating that it operated free of *de jure* and *de facto* government control.

## **SURROGATE COUNTRY**

In the *Preliminary Results*, we treated the PRC as a non-market economy (NME) country and, therefore, we calculated normal value in accordance with section 773(c) of the Tariff Act of 1930, as amended (the Act). We selected Thailand as the primary surrogate country, pursuant to 19 CFR 351.408(c)(2), because it is at the same level of economic development as the PRC, because it is a significant producer of merchandise comparable to subject merchandise and because of the availability and quality of Thai data for valuing the factors of production (FOP).<sup>8</sup> For the final results of review, we continued to treat the PRC as an NME country and have continued to use Thailand as the primary surrogate country.

## **DISCUSSION OF THE ISSUES**

### Surrogate Values

#### **Comment 1: Whether the Department Used the Correct Surrogate Value and/or Time Period for Hot-Rolled Circular Silico-Manganese Steel Bar**

Shakeproof notes that the Department used import data for Thai HTS 7228.20 for hot-rolled circular silico-manganese steel bar (steel bar) for the time period April 2012 through April 2013 rather than for the POR, October 2012 through September 2013.<sup>9</sup> Shakeproof concludes that, for the final results, the Department should use data for the POR.<sup>10</sup>

US&F argues that Thai HTS 7228.20 is a distorted basket category that the Department used instead of the more specific HTSs on the record because the Department determined that the surrogate value's (SV) contemporaneity with the POR is a higher priority than its product-specificity.<sup>11</sup> Specifically, US&F states that "{Thai} HTS 7228.20 is not specific to the input, either in terms of heat treatment (hot- vs. cold-rolled), profile (circular vs. non-circular) or type of steel product (bar vs. rod)."<sup>12</sup>

According to US&F, the data for Thai HTS 7228.20.11000 is "slightly less" contemporaneous than the data for Thai HTS 7228.20 but it is specific to steel bar, the main input of the subject merchandise.<sup>13</sup> The import data from Thai HTS 7228.20.11000 is limited to the month prior to the POR (*i.e.*, September of 2012). US&F argues that the Department should use Thai HTS 7228.20.11000 and inflate the value in order to satisfy the contemporaneity requirement.<sup>14</sup> In support, US&F cites *Silicon Metal from the People's Republic of China: Final Results and*

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<sup>8</sup> See *Preliminary Results* and the accompanying Preliminary Decision Memorandum.

<sup>9</sup> See Shakeproof Brief at 2.

<sup>10</sup> *Id.*

<sup>11</sup> See US&F Brief at 3.

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.* at 8.

<sup>14</sup> *Id.* at 11.

*Partial Rescission of the 2008-2009 Administrative Review of the Antidumping Duty Order*, 76 FR 3084 (January 19, 2011) (*Silicon Metal—PRC*).<sup>15</sup>

Alternatively, US&F argues that Indonesian HTS 7228.20.1100 is both specific to the main input and contemporaneous to the POR.<sup>16</sup> According to US&F, the Department must value factors using the best available information which overrides the Department's regulatory preference for using a single country in valuing the factors.<sup>17</sup> US&F concludes that the Department erred in preferring contemporaneous import data under a non-specific HTS heading and that, for the final results, the Department should use either Thai 7228.20.11000 or Indonesian HTS 7228.20.1100.<sup>18</sup>

In its Rebuttal Brief, Shakeproof argues that the Department's use of Thai HTS 7228.20 was proper and "consistent with settled agency and judicial precedent."<sup>19</sup> In support, Shakeproof cites *Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 94 (January 2, 2014) (*Pure Magnesium—PRC*) and accompanying Issues and Decision Memorandum (IDM) at Comment 2. According to Shakeproof, in *Pure Magnesium—PRC*, the Department rejected the use of a surrogate value because the import data was non-contemporaneous and consisted of a single shipment prior to the POR; in this instant case, Thai HTS 7228.20.11.000 also offers a only single shipment prior to the POR, from a single country, totaling 8,306 kilograms and with a value of \$11,095 United States Dollars.<sup>20</sup>

**Department's Position:** For the final results, the Department is continuing to use Thai HTS 7228.20. When selecting SVs with which to value the FOPs used to produce subject merchandise, the Department is directed to use the "best available information" on the record.<sup>21</sup> The Department's preference is to use, where possible, a range of publicly available, non-export, tax-exclusive, and product-specific prices for the POR, with each of these factors applied non-hierarchically to the particular case-specific facts and with preference for data from a single surrogate country.<sup>22</sup> Additionally, it is the Department's practice to carefully consider the

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* and 6.

<sup>17</sup> *Id.* at 12. In support, US&F cites, *Camau Frozen Seafood Processing Imp. Exp. Corp. v. United States*, 929 F. Supp. 2d 1352 (CIT 2013) (*Camau Frozen Seafood*), *Peer Bearing Company-Changshan v. United States*, 804 F. Supp. 2d 1337 (CIT 2011), *Shantou Red Garden Foodstuff Co. v. United States*, 880 F. Supp. 2d 1332 (CIT 2012) (*Peer Bearing Company-Changshan*), *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Reviews; 2011-2012*, 78 FR 39708 (July 2, 2013) (*Frozen Fish Fillets—PRC*), and *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36168 (June 17, 2013) (*Fresh Garlic—PRC*).

<sup>18</sup> In support, US&F cites *Xinjiaimei Furniture Zhangzhou Co. v. United States*, 968 F. Supp. 2d 1255 (CIT 2014) (*Xinjiaimei Furniture*), *Taian Ziyang Food Co. v. United States*, 783 F. Supp. 2d 1292 (CIT 2011) (*Taian Ziyang Food*), *Blue Field (Sichuan) Food Indus. Co. v. United States*, 949 F. Supp. 2d 1311, 1332 (CIT 2013) (*Blue Field (Sichuan) Food*), and *Home Meridian Int'l, Inc. v. United States*, 865 F. Supp. 2d 1311, 1319 (CIT 2012) (*Home Meridian Int'l, Inc.*).

<sup>19</sup> See Shakeproof Rebuttal at 2.

<sup>20</sup> *Id.* at 2 and 3. For the same proposition, Shakeproof also cites *Downhole Pipe & Equip. v. United States*, 949 F. Supp. 2d 1288 (CIT 2013).

<sup>21</sup> See Section 773(c)(1)(B) of the Act.

<sup>22</sup> See, e.g., *Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005) and accompanying IDM at Comment 3

available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs on a case-by-case basis.<sup>23</sup> As there is no hierarchy for applying the above-mentioned principles, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision about what the “best available” SV is for each input.<sup>24</sup>

With respect to Thai HTS 7228.20.11.000 and Indonesian HTS 7228.20.1100, in the *Preliminary Results*, we stated that:

The record demonstrates that only Indonesia had imports of steel bar contemporaneous with the POR whereas Thailand’s imports occurred one month before the POR. However, Thailand did have imports of steel bar at the six-digit HTS number, *i.e.*, “Other Bars And Rods Of Silico-Manganese Steel.” Accordingly, we preliminarily determine that, with respect to steel bar, both these countries offer data that is publicly available, contemporaneous with the POR, representative of a broad-market average, from an approved surrogate country, tax- and duty-exclusive, and specific to the input. {In addition}, it is well established that the Department’s preference is to value factors in a single surrogate country when possible and our decision necessarily is guided by considering the best information available on the record.<sup>25</sup> To that end, we have useable surrogate financial statements from Thailand but not Indonesia. Therefore, we preliminarily determine to use Thailand as the surrogate country.<sup>26</sup>

In light of the Department’s directive to use the “best available information” as described above, it is not the case, as US&F contends, that the Department overrode the best available information requirement for the Department’s regulatory preference for (1) contemporaneity with the POR over specificity or, (2) using a single country in valuing the factors. Rather, the Department here reiterates that we weighed all of the factors the Department normally examines when choosing an SV, *i.e.*, a range of publicly available, non-export, tax-exclusive, product-specific prices for the POR, *in conjunction* with the regulatory preference for valuing all of the factors from a single country. *See Clearon Corp. v. United States*, 2014 Ct. Intl. Trade LEXIS 88 (CIT, July 24, 2014). Thus, the Department continues to determine that it is not appropriate to use Thai HTS 7228.20.11.000 or Indonesian HTS 7228.20.1100 on this, a case-specific basis.<sup>27</sup>

With respect to Indonesian HTS 7228.20.1100, the Department finds US&F’s cited support unpersuasive. In particular, in *Camau Frozen Seafood*, the Court of International Trade (CIT)

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and *Carbazole Violet Pigment 23 from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010) and accompanying IDM at Comment 4; *see also* 19 CFR 351.408(c)(2).

<sup>23</sup> *See, e.g., Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) and accompanying IDM at Comment 1. <sup>24</sup> *Id.*

<sup>25</sup> *See High Pressure Steel Cylinders From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 26739 (May 7, 2012), and accompanying IDM at Comments 1 and 2.

<sup>26</sup> We note that the Thai financial statements used in these preliminary results were placed on the record by US&F.

<sup>27</sup> *Home Meridian Int’l, Inc.*, cited by US&F, stands for the proposition that the Department cannot rely on contemporaneity to the exclusion of all other factors, which, as explained here, the Department has not but rather, has considered all the factors in total.

found that “it is not sufficient for Commerce to cite the policy of using a single surrogate country where, as here, there is reason to believe that the primary surrogate country may not provide the best available information for a particular FOP.”<sup>28</sup> However, record evidence in that case indicated that two different data sets (regarding wage labor) were disparate and were not comparable.<sup>29</sup> The record of this administrative review does not contain similar evidence and US&F has not argued that it does.<sup>30</sup>

With respect to Thai HTS 7228.20.11.000, we also find US&F’s cited support unpersuasive. In *Fresh Garlic—PRC*, the Department did not value the primary input with country-specific data. In *Fresh Garlic—PRC*, record evidence demonstrated that the main input, garlic, was highly similar, and thus specific to garlic from the PRC. The Department did not value garlic using this country-specific data because the majority of that data represented imports from the PRC and (1) the Department excludes from its calculations any imports from NME countries and (2) record evidence did not establish the comparability of the respondents’ garlic to the data on imports of non-PRC garlic.<sup>31</sup> However, the information on the record of that administrative review was highly case-specific, *e.g.*, it contained world-wide pricing data for garlic from a variety of sources. With respect to steel bar, the record of this administrative review does not undermine the quality of the data reported under Thai HTS 7228.20 and, thus, we find that *Fresh Garlic—PRC* is distinguishable on its facts.

In *Silicon Metal—PRC*, we stated that, “while the Department considers several factors when selecting surrogate values including the quality, specificity, and contemporaneity of the data, when presented with a potential surrogate value that is more specific to the input in question but not as contemporaneous with the POR, the Department has inflated the less contemporaneous value.”<sup>32</sup> However, as in *Fresh Garlic—PRC*, the record of *Silicon Metal—PRC* was also highly case-specific. In particular, we noted in *Silicon Metal—PRC* that the HTS SV category in question did not provide sufficiently specific data where, for example, record evidence demonstrated that the HTS SV included information from countries that did not produce the input in question.<sup>33</sup> Again, in this administrative review, with respect to Thai HTS 7228.20, the record does not demonstrate any such specific aberrations nor has US&F argued that such exist.

In *Xinjiamei Furniture*, the Department found that certain SV data were not reliable.<sup>34</sup> In the administrative proceeding underlying *Xinjiamei Furniture*, record evidence demonstrated that the average unit values (AUV) of the SVs in question “{fell} outside the range of AUVs from all

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<sup>28</sup> See *Camau Frozen Seafood* at 1355.

<sup>29</sup> *Id.* at 1357.

<sup>30</sup> In *Peer Bearing Company-Changshan*, the CIT remanded the underlying administrative proceeding as the Department did not sufficiently explain its departure from valuing the major factor with information from the same surrogate country. In the instant proceeding, the Department is valuing all factors from the same surrogate country and, therefore, *Peer Bearing Company-Changshan* is not instructive. In *Frozen Fish Fillets—PRC*, we valued the input in question with data from the country used to value all other inputs despite parties’ arguments that the information was aberrational. As noted above, US&F has not cited specific evidence that Thai HTS 7228.20 is aberrational. Thus, *Frozen Fish Fillets—PRC* is also not instructive.

<sup>31</sup> See *Fresh Garlic—PRC* and accompanying IDM at Comment 6.

<sup>32</sup> See *Silicon Metal—PRC* and accompanying IDM at Comment 5.

<sup>33</sup> *Id.*

<sup>34</sup> See *Xinjiamei Furniture* at 1262.

other potential surrogate countries....”<sup>35</sup> Again, there is no record evidence, in this review, that that the AUVs of Thai HTS 7228.20 are not reasonably comparable nor has US&F argued so.<sup>36</sup>

In *Taian Ziyang Food*, the CIT noted that “‘product specificity’ logically must be the primary consideration in determining ‘best available information.’ If a set of data is not *sufficiently* ‘product specific,’ it is of no relevance whether or not the data satisfy the other criteria set forth in Policy Bulletin 04.1.”<sup>37</sup> US&F’s reliance on *Taian Ziyang Food* is misplaced. While US&F argues that Thai 7228.20.11000 (and Indonesian HTS 7228.20.1100) is specific to steel bar, it does not argue that Thai 7228.20 is not “sufficiently” product specific, which is the standard the CIT has established with regard to the Department’s selection of SVs.<sup>38</sup> As in the *Preliminary Results*, the Department continues to find Thai 7228.20 is sufficiently product-specific for the purposes of valuing steel bar.

Finally, we have corrected the import data for Thai HTS 7228.20 to ensure that we are using data that is contemporaneous to the POR for these final results.<sup>39</sup>

### **Comment 2: Whether the Department’s SAS Program Included a Value for Plywood**

According to Shakeproof, the Department’s margin program contains a programming language error which resulted in a margin calculation that does not include a value for the plywood reported by Jiangsu RC.<sup>40</sup> US&F did not comment on this issue.

**Department’s Position:** We agree with Shakeproof that the Department’s margin calculation contained an inadvertent error in the program language with respect to the value for plywood. For the final results, we have corrected this language to ensure that the value for plywood is included in the SV calculation.<sup>41</sup>

### **Comment 3: Whether the Department’s SAS Program Properly Calculated TOTCOM**

According to Shakeproof, the Department’s margin program contained a programming language error affecting the total cost of manufacturing (TOTCOM). The program incorrectly added the cost of manufacture (COM) to the surrogate value for overhead rather than adding the COM to the associated overhead expenses.<sup>42</sup> US&F did not comment on this issue.

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<sup>35</sup> *Id.*

<sup>36</sup> In *Blue Field (Sichuan) Food* the CIT remanded the underlying administrative review because the Department did not sufficiently explain possible aberrations in the SV used. *Blue Field* at 1332. Because there are arguments that Thai HTS 7228.20 provides data that is aberrational, we determine that *Blue Field (Sichuan) Food* is also non-instructive.

<sup>37</sup> See *Taian Ziyang Food* at 1330. Emphasis added. The CIT discussed product specificity within the context of finding that the Department did not sufficiently explain why it determined, in the underlying administrative review and remand, that a certain SV was “sufficiently specific.”

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

<sup>39</sup> See Memorandum, “Final Results of the Eighteenth Administrative Review of Helical Spring Lock Washers from the People’s Republic of China: Analysis of the Preliminary Results Margin Calculation for Jiangsu RC Import & Export Co., Ltd.,” concurrently dated (Jiangsu RC Analysis Memorandum).

<sup>40</sup> See Shakeproof Brief at 2 and 3.

<sup>41</sup> See Jiangsu RC Analysis Memorandum.

<sup>42</sup> See Shakeproof Brief at 3.

**Department's Position:** We agree with Shakeproof that the Department's margin calculation contained an inadvertent error in the program language with respect to the value for TOTCOM. For the final results, we have corrected this language to ensure that that COM is correctly added to the associated overhead expenses.<sup>43</sup>

Financial Statements/Ratios<sup>44</sup>

**Comment 4: Whether the Department Should Use the Financial Statements of System 3**

Shakeproof argues that record evidence demonstrates that System 3 Co., Ltd. (System 3) is not a manufacturer of merchandise comparable to that produced by Jiangsu RC and that, therefore, the Department should not rely on System 3's financial statements for the final results.<sup>45</sup> According to Shakeproof: (1) System 3's financial statements describe the company's business as "{m}anufacturing and {d}istribution of electrical equipment," (2) [thailandindustrialmarket.com](http://thailandindustrialmarket.com) lists System 3 in the category of "Electrical/Electronics/Control/Automation," and (3) the financial statements of System 3 reference comparable merchandise "only at the end of a long list of non-comparable merchandise."<sup>46</sup> Shakeproof concludes that System 3's production of comparable merchandise constitutes a small portion of System 3's business.<sup>47</sup> Shakeproof cites *Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part*, 76 FR 49729 (August 11, 2011) (*WBF—PRC*) where, according to Shakeproof, the Department did not use the financial statements of two companies that had limited overlap of production of subject merchandise and the record of the review contained a sufficient number of usable financial statements.<sup>48</sup>

US&F argues that the Department's use of System 3 was proper as System 3's business scope includes connectors, nuts and bolts, and that there is no information on the record discussing the percentage of total sales of connectors, nuts, and bolts.<sup>49</sup> US&F adds that the record evidence does not clearly indicate that the references to electric equipment, electronics, and control systems industries represent an exhaustive list of the products produced by System 3.<sup>50</sup> US&F also argues that System 3's inclusion of comparable merchandise at the end of the listing of products produced by System 3 is neither suggestive nor dispositive that its comparable merchandise is an insignificant portion of the company's production.<sup>51</sup>

In the alternative, US&F argues that, even if System 3's production of comparable merchandise consisted of a small portion of its overall production, System 3 would still be viable as a surrogate company. In support, US&F cites *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) (*Steel Nails—PRC*)

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<sup>43</sup> See Jiangsu RC Analysis Memorandum.

<sup>44</sup> The financial statements are fully translated.

<sup>45</sup> See Shakeproof Brief at 3.

<sup>46</sup> *Id.* and 4.

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

<sup>48</sup> *Id.*

<sup>49</sup> See US&F Rebuttal at 2.

<sup>50</sup> *Id.* at 3.

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

where the Department determined that smaller production volumes of subject merchandise do not render a company an unfit surrogate.<sup>52</sup>

US&F also argues that *WBF—PRC* is distinguishable on the facts and therefore does not support Shakeproof's argument. Specifically, US&F argues that record evidence specifically demonstrates that the surrogate company in question in *WBF—PRC* produced comparable merchandise once or twice a year and exclusively on a special-order basis.<sup>53</sup> According to US&F, there is no similar evidence with respect to System 3.<sup>54</sup>

Finally, US&F argues that there were 18 financial statements available for use in *WBF—PRC* whereas, in the instant review, there are five, and two of the companies' financial statements (Mahajak Autoparts' and Hitech Fastener's) are unusable (*see* Comment 5).<sup>55</sup>

**Department's Position:** We agree with US&F that the record of this review does not support a conclusion that System 3 is not a producer of comparable merchandise. As noted in the *Preliminary Results*, System 3's business scope includes connectors, nuts, and bolts, which the Department determines, represent comparable merchandise. Finally, we agree that *WBF—PRC* is distinguishable on the facts discussed by US&F. These circumstances are not present here.

For the final results, we continue to use the financial statements of System 3 subject to the changes discussed below at Comment 6.

#### **Comment 5: Whether the Department Should Use the Financial Statements of Mahajak Autoparts and Hitech Fasteners**

US&F argues that that the financial statements of Mahajak Autoparts Company Limited (Mahajak Autoparts) and Hitech Fastener Manufacturer (Thailand) Ltd. (Hitech Fastener) should not be used for the final results because they contain several basket category line items and are, therefore, not sufficiently detailed.<sup>56</sup> US&F contends that Mahajak Autoparts' and Hitech Fastener's statements do not have a line item expense for the cost of energy and do not contain separate line items for freight or transportation, the costs of which the Department excludes from its ratio calculations.<sup>57</sup> According to US&F, the Department disregards financial statements that are not sufficiently detailed to permit the calculation of one or more of the surrogate financial ratios when there are other detailed financial statements on the record.<sup>58</sup> US&F adds that it is

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<sup>52</sup> *Id.* at 4. US&F also cites *Chlorinated Isocyanurates from the People's Republic of China: Final Results of June 2008 Through November 2008 Semi-Annual New Shipper Review*, 74 FR. 68575 (December 28, 2009).

<sup>53</sup> *Id.* at 5 and 6.

<sup>54</sup> *Id.* US&F also argues that another surrogate company was eliminated because of the explicit statements in the company's financial statements indicating that it was not a producer of comparable merchandise.

<sup>55</sup> *Id.* at 7.

<sup>56</sup> *See* US&F Brief at 15.

<sup>57</sup> *Id.* at 17.

<sup>58</sup> *Id.* at 16. In support, US&F cites *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 IDM at Comment 1 (*Citric Acid—PRC*) and *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review*, 76 FR 9753 (February 22, 2011) and accompanying IDM at Issue 1.

also the Department's policy to disregard financial statements if they "simply fail to separately itemize energy expenses."<sup>59</sup>

Finally, US&F argues that the financial statements of Siam Anchor Fastener Industry Co., Ltd. (Siam Anchor), System 3, and Bangkok Fastenings Co., Ltd. (Bangkok Fastenings), satisfy all of the Department's criteria for the selection of financial statements, as all three are sufficiently detailed, provide a line item for energy expenses, disaggregate all individual expenses, and provide a separate line item for "transportation" or "freight."<sup>60</sup>

In rebuttal, Shakeproof argues that the financial statements of Mahajak Autoparts and Hitech Fasteners are sufficiently detailed to accurately compute the financial ratio. Specifically, with respect to Hitech Fastener's financial statement, Note 16 provides a detailed breakout of administrative expenses, all of which are properly classified as part of SG&A expenses.<sup>61</sup>

With respect to Mahajak Autoparts, according to Shakeproof, the absence of a separate line item for energy-related expenses is not grounds for exclusion here because the Department disregarded Jiangsu RC's energy FOPs, since Jiangsu RC was unable to report its tollers' actual energy usage.<sup>62</sup> That is, even if Mahajak Autopart's financial statement included a separate line item for energy-related expenses, the Department would proceed to reclassify it as factory overhead where it is already included.<sup>63</sup>

As far as Mahajak Autopart's financial statement not including a detailed breakout of the income statement line items for SG&A, Shakeproof argues that there is no evidence to indicate what these line items might include and how the resulting financial ratios may be distorted.<sup>64</sup> Shakeproof adds that the record evidence demonstrates that for all of the financial statements that contain such breakouts, the value of excluded line items in these categories is zero or negligible.<sup>65</sup>

**Department's Position:** The Department agrees with US&F that the financial statements of Mahajak Autoparts are not sufficiently detailed and do not support the accurate calculation of financial ratios, in comparison to the financial statements of Siam Anchor, System 3, and Bangkok Fastenings. However, the Department disagrees with US&F's argument that Hitech Fasteners' financial statements exhibit the same deficiencies as Mahajak Autoparts.

Mahajak Autopart's financial statements do not disaggregate administrative or cost of manufacturing expenses, both of which normally include related energy expenses. Mahajak

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<sup>59</sup> *Id.* In support, US&F cites *Utility Scale Wind Towers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 75992 (December 26, 2012) and accompanying IDM at Comment 2 (*Wind Towers—PRC*), and *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 IDM at Comment 16 (*DSB—PRC*).

<sup>60</sup> See US&F Brief at 18.

<sup>61</sup> See Shakeproof Rebuttal at 4.

<sup>62</sup> *Id.* at 5.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

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

Autoparts' financial statements also do not disaggregate transportation costs and we, therefore, cannot exclude those costs from the financial ratio calculation. In *Citric Acid—PRC*, the surrogate financial statement in question did not include a separate line item for energy in the reported cost of manufacturing.<sup>66</sup> There, we concluded that energy was recorded as part of overhead and we excluded the respondent's energy costs in order to avoid double-counting energy expenses.<sup>67</sup> In this review, we have, as noted by Shakeproof, also disregarded Jiangsu RC's energy-related expenses. However, unlike in *Citric Acid—PRC*, the record in this review contains four additional useable financial statements, all of which appropriately disaggregate energy and other expenses. Therefore, with respect to Mahajak Autoparts' financial statements' shortcomings, and in light of having additional useable financial statements, there is no need for the Department to make assumptions about which costs are in fact included in Mahajak Autoparts' administrative expenses. Indeed, assumptions would not suffice with respect to transportation costs.

In *Wind Towers—PRC*, the financial statements in question did not itemize raw materials, labor, and energy and we determined that deriving the surrogate financial ratios would require an unacceptable degree of estimation.<sup>68</sup> We, therefore, disregarded those financial statements for lack of sufficiently detailed information to permit the calculation of one or more of the surrogate financial ratios.<sup>69</sup> Likewise, in *DSB—PRC*, we disregarded financial statements that were insufficiently detailed because they did not provide labor costs, energy costs, beginning and ending work-in-process costs, and line-item details of financing costs.<sup>70</sup> Therefore, consistent with our past practice, we find that Mahajak Autoparts' financial statements are not sufficiently detailed to calculate accurate surrogate financial ratios. Further, because we have other useable financial statements, we have not used Mahajak Autoparts' financial statements for the final results.

With respect to Hitech Fasteners, we agree with Shakeproof that these financial statements are sufficiently detailed to calculate accurate financial ratios. Specifically, as noted by Shakeproof, Note 16 of the statements disaggregates the company's administrative expenses. In addition, Note 14 disaggregates the company's transportation costs, which enables the Department to exclude those costs, as appropriate. Therefore, for the final results, the Department will continue to use Hitech Fasteners' financial statements.

#### **Comment 6: Whether the Department Should Adjust the Financial Ratio Calculations Based on the Financial Statements of Siam Anchor, System 3, and Bangkok Fastenings**

Shakeproof argues that, for the final results, the Department should make certain adjustments to the financial ratio calculations based on the financial statements of Siam Anchor, System 3, and Bangkok Fastenings.<sup>71</sup> Specifically, according to Shakeproof:

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<sup>66</sup> See *Citric Acid—PRC* and accompanying IDM at Comment 1.

<sup>67</sup> *Id.*

<sup>68</sup> See *Wind Towers—PRC* and accompanying IDM at Comment 1.

<sup>69</sup> *Id.*

<sup>70</sup> See *DSB—PRC* and accompanying IDM at Comment 16.

<sup>71</sup> See Shakeproof Brief at 5. Shakeproof notes that the Department should make adjustments to System 3's financial statements only if the Department decides to continue using them for the final results.

- The Department did not include energy FOPs in its normal value calculation and the Department, therefore, should treat all energy-related expenses of Siam Anchor, System 3, and Bangkok Fastenings as manufacturing overhead;<sup>72</sup>
- With respect to the financial statements of Bangkok Fastenings and System 3, the Department classified certain administrative expenses as labor expenses where the financial statements classified them as administrative expenses.<sup>73</sup> Specifically:
  - For Bangkok Fastenings, the expenses are “Social Security Fund Contributions,” “Staff’s Welfare,” and “Medical expense;”
  - For System 3, the expenses are “Staff Welfare” and “Social Security Fund.”

Shakeproof adds that direct labor and manufacturing expenses are separately reported in Bangkok Fastenings’ and System 3’s financial statements, which further demonstrates that the expenses in question are administrative.<sup>74</sup> Shakeproof argues that, for the final results, the Department should use the administrative expenses in the manner in which they are classified in the financial statements. In support, Shakeproof cites *Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire From the People’s Republic of China*, 79 FR 25572 (May 5, 2014) and accompanying IDM at Comment 10 (*Prestressed Concrete Steel—PRC*).

- Shakeproof also argues that, with respect to Siam Anchor’s financial statements, the Department incorrectly treated “Security Guard,” and “Rental” expenses as selling, general, and administrative expenses (SG&A) where Siam Anchor’s financial statement treats these expenses as overhead expenses.<sup>75</sup>

With respect to whether energy FOPs should be included in the normal value calculation, US&F reiterates its argument that the financial statements of Mahajak Autoparts and Hitech Fasteners do not disregard energy expenses (*see* Comment 5) and that, therefore, these financial statements should be rejected.<sup>76</sup> US&F adds, “{a}fter rejecting the financial statements of Mahajak Autoparts and Hitech Fasteners, the remaining three financial statements remain available to value energy expenses separately since the data in the Siam Anchor, System 3 and Bangkok Fasteners financial statements are clear and straightforward. Using these data, the Department can value the financial ratios accurately, as the law requires.”<sup>77</sup>

With respect to labor and SG&A expenses, US&F argues that the itemization of indirect manufacturing labor costs under administrative expenses instead of under overhead or cost of goods sold (COGS), as is done in Bangkok Fastenings’ and System 3’s financial statements, is

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<sup>72</sup> *Id.* at 6.

<sup>73</sup> *Id.* at 6 and 7.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 8.

<sup>76</sup> *See* US&F Rebuttal at 8.

<sup>77</sup> *Id.* at 9. The Department interprets US&F’s position as agreeing with Shakeproof’s argument that the Department should treat all energy-related expenses of Siam Anchor, System 3, and Bangkok Fastenings as manufacturing overhead.

not determinative of the correct allocation of the indirect manufacturing labor costs.<sup>78</sup> In support, US&F cites *Certain Steel Nails from the People's Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014) (*Steel Nails/AR—PRC*) where indirect labor costs were not itemized under overhead or COGS. US&F adds that there is no indication that expenses reported in the line items “wages” or “direct labor” also capture the costs of indirect labor.<sup>79</sup>

Lastly, US&F argues that *Prestressed Concrete Steel—PRC* is distinguishable because in that case, the line item involved and reported under manufacturing cost was “factory labor,” which could include direct and indirect labor costs whereas, in this review, the line items are “Wages” and “Direct Labor” costs which, by their terms, do not include the elements of indirect labor costs.<sup>80</sup> Therefore, according to US&F, *Prestressed Concrete Steel—PRC* stands for the proposition that the Department relies on financial statement classification unless there is reason to believe it is inaccurate where, as here, there is a “clear indication” that the line items for “Wages” and “Direct labor” cost do not include the elements of indirect manufacturing labor expenses.<sup>81</sup>

**Department’s Position:** The Department agrees with Shakeproof that, for the final results, the energy-related expenses of Siam Anchor, System 3, and Bangkok Fastenings should be treated as manufacturing overhead.<sup>82</sup>

With respect to Bangkok Fastenings’ “Social Security Fund Contributions,” “Staff’s Welfare,” and “Medical expenses,” and System 3’s, “Staff Welfare” and “Social Security Fund expenses,” we agree with Shakeproof that these expenses, classified by the companies as administrative expenses should be reclassified as administrative expenses for the purposes of calculating accurate financial ratios. In *Prestressed Concrete Steel—PRC*, we stated:

The Vongthong financial statements provide a separate and clear classification for manufacturing costs and for selling and administrative expenses. Because the expenses at issue are classified on those financial statements as “administrative” costs, we included them in the numerator of our SG&A surrogate ratio calculation for the preliminary determination.

Given the nature of the information that serves as the source for financial ratio calculations in NME cases (*i.e.*, that it is based on 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. Therefore, when assigning the various expenses to particular categories for our financial ratio calculations, we prefer to rely on the classification of expenses from the surrogate financial statements, *unless there is good reason to believe the classification is not accurate*. In this case, as noted above, manufacturing costs and selling and

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<sup>78</sup> *Id.* at 7.

<sup>79</sup> *Id.* at 11.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> The Department notes that Shakeproof(?) does not contest US&F’s argument.

administrative expenses are clearly identified in the surrogate financial statements, and the accompanying notes provide rather detailed schedules of the expenses included in each category. It is not unreasonable to assume that the expenses at issue relate only to administrative personnel, as they are classified specifically as such in the financial statements. Nor is it unreasonable to expect that social security and workmen's compensation expenses are already included in the factory labor amounts, even though they are not separately itemized in the schedule of manufacturing costs. Moreover, there is no other information in the Vongthong financial statements or elsewhere on the record of this case suggesting that the financial statement classifications are not accurate.<sup>83</sup>

The Department's determination in *Prestressed Concrete Steel—PRC* is instructive. That is, the Department will rely on the surrogate company's expense classification unless there is good reason to believe that the classification is inaccurate. US&F argues that the line items expenses "Wages" and "Direct Labor," by their terms alone, indicate that these expenses do not include elements of indirect labor costs. We disagree that these terms are determinative of the expenses that are, or are not, included. More importantly, we disagree that the terms themselves provide good reason to believe that classifications are inaccurate. In *Steel Nails/AR—PRC*, we said:

With regard to LSI, under the "Total Cost of Management" account, for the Preliminary Results we classified two items under "Labor," which were "Welfare" and "Social Security and Compensation." We classified these two items as "Labor" as there is neither a separate line item for these items under "Cost of Services" (where "Direct Labor" and "Wages" appear), nor is there any indication that "Direct Labor" and "Wages" include these types of compensation. Moreover, the Thailand National Statistics Office ("NSO") 2007 labor data that the Department relied on for the *Preliminary Results* encompasses similar types of compensation:

"...the 2007 NSO data include (1) wages/salaries; (2) overtime payment, bonus, special payment, cost of living allowance and commission; (3) fringe benefits such as "food, beverages, lodgings, rent, medical care, transportation recreational and entertainment services, etc.;" and (4) employer's contribution to social security, e.g., "social security fund, workmen's compensation fund and health insurance, etc."<sup>84</sup>

The record in this case does not provide an additional reason to "look behind" the financial statements as the Department it did in *Steel Nails/AR—PRC*, i.e., the 2007 NSO data. Therefore, based on the Department's practice, for the final results, we will treat these expenses as administrative. In addition, we will treat Siam Anchor's "Security Guard," and "Rental" expenses as overhead expenses because we have no reason "look behind" Siam Anchor's financial statements.

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<sup>83</sup> See *Prestressed Concrete Steel—PRC* and accompanying IDM at Comment 10. Emphasis added.

<sup>84</sup> See *Steel Nails—PRC* and accompanying IDM at Comment 10. Citing *Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013) and accompanying IDM at Comment 4.

## Value-Added Taxes

### **Comment 7: Whether the Department Should Continue to Deduct from U.S. Price Irrecoverable Value-Added Tax**

US&F argues that, for the final results, the Department should not continue to deduct the value-added tax (VAT) levied on inputs used in producing the subject merchandise and not recovered. Specifically, according to US&F, the irrecoverable VAT (17 percent) is not an “export tax” as provided in 772(c)(2)(B) of the Act (*i.e.*, it does not arise as a result of exportation) and that, therefore, the Department is in contravention of the Act.<sup>85</sup> US&F adds the record evidence demonstrates that the exportation of subject merchandise from the PRC to the United States is exempt from the payment of VAT and that VAT may be imposed on domestic purchases in the PRC, but it is not imposed on exports, which are specifically exempt from the payment of VAT.<sup>86</sup>

In support, US&F cites *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) (*Chevron*) and argues that categorizing the VAT that is not fully refunded upon exportation as an export tax in under 772(c)(2)(B) of the Act is a violation of *Chevron*’s first prong, which requires the agency and the court to comply with the clear intent of Congress when Congress has spoken directly to the precise question at issue.<sup>87</sup> According to US&F, section 772(c)(2)(B) of the Act is clear and unambiguous with respect to export tax and the Department therefore has no discretion to construe it otherwise and to deduct from U.S. price un-refunded VAT as export tax.

Finally, US&F argues that the Department’s computation of irrecoverable VAT exceeds the amount of VAT originally paid by the respondent. According to US&F, the amount of VAT paid is computed at the rate of 17 percent of the cost of inputs, while the irrecoverable VAT amount was computed at the rate of 17 percent of the sale price of finished goods, where the sale price of finished goods on a per-unit basis normally exceeds the aggregate of the cost of the corresponding inputs utilized in producing such finished goods.<sup>88</sup> Therefore, according to US&F, should the Department continue to deduct the irrecoverable VAT in the final results, the Department should accurately determine the amount of VAT actually paid on the inputs utilized in producing the subject merchandise.<sup>89</sup>

Shakeproof argues that there is no merit to US&F’s argument that the Act prohibits the Department from deducting the irrecoverable VAT from U.S. sales price.<sup>90</sup> Shakeproof also argues that there is no merit to US&F’s challenge to the Department’s calculation of irrecoverable VAT based on export sales price rather than on the cost of the inputs used to produce the subject merchandise.<sup>91</sup> According to US&F, the Department’s methodology is

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<sup>85</sup> See US&F Brief at 20-24. Emphasis added.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* US&F also cites *Dorbest v. United States*, 604 F.3d 1363 (Fed. Cir. 2010) in support.

<sup>88</sup> *Id.* at 24-25.

<sup>89</sup> *Id.* The Department notes that US&F does not suggest a methodology in lieu of the methodology used by the Department in the *Preliminary Results*.

<sup>90</sup> See Shakeproof Rebuttal at 6-7.

<sup>91</sup> *Id.*

consistent with both the Department's past practice and the PRC's own definition of irrecoverable VAT.<sup>92</sup>

**Department's Position:** For the reasons explained below, we applied the VAT adjustment formula we used in the *Preliminary Results* to deduct from the reported U.S. prices an amount for irrecoverable VAT.

In 2012, we announced a change in methodology with respect to the calculation of export price (EP) or constructed export price (CEP) to include an adjustment for any un-refunded (irrecoverable) VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.<sup>93</sup> In this announcement, we stated that when an NME government has imposed an export tax, duty, or other charge on subject merchandise *or on inputs* used to produce subject merchandise, from which the respondent was not exempted, we will reduce the respondent's EP or CEP by the amount of the tax, duty or charge paid, but not rebated.<sup>94</sup> 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 against the VAT they collect from customers.<sup>95</sup> That stands in contrast to China's VAT regime, where some portion of the VAT that a company pays on purchases of inputs used in the production of exports is not refunded or otherwise credited.<sup>96</sup> This amounts to a tax, duty or other charge imposed on exports that is not imposed on domestic sales. Where the irrecoverable VAT is a fixed percentage of U.S. price, the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.<sup>97</sup>

Section 772(c)(2)(B) of the Act requires 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. In arguing that Chinese VAT is not an export tax, duty or charge, US&F misstates the issue: irrecoverable VAT is distinct from VAT *per se*. In this context, irrecoverable VAT, as defined in the 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 not refunded or otherwise credited in the way that VAT normally is,

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<sup>92</sup> *Id.* In support, Shakeproof cites *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—PRC*) and accompanying IDM at Comment 1, where the Department addresses the relevant PRC taxing regime.

<sup>93</sup> See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36482 (June 19, 2012) (*Methodological Change*).

<sup>94</sup> *Id.*, 77 FR at 36483; 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 the accompanying IDM at Comment 5 (*Chlorinated Isocyanurates—PRC*).

<sup>95</sup> See, e.g., *Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 26712 (May 9, 2014) (*Wood Flooring—PRC*), and the accompanying IDM at Comment 3, and *Methodological Change*, 77 FR at 36483.

<sup>96</sup> See "The Interim Regulations of the People's Republic of China on Value-added Tax adopted after being revised at the 34th executive meeting of the State Council on November 5, 2008 are hereby issued and shall come into effect as of January 1, 2009" (Interim Regulations), provided in Jiangsu RC's section C response dated April 17, 2014, at Exhibit C-2.

<sup>97</sup> See *Methodological Change*, 77 FR at 36483.

and, therefore, it becomes a cost of producing goods for export. Therefore, it is appropriate for the Department to treat irrecoverable VAT as 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 irrecoverable VAT is a cost that arises as a result of export sales. It is set forth in the PRC law and, therefore, can be considered to be “imposed” by the exporting country upon the exportation of subject merchandise. Further, an adjustment for irrecoverable VAT achieves the objective of section 772(c)(2)(B) of the Act, because it reduces the gross U.S. price charged to the customer to a net price received. This deduction is consistent with our longstanding policy, and the intent of the statute, that dumping margin calculations be tax-neutral.<sup>98</sup>

Our methodology, as explained above, has two basic steps: (1) determining the amount of irrecoverable VAT on subject merchandise, and (2) reducing U.S. price by this amount. Information placed on the record of this review by Jiangsu RC indicates that, according to the PRC VAT schedule, VAT is levied on sales of subject merchandise at a rate of 17 percent and there is no VAT rebate.<sup>99</sup> For the final results, therefore, we continue to remove from U.S. price 17 percent of the export sales value (*i.e.*, U.S. price net of international movement expenses), consistent with the definition of irrecoverable VAT under the PRC tax law and regulation.<sup>100</sup>

Pursuant to Interim Regulations,<sup>101</sup> irrecoverable VAT is defined as (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 otherwise applicable to exported goods.<sup>102</sup> 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 explicitly set forth in Chinese law and regulation.<sup>103</sup>

Our methodology removes irrecoverable VAT on exports, which is product-specific and is explicitly defined in the PRC tax regulations.<sup>104</sup> Our deduction of product-specific irrecoverable VAT from the price of the subject merchandise is a reasonable and accurate methodology because the export tax, duty, or other charge is a product-specific expense that is directly linked with the exportation of the subject merchandise. The Department’s method of relying on the standard formula provided for under the PRC tax law and regulation is a straightforward, consistent, and verifiable method to make this adjustment under section 772(c)(2)(B) of the Act. In that respect, the irrecoverable VAT formula for taxation purposes is solely a function of the rates under the PRC regulation and the respondent-specific export value of subject merchandise.

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<sup>98</sup> *Id.*, 77 FR at 36483, and *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27369 (May 19, 1997) (citing Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-106, vol. 1, 827, reprinted in 1995 U.S.C.C.A.N. 3773, 4172).

<sup>99</sup> See Jiangsu RC’s section C response dated April 17, 2014, at Exhibit C-2.

<sup>100</sup> See *Prestressed Wire—PRC* and the accompanying IDM at Comment 1, and *Wood Flooring—PRC* and the accompanying IDM at Comment 3.

<sup>101</sup> See Jiangsu RC’s section C response dated April 17, 2014, at Exhibit C-2.

<sup>102</sup> See *Prestressed Wire—PRC* and the accompanying IDM at Comment 1, n. 35, and *Wood Flooring—PRC* and the accompanying IDM at Comment 3.

<sup>103</sup> See *Prestressed Wire—PRC* and the accompanying IDM at Comment 1, n. 36, and *Wood Flooring—PRC* and the accompanying IDM at Comment 3.

<sup>104</sup> See *Prestressed Wire—PRC* and the accompanying IDM at Comment 1, and *Wood Flooring—PRC* and the accompanying IDM at Comment 3.

There could be any number of differences between the irrecoverable VAT reported for the PRC tax purposes and how the irrecoverable VAT is actually recorded in a given respondent's records. For all of the reasons stated above, do will not consider allocations across all company sales or across sales of products with different VAT schedules. The irrecoverable VAT liability is determined on a product-specific basis, and it is on this basis that we will consider respondent-specific claims for adjustments to the standard formula, taking into account whether such adjustments are permitted under the PRC law and regulation and supported with record evidence.

Finally, this analysis is consistent with our current VAT policy and our treatment of VAT in recently completed NME cases.<sup>105</sup>

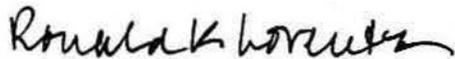
## RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

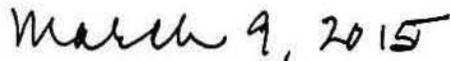
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\_\_\_\_\_  
Agree

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Disagree



\_\_\_\_\_  
Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance



\_\_\_\_\_  
(Date)

<sup>105</sup> See *Prestressed Wire—PRC* and the accompanying IDM at Comment 1, *Wood Flooring—PRC* and the accompanying IDM at Comment 3, and *Chlorinated Isocyanurates—PRC* and the accompanying IDM at Comment 5A.