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June 7, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Administrative Review
of the Antidumping Duty Order on Diamond Sawblades and Parts
Thereof from the People's Republic of China

Summary

We analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (the PRC) covering the period November 1, 2013, through October 31, 2014. As a result of our analysis, we made changes in 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 a complete list of the issues for which we have received comments and rebuttal comments from the interested parties:

1. Respondent Selection
2. Value-Added Tax
3. Differential Pricing
 - a. Statutory Authority
 - b. Withdrawn Targeted Dumping Regulations
 - c. Cohen's *d* Test
 - d. Denial of Offsets for Non-Dumped Sales When Using the A-T Method
 - e. Aggregation of A-A and A-T Comparison Results
 - f. Floating Numbers
4. Surrogate Values
 - a. Brokerage and Handling – Letter of Credit Expenses
 - b. Container Weight in the Brokerage and Handling and Truck Freight Expenses
 - c. Cores – Modification to the Build-Up Methodology
 - d. Cores – AUV from Comparable Products
 - e. Cores – Steel Consumption Quantities
 - f. Financial Statements
 - g. Graphite Molds



- h. Labor
 - i. Nitrogen and Oxygen
 - j. Scrap Offset
 - k. Truck Freight
 - l. Wooden Trays
5. Billing Adjustments
 6. Reconstruction of Control Numbers
 7. Rescission of Review in Part

Background

On December 4, 2015, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on diamond sawblades from the PRC.¹ As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines by four business days due to the closure of the Federal Government.² The tolled deadline for the final results of this review was April 8, 2016. The Department fully extended the final results of this review to June 7, 2016.³

We invited interested parties to comment on the *Preliminary Results*. We received case⁴ and rebuttal⁵ briefs from various parties to this administrative review. Pursuant to requests from interested parties, we held a hearing on April 20, 2016.

Company Abbreviations

Alpha – Alpha Diamond Tools Co., Ltd.
AT&M – Advanced Technology & Materials Co., Ltd.
ATMI – AT&M International Trading Co., Ltd
ATM Single Entity – ATM, ATMI, BGY, Cliff, and HXF
BGY – Beijing Gang Yan Diamond Products Co.
Bosun – Bosun Tools Co., Ltd.
Cliff – Cliff International Ltd.
Husqvarna – Husqvarna (Hebei) Co., Ltd.

¹ See *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 75854 (December 4, 2015) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

² See Memorandum for the Record from Acting Assistant Secretary Ron Lorenzen entitled “Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm ‘Jonas’” dated January 27, 2016.

³ See Memorandum to Associate Deputy Assistant Secretary Gary Taverman entitled “Diamond Sawblades and Parts Thereof from the People’s Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review” dated March 23, 2016, and Memorandum to Deputy Assistant Secretary Christian Marsh entitled “Diamond Sawblades and Parts Thereof from the People’s Republic of China: Full Extension of Deadline for Final Results of Antidumping Duty Administrative Review” dated May 18, 2016.

⁴ See Case Briefs filed by various parties on January 19, 2016. Weihai resubmitted its redacted case brief on February 2, 2016.

⁵ See Rebuttal Briefs filed by various parties on February 5, 2016. Bosun resubmitted its redacted rebuttal brief on February 11, 2016, and Weihai resubmitted its redacted rebuttal brief on April 13, 2016.

HXF – HXF Saw Co., Ltd.
Jiangsu Fengtai Single Entity – Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd., Jiangsu Fengtai Tools Co., Ltd., and Jiangsu Sawing Co., Ltd., as a single entity
KM – K.M. & A.A. Co., Ltd.
The petitioner – Diamond Sawblades Manufacturers Coalition
Trigger – Trigger Co. Philippines, Inc.
Weihai – Weihai Xiangguang Mechanical Industrial Co., Ltd.

Other Abbreviations

A-A – average-to-average
A-T – average-to-transaction
ACCESS – Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System
APA – Administrative Procedure Act
AUV – average unit value
B&H – brokerage and handling
CAFC – Court of Appeals for the Federal Circuit
CBP – U.S. Customs and Border Protection
CEP – constructed export price
CIT – U.S. Court of International Trade
CPI – Consumer Price Index
CVD – countervailing duty
Doing Business – Doing Business 2015 – Trading Across Borders in Thailand
DP – differential pricing
EP – export price
FOPs – factors of production
GTA – Global Trade Atlas
HTS – Harmonized Tariff Schedule
LTFV – less than fair value
NME – non-market economy
NSO – National Statistics Office in Thailand
POR – period of review
SAA – Statement of Administrative Action accompanying the URAA
SRA – separate rate application
SV – surrogate value
TD – targeted dumping
The Act – The Tariff Act of 1930, as amended
T-T – transaction-to-transaction
URAA - Uruguay Round Agreements Act
USTR – U.S. Trade Representative
VAT – value-added tax
WTO – World Trade Organization

Diamond Sawblades Administrative Determinations and Results

LTFV Final – Diamond Sawblades and Parts Thereof from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances, 71 FR 29303 (May 22, 2006), as amended in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof from the People’s Republic of China*, 71 FR 35864 (June 22, 2006).

Section 129 and Partial Revocation - Certain Frozen Warmwater Shrimp From the People’s Republic of China and Diamond Sawblades and Parts Thereof From the People’s Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders, 78 FR 18958 (March 28, 2013)

Diamond Sawblades 1 – 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).

Diamond Sawblades 2 – Diamond Sawblades and Parts Thereof From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 36166 (June 17, 2013), as amended in *Diamond Sawblades and Parts Thereof From the People’s Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 42930 (July 18, 2013).

Diamond Sawblades 3 – 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).

Diamond Sawblades 4 – Diamond Sawblades and Parts Thereof From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 32344 (June 8, 2015).

Scope of the Order

The products covered by the order are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of the order are semifinished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the order. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the order. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of the order. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the order. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the order.

Merchandise subject to the order is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. On October 11, 2011, the Department included the 6804.21.00.00 HTSUS classification number to the customs case reference file, pursuant to a request by CBP.⁶

The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Surrogate Country

In the *Preliminary Results*, we treated the PRC as an NME country and calculated normal value in accordance with section 773(c) of the Act. We selected Thailand as the primary surrogate country, pursuant to 19 CFR 351.408(c)(2), because it is at the level of economic development of 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 FOPs.⁷ 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.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate.⁸ It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.⁹

⁶ See *Diamond Sawblades and Parts Thereof From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 76128 (December 6, 2011).

⁷ See *Preliminary Results*, and accompanying Preliminary Decision Memorandum at 12-14.

⁸ See, e.g., *LTFV Final*, 71 FR at 29307, and *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).

⁹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 79 FR 76956 (December 23, 2014) (*Initiation Notice*).

In the *Preliminary Results*, we found that, in addition to two of the companies we selected for individual examination, certain companies demonstrated their eligibility for separate rate status by demonstrating that they operated free of *de jure* and *de facto* government control. Based on the information on the record of this review, we continue to find that the respondents that received separate rates in the *Preliminary Results* are eligible for separate rates.

Neither the statute nor the Department's regulations addresses the establishment of a rate to be applied to companies not selected for individual examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Our practice in this regard has been to average the margins for the selected companies, excluding margins that are zero, *de minimis*, or based entirely on facts available. Consistent with that practice and the *Preliminary Results*, we have assigned separate-rate respondents that are not being individually examined the weighted average of the two selected respondents' rates based on their ranged U.S. sales values. The two selected respondents for which we calculated individual margins in this review are the Jiangsu Fengtai Single Entity and Weihai. For the final results of this review, because we changed the dumping margins for the Jiangsu Fengtai Single Entity and Weihai, the rate assigned to the eligible non-selected separate rate companies likewise changes to 29.76 percent.¹⁰

Differential Pricing

For the final results, we have modified a program code for the DP analysis for the Jiangsu Fengtai Single Entity and Weihai.¹¹ For the Jiangsu Fengtai Single Entity, the results of the DP analysis showed that 18.4 percent of its U.S. sales passed the Cohen's *d* test and does not confirm that a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods.¹² Because the results of the Cohen's *d* test do not support consideration of an alternative to the A-A method, we used the A-A method to calculate the final weighted-average dumping margin for the Jiangsu Fengtai Single Entity.¹³ For Weihai, based on the results of the DP analysis, we find that 50.7 percent of its U.S. sales pass the Cohen's *d* test and confirm the existence of a pattern of CEPs and EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods.¹⁴ Moreover, we determine that the A-A method cannot appropriately account for such differences because the resulting weighted-average dumping margin moves across the *de minimis* threshold when calculated using the A-A

¹⁰ See Memorandum to the File entitled "Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Calculation of Separate Rate for Eligible Non-Selected Respondents" dated concurrently with this Issues and Decision Memorandum.

¹¹ See Comment 8 below.

¹² See Memorandum to the File entitled "Antidumping Duty Administrative Review on Diamond Sawblades and Parts Thereof from the People's Republic of China; 2013-2014: Final Analysis Memorandum for Jiangsu Fengtai Single Entity" (Jiangsu Fengtai Single Entity final analysis memorandum) dated concurrently with this Issues and Decision Memorandum.

¹³ In these final results, we applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification*).

¹⁴ See Memorandum to the File entitled "Antidumping Duty Administrative Review on Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Analysis Memorandum for Weihai Xiangguang Mechanical Industrial Co., Ltd." (Weihai final analysis memorandum) dated concurrently with this Issues and Decision Memorandum.

method and an alternative method based on the A-T method applied to the U.S. sales which pass the Cohen's *d* test.¹⁵ Accordingly, we used the A-T method for U.S. sales passing the Cohen's *d* test and the A-A method for U.S. sales not passing the Cohen's *d* test to calculate the final weighted-average dumping margin for Weihai.¹⁶

ATM Single Entity

In the *Initiation Notice*, the Department initiated the review for several companies that we have previously considered to be a single entity, and which we have called the ATM Single Entity, *i.e.*, AT&M, ATMI, BGY, Cliff, and HXF.¹⁷ In the *Preliminary Results*, we stated that entries made “on or after March 22, 2013 of diamond sawblades from the PRC produced and exported by AT&M, BGY, and HXF, are not subject to the order” pursuant to the *Section 129 and Partial Revocation*, 78 FR at 18960.¹⁸ We also explained that, because the *Section 129 and Partial Revocation* is the subject of ongoing litigation, “we may reevaluate the status of diamond sawblades from the PRC produced and exported by AT&M, BGY, and HXF as a result of, and consistent with, a court decision in this litigation.”¹⁹

On December 1, 2015, we issued a remand redetermination in which we determined that reinstatement of the antidumping duty order on diamond sawblades from the PRC with respect to AT&M²⁰ was appropriate for reasons explained in the remand determination.²¹ The CIT sustained that remand redetermination on May 11, 2016, less than one month from a fully extended deadline, *i.e.*, June 7, 2016, for completing this administrative review.²² Thus, we reinstated the order with respect to entries of diamond sawblades from the PRC for which we revoked the order in part under the *Section 129 and Partial Revocation*.²³ And, accordingly, for the final results of this review, consistent with the CIT's decision and the concomitant reinstatement of the order, the ATM Single Entity comprising all five companies identified above is subject to the order and subject to this administrative review.²⁴ Although BGY filed an

¹⁵ See Weihai final analysis memorandum. See also *Preliminary Results*, and accompanying Preliminary Decision Memorandum at 15-17 for determination of comparison methods.

¹⁶ In these final results, we applied the weighted-average dumping margin calculation method adopted in *Final Modification*.

¹⁷ See *Initiation Notice*, 79 FR at 76957-58.

¹⁸ See *Preliminary Results*, and accompanying Preliminary Decision Memorandum at 3.

¹⁹ *Id.*

²⁰ Collectively with BGY and HXF.

²¹ See Final Results of Redetermination Pursuant to *Diamond Sawblades Manufacturers' Coalition v. United States*, Court No. 13-00168, slip op. 15-92, 2015 Ct. Intl. Trade LEXIS 92 (Ct. Int'l Trade Aug. 20, 2015), available at <http://enforcement.trade.gov/remands/15-92.pdf>.

²² See *Diamond Sawblades Manufacturers' Coalition v. United States*, Court No. 13-00168, slip op. 16-48, 2016 Ct. Intl. Trade LEXIS 48 (Ct. Int'l Trade May 11, 2016).

²³ See *Diamond Sawblades And Parts Thereof from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination Under Section 129 of the Uruguay Round Agreements Act and Reinstatement of Order, In Part*, 81 FR 36519 (June 7, 2016).

²⁴ To the extent they do not demonstrate eligibility for a separate rate and no party has requested a review of the PRC-wide entity, there is no conditional review of the PRC-wide entity. See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013), and *Preliminary Results*, 80 FR at 75854.

SRA, it does not rebut the presumption of PRC government control over the ATM Single Entity for the reasons explained below.

BGY filed its SRA for the merchandise it exported to the United States.²⁵ We do not find that BGY's SRA rebuts the presumption of PRC government control over the ATM Single Entity. In *Diamond Sawblades 3*, which was the last completed administrative review at the time BGY submitted its SRA in this review, we treated the ATM Single Entity as part of the PRC-wide entity based on the ATM Single Entity's corporate ownership structure and interlocking board memberships and senior managements where (1) the PRC government "had the capacity to influence AT&M's affairs (and therefore the affairs of ATM Single Entity)" and (2) "AT&M did not choose its management autonomously."²⁶ Notwithstanding that BGY is part of the ATM Single Entity, this SRA covers BGY only; the SRA does not provide information about, for example, AT&M's board membership and selection of management. Additionally, this SRA provides no information rebutting the presumption of the PRC government's control over the ATM Single Entity, particularly the *de facto* control through selection of AT&M's management which formed part of our basis for treating the ATM Single Entity as part of the PRC-wide entity in *Diamond Sawblades 3*.²⁷ Specifically, BGY's SRA provides the corporate ownership structure of the ATM Single Entity, including AT&M, but does not provide any meaningful difference from *Diamond Sawblades 3* for us to find the ATM Single Entity eligible for a separate rate.²⁸ While BGY states that AT&M is its parent company, it does not provide any narrative explanation on whether the corporate ownership structure, board membership, and management are different from *Diamond Sawblades 3*.²⁹ Accordingly, the ATM Single Entity continues to be part of the PRC-wide entity.

²⁵ See BGY's SRA dated February 23, 2015.

²⁶ See *Diamond Sawblades 3*, and accompanying Issues and Decision Memorandum at Comment 1. See also Final Results of Redetermination pursuant to *Diamond Sawblades Manufacturers' Coalition v. United States*, Court No. 13-00078, slip op. 14-50 (Ct. Int'l Trade Apr. 29, 2014) dated April 10, 2015, at 4, available at <http://enforcement.trade.gov/remands/14-50.pdf>, *aff'd*, *Diamond Sawblades Manufacturers' Coalition v. United States*, Court No. 13-00078, slip op. 15-105 (Ct. Int'l Trade Sept. 23, 2015), Final Remand Redetermination pursuant to *Diamond Sawblades Manufacturers Coalition v. United States*, Court No. 13-00241, slip op. 14-112 (Ct. Int'l Trade Sept. 23, 2014) dated May 18, 2015, at 7-8, available at <http://enforcement.trade.gov/remands/14-112.pdf>, *aff'd*, *Diamond Sawblades Manufacturers' Coalition v. United States*, Court No. 13-00241, slip op. 15-116 (Ct. Int'l Trade Oct. 21, 2015), and *Diamond Sawblades 4*, and accompanying Issues and Decision Memorandum at Comment 1, in which we also treated the ATM Single Entity as part of the PRC-wide entity based on the same ground. (These two remand redeterminations and *Diamond Sawblades 4* postdate *Diamond Sawblades 3* and BGY's SRA.) Our denial of the separate rate eligibility and treatment of the ATM Single Entity as part of the PRC-wide entity in the administrative reviews of this order follows our remand redetermination in the LTFV investigation, which the CIT and CAFC affirmed. See Final Results of Redetermination pursuant to *Advanced Technology & Materials Co. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) dated May 6, 2013, available at <http://enforcement.trade.gov/remands/12-147.pdf>, *aff'd*, *Advanced Technology & Materials Co. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), and *Advanced Tech. & Materials Co. v. United States*, 581 Fed. Appx. 900, 2014 U.S. App. LEXIS 20800 (Fed. Cir. 2013).

²⁷ See *Diamond Sawblades 3*, and accompanying Issues and Decision Memorandum at Comment 1.

²⁸ See BGY's SRA dated March 23, 2015, at 17 and Exhibit 7 for details which contain the ATM Single Entity's business-proprietary information.

²⁹ See BGY's SRA at 17.

Discussion of the Issues

Respondent Selection

Comment 1: Bosun requests that the Department additionally select Bosun for individual examination and issue an antidumping questionnaire to it. Citing *Zhejiang*,³⁰ Bosun contends that the Department's selection of two respondents for individual examination due to heavy caseload in several cases and anticipated future workload is impermissible. Citing *Carpenter Technology Corporation v. United States*, 662 F. Supp. 2d 1337, 1343-44 (CIT 2009) and *Husteel Co. v. United States*, 98 F. Supp. 3d 1315, 1327 (CIT 2015), Bosun argues that the numbers of respondents ranging from three to eight are not large enough to limit the respondents for individual examination. Bosun contends that, while selecting one or two respondents with overwhelming entries of subject merchandise, *e.g.*, 95 percent in quantity, would be reasonable, the Department selected two respondents with two extreme examples and calculated an unreasonable separate rate for non-selected respondents. Bosun claims that the Department's preliminary separate rate for non-selected respondents is not accurate and representative of the rate for non-selected respondents. Bosun explains that its margins have been equal to or below that of Weihai's margins in the last four completed administrative reviews. Bosun contends that, in this review, its rate is much higher than Weihai's margin and out of sync with the history of the two respondents' rates in previous reviews.

Bosun argues that, even though it raises this issue for the first time in its case brief, raising it earlier in this review would have been futile and, thus, it did not fail to exhaust administrative remedies. Bosun explains that the petitioner requested the sampling of respondents for individual examination earlier in the review but the Department "rejected" the petitioner's recommendation. Bosun also explains that filing a voluntary response would have been futile because (1) the Department has an established practice of not accepting a voluntary response unless one of the selected respondents drops out and (2) the recently revised statute allows the Department to decline to accept a voluntary response based on the volume of caseload. Bosun explains that Weihai has been a well-established cooperative respondent in past reviews and the Jiangsu Fengtai Single Entity showed no signs of being uncooperative.

The petitioner argues that the Department reasonably limited individual examination to two exporters accounting for the largest volume of subject merchandise from the PRC that can reasonably be examined under section 777A of the Act. The petitioner contends that section 777A of the Act does not require a minimum number of respondents to be selected for individual examination when the number of respondents under review is large, as in this review. The petitioner explains that the reasonableness of the number of respondents selected for individual examination depends on case-specific facts and the courts have upheld the selection of fewer than three respondents when case-specific facts merited such limitation. The petitioner argues that, with a newly selected respondent, significant argumentation regarding surrogate financial ratios, and large number of supplemental questionnaires, there is no reason that the Department was required to select additional respondents for individual examination.

³⁰ *Zhejiang Native Produce & Animal By-Products Import & Export Corp. v. United States*, 637 F. Supp. 2d 1260, 1263-64 (CIT 2009) (*Zhejiang*).

In addition, according to the petitioner, Bosun did not provide comments on respondent selection prior to respondent selection or submit a voluntary response. The petitioner explains that, contrary to Bosun's claim that the Department "rejects" comments on respondent selection, the petitioner's comments on respondent selection remain on the record of this review and there has been no memorandum to reject the petitioner's comments on respondent selection. Finally, citing *Husteel Co. v. United States*, 98 F. Supp. 3d 1315 (CIT 2015), the petitioner argues that the Department calculated the separate rate for non-selected respondents, including Bosun, consistent with the statutory requirements that the calculation of separate rates for non-selected respondents be based on the weighted average of the estimated weighted-average dumping margins established for individually examined respondents. The petitioner contends that Bosun does not argue against the Department's calculation methodology for non-selected separate rate respondents, but Bosun's claim of receiving an unrepresentative margin in the *Preliminary Results* appears to be a support for its claim that the Department has erred in selecting only two respondents for individual examination.

Department's Position: We disagree with Bosun. Specifically, we properly determined not to select Bosun for individual examination and, in any event, Bosun did not request that it be selected for individual examination as either a mandatory respondent or a voluntary respondent until it filed its case brief.

With respect to our decision not to select Bosun for individual examination, section 777A(c)(2) of the Act provides that when we are faced with a large number of companies such that individual examination of all companies would be impracticable, we may limit our individual examination of companies to a reasonable number of such companies. In addition, section 777A(c)(2) of the Act permits us to determine margins for a reasonable number of exporters by limiting our examination either: (1) through a sampling of exporters, producers, or types of products; or (2) by selecting the exporters accounting for the largest volume of the subject merchandise.

On March 20, 2015, we released the CBP data containing entries of subject merchandise and solicited comments from interested parties on the selection of mandatory respondents.³¹ The petitioner provided comments concerning respondent selection.³² Bosun, for its part, provided no comments concerning the Department's respondent selection methodology, the CBP data, or why the Department should select Bosun for individual examination. The arguments raised by Bosun in its case brief represent the first time in the segment that Bosun has requested that it be selected for individual examination or otherwise commented upon our respondent selection methodology. Even assuming that Bosun presented valid arguments for us to depart from our respondent selection methodology pursuant to the statute, it raised those arguments at such a late stage in the review that it prevented us from acting upon them within the deadlines of this review.³³

³¹ See Letter to interested parties dated March 20, 2015.

³² See Petitioner's comments on respondent selection dated March 27, 2015.

³³ Similarly, in a prior review of this order, the petitioner filed its targeted dumping allegation for the first time in its case brief, we found the allegation untimely filed, although there was no established deadline for filing a targeted dumping allegation. We declined to analyze the allegation because of due process concerns and because we lacked sufficient time to conduct the analysis. See *Diamond Sawblades 2*, and accompanying Issues and Decision Memorandum at Comment 4, *aff'd Diamond Sawblades Manufacturers' Coalition v. United States*, Court No. 13-

In selecting respondents for individual examination, we took into consideration the petitioner's comments on respondent selection, as well as our resources such as current and anticipated workload, and deadlines expected to coincide with the segment in question.³⁴ In the Respondent Selection Memo, we explained that it would not be practicable in this review to examine all 63 companies for which we had initiated a review in light of, *inter alia*, our limited resources. Thus, in accordance with section 777A(c)(2) of the Act, we selected a reasonable number of respondents, specifically the Jiangsu Fengtai Single Entity (comprising several companies) and Weihai, the two respondents accounting for the largest volume of exports of subject merchandise that could reasonably be examined.³⁵

Even if there were merit to Bosun's arguments for us to select it for individual examination in addition to the mandatory respondents, Bosun was silent when we solicited comments for respondent selection earlier in this review. At this stage of this review, we do not find it practicable to issue a questionnaire to Bosun for individual examination. In administrative reviews, we issue questionnaires requesting parties to provide detailed information on a wide range of matters that are essential to the calculation of an accurate dumping margin, such as corporate structure and ownership, sales practices, U.S. sales prices and adjustments thereto, packing, transportation and other movement-related expenses, and production data for subject merchandise. In addition, in an NME review such as this, we solicit substantial amounts of information for multiple FOPs.³⁶ We carefully analyze initial information we receive in response to questionnaires and we issue follow-up questionnaires to clarify points or obtain further information. We analyze such supplemental responses in order to allow time for any further questions or to prepare for verification. Such verifications often take place in the foreign country, involve a detailed examination of price and FOP data, and require a thorough report of the verification process and results thereafter. Thus, there is substantial work involved in individually examining a company and we find that there is no time within the statutory timeframe to first begin examining Bosun after the publication of the *Preliminary Results*.³⁷ For its part, Bosun does not even assert that, if we had acted upon receipt of Bosun's case brief and selected it as an additional respondent, it reasonably could have completed all of the above-mentioned steps.

With respect to the issue of the futility of filing a voluntary response, we do not find Bosun's argument persuasive. Bosun argues that seeking voluntary status at the appropriate time in this administrative review would have been futile, yet Bosun then for the first time requests individual treatment even later in the administrative review, in its case brief, when we would not have sufficient time to examine Bosun individually. Additionally, Bosun did not follow the requirements for consideration for voluntary status. For us to consider whether we should accept

00241, 2015 Ct. Intl. Trade LEXIS 116, at *11-14 (Ct. Int'l Trade Oct. 21, 2015) (*DSMC*).

³⁴ See Memorandum entitled "Diamond Sawblades and Parts Thereof from the People's Republic of China: Selection of Respondents for Individual Examination" dated April 7, 2015 (Respondent Selection Memo).

³⁵ *Id.*

³⁶ See, e.g., Letter to interested parties entitled "Diamond Sawblades and Parts Thereof from the People's Republic of China: Request for Surrogate Country and SV Comments and Information" dated February 19, 2015, and Letter to interested parties dated December 10, 2015.

³⁷ See section 751(a)(3)(A) of the Act. See also *Diamond Sawblades I*, and accompanying Issues and Decision Memorandum at Comment 4.

a non-selected respondent as a voluntary respondent, the statute requires that the would-be voluntary respondent file a response to the questionnaire within the deadlines established for the mandatory respondents.³⁸ Bosun is not excused from the statutory requirement of filing a voluntary response if it seeks treatment as a voluntary respondent merely because it considers doing so to be futile.

Our calculation of the final separate rates for the non-selected respondents, including Bosun, is consistent with our practice.³⁹ Our practice is guided by the statute covering the calculation of separate rates for non-selected respondents in investigations, which does not require that we take into consideration margins for a respondent in prior segments of proceedings, as Bosun argues we should.⁴⁰

Value-Added Tax

Comment 2: Bosun, the Jiangsu Fengtai Single Entity, and Weihai argue that the Department's preliminary deduction of unrefunded VAT from U.S. price is a violation of section 772(c)(2)(B) of the Act and *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Bosun, the Jiangsu Fengtai Single Entity, and Weihai claim that the unrefunded VAT at issue is the tax for the imports of raw materials from other countries into the PRC, not the export tax specifically mentioned in section 772(c)(2)(B) of the Act. Weihai explains that the exportation of the subject merchandise is exempt from, not subject to, the payment of VAT. Bosun, the Jiangsu Fengtai Single Entity, and Weihai contend that categorizing the VAT that is not fully refunded upon exportation as an export tax pursuant to section 772(c)(2)(B) of the Act is a violation of *Chevron's* first prong, which requires the Department to comply with the clear intent of Congress when Congress has spoken directly to the precise question at issue. Bosun, the Jiangsu Fengtai Single Entity, and Weihai claim that, because section 772(c)(2)(B) of the Act is clear and unambiguous with respect to export tax, the Department has no discretion to construe it otherwise to deduct unrefunded VAT as an export tax from U.S. price.

Bosun and Weihai state that they did not pay VAT or any export tax upon exportation of the subject merchandise because the Chinese authorities exempt the exports of finished goods from VAT. Weihai contends that the VAT rate is zero percent for the subject merchandise because the Interim Regulations list the zero percent tax rate for taxpayers that export goods. Bosun and Weihai insist that the unrefunded VAT is a result of the purchase and importation of raw materials, not the exportation of the subject merchandise, and that the payment of VAT does not originate with the exportation of subject merchandise. Weihai claims that this VAT is not different from income or payroll taxes, for example, it pays in connection with production and

³⁸ See section 782(a) of the Act ("the administering authority shall establish ... an individual weighted average dumping margin for any exporter or producer not initially selected for individual examination under such sections who submits to the administering authority the information requested from exporters or producers selected for examination, if....(emphasis added)").

³⁹ See *Preliminary Results*, and accompanying Preliminary Decision Memorandum at 11. See also *Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53662 (September 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

⁴⁰ *Id.* See also section 735(c)(5)(A) of the Act for the statutory requirements for calculating separate rates for non-selected respondents in investigations.

sales of subject merchandise. Weihai explains that it would have paid this VAT regardless of whether the sales were domestic or export sales. Weihai contends that the statute does not allow the Department to interpret the irrevocable VAT as an export VAT because the statute is unambiguous with respect to the export tax. Weihai argues that *Diamond Sawblades 4* and accompanying Issues and Decision Memorandum at Comment 7, which the Department relied on to deduct preliminarily the unrefunded VAT, does not pinpoint any specific PRC tax regulations that provide for an unrefunded amount of input VAT pursuant to the exportation of goods.

Citing, e.g., *Magnesium Corp. v United States*, 166 F.3d 1364, 1370-71 (Fed. Cir. 1999), Bosun and the Jiangsu Fengtai Single Entity argue that the CAFC upheld the Department's decision not to capture domestic taxes imposed upon the purchase of raw materials in the PRC because there is no reliable way to determine whether or not an export tax has been included in the price of a product from an NME. Bosun and the Jiangsu Fengtai Single Entity contend that this rationale has not changed despite the Department's recent decision to deduct the unrefunded VAT. Bosun claims that the Department's methodology in the deduction of unrefunded VAT is based on pure speculation, not substantial evidence on the record. Even if the Department is concerned about respondents receiving some benefits from the NME methodology in the form of tax on production not fully rebated, according to Bosun, the Department's deduction of unrefunded VAT is an inappropriate way to address the concern.

The Jiangsu Fengtai Single Entity argues that, because the statute is unambiguous, the Department does not need to determine under *Chevron's* second prong whether its deduction of the unrefunded VAT is a permissible interpretation of the statute. The Jiangsu Fengtai Single Entity claims that, even if it becomes necessary to make a determination under *Chevron's* second prong, the Department's deduction of the unrefunded VAT is an impermissible interpretation of the statute because the unrefunded VAT at issue is not an export tax, export duties, or other export charges specified in section 772(c)(2)(B) of the Act. The Jiangsu Fengtai Single Entity describes the unrefunded VAT as the PRC government's withholding of funds that otherwise would have been refunded or paid to the exporter upon the exportation of the subject merchandise. The Jiangsu Fengtai Single Entity explains that, instead of imposing a tax, charge, or other duty, the PRC government is not refunding previously paid VAT at the time of the exportation of the subject merchandise. In addition, according to the Jiangsu Fengtai Single Entity, because section 772(c)(2)(B) of the Act requires that the Department deduct export taxes, export duties, or other charges that are included in U.S. price, the Department may not deduct the unrefunded VAT, which is not included in U.S. price.

According to the Jiangsu Fengtai Single Entity, the Department explained in *Methodological Change*⁴¹ that the reason for deducting from U.S. price an amount for unrefunded VAT imposed by the PRC is in accordance with the Department's reinterpretation of the CVD law in 2006. The Jiangsu Fengtai Single Entity contends that, while the CAFC overturned this reinterpretation in *GRX Int'l Tire Corp.*,⁴² and a subsequent statutory amendment authorized the Department to

⁴¹ *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*).

⁴² *GPX Int'l Tire Corp. v. United States*, 666 F.3d 732 (Fed. Cir. 2011) (*GRX Int'l Tire Corp.*).

impose CVDs on NME countries, Congress did not amend section 772(c)(2)(B) of the Act to allow the Department to deduct VAT from U.S. price, the Department may not rely on the 2006 reinterpretation of the statute to deduct the VAT from U.S. price.

The petitioner argues that the Department should continue to deduct the unrefunded VAT from the U.S. price. According to the petitioner, both the Jiangsu Fengtai Single Entity and Weihai reported that the VAT was 17 percent during the POR with the VAT rebate of nine percent applicable to exports of the subject merchandise. The petitioner explains that respondents challenging the VAT deduction offered no new arguments that would justify reconsidering the Department's position concerning this issue as explained in, e.g., *Diamond Sawblades 4* and accompanying Issues and Decision Memorandum at Comment 7. Citing *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, the petitioner argues that cases such as *Magnesium Corp.* do not reject the Department's deduction of unrebated VAT. The petitioner explains that those cases simply agreed with the Department's decision not to do so back at the time when the PRC economy was different from today's PRC economy.

The petitioner also requests that the Department deduct VAT from Weihai's EP sales. The petitioner explains that the Department did not properly deduct them in the *Preliminary Results*.

Department's Position: For the reasons explained below, we continue to apply our preliminary formula to adjust the VAT to deduct from the reported U.S. prices an amount for irrecoverable VAT.

In 2012, we announced a change of methodology with respect to the calculation of the EP or CEP to include an adjustment of any irrecoverable VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.⁴³ 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 EPs or CEPs accordingly by the amount of the tax, duty or charge paid, but not rebated.⁴⁴ 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.⁴⁵ That stands in contrast to China'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.⁴⁶ This

⁴³ See *Methodological Change*, 77 FR at 36482.

⁴⁴ *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 accompanying Issues and Decision Memorandum at Comment 5 (*Chlorinated Isocyanurates*).

⁴⁵ See, e.g., *Diamond Sawblades 3*, and accompanying Issues and Decision Memorandum at Comment 6, *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*), and accompanying Issues and Decision Memorandum at Comment 3, and *Methodological Change*, 77 FR at 36483.

⁴⁶ See the Jiangsu Fengtai Single Entity's section C response dated June 19, 2015, at 37-39 and Exhibit C-4 for "Interim Regulations of the People's Republic of China on Value Added Tax" and "Detailed Rule for the

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 final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.⁴⁷

In response to the claims that we do not have the statutory authority to adjust for VAT, section 772(c)(2)(B) of the Act authorizes us to deduct from EP or CEP the amount, if included in the price, of any “export tax, duty, or other charge imposed by the exporting country on the exportation” of the subject merchandise. Respondents argue that Chinese VAT is not an export tax, duty or charge, but they misstate what is at issue. The issue is the irrecoverable VAT, not VAT *per se*. In this context, irrecoverable VAT, as defined in Chinese law, is a net VAT burden that arises solely from, and is specific to, exports.⁴⁸ It is VAT paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost. Irrecoverable VAT is, therefore, an “export tax, duty, or other charge imposed” on exportation of the subject merchandise to the United States. Neither the statute nor its legislative history defines the term(s) “export tax, duty, or other charge imposed” on the exportation of subject merchandise. The CIT upheld our interpretation of these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as a result of export sales.⁴⁹ It is set forth in Chinese 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 longstanding policy, which is consistent with the intent of the statute, that dumping margin calculations be tax-neutral.⁵⁰

Our methodology, as explained above, essentially amounts to 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. The Jiangsu Fengtai Single Entity and Weihai reported that the standard VAT levy on the subject merchandise is 17 percent and the VAT rebate rate for the subject merchandise is nine percent.⁵¹ For the final results, therefore, we removed from U.S. price an amount calculated based on the difference between these rates (*i.e.*, eight percent)

Implementation of the Provisional Regulation of the People’s Republic of China on Value-Added Tax.” See Weihai’s section C response dated June 25, 2015, at 49-51 and Exhibits C-25A and C-25B for “Interim Regulations of the People’s Republic of China on Value Added Tax” and “Circular on Value-Added Tax and Consumption Tax Policies on Exported Goods and Services” respectively.

⁴⁷ See *Methodological Change*, 77 FR at 36483.

⁴⁸ See, e.g., *Diamond Sawblades 3*, and accompanying Issues and Decision Memorandum at Comment 6.

⁴⁹ See *Fushun Jinly Petrochemical Carbon Co., Ltd. v. United States*, Court No. 14-00287, 2016 Ct. Intl. Trade LEXIS 25, at *36-37 (Ct. Int’l Trade Mar. 23, 2016) (*Fushun Jinly*).

⁵⁰ See *Methodological Change*, 77 FR at 36483, and *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27369 (May 19, 1997) (citing SAA accompanying the URAA, H.R. Doc. No. 103-106, vol. 1, 827, reprinted in 1995 U.S.C.C.A.N. 3773, 4172).

⁵¹ See the Jiangsu Fengtai Single Entity’s section C response dated June 19, 2015, at 37-39 and Exhibit C-4 for “Interim Regulations of the People’s Republic of China on Value Added Tax” and “Detailed Rule for the Implementation of the Provisional Regulation of the People’s Republic of China on Value-Added Tax.” See Weihai’s section C response dated June 25, 2015, at 49-51 and Exhibits C-25A and C-25B for “Interim Regulations of the People’s Republic of China on Value Added Tax” and “Circular on Value-Added Tax and Consumption Tax Policies on Exported Goods and Services”, respectively.

applied to the export sales value (*i.e.*, U.S. price net of international movement expenses), consistent with the definition of irrecoverable VAT under Chinese tax law and regulation.⁵²

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 applicable to exported goods.⁵³ The first variable, export value, is unique to each respondent while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in Chinese law and regulation.⁵⁴

Our methodology is based on removing irrecoverable VAT on exports, which is product-specific and is explicitly defined in Chinese tax regulations.⁵⁵ 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. Our method of relying on the standard formula provided for under Chinese tax law and regulation is straightforward, consistent, and a 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 Chinese regulation and the respondent-specific export value of subject merchandise.

There could be any number of differences between the irrecoverable VAT reported for Chinese tax purposes and how the irrecoverable VAT is actually recorded in a given respondent's records. For all of the reasons stated above, we 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 Chinese law and regulation and supported with record evidence.

We disagree with the Jiangsu Fengtai Single Entity concerning its argument that our deduction of the irrecoverable VAT from U.S. price is based on our 2006 decision and, thus, invalid under *GRX Int'l Tire Corp.* First, *GRX Int'l Tire Corp.* did not overturn our deduction of the irrecoverable VAT from U.S. price. In *Methodological Change*, we stated that our decision to deduct the irrecoverable VAT would depend on “copies of laws, regulations, other official documents, or similar publicly available information that identify the particular tax imposed on certain exports by the PRC ... government” placed on the record of an administrative review.⁵⁶ We also explained that we will also consider evidence as to whether a respondent “was, in some

⁵² 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, and *Wood Flooring*, and accompanying Issues and Decision Memorandum at Comment 3.

⁵³ See *Prestressed Wire*, and accompanying Issues and Decision Memorandum at Comment 1, n. 35, and *Wood Flooring*, and accompanying Issues and Decision Memorandum at Comment 3.

⁵⁴ See *Prestressed Wire*, and accompanying Issues and Decision Memorandum at Comment 1, n. 36, and *Wood Flooring*, and accompanying Issues and Decision Memorandum at Comment 3.

⁵⁵ See *Prestressed Wire*, and accompanying Issues and Decision Memorandum at Comment 1, and *Wood Flooring*, and accompanying Issues and Decision Memorandum at Comment 3.

⁵⁶ See *Methodological Change*, 77 FR at 36482-83.

manner, exempted from the requirement to pay the export tax, duty, or other charge” and that we anticipate “that such evidence would include official documentation of the respondent’s exemption.”⁵⁷ As explained above, our decision to deduct the irrecoverable VAT is based not on the 2006 decision but on the information the Jiangsu Fengtai Single Entity and Weihai placed on the record of this review, which provides an independent basis demonstrating that the PRC government imposes taxes that can be identified and measured.⁵⁸

Our analysis is consistent with our current VAT policy and our treatment of VAT in recently completed NME cases.⁵⁹ Also for the final results, consistent with our reasons explained above and in the *Preliminary Results*, we deducted the VAT in the calculation of Weihai’s EP sales.⁶⁰

Differential Pricing

Statutory Authority

Comment 3: Bosun argues that the Department lacks statutory authority to conduct the DP analysis in this review under section 777A(d)(1)(B) of the Act and 19 CFR 351.414(b). According to Bosun, section 777A(d)(1)(B) of the Act authorizes the Department to use the A-T method as an alternative only in investigations, not in administrative reviews. Citing, *e.g.*, *Hamdan v. Rumsfeld*, 548 U.S. 557,578 (2006), Bosun explains that Congress intentionally included investigations in, and omitted administrative reviews from, section 777A(d)(1)(B) of the Act. Therefore, Bosun contends, the Department should not interpret the absence of the statutory provision with respect to the use of the A-T method in administrative reviews as a statutory gap that can be filled with the statute that authorizes the use of the A-T method in investigations. Bosun claims that 19 CFR 351.414(b) was amended in 2012 and has no effect after *Gold East*⁶¹ concluded that the predecessor provision remains in force.

The petitioner argues that section 777A(d)(1) of the Act does not provide an express limitation or implied prohibition on the Department’s DP analysis in administrative reviews. Citing, *e.g.*, *Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 36719 (June 30, 2014), and accompanying Issues and Decision Memorandum at Comment 1, the petitioner explains that the Department is authorized to fill the gap in the construction of the statute with respect to the use of the DP analysis in administrative reviews.

⁵⁷ See *Methodological Change*, 77 FR at 36483.

⁵⁸ *Id.*, at 36482. (“... the Department has reconsidered its administrative practice that taxes paid by NME companies to these NME governments cannot be identified and measured.”)

⁵⁹ See *Prestressed Wire*, and accompanying Issues and Decision Memorandum at Comment 1, *Wood Flooring*, and accompanying Issues and Decision Memorandum at Comment 3, and *Chlorinated Isocyanurates*, and accompanying Issues and Decision Memorandum at Comment 5A. See also *Diamond Sawblades 3*, and accompanying Issues and Decision Memorandum at Comment 6 and *Helical Spring Lock Washers From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 13833 (March 17, 2015), and accompanying Issues and Decision Memorandum at Comment 7.

⁶⁰ See Weihai final analysis memorandum for more details containing Weihai’s business proprietary information.

⁶¹ *Gold East Paper (Jiangsu) Co., Ltd. v. United States*, 918 F. Supp. 2d 1317, 1327 (CIT 2013) (*Gold East*).

Department's Position: We do not agree with Bosun's assertion that we have no authority to use the A-T method in administrative reviews. Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." By definition, a "dumping margin" requires a comparison of normal value and EP or CEP. Before making the comparison required, it is necessary to determine how to make the comparison. The CIT has affirmed our authority to engage in our DP analysis to decide which comparison methodology to use for calculating dumping margins and thereafter apply the A-T method in an administrative review when appropriate.⁶²

Section 777A(d)(1) of the Act discusses the standard comparison methods (*i.e.*, A-A and T-T) in investigations and then provides for an alternative comparison method (*i.e.*, A-T) that is an exception to the standard methods when certain criteria are met. For reviews, section 777A(d)(2) of the Act discusses the maximum length of time over which the Department may calculate weighted-average normal value when using the A-T method. Section 777A(d)(2) of the Act has no provision specifying the comparison method to be employed in administrative reviews. However, concluding that the statute makes no provision for comparison methods in administrative reviews would infer that Congress did not give us the authority to use a comparison method at all in administrative reviews, with the result that we would not be permitted to make a comparison of normal values and EPs or CEPs in order to calculate a dumping margin, as described in section 771(35)(A) of the Act.

We find that, contrary to Bosun's claim, the silence of the statute with regard to application of the A-T comparison method in administrative reviews does not preclude us from applying such a practice in administrative reviews. Indeed, the CAFC stated that the "court must, as we do, defer to Commerce's reasonable construction of its governing statute where Congress leaves a gap in the construction of the statute that the administrative agency is explicitly authorized to fill or implicitly delegates legislative authority, as evidenced by the agency's generally conferred authority and other statutory circumstances."⁶³ Further, this "silence has been interpreted as 'an invitation' for an agency administering unfair trade law to 'perform its duties in the way it believes most suitable' and courts will uphold these decisions {s}o long as the {agency}'s analysis does not violate any statute and is not otherwise arbitrary and capricious."⁶⁴

To fill this gap in the statute, the Department promulgated regulations to specify how comparisons between normal value and EP or CEP would be made in administrative reviews. With the implementation of the URAA, the Department promulgated the final rule in 1997 in which 19 CFR 351.414(c)(2) stated that the Department would normally use the A-T method in administrative reviews. In 2010, the Department published *Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings: Proposed Rule; Proposed Modification; Request for Comment*, 75 FR 81533 (December 28, 2010) pursuant to section 123(g)(1) of the URAA. This proposal

⁶² See *Apex Frozen Foods Private Limited v. United States*, Court No. 14-00226, 2016 Ct. Intl. Trade LEXIS 9, at 8 (Ct. Int'l Trade Feb. 2, 2016) (*Apex*).

⁶³ See *U.S. Steel Corp. v. United States*, 621 F.3d 1351, 1357 (Fed. Cir. 2010) (*U.S. Steel Corp.*).

⁶⁴ See *Mid Continent Nail Corp. v. United States*, 712 F. Supp. 2d 1370, 1376-77 (CIT 2010), citing *U.S. Steel Group v. United States*, 96 F.3d 1352, 1362 (Fed. Cir. 1996).

was in reaction to several WTO Dispute Settlement Body panel reports, which had found the denial of offsets for non-dumped sales in administrative reviews to be inconsistent with the WTO obligations of the United States. When considering the proposed revisions to 19 CFR 351.414, the Department gave proper notice and opportunity to comment to all interested parties. Pursuant to section 123(g)(1)(D) of the URAA, in September 2011, the USTR submitted a report to the House Ways and Means and Senate Finance Committees, which described the proposed modifications, the reasons for the modifications, and a summary of the advice which the USTR had sought and obtained from relevant private sector advisory committees pursuant to section 123(g)(1)(B) of the URAA. Also, in September 2011, pursuant to section 123(g)(1)(E) of the URAA, the USTR, working with the Department, began consultations with both congressional committees concerning the proposed contents of the final rule and the final modification. As a result of this process, the Department published *Final Modification for Reviews*. These revisions were effective for all preliminary results of review issued after April 16, 2012, and, thus, they apply to this administrative review.

The regulations revised in 2012 describe the methods by which normal value can be compared to EP and CEP in LTFV investigations and administrative reviews (*i.e.*, A-A, T-T, and A-T).⁶⁵ These comparison methods are distinct from each other. When we use the T-T or A-T method, a comparison is made for each export transaction to the United States. When we use the A-A method, a comparison is made for each group of comparable export transactions for which the EPs or CEPs have been averaged together (*i.e.*, for an averaging group). We do not interpret the Act or the SAA to prohibit the use of the A-A comparison method in administrative reviews, nor does the Act or the SAA mandate the use of the A-T comparison method in administrative reviews; 19 CFR 351.414(c)(1) fills the gap in the statute concerning the choice of a comparison method in the context of administrative reviews. In both LTFV investigations and administrative reviews, the A-A method will be used, unless we determine that another method is appropriate in a particular case. Because Congress did not specify the comparison method for administrative reviews, we have great discretion in selecting the appropriate comparison method in administrative reviews. Therefore, we have authority to consider the application of the A-T method as an alternative comparison methodology in administrative reviews, which the CIT has affirmed.⁶⁶

Withdrawn Targeted Dumping Regulations

Comment 4: Bosun argues that the Department should not conduct the TD or DP analysis in this review. Bosun explains that 19 CFR 351.414(f) (2008) (the section that covered the TD analysis) is still in effect because the Department did not properly withdraw it. Bosun states that the court in *Gold East* disagreed with the Department's assertion that it withdrew 19 CFR 351.414(f) (2008) properly and required the Department to first submit the proposal for notice and comment. According to Bosun, while the Department took steps to withdraw 19 CFR 351.414(f) (2008) properly, the very request for comments on its new methodology demonstrates that it has not yet undertaken all necessary steps to replace the original TD methodology and procedure. Because the petitioner did not file a timely TD allegation against Bosun in this review and the Department has not followed other procedural or substantive requirements in 19

⁶⁵ See 19 CFR 351.414(b) (2012).

⁶⁶ See *CP Kelco Oy and CP Kelco US, Inc. v. United States*, 978 F. Supp. 2d 1315 (CIT 2014).

CFR 351.414(f) (2008), according to Bosun, the Department should not conduct the TD or DP analysis for the final results.

The petitioner contends that the Department rejected the same arguments raised in other cases such as *Diamond Sawblades 4* and accompanying Issues and Decision Memorandum at Comment 9. The petitioner argues that, because the Department satisfied the APA requirements for withdrawing the TD regulations, the Department does not need to use the withdrawn regulations, *i.e.*, 19 CFR 351.414(f)(1)(ii) and (2) (2008). The petitioner also argues that *Gold East* involves an investigation, not an administrative review.

Department's Position: The targeted dumping regulations withdrawn in the *2008 Withdrawal*⁶⁷ are no longer in effect and, when they were in effect, they applied only to the LTFV investigations, not administrative reviews.⁶⁸ Likewise, *Gold East* involves a LTFV investigation, not an administrative review.⁶⁹ Furthermore, the currently effective 19 CFR 351.414 specifically fills the statutory gap regarding the selection of an appropriate comparison method in the context of administrative reviews.⁷⁰ This process was done with proper notice and opportunity to comment, and no party could reasonably have been left with the impression that the Department would be bound by the withdrawn targeted dumping regulations in administrative reviews.

The issue of whether the targeted dumping regulations were properly withdrawn in 2008 is not relevant in this review because the withdrawn targeted dumping regulations were applicable only to investigations, not reviews.⁷¹ In any event, the targeted dumping regulations were withdrawn properly pursuant to the APA. During the withdrawal process, the Department engaged the public to participate in its rulemaking process. In fact, the Department's withdrawal of its regulations in 2008 came after two rounds of soliciting public comments on the appropriate targeted dumping analysis.

The Department solicited the first round of comments in October 2007, more than one year before it withdrew the regulation, by publishing a notice in the *Federal Register* seeking public comments on what guidelines, thresholds, and tests it should use in conducting an analysis under section 777A(d)(1)(B) of the Act.⁷² As the notice explained, because the Department had

⁶⁷ See *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (December 10, 2008) (*2008 Withdrawal*).

⁶⁸ See *Apex*, 2016 Ct. Intl. Trade LEXIS 9, at *19.

⁶⁹ *Id.* See also *Gold East and Gold East Paper (Jiangsu) Co., Ltd. v. United States*, Consol. Court No. 10-00371, 2015 Ct. Intl. Trade LEXIS 36 (Ct. Int'l Trade Apr. 22, 2015).

⁷⁰ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

⁷¹ See, *e.g.*, *Apex*, 2016 Ct. Intl. Trade LEXIS 9, at *19-20 ("However, whether the regulation was in full force and effect is of no consequence here. The regulatory provisions that Plaintiffs argue Commerce failed to comply with do not apply to administrative reviews. The issue of whether the regulations were properly withdrawn is not before the court as the regulations by their terms only apply to investigations, which Plaintiffs concede in their argument. (Citations omitted.) Thus, there is no regulation that expressly requires Commerce to apply the limiting rule and the allegation requirement in a review.").

⁷² See *Targeted Dumping in Antidumping Investigations; Request for Comment*, 72 FR 60651 (October 25, 2007) (*Targeted Dumping*).

received very few targeted dumping allegations under the regulations then in effect, it solicited comments from the public to determine how best to implement the remedy provided under the statute to address masked dumping. The notice posed specific questions, and allowed the public 30 days to submit comments. Various parties submitted comments in response to the Department's request.⁷³ After considering those comments, the Department published a proposed new methodology in May 2008 and again requested public comment.⁷⁴ Among other things, the Department specifically sought comments "on what standards, if any, {it} should adopt for accepting an allegation of targeted dumping."⁷⁵ Several of the submissions⁷⁶ received from parties explained that the Department's proposed methodology was inconsistent with the statute and should not be adopted.⁷⁷ Moreover, several entities explicitly stated that the Department should not establish minimum thresholds for accepting allegations of targeted dumping because the statute contains no such requirements.⁷⁸

After considering the parties' comments the Department explained that because "the provisions were promulgated without the benefit of any experience on the issue of targeted dumping, the Department may have established thresholds or other criteria that have prevented the use of this comparison methodology to unmask dumping."⁷⁹ For this reason, the Department determined that the regulation had to be withdrawn.⁸⁰ Although this withdrawal was effective immediately, the Department again invited parties to submit comments, and gave them a full 30 days to do so.⁸¹ The comment period ended on January 9, 2009, with several parties submitting comments.⁸²

The course of the Department's decision-making demonstrates that it sought to engage the public actively. This type of public participation is fully consistent with the APA's notice-and-comment requirement.⁸³ Moreover, various courts have rejected the idea that an agency must give the parties an opportunity to comment before every step of regulatory development.⁸⁴ Rather, where the public is given the opportunity to comment meaningfully, consistent with the statute, the APA's requirements are satisfied. The touchstone of any APA analysis is whether

⁷³ See, e.g., *Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 54264 (September 11, 2014) (*CTL Plate*), and accompanying Issues and Decision Memorandum at Comment 3 n.18.

⁷⁴ See *Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations*, 73 FR 26371, 26372 (May 9, 2008).

⁷⁵ *Id.*

⁷⁶ See, e.g., *CTL Plate*, and accompanying Issues and Decision Memorandum at Comment 3 n.21.

⁷⁷ See, e.g., *CTL Plate*, and accompanying Issues and Decision Memorandum at Comment 3 n.22.

⁷⁸ See, e.g., *CTL Plate*, and accompanying Issues and Decision Memorandum at Comment 3 n.23.

⁷⁹ See *2008 Withdrawal*.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² See, e.g., *CTL Plate*, and accompanying Issues and Decision Memorandum at Comment 3 n.27.

⁸³ See, e.g., *Arizona Pub. Serv. Co. v. EPA*, 211 F.3d 1280, 1299-1300 (D.C. Cir. 2000) (holding that the EPA's decision to not implement a rule upon which it had sought comments did not violate the APA's notice and comment requirements because the parties should have understood that the agency was in the process of deciding what rule would be proper).

⁸⁴ See *Fed. Express Corp. v. Mineta*, 373 F.3d 112, 120 (D.C. Cir. 2004) (*Fed. Express Corp.*) (holding that the Department of Transportation's promulgation of four rules, each with immediate effect, only after the issuance of which the public was given the opportunity to comment, afforded proper notice and comment).

the agency, as a whole, acted in a way that is consistent with the statute's purpose.⁸⁵ Here, similar to the agency in *Fed. Express Corp.*, the Department provided the parties more than one opportunity to submit comments before issuing the final rule. As in *Fed. Express Corp.*, the Department also considered the comments submitted and based its final decision, at least in part, upon those comments. Just as the court in *Fed. Express Corp.* found all of those facts to indicate that the agency's actions were consistent with the APA, so too the Department's actions here demonstrate that it fulfilled the notice and comment requirements of the APA.

The APA does not require that a final rule that the agency promulgates must be identical to the rule that it proposed and upon which it solicited comments.⁸⁶ Here, the Department actively engaged the public in its rulemaking process; it solicited comments and considered the submissions it received. In fact, that the numerous comments prompted the Department to withdraw the regulation demonstrates that the Department provided the public with an adequate opportunity to participate. In doing so, the Department fully complied with the APA.

Further, even if the two rounds of comments that the Department solicited before the withdrawal of the regulation were insufficient to satisfy the APA's requirements, the Department properly declined to solicit further comments pursuant to the APA's "good cause" exception. This exception provides that an agency is not required to engage in notice and comment if it determines that doing so would be "impracticable, unnecessary, or contrary to the public interest."⁸⁷ The CAFC recognized that this exception can relieve an agency from issuing notice and soliciting comment where doing so would delay the relief that Congress intended to provide; in *National Customs Brokers*,⁸⁸ the CAFC rejected a plaintiff's argument that the U.S. Customs Service failed to follow properly the APA in promulgating certain interim regulations when it had published these regulations without giving the parties a prior opportunity to comment. Moreover, although CBP solicited comments on the published regulations, it stated that it "would not consider substantive comments until after it implemented the regulations and reviewed the comments in light of experience" administering those regulations.⁸⁹ CBP explained that "good cause" existed because the new requirements did not impose new obligations on parties, and emphasized its belief that the regulations should "become effective as soon as possible" so that the public could benefit from "the relief that Congress intended."⁹⁰ The court recognized that this explanation was a proper invocation of the "good cause" exception and explained that soliciting and considering comments was *both* unnecessary (because Congress had passed a statute that superseded the regulation) "*and* contrary to the public interest because the public would benefit from the amended regulations."⁹¹ For this reason, the court affirmed the regulation against the plaintiff's challenge.⁹²

⁸⁵ *Id.*

⁸⁶ *See, e.g., First Am. Discount Corp. v. CFTC*, 222 F.3d 1008, 1015 (D.C. Cir. 2000).

⁸⁷ *See* 5 USC 553(b)(B).

⁸⁸ *See National Customs Brokers and Forwarders Association of America, Inc. v. United States*, 59 F.3d 1219 (Fed. Cir. 1995) (*National Customs Brokers*).

⁸⁹ *Id.*, at 1220-21.

⁹⁰ *Id.*, at 1223.

⁹¹ *Id.*, at 1224 (emphasis added).

⁹² *Id.*

In short, the regulation at issue may have had the unintentional effect of preventing the Department from employing an appropriate remedy to consider whether the A-A method is the appropriate tool with which to measure the extent to which a respondent is dumping. Such effect would have been contrary to congressional intent. Notwithstanding that we satisfied the APA's requirements as discussed above, the Department's revocation of such a regulation without additional notice and comment was based upon a recognized invocation of the "public interest" exception because good cause existed to waive the notice and comment period.⁹³

Finally, Bosun does not address, and *Gold East* did not analyze, the question of harmless error, which is critical because a lack of prior notice and comment is not sufficient to invalidate a regulation where the error is harmless.⁹⁴ Indeed, the CIT recently held that, under nearly identical facts, a party was not harmed by the *2008 Withdrawal* and the withdrawn regulations no longer bind us.⁹⁵ Similarly, Bosun's failure to: (1) submit any comments before or after the *2008 Withdrawal*; or (2) identify any arguments not already presented by other interested parties demonstrates that, even if not properly withdrawn, the Department's withdrawal of the targeted dumping regulations was harmless with respect to Bosun.

Accordingly, there is no basis to apply the withdrawn targeted dumping regulations for the final results of this review.

Cohen's d Test

Comment 5: Bosun argues that the Department did not disclose the DP analysis methodology. Specifically, Bosun argues that the Department did not disclose: (1) the historical context and purpose of the DP analysis; and (2) the related mathematical formulas or how and where the DP analysis diverged from such original mathematical formulas. Bosun requests that the Department disclose them and invite comments from parties. Bosun states that this request is reasonable because the Department gathered factual information from mandatory respondents even as the case brief deadline approached.

According to Bosun, the Cohen's *d* test is a statistical measure developed to express and evaluate the difference between the means of two independent samples drawn from populations with a common standard deviation or as a measure of effect size. Bosun explains that the Cohen's *d* statistics are calculated by finding the difference between the means of two samples and dividing this number by an estimator for the common standard deviation. Bosun explains further that the use of the "pooled" standard deviation for two samples as an estimator for the common standard deviation is a currently accepted practice. Bosun states that the pooled standard deviation is calculated by taking the square root of the weighted average of the two sample variances in which the weight-averaging is by the number of observations in each sample.

⁹³ See, e.g., *Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71087 (December 1, 2014), and accompanying Issues and Decision Memorandum at Comment 6.

⁹⁴ See *Intercargo Ins. Co. v. United States*, 83 F.3d 391, 394 (Fed. Cir. 1996).

⁹⁵ See *Beijing Tianhai Indus. Co., Ltd. v. United States*, 7 F. Supp. 3d 1318 (CIT 2014) (explaining that where plaintiff did not (1) submit any comments before or after the *2008 Withdrawal* and (2) identify any arguments not already presented, the Department's failure to invite notice and comment prior to issuing the *2008 Withdrawal* constituted harmless error).

Bosun explains that the Department calculated the pooled standard deviation for the Cohen's *d* statistics by adding the sample variances of the test group and the base group, dividing the sum of this addition by two, and then taking the square root. Bosun contends that this calculation does not weigh each sample variance by the number of transactions in each group, misses a crucial aspect of the formula for calculating the pooled standard deviation, and produces an inaccurate result unless the test and base groups have an equal number of transactions. Bosun claims that more unequal sample sizes produce a greater difference in the sample standard deviation. Thus, Bosun argues, the Cohen's *d* coefficient over the DP analysis threshold of 0.8 is a product of the use of an incorrect formula.

Bosun claims that the Department uses too few transactions in the test and base groups in the Cohen's *d* test. Bosun argues that applying the Cohen's *d* test when there are at least two transactions in both the test and base groups is unsound because the Cohen's *d* test is: (1) a biased estimator for the true effect size; and (2) even more biased when the total number of transactions in the samples being compared is less than 20. Bosun contends that, as a result, the calculated Cohen's *d* coefficient will be larger than the true effect size in terms of absolute value and its use could potentially result in producing a coefficient greater than the DP threshold of 0.8 when the true effect size is less than 0.8, particularly when the total number of transactions in both samples is less than 20. Bosun suggests an alternative methodology, *e.g.*, Hedges' *g*, to estimate effect size accurately in such an instance.

Bosun argues that the Department should not use the Cohen's *d* test as a test of statistical significance because it is simply a standardized measure of the difference between two means. Bosun explains that the Cohen's *d* test can produce the coefficient over 0.8 even when the difference between the means of two groups is not statistically significant. Bosun states that it is unreasonable to rely on the Cohen's *d* coefficient to find a statistically significant difference between the means of two groups. Bosun requests that the Department discontinue the use of the current DP analysis until it can be fully evaluated and revised to meet the bare minimum reasonable statistical method.

Bosun argues that counting sales at prices above the mean as passing the Cohen's *d* test does not unmask TD because sales at above average prices cannot reasonably be characterized as targeted. Bosun requests that the Department exclude targeted sales that are not dumped because there is no unmasking of dumping when there is no dumping.

With respect to Bosun's claim that the Department did not disclose the DP analysis methodology, the petitioner states that the Department rejected similar arguments in *Citric Acid*.⁹⁶ The petitioner explains that the Department fully explained the DP analysis in the *Preliminary Results* and accompanying Preliminary Decision Memorandum at 15-16 and disclosed the margin calculation programs, which include all calculations, including the DP analysis, for the *Preliminary Results*.

⁹⁶ See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 65182 (November 3, 2014) (*Citric Acid*), and accompanying Issues and Decision Memorandum at Comment 1-D.

The petitioner argues that the Department's use of the simple average in the calculation of the Cohen's *d* statistics is correct. The petitioner also argues that the Cohen's *d* test is not biased for the true effect size. With respect to these issues, the petitioner states that, in *Diamond Sawblades 4* and accompanying Issues and Decision Memorandum at Comment 10 and *Citric Acid* and accompanying Issues and Decision Memorandum at Comment 1-D, the Department explained in detail the reasons it rejected the arguments that are identical with Bosun's in this review. Citing *Diamond Sawblades 4* and accompanying Issues and Decision Memorandum at Comment 10 and *Certain Steel Nails*,⁹⁷ the petitioner contends that, as a generally recognized statistical measure of effect size, the Cohen's *d* test does not need to measure a statistically significant difference because the statute does not require the difference be statistically significant. Finally, citing, *e.g.*, *Diamond Sawblades 4* and accompanying Issues and Decision Memorandum at Comment 10 and *Wood Flooring* and accompanying Issues and Decision Memorandum at Comment 1.C, the petitioner supports the Department's use of both low-priced and high-priced sales in the DP analysis to determine whether a pattern of prices that differ significantly exists and whether masking of dumping is occurring.

Department's Position: Bosun does not argue that our Cohen's *d* test violates the statute. Rather, Bosun puts forth several reasons unrelated to the statute why it believes that the DP analysis should be modified from the *Preliminary Results*. The statute does not direct how we measure whether there is a pattern of prices that differs significantly or how we calculate the pooled standard deviation of the Cohen's *d* coefficient. On the contrary, we have exercised our discretion in a reasonable manner as conferred by Congress on this matter. As explained in the *Preliminary Results* and below, our DP analysis is reasonable and the use of the Cohen's *d* test as a component of this DP analysis is in accordance with the law.⁹⁸

In the *Preliminary Results*, we fully described our DP analysis for examining the two requirements under section 777A(d)(1)(B) of the Act.⁹⁹ Also, our preliminary margin programs for the two selected respondents include the calculations we used for the *Preliminary Results*, including our examination of whether there exists a pattern of prices that differ significantly and whether or not the A-A method can account for such differences.¹⁰⁰ We made available to interested parties under the administrative protective order in this review the preliminary margin calculation programs as well as other preliminary results documents and data for the two selected

⁹⁷ See *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) (*Certain Steel Nails*), and accompanying Issues and Decision Memorandum at Comment 7.

⁹⁸ See, *e.g.*, *Citric Acid*, and accompanying Issues and Decision Memorandum at Comment 1.D, and *Diamond Sawblades 4*, and accompanying Issues and Decision Memorandum at Comment 10. See also *Apex*, 2016 Ct. Intl. Trade LEXIS 9, at *34-46.

⁹⁹ See *Preliminary Results*, and accompanying Preliminary Decision Memorandum at 14-16. See also *Apex*, 2016 Ct. Intl. Trade LEXIS 9, at *34-46.

¹⁰⁰ See Memoranda to the File entitled "Antidumping Duty Administrative Review on Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Analysis Memorandum for Jiangsu Fengtai Single Entity" and "Antidumping Duty Administrative Review on Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Analysis Memorandum for Weihai Xiangguang Mechanical Industrial Co., Ltd." (Weihai preliminary analysis memorandum), November 30, 2015, and the attached preliminary margin calculation programs and logs for these two respondents. See also Jiangsu Fengtai Single Entity and Weihai final analysis memoranda and the final margin calculation programs and logs attached therein.

respondents on ACCESS after the *Preliminary Results* was signed and issued, consistent with 19 CFR 351.224(b).

With respect to Bosun’s argument that our use of a simple average of the sample variances of the test and base groups, when calculating the pooled standard deviation, creates inaccurate results, we reiterate that the statute does not direct how we should determine whether a pattern of prices that differ significantly exists, let alone how to calculate the pooled standard deviation of the Cohen’s *d* coefficient. Furthermore, Bosun has provided no support to substantiate its argument. Our intent is to rely on a reasonable approach that affords predictability and we find that a simple average (*i.e.*, giving equal weight to the test and comparison groups) is the best way to accomplish this goal when we determine the pooled standard deviation. The use of a simple average equally weighs a respondent’s pricing practices to each group and the magnitude of the sales to one group does not skew the outcome. This approach is reasonable and consistent with section 777A(d)(1)(B)(i) of the Act.¹⁰¹

Our use of the Cohen’s *d* test is based on the entire population of the U.S. sales of the two selected respondents and, therefore, there are no estimates involved in the results and “statistical significance” is not a relevant consideration. Moreover, for our application of the Cohen’s *d* test, it is unnecessary to consider sampling size, randomness of the sample, or to include a measure of the statistical significance of its results, as this analysis includes all of the two selected respondents’ sales in the U.S. market. The Cohen’s *d* test “is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group.”¹⁰² Within the Cohen’s *d* test, the Cohen’s *d* coefficient is calculated based on the means and variances of the test group and the comparison group. The test and comparison groups include all of the U.S. sales of comparable merchandise reported by the respondent. As such, the means and variances calculated for these two groups are the actual values for both the test and comparison groups, and are not estimates which include sampling errors. Statistical significance is used to evaluate whether the results of an analysis rise above sampling error (*i.e.*, noise) present in the analysis and is dependent on the sampling technique and sample size. Our application of the Cohen’s *d* test is based on the mean and variance calculated using the entire population of the two selected respondents’ sales in the U.S. market and, therefore, these values contain no sampling error. Accordingly, sampling technique, sample size, and statistical significance are not relevant considerations in this context.

If Congress intended to require a particular result be obtained, with a level of “statistical significance” of price differences as a condition for finding that there exists a pattern of prices that differ significantly, then Congress presumably would have used language beyond the stated requirement and more precise than “differ significantly.” This is what Congress did, for example, with respect to enacting the sampling provision for respondent selection in section 777A(c)(2)(A) of the Act. But it did not do so with respect to the determination of the existence of a pattern in section 777A(d)(1)(B)(i) of the Act. As the executive agency tasked with implementing the antidumping law, resolving statutory ambiguities, and filling gaps in the

¹⁰¹ See *Citric Acid*, and accompanying Issues and Decision Memorandum at Comment 1.D, and *Diamond Sawblades* 4, and accompanying Issues and Decision Memorandum at Comment 10.

¹⁰² See *Preliminary Results*, and accompanying Preliminary Decision Memorandum at 15.

statute, we do not agree with Bosun’s opinion that the term “significantly” in the statute can mean only “statistically significant.” The law includes no such directive.¹⁰³

Our analysis, including the use of the Cohen’s *d* test, reasonably fills the statutory gap as to how to determine whether a pattern of prices “differ significantly.”¹⁰⁴ Further, the consideration of “statistical significance” is to determine, from a sample of a larger population, an estimate of what the actual values (*e.g.*, the mean or variance) of the larger population may be with a “statistical significance” attached to that estimate. As discussed above, our use of the Cohen’s *d* test is based on the entire population of the two selected respondents’ U.S. sales, and, therefore, there are no estimates involved in the results and accordingly “statistical significance” is not a relevant consideration. Our application of the Cohen’s *d* test is based on the mean and variance calculated using the entire population of a respondent’s sales in the U.S. market, and, therefore, these values contain no sampling error. All of the two selected respondents’ U.S. sales in their U.S. sales databases make Bosun’s “statistical significance” argument inapposite.¹⁰⁵

With respect to Bosun’s argument that sales at above average prices cannot reasonably be characterized as targeted, the statute does not require that we consider only lower priced sales in the DP analysis. We have the discretion to consider sales information on the record in our analysis and to draw reasonable inferences as to what the data show. It is reasonable for us to consider both lower-priced and higher-priced sales in the Cohen’s *d* analysis because higher-priced sales are equally likely as lower-priced sales to create a pattern of prices that differ significantly. Further, higher-priced sales will offset lower-priced sales, either implicitly through the calculation of a weighted-average price or explicitly through the granting of offsets for non-dumped sales that can mask dumping. The statute states that we may apply the A-T method if “there is a pattern of export prices . . . for comparable merchandise that differ significantly among purchasers, regions, or periods of time,” and we explain “why such differences cannot be taken into account” using the A-A method.¹⁰⁶ Further, the SAA states with reference to section 777A(d) of the Act, and TD that:

In such situations, an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions.¹⁰⁷

The SAA further states that

New section 777A(d)(1)(B) provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an average-to-average or transaction-to-transaction methodology cannot account for a pattern of prices that differ significantly among purchasers, regions or time periods, *i.e.*, where targeted dumping may be occurring.¹⁰⁸

¹⁰³ See, *e.g.*, *CTL Plate*, and accompanying Issues and Decision Memorandum at Comment 1.

¹⁰⁴ *Id.*

¹⁰⁵ See *Citric Acid*, and accompanying Issues and Decision Memorandum at Comment 1.D.

¹⁰⁶ See section 777A(d)(1)(B) of the Act.

¹⁰⁷ See SAA at 842.

¹⁰⁸ *Id.*, at 843.

Therefore, the concept of the pattern of prices that differ significantly is clearly linked to prices that are higher than other prices that may be dumped (*i.e.*, lower prices) as well as to lower prices.¹⁰⁹

The statute directs us to consider whether there exists a pattern of prices that differ significantly. The statutory language references prices that “differ” and does not specify whether the prices differ by being lower or higher than the remaining prices. The statute does not require that we consider only higher-priced sales or only lower-priced sales when conducting its analysis, nor does the statute specify whether the difference must be the result of certain sales being priced higher or lower than other sales. We have explained that higher-priced sales and lower-priced sales do not operate independently; all sales are relevant to the analysis.¹¹⁰ By considering all sales, higher priced sales and lower priced sales, we are able to analyze an exporter’s pricing practice and to identify whether there is a pattern of prices that differ significantly. Moreover, if we find that such a pattern of prices that differ significantly among purchasers, regions, or periods of time does exist, then this signals that the exporter is discriminating between purchasers, regions, or periods of time within the U.S. market rather than following a more uniform pricing behavior. Where the evidence indicates that the exporter is engaged in discriminatory pricing behavior, there is cause to continue with the DP analysis to determine whether the A-A method or the T-T method can account for such pricing behavior. Accordingly, both higher and lower priced sales are relevant to our analysis of the exporter’s pricing behavior when examining the requirement under section 777A(d)(1)(B)(i) of the Act.¹¹¹

In our DP analysis, we include non-dumped U.S. sales that are priced below the average prices. Lower or higher priced sales could be dumped or could be masking other dumped sales. This is not relevant in answering the question of whether there exists a pattern of prices that differ significantly because our DP analysis includes no comparisons with normal values and section 777A(d)(1)(B)(i) of the Act contemplates no such comparisons. Section 777A(d)(1)(B)(i) of the Act specifies a “pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions or periods of time.” Such a pattern is strictly between the sale prices in the U.S. market, and has no relationship with the comparable normal values for these U.S. sales. Accordingly, consideration of whether these U.S. sales are dumped is not part of fulfilling this requirement.¹¹² Indeed, the lower-priced U.S. sales could be below their normal value, the high-priced U.S. sales could also be below their

¹⁰⁹ See *Citric Acid*, and accompanying Issues and Decision Memorandum at Comment 1.D, and *Diamond Sawblades 4* and accompanying Issues and Decision Memorandum at Comment 10. See also *Apex*, 2016 Ct. Intl. Trade LEXIS 9, at *52 (“Therefore, the SAA also supports the view that consideration of both lower and higher-priced sales may be appropriate in determining whether application of A-T is necessary to unmask dumping. For the reasons discussed above, Plaintiffs are unable to demonstrate that Commerce’s decision to consider all sales in the ratio test was unreasonable.”).

¹¹⁰ See *Wood Flooring*, and accompanying Issues and Decision Memorandum at Comment 1.C, and *Diamond Sawblades 4*, and accompanying Issues and Decision Memorandum at Comment 10.

¹¹¹ See *Citric Acid*, and accompanying Issues and Decision Memorandum at Comment 1.D, and *Diamond Sawblades 4*, and accompanying Issues and Decision Memorandum at Comment 10.

¹¹² See *Apex*, 2016 Ct. Intl. Trade LEXIS 9, at *51 (“All sales are subject to the differential pricing analysis because its purpose is to determine to what extent a respondent’s U.S. sales are differentially priced, not to identify dumped sales. (Citation omitted.) Commerce is not restricted in what type of sales it may consider in assessing the existence of such a pattern so long as its methodological choice enables Commerce to reasonably determine whether application of A-T is appropriate. See 19 C.F.R. § 351.414(c)(1).”).

normal value, or none of the U.S. sales could be below their normal value. Such a determination is not part of this statutory requirement. Therefore, the Cohen’s *d* test, in its application to determine whether there exists a pattern of prices that differ significantly, is not required to consider whether these sales are also “dumped” as asserted by Bosun.¹¹³

Denial of Offsets for Non-Dumped Sales When Using the A-T Method

Comment 6: Bosun claims that, even if it continues to use the DP analysis in the final results of this review, the Department should not use zeroing in NME proceedings. Bosun argues that *Union Steel v. United States*, 713 F.3d 1101, 1106 (Fed. Cir. 2013) (*Union Steel*), which affirmed the Department’s use of zeroing in *Corrosion-Resistant Carbon Steel Korea*,¹¹⁴ applies to market economy proceedings only, and does not apply to NME proceedings because of the statutory difference between market economy proceedings and NME proceedings in calculating normal values. According to Bosun, the Department calculates the average normal value on a yearly basis in NME proceedings as opposed to a monthly basis in market economy proceedings, which is central to the CAFC decision in *Union Steel*, 731 F.3d at 1108.

Bosun explains that, in this review, the Department valued each raw material input using the one single annual POR average SV. Bosun explains further that the Department calculated financial ratios based on Trigger’s financial statements covering the fiscal year that overlaps the POR by ten months. For these reasons, according to Bosun, even with the increases of the costs of the FOPs and the corresponding increase of the U.S. prices, the respondents are stuck with the “mid-point cost” based on the Department’s NME methodology. Bosun claims that this methodology results in driving some U.S. sales above, and some other U.S. sales below, normal value in a way that is indistinguishable from the A-A method in investigations. Bosun contends that, under such circumstances, it is not reasonable to remove non-dumped sales that could potentially offset artificially created dumping margins. Bosun also states that the information the Department uses to calculate SVs and financial ratios is not available to the NME exporters when they price U.S. sales, even if they can correctly guess which sources the Department would ultimately select.

The petitioner states that the Department rejected Bosun’s argument in the last review on the basis that market economy cases, including the underlying case in *Union Steel*, use constructed value as normal value. The petitioner contends that *Union Steel* does not limit the use of the A-T method only to market economy cases. Citing *Diamond Sawblades 4* and accompanying Issues and Decision Memorandum at Comment 11, the petitioner claims that there is no difference between market economy and NME proceedings, in that in both proceedings, the Department calculates normal values using period-wide averages.

Department’s Position: In *Union Steel*, the CAFC affirmed the Department’s explanation that it may interpret the statute to permit the denial of offsets for non-dumped sales with respect to the A-T comparison method in administrative reviews, while permitting the Department to grant offsets for non-dumped transactions when applying the A-A comparison method in

¹¹³ *Id.*

¹¹⁴ *Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review*, 76 FR 15291 (March 21, 2011) (*Corrosion-Resistant Carbon Steel Korea*).

investigations.¹¹⁵ The CAFC also affirmed the Department’s explanation that it may interpret the same statutory provision differently because there are inherent differences between the comparison methods used in investigations and reviews.¹¹⁶ Indeed, the court noted that although the Department recently modified its practice “to allow for offsets when making A-A comparisons in administrative reviews . . . {t}his modification does not foreclose the possibility of using the zeroing methodology when {the Department} employs a different comparison method to address masked dumping concerns.”¹¹⁷

Likewise, in *U.S. Steel Corp.*, the CAFC sustained the Department’s decision to no longer apply zeroing when employing the A-A comparison method in investigations while recognizing the Department’s intent to continue to apply zeroing in other circumstances. Specifically, the court recognized that the Department may use zeroing when applying the A-T comparison method where patterns of significant price differences are found.¹¹⁸

We also disagree with Bosun’s contention that the CAFC’s decision in *Union Steel* is limited to market economy reviews. Bosun asserts that the A-T method used in market economy reviews differs from the methodology employed in administrative reviews of antidumping duty orders for an NME. While Bosun suggests that the “average” normal value is a monthly average in market-economy reviews, but a yearly value covering the entire review period in NME reviews, this is only true where normal value is based on comparison market sale prices; Bosun ignores market economy reviews where normal value is based on constructed value. Therefore, the argument that *Union Steel* applies only to market economy reviews where normal value was based on comparison market sales overlooks the fact that even the review underlying the *Union Steel* decision involved the use of constructed value.¹¹⁹ Although the Department modified its cost-calculation methodology in that review, the Department’s normal practice is to calculate an annual weighted-average cost for the POR.¹²⁰

Cost of production is calculated according to a statutory formula by adding together several costs and expenses, including the cost of materials, fabrication, containers, coverings, and other processing costs, and selling, general, and administrative expenses. . . . The constructed value of merchandise, which is the basis for normal value when there are insufficient sales in the exporting country or a third country, is the sum of the same costs and expenses used to calculate cost of production, plus realized profits. . . . Under its standard methodology, Commerce determines cost of production by calculating a single weighted-average cost for the period of review.¹²¹

¹¹⁵ See *Union Steel*, 731 F.3d at 1106.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ See *U.S. Steel Corp.* 621 F.3d at 1355 n.2, 1362-63

¹¹⁹ See *Corrosion-Resistant Carbon Steel Korea*.

¹²⁰ See, e.g., *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006) (*Wire Rod Canada*), and accompanying Issues and Decision Memorandum at Comment 5, which explains our practice of computing a single weighted-average cost for the entire period.

¹²¹ See *Thai Pineapple Canning Indus. Corp. v. United States*, 273 F.3d 1077, 1084 (Fed. Cir. 2001).

Section 773(e) of the Act discusses the use of constructed value as the basis for normal value, and contains no limits regarding the time period for production costs used to calculate constructed value as the basis for normal value. In fact, the Department's practice, as explained above, is to calculate a single, weighted-average control number-specific cost for the review period. We use annual average costs in order to even out swings in production costs experienced by respondents over short periods of time. In this manner, we smooth out the effect of fluctuating raw material costs.¹²² Likewise, in NME reviews, such as this one, pursuant to section 773(c)(1) of the Act, the Department calculates a single control number-specific weighted-average normal value for the review period in a manner similar to how it calculates constructed value, except that it values the FOPs utilizing, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

Notwithstanding Bosun's claims to the contrary, the court's decision in *Union Steel* was not restricted to market economy reviews in which normal value was based on comparison market sale prices. Therefore, consistent with the Department's normal practice in reviews involving NME countries, we properly applied the A-T method to respondents' sales. Further, in doing so, we properly denied offsets for non-dumped transactions as part of the A-T method.

Aggregation of A-A and A-T Comparison Results

Comment 7: Weihai claims that the calculations the Department preliminarily used for the mixed comparison method are inconsistent with *Final Modification for Reviews*. Specifically, Weihai explains that the mixed comparison method uses the standard A-A method for the sales that did not pass the Cohen's *d* test and the alternative A-T method for the sales that passed the Cohen's *d* test. According to Weihai, the Department used the mixed comparison method because between 33 percent and 66 percent of Weihai's U.S. sales showed a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods, and passed the Cohen's *d* test. Weihai does not challenge the Department's use of the mixed comparison method, but it contends that the Department erred in its calculations by zeroing the overall results found for the sales that did not pass the Cohen's *d* test, rather than offsetting the overall results of those sales with the overall results for the sales that passed the Cohen's *d* test. Weihai argues that zeroing the dumping results of the sales for which the standard A-A method was used disfavors those sales over the sales for which the alternative A-T method was used. According to Weihai, it was the Department's intent to merge these two groups without regard to zeroing, but the calculations did not reflect the Department's intent. Weihai requests that the Department modify its calculations so the sales for which the A-A method was used are not zeroed before being combined with the sales for which the A-T method was used.

The petitioner argues that the Department's preliminary calculations were correct. The petitioner explains that the *Final Modification for Reviews* allows offsetting non-dumped sales in the A-A method but it does not require such an offset in the A-T method. The petitioner explains further that the *Final Modification for Reviews* does not specify how to manage offsetting in the

¹²² See *Wire Rod Canada*, and accompanying Issues and Decision Memorandum at Comment 5.

combination of the A-A and A-T methods. The petitioner describes Weihai's proposed methodology as double offsetting. The petitioner states that the Department rejected Weihai's argument in the last review because Weihai's proposed methodology would defeat the purpose of the A-T method where a pattern of EPs or CEPs for comparable merchandise was found that differed significantly among purchasers, regions, or period of time.

Department's Position: For the final results, we continue to use the same mixed comparison method that we used in the *Preliminary Results*. Consistent with the *Final Modification for Reviews*, in an administrative review, we use the A-A method unless we determine that another method is appropriate in a particular case.¹²³ With the A-A method, we compare the EP or CEP with the normal value. When the normal value exceeds the EP or CEP, the comparison result is the amount of dumping on an average basis. The amount of dumping for all sales is the sum of these comparison results where the normal value exceeds the EP or CEP. This amount of dumping may then be offset by the comparison results for those sales where the EP or CEP exceed the normal value, up to the amount of dumping found for these sales.

When we have determined that the A-A comparison method is not appropriate in a particular case, we may use the A-T comparison method as an alternative. With the A-T method, we also compare the EP or CEP with the normal value. When the normal value exceeds the EP or CEP, the comparison results is the amount of dumping for that export transaction. The amount of dumping for all sales is the sum of these comparison results where the normal value exceeds the EP or CEP. However, for the A-T method, there is no offset to this amount for the export transactions where the EP or CEP exceed the normal value.

When we use for a respondent both the A-A method for some sales and the A-T method for other sales, we then must aggregate these results to calculate this respondent's weighted-average dumping margin. To do this, we add the amounts of dumping found for the A-A method and the A-T method, and divide this amount by the total U.S. sales value that correspond to the A-A method and the A-T method. Thus, we have reasonably aggregated the results of these two different comparison methods to calculate the single weighted-average dumping margin for the respondent. We have taken this approach since considering the use of an alternative comparison method under the now-withdrawn regulations governing targeted dumping in LTFV investigations. The CIT has recently affirmed our mixed comparison method explained above.¹²⁴

We disagree with Weihai's proposal that we grant offsets for the amount by which EP or CEP exceeds normal value for those sales being evaluated using the A-A method not only to the amount of dumping found for those sales evaluated using the A-A method, but also to the amount of dumping found for those sales evaluated using the A-T method. The A-A method and the A-T method are different comparison methods which are provided for in the statute and regulations and which are distinct and independent from each other. We also find that results from our calculations under each of these methods (or other methods by which we may calculate the amount of dumping for a group of sales, such as facts available or the T-T method) are distinguishable. To calculate the weighted-average dumping margin for a respondent whose

¹²³ See 19 CFR 351.414(c)(1) and *Final Modification for Reviews*, 77 FR at 8102 and 8114.

¹²⁴ See *Apex*, 2016 Ct. Intl. Trade LEXIS 9, at *66-73.

sales have been evaluated using more than one comparison method, we reasonably aggregate the results of each of these distinct comparison methods, specifically summing the amount of dumping and the U.S. sales value for each of these methods. To allow for offsets when combining the results of the mixed comparison approach would defeat the purpose of the A-T method where a pattern of EPs or CEPs for comparable merchandise was found that differed significantly among purchasers, regions, or periods of time. Such an approach would allow the results of A-A method to reduce or completely negate the results of the A-T method prescribed by section 777A(d)(1)(B) of the Act.¹²⁵ The CIT held that such a “double-offsetting” approach “could render the A-T method ineffective in situations where a respondent’s U.S. sales fall between the 33% and 66% threshold and result in a negative dumping margin in the A-A side of the equation.”¹²⁶ Instead, by preserving the results of the A-T method, we ensure that the purpose of the A-T method of uncovering masked dumping is fulfilled, just as it is when we apply the A-T method as a singular comparison method.¹²⁷ The CIT stated that “to declare {the Department’s} refusal to offset the A-T margin with the A-A margin unreasonable would in turn undermine the A-T method as a whole.”¹²⁸ Moreover, Weihai has not pointed to any specific provisions in the *Final Modification for Reviews* that is inconsistent with our practice.

Floating Numbers

Comments 8: Weihai requests that the Department revise the DP program to eliminate floating point numbers that incorrectly found U.S. sales passing the Cohen’s *d* test. Weihai claims that the floating point numbers at the quadrillionth decimal place caused the DP program to find identical base and test average DP period prices within a same control number passing the Cohen’s *d* test. Weihai explains that modern computers and computer software support and store floating point numbers in a numerical binary code system without using real numbers. According to Weihai, computers use the binary system, which have only zero or one to represent a number depending upon its position. Weihai explains that floating point numbers within the binary system use a floating decimal (or binary) point that a computer can place anywhere relative to the digits of the particular number to facilitate mathematical operations. Weihai claims that this allows the computer to handle expeditiously numbers ranging from very large to very small, while it sacrifices absolute accuracy, which, in most instances, does not matter. Weihai explains that a computer cannot store an infinite number and storing of data as floating point numbers has been an accepted industry standard. However, Weihai contends, the DP program erroneously detected a weighted-average pricing difference in four instances when there was no difference. Weihai recommends that the Department subtract one number from the other to determine whether the difference between the base and test average prices is greater than 0.001 (or another similar threshold) that satisfies the Department’s need for accuracy.

The petitioner requests that, if the Department agrees with Weihai and modifies the DP program, the Department make one additional modification to Weihai’s suggested program code. The petitioner explains that, with Weihai’s suggested program code, U.S. sales can only be considered to have passed the Cohen’s *d* test if the base price is higher than the test price and

¹²⁵ See *Apex*, 2016 Ct. Intl. Trade LEXIS 9, at *66-73.

¹²⁶ *Id.*, at 72-73.

¹²⁷ *Id.*, at 73.

¹²⁸ *Id.*

U.S. sales will not pass the Cohen's *d* test if the test price is higher than the base price, regardless of how big the price difference. According to the petitioner, the DP analysis is concerned with not only low process but also with all prices that differ as the DP analysis considers U.S. sales to have passed the Cohen's *d* test if the absolute value of the Cohen's *d* coefficient is greater than 0.8 or if the base and test prices are not equal. The petitioner requests that the Department ensure that the new program code treat U.S. sales as passing the Cohen's *d* test if they are different regardless of whether the base or test price is higher. According to the petitioner, this can be accomplished with the program code structured to look at whether the absolute value of the difference between the two prices is greater than a particular threshold.¹²⁹

Department's Position: We agree with Weihai that the Cohen's *d* test inadvertently identified certain test groups as passing the Cohen's *d* test rather than as not passing the Cohen's *d* test. These unintended results were caused by floating-point numbers, which is the basis for how numbers are stored in a binary computer system. Weihai correctly identified the specific SAS statement causing these unintended results, but we also agree with the petitioner that our program modification should not produce results in which U.S. sales can only be considered to have passed the Cohen's *d* test if the base price is higher than the test price and U.S. sales will not pass the Cohen's *d* test if the test price is higher than the base price, regardless of how big the price difference is. We have modified this SAS statement to take into account the aspect of calculating the difference of two floating-point numbers with the result that these certain test groups no longer pass the Cohen's *d* test.¹³⁰ With this program modification, we also ensure that the revised program code treats U.S. sales as passing the Cohen's *d* test if they are different regardless of whether the base or test price is higher. We have made the same change for Jiangsu Fengtai Single Entity for the final results of this review.¹³¹

Surrogate Values

Brokerage and Handling – Line of Credit Expenses

Comment 9: Bosun requests that the Department deduct fees for the letter of credit embedded in the B&H expenses in *Doing Business* if the Department decides to rely on *Doing Business* to value B&H expenses for the final results. According to Bosun, record evidence indicates that the cost of the time and expense to obtain an export letter of credit is embedded in the B&H expense reported in *Doing Business*. Citing *Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 18816 (April 8, 2015) and accompanying Issues and Decision Memorandum at 22, Bosun explains that it is the Department's practice to remove the letter of credit expense when a party demonstrates that the World Bank source includes this cost.

Department's Position: For the final results, we deducted \$60.00, which is the cost of obtaining a letter of credit, from the total B&H expenses reported in *Doing Business*.¹³² We have record

¹²⁹ During the hearing, Weihai expressed its agreement with the petitioner on the petitioner's suggested program code. See the transcript for the April 20, 2016, hearing, at 43-46 (filed on April 27, 2016).

¹³⁰ See Weihai final analysis memorandum.

¹³¹ See Jiangsu Fengtai Single Entity final analysis memorandum.

¹³² See Weihai's SV comments dated July 16, 2015, at Exhibit 13. See also *Certain Steel Nails from the People's*

evidence showing that such expenses are included in the B&H costs reported in *Doing Business*.¹³³ Our recent practice has been to deduct these expenses even where there is no record evidence that the respondent incurred such expenses.¹³⁴

Container Weight in Brokerage and Handling and Truck Freight Expenses

Comment 10: Bosun disagrees with the Department's use of the weight of 10,000kg as the denominator in the calculation of the surrogate B&H and truck freight expenses in the *Preliminary Results*. Bosun requests that the Department recalculate these two surrogate expenses to reflect shipping reality by using the actual maximum cargo load as the denominator. Bosun argues that *Doing Business* does not indicate that the weight of 10,000kg is the maximum or even standard cargo weight of a 20-foot container. Bosun explains that the World Bank established an assumption for contributors to *Doing Business* that the information they provide is for a 20-foot container weighing 10,000kg without explaining the reason for setting this assumption and suggesting that the cost of transport is dependent on the container weight. According to Bosun, the Department relies on only a small portion of *Doing Business*. Bosun contends that the majority of *Doing Business* reports the time it takes to import and export into and out of Thailand and the weight parameter at issue, *i.e.*, 10,000kg, could relate to any number of other issues in *Doing Business*. Bosun explains that no evidence suggests that the price of transportation depends on the container weight, while other facts on the record suggest that the container weight is not indicative of the cost of transporting the container.

According to Bosun, record evidence suggests that the B&H and truck freight expenses are based on an entire container or truck, not weight. Citing *Since Hardware*,¹³⁵ Bosun contends that the B&H and truck freight expenses are not dependent on and not relevant to the container weight or volume. Bosun claims that a comparison of the container costs for a 20-foot container and a 40-foot container reveals that the bill of lading and customs clearance documentation remain the same and, while the handling and freight charges increase, they do not double as the Department estimated in the case where a respondent used a 40-foot container. Bosun argues that, because the price quotations in *Doing Business* were dependent on the container size, but not the container weight, the only relevant figure in *Doing Business* is the numerator cost for B&H and truck freight expenses. Bosun requests that the Department "use the actual reported cost of the numerator and then use other record information to reasonably assign the denominator weight or volume to derive the unit cost; namely the maximum weight of a 20-foot container (footnote omitted)."

The petitioner explains that the Department appropriately used a cargo weight of 10,000kg because: (1) the data in *Doing Business* were compiled based on the assumption that the cargo for which costs are reported weigh 10,000kg; and (2) doing so maintains the relationship between cost and quantity from the same source used to compile the data in *Doing Business*. The petitioner claims that the Department described such calculation methodology as a long-

Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 18816 (April 8, 2015), and accompanying Issues and Decision Memorandum at Comment 6.

¹³³ See Petitioner's SV rebuttal comments dated July 23, 2015, at Exhibit 2 (Trading Across Borders Methodology).

¹³⁴ See, *e.g.*, *Citric Acid*, and accompanying Issues and Decision Memorandum at Comment 7.

¹³⁵ *Since Hardware (Guangzhou) Co. v. United States*, 977 F. Supp. 2d 1347 (CIT 2014) (*Since Hardware*).

standing, consistent practice and rejected Bosun's arguments in *Certain Uncoated Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 81 FR 3112 (January 20, 2016), and accompanying Issues and Decision Memorandum at 35-37. The petitioner contends that using any weight other than 10,000kg, which is not based on the costs reported in *Doing Business*, would disrupt the integrity of the calculation of these two surrogate expenses. According to the petitioner, *Since Hardware* is a case-specific decision and does not undermine the Department's use of 10,000kg in the calculation of the surrogate B&H and freight expenses using *Doing Business*, which the Department did in several cases before and after *Since Hardware* was decided. Finally, the petitioner argues that, even if the B&H and freight costs in *Doing Business* are per-container costs unaffected by the cargo weight, because there are no relations between the costs in *Doing Business* and the maximum weight of a 20-foot container, Bosun suggests (28,000kg), using the maximum weight of a 20-foot container would be just as distortive as using 10,000kg.

Department's Position: We disagree that a change is needed to the denominator of the calculation of the surrogate B&H and truck freight expenses. We have previously determined that the weight of 10,000kg is the appropriate quantity for deriving per-unit values from *Doing Business*, which provides B&H and truck freight costs in Thailand for a 20-foot container that *Doing Business* assumes to weigh 10,000kg.¹³⁶ Because an alternative weight other than 10,000kg from *Doing Business*: (1) is a weight not related to the costs reported in *Doing Business*; and (2) would result in a distortive per-unit cost, we find it appropriate to continue to calculate the surrogate B&H and truck freight expenses using 10,000kg as the denominator, based on *Doing Business*.¹³⁷ Specifically, the costs in *Doing Business* used to calculate the surrogate B&H and truck freight expenses were based upon the assumption that a 20-foot container contained 10,000kg of products.¹³⁸ Using 10,000kg in the per-unit calculation maintains the relationship between costs and quantity from the survey (which is important because the numerator and the denominator of the calculation are dependent upon one another), and makes use of data from the same source.¹³⁹ Therefore, we continued to use 10,000kg to calculate the surrogate B&H and truck freight expenses to maintain the internal consistency of the calculation, *i.e.*, the numerator and the denominator of the calculation are from the same source and dependent upon one another.

¹³⁶ See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 77323 (December 14, 2015), and accompanying Issues and Decision Memorandum at Comment 6. See also, *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2013-2014*, 81 FR 1396 (January 12, 2016), and accompanying Issues and Decision Memorandum at Comment 3, and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Results of the New Shipper Review; 2012-2013*, 80 FR 4244 (January 27, 2015), and accompanying Issues and Decision Memorandum at Comment 1, *Certain Polyethylene Terephthalate Resin From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 81 FR 13331 (March 14, 2016), and accompanying Issues and Decision Memorandum at Comment 3, and *Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 18th Antidumping Duty Administrative Review; 2011-2012*, 79 FR 36721 (June 30, 2014), and accompanying Issues and Decision Memorandum at Comment 7.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

Bosun's argument that B&H and truck freight expenses do not vary based upon weight is irrelevant to the *Doing Business* survey, which was conducted based on the assumption that the 20-foot container contained 10,000kg of products, and, thus, bears no relationship with the B&H and truck freight expenses in *Doing Business*. Because *Doing Business* does not provide information showing how this assumption was developed, we are not able to go behind *Doing Business* to analyze their assumption further.¹⁴⁰ Additionally, unlike in *Since Hardware*, we have no reason in this review to question the weight of 10,000kg used as the basis for the fee in the *Doing Business* survey or to find that the weight and fee in the *Doing Business* survey are independent of one another such that the fee is not based on the 10,000kg weight.

Our record does not substantiate Bosun's claim that *Doing Business* provides B&H and truck freight expenses based on an entire container or truck, not weight. *Doing Business* clearly provides B&H and truck freight costs in Thailand for a 20-foot container assumed to weigh 10,000kg.¹⁴¹ Even Bosun agrees that the denominator should be a container weight. Bosun's only argument is that the container weight should come from another source of information on the record of this review. As explained above, for consistency purposes, the container weight relevant in the calculations of these two SVs is 10,000kg, because *Doing Business* bases its data on a 10,000kg, 20-foot container. Other container weights are irrelevant to *Doing Business*' reported data. Accordingly, we continue to use 10,000kg, the quantity upon which the costs in *Doing Business* are based, in conjunction with the per-container expense identified in *Doing Business*, to calculate the appropriate per unit B&H and truck freight expenses.

Cores – Modification to the Build-Up Methodology

Comment 11: The petitioner argues that the Department incorrectly valued cores that Weihai purchased from unaffiliated NME suppliers by multiplying per-piece SVs for cores by the weight of cores reported. The petitioner explains the steps the Department undertook to calculate the intermediate SVs to calculate the SV for cores Weihai purchased from NME suppliers are as follows:

Step 1: average{ } the steel quantity, labor hours, and electricity Weihai used to produce its cores.

Step 2: appl{y} the SVs for steel, labor, and electricity to the averaged steel quantity, labor hours, and electricity consumption respectively to calculate the SV for each of the three underlying inputs (*i.e.* steel, labor, and electricity) . . . {and} add { } these three SVs to calculate the SV for Weihai's purchased cores.

Step 3: appl{y} this SV to the purchased cores in Weihai's FOP database.

The petitioner claims that Weihai reported the steel quantity, labor hours, and electricity the Department averaged in Step 1 on a per-piece basis, *i.e.*, grams of steel, labor hours, and electricity kilowatt consumed to produce one piece of core. Consequently, the petitioner argues,

¹⁴⁰ Similarly, in prior cases, we decided not to take certain actions because we were not able to "go behind the *Doing Business* data" to make a determination. See, e.g., *Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2013-2014*, 80 FR 69942 (November 12, 2015), and accompanying Issues and Decision Memorandum at Comment 5.

¹⁴¹ See Petitioner's SV rebuttal comments dated July 23, 2015, at Exhibit 2 (Trading Across Borders Methodology).

the SV calculated for the cores Weihai purchased from NME suppliers in step 2 is the SV per piece, not per kilogram. The petitioner contends that the Department erred in step 3 by multiplying this SV per piece by the kilograms of the cores Weihai purchased from NME suppliers. According to the petitioner, Weihai reported cores in grams and the Department converted grams into kilograms for purposes of cores valuation in the *Preliminary Results*.

Weihai agrees with the petitioner that the Department erred in multiplying the SV per piece by the kilograms of the cores in step 3. To correct this error, Weihai suggests that the Department convert the SV per piece calculated in step 2 into the SV per kilogram by dividing this SV by the weight of diamond sawblades reported in its U.S. sales database so the cores Weihai purchased from NME suppliers can be valued on a transaction-specific basis. Weihai explains that the SV per piece calculated in step 2 is “a dollar amount per piece of saw blade.” The petitioner suggests that the Department skip steps 2 and 3 and use different program codes. Weihai opposes the petitioner’s suggested program codes because their use would undermine the well-established methodology to value cores Weihai purchased from NME suppliers.

In addition, both the petitioner and Weihai request that the Department use the SVs for steel type 2 and steel type 4 to value core type 1 and core type 3, respectively. Weihai explains that, because steel type 2 and core type 1 have the same chemical and physical composition, *i.e.*, 65Mn NH with thickness greater than one millimeter, and steel type 4 and core type 3 have the same chemical composition, *i.e.*, SCM435 H Steel, using the SVs for steel type 2 and steel type 4 to value core type 1 and core type 3, respectively, is consistent with the product specificity criteria explained in *Diamond Sawblades 3* and accompanying Issues and Decision Memorandum at Comment 17. Weihai opposes the Department’s preliminary valuation of cores using the simple average of the SVs for five types of steels Weihai reported.

Department’s Position: For the final results, we converted the SV per piece calculated in step 2 into the SV per kilogram and applied the SV per kilogram to the cores Weihai purchased from NME suppliers in step 3. This modification does not eliminate two steps in our well-established, CIT-sustained methodology to value cores respondents purchased from NME suppliers in this proceeding.¹⁴² This modification is also consistent with Weihai’s suggestion, except that we used the average weight of the steel we calculated in step 1, instead of the weight of the diamond sawblades, to convert the per-piece SV to the per-kilogram SV. We disagree with Weihai’s suggestion that we make the conversion using the weight of diamond sawblades reported in Weihai’s U.S. sales database, which would be over inclusive, covering the weight of both a core and segments. The SV per piece calculated in step 2, by contrast, is a surrogate of the dollar value incurred to produce a piece of core, not a diamond sawblade. Also, because we did not use the total weight of a diamond sawblade to average the weight of a core in the three-step build-up cores valuation methodology, the weight of diamond sawblades bears no relationship to our calculation of SVs for cores Weihai purchased from NME suppliers. For the final results, consistent with the petitioner’s and Weihai’s arguments, we valued core type 1 using the SV for steel 2 and core type 3 using the SV for steel type 4 in order to value cores using the steel SV for the identical steel specifications. Our modifications to the valuation of cores Weihai purchased

¹⁴² See *DSMC*, 2015 Ct. Intl. Trade LEXIS 116, at *5-6, sustaining the final remand redetermination pursuant to *Diamond Sawblades Manufacturers Coalition v. United States*, Court No. 13-00241, slip op. 14-112 (Ct. Int’l Trade Sept. 23, 2014) dated May 18, 2015, available at <http://enforcement.trade.gov/remands/14-112.pdf>.

from NME suppliers produces the same results that the petitioner's suggested program codes produce.¹⁴³

Cores – AUV from Comparable Products

Comment 12: The petitioner requests that the Department value cores the Jiangsu Fengtai Single Entity and Weihai purchased from unaffiliated NME suppliers using an AUV based on the GTA statistics for HTS subheading 8202.31.10000, which covers “Hand saws, blades for saws of all kinds (including slitting, slotting, or toothless saw blades); Circular saw blades (including slitting or slotting saw blades): With working part of steel: Blanks.” The petitioner claims that the products covered by this HTS subheading are nearly identical to cores in diamond sawblades. The petitioner requests that, if the Department decides not to use this AUV, the Department recalculate the SVs for cores using the petitioner's suggested program codes for the issue raised in Comment 11 above. The petitioner also claims that the comparison of the costs of cores valued using the build-up methodology with certain price quotes and the costs of cores valued using this AUV demonstrates inaccuracies in the build-up methodology.

Bosun and Weihai oppose the use of this AUV for various reasons. Bosun and Weihai explain that the Department can value cores that respondents purchased from NME suppliers using the FOP data for self-produced cores. Bosun and Weihai contend that this AUV is not specific to the product at issue, *i.e.*, cores in diamond sawblades. According to Weihai, the HTS subheading from which this AUV is derived covers only toothed blanks, which are: (1) finished goods that can be independently used for cutting operations; and (2) not identical to cores in diamond sawblades. Weihai also claims that this AUV is aberrationally high compared to the prices of cores in Indian and Thai price quotes that Weihai placed on the record of this review. Bosun argues that the price quotes the petitioner used as benchmarks to demonstrate cores valued at unreasonably low costs with the build-up methodology is limited to certain sizes of blades, and the Department generally disregards confidential price quotes. The Jiangsu Fengtai Single Entity did not provide comments in response to the petitioner's request.

Department's Position: In *Diamond Sawblades 4*, in which we decided not to use the AUV from the same source, *i.e.*, the GTA statistics for HTS subheading 8202.31.10000, to value cores, we explained that, when we can value cores the two selected respondents purchased from NME suppliers using the inputs they used to self-produce the identical types of cores, *i.e.*, cores for diamond sawblades, we do not need to resort to this AUV, which was derived from a Thai HTS subheading for merchandise different from cores for diamond sawblades.¹⁴⁴ The petitioner describes merchandise covered by this HTS subheading “nearly identical” but they are the products we found in the last review as “different from the cores used in the production of diamond sawblades,” *e.g.*, toothed blanks.¹⁴⁵ We do not consider that an AUV based on an HTS subheading for non-identical products is a better alternative to the build-up methodology, which is based on the inputs for the production of the identical products, cores for diamond

¹⁴³ See Weihai final analysis memorandum for more details which contain Weihai's business proprietary information.

¹⁴⁴ See *Diamond Sawblades 4*, and accompanying Issues and Decision Memorandum at Comment 14.

¹⁴⁵ *Id.*

sawblades.¹⁴⁶ For the same reasons, we did not use this AUV to value cores for these two respondents in this review. For Weihai, because we modified our valuation of the cores Weihai purchased from NME suppliers as explained in Comment 11 above, the petitioner’s comparisons of the cores values between the cores valued using the preliminary build-up methodology, the price quote, and the AUV at issue is no longer valid. Also, because the petitioner did not explain why this AUV is better than the build-up methodology we used to value the cores the Jiangsu Fengtai Single Entity purchased from NME suppliers, we have no reason to use this AUV to value those cores for the final results.

Cores – Steel Consumption Quantities

Comment 13: The petitioner requests that the Department take into account the steel consumption quantities of self-produced cores and purchased cores in the calculation of normal value. The petitioner explains that Weihai reported the steel consumption for its self-produced cores and purchased cores by applying a variance to the standard steel consumption and dividing the resulting total actual steel consumption per model by the total number of pieces of cores of the same model that Weihai self-produced or purchased.

Weihai argues that the petitioner incorrectly assumes that Weihai reported steel consumption for purchased cores. Weihai claims that it reported consumption of purchased cores in grams for the production of one piece of finished diamond sawblades.

Department’s Position: In the *Preliminary Results*, we took into account the steel inputs that Weihai used to self-produce cores and the cores Weihai purchased for the calculation of normal value.¹⁴⁷ We continue to do so for the final results, with the modifications explained in Comment 11 above.¹⁴⁸ We find no record evidence substantiating the petitioner’s assertion that the quantity of purchased cores Weihai reported represents “steel consumption” like the quantity of steel Weihai consumed to produce cores. For the purchased cores, Weihai reported the weight of those cores as the input quantities, not the weight of steel consumed to produce those cores.¹⁴⁹ The petitioner did not justify its characterization of Weihai’s use of purchased cores, which are already finished cores, as “steel consumption,” like Weihai’s steel consumption in the process to produce cores. Moreover, the petitioner’s proposed program codes for the modification of cores valuation in Comment 11 above do not take into account the steel consumption of Weihai’s self-produced cores.¹⁵⁰ Therefore, we did not make any other modifications to the valuation of cores Weihai purchased from unaffiliated NME suppliers.

Financial Statements

Comment 14: Weihai requests that the Department recalculate the final surrogate financial ratios using either Trigger’s 2013 financial statements or Alpha’s 2014 financial statements. Weihai opposes our preliminary calculation of the surrogate financial ratios based on KM’s 2014

¹⁴⁶ *Id.*

¹⁴⁷ See Weihai preliminary analysis memorandum.

¹⁴⁸ See Weihai final analysis memorandum.

¹⁴⁹ See Weihai’s section D response dated June 25, 2015, at 11 and Exhibits D-8, D-8.1, D-8.2, and D-8.3.

¹⁵⁰ See Petitioner’s case brief dated January 19, 2016, at 21-22.

financial statements. Weihai contends that, because KM produced whet stone, grinding stone, and polished stone, not grinding wheels, KM is not a producer of comparable merchandise. Weihai claims that: (1) before and after the *Preliminary Results*, an issue was developed as to whether a certain Thai word in KM's financial statements could be translated as grinding stone or grinding wheel; and (2) documents filed on the record of this review by itself, the petitioner, and the Department reveal that this Thai word means grinding stone, not grinding wheels. Weihai also alleges that the petitioner influenced Weihai's translation agency to change the definition of this Thai word from grinding stone to grinding wheel. Weihai explains that Trigger's financial statements predate the POR by two months but they provide surrogate financial ratios data with better quality than KM's financial statements do. Weihai argues that, in the alternative, the Department should use Alpha's financial statements. Weihai claims that Alpha's financial statements are better than KM's financial statements because, while Alpha's financial statements contain "certain basket category line items," Alpha produced identical and comparable merchandise while KM did not.

The Jiangsu Fengtai Single Entity also requests that the Department use Trigger's financial statements for the final results of this review. Citing *Diamond Sawblades 4* and accompanying Issues and Decision Memorandum at Comment 16, the Jiangsu Fengtai Single Entity argues that KM does not produce merchandise comparable to diamond sawblades and that the petitioner provided an incorrect English translation of KM's financial statements with respect to the merchandise that KM produces.

The petitioner requests that the Department continue to calculate the surrogate financial ratios using KM's financial statements. The petitioner insists that KM is a producer of comparable merchandise. The petitioner explains that a translation error to KM's 2013 financial statements incorrectly translated a Thai word for grinding wheels as grinding stone and a correct translation to KM's 2014 financial statements correctly translated the Thai word at issue as grinding wheels, not grinding stone. The petitioner reiterates that KM produces, *inter alia*, grinding wheels. Specifically, the petitioner claims that: (1) KM's catalog and website excerpts show that KM produces grinding wheels; and (2) an independent translation agency relied on by both the petitioner and Weihai explained that the Thai word at issue can mean both grinding stone and grinding wheel, but in the context in which KM used the term in its financial statements, the most accurate translation is grinding wheel. The petitioner explains further that the Department's own research supports the translation agency's explanation, because it shows that the Thai word at issue can translate to grinding stone in isolation but Thai companies involved in the production and/or sales of grinding wheels use this Thai word to identify grinding wheels. The petitioner denies Weihai's claim that it guided the independent translation agency to adopt the petitioner's preferred translation. The petitioner contends that it simply requested the translation agency for clarity with regard to a term that has more than one meaning. The petitioner points out that none of the respondents placed any information on the record showing any other Thai words used to identify grinding wheels or Thai producers of grinding stones to identify their products using this Thai word at issue. The petitioner contends that, because KM's financial statements and websites consistently show that it produces grinding wheels, the Department does not need to give more weight to information on KM's website than to information in KM's financial statements.

The petitioner explains that KM is a producer of comparable merchandise in the primary surrogate country. The petitioner explains further that KM's financial statements are contemporaneous with the POR and sufficiently detailed to calculate surrogate financial ratios and contain no evidence of receiving subsidies. The petitioner claims that Trigger's 2013 financial statements are deficient in several areas and requests that the Department not use Trigger's 2013 financial statements in this review. The petitioner also argues that, as in the last two reviews, Alpha's financial statements contain no detailed information on any expenses that are included in costs of goods sold, selling expenses, administrative expenses, or other expenses. The petitioner argues that Alpha's financial statements, therefore, are unusable.

Department's Position: For the final results of this review, we continue to use KM's financial statements to calculate surrogate financial ratios, as we did in the *Preliminary Results*. We continue to find that KM produced comparable merchandise during the POR and the fiscal year 2014. After the *Preliminary Results*, we received claims from Weihai and the petitioner concerning the translation of the Thai word at issue, which was critical in determining whether KM is a producer of comparable merchandise for purposes of calculating surrogate financial ratios in this review.¹⁵¹ In response to the submissions from both parties, we conducted our own research and found that, although a dictionary definition of the Thai word at issue is grinding stone, this Thai word means abrasives and grinding wheels in the Thai abrasives industry.¹⁵² We released our research and invited interested parties for comments.¹⁵³ Only the petitioner submitted comments supporting our findings.¹⁵⁴ Because our own findings support the petitioner's claim that this Thai word is used in Thai abrasives industry to mean grinding wheels, not grinding stones, and because Weihai did not rebut our findings when given an opportunity to do so, we continue to find that KM's financial statements state that KM produced, *inter alia*, grinding wheels,¹⁵⁵ which is merchandise we found to be comparable to the subject merchandise.¹⁵⁶ No party has argued that, even if KM is a producer of grinding wheels, we should not rely on KM's financial statements to calculate surrogate financial ratios.

Also, copies of KM's websites and our own research of the Thai word at issue show that KM produced grinding wheels.¹⁵⁷ Unlike the prior review in which information in KM's financial statements refuted information from KM's website, in this case the KM website information is consistent with information in KM's financial statements that the company produces grinding wheels.¹⁵⁸ One of the documents that the petitioner provided to support its claim with respect to KM's production of comparable merchandise is KM's company website pages printed on October 28, 2014. In the last review, we stated that KM's website does not prove that KM

¹⁵¹ See Weihai's letters dated November 25, 2015 and December 9, 2015 and Petitioner's letter dated December 9, 2015. See also Memorandum to the File entitled "Diamond Sawblades and Parts Thereof from the People's Republic of China: Document Acceptance and Response Deadline" dated December 7, 2015, which accepted Weihai's letter dated November 25, 2015 and invited the letters from Petitioner and Weihai dated December 9, 2015.

¹⁵² See Letter to interested parties dated December 10, 2015.

¹⁵³ *Id.*

¹⁵⁴ See Letter from the petitioner dated December 15, 2015.

¹⁵⁵ See Petitioner's SV comments dated November 2, 2015, at Exhibit 1B.

¹⁵⁶ See *LTFV Final*, and accompanying Issues and Decision Memorandum at Comment 2.

¹⁵⁷ See Petitioner's SV comments dated November 2, 2015, at Exhibit 1C.

¹⁵⁸ See *Diamond Sawblades 4*, and accompanying Issues and Decision Memorandum at Comment 16.

produced grinding wheels because this website page postdated the period of that review and, moreover, it conflicted with information in KM's financial statements.¹⁵⁹ For this review, the date of this website page is within the POR. Moreover, KM's financial statements and these website pages consistently indicate that KM produced grinding wheels during the POR and fiscal year 2014.¹⁶⁰ Therefore, we find it reasonable to rely on KM's financial statements and determine that KM produced comparable merchandise during the POR or the fiscal year 2014. Thus, unlike the prior segment, this record contains usable financial statements from Thailand, the primary surrogate country.

In the last review, the Department relied upon the financial statements of Trigger, a Philippine company.¹⁶¹ The difference between the last review and this review with respect to Trigger's financial statements is that, unlike in the last review, Trigger's financial statements predate the period of this review and, thus, are not contemporaneous with the POR. In any case, we find that these non-contemporaneous statements from a country other than the primary surrogate country are not the best available information when the record contains as an alternative detailed and POR-contemporaneous financial statements from a producer of comparable merchandise in the primary surrogate country. We did not use Alpha's financial statements because they lack sufficient details with, as Weihai acknowledges, "basket category line items."¹⁶²

Graphite Molds

Comment 15: The Jiangsu Fengtai Single Entity requests that the Department treat graphite molds as a component of manufacturing overhead costs, not as direct material input. The Jiangsu Fengtai Single Entity argues that, unlike the graphite molds that the Department found in *LTFV Final* and accompanying Issues and Decision Memorandum at Comment 2 to be a direct input consumed in the production process due to their short usage life, the graphite molds that it used in the production of subject merchandise during the POR were: (1) not physically incorporated into the subject merchandise; and (2) had a long useful life, as each graphite mold was used over 258 times to produce the subject merchandise and replaced only when it was broken. Citing, e.g., *Brake Drums*,¹⁶³ and accompanying Issues and Decision Memorandum at Comment 8, the Jiangsu Fengtai Single Entity explains that the Department's practice is to treat process materials as manufacturing overhead if they are: (1) not consumed in the production process; and (2) reused and infrequently replaced. The Jiangsu Fengtai Single Entity states that, even from a cost accounting perspective, its graphite molds should be classified as indirect manufacturing cost that should have been considered as part of overhead.

The petitioner argues that the Jiangsu Fengtai Single Entity reported graphite molds as direct materials, calculated FOPs for them, and did not amend or otherwise update its reporting of graphite molds in subsequent supplemental responses. The petitioner requests that the

¹⁵⁹ See *Diamond Sawblades 4*, and accompanying Issues and Decision Memorandum at Comment 16.

¹⁶⁰ See *Certain Steel Nails from the People's Republic of China: Final Results of the First New Shipper Review*, 75 FR 34425 (June 17, 2010), and accompanying Issues and Decision Memorandum at Comment 4.

¹⁶¹ See *Diamond Sawblades 4*, and accompanying Issues and Decision Memorandum at Comment 16.

¹⁶² *Id.*

¹⁶³ *Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China*, 62 FR 9160 (February 28, 1997) (*Brake Drums*).

Department continue to follow its precedent in the *LTFV Final* and treat the Jiangsu Fengtai Single Entity's graphite molds used in the production of diamond sawblades as direct materials.

Department's Position: For the final results, we continued to treat the Jiangsu Fengtai Single Entity's graphite molds as process materials and assign the SV to them. Although graphite molds are not physically incorporated into diamond sawblades, it has been our practice to treat them as process materials if they are replaced regularly in the course of production of subject merchandise.¹⁶⁴ Based on the Jiangsu Fengtai Single Entity's argument on this issue, we find that the Jiangsu Fengtai Single Entity regularly and frequently replaced its graphite molds during the POR.¹⁶⁵ Thus, we have no reason to believe that the Jiangsu Fengtai Single Entity's graphite molds have long usage life similar to steel molds which we treated as manufacturing overhead.¹⁶⁶

Labor

Comment 16: Bosun and Weihai disagree with the Department's preliminary valuation of labor based on the quarter-specific POR data from the Thai NSO's 2014 Labor Force Survey (2014 Labor Force Survey data). Bosun and Weihai describe the 2014 Labor Force Survey data as overly broad with one manufacturing sector category that represents an average of labor cost data covering different manufacturing sectors, whereas the 2011 Thai Industrial Census data (2011 Industrial Census data), which were released in 2012, provide labor cost data specific to the manufacture of hand tools and general hardware, which specifically includes "manufacture of saws and saw blades, including circular saw blades and chainsaw blades." Bosun explains that the 2011 Industrial Census data contain specific details the Department can rely on to value labor for the final results.

Weihai distinguishes this review from *PVLT Tires*,¹⁶⁷ in which the Department valued labor using the NSO's Labor Force Survey data contemporaneous with the period of that investigation. According to Weihai, the petitioner recommends the use of the 2014 Labor Force Survey data based on an assumption that a recent increase to Thai minimum wage proportionately increased the total labor cost between 2011 and the POR. Weihai contends that the petitioner's assumption is incorrect because a wage increase alone does not indicate an increase or decrease to other non-wage labor costs, *e.g.*, salaries, overtime, bonus, medical care, employers' contribution to social security, *etc.*, which constitute total labor costs. Weihai also contends that the minimum wage increase did not affect the saw and saw blades industry's average wage, which was already above the minimum wage.

Weihai argues that, contrary to *PVLT Tires*, in which the Department found that an Industrial Census report does not contain indirect labor costs, the 2011 Industrial Census data encompass all elements of indirect labor costs covered by the ILO Chapter 6A data (*e.g.*, work clothes, food,

¹⁶⁴ See *LTFV Final*, and accompanying Issues and Decision Memorandum at Comment 2.

¹⁶⁵ See Jiangsu Fengtai Single Entity final analysis memorandum for more details of our analysis on this issue, which include the company's business proprietary information.

¹⁶⁶ See *LTFV Final*, and accompanying Issues and Decision Memorandum at Comment 2.

¹⁶⁷ *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893, 34899 (June 18, 2015) (*PVLT Tires*).

housing, vocational training, welfare services, employee recruiting, medical care, *etc.*) as miscellaneous items and fringe benefits. Weihai explains that an official letter from the NSO clarified that: (1) the 2011 Industrial Census data were based on employers' reports of not only wages, overtime, bonus, medical care, and other benefits provided to individual employees, but also employers' contribution to social security, which was not directly provided to the employees but still a part of total labor cost; (2) whereas the quarterly Labor Force Survey reports do not include employers' contribution to social security.

Weihai also claims that the 2011 Industrial Census data are based on survey responses from a large number of employers who would have access to indirect labor costs from their accounting records and the 2014 Labor Force Survey data are based on survey responses from a small sample of employees who are unlikely to have access to indirect labor costs of their employers. For this reason, Weihai explains, the 2011 Industrial Census data contain full direct and indirect labor costs, whereas the 2014 Labor Force Survey data may not contain full direct and indirect labor costs and thus provide less accurate data than the 2011 Industrial Census data do. Weihai states that the NSO official clarification confirms that the 2011 Industrial Census data are verified, whereas the 2014 Labor Force Survey data are not.

Weihai requests that the Department inflate the 2011 Industrial Census data with the CPI to value labor for the final results of this review. Citing *Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 75 FR 70208, 70211 (November 17, 2010), Weihai argues that the Department should reject the petitioner's argument that the CPI does not account for the full increase in the manufacturing labor cost. Weihai explains that the Department prefers using the CPI to inflate labor costs even in instances where any other measure of inflation does not correspond with the CPI data. Citing, *e.g.*, *Silicon Metal from the People's Republic of China: Final Results and Partial Rescission of the 2008-2009 Administrative Review of the Antidumping Duty Order*, 76 Fed. Reg. 3084, 3086 (Jan. 19, 2011), and *Taian Ziyang Food Company, Ltd. vs. United States*, 918 F. Supp. 2d 1345, 1357 (CIT 2013), Weihai explains that it is the Department's practice to value labor by inflating pre-POR labor data that specifically cover the manufacturing of the subject merchandise, not by relying on labor data that cover the national manufacturing sector in general.

The petitioner argues that, given the substantial increase in the Thai labor cost for manufacturing between 2011 and 2014, the 2011 Industrial Census data adjusted for inflation would not accurately represent Thai labor costs during the POR. The petitioner explains that the 2011 Industrial Census data predate the POR and the 2011 Industrial Census data adjusted for inflation fall short of representing the rise of manufacturing labor costs between 2011 and 2014, which was 37.88 percent and higher than the inflation rate (7.09 percent) during the same period. Specifically, the petitioner claims the increase by 37.88 percent was similar in almost all occupational categories, *e.g.*, "Craftsmen and related trade workers" and "Plant and machine operators and assemblers" with increases in average wage of 39.65 percent and 36.91 percent, respectively, during the same period.

The petitioner contends that Weihai provided no support for its claim that the minimum wage increase did not affect the manufacturing labor costs. The petitioner explains that an increase to

the minimum wage also increases the average labor cost, even if the average labor cost is above the minimum wage rate. The petitioner claims that the average daily wage of 550 baht for five employees earning 1,000 baht, 800 baht, 500 baht, 250 baht, and 200 baht daily would increase to 580 baht with the increase of minimum wage to 300 baht, which would increase the last two employees' daily wages from 250 baht and 200 baht, respectively. The petitioner argues that the 37.88 percent increase is not an increase of wages alone but an increase of the total manufacturing labor cost, which includes wage, bonus, overtime, other income, food, clothes, housing, and other between 2011 and 2014. The petitioner contends that the inclusion of the employers' social security contributions in the 2011 Industrial Census data, which account for five percent of reported wages, does not outweigh the 37.88 percent difference between the 2011 Industrial Census data and the 2014 Labor Force Survey data. The petitioner states that, if the Department finds it necessary to account for employers' social security contributions, the Department can add five percent of gross salary to the surrogate labor cost.

The petitioner claims that Thai Quarterly Labor Force Survey data are accurate and reliable. The petitioner explains that average labor costs for all manufacturing labor costs between the Industrial Census and Labor Force Survey in 2011 were 52.92 baht per hour and 59.32 baht per hour, respectively, with only a difference of seven baht per hour. Given that the Labor Force Survey data in 2011 was essentially equal to the Industrial Census data, the petitioner argues, it is reasonable to assume that the 2014 Labor Force Survey data are just as accurate. The petitioner explains that changes to Thai labor rate between 2011 and 2014 are the most significant concern and this concern cannot be adequately addressed by inflating the 2011 Industrial Census data using the CPI. The petitioner claims that the 2014 Labor Force Survey data are more accurate than the 2011 Industrial Census data with inflation adjustments.

Department's Position: We find that the record evidence supports our continued reliance on the 2014 Labor Force Survey data to value labor for the final results of this review. In this case, the 2014 Labor Force Survey provides superior data, even if the 2011 Industrial Census is adjusted for inflation.

In *Labor Methodologies*, we decided to change to the use of ILO Chapter 6A 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.¹⁶⁸ We did not, however, preclude all other sources for evaluating labor costs in NME antidumping duty proceedings. Rather, we continue to select the best available information to determine SVs for inputs such as labor.¹⁶⁹

The 2014 Labor Force Survey data that we preliminarily used are publicly available, representative of a broad market average, tax-and duty-exclusive, specific to the industry in question, and more contemporaneous than 2011 Industrial Census data.¹⁷⁰ Also, a closer

¹⁶⁸ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092, 36093 (June 21, 2011) (*Labor Methodologies*).

¹⁶⁹ See *Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013), and accompanying Issues and Decision Memorandum at Comment 3, and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2013-2014*, 81 FR 1396 (January 12, 2016), and accompanying Issues and Decision Memorandum at Comment 4.

¹⁷⁰ See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China:*

examination of record evidence for these two data sources reveals that the 2014 Labor Force Survey data better reflect the full spectrum of labor (*i.e.*, fully loaded, direct and indirect) costs expressed within ILO Chapter 6A data and, in this sense, the 2014 Labor Force Survey data are preferable.

In *Labor Methodologies*, the Department found that the ILO Chapter 6A is the primary source of labor cost data, in that these data best account for all direct and indirect labor costs.¹⁷¹ Since ILO Chapter 6A data for Thailand are not on the record of this review, we compared the direct and indirect labor cost elements in the 2011 Industrial Census data and the 2014 Labor Force Survey data to the same elements described in the ILO Chapter 6A definition.¹⁷²

Specifically, the ILO Chapter 6A data comprise compensation of employees, employers' expenditure for vocational training and welfare services (*e.g.*, training), the cost of recruitment and other miscellaneous items (*e.g.*, work clothes, food, housing), and taxes.¹⁷³ The 2014 Labor Force Survey data include cash for average wage, bonus, overtime, and other income, as well as in kind compensation for food, clothes, housing, and others.¹⁷⁴ The 2011 Industrial Census data include wages, salaries, overtime bonus, fringe benefits (medical care, others), and employer's contribution to social security.¹⁷⁵

We find that the 2014 Labor Force Survey data provide categories of direct and indirect labor costs that match more closely to costs covered by the ILO Chapter 6A labor data than the 2011 Industrial Census data do. The 2014 Labor Force Survey data provide compensation of employees (cash for average wage, bonus, overtime, and other income), work clothes, food, and housing. The 2011 Industrial Census data provide compensation of employees (wages, salaries, overtime bonus) and taxes (employer's contribution to social security). Although the Appendix B of the 2011 Industrial Census data explains that fringe benefits "{r}efer to all payments in addition to wages or salaries paid to employees such as food, beverages, lodgings, rent, medical care, transportation recreational and entertainment services, etc.,"¹⁷⁶ the 2011 Industrial Census data do not specify whether work clothes, food, and housing are in fact included in the "Others" category of fringe benefits.¹⁷⁷ The 2011 Industrial Census data categorize fringe benefits only as "Medical care" and "Others."¹⁷⁸ Therefore, the uncertainty over whether work clothes, food, and housing are in fact included in fringe benefits of the 2011 Industrial Census data makes the 2011 Industrial Census data less detailed and potentially less similar to the ILO Chapter 6A labor data than the 2014 Labor Force Survey data. While the 2011 Industrial Census data are specific to the relevant industry, they are neither contemporaneous with the POR nor as or more detailed than

Final Results of the Antidumping Duty Administrative Review; 2013-2014, 81 FR 1396 (January 12, 2016) (TRBs), and accompanying Issues and Decision Memorandum at Comment 4.

¹⁷¹ See *Labor Methodologies*, 76 FR at 36092-93.

¹⁷² See *PVLT Tires*, at Comment 13, where the Department discusses the ILO Chapter 6A data.

¹⁷³ *Id.*

¹⁷⁴ See Petitioner's SV comments dated November 3, 2015 at Exhibit 6A, and Memorandum to the File entitled "Diamond Sawblades and Parts Thereof from the People's Republic of China: Surrogate Values for the Final Results of Review" dated concurrently with this Issues and Decision Memorandum at Exhibit 1, Labor tab (Final SV Memo).

¹⁷⁵ See Weihai's SV comments dated July 16, 2015, at Exhibit 6, "Thai NSO Labor COST Data."

¹⁷⁶ See Weihai's SV comments dated July 16, 2015, at Exhibit 6, "Appendix B: Definitions."

¹⁷⁷ See Weihai's SV comments dated July 16, 2015, at Exhibit 6, "Thai NSO Labor COST Data."

¹⁷⁸ *Id.*

the 2014 Labor Force Survey in terms of matching categories of labor costs specified in the ILO Chapter 6A labor data. Therefore, we find that the general manufacturing labor data in the 2014 Labor Force Survey provide the best available information for purposes of these final results.

Even if the 2014 Labor Force Survey and the 2011 Industrial Census data equally match to all costs covered by the ILO Chapter 6A labor data, we would not select the 2011 Industrial Census data over the 2014 Labor Force Survey data because the pre-POR 2011 Industrial Census data cannot reasonably reflect the labor cost, even after the adjustment for inflation, whereas the POR-contemporaneous 2014 Labor Force Survey data do so without any adjustment.¹⁷⁹ We do not find that inflating the 2011 Industrial Census data would provide the best available information to value labor costs for the POR of this review. According to the Labor Force Survey, from 2011 to 2014, the average labor cost per hour, which includes not just wages but also benefits, rose by 37.88 percent¹⁸⁰ and the average wage per hour alone rose by 45.33 percent.¹⁸¹ We inflated the 2011 average labor cost per hour using the CPI provided by the petitioner and compared the inflated 2011 average labor cost per hour to the 2014 average labor cost per hour. The 2014 average labor cost per hour was 28.75 percent higher than the inflated 2011 average labor cost per hour.¹⁸² We also inflated the 2011 average wage per hour alone using the CPI provided by the petitioner and compared the inflated average wage per hour to the 2014 average wage per hour. The 2014 average wage per hour was 35.71 percent higher than the inflated 2011 average wage per hour.¹⁸³ These comparisons are based on the Labor Force Surveys covering 2011 and 2014.¹⁸⁴ The 2014 average labor cost per hour based on the 2014 Labor Force Survey was 27.74 percent higher than the inflation-adjusted 2011 average labor cost per hour based on the 2011 Industrial Census.¹⁸⁵ In any event, we do not find that, even with the adjustment for inflation, the 2011 average labor costs per hour from both sources – Industrial Census and Labor Force Survey – reasonably reflect the 2014 average labor cost per hour based on the Labor Force Survey.

We did not rely on the NSO clarification because it does not provide an explanation about the methodology the NSO used to compile labor data for 2014. The NSO clarification explains only the difference between the 2011 Labor Force Survey and the 2011 Industrial Census data for the manufacture of hand tools and general hardware. In any event, because we have reliable surrogate labor data, which are contemporaneous with the POR, we do not find it necessary to rely on labor data that predate the POR by adjusting the data for inflation.

¹⁷⁹ See *Blue Field (Sichuan) Food Indus. Co. v. United States*, 949 F. Supp. 2d 1311, 1331 (CIT 2013) (*Blue Field*) (“Commerce may invoke contemporaneity as a tie-breaking factor when choosing between equally reliable datasets.”)

¹⁸⁰ See Petitioner’s SV comments dated November 3, 2015 at Exhibit 6A and Final SV Memo at Exhibit 1, Labor tab.

¹⁸¹ *Id.*

¹⁸² See Weihai’s SV comments dated July 16, 2015 at Exhibit 6, the petitioner’s SV comments dated November 3, 2015 at Exhibit 6A, and the final SV memorandum at Exhibit 1, Labor tab.

¹⁸³ *Id.*

¹⁸⁴ See Petitioner’s SV comments dated November 3, 2015 at Exhibit 6A, and Final SV Memo at Exhibit 1, Labor tab.

¹⁸⁵ See Weihai’s SV comments dated July 16, 2015 at Exhibit 6, and Final SV Memo at Exhibit 1, Labor tab.

Nitrogen and Oxygen

Comment 17: The Jiangsu Fengtai Single Entity challenges the Department's preliminary reliance on the GTA statistics for HTS headings 2804.30 and 2804.40, respectively, to value nitrogen and oxygen. The Jiangsu Fengtai Single Entity contends that the preliminary SVs for these two materials are aberrationally high and not the best available data compared to: (1) the SVs derived from the same data for the same HTS headings covering the prior period of review; and (2) the costs for these two inputs in the financial statements of Bhoruka Gases Limited (Bhoruka), which is an Indian company. The Jiangsu Fengtai Single Entity also contends that the volume of Thai imports of nitrogen and oxygen is insignificant compared to the volume of nitrogen and oxygen the Jiangsu Fengtai Single Entity consumed during the POR and the volume of Thai imports of other industrial gases (*i.e.*, argon and anhydrous ammonia) during the POR. The Jiangsu Fengtai Single Entity requests that the Department value nitrogen and oxygen by either: (1) inflating the prices of these two items in Bhoruka's financial statements to the current POR; or (2) using the SVs that the Department used in *Diamond Sawblades 4*, which Weihai placed on the record of this review as a part of its SV comments.

The petitioner states that the Department preliminarily valued nitrogen and oxygen using Thai import data that are broad-market averages and contemporaneous with the POR. The petitioner argues that India is not an economically comparable country for purposes of this review. The petitioner argues further that the Indian price quote at issue comes from a single source, which dates back to 1996 and, thus, is not contemporaneous with the POR. For these reasons, the petitioner argues that Bhoruka's financial statements do not provide reliable benchmarks to determine that the Department preliminarily valued nitrogen and oxygen using aberrational AUVs. The petitioner explains that, even with an adjustment for inflation, Bhoruka's financial statements provide AUVs that are extremely low in comparison with actual prices of nitrogen and oxygen imported to the primary surrogate country during the POR.

The petitioner disagrees with the Jiangsu Fengtai Single Entity's characterization of the preliminary AUVs of nitrogen and oxygen as aberrational based on the last review's AUVs for the same FOP inputs. Citing *Diamond Sawblades 4* and accompanying Issues and Decision Memorandum at Comment 17, the petitioner explains that, when there are AUVs from two reviews for comparisons, the Department cannot conclude whether the AUVs from the prior review are aberrationally low or the AUVs from this review are aberrationally high. Moreover, citing *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 64100 (October 18, 2012), and accompanying Issues and Decision Memorandum at Comment 1, the petitioner contends that, in order to determine whether the import data are aberrational due to the volume of imports, the Department compares that import data against volumes in other economically comparable countries, not against a respondent's own purchases of the inputs at issue. The petitioner requests that the Department continue the preliminary valuation of these two inputs for the final results of this review.

Department's Position: For the final results, we continue to calculate the SVs for nitrogen and oxygen based on the GTA statistics for the HTS headings 2804.30, and 2804.40, respectively, as we did in the *Preliminary Results*, because: (1) the data are contemporaneous with the POR; and

(2) the GTA statistics represent a broad-market average that is tax- and duty-exclusive.¹⁸⁶ Moreover, these GTA statistics are import statistics of Thailand, the primary surrogate country in this review and, thus satisfy our preference to use SVs from a single country when possible.¹⁸⁷

In this review, the Jiangsu Fengtai Single Entity agrees with the valuation of nitrogen and oxygen based on the GTA statistics for HTS subheading headings 2804.30, and 2804.40 as we did in the last review. The Jiangsu Fengtai Single Entity's only contention is that this review's AUVs based on these statistics are aberrationally high compared to the last review's AUVs and the prices of nitrogen and oxygen contained in Bhoruka's financial statements. As explained below, we do not consider the prices of nitrogen and oxygen included in Bhoruka's financial statements prove that this review's AUVs are aberrational. This leaves only the AUVs from this review and from the last review. With these AUVs from only two different PORs to compare with no other reliable benchmark prices, we do not find a basis upon which to determine whether the AUV from the prior review period or the instant review period is aberrational and, if so, which one.¹⁸⁸ Therefore, we do not have sufficient historical AUVs on this record to determine whether the AUVs for nitrogen and oxygen are aberrational.¹⁸⁹ Moreover, in order to determine whether import data for an input are aberrational, we do not compare volume of imports in the import data to the volume of the input a respondent purchased or non-identical inputs; we compare the total import volumes of potential surrogate countries to one another.¹⁹⁰

We evaluated Bhoruka's financial statements and found the same deficiencies that we identified in Bhoruka's financial statements (provided by Weihai) in the last review.¹⁹¹ Bhoruka's financial statements are not contemporaneous with the POR because they date back to 1996.¹⁹² Moreover, we prefer country-wide information such as government import statistics to information from a single source, and we prefer industry-wide values to values of a single producer because industry-wide values better represent prices of all producers in the surrogate country.¹⁹³ We also 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."¹⁹⁴ Bhoruka's financial statements are a single source from a

¹⁸⁶ See *Certain Steel Nails From the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review*; 2010-2011, 78 FR 16651 (March 18, 2013) (*Steel Nails*), and accompanying Issues and Decision Memorandum at Section M. Sodium Bicarbonate.

¹⁸⁷ See *Clearon Corp. v. United States*, Court No. 08-00364, 2013 Ct. Intl. Trade LEXIS 27, at *19-22 (Ct. Int'l Trade Feb. 20, 2013) (*Clearon Corp.*).

¹⁸⁸ See *Diamond Sawblades 3*, and accompanying Issues and Decision Memorandum at Comment 19 and *Diamond Sawblades 4*, and accompanying Issues and Decision Memorandum at Comment 17.

¹⁸⁹ *Id.*

¹⁹⁰ See *Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2012-2013, 80 FR 4539 (January 28, 2015), and accompanying Issues and Decision Memorandum at Comment 2, B. Hydrogen.

¹⁹¹ See *Diamond Sawblades 3*, and accompanying Issues and Decision Memorandum at Comment 11 and *Diamond Sawblades 4* and accompanying Issues and Decision Memorandum at Comment 13.

¹⁹² See Weihai's SV comments dated July 16, 2015, at Exhibit 16.

¹⁹³ See, e.g., *Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 33406 (July 13, 2009) (*Certain Pencils*), and accompanying Issues and Decision Memorandum at Comment 4.

¹⁹⁴ 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) (*Honey*).

country that is not at the level of the economic development of the PRC.¹⁹⁵ Thus, unlike the GTA data, the Jiangsu Fengtai Single Entity's suggested SVs do not represent industry-wide values or broad market averages from a country at the level of economic development of the PRC. Moreover, as explained earlier, Bhoruka's financial statements are not contemporaneous with the POR. In the last two reviews, for similar reasons, we determined that Bhoruka's financial statements did not represent the best available information.¹⁹⁶

As stated above, there is no evidence demonstrating that our reliance on the GTA statistics for the two HTS headings resulted in distortive valuations of nitrogen and oxygen. Also, there is no evidence that Bhoruka's financial statements are better than the GTA statistics we preliminarily used. We find that the GTA statistics constitute the best available information on the record and, accordingly, we do not need to rely on Bhoruka's financial statements that are single-sourced and nearly two decades old.¹⁹⁷

Scrap Offset

Comment 18: The petitioner argues that Weihai did not respond to the Department's request for documents evidencing production of the steel scrap that it reported as by-product. The petitioner requests that the Department deny the steel scrap offset Weihai seeks because, as stated in *Silicon Metal*,¹⁹⁸ and accompanying Issues and Decision Memorandum at Comment 11, sales records alone without production records on the record of this review is insufficient to grant the steel scrap offset.

Weihai explains that it provided a VAT invoice, accounting voucher, and warehouse-out slip that reasonably link to the quantity of scrap Weihai sold during the POR. Weihai claims that warehouse-out slips are valid evidence of scrap production. Citing *Am. Tubular Prods., LLC v. United States*, 36 Int'l Trade Rep. (BNA) 1073 (CIT 2014), Weihai argues that exporters without scrap production records may still claim scrap offsets if they reasonably link the amount of scrap sold during the POR to the amount produced during the same time, as a respondent did with stock-out slips in *Steel Sinks*,¹⁹⁹ and accompanying Issues and Decision Memorandum at Comment 9, and another respondent did with inventory records in *Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 62027 (October 15, 2015), and accompanying Issues and Decision Memorandum at Comment 3. Weihai contends that *Silicon Metal* and other precedents the petitioner cited are inapplicable to this case because in none of those prior cases did respondents with scrap offsets claims provide secondary evidence of production of scraps. Weihai argues that the Department distinguished *Steel Sinks* from *Silicon Metal* based on the existence and absence of secondary evidence of scrap

¹⁹⁵ See Weihai's SV comments dated July 16, 2015 at Exhibit 16.

¹⁹⁶ See *Diamond Sawblades 3*, and accompanying Issues and Decision Memorandum at Comment 11 and *Diamond Sawblades 4* and accompanying Issues and Decision Memorandum at Comment 13.

¹⁹⁷ See *Blue Field*, 949 F. Supp. 2d at 1331 ("Commerce may invoke contemporaneity as a tie-breaking factor when choosing between equally reliable datasets.")

¹⁹⁸ *Silicon Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 54563 (September 5, 2012) (*Silicon Metal*).

¹⁹⁹ *Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013) (*Steel Sinks*).

production, respectively. Weihai claims that its scrap had commercial value because it sold scrap and earned revenue and allocated scrap produced on a control-number basis and determined the quantity of scrap produced in the course of production of the subject merchandise. Weihai explains that the Department granted its scrap offset in past reviews.

Department's Position: For the final results, we continue to grant the scrap offset for Weihai. We find that, in the absence of the direct record of scrap production on the record of this review, the warehouse-out slip Weihai provided in response to our request for production documents for its steel scrap reasonably links the quantity of scrap sold during the POR to the quantity produced during the same time.²⁰⁰ The quantity in the warehouse-out slip tied with the quantity in the corresponding sales and VAT documents for scrap sold.²⁰¹ This case is distinguishable from other cases in which respondents claiming scrap offset did not provide any production record or any alternative record.²⁰²

Truck Freight

Comment 19: The petitioner requests that the Department recalculate the SV for truck freight based on the 14-kilometer distance between Bangkok and the Port of Bangkok. The petitioner claims that, unlike prior versions, *Doing Business* data that the Department used to value truck freight in this review were compiled based on the distance between Bangkok and the Port of Bangkok. The petitioner contends that, other than Weihai's submission of cruise websites that claim that the Port of Laem Chabang is also referred to as the Bangkok Port, there is no information on the record that indicates that the Port of Laem Chabang is also the Port of Bangkok. The petitioner requests that the Department use the data from the same source and maintain the relationship between the data and the source of the data. The petitioner explains that *Doing Business* was compiled using the survey that provided a number of assumptions based on which participants were asked to provide data. According to the petitioner, with respect to inland freight costs, the survey requests to identify, *inter alia*, specific ports to which merchandise is shipped from the survey city.

Bosun requests that the Department recalculate the SV for truck freight based on the distance between Bangkok and the Port of Laem Chabang. Bosun explains that the Port of Laem Chabang is the primary and largest commercial seaport used by traders in Bangkok and contemplated by *Doing Business*. Bosun explains further that the Department consistently used the distance between Bangkok and the Port of Laem Chabang in recent past cases, e.g., *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair*

²⁰⁰ See *Steel Sinks*, and accompanying Issues and Decision Memorandum at Comment 9. See also *Am. Tubular Prods., LLC v. United States*, 36 Int'l Trade Rep. (BNA) 1073 (CIT 2014) ("Commerce requires two data points from exporters before it will grant the offset. . . . {I}f an exporter does not record scrap production, the exporter may still claim the offset if it "reasonably link{s}" the amount of scrap sold during the review period to the amount produced during the same time.").

²⁰¹ See Weihai's supplemental response dated September 11, 2015 at Exhibit SD-23.

²⁰² See, e.g., *Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Results of New Shipper Review; 2012-2013*, 80 FR 41476 (July 15, 2015), and accompanying Issues and Decision Memorandum at Comment 16, in which the Department denied a respondent's claim for scrap offset because it did not provide any production document or any alternative document to prove the scrap production.

Value, 78 FR 33350, (June 4, 2013), and accompanying Issues and Decision Memorandum at Comment 38. In the alternative, Bosun requests that the Department find that the identity of the port at issue is uncertain in *Doing Business* and continue to use the preliminary distance for the final results.

Weihai disagrees with the petitioner. According to Weihai, most commercial export shipments from Bangkok are transported to the Port of Laem Chabang. Weihai argues that the Port of Laem Chabang is larger than the Port of Bangkok and handles 4.4 times the volume of containerized cargo than the Port of Bangkok. Weihai also distinguishes the Port of Laem Chabang from the Port of Bangkok based on the fact that the former is a seaport and the latter is a riverport. Weihai explains that, for these reasons, it is reasonable for a trader in Bangkok to provide the name of the Port of Laem Chabang in response to a *Doing Business* survey requesting to provide the seaport traders most commonly used.

Weihai argues that cruise companies cannot routinely refer to the Port of Laem Chabang as a Bangkok port unless it was commonly accepted that the Port of Laem Chabang is in fact a Bangkok port. Weihai claims that the import/export community, as well as the cruise ship companies, considers the Port of Laem Chabang as a Bangkok port.

Weihai explains that the Department's preliminary use of the average of the distance between Bangkok and the Port of Bangkok and the distance between Bangkok and the Port of Laem Chabang in the valuation of truck freight transportation is reasonable, given the fact that *Doing Business* refers to Bangkok as the port without specifying whether it is the Port of Bangkok or the Port of Laem Chabang and both ports are considered as Bangkok ports and used for Bangkok container exports.

Weihai disagrees with the petitioner on the distance between Bangkok and the Port of Bangkok. Weihai explains that *Doing Business* does not contemplate the center of Bangkok as the beginning point of commercial export shipments. According to Weihai, the petitioner's suggested distance of 14 kilometers is the distance between the center of Bangkok and the Port of Bangkok through the shortest roads and Thai traffic regulations prohibit trucks from driving on those roads. Weihai explains that commercial trucks transporting containers must use the expressway outside Bangkok, even if doing so increases the time and distance of their trip. Weihai explains further that the Port of Bangkok has two gates separated by the distance of four or five kilometers and only one gate is for the commercial container port. Citing *Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire From the People's Republic of China*, 79 FR 25572 (May 5, 2014), and accompanying Issues and Decision Memorandum at Comment 4, Weihai argues that the correct distance between Bangkok and the Port of Bangkok should be based on the distance from a Bangkok industrial park to the Port of Bangkok through the expressway outside Bangkok. Weihai suggests that a correct distance between a warehouse located in Bangkok and the Port of Bangkok would be 26 kilometers, which is the average of distances from the three industrial estates in Bangkok – Bangchan, Gemopolis, and Lad Krabang – to the Port of Bangkok.

Department's Position: For the final results, we revised the surrogate distance for the valuation of truck freight and used the distance between Bangkok and the Port of Bangkok only. Unlike

the previous versions of *Doing Business* in the past reviews, *Doing Business* explicitly identifies Bangkok as the name of the port and the name of the city where the standardized company is located.²⁰³ Therefore, we do not find that *Doing Business* made a general reference to ports that serve the Bangkok metropolitan area when it explicitly stated that the name of port used to compile these data is Bangkok. Therefore, even if cruise companies and other companies call both ports Bangkok ports as Weihai claims, they are irrelevant to the fact that the freight transportation data compiled in *Doing Business* are based on the transportation from Bangkok to the Port of Bangkok. Also, for the same reason, we find that the quantity of freight the Port of Laem Chabang handles compared to the quantity of freight the Port of Bangkok handles is irrelevant in our valuation of truck freight expense.

For the distance between Bangkok and the Port of Bangkok, we used the average of the distances between industrial estates in Bangkok and the Port of Bangkok, which is 26 kilometers.²⁰⁴ We find that this average distance is based on record evidence²⁰⁵ and consistent with our recent precedents in which we used the average of the distances between industrial estates in Bangkok and the Port of Bangkok.²⁰⁶ Because we have on the record of this review distances between industrial estates and the port of exportation, we find it more reasonable to use the distance between industrial estates and the port of exportation than to use the distance between the center of the city and the port of exportation.

Wooden Trays

Comment 20: The Jiangsu Fengtai Single Entity requests that the Department revise the valuation of its wooden trays by using the GTA statistics for the HTS heading 4415.20 (Pallets, And Other Load Boards & Collars, Of Wood) instead of the GTA statistics for the HTS heading 4415.10 (Cases/Boxes/Crates/Simlr Packings, Cable-Drum, Wood), which the Department preliminarily used. The Jiangsu Fengtai Single Entity explains that its wooden trays, which have no solid sides or tops, are more similar to the items covered by the HTS heading 4415.20 than to the items covered by the HTS heading 4415.10. The Jiangsu Fengtai Single Entity explains further that a wooden tray is a pallet and provides a wooden platform for the transport of merchandise secured to it.

The petitioner requests that the Department continue to value the Jiangsu Fengtai Single Entity's wooden trays as it did in the *Preliminary Results*. The petitioner points out that the Jiangsu Fengtai Single Entity provided no SV comments and no information to justify its request for this revised valuation of wooden trays.

²⁰³ See Petitioner's SV rebuttal dated July 23, 2015 at Exhibit 2, page 65. See also, e.g., *TRBs*, and accompanying Issues and Decision Memorandum at Comment 2.

²⁰⁴ See Weihai's SV rebuttal dated November 12, 2015 at Exhibit 3C. Although Weihai's suggested 26 kilometers is based on the information in Exhibit 3C, Weihai also submitted distances between four Bangkok industrial estates and the Port of Bangkok. See Weihai's SV comments dated November 3, 2015 at Exhibits 5H and 5I. The simple average of the distances between these four industrial estates and the Port of Bangkok is also 26 kilometers. See Final SV Memo at Exhibit 1, Truck Freight tab.

²⁰⁵ *Id.*

²⁰⁶ See, e.g., *TRBs*, and accompanying Issues and Decision Memorandum at Comment 2.

Department's Position: For the final results, we revised our valuation of the Jiangsu Fengtai Single Entity's trays using the GTA statistics for the HTS heading 4415.20. We find that wooden trays are more similar to "Other Load Boards and Collars, Of Wood" in HTS heading 4415.20 than "Cases/Boxes/Crates/Simlr Packings, Cable-Drum, Wood" in HTS heading 4415.10. We compared the average quantity of wooden trays and carton boxes and corrugated paper boxes the Jiangsu Fengtai Single Entity reported in its FOP database and we have data to support that the Jiangsu Fengtai Single Entity's claim reasonable. For further analysis see the Jiangsu Fengtai Single Entity final analysis memorandum, which contains the company's business proprietary information.

Billing Adjustments

Comment 21: The petitioner requests that the Department deduct billing adjustments from gross unit price for Weihai. The petitioner explains that the Department's preliminary addition of billing adjustments is inconsistent with Weihai's claim that they should be deducted from gross unit price because positive and negative billing adjustments represent post-sale price decreases and increases, respectively. The petitioner states that the deduction of billing adjustments will ensure the correct treatment of Weihai's billing adjustments, *i.e.*, decreases to prices are deducted from gross unit price and increases to price are added to gross unit price. Weihai did not comment on this issue.

Department's Position: For the final results, consistent with Weihai's explanation of the nature of its billing adjustments,²⁰⁷ we deducted Weihai's billing adjustments from gross unit prices.

Reconstruction of Control Numbers

Comment 22: The petitioner claims that Weihai made certain errors in the construction of some control numbers. The petitioner requests that the Department reconstruct all of Weihai's control numbers using the physical characteristics Weihai reported in its U.S. sales database. In the alternative, the petitioner suggests that the Department use Weihai's U.S. sales database that the petitioner revised with the reconstructed control numbers and submitted with its case brief.

Weihai admits that it made an inadvertent file processing error when it merged physical characteristics for control numbers in its U.S. sales database. However, Weihai claims that the revised U.S. sales database the petitioner submitted is not usable because: (1) it contains total diamond weights in four and five digits for different control numbers when they all should be in five digits; and (2) some of the total diamond weights the petitioner used to reconstruct the control numbers are incorrect.

Department's Position: We identified Weihai's U.S. sales transactions with incorrectly reported control numbers and correctly reported physical characteristics. For those U.S. sales transactions, we reconstructed control numbers using the correct physical characteristics for the final results of this review. We also identified Weihai's U.S. sales transactions with correctly reported control numbers, including those with diamond powder weights incorrectly reported in

²⁰⁷ See Weihai's section C response dated June 25, 2015 at 27.

a separate field in the FOP database. For those U.S. sales transactions, we used the reported control numbers for the final results of review.²⁰⁸

Rescission of Review in Part

Comment 23: The petitioner argues that the Department should not have rescinded the review in part with respect to Husqvarna. The petitioner explains that, although it did not request the review of Husqvarna, it requested the review of its predecessor Hebei Husqvarna Jikai Diamond Tools Co., Ltd., its U.S. affiliate Husqvarna Construction Products North America, Inc., and any additional affiliates. The petitioner claims that Husqvarna is an additional affiliate of Husqvarna Jikai Diamond Tools Co., Ltd., and Husqvarna Construction Products North America, Inc.

Husqvarna argues that the Department properly rescinded the review in part for Husqvarna upon Husqvarna's timely filed withdrawal of review request. Husqvarna contends that the petitioner requested the review of Husqvarna's predecessor that no longer exists without specifically identifying Husqvarna by name as the company that it requests to be reviewed. Husqvarna argues that, because the petitioner did not specifically name Husqvarna the party for whom it requested a review, the petitioner may not claim that the Department erroneously rescinded the review in part with respect to Husqvarna.

Department's Position: We disagree with the petitioner. In the first instance, the petitioner never specifically requested the review of Husqvarna. Rather, the petitioner requested review of another company, Husqvarna Jikai Diamond Tools Co., Ltd.²⁰⁹ The other company, Husqvarna's predecessor-in-interest, ceased to exist before the POR²¹⁰ and we did not initiate this review with respect to this predecessor-in-interest.²¹¹ Moreover, following the partial rescission of review with respect to Husqvarna, the Department issued instructions for CBP to liquidate Husqvarna's exports. Accordingly, this issue was rendered moot by our instruction to CBP that it liquidate the suspended entries of subject merchandise exported by Husqvarna during the POR.²¹²

²⁰⁸ See Weihai final analysis memorandum for more details containing Weihai's business-proprietary details.

²⁰⁹ See Petitioner's review request dated November 26, 2014.

²¹⁰ See *Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review*, 78 FR 48414 (August 8, 2013). See also *Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 71980 (December 4, 2014), and accompanying Preliminary Decision Memorandum at 5, unchanged in *Diamond Sawblades 4* where we rescinded the review of this company because it no longer exists.

²¹¹ See *Initiation Notice*, 79 FR at 76957-68.

²¹² See CBP Message Number 6015304 dated January 15, 2016, available at http://adcvd.cbp.dhs.gov/adcvdweb/ad_cvd_msgs/20826.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of the review and the final dumping margins for all of the reviewed companies in the Federal Register.

Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

7 JUNE 2016
(Date)