



A-570-016

POR: 1/27/2015 - 7/31/2016

E&C Office VII: TP

Public Document

DATE: March 9, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Passenger Vehicle and Light Truck Tires from the
People's Republic of China: Issues and Decision
Memorandum for the Final Results of the 2015-2016
Antidumping Duty Administrative Review

I. Summary

The Department of Commerce (Commerce) published the preliminary results of the administrative review of the antidumping duty (AD) order on certain passenger vehicle and light truck tires (passenger tires) from the People's Republic of China (China) on September 7, 2017.¹ The period of review (POR) is January 27, 2015, through July 31, 2016. Commerce analyzed the comments submitted by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (the petitioner); Giti Tire Global Trading Pte. Ltd. (Giti); Qingdao Sentury Tire Co., Ltd. (Sentury), and certain separate rate companies.² Following the *Preliminary Results*

¹ See *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Rescission, in Part; 2015–2016*, 82 FR 42281, (September 7, 2017) and accompanying preliminary decision memorandum (PDM) (*Preliminary Results*).

² See the petitioner's Letter, "Case Brief Submitted on Behalf of United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC," dated February 5, 2018 (Petitioner's Case Brief); see also the petitioner's Letter, "Rebuttal Brief Submitted on Behalf of United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC," dated February 12, 2018 (Petitioner's Rebuttal Brief); see also Giti's Letter, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Case Brief - Giti Tire Global Trading Pte. Ltd.," dated February 5, 2018 (Giti's Case Brief); see also Giti's Letter, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Comments on Draft Customs Instructions," dated February 9, 2018 (Giti's Draft CBP Instruction Comments); see also Giti's Letter, "Passenger Vehicle and



and based on the analysis of the comments received, we made changes to the margin calculations for these final results.

We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a list of the issues in this administrative review for which we received comments from interested parties:

- Comment 1: Whether to Apply Adverse Facts Available (AFA) to Sentury
- Comment 2: Whether Commerce Should Grant Sentury a Double-Remedies Adjustment
- Comment 3: Whether Commerce Should Revise how it Implements any Double-Remedy Adjustment
- Comment 4: Whether Commerce Should Revise its Calculation of the Irrecoverable Value Added Tax (VAT) Adjustment to U.S. Price
- Comment 5: Whether Commerce Should Correct Sentury’s Reporting of Early Payments (EARLPYU)
- Comment 6: Whether Commerce Should Re-Calculate Giti’s Market Economy Purchase (MEP) Values and Volumes
- Comment 7: Whether Commerce Should Change the Thai Harmonized Tariff Schedule (HTS) Codes Used for Two Giti Compound Rubber Inputs
- Comment 8: Whether Commerce Should Re-Calculate Certain Surrogate Values Used for Giti in the Preliminary Results
- Comment 9: Whether Commerce Should Correct Giti’s Packing Labor Calculation
- Comment 10: Whether Commerce Should Value Truck Freight Based on the World Bank’s Doing Business Report
- Comment 11: Whether Commerce Should Grant Separate Rate Status to Shandong Hongsheng Rubber Co. Ltd. (Hongsheng), Qingdao Yongdao, International Trade Co. Ltd. (Yongdao), and Poplar Tire International Co. Ltd. (Poplar)
- Comment 12: Whether Commerce Should Grant Separate Rate Status to Shandong Yongtai Group Co., Ltd. (Yongtai Group) and Shandong Yongtai Chemical Co., Ltd. (Yongtai Chemical)

Light Truck Tires from the People’s Republic of China: Rebuttal Brief - Giti Tire Global Trading Pte. Ltd.,” dated February 12, 2018 (Giti’s Rebuttal Brief); *see also* Sentury’s Letter, “Qingdao Sentury Tire Co., Ltd. and Sentury Tire USA Inc. Case Brief in the First Administrative Review of Antidumping Duty Order on Passenger Vehicle and Light Truck Tires from the People’s Republic of China,” dated February 5, 2018 (Sentury’s Case Brief); *see also* Sentury *et al’s* Letter, “GDLSK Respondents’ Comments on Draft Customs Instructions: First Administrative Review of the Antidumping Duty Order on Passenger Vehicle and Light Truck Tires from the People’s Republic of China,” dated February 9, 2018 (Sentury *et al’s* Draft CBP Instruction Comments); *see also* Sentury’s Letter, “Qingdao Sentury Tire Co., Ltd. and Sentury Tire USA Inc. Rebuttal Brief in the First Administrative Review of Antidumping Duty Order on Passenger Vehicle and Light Truck Tires from the People’s Republic of China,” dated February 12, 2018 (Sentury’s Rebuttal Brief); *see also* Pirelli’s Letter, “Administrative Review of the Antidumping Order on Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China (A-570-016) - Pirelli Tyre Co., Ltd. Case Brief,” dated February 5, 2018 (Pirelli’s Case Brief); *see also* Shandong Yongtai Group Co., Ltd.’s Letter, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China –Case Brief,” dated February 5, 2018 (Yongtai Group’s Case Brief); *see also* Shandong Hongsheng Rubber Co. Ltd. (Hongsheng), Poplar Tire International Co. Ltd. (Poplar), and Qingdao Yongdao, International Trade Co. Ltd. and Shandong Hongsheng Rubber Co. Ltd.’s Letter, (Yongdao), “*Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Administrative Case Brief,*” dated February 5, 2018 (Hongsheng *et al’s* Case Brief).

Comment 13: Whether Commerce Should Grant Separate Rate Status to Pirelli Tyre Co., Ltd. (Pirelli)

II. Background

Commerce published the *Preliminary Results* of this administrative review of passenger tires from China on September 7, 2017.³ Between October 2, 2017 and October 10, 2017, the petitioner; Giti; Sentury; and Pirelli Tyre Co., Ltd., Pirelli Tyre S.p.A., and Pirelli Tire LLC (collectively, Pirelli) filed hearing requests.⁴ The petitioner subsequently withdrew its request for a hearing.⁵

We verified Sentury and its U.S. affiliate from December 11, 2017 through December 15, 2017, and December 20, 2017 through December 22, 2017.⁶

In the *Preliminary Results* of this administrative review, Commerce preliminarily continued to find that Giti, Giti Tire (USA) Ltd. (Giti USA); Giti Radial Tire (Anhui) Company Ltd. (Giti Radial Anhui); Giti Tire (Fujian) Company Ltd. (Giti Fujian); and Giti Tire (Hualin) Company Ltd. (Giti Hualin) are affiliated exporters and manufacturers of subject merchandise and should be treated as a single entity (the Giti Entity) for purposes of this review.⁷ The affiliation among Giti, Giti Radial Anhui, Giti Fujian, and Giti Hualin or treatment of these companies as a single entity has not been disputed in this review. Accordingly, these findings remain unchanged for these final results.

Additionally, Commerce stated in the *Preliminary Results* that we would analyze whether to collapse the Giti Entity with its other affiliated producers Giti Tire Greatwall Company, Ltd.

³ See *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Rescission, in Part; 2015–2016*, 82 FR 42281, (September 7, 2017) (*Preliminary Results*) and accompanying preliminary decision memorandum (PDM).

⁴ See the petitioner's Letter, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China (A-570-016)– Petitioner's Hearing Request," dated October 10, 2017; see also Giti's Letter, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Request for Hearing," dated October 2, 2017; see also Sentury's Letter, "Sentury Request for Hearing: First Administrative Review of the Antidumping Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China (A-570-016)," dated October 2, 2017; see also Pirelli's Letter, "First Administrative Review of the Antidumping Duty Order on Passenger Vehicle and Light Truck Tires from China, A-570-016: Request for Hearing," dated October 10, 2017.

⁵ See the petitioner's Letter, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China (A-570-016)– Petitioner's Withdrawal of Hearing Request," dated February 12, 2018.

⁶ See Memorandum, "Verification of the Questionnaire Responses of Qingdao Sentury Tire Co., Ltd. in the Antidumping Administrative Review of Passenger Vehicle and Light Truck Tires from the People's Republic of China," dated January 26, 2018 (Sentury Sales Verification Report); see also Memorandum, "Verification of the U.S. Sales Questionnaire Responses of Qingdao Sentury Tire Co., Ltd. in the Antidumping Administrative Review of Passenger Vehicle and Light Truck Tires from the People's Republic of China," dated January 26, 2018 (Sentury CEP Verification Report).

⁷ See *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Rescission, in Part; 2015–2016*, 82 FR 42281 (September 7, 2017) (*Preliminary Results*) and accompanying PDM at 11-12.

(Giti Greatwall), Giti Tire (Anhui) Company, Ltd. (Giti Anhui), Giti Tire (Yinchuan) Company, Ltd. (Giti Yinchuan), and Giti Tire (Chongqing) Company, Ltd. (Giti Chongqing) after the *Preliminary Results*.⁸ For these final results, Commerce is collapsing these entities with the Giti Entity. The proprietary discussion of Commerce's decision is included in a separate memorandum.⁹

On January 3, 2018, Commerce postponed the final results until March 6, 2018.¹⁰ Commerce exercised its discretion to toll deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final results of this review is now March 9, 2018.¹¹

III. Scope of the Order

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

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

Prefix designations:

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

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

Suffix letter designations:

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

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

⁸ See *Preliminary Results*, PDM at 12.

⁹ See Memorandum, "Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Collapsing of Giti Tire Global Trading Pte. Ltd. and Affiliated Producers," dated concurrently with the instant memorandum.

¹⁰ See Memorandum, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated January 3, 2018.

¹¹ See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018 (Tolling Memorandum). All deadlines in this segment of the proceeding have been extended by 3 days.

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

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

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

- (1) racing car tires; such tires do not bear the symbol “DOT” on the sidewall and may be marked with “ZR” in size designation;
- (2) new pneumatic tires, of rubber, of a size that is not listed in the passenger car section or light truck section of the Tire and Rim Association Year Book;
- (3) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires;
- (4) non-pneumatic tires, such as solid rubber tires;
- (5) tires designed and marketed exclusively as temporary use spare tires for passenger vehicles which, in addition, exhibit each of the following physical characteristics:
 - (a) the size designation and load index combination molded on the tire’s sidewall are listed in Table PCT-1B (“T” Type Spare Tires for Temporary Use on Passenger Vehicles) of the Tire and Rim Association Year Book,
 - (b) the designation “T” is molded into the tire’s sidewall as part of the size designation, and,
 - (c) the tire’s speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by Tire and Rim Association Year Book, and the rated speed is 81 MPH or a “M” rating;
- (6) tires designed and marketed exclusively for specialty tire (ST) use which, in addition, exhibit each of the following conditions:
 - (a) the size designation molded on the tire’s sidewall is listed in the ST sections of the Tire and Rim Association Year Book,
 - (b) the designation “ST” is molded into the tire’s sidewall as part of the size designation,
 - (c) the tire incorporates a warning, prominently molded on the sidewall, that the tire is “For Trailer Service Only” or “For Trailer Use Only”,

(d) the load index molded on the tire's sidewall meets or exceeds those load indexes listed in the Tire and Rim Association Year Book for the relevant ST tire size, and

(e) either

(i) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by Tire and Rim Association Year Book, and the rated speed does not exceed 81 MPH or an "M" rating; or

(ii) the tire's speed rating molded on the sidewall is 87 MPH or an "N" rating, and in either case the tire's maximum pressure and maximum load limit are molded on the sidewall and either

(1) both exceed the maximum pressure and maximum load limit for any tire of the same size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book; or

(2) if the maximum cold inflation pressure molded on the tire is less than any cold inflation pressure listed for that size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book, the maximum load limit molded on the tire is higher than the maximum load limit listed at that cold inflation pressure for that size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book;

(7) tires designed and marketed exclusively for off-road use and which, in addition, exhibit each of the following physical characteristics:

(a) the size designation and load index combination molded on the tire's sidewall are listed in the off-the-road, agricultural, industrial or ATV section of the Tire and Rim Association Year Book,

(b) in addition to any size designation markings, the tire incorporates a warning, prominently molded on the sidewall, that the tire is "Not For Highway Service" or "Not for Highway Use",

(c) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by the Tire and Rim Association Year Book, and the rated speed does not exceed 55 MPH or a "G" rating, and

(d) the tire features a recognizable off-road tread design.

The products covered by the orders are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.10.10.10, 4011.10.10.20, 4011.10.10.30, 4011.10.10.40, 4011.10.10.50, 4011.10.10.60, 4011.10.10.70, 4011.10.50.00, 4011.20.10.05, and 4011.20.50.10. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.45.10, 4011.99.45.50, 4011.99.85.10, 4011.99.85.50, 8708.70.45.45, 8708.70.45.60, 8708.70.60.30, 8708.70.60.45, and

8708.70.60.60. While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

IV. Discussion of the Issues

Comment 1: Whether to Apply Adverse Facts Available (AFA) to Sentury

Petitioner's Case Brief

- Sentury did not report sales of “green” tires to its affiliate in Thailand as U.S. sales.
- Sentury allocated full labor and energy factors of production (FOPs) to these tires, including all labor and energy from all production steps. Thus, Sentury’s reporting has not treated these tires as “green”, but as tires fully finished in China.
- Commerce should apply total AFA to Sentury because it intentionally withheld information and failed to cooperate to the best of its ability. Intentional conduct, such as withholding or inaccurately reporting information to Commerce is grounds for facts available or AFA in accordance with *Nippon Steel Corp. and Shanghai Taoen Int’l Co.*¹²
- Commerce should initiate an anti-circumvention inquiry, in accordance with 19 CFR 351.225(b), against Sentury to determine if tires from Thailand should be brought into the scope of the orders.

Sentury's Rebuttal Brief

- Sentury properly did not report its sales of non-subject green tires to its Thai affiliate as U.S. sales.
- Commerce verified that all of the tires sold/shipped by Sentury to Thailand were unfinished green tires.
- Sentury fully captured all raw materials, energy, and labor consumed for the production of all products during the POR. This allocation methodology accounts for all consumption for all products, including consumption for the production of all intermediate unfinished green tires.
- Commerce verified all of Sentury’s sales reconciliations, cost reconciliations, and factors of production reporting and noted no discrepancies warranting facts available, let alone total AFA, with respect to any information reported to Commerce in this proceeding.
- All of the record evidence in this proceeding dispels any contention that Sentury was, or is, trans-shipping subject tires through Thailand to the United States. Thus, there is no reason to initiate an anti-circumvention inquiry.

Commerce Position:

Commerce finds that there is no basis to apply facts available (FA) or AFA to Sentury with respect to its sales of green tires to its affiliate in Thailand in these final results.

¹² See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*) and *Shanghai Taoen Int’l Co. v. United States*, 29 CIT 189, 195 (2005) (*Shanghai Taoen*).

Section 776(a)(2) of the Act states that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadline, or in the form or manner requested; (C) significantly impedes a proceeding; or (D) provides such information that cannot be verified, Commerce shall use, subject to sections 782(d) and (e) of the Act, use facts otherwise available in reaching the applicable determination. Moreover, pursuant to section 776(b) of the Act, Commerce may use information that is adverse to the interest of that party when the party fails to cooperate by not acting to the best of its ability in responding to Commerce's request for information.

The record of this review shows that Sentury provided complete information with respect to the sales at issue in its questionnaire response.¹³ As part of the completeness test during verification, we examined Sentury's accounting ledgers and sub-ledgers and identified sales of green tires and other items to its Thai affiliate during the POR.¹⁴ We also verified that Sentury did not sell finished tires to its Thai affiliate. We also obtained a sample commercial invoice and a bill of lading for a green tire shipment to Sentury's Thai affiliate.¹⁵ There is no information on the record indicating that the green tires at issue were actually in-scope finished tires when they were shipped from China, or that the green tires were further processed into finished saleable tires in Thailand. Finally, there is no information on the record to support the petitioner's allegation that Sentury transshipped any subject merchandise to the United States via Thailand. Based on the above analysis, we conclude that there is no basis to rely on FA with respect to the sales of green tires as the record shows that none of the four prongs of section 776(a) of the Act have been met. Because we have not relied on FA with respect to these sales, the question of whether to apply AFA pursuant to 776(b) of the Act to Sentury is moot.

Commerce also finds that the record of this review does not warrant the initiation of an anti-circumvention investigation. As noted previously, we examined Sentury's sales to its Thai affiliate and verified that the items sold were not finished tires; thus, these were not items that could be considered within the scope of the instant administrative review. Additionally, because there is no record evidence that the green tires were further processed into finished saleable tires in Thailand, we find that there is currently no basis to initiate an anti-circumvention inquiry pursuant to section 781(b) of the Act (merchandise completed or assembled in another country).

Comment 2: Whether Commerce Should Grant Sentury a Double-Remedies Adjustment

Sentury's Case Brief

- Commerce should grant CVD offsets to Sentury's AD margin for both domestic pass through subsidies and export subsidies from the companion CVD proceeding.
- Commerce noted in the *Preliminary Results* that Sentury had provided sufficient information to show a subsidies-to-cost link, but had failed to show a cost-to-price

¹³ See Sentury's November 17, 2017 Supplemental Questionnaire Response (Sentury November 17, 2017 Supplemental QR) at Exhibit SQR D-1.

¹⁴ See Sentury Sales Verification Report at 10 and Verification Exhibit 9.

¹⁵ *Id.*

link. Commerce indicated that it would issue a supplemental questionnaire to Sentury following the *Preliminary Results*.

- In responding to the supplemental questionnaire, Sentury provided all of the information requested, and needed, to show the cost-to-price link in its supplemental double-remedies questionnaire response.
- To clearly demonstrate a cost-to-price link (*i.e.*, that Sentury's prices were dependent on changes in COM), Sentury provided the following information:
 1. The minutes of an internal meeting held during the POR, which demonstrate that Sentury granted a price reduction to at least one US customer, based on the analysis of its break-even price (*e.g.*, cost analysis);
 2. Monthly cost assessments for December 2015 and July 2016, which were given by Sentury's financial department to the general manager to facilitate decision making with respect to appropriate pricing;
 3. A comparison showing the price trends for the top ten specifications of subject merchandise exported to the U.S. during the POR by sales volume, and the corresponding price trends for major inputs, which were reported by Sentury in response to the double-remedy supplemental questionnaire;
 4. For all of the customers specifically identified by Commerce in the supplemental double-remedies questionnaire, Sentury provided price lists and relevant price trends during the POR;
 5. Price trend data covering the entire POR, thereby demonstrating the downward trend which is consistent with the price trends in the cost of major raw materials.
- Sentury provided costs-to-price links for all class of customers and all products.
- Commerce did not provide any reason for denying Sentury an offset for the CVD rates linked to export subsidies pursuant to section 772(c)(1)(C) of the Act.
- Sentury was a separate rate respondent in the companion CVD review, and was assigned the all-others CVD rate of 19.84 percent. The CVD all-others calculation memorandum shows that 13.53 percent of that rate was accounted for by export subsidies.
- In the *Final Determination* of the original investigation in this case, Commerce granted offsets for CVD duties related to export subsidies and domestic pass through subsidies.¹⁶
- Commerce should offset Sentury's AD duty rate by the full CVD rates corresponding to the less than adequate remuneration (LTAR) programs. If Commerce needs to make an adjustment to the subsidy rates, it should use the contemporaneous Bloomberg data from the petitioner's October 18, 2017, submission.

Petitioner's Rebuttal Brief

- Sentury has not shown the cost-to-price link for its U.S. sales, Commerce should continue to deny a double-remedies adjustment to Sentury. Section 777A(f)(1)(B) requires that, before Commerce can make any double-remedies adjustment for CVD

¹⁶ See *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, 34897 (June 18, 2015) (*Passenger Tires from China Final Determination*).

- rates, the evidence must demonstrate that the subsidy “reduced the average price of imports of the class or kind of merchandise during the relevant period,”
- Sentury did not provide internal communications that show it considered changes in raw material costs when raw materials when setting tire prices in the United States. Instead, Sentury offered “minutes of an internal meeting”, that it claims demonstrate a price reduction based on the analysis of its break-even price (*e.g.*, cost analysis.)
 - Sentury has not shown that it considered any falling raw materials prices when reducing its tires prices. Sentury has only shown that two events occurred, and failed to provide any evidence that they are linked.
 - Sentury does not specify what law requires Commerce to apply the results from the unfinished concurrent CVD review instead.

Commerce Position:

Commerce has granted an export subsidy adjustment pursuant to section 772(c)(1)(C) of the Act and granted a double-remedies adjustment pursuant to sections 777A(f)(1)(A)-(C) of the Act to Sentury for these final results. In the *Preliminary Results*, Commerce inadvertently did not grant Sentury an export subsidy adjustment. We also determined that while Sentury had satisfied the subsidies-to-cost link for a double-remedy adjustment, it did not demonstrate a cost-to-price link, *i.e.*, that Sentury’s “prices were dependent on changes in the COM.”¹⁷ Commerce also stated in the *Preliminary Results* that we would issue a supplemental questionnaire to Sentury after the *Preliminary Results*.¹⁸ Thus, we did not grant a double-remedy adjustment to Sentury. For these final results, we analyzed the information provided in Sentury’s October 12, 2017 SDRQR,¹⁹ and find that Sentury now satisfies all requirements of sections 777A(f)(1)(A)-(C) of the Act.

Specifically, we have the determined that the record shows that during the period of review Sentury took into account changes in costs when it set prices. Information on the record indicates that Sentury considered its production costs, the prevailing market price, and the expected profit when setting tire prices in the United States. With respect to production costs, Sentury reports that it “primarily considered the purchase price of the major inputs in the past three months, especially for the four main inputs.”²⁰ In addition, Sentury provided cost assessments, “including monthly break-even price data calculated based on cost of sales and relevant expenses.”²¹ To demonstrate the linkage between sales price and the costs of inputs during the POR, Sentury provided a comparison chart “between the price trends in {the} Top 10 specifications of subject merchandise exported to the U.S. during the POR by sales volume, and the price trends in major inputs which were reported by Sentury” in

¹⁷ See Memorandum, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Preliminary Double Remedies Calculation Memorandum,” dated August 31, 2017 (Preliminary DR Memorandum) at 2.

¹⁸ See *Preliminary Results*, PDM at 33.

¹⁹ See Sentury’s October 12, 2017 Supplemental Double Remedy Questionnaire Response (Sentury October 12, 2017 SDRQR).

²⁰ See Sentury’s July 10, 2017 Double Remedy Questionnaire Response at 1-2 (Sentury July 10, 2017 DRQR).

²¹ See Sentury October 12, 2017 SDRQR at 1 and Exhibit DRS-1B.

Sentury's July 10, 2017 DRQR.²² Sentury also provided price trending data for the entire POR that demonstrated a downward trend that is consistent with the trends in the costs of the major raw materials.²³ Commerce verified the reported POR raw material costs and sales price data Sentury relied upon to report these trends and links and noted no discrepancies.²⁴ Finally, Sentury provided an internal communication describing how prices change in response to costs.²⁵ Sentury's cost-to-price link is more fully discussed in the business proprietary final calculation memorandum accompanying this memorandum.²⁶

Based on the record, Commerce finds that Sentury provided adequate information to establish a link between subsidies (the provision of carbon black, nylon cord, synthetic rubber and butadiene, and natural rubber for LTAR), costs and prices. Therefore, Commerce is granting a double-remedy adjustment to Sentury for purposes of these final results of review.

Comment 3: Whether Commerce Should Revise how it Implements any Double-Remedy Adjustment

Petitioner's Case Brief

- Commerce should increase U.S. price by the amount of the double-remedies adjustment instead of reducing the weight-averaged margin by the double-remedies adjustment amount as was done in the *Preliminary Results*.
- Commerce's preliminary methodology is only applicable in investigations and not administrative reviews.
- Increasing U.S. price by the double remedies amount is in accordance with section 772(c)(1)(C) of the Act, Commerce's practice,²⁷ and court rulings.²⁸

Giti's Rebuttal Brief

- While the petitioner argues that Commerce, in making the domestic pass-through adjustment, should apply its practice for administrative reviews in the instant review, it fails to articulate the proper scope of the CVD adjustment or explain how this methodology should be applied.

²² *Id.* at 2 and Exhibit DRS-1C.

²³ *Id.* at 3 and Exhibit DRS-3.

²⁴ See Sentury Sales Verification Report at 11-18 and Verification Exhibits 8, 10, and 12-13d; see also Sentury CEP Verification Report at 4-6 and Verification Exhibits 5 and 16-18.

²⁵ See Sentury's July 10, 2017 DRQR at Exhibit DR-4.

²⁶ See Memorandum, "Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Analysis Memorandum for Qingdao Sentury Tire Co., Ltd., dated concurrently with this memorandum (Sentury's Final Calculation Memorandum).

²⁷ See e.g., *Certain Lined Paper Products from India, Preliminary Results of AD Review*, 82 FR 46764 (October 6, 2017), and accompanying PDM at 12; *Certain Pasta from Italy, Preliminary Results of AD Review*, 81 FR 53404 (August 12, 2016), and accompanying PDM at 9; *Carbozole Violet Pigment 23 from India, Final Results of AD Review*, 75 FR 38076 (July 1, 2010), and accompanying Issues and Decision Memorandum (IDM) at Comment 1; *Certain Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India, Final Results of AD Review*, 73 FR 7252 (February 7, 2008), and accompanying IDM at Comment 1.

²⁸ See *Cooper v. United States*, 217 F. Supp.3d 1373, 1382 (CIT 2017) (explaining that Commerce's practice in reviews differs from investigation practice) and 1383 (in a review "any adjustment will be made to its own EP and CEP starting prices").

- The total CVD offset for Giti, reflecting both export subsidies and domestic pass-through subsidies, should be 22.65 percent based on the countervailable subsidy rates it received during the original CVD investigation.
- Commerce should make changes to Giti’s SAS programming to properly calculate the CVD offset adjustment, and to properly increase the U.S. net price by the CVD offset adjustment.

Sentury’s Rebuttal Brief

- Commerce should grant Sentury CVD offsets to its AD margin for both domestic pass through subsidies and export subsidies identified in the companion CVD proceeding. In so doing, Commerce must accurately deduct the applicable CVD offsets when calculating Sentury’s final AD duty margin. It should also ensure that it deducts these offsets from Sentury’s dumping margin in both the cash deposit and Sentury-specific liquidation instructions.

Commerce Position:

Consistent with its established practice, Commerce has increased U.S. price by the applicable export subsidy and double-remedy adjustment for these final results.²⁹ Also consistent with our practice, we have utilized the final CVD rates from the most recently completed CVD segment of this proceeding to determine the rates to be used as export subsidy and double-remedy adjustments for Giti, Sentury, and the separate rate companies.³⁰

Comment 4: Whether Commerce Should Revise its Calculation of the Irrecoverable Value Added Tax (VAT) Adjustment to U.S. Price

Sentury’s Rebuttal Brief

- The “Interim Regulations” submitted by Sentury states at Article 2.3 that “{f} or taxpayers that export goods, the tax rate shall be zero” and Sentury only paid VAT on its domestic purchases of inputs used to produce subject tires.
- According to the ruling in *Globe Metallurgical Inc.*, “VAT is paid in RMB on an aggregated basis by Respondents to the Chinese authorities ... contrary to Globe’s claim, the record indicates that Chinese law does not require the VAT to be charged to customers on export sales.”³¹
- Any cost associated with VAT is attributable to the initial purchase of the inputs; it does not “arise solely from” and is not “specific to” export transactions. Thus, it is only through exportation that the respondents are entitled to a refund of some VAT amounts previously paid on inputs.

²⁹ See Memorandum, “Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Final Analysis Memorandum for Giti Tire Global Trading Pte. Ltd. and its Affiliates,” dated concurrently with this memorandum (Giti’s Final Calculation Memorandum); see also Sentury’s Final Calculation Memorandum.

³⁰ See *Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2014-2015* dated concurrently with these final results.

³¹ See *Globe Metallurgical Inc. v. United States*, 781 F. Supp. 2d 1340, 1346-1347 (Ct. Int’l Trade 2011).

- By its plain language, section 772(c)(2)(B) of the Act only authorizes Commerce to make a deduction to U.S. price to account for taxes or duties that: (1) are imposed on the exportation of the subject merchandise; and (2) are included in the reported U.S. price of the subject merchandise.
- In accordance with the Court’s finding in *Fine Furniture (Shanghai) Limited, et al*, computing an adjustment based upon the difference between the VAT rates paid and refunded is obviously not the same as computing the actual amount paid if the applicable input VAT rate and refund rate are applied to a different value basis.³²
- In this case, the record shows that the 17 percent VAT input rate used by Commerce is only applied to the value of inputs purchased by Sentury for the production of tires, while the nine percent refund rate is applied to the much higher gross unit price value of the finished merchandise. Thus, eight percent of the gross unit price of the finished tires could equal or exceed the 17 percent VAT amount paid on the cost of material inputs. Therefore, Commerce should recalculate Sentury’s margin without any VAT deduction to U.S. price.
- Commerce’s decision to reduce Sentury’s reported U.S. prices for the allegedly unrefunded eight percent VAT rate is both contrary to the plain language of the statute and unsupported by record evidence.
- Commerce states in its Section C questionnaire that “{i}f VAT was paid on the inputs used to produce the subject merchandise sold to the United States, and a portion of that input VAT was not fully refunded on exportation, report this irrecoverable (un-refunded) input VAT amount here.” Sentury provided complete responses to Commerce’s questions in its Section C questionnaire response regarding VAT.
- Commerce, consistent with its well-established practice, should calculate the VAT deduction based on the FOB price (field FOBUNITUSDU), rather than the gross unit price (GRSUPRU).
- Commerce appears to have incorrectly calculated the applicable VAT offset relying on VAT as a percentage of gross unit price: $VETAXU = (GRSUPRU * VATTAXU)$; whereby VATTAXU is the rate of 8 percent. This deduction mistakenly uses gross unit price rather than FOB price, which Commerce has repeatedly recognized should be used as the basis for the deduction of irrecoverable VAT in PRC cases.
- Commerce should instead use the FOBUNITUSDU field instead of GRSUPRU to calculate the applicable VETAXU (e.g. $VETAXU = (FOBUNITUSDU * VATTAXU)$).
- Commerce applied the VAT deduction to respondent’s FOB price for this calculation in the investigation.³³
- Sentury has reported, and Commerce verified, a transaction-specific FOB price for each sale in its U.S. sales database (FOBUNITUSDU).
- Commerce should adjust the percentage adjustment applied to the FOB price in accordance with the articles of the PRC Circular governing the determination of irrecoverable VAT.

³² See Sentury Case Brief at 10, citing *Fine Furniture (Shanghai), Ltd. v. United States*, 2016 Ct. Intl. Trade LEXIS 85, 11-15 (September 9, 2016) (*Fine Furniture (Shanghai) Limited, et al*).

³³ See *Preliminary Results*, PDM at 26; see also Memorandum, “Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Preliminary Analysis Memorandum for Qingdao Sentury Tire Co., Ltd.,” dated August 31, 2017 at 3.

- Sentury has provided Commerce with all of this information necessary to calculate irrecoverable VAT on a line item (OBS) specific basis.
- Commerce should rely on the following formula for determining the percentage to apply should be $(\text{FOB unit price}) \times (17 \text{ percent} - 9 \text{ percent} = 8 \text{ percent}) - (\text{FOB unit price}) \times (\text{a company specific expected/planned allocation rate}) \times (17 \text{ percent} - 9 \text{ percent} = 8 \text{ percent})$ or $\text{Irrecoverable VAT} = (\text{FOB unit price}) \times (1 - \text{company specific expected/planned allocation rate}) \times (17 \text{ percent} - 9 \text{ percent} = 8 \text{ percent})$ for the final results.
- Commerce should also properly adjust the percentage applied to FOB price in accordance with the articles of the PRC Circular governing the determination of irrecoverable VAT (*i.e.*, $\text{FOBUNITUSDU} \times (1 - \text{planned allocation rate}) \times (17 \text{ percent} - 9 \text{ percent} = 8 \text{ percent})$)).
- Commerce should use the FOB value for the VAT deduction to the U.S. price because Commerce verified what appears to be identical information provided in *New Pneumatic Off the- Road Tires*.³⁴

Giti's Case Brief

- For the final results, Commerce should rely on Giti's actual reported VAT expense to calculate the irrecoverable VAT that Giti reported its actual VAT expenses, which comply with Chinese VAT regulations, in its initial Section C and supplemental questionnaire responses.
- Giti reported that its export sales used materials from bonded warehouses. Commerce has previously determined that the VAT adjustment calculation must take into account the value of bonded raw materials in the calculation, as determined by Chinese VAT regulations.
- In *PET Film from China*, which is similar to the instant case, Commerce did not make a deduction for irrecoverable VAT because the vast majority of the respondent's raw materials used to produce the subject merchandise were imported under bond.³⁵
- Similar to the respondent in *PET Film from China*, Giti is required by the Chinese tax authority to trace the bonded raw materials separately from non-bonded raw materials and is subject to periodic audits by tax authorities.
- Giti has tied the actual amount of irrecoverable VAT, including the adjustment for bonded raw materials, to each plant's actual VAT declaration forms in its Supplemental Section C response.³⁶
- If Commerce continues to rely on nominal VAT rates to calculate the irrecoverable VAT adjustment to U.S. price, it should apply that adjustment to Giti's FOB China price rather than to EP or CEP.³⁷

³⁴ See *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Rescission of New Shipper Review; 2015-2016*, 82 FR 46965 (October 10, 2017) and accompanying PDM at 23-24.

³⁵ See *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments and Partial Rescission of Review; 2012-2013*, 79 FR 72166 (December 5, 2014) (*PET Film from China*).

³⁶ See Giti's July 7, 2017 Supplemental Section C Questionnaire Response, Part 1 at Exhibits 23 and 24.

³⁷ See, e.g., *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 51607 (November 7, 2017) (*Activated Carbon from China*);

- The FOB China price reported by Giti is the most reliable basis for calculating irrecoverable VAT for CEP sales because using entered value would be incorrect and unreliable.

Petitioner's Rebuttal Brief

- Sentury incorrectly states that Commerce cannot adjust a respondent's price for irrevocable VAT. Commerce has previously rejected this argument in *Activated Carbon from China*³⁸ and in the *Preliminary Results* of the instant administrative review.
- Sentury's argument of applying VAT adjustments based on FOB prices instead of gross U.S. prices is also erroneous. In *Activated Carbon from China*, Commerce used estimated customs value to calculate the VAT adjustment when the reported entered values did not represent commercial values for export. In this case, Sentury has never explained what the "FOBUNITUSDU" values it reported in Sentury's database represent, and they do not represent commercial export values.
- Commerce has previously rejected claims about bonded inputs when the company's bonded imports were not specific to the subject merchandise. Commerce's practice of rejecting such non-product specific adjustments is based on 19 CFR 351.401(c), which requires that price adjustments that are "reasonably attributable to the subject merchandise."
- Giti's reliance on *PET Film from India* is erroneous because, as they acknowledge, Commerce granted the adjustment in *PET Film from India* because "the vast majority" of the materials used in the subject merchandise were bonded.

Commerce Position:

We have calculated the irrecoverable VAT adjustment using each company's FOB China price for these final results. Pursuant to section 772(c)(2)(B) of the Act, the price used to establish EP and CEP shall be reduced by "the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States." We agree with Giti and Sentury that the irrecoverable VAT percentage should be applied to each company's reported FOB China value. The "Notice of the Ministry of Finance and the State Administration on VAT and Consumption Tax Policies for Exported Goods and Labor Services," CAISHUI (2012) No. 39 (Circular), stated that the amount of VAT refund is calculated on the basis of the actual FOB value of the exported goods and labor services. Therefore, we are calculating the irrecoverable VAT amount by applying the irrecoverable VAT percentage to the FOB China value, as reported by the Giti and Sentury, consistent with our practice.

Potassium Permanganate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014, 81 FR 58476 (August 25, 2016); *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*; 2012-2013, 79 FR 61291 (October 10, 2014); *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).

³⁸ See *Activated Carbon from China* at Comment 1.

Our irrecoverable VAT calculation methodology, consists of performing two basic steps: (1) determining the irrecoverable VAT on subject merchandise, and (2) reducing U.S. price by the amount determined in step one. Information placed on the record of this review by Giti and Sentury indicates that, according to the PRC VAT schedule, the standard VAT levy on the subject merchandise is 17 percent and the VAT rebate rate for the subject merchandise is nine percent.³⁹ For the final results, therefore, we removed from the U.S. price the amount calculated based on the difference between these rates (*i.e.*, eight percent) applied to the export sales value, consistent with the definition of irrecoverable VAT under Chinese tax law and regulation.

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

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

With regard to Giti, the facts of this review are similar to those of the *Fine Furniture (Shanghai) Limited, et al.* In both cases, the respondents have argued that we should calculate the irrecoverable VAT adjustment based on transfer prices to a collapsed affiliate because these transfer prices served as the actual base used by the Chinese government to calculate VAT liability. We are limiting the irrecoverable VAT adjustment to the amount of VAT imposed by the exporting country on the exportation of the subject merchandise to the United States. In the remand redetermination issued pursuant to *Fine Furniture (Shanghai) Limited, et al.*, we agreed with the U.S. Court of International Trade that it was more appropriate to focus on tax neutrality rather than determining what taxes the Chinese government should have imposed.⁴⁰ As a result, on remand Commerce used Fine Furniture's transfer price to its collapsed affiliate to calculate the irrecoverable VAT adjustment.

In the instant review, the record shows that Giti used the FOB price between its factories and its affiliate to calculate its VAT liability to the Chinese government.⁴¹ Moreover, there is no evidence that these prices are unreliable, as alleged by the petitioner. Therefore, we are relying on the FOB price between its factories and its affiliate Giti Global Trade to calculate the irrecoverable VAT deduction.

³⁹ See Giti's SCQR at 52 and Exhibit 26; see also Sentury's SCQR at 42 and Exhibits C-8B and C-8C.

⁴⁰ See *Fine Furniture (Shanghai) Limited, et al., v. United States* Consol. Court No. 14-00135 (CIT September 9, 2016) Final Results of Redetermination Pursuant to Court Order at 8 (August 28, 2017).

⁴¹ See Giti Case Brief at 6,

For both Giti and Sentury, record evidence does not support the contention that all of the bonded materials that were exempted from input VAT were actually used in the production of subject merchandise. In addition, neither respondent could demonstrate that the materials entered under bonded warehouse, or the “bonded ratio,” was calculated for subject merchandise only. The available record information was insufficient for us to be able to tie the “bonded ratio” to the calculation of the U.S. price of subject merchandise and the non-funded percentages to amounts reported in those companies’ VAT returns. Therefore, for the final results, we are not making a bonded material adjustment for the irrecoverable VAT deduction.

Comment 5: Whether Commerce Should Correct Sentury’s Reporting of Early Payments (EARLPYU)

Sentury’s Case Brief

- Commerce should correct Sentury’s over-reporting of early payment discount for CEP sales in its U.S. sales database.
- Commerce found and verified this error in the course of the CEP verification.

Petitioner did not comment on this issue.

Commerce Position:

We verified that Sentury over-reported its early payment discount (EARLPYU) for the CEP sales and will adjust its EARLPYU variable for the final results.⁴²

Comment 6: Whether Commerce Should Re-Calculate Giti’s Market Economy Purchase (MEP) Values and Volumes

Giti’s Case Brief

- Commerce departed from its normal practice when it erroneously discarded affiliated MEP prices from affiliates that were higher than MEP prices from unaffiliated parties from its calculation.⁴³

Petitioner did not comment on this issue.

Commerce Position:

We have continued to disregard Giti’s MEPs from affiliates when the prices of the MEPs failed the arms-length test for these final results. Specifically, consistent with the *Preliminary Results*, Commerce has excluded Giti’s MEPs from affiliated parties when the prices were outside the 98 percent to 102 percent range of unaffiliated prices. Because the MEPs at issue failed the arm’s-length test, we did not use the prices or the volume of these MEPs in our calculation of normal value.⁴⁴

⁴² See Sentury Final Calculation Memorandum.

⁴³ See Giti Case Brief at 11.

⁴⁴ See Commerce Memorandum, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Preliminary Surrogate Value Memorandum,” dated August 31, 2017 at Attachment 1.

As stipulated in 19 CFR 351.408(c)(1), where a factor is produced in market economy (ME) countries, purchased from ME suppliers and paid for in ME currencies, Commerce normally will use the MEP price to value an FOP if its MEP volume is not less than 85 percent of total volume consumed in the production of subject merchandise, or will weight average the MEP price and surrogate value (SV) by their respective quantities.

Also, in the *MEP Final Rule*,⁴⁵ responding to comment of “Criteria for When the Department Will Accept a Respondent’s Market Economy Purchases,” Commerce stated that will not use MEP prices from countries that maintain broadly available, non-industry-specific export subsidies (*i.e.*, India, Indonesia, South Korea, and Thailand), nor will we use the MEP prices from affiliated purchases not made at arm’s-length.

Further, in the arm’s-length test, Commerce compares the weighted-average price of transactions between affiliated parties (affiliated price) to weighted-average price of transactions between unaffiliated parties (unaffiliated price), and has established a range, *i.e.*, between 98 percent and 102 percent inclusive, into which the ratio of affiliated price to unaffiliated price must fall, in order for transactions between affiliated parties to be included in the normal value calculation.⁴⁶

Finally, Giti has cited to no support for its contention that Commerce’s practice is to use MEPs when the price from the affiliate is above the established range for arm’s-length prices. Moreover, Giti’s contention that Commerce used prices for MEPs from affiliates in the underlying investigation, is unsupported by fact. In the investigation, we did not use any prices for MEPs from affiliates when the prices at issue were failed the arms-length test.⁴⁷

Accordingly, in the *Preliminary Results*, Commerce excluded Giti’s MEPs from affiliated parties when affiliated prices were not between 98 percent and 102 percent of unaffiliated prices. Because those MEPs failed the arm’s-length test, we accepted neither price nor volume for the normal value calculation. We made no change in the final results.

Comment 7: Whether Commerce Should Change the Thai Harmonized Tariff Schedule (HTS) Codes Used for Two Giti Compound Rubber Inputs

Giti’s Case Brief

- Commerce used an incorrect Thai HTS code, 4005.10, for two of Giti’s compound rubber inputs, CR-SMR 10 and CR- SMR 20. The record shows that the Thai HTS code covers rubber compounded with carbon black or silica. Neither CR-SMR 10 or

⁴⁵ See *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013) (*MEP Final Rule*) at Comment 5: *Criteria for When the Department Will Accept a Respondent’s Market Economy Purchases*.

⁴⁶ See, *e.g.*, *Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 68341 (December 3, 2004) (unchanged in Final Results, 70 FR 18366 (April 11, 2005) and accompanying Issues and Decision memorandum).

⁴⁷ See *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 (June 18, 2015) and accompanying IDM at 43.

CR- SMR 20 rubber contains carbon black or silica. The record shows that the appropriate Thai HTS code is HTS 4005.99.⁴⁸

- Commerce used HTS 4005.99 as the SV for CR-SMR 10 in the investigation.⁴⁹

Petitioner did not comment on this issue.

Commerce Position:

The record of this review shows that Giti's CR-SMR 10 and CR- SMR 20 rubber do not contain carbon black or silica, as is required for merchandise covered by Thai HTS code 4005.10. Therefore, for the final results, we will value Giti's CR-SMR 10 and CR-SMR 20 FOPs using the Thai HTS code 4005.99.⁵⁰

Comment 8: Whether Commerce Should Re-Calculate Certain Surrogate Values Used for Giti in the Preliminary Results

Giti's Case Brief

- Commerce should recalculate GTA-based surrogate values for Giti's material inputs using only GTA source data denominated in Thai baht for the 19-month period covering the entire POR.⁵¹ This data is also already on the record.⁵²

Petitioner's Rebuttal Brief

- Commerce was fully justified in limiting its surrogate value calculations to the 18 months fully covered by this review because the instant POR started January 27, 2015, meaning that the vast majority of the Thai imports for January 2015 would have taken place outside the POR.⁵³
- Including the full January data would make the surrogate values less representative of the period covered by this review.

Commerce Position:

We have continued to use GTA-based surrogate values for Giti's material inputs using only GTA source data for the 19-month period covering the entire POR for these final results.⁵⁴ However, we have rerun the GTA data to use imports denominated in Thai baht.⁵⁵

⁴⁸ See Giti's February 24, 2017 Section D Questionnaire Response at Exhibit 10.

⁴⁹ See Giti Case Brief at 13, and *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 (June 18, 2015) at Final Surrogate Value Memorandum.

⁵⁰ See Memorandum, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Surrogate Value Memorandum," dated concurrently with this memorandum (Final SV Memorandum).

⁵¹ See Giti Case Brief at 14.

⁵² *Id.* at 15.

⁵³ See Petitioner's Rebuttal Brief at 21.

⁵⁴ See Final SV Memorandum.

⁵⁵ *Id.*

Comment 9: Whether Commerce Used the Best Information Available to Value Truck Freight

Sentury's Case Brief

- In the *Preliminary Results*, Commerce did not explain its rationale in finding the data published by the Comptroller General Department, Government of Thailand (GOT) and by PTT Public Company Limited (formerly known as Petroleum Authority of Thailand) (PTT) to be “actual cost and a broad-market average” for valuing truck freight. Commerce’s cursory analysis is unsupported by the source document which does not provide details on the methodology that GOT/PTT used to collect the underlying data.⁵⁶
- Commerce should follow its well-established practice and value truck freight based on the World Bank’s *Doing Business in Thailand 2017* report.
- The World Bank’s *Doing Business in Thailand 2017* report contains an alternative robust surrogate value data source, which has been applied in hundreds of Chinese AD proceedings and also affirmed by the Court. More importantly, it contains the exact methodology followed by the World Bank team for collecting truck freight data for exporting a 20-foot container load of goods (from Bangkok city to Laem Chabang seaport) from numerous stakeholders. As result, it is based on actual cost as well as satisfies the broad market average criteria.

Petitioner's Rebuttal Brief

- Commerce has explained that it “makes an independent determination of what constitutes the ‘best available information’ during each segment of a proceeding based on the information available on the record,”⁵⁷ and “makes SV determinations based on the record information before it, ... {and such a SV determination} is not contrary to law but, instead, consistent with the statute and our practice to value FOPs using the best available information on the record.”⁵⁸
- Sentury did not challenge the Commerce’s finding that the GOT/PTT data was the best information on this record as it “represents actual cost and a broad-market average.” Nor did it cite to any instance in which Commerce determined the World Bank data to be superior to the GOT/PTT data.
- Commerce’s use of the World Bank data in other proceedings is irrelevant to its decision on this record. Commerce should continue to use the selected surrogate value for freight as it is the best information on this record

Commerce Position:

We continue to find that the inland freight data published by the GOT/PTT is the best information on the record and have continued to use this data to value inland freight for these final results.

⁵⁶ See Sentury Case Brief at 31.

⁵⁷ See *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 71 FR 34893 (June 16, 2006) and accompanying IDM at Comment 1.

⁵⁸ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2014-2015*, 81 FR 62717 (September 12, 2016) and accompanying IDM at Comment 5.

We disagree with Sentury’s contention that the GOT/PTT data does not explain the methodology used to compile the underlying data. We note that the GOT/PTT “table of Transportation cost for Construction Materials For 6-wheel trucks (of which the total load is less than 15 tons) For a price of diesel fuel between 20-69.99 Baht per liter,” shows published truck rates on a per kilometer basis up to 200 kilometers and provided a truck rate calculation for 500 kilometers.⁵⁹ In addition, the report specified fuel prices (*i.e.*, 26.00-26.99 Baht per liter) for which those rates are valid.⁶⁰ Thus, the table provides ample evidence that of the GOT/PTT’s methodology takes into account several factors that affect freight rates including multiple distance and a range of fuel costs. In contrast, the Doing Business report on the record provides a single rate covering one distance *i.e.*, from Bangkok city to Laem Chabang seaport.⁶¹

As all parties acknowledge, using the best available information on the record of a particular proceeding is the established practice that Commerce follows to value factors of production. Thus, Sentury’s argument that we should have determined that the Doing Business publication was the best available information for valuing truck freight on the record of this review because it is our normal practice is inapposite. While we have used the World Bank’s Doing Business Report to value truck freight in many reviews, we did so because we had determined that it was the best information on the record in each of those proceedings.⁶² As noted above, the GOT/PTT data provides rates for multiple distances while the Doing Business report on the record provides a single data point. Moreover, we note that Commerce has used other sources for truck freight even when the Doing Business Report was also on the record. Specifically, in the *Solar Cell China* 14-15 AR,⁶³ Commerce valued the truck freight using a report from Thailand’s Office of Transport and Traffic Policy and Planning entitled “Strategic Development of Transport Infrastructure in Thailand Year 2015-2022” rather than the Doing Business Report that was on the record.⁶⁴

Comment 10: Whether Commerce Should Correct Giti’s Packing Labor Calculation

Giti’s Case Brief

- Commerce should include packing labor as part of the PACKING calculation rather than as part of its LABOR calculation.

⁵⁹ See the petitioner’s Letter, “Passenger Vehicle and Light Truck Tires from the People’s Republic of China – Petitioner’s First Surrogate Value Submission,” dated April 28, 2017 (the petitioner April 28, 2017 SV submission) at Attachment 9.

⁶⁰ *Id.*

⁶¹ See the petitioner April 28, 2017 SV submission at Attachment 9.

⁶² See *e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2015–2016*, 83 FR 1018 (January 9, 2018).

⁶³ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014–2015*, 81 FR 93888 (December 22, 2016) (*Solar Cells from China 14-15 AR*), and accompanying PDM at 25 (unchanged in the Final Results).

⁶⁴ See *Solar Cells from China 14-15 AR*, PDM at 25-26.

Petitioner did not comment on this issue.

Commerce Position:

We agree with Giti. For the final results, we are including packing labor as part of the packing calculation, as opposed to the labor calculation.⁶⁵

Comment 11: Whether Commerce Should Grant Separate Rate Status to Shandong Hongsheng Rubber Co. Ltd. (Hongsheng), Poplar Tire International Co. Ltd. (Poplar), and Qingdao Yongdao, International Trade Co. (Yongdao)

Hongsheng/Poplar/Yongdao (Hongsheng et al) Case Brief

- The rejection of the separate rate applications (SRAs) of Hongsheng *et al* merely on the grounds that request for review was not filed is incorrect considering that section 751(a)(1)(B) of the Act does not provide for this separate rate process as part of an administrative review.
- The Court in *Hubbel* and *Sigma* has treated the review process of administratively examining sales and the separate rate process as two distinct inquiries, and thus, Commerce must base its separate rate analysis on the record evidence specific to the question of whether the company is subject to state control.⁶⁶
- In accordance with the Court’s ruling in *Decca*, Hongsheng *et al* should be viewed as interested parties with respect to this administrative review.⁶⁷ Thus, Commerce was required under those circumstances to give notice to each interested party of filing deadlines.
- Hongsheng *et al* timely submitted separate rate applications and Commerce has not stated that there was any defect in the applications.
- Commerce has not made a finding that Hongsheng, Yongdao, or Poplar failed to rebut the presumption of state control or that Hongsheng, Yongdao, or Poplar failed to cooperate. Thus, Commerce cannot use its decision to avoid a separate rate analysis.

Petitioner’s Rebuttal Brief

- Section 751(a)(2) of the Act makes clear that in administrative reviews only “if a request for such a review has been received and after publication of notice of such review in the Federal Register” will Commerce “review, and determine...the amount of any antidumping duty” for entries during that period.
- In the *Initiation Notice*, Commerce specifically explained that its separate rate instructions were for “entities for whom a review was requested.”⁶⁸

⁶⁵ See Giti Final Calculation Memorandum.

⁶⁶ See *Hubbell Power Sys., Inc. v. United States*, 884 F. Supp. 2d 1283, 1292 (CIT 2012) (*Hubbell*); see also *Sigma Corp v. United States*, 117 F.3d 1401, 1405-06 (Fed. Cir. 1997) (*Sigma*).

⁶⁷ See *Decca Hospitality Furnishings, LLC v. United States*, 29 CIT 920, 927-929; 391 F. Supp. 2d 1298 (2005) (CIT 2005) (*Decca Hospitality Furnishings, LLC*).

⁶⁸ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 71061, 71062 (October 14, 2016) (*Initiation Notice*).

- No party requested a review of Hongsheng, Poplar, or Yongdao and Commerce did not initiate a review of these exporters.
- The courts have been clear in *Consolidated Bearings Co.*, *Parkdale International*, *Snap-on, Inc.*, and *ITT Indus., Inc.*, that a party not covered by a review does not receive the rates established in that review.⁶⁹
- As the statute and the courts have made clear, Hongsheng *et al* “have no statutory entitlement” to any new rate, as they failed to follow the statutory and regulatory requirements to timely request and participate in an administrative review.
- Hongsheng *et al*’s reliance on *Decca Hospitality Furnishings* is wholly misplaced because that case concerned the opportunity for an exporter in an investigation to submit evidence.⁷⁰ In an investigation, all exporters are under examination and are affected by the determination, but not so in an administrative review.
- Exporters not initiated on do not face the possibility of individual examination. But if those un-reviewed exporters are able to gain access to the all-others rate in a review by simply filing a separate rate application, they would not risk having their own dumping activity reviewed.

Commerce Position:

Commerce continues to find that Hongsheng, Yongdao, and Poplar do not qualify for a separate rate in this administrative review. Hongsheng *et al* have no statutory entitlement to a rate determined in this administrative review, as each company failed to follow the statutory and regulatory requirements to timely request and participate in an administrative review. As the respondents acknowledge, it is Commerce’s responsibility to establish clear deadlines for the administrative process. We note that Commerce publishes a notice in the anniversary month of each order to give interested parties an opportunity to request an administrative review. In the instant administrative review, Commerce published a notice on August 5, 2016 informing parties which stated, “{o}ppportunity to request a review: Not later than the last day of August 2016, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods...” for the January 27, 2015, through July 31, 2016 POR of this case.⁷¹ All parties to this review concede that Hongsheng, Yongdao, and Poplar did not self-request an administrative review and that no other party requested an administrative review of any of these three companies within the established deadline.⁷²

⁶⁹ See e.g., *Consolidated Bearings Co. v. United States* 348 F.3d 997, 1005–06 (Fed. Cir. 2003) (*Consolidated Bearings Co.*); *Parkdale International v. United States* 30 C.I.T. 551, 562 (2006), *aff’d*, 475 F.3d 1375 (Fed. Cir. 2007) (quoting *Consolidated Bearings Co.*) (*Parkdale International*); and *United States v. ITT Indus., Inc.*, 28 C.I.T. 1028 (2004) (*ITT Indus., Inc.*).

⁷⁰ See, e.g., *Decca Hospitality Furnishings, LLC v. United States*, 391 F. Supp. 2d 1298 (CIT 2005); *Consolidated Bearings Co. v. United States*, 348 F.3d 997, 1005–06 (Fed. Cir. 2003); *Parkdale International v. United States*, 429 F. Supp 2d 1324, 1334 (CIT 2006), *aff’d*, 475 F.3d 1375 (Fed. Cir. 2007) (quoting *Consolidated Bearings Co.*); and *United States v. ITT Indus., Inc.*, 343 F. Supp. 2d 1322 (CIT 2004).

⁷¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 81 FR 51850, 51851 (August 5, 2016).

⁷² See Hongsheng *et al*’s Case Brief at 13; see also Petitioner’s Rebuttal Brief at 3.

In addition, we note that the “Separate Rates” section of the *Initiation Notice* states that “{a}ll firms listed below (*i.e.* the firms listed under the ‘Initiation of Reviews’ section of the notice) that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below.”⁷³ We note again that none of these entities were listed as being initiated on for the 2015-2016 administrative review of the instant case.

Commerce also disagrees with Hongsheng *et al*’s reliance on *Decca Hospitality Furnishings*. As noted by the petitioner, *Decca Hospitality Furnishings* concerned an investigation where all exporters were considered to be under examination. Thus, all separate rate applications were examined. In an administrative review, the Courts have interpreted section 751(a)(2) of the Act to limit the application of the final results of an administrative review to those entities covered by the review.⁷⁴ As noted previously, none of these exporters were subject to the 2015-2016 administrative review of this case. Therefore, we continue to find that these entities cannot qualify for separate rate status in this review nor should we review Hongsheng, Yongdao and Poplar’s separate rate applications.

Comment 12: Whether Commerce Should Grant Separate Rate Status to Shandong Yongtai Group Co., Ltd.’s (Yongtai Group) and Shandong Yongtai Chemical Co., Ltd. (Yongtai Chemical)

Yongtai Group’s Case Brief

- Yongtai Group’s separate rate application clearly covered both its current name (Yongtai Group) and its former name (Yongtai Chemical).
- Yongtai Group included Yongtai Chemical’s business license and its foreign trade operator license. Therefore, Commerce has sufficient information on the record to grant separate rate status to both the current and former entity names.
- Yongtai Group used the exact same terminology (*i.e.* Shandong Yongtai Group Co., Ltd. formerly known as Shandong Yongtai Chemical Co., Ltd.) in its request for separate rate status as Commerce used in its *Initiation Notice*; therefore, Commerce should not treat the request as a request for only the current name of the company.
- Yongtai Group submitted a separate rate application instead of separate rate certificate for Yongtai Chemical because Commerce’s instructions in the separate rate certification state that all companies that had a name change are required to submit a separate rate application.
- To the extent that Commerce expected that Yongtai Group should have listed Yongtai Chemical in response to Question 2, Section II of the separate rate application, (“whether the applicant is identified by any *other* names, such as trade names or ‘doing-business-as’ (‘d.b.a’) names)” the phrasing of the question indicates that it would be unnecessary to list the name again in response because Yongtai Chemical is not a trade name or d.b.a. name – it was the official company name.

⁷³ See *Initiation Notice*, 81 FR 71061, 71062.

⁷⁴ See, *e.g.*, *Decca Hospitality Furnishings*, 391 F. Supp. 2d at 1298.

- Although the name was changed in the business license on a date a few days prior to the period of review, Yongtai Group did not fully discontinue use of the old name at that time.
- Commerce has previously granted separate rate status to names that were officially changed prior to a review period but which continued to be used in sales documentation and entry documents during the period of review.⁷⁵

Petitioner did not rebut this comment

Commerce Position:

Commerce will continue to only grant the separate rate status to the Yongtai Group. The record of this review shows that the Yongtai Group submitted a separate rate application that states that its former name was Yongtai Chemical. However, the Yongtai Group did not submit any documentation in its application showing its former name was Yongtai Chemical or regarding the purported name change. While the Yongtai Group's separate rate application had sufficient information to grant the Yongtai Group a separate rate, it provided no details with respect to Yongtai Chemical. Therefore, there is insufficient information on the record for Commerce to examine whether the Yongtai Group is the successor-in-interest of Yongtai Chemical such that the separate rate eligibility of the Yongtai Group could also apply to entries entered under the Yongtai Chemical name.⁷⁶ Finally, the Yongtai Group's interpretation of Question 2 in Section II of the separate rate application is erroneous. As noted by the Yongtai Group, the application states "whether the applicant is identified by any *other* names, such as trade names or 'doing-business-as' ('d.b.a') names." The key to that statement is "such as," meaning that trade names or dba names are just examples of the type of names a company could list. The Yongtai Group could have listed Yongtai Chemical in response because it states in the application that it was still using the name Yongtai Chemical during a portion of the POR. Since the Yongtai Group did not provide a certification of the name change, include Yongtai Chemical in response to Question 2 in Section II of the separate rate application, or provide sufficient information to conduct a successor-in-interest analysis, Commerce has no basis to grant a separate rate to Yongtai Chemical.

We also disagree with the Yongtai Group's argument that simply listing the former name "Yongtai Chemical" in its SRA and review request provides sufficient information for Commerce to grant Yongtai Chemical a separate rate or perform a successor-in-interest analysis. As noted above, the information in the Yongtai Group's SRA was sufficient to

⁷⁵ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 55800 (September 11, 2012), and accompanying IDM at Comment 9 (granting separate rate status to iterations of various company names) (*Shrimp from Vietnam*).

⁷⁶ When determining if one company is the successor-in-interest to another, Commerce examines a number of factors including, but not limited to, changes in management, production facilities, supplier relationships, and customer base. See, e.g., *Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp from Thailand*, 75 FR 61702, 61703 (October 6, 2010) (*Shrimp from Thailand Preliminary Results*) (unchanged in *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp from Thailand*, 75 FR 74684 (December 1, 2010) (*Shrimp from Thailand Final Results*)).

grant the Yongtai Group a separate rate. However, the Yongtai Group's SRA provided no such support with respect to Yongtai Chemical. Therefore, the Yongtai Group's SRA cannot serve as the basis for granting Yongtai Chemical a separate rate.

The Yongtai Group's reliance on *Shrimp from Vietnam* in the instant case is misplaced. In that case, the respondents argued that Commerce erred by omitting the names of various respondents' affiliates from the draft U.S. Customs and Border Protection instructions as well from the preliminary *Federal Register* notice even though Commerce stated that it would grant those affiliates separate rate status.⁷⁷ The respondents in question requested that Commerce correct in the final results its omission of the affiliates (to whom Commerce stated that it would grant separate rate status) from the draft U.S. Customs and Border Protection instructions and *Federal Register* notice. Commerce agreed with the respondents in *Shrimp from Vietnam* and corrected the omissions in the final results.⁷⁸ In the instant case, we did not erroneously deny Yongtai Chemical a separate rate or omit its name in the *Preliminary Results*. As we explained previously, we only granted a separate rate Yongtai Group. Because Yongtai Group has not identified any record information that would allow Commerce to determine that Yongtai Chemical merits a separate rate or whether Yongtai Group is the successor-in-interest of Yongtai Chemical, we continue to find that it is not appropriate to grant a separate rate to Yongtai Chemical.

Comment 13: Whether Commerce Should Grant Separate Rate Status to Pirelli Tyre Co., Ltd. (Pirelli Tyre)

Pirelli Tyre's Case Brief

- Pirelli Tyre should be granted a separate rate for the nine months of the POR prior to China National Chemical Corporation's (Chem China) investment in Pirelli Tyre S.p.A. (Pirelli Tyre's owner) Prior to that investment, Pirelli Tyre S.p.A. was an Italian corporation, traded on the Milan stock exchange, and managed by Italian nationals.
- Prior to the ownership change on October 20, 2015, Pirelli Tyre was owned by the same entities and individuals that were listed in the SRA filed in the underlying investigation in which Commerce granted Pirelli Tyre a separate rate.
- Pirelli Tyre's SRA requested that Commerce grant Pirelli Tyre two different rates during the POR, one for the portion of the POR that was pre-Chem China investment in Pirelli S.p.A., and one for the portion of the POR that was post-Chem China investment in Pirelli S.p.A.
- In accordance with *Shrimp from Thailand*, there is regulatory and administrative precedent for Commerce to calculate different rates during a POR to reflect changes in ownership structure or business affiliation.⁷⁹
- Commerce's preliminary determination only found that Chem China had *de facto* control because of the new shareholder structure towards the end of the POR where

⁷⁷ See *Shrimp from Vietnam* IDM at Comment 9.

⁷⁸ *Id.*

⁷⁹ See *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012-2013*, 79 FR 51306 (August 28, 2014) and accompanying IDM at Comment 8 (*Shrimp from Thailand*).

Chem China had the ability to appoint Pirelli's management and its board of directors.

Petitioner's Rebuttal Brief

- Pirelli Tyre does not argue that Commerce should grant it a separate rate for any period after Chem China's purchase of Pirelli S.p.A. Thus, Pirelli Tyre has not rebutted the presumption of *de facto* government control.
- Pirelli Tyre failed to provide evidence addressing its ownership prior to Chem China's purchase of its owner, Pirelli S.p.A. Therefore, Commerce should not grant Pirelli Tyre a separate rate for any part of the POR.
- The fact that Commerce granted a separate rate in a prior segment to Pirelli Tyre does not mean that the respondent is therefore automatically entitled to a separate rate in a later segment. Each segment concerns the record and evidence on separate record, and NME respondents must show their eligibility on the evidence they provide on that record.⁸⁰

Commerce Position:

We continue to find that Pirelli Tyre does not qualify for a separate rate for these final results. In proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.⁸¹ Commerce's policy is to assign all exporters of merchandise under consideration that are 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.⁸² Commerce analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*⁸³ as amplified by *Silicon Carbide*,⁸⁴ and further refined in *Diamond Sawblades*.⁸⁵ According to this separate rate test, Commerce will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities.

⁸⁰ See, e.g., *Peer Bearing Co.-Changshan v. United States*, 32 C.I.T. 1307, 1309-10 (2008).

⁸¹ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (September 24, 2008).

⁸² See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*).

⁸³ *Id.*

⁸⁴ See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

⁸⁵ See *Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China (May 6, 2013) in Advanced Technology & Materials Co., Ltd. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012), sustained, *Advanced Technology & Materials Co. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), aff'd, Case No. 2014-1154 (Fed. Cir. 2014). This remand redetermination is on the Enforcement and Compliance website at <http://enforcement.trade.gov/remands/12-147.pdf>; see also *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*; 2011-2012, 78 FR 77098 (December 20, 2013) and accompanying PDM at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2011-2012, 79 FR 35723 (June 24, 2014) and accompanying IDM at Comment 1.

Commerce preliminarily determined that Pirelli Tyre did not qualify for separate rate status because there was *de facto* Chinese government control over the company through Chem China's ownership of Pirelli S.p.A.⁸⁶ As noted above, Commerce will only grant separate rate status to entities that can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. Because Pirelli Tyre did not meet both criteria, under the tests established in *Sparklers*, *Silicon Carbide*, and *Diamond Sawblades*, it does not qualify for a separate rate.⁸⁷

Commerce has also denied Pirelli Tyre's "request" for a separate rate during the period before Chem China's acquisition of Pirelli S.p.A. in October 2015. As an initial matter, Pirelli Tyre did not provide complete ownership information for the early part of the POR so its claim that its ownership structure prior to October 2015 was the same as its ownership structure during the underlying investigation (where Commerce granted it a separate rate) is not supported by the instant record. (We note that question 1 under Section IV of our separate rate application instructs applicants to provide complete information on their intermediate and ultimate ownership during the POR,⁸⁸ so Pirelli Tyre should have provided complete ownership information for the entire POR, including the period January 2015 through October 2015). Thus, the fact that Commerce granted Pirelli Tyre a separate rate in the investigation based on the ownership information on the record of the investigation is irrelevant to whether Commerce should grant it a separate rate for the early part of this POR of this review. Finally, Pirelli Tyre's mere reference to the complete ownership information which served as the basis for granting it a separate rate in the investigation is not a sufficient basis on which to determine that Commerce should grant it a separate rate for any part of this POR.

We also find that Pirelli Tyre's reliance on *Shrimp from Thailand* is misplaced. In that case, Commerce had information on the record regarding prior and current ownership of the companies involved during the proceeding and thus, was able to determine when to apply the different rates.⁸⁹ As discussed above, Pirelli Tyre has not provided complete ownership information with respect to its intermediate and ultimate owners during the January through October 2015 portion of the instant POR. As such, there is no basis to grant Pirelli Tyre a separate rate for any portion of this POR.

⁸⁶ See Commerce Memorandum, "Antidumping Duty Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Denial of Separate Rate Status," at 2 (dated August 31, 2017).

⁸⁷ *Id.*; see also *Sparklers* at 56 FR 20588, 20589.

⁸⁸ See Commerce's Separate Rate Application for the People's Republic of China at Question 1 Section IV which states, "For each intermediate and ultimate shareholder entity, please respond to the following. In responding, please ensure that you include information regarding the ownership of your reported shareholder entities. The ultimate owners may be individuals, government entities, *etc.*" The accompanying footnote goes on to state "{p}lease state in your response if any of your intermediate or ultimate shareholders are owned or supervised, in full or in part, by the State Owned Assets Supervision and Administration Commission ("SASAC")."

⁸⁹ See *Shrimp from Thailand* IDM at Comment 8.

V. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions, and making the changes identified above to our *Preliminary Results*. If accepted, we will publish the final results of review in the *Federal Register*.

Agree

Disagree

3/9/2018

X



Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

Appendix I

List of Companies Granted Separate Rate Status

Mandatory Respondents

1. Giti Tire Global Trading Pte. Ltd./Giti Tire (USA) Ltd./Giti Tire (Anhui) Company Ltd./Giti Tire (Fujian) Company Ltd./Giti Tire (Hualin) Company Ltd. /Giti Tire Greatwall Company, Ltd./ Giti Tire (Anhui) Company, Ltd./ Giti Tire (Yinchuan) Company, Ltd./ Giti Tire (Chongqing) Company, Ltd.
2. Qingdao Sentury Tire Co., Ltd./Sentury Tire USA Inc./Sentury (Hong Kong) Trading Co., Limited

Separate Rate Respondents

1. Actyon Tyre Resources Co., Limited
2. Briway Tire Co., Ltd.
3. Crown International Corporation
4. Dynamic Tire Corp.
5. Fleming Limited
6. Guangrao Taihua International Trade Co., Ltd
7. Hankook Tire China Co., Ltd.
8. Haohua Orient International Trade Ltd.
9. Hongkong Tiancheng Investment & Trading Co., Limited
10. Hongtyre Group Co.
11. Husky Tire Corp.
12. Jiangsu Hankook Tire Co., Ltd.
13. Jilin Jixing Tire Co., Ltd.
14. Jinyu International Holding Co., Limited
15. Kenda Rubber (China) Co., Ltd.
16. Koryo International Industrial Limited

17. Kumho Tire Co., Inc.
18. Liaoning Permanent Tyre Co., Ltd.
19. Macho Tire Corporation Limited
20. Maxon Int'l Co., Limited
21. Mayrun Tyre (Hong Kong) Limited
22. Nankang (Zhangjiagang Free Trade Zone) Rubber Industrial Co., Ltd.
23. Prinx Chengshan (Shandong) Tire Co., Ltd.
24. Qingdao Crown Chemical Co., Ltd.
25. Qingdao Fullrun Tyre Corp., Ltd.
26. Qingdao Fullrun Tyre Tech Corp., Ltd
27. Qingdao Jinhaoyang International Co., Ltd.
28. Qingdao Keter International Co., Limited
29. Qingdao Lakesea Tyre Co., Ltd.
30. Qingdao Nama Industrial Co., Ltd.
31. Qingdao Odyking Tyre Co., Ltd.
32. Qingzhou Detai International Trading Co., Ltd.
33. Riversun Industry Limited
34. Roadclaw Tyre (Hong Kong) Limited
35. Safe & Well (HK) International Trading Limited
36. Sailun Jinyu Group (Hong Kong) Co., Limited
37. Sailun Jinyu Group Co., Ltd.
38. Sailun Tire International Corp.
39. Seatex International Inc.

40. Shandong Anchi Tyres Co., Ltd.
41. Shandong Changfeng Tyres Co., Ltd.
42. Shandong Duratti Rubber Corporation Co. Ltd.
43. Shandong Guofeng Rubber Plastics Co., Ltd
44. Shandong Hengyu Science & Technology Co., Ltd.
45. Shandong Jinyu Industrial Co., Ltd.
46. Shandong Linglong Tyre Co., Ltd.
47. Shandong Longyue Rubber Co., Ltd.
48. Shandong New Continent Tire Co., Ltd.
49. Shandong Province Sanli Tire Manufactured Co., Ltd.
50. Shandong Shuangwang Rubber Co., Ltd.
51. Shandong Wanda Boto Tyre Co., Ltd
52. Shandong Yongtai Group Co., Ltd.
53. Shandong Yonking Rubber Co., Ltd
54. Shandong Zhongyi Rubber Co., Ltd.
55. Shengtai Group Co., Ltd.
56. Shouguang Firemax Tyre Co., Ltd.
57. Techking Tires Limited
58. Triangle Tyre Co., Ltd.
59. Tyrechamp Group Co., Limited
60. Weihai Zhongwei Rubber Co., Ltd.
61. Windforce Tyre Co., Limited
62. Winrun Tyre Co., Ltd.
63. Zhaoqing Junhong Co., Ltd.

Appendix II

List of Companies not Receiving Separate Rate Status

1. American Pacific Industries, Inc.
2. BC Tyre Group Limited
3. Best Choice International Trade Co., Limited
4. Cheng Shin Tire & Rubber (China) Co., Ltd.
5. Guangzhou Pearl River Rubber Tyre Ltd.
6. Hebei Tianrui Rubber Co., Ltd.
7. Hong Kong Tri-Ace Tire Co., Limited
8. Hwa Fong Rubber (Hong Kong) Ltd.
9. ITG Voma Corporation
10. Nankang International Co., Ltd.
11. Nankang Rubber Tire Corp., Ltd.
12. Pirelli Tyre Co., Ltd.
13. Qingdao Goalstar Tire Co., Ltd.
14. Qingdao Nexen Tire Corporation
15. Qingdao Qianzhen Tyre Co., Ltd.
16. Qingdao Qihang Tyre Co., Ltd.
17. Qingdao Qizhou Rubber Co., Ltd.
18. Shandong Changhong Rubber Tech
19. Shandong Good Forged Alum Wheel
20. Shandong Haohua Tire Co., Ltd.
21. Shandong Haolong Rubber Tire Co., Ltd.
22. Shandong Huitong Tyre Co., Ltd.

23. Shandong Sangong Rubber Co., Ltd.
24. Shangong Ogreen International Trade Co., Ltd.
25. Shifeng Juxing Tire Co., Ltd.
26. Southeast Mariner International Co., Ltd.
27. Toyo Tire (Zhangjiagang) Co., Ltd.
28. Wanli Group Trade Limited
29. Xiamen Sunrise Wheel Group Co., Ltd.
30. Xiamen Topu Import
31. Zhejiang Jingu Company Limited
32. Zhejiang Qingda Rubber Co., Ltd.