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November 2, 2020

**MEMORANDUM TO:** Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Diamond Sawblades and Parts Thereof from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review; 2017-2018

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## I. SUMMARY

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (China) covering the period of review (POR) November 1, 2017 through October 31, 2018. We made certain changes to the margin calculations as a result of our analysis. We recommend that you approve the positions we developed in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues for which we have received comments from interested parties:

- Comment 1: Selection of Primary Surrogate Country
- Comment 2: Valuation of Diamond Input
- Comment 3: Selection of Financial Statements for Surrogate Financial Ratios
- Comment 4: Whether to Apply Partial AFA to Chengdu Huifeng's Reported Labor FOPs
- Comment 5: Conversions of Surrogate Values

## II. BACKGROUND

On January 16, 2020, Commerce published the preliminary results of the 2017-2018 administrative review of the antidumping duty order on diamond sawblades from China.<sup>1</sup> We

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<sup>1</sup> See *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 85 FR 2705 (January 16, 2020), and accompanying Preliminary Decision Memorandum (*Preliminary Results*).



invited interested parties to comment on the *Preliminary Results*. We received a case brief from the petitioner, the Diamond Sawblades Manufacturers' Coalition,<sup>2</sup> and a rebuttal brief from the mandatory respondent Chengdu Huifeng New Material Technology Co., Ltd. (Chengdu Huifeng), and non-selected respondents, the Jiangsu Fengtai Single Entity, and Wuhan Wanbang Laser Diamond Tools Co., Ltd.<sup>3</sup>

### III. SCOPE OF THE ORDER

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

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the order. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the order. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of the order. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the order. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the order. Merchandise subject to the order is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. On October 11, 2011, Commerce included the 6804.21.00.00 HTSUS classification number to the customs case reference file, pursuant to a request by U.S. Customer and Border Protection (CBP).<sup>4</sup> Pursuant to requests by CBP, Commerce included to the customs case reference file the following HTSUS classification numbers: 8202.39.0040 and 8202.39.0070 on January 22, 2015, and 6804.21.0010 and 6804.21.0080 on January 26, 2015.

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<sup>2</sup> See Petitioner's Letter, "Diamond Sawblades' Sawblades and Parts Thereof from the People's Republic of China: DSMC's Case Brief," dated February 18, 2020 (Petitioner's Case Brief).

<sup>3</sup> See Chengdu Huifeng Diamond Tools Co., Ltd., the Jiangsu Fengtai Single Entity, and Wuhan Wanbang Laser Diamond Tools Co., Ltd.'s Letter, "Diamond Sawblades and Parts Thereof from the People's Republic of China: Submission of Chengdu Huifeng's Administrative Rebuttal Brief," dated March 2, 2020 (Chengdu Huifeng's Rebuttal Brief). The Jiangsu Fengtai Single Entity is comprised of Jiangsu Fengtai Diamond Tool Manufacturer Co., Ltd.; Jiangsu Fengtai Diamond Tools Co., Ltd.; and Jiangsu Fengtai Sawing Industry Co., Ltd.

<sup>4</sup> See *Diamond Sawblades and Parts Thereof from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 76128, 76130 (December 6, 2011).

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

#### IV. SURROGATE COUNTRY

In the *Preliminary Results*, we treated China as a non-market economy (NME) country and, therefore, we calculated normal value in accordance with section 773(c) of the Tariff Act of 1930, as amended (the Act). We selected Mexico as the primary surrogate country, pursuant to section 773(c)(4) of the Act, because it is a significant producer of merchandise comparable to subject merchandise and is at the same level of economic development as China.<sup>5</sup>

For these final results, we continue to treat China as an NME country and used the same primary surrogate country, Mexico.<sup>6</sup> For the valuation of all inputs, including diamond powder, we continue to use Mexican import data published by the *Instituto Nacional de Estadística y Geografía* (INEGI).<sup>7</sup> We also continue to find that, pursuant to section 773(c)(1) of the Act, Thai Gulf Abrasives Co., Ltd.’s (Thai Gulf) 2016 Annual Report constitutes the “best available information” for valuing financial ratios.

#### V. DISCUSSION OF THE ISSUES

##### Comment 1: Selection of Primary Surrogate Country and Surrogate Value Data

###### *Petitioner’s Comments:*

- Commerce identified six potential surrogate countries for this review - Brazil, Kazakhstan, Malaysia, Mexico, Romania, and Russia.<sup>8</sup>
- Of these six, the record contains only certain surrogate value (SV) data for Mexico which were provided by Chengdu Huifeng.<sup>9</sup>
- In the *Preliminary Results*, while Commerce recognized Thailand to be a significant producer, it did not find Thailand to be at the same level of economic development as China.<sup>10</sup>

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<sup>5</sup> See Preliminary Decision Memorandum at 5-7.

<sup>6</sup> See.

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

<sup>8</sup> See Petitioner’s Case Brief at 2 (citing Petitioner’s Case Brief at 5 (citing Commerce’s Letter, “Diamond Sawblades and Parts Thereof from the People’s Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information,” dated April 15, 2019, at attached Memorandum, “List of Surrogate Countries for Antidumping Investigations and Reviews from China,” dated August 2, 2018, “List of Surrogate Countries for Antidumping Investigations and Reviews from the People’s Republic of China,” dated August 2, 2018 (Surrogate Value Letter); see also Memorandum, “Diamond Saw blades and Parts Thereof from the People’s Republic of China: Surrogate Values for the Preliminary Results of Review,” dated January 9, 2020 (Preliminary SV Memorandum) at 2-3).

<sup>9</sup> See Petitioner’s Case Brief at 2-3 (citing Preliminary SV Memorandum at 3; Chengdu Huifeng’s Letter, “Diamond Sawblades and Parts Thereof from the People’s Republic of China: Submission of Initial Surrogate Value Information,” dated July 12, 2019 (Chengdu Huifeng’s Initial SV Comments); see also Chengdu Huifeng’s Letter “Diamond Sawblades and Parts Thereof from the People’s Republic of China: Chengdu Huifeng’s Additional Surrogate Value Submission” (Dec. 10, 2019) (Chengdu Huifeng’s Additional SV Comments)).

<sup>10</sup> See Petitioner’s Case Brief at 3 (citing Preliminary SV Memorandum at 3).

- Thailand, for which the petitioner submitted complete SV information, is not only a significant producer of identical and/or comparable merchandise but is also at the same level of economic development as China.<sup>11</sup>
- In the *Preliminary Results*, Commerce selected Mexico as the primary surrogate country based on its determination that Mexico was, not only a significant producer, but also at the same level of economic development as China. Substantial record evidence, however, supports the selection of Thailand as the primary surrogate country for this review.

#### Selection of the Appropriate Surrogate Country on Economic Comparability

- Section 773(c)(4)(A) of the Act is silent with respect to how Commerce may determine that a country is at a level of economic development comparable to the NME country. As such, Commerce’s longstanding practice is to identify those countries which are at a level of economic development similar to China based on gross national income (GNI) data reported in the *World Bank Development Report*.<sup>12</sup>
- Commerce’s list of surrogate countries is not intended to list every country that is economically comparable to the surrogate country.<sup>13</sup> While the list is based on GNI, Commerce may consider other factors, and such other factors “could outweigh {GDP/GNI} where the circumstances so warranted.”<sup>14</sup>
- Although Thailand’s GNI may not be as close to China’s as those identified as potential surrogate countries, taken in context, the difference in the GNI of China versus Thailand is quite small; while China’s GNI is approximately 46 percent above that of Thailand’s, this difference is relatively minor considering the substantial differences that are seen between the country with the highest GNI, Isle of Man, which has a GNI that is more than 950 percent greater than China, and the country with the lowest GNI, Burundi, which has a GNI that is almost 3,000 percent lower than China’s GNI.<sup>15</sup>
- The record also contains information on purchasing power parity (PPP);<sup>16</sup> these data demonstrate not only that China and Thailand are highly comparable, but also that they are more comparable than any of the countries included as potential surrogate countries.<sup>17</sup>

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<sup>11</sup> See Petitioner’s Case Brief at 3 (citing Petitioner’s Case Brief at 3 (citing Petitioner’s Letter “Diamond Sawblades and Parts Thereof from the People’s Republic of China: Comments on Surrogate Country List,” (April 29, 2019) (Petitioner’s Surrogate Country List Comments)).

<sup>12</sup> See Petitioner’s Case Brief at 4.

<sup>13</sup> See Petitioner’s Case Brief at 4 (citing Petitioner’s Letter, “Diamond Sawblades and Parts Thereof from the People’s Republic of China: Comments on Surrogate Country List,” dated April 29, 2019 at 2; see also Surrogate Value Letter at Attachment (List of Surrogate Countries for Antidumping Investigations and Reviews from the People’s Republic of China)).

<sup>14</sup> See Petitioner’s Case Brief at 4 (citing *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27366 (May 19, 1997)).

<sup>15</sup> See Surrogate Value Letter.

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

<sup>17</sup> See Petitioner’s Case Brief at 5 (citing Petitioner’s Surrogate Country List Comments at 3).

## Whether Data Concerns Require the Selection of Thailand as the Primary Surrogate Country

- Commerce’s practice is to consider a country not on the list of potential surrogates (*i.e.*, outside the GNI band), but at a comparable level of economic development, where it does not find any of the countries on the list of potential surrogate countries to be a significant producer of comparable merchandise,<sup>18</sup> or there are unique data concerns as in *Fish Fillets 2011-2012*.<sup>19</sup>
- The most critical concern is the aberrational nature of Chengdu Huifeng’s reported Mexican SV for diamond based on HTS number 7105.10 (discussed below).
- If Commerce continues to find HTS number 7105.10 appropriately applied, its selection of the surrogate country must account for the aberrational nature of the Mexican average unit value (AUV) for this classification. In evaluating the reliability of SVs which were valued using import statistics alleged to be aberrational, Commerce’s longstanding practice is to examine benchmark import AUVs from the same HTS number for: (a) the surrogate country over multiple years to determine if the current data appear aberrational compared to historical values, and/or (b) POR-specific data for potential surrogate countries for a given case<sup>20</sup>
- Historical pricing in Mexico for HTS 7105.10, diamond powder is 2015: 0.18; 2016: 0.19; 2017: 0.13; and, 2018 0.07. The price in Russia was 0.16 during the POR. In 2018, the next highest AUV to Mexico is from Russia (a country on the list) and is more than 128 percent higher than the Mexican AUV. Historically, the Mexican AUVs for 2015 through 2017 average 137 percent higher than the AUV for 2018. Given this record evidence, and consistent with established agency practice to consider the accuracy of the SV for a primary input as a key factor in the determination of the surrogate country,<sup>21</sup> Commerce should select Thailand as the surrogate country for this review. Also included are comparisons to the United States, and the European Union, as well as historic information from Malaysia.
- If Commerce continues to rely on Mexico as the surrogate country, it should nevertheless value diamond based on the Thai AUV. It is Commerce’s longstanding practice to use an alternate country’s data for an SV where the SV data in the selected surrogate country are unavailable or unreliable.<sup>22</sup>

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<sup>18</sup> See Petitioner’s Case Brief at 6 (citing *e.g.*, 1-Hydroxyethylidene-I, I -Diphosphonic Acid from China, 79 FR 16280, and the accompanying Preliminary Decision Memorandum (March 18, 2014) at 7.

<sup>19</sup> See Petitioner’s Case Brief at 7 (citing *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012*, 79 FR 19053 (April. 7, 2014) (*Fish Fillets 2011-2012*), and the accompanying Issues and Decision Memorandum (IDM) at Comment I).

<sup>20</sup> See Petitioner’s Case Brief at 7 (citing *Fish Fillets 2011-2012* at 37-41).

<sup>21</sup> See Petitioner’s Case Brief at 8 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from the Republic of Korea*, 77 FR 75992 (December. 26, 2012), and the accompanying IDM at Comment I).

<sup>22</sup> See Petitioner’s Case Brief at 8 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014*, 81 FR 39905 (June 20, 2016) (*Photovoltaic Cells 2013-2014*), and the accompanying IDM at comment 21 (Commerce “resorts to a secondary country among countries found to be at a level of economic development comparable to the NME, if data from the primary surrogate country are unavailable or unreliable. Thus, Commerce values inputs using a secondary surrogate country only in the absence of usable data from the primary surrogate country)).

- Commerce indicates that the import data were published by INEGI;<sup>23</sup> however, Chengdu Huifeng sourced the data from the website for the International Trade Centre.<sup>24</sup>
- Commerce is extremely wary of data sources that have not been corroborated, and in *Propane Cylinders* rejected better known sources of import statistics - such as the Trade Data Monitor - where the reliability of the data is not wholly demonstrated and confirmed.<sup>25</sup>
- In *Photovoltaic Cells 2016-2017* Commerce rejected INEGI-based AUVs given inconsistencies between those data and Mexican import statistics sourced from the Global Trade Atlas (GTA) - Commerce's preferred source for import statistics.<sup>26</sup>
- In *Chlorinated Isocyanurates*, Commerce has similarly rejected surrogate labor rate data sourced from INEGI as a result of inconsistencies between the labor costs sourced from INEGI compared to those obtained from the International Labor Organization.<sup>27</sup>

#### Certain SVs Used in the Preliminary Results Are Not Available from Mexico

- Certain of the Mexican HTS categories identified by Chengdu Huifeng, which Commerce wholly accepted for the *Preliminary Results*,<sup>28</sup> do not exist. These include the HTS numbers Chengdu Huifeng identified for tin powder, manganese powder, sodium nitrate and cobalt powder.
- Chengdu Huifeng claimed in Chengdu Huifeng Additional SV Comments to have corrected the value for diamond; however, the value remained unchanged from Chengdu Huifeng's Initial SV Comments. Chengdu Huifeng did not provide supporting calculations, and it is unclear if the import data underlying Chengdu Huifeng's AUV were reported in carats or kg, if it was necessary for Chengdu Huifeng to apply a conversion, and if so, what rate was used and from where it was sourced.

#### Inconsistencies in Mexican AUVs

- All of Chengdu Huifeng's reported Mexican import AUVs are based on FOB values; margin calculations that rely on such SVs are inherently understated. Commerce has

<sup>23</sup> See Petitioner's Case Brief at 9 (citing Preliminary SV Memorandum at 4).

<sup>24</sup> See Petitioner's Case Brief at 9 (citing <https://trademap.org> which is included on the record by reference in Preliminary SV Memorandum at 3; and Chengdu Huifeng's Initial SV Comments at 2 (“{AUVs} of import statistics...as compiled by the International Trade Centre in its Trade Map database.”)).

<sup>25</sup> See Petitioner's Case Brief at 9 (citing *Steel Propane Cylinders from the People's Republic of China and Thailand: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Orders*, 84 FR 29161 (June 21, 2019) (*Propane Cylinders*), and the accompanying IDM at Comment 3. Indeed, this is why the petitioner submitted GTA Data for Thailand. See Petitioner's Letter “Diamond Sawblades and Parts Thereof from the People's Republic of China: Petitioner's Pre-Preliminary Comments,” dated December 9, 2019 (Petitioner's Pre-Prelim Comments) at Exhibit 1.

<sup>26</sup> See Petitioner's Case Brief at 9-10 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 36886 (July 30, 2019) (*Photovoltaic Cells 2016-2017*), and the accompanying IDM at Comment 13.

<sup>27</sup> See Petitioner's Case Brief at 10 (citing *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 5243 (February 6, 2018), and the accompanying IDM (*Chlorinated Isocyanurates*) at Comment 5C.)

<sup>28</sup> See Petitioner's Case Brief at 10 (citing Preliminary SV Memorandum at 4).

recognized that Mexican import statistics are reported on an FOB, rather than a CIF, basis, and when applying Mexican SVs, it is Commerce's practice to increase the calculated import data AUV by an amount for international freight.<sup>29</sup> Chengdu Huifeng has not provided any information regarding international freight rates such that its reported AUVs can be properly increased to CIF values.

- There are several inputs where Chengdu Huifeng calculated an SV based on a period other than the POR,<sup>30</sup> included import statistics for NME or "unknown" countries when calculating an SV,<sup>31</sup> or included import data with unidentified or mixed quantity units in the calculations.<sup>32</sup>
- It appears Commerce attempted to correct Chengdu Huifeng's errors given the SVs actually applied by Commerce differ from those calculated by Chengdu Huifeng.<sup>33</sup>
- Commerce typically downloads import statistics for the primary surrogate country and provides to the parties that data as well as its AUV calculations based on that data; Commerce did not do so for these *Preliminary Results*.<sup>34</sup> It is unclear how Commerce arrived at the SVs and from where it sourced the import data.
- Commerce should ensure full disclosure of its methods in this review; the petitioner is concerned by Commerce's seemingly blanket acceptance of Chengdu Huifeng's SVs despite numerous and significant discrepancies and Commerce's apparent efforts to smooth over and fill in the gaps of Chengdu Huifeng's surrogate country argument.
- The burden to demonstrate that Mexico is the best choice for the primary surrogate country and the burden to provide complete, accurate and reliable Mexican SV data is on Chengdu Huifeng.<sup>35</sup>
- Commerce does not have an obligation to interpret the gaps in Chengdu Huifeng's information in Chengdu Huifeng's favor, due to its failure to provide complete information.<sup>36</sup>

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<sup>29</sup> See Petitioner's Case Brief at 11 (citing *Certain Quartz Surface Products From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23767 (May 23, 2019) (*Quartz Surface Products*), and the accompanying IDM at comment 9.

<sup>30</sup> See Petitioner's Case Brief at 11 (citing Chengdu Additional SV Comments at Exhibits 1 and 2 (worksheets for ink, pallets and paperboard)).

<sup>31</sup> See Petitioner's Case Brief at 11 (citing Chengdu Additional SV Comments at Exhibits 1 and 2 (worksheets for grommets and labels)).

<sup>32</sup> See Petitioner's Case Brief at 11 (citing Chengdu Additional SV Comments at Exhibits 1 and 2 (worksheets for magnetic strip and grommets)).

<sup>33</sup> See Petitioner's Case Brief at 11-12 (citing the SV summary at Exhibit 2 of Preliminary SV Memorandum compared to Exhibit 1 of Chengdu Huifeng's Additional SV Comments for butyl acetate, ink, adhesive tape, pallet, paper board, grommet and magnetic strip).

<sup>34</sup> See Petitioner's Case Brief at 12 (citing Preliminary SV Memorandum at Exhibit 2. (While the Microsoft Excel version of the exhibits to the memo includes an overall SV summary, Commerce did not provide any underlying data.))

<sup>35</sup> See Petitioner's Case Brief at 12 (citing *NTN Bearing Corp. of Am. v. United States*, 248 F. Supp. 2d 1256, 1286 (CIT 2003) ("{Commerce} is correct in its observation that it is well settled that the party in possession of information has the burden of producing that information in order to obtain a favorable adjustment or exclusion." (internal citation and quotation marks omitted)).

<sup>36</sup> See Petitioner's Case Brief at 12 (citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Amended Final Results of Administrative Review*, 71 FR 2517 (January 17, 2006), and accompanying IDM at Comment 9.

*Chengdu Huifeng's Rebuttal Comments:*

Selection of the Appropriate Surrogate Country on Economic Comparability

- Commerce's practice is to compile a "list of potential surrogate countries that are at a comparable level of economic development to the NME country," whose per capita GNI falls within a range of comparability to the GNI of the NME country. Commerce relies on per capita GNI as it "represents the single best measure of a country's level of total income and thus level of economic development."<sup>37</sup>
- Commerce explained in *Fish Fillets 2011-2012* that "within a given range, difference in per-capita GNI between the countries do not imply a difference in level of economic development."<sup>38</sup>
- Countries that fall outside the given per capita GNI range, such as Thailand, are not at the same level of economic development.<sup>39</sup>
- Thailand is outside the range of economically comparable countries in both relative and absolute terms. The petitioner fails to show that the difference between China's GNI and Thailand's GNI (a 46 percent difference) is relatively minor when compared to the wide range between the world's highest and lowest GNIs,<sup>40</sup> because the wide range of world GNIs across 187 countries is an unreasonable basis upon which to demonstrate relative comparability.<sup>41</sup>
- The petitioner's alleged data concerns do not outweigh the differences in levels of economic development.
- The statute provides that Commerce is required to utilize, to the extent possible, factors of production (FOPs) in one or more surrogate market economy countries that are economically comparable and significant producers of comparable merchandise.<sup>42</sup>
- Potentially slight differences in data quality do not outweigh the large difference in economic comparability where China's GNI is approximately 46 percent above that of Thailand's GNI.<sup>43</sup>
- In this review, Commerce found that each of the six potential surrogate countries are at the same level of economic development as China have exports of HTS code 8202.39, and, thus, have significant production of comparable or identical merchandise to diamond sawblades.<sup>44</sup>

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<sup>37</sup> See Chengdu Huifeng's Rebuttal Brief at 2 (citing *Antidumping Methodologies in Proceedings Involving Non-Market Economy Countries: Surrogate Country Selection and Separate Rates*, 72 FR. 13246 (March 21, 2007)).

<sup>38</sup> See Chengdu Huifeng's Rebuttal Brief at 2 (citing *Fish Fillets 2011-2012* IDM at Comment 1).

<sup>39</sup> See Chengdu Huifeng's Rebuttal Brief at 2 (citing Preliminary SV Memorandum at 2 ("Thailand has a lower GNI than these six countries.")).

<sup>40</sup> See Chengdu Huifeng's Rebuttal Brief at 2 (citing Petitioner's Case Brief at 5).

<sup>41</sup> See Chengdu Huifeng's Rebuttal Brief at 3.

<sup>42</sup> See section 773(c) of the Act.

<sup>43</sup> See, e.g., *Vinh Hoan Corporation v. United States*, 179 F. Supp. 3d 1208, 1214 (CIT 2016) (directing Commerce to "weigh economic comparability against the strengths and weaknesses of the factors data in making its surrogate country selection").

<sup>44</sup> See Preliminary SV Memorandum at 3.

## Whether Data Concerns Require the Selection of Thailand as the Primary Surrogate Country

- An analysis of the data considerations raised by the petitioner show that no unique data concerns exist to warrant the selection of Thailand as a primary surrogate country considering that it is not at the same level of economic development as China.<sup>45</sup>
- Data concerns that potentially outweigh economic comparability include whether the primary input of the subject merchandise is a special or “unique input.”<sup>46</sup> In *Fish Fillets 2011-2012*, Commerce selected Indonesia as the primary surrogate country because few countries in the world produced whole, live, pangasius fish, which Commerce considered to be a special or unique input. The petitioner has not shown that any such special circumstances exist here to outweigh the selection of Mexico as the primary surrogate country which is at the same level of economic development as China.<sup>47</sup>
- In addition, the administrative record contains data from Mexico to value each of the FOPs, except the financial ratios.<sup>48</sup> *Jacobi Carbons* explains Commerce’s usual data evaluation standards, and here, the Mexican data on the record adequately meet Commerce’s data quality test.<sup>49</sup>
- Commerce’s use of limited data from Thailand to value certain FOPs was also supported by its administrative practice and is in accordance with law.<sup>50</sup>
- Given the attendant differences between economic comparability on the one hand and data availability on the other in this review, this is a situation in which “sourcing surrogate data from more than one country... yields the most accurate dumping margin.”<sup>51</sup>
- The petitioner asserts that its “most critical concern” with the Mexican FOP data is the alleged “aberrational nature of Chengdu Huifeng’s reported Mexican SV for diamond based on HTS number 7105.10.”<sup>52</sup> In 2015, the AUVs of HTS 7105.10 for the countries selected by the petitioner show a decreasing trend year over year.

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<sup>45</sup> See Chengdu Huifeng’s Rebuttal Brief at 4-5.

<sup>46</sup> See *Fish Fillets 2011-2012* and accompanying IDM at Comment 1 (“Countries that are not at the same level of economic development as the NME country... are considered when data or significant producer considerations potentially outweigh the fact that these countries are not at the same level of economic development.”)

<sup>47</sup> See Chengdu Huifeng’s Rebuttal Brief at 5.

<sup>48</sup> See Chengdu Huifeng’s Rebuttal Brief at 5 (citing Preliminary SV Memorandum at 4 (“There was information available in Mexico to value all FOPs except the three financial ratios”)).

<sup>49</sup> See Chengdu Huifeng’s Rebuttal Brief at 5 (citing *Jacobi Carbons AB v. United States*, 992 F. Supp. 2d 1360, 1366 (CIT 2014) (*Jacobi Carbons*) (“Commerce’s practice, in selecting the best available information for valuing FOPs, is to ‘choose’ surrogate values that represent broad-market average prices, prices specific to the input, prices that are net of taxes and import duties, prices that are contemporaneous with the POR, and publicly available non-aberrational data from a single surrogate market-economy.”)).

<sup>50</sup> See Chengdu Huifeng’s Rebuttal Brief at 6 (citing, e.g., *Freshwater Crawfish Tail Meat from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of New Shipper Review; 2015-2016*, 82 FR 47469 (October 12, 2017) (where Commerce selected Thailand as the primary surrogate country, used Spanish data to value the major input ( {whole} crawfish), and used the financial statements of a South African company to value the financial ratios).

<sup>51</sup> See Chengdu Huifeng’s Rebuttal Brief at 6 (citing *Shanghai Wells Hanger Co., Ltd. v. United States*, 211 F. Supp. 3d 1377, 1381 (CIT 2017); and *Weishan Hongda Aquatic Food Co., Ltd. v. United States*, 917 F. 3d 1353, 1365 (CAFC 2019) (upholding Commerce’s decision to use South African financial statements where Thailand was selected as the primary surrogate country).

<sup>52</sup> See Chengdu Huifeng’s Rebuttal Brief at 6-7 (citing Petitioner’s Case Brief at 7).

- Data from the European Union and the United States should be ignored entirely because they are not at a comparable level of economic development to China.<sup>53</sup>
- The Mexican AUV dropped 6 cents from 2016 to 2017 and dropped another 6 cents from 2017 to 2018. Thus, it is clear that the decrease in AUV from 2016 to 2017 was at the same degree as the decrease from 2017 to 2018. Rather than being aberrational, the surrogate value of HTS 7105.10 exhibits a consistent trend over time.<sup>54</sup>
- The petitioner also asserts that Commerce does not have an obligation to correct alleged miscalculations in certain submitted surrogate values, or to augment the record by extracting import data from GTA. This assertion ignores Commerce’s discretion in deciding and selecting among the best available information.
- Commerce also has the authority to place documents on the administrative record that it considers relevant.<sup>55</sup>

#### Certain SVs Used in the Preliminary Results Are Not Available from Mexico

- Chengdu Huifeng did not rebut the petitioner’s arguments directly concerning the alleged selection of HTS numbers at the eight- and ten-digit level.

#### Inconsistencies in Mexican AUVs

- There are no inconsistencies in Chengdu Huifeng’s reported SVs. Mexican import data on the record supports the submitted surrogate values. This data was submitted in two submissions and items in the second replace those in the first where there is duplication. The second submission corrects for the fact that the values are reported in thousands of dollars.
- The petitioner’s citation to Commerce’s rejection of INEGI data to value the labor FOP is inapposite.<sup>56</sup> Commerce’s administrative practice is to use specific labor data from the International Labor Organization (ILO); Commerce used ILO data, to value the direct, indirect, and packing labor FOPs in the *Preliminary Results*; and the petitioner has pointed to no evidence on the record that the INEGI-based AUVs obtained from the International Trade Centre to value the material inputs in this review were inconsistent with GTA’s Mexican import statistics.<sup>57</sup>
- In the absence of record evidence to the contrary, the Mexican import data derived from the International Trade Centre and based on INEGI are equally reliable to GTA in that both databases have an almost identical compiling structure, and the same figures for import data. The International Trade Centre database, which sources Mexican import statistics from INEGI, provides both the values and quantities of inputs, enables

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<sup>53</sup> See the petitioner’s Case Brief at 8 (citing Petitioner’s Letter “Diamond Sawblades and Parts Thereof from the People’s Republic of China: Rebuttal Surrogate Value Comments,” dated July 22, 2019) (Petitioner’s Rebuttal Surrogate Value Comments).

<sup>54</sup> *Id.*

<sup>55</sup> See Chengdu Huifeng’s Rebuttal Brief at 6-7 (citing, *e.g.*, *QVD Food Co., Ltd. v. United States*, 658 F.3d 1318, 1324 (CAFC 2011)).

<sup>56</sup> *Id.*

<sup>57</sup> See Chengdu Huifeng’s Rebuttal Brief at 8-9 (citing, *e.g.*, *Chlorinated Isocyanurates* and accompanying IDM at Comment 5C (“{B}oth petitioners and the respondents provided two different sets of INEGI data for the labor wage calculation.”)).

manipulation of the relevant time periods, and allows contemporaneous calculation of the AUVs. The database also accurately reports the data from countries which Commerce excludes from the AUV calculation. Consequently, there is no basis on the present record to exclude the INEGI-derived Mexican import statistics obtained from the International Trade Centre's Trade Map database.<sup>58</sup>

**Commerce's Position:** For the *Preliminary Results*, we selected Mexico as the primary surrogate country because it is: (1) at the same level of economic development as China; (2) a significant producer of comparable or identical merchandise to diamond sawblades; and (3) there was useable surrogate value information on the record from Mexico to value all FOPs except financial ratios, for which we used information from Thailand.

In antidumping proceedings involving NME countries, such as China, section 773(c)(1)(B) of the Act requires Commerce to calculate normal value of the subject merchandise based on surrogate values offered in a comparable market economy, *i.e.*, in a surrogate country. As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME country unless it is determined that none of the countries are viable options because, either: (a) they are not significant producers of comparable merchandise; (b) do not provide sufficient reliable sources of publicly available SV data; or (c) are not suitable for use based on other reasons.<sup>59</sup> Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.<sup>60</sup> To determine which countries are at the same level of economic development, Commerce generally relies on GNI data from the World Bank's World Development Report.<sup>61</sup> Further, Commerce will normally value all FOPs from a single surrogate country.<sup>62</sup>

Commerce identified six potential surrogate countries for this review: Brazil, Kazakhstan, Malaysia, Mexico, Romania, and Russia.<sup>63</sup> Interested parties placed three sources of surrogate value data on the record: International Trade Centre, Trade Map data compiled from INEGI data submitted by Chengdu Huifeng for Mexico,<sup>64</sup> Trade Data Monitor data for Thailand, and GTA data for Thailand. In the *Preliminary Results*, we found that Mexico is at the same level of economic development as China, Thailand is not at the same level of economic development as China, and that both Mexico and Thailand were significant producers of comparable merchandise.<sup>65</sup>

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<sup>58</sup> See Chengdu Huifeng's Rebuttal Brief at 9.

<sup>59</sup> See Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1).

<sup>60</sup> See Surrogate Value Letter.

<sup>61</sup> *Id.*

<sup>62</sup> See 19 CFR 351.408(c)(2).

<sup>63</sup> See Petitioner's Case Brief at 2 (citing Surrogate Value Letter); *see also* Preliminary SV Memorandum at 2-3.

<sup>64</sup> In the *Preliminary Results* we stated that the data source was INEGI, however it is International Trade Centre, Trade Map data, and the International Trade Centre, Trade Map's data source is INEGI.

<sup>65</sup> See the "Surrogate Country" section of the Preliminary Decision Memorandum.

## Selection of the Appropriate Surrogate Country on Economic Comparability

Section 773(c)(1)(B) of the Act directs us to use “the best information available” to value FOPs and section 773(c)(4) of the Act states that we should value FOPs “in one or more market countries” and indicates that those factors should be valued (A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise.” The statute does not define “comparable”; nor does it require Commerce to use any particular methodology in determining which countries are sufficiently comparable. Commerce’s regulations at 19 CFR 351.408(c)(2) state that Commerce will normally value all factors in a single surrogate country. However, we must consider this regulation in the context of each proceeding, and in light of the best available information on the record.<sup>66</sup> In this proceeding, there is no single country that is both at the same level of economic development as China and for which we have useable data on the record to value all FOPs; therefore, we must balance our regulatory preference and statutory directives in selecting surrogate countries. Of the countries identified as at the same level of economic development as China, there is only data for Mexico on the record, and the record lacks information to value financial ratios in Mexico. However, considering our preference to value all surrogate values in a single country, we are able to value nearly all the FOPs in a single country at the same level of economic development, Mexico.

Commerce identified countries that were at the same level of economic development as China in terms of per capita GNI, identifying: Brazil, Kazakhstan, Malaysia, Mexico, Romania, and Russia.<sup>67</sup> According to the *World Bank Development Indicator* report, China’s per capita GNI was 8,690 USD, Mexico’s was 8,610 USD, and Thailand’s was 5,960 USD. Of the countries on Commerce’s list, Kazakhstan had the lowest per capita GNI at 7,890 USD, and Romania had the highest at 9,970 USD. This data is collated by the World Bank using the Atlas methodology to make the comparison. The countries within the upper and lower GNI band are at the same level of economic development as China. The GNI of Thailand is below the bottom of the lower band (below Kazakhstan’s GNI) and we therefore continue to find that Thailand is not at the same level of economic development as China. Because the record only contains financial statements from Thailand and because Thailand is also a significant producer of comparable merchandise, for purposes of these final results we determine that this information is useable to value the financial ratios under sections 773(c)(1)(B) and 773(c)(4) of the Act.

The petitioner argues that we should revisit our surrogate country selection decision from the *Preliminary Results* and select Thailand, rather than Mexico, as the primary surrogate country because it is at a comparable level of economic development relative to all countries on the list. However, as explained above, we will consider countries that are not at the same level of economic development as China if the countries on the list either: (a) are not significant producers of comparable merchandise; (b) do not provide sufficient reliable sources of publicly

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<sup>66</sup> See *Photovoltaic Cell 2016-2017*, and the accompanying IDM at Comment 13 (“...we have continued to use Bulgarian import data under HTS category 280430 to value nitrogen. Commerce evaluates SV information on a case-by-case basis, and, in accordance with section 773(c)(1) of the Act, selects the best available information from an appropriate surrogate country to value FOPs”).

<sup>67</sup> See Petitioner’s Case Brief at 2 (citing Surrogate Value Letter); see also Preliminary SV Memorandum at 2-3.

available SV data; or (c) are not suitable for use based on other reasons. We find that Mexico best meets our selection criteria for valuing FOPs with the exception of financial ratios.

The petitioner also argues that Thailand is more comparable to China than other countries on Commerce's list, and Mexico in particular, because China's GNI in PPP terms was 16,760 USD, Thailand's was 17,090 USD, and Mexico had a GNI of 17,740 USD when described in PPP terms (provided in the same *World Bank Development Indicators* data used to ascertain GNI by the Atlas Method).<sup>68</sup> We have not changed our primary surrogate country selection methodology for these final results. Since 2007, we have relied on per capita GNI for determining sufficiently comparable countries because we believe "that the per capita GNI represents the single best measure of a country's level of total income and thus level of economic development."<sup>69</sup> Commerce has a longstanding practice of relying on per capita GNI, *i.e.*, collated using the Atlas Method to select countries that are at the same level of economic development to the NME country.<sup>70</sup> Since 1995, Commerce also has on numerous occasions explicitly rejected parties' arguments to rely on alternative measures of economic comparability, including PPP measures.<sup>71</sup>

#### Whether Data Concerns Require the Selection of Thailand as the Primary Surrogate Country

The petitioner argues that Thailand is preferable to Mexico given substantial issues with Mexican SV data. We disagree. We used the only Mexican information available on the record to value FOPs in the *Preliminary Results*, and while the petitioner has questioned the validity of International Trade Centre data compared to GTA data, it has not substantiated any differences between the International Trade Centre and GTA data compilation methods. Because we determined to use Mexico as the primary surrogate country, we have valued as many surrogate values as possible based on Mexican AUVs. Data from the International Trade Centre is not private information or unusable to value surrogate values. Although it is from a subscription-based service, once placed on the record the information is publicly available and therefore useable for our purpose.

The petitioner argues that there are "unique data concerns" which make the Mexican data unreliable, citing to Commerce's determination in *Fish Fillets 2011-2012*. In *Fish Fillets 2011-2012*, however, Commerce selected Indonesia as the primary surrogate country based on the availability of data for valuing the main input for frozen fish fillets – whole, live pangasius fish – because few other countries produced the input. Here, by contrast, data on the record indicate that there are imports of diamond powder from numerous countries, suggesting the input is not unique or uncommon.<sup>72</sup> Moreover, the petitioner provides no arguments to establish how diamond powder is anything like the "unique" surrogate value in *Fish Fillets 2011-2012*.

Policy Bulletin 04.1 states that "{d}ata quality is a critical consideration affecting surrogate country selection. A country that perfectly meets the requirements of economic comparability

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<sup>68</sup> See Petitioner's Surrogate Country List Comments at 3.

<sup>69</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economy Countries: Surrogate Country Selection and Separate Rates*, 72 FR 13246, 13246 at Note 2 (March 21, 2007).

<sup>70</sup> See *Fish Fillets 2011-2012* and the accompanying IDM at Comments I.

<sup>71</sup> *Id.*

<sup>72</sup> See *Fish Fillets 2011-2012* and the accompanying IDM at Comment I.

and is a significant producer is not much use as a primary surrogate country if crucial factor price data from that country are inadequate or unavailable.”<sup>73</sup> We do not find that any of the Mexican price data are inadequate, and have only moved outside the primary surrogate country to value information that is not available in the primary surrogate country, *i.e.*, financial ratios. The petitioner’s concerns over the specificity between competing INEGI methods for publishing wage data in *Chlorinated Isocyanurates* are misplaced because here we are not comparing INEGI wage labor calculations.

Based on the record, we find no basis for determining that the Mexican AUVs are unreliable, and because there are no financial statements for Mexico from which we can value financial ratios, we are using the only useable financial statements on the record, which are from Thailand.

The petitioner has raised several other situations found in other cases to discredit the Mexican data, but we do not find these cases instructive for our purposes.

In *Propane Cylinders from China* we did not use Trade Data Monitor data over GTA data in the same country because we considered the former private information and the latter public information; here the only country with data from multiple sources on the record is Thailand, and we were able to value all surrogate values except financial ratios in Mexico.

In *Photovoltaic Cells 2016-2017*, we found inconsistencies in the value of one SV in Mexico, between INEGI-based data and GTA-based data, and we also found inconsistencies in Thailand for one SV between GTA data and another data source. International Trade Centre data are based on INEGI data, but here we do not have other Mexican data on the record to make comparisons, so no record information detracts from the Mexican International Trade Centre data.

In *Chlorinated Isocyanurates*, we rejected employer’s cost-of-labor-based data sourced from INEGI derived data, and instead used ILO data, because the INEGI data were based on an employer’s costs rather than a wage rate basis as is our preference. In that case, the differences are specific to disparities between two types of INEGI labor data and are not indicative of the general veracity of INEGI data. Further, the focus was on the valuation of material inputs and packing materials, not labor data.

Commerce states its strong preference to value all FOPs in a single surrogate country pursuant to 19 CFR 351.408(c)(2) in *Activated Carbon*; but, in that case, we also cite the U.S. Court of International Trade (CIT) in *Jiaxing Brother* to state that we “only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable.”<sup>74</sup> Here, the only SVs for which we do not have Mexican data are SVs derived from the financial statements, for which we are using Thai data. No record information indicates that our selected Mexican surrogate values are unreliable, therefore, contrary to the petitioner’s

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<sup>73</sup> See Policy Bulletin 04.1.

<sup>74</sup> See *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61172 (October 9, 2015) (*Activated Carbon*), and the accompanying IDM at Comment 2 (citing *Jiaxing Brother Fastener Co. v. United States*, 11 F. Supp. 3d 1326, 1332-33 (United States Court of International Trade (CIT) 2014) (*Jiaxing Brother*)).

argument, our decision is consistent with *Activated Carbon*.

Commerce's practice described in *Acid from China* is to consider a country not on the list of potential surrogate countries but at a comparable level of economic development, where it does not find any of the countries on the list of potential surrogate countries to be significant producers of comparable merchandise. Here we found that Mexico, a country on the list, was a significant producer. Therefore, this is not a situation where it is necessary to move to countries beyond the list to find a significant producer.

#### Certain SVs Used in the Preliminary Results Are Not Available from Mexico

Next, the petitioner claims that Commerce accepted Mexican HTS numbers for four surrogate values even though they did not exist in the Mexican data. For the four surrogate values in question, *i.e.*, cobalt powder, manganese powder, tin powder, and sodium nitrate, the surrogate value data provided by Chengdu Huifeng were provided at the six-digit level of specification even though our surrogate value sheet used in the preliminary results inadvertently indicated HTS numbers of 10- to 12-digits in length. For these final results, we continue to use the HTS numbers based on the six-digit HTS classifications submitted by the respondent and have revised the surrogate value spreadsheet to reflect the correct digits of each HTS classification used in the margin calculation.<sup>75</sup>

#### Inconsistencies in Mexican AUVs

In *Photovoltaic Cells 2013-2014*, we reiterated our longstanding practice to use an alternate country's data for an SV where the SV data in the selected country were unreliable.<sup>76</sup> Here, we do not find any SVs in Mexico to be unreliable; therefore, it is not necessary to rely on any Thai data for which there are data in Mexico on the record to determine a given SV.

The petitioner's claim that the value of diamond powder is aberrational is also without merit. In *Propane Cylinders*, we stated that we test the reliability of SVs which were valued using import statistics alleged to be aberrational. Commerce's longstanding practice is to examine benchmark import AUVs from the same HTS number for: (a) the surrogate country over multiple years to determine if the current data appear aberrational compared to historical values, and/or; (b) POR-specific data for potential surrogate countries for a given case.<sup>77</sup> For these reasons, we have not considered the data submitted by the petitioner for the European Union or the United States for any year, or data from Malaysia and Russia for all years other than that of the POR. Of the submitted data, this leaves us with a yearly AUV time series for HTS 7105.10 in Mexico for 2015-2018 of 0.18, 0.19, 0.13, 0.07 USD/carat. No other comparisons are possible to determine whether the data are aberrational based on the data available on the record because,

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<sup>75</sup> See Memorandum, "Diamond Sawblades and Parts Thereof from the People's Republic of China: Surrogate Values for the Final Results of Review," dated concurrently with this memorandum (Final SV Memorandum) at Attachment, Surrogate Value Sheet.

<sup>76</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014*, 81 FR 39905 (June 20, 2016) (*Photovoltaic Cells AR13-14*) and accompanying IDM at Comment 21.

<sup>77</sup> See *Propane Cylinders* and the accompanying IDM at comment 3.

of the data submitted by the petitioner regarding the value of HTS 7105.10,<sup>78</sup> the POR-specific AUV for 2018 in Malaysia is not available, and although the 2018 AUV in Russia is available, (*i.e.*, 0.16 USD/carat), we conduct a comparison with all the countries on Commerce’s list, not with a limited set of them.<sup>79</sup> With respect to the time series, the AUV plateaued in the first two years, rising only slightly from 2015 to 2016, and then declining by the same amount for two years in a row. Because the decline in price was relatively steady, we find that the lower value for 2018 is not aberrational, but rather represents one end of a continuum of prices. Therefore, these comparisons indicate that the 2018, Mexican AUV for HTS 7105.10 is not aberrational and is appropriate to use as an SV.

In *Wind Towers*, the accuracy of a primary input was a key factor in determining the surrogate country.<sup>80</sup> Here, however, as in *Photovoltaic Cells AR13-14*, because we do not find the Mexican AUV for HTS 7105.10 for diamond powder to be aberrational or inaccurate, there is no need to look to surrogate countries outside of Mexico for our surrogate value calculations, except for financial ratios for which no Mexican data are available.<sup>81</sup> Further, the petitioner cites *Photovoltaic Cells AR16-17*<sup>82</sup> to argue that GTA is our preferred data source; however, in that case, there were competing data sources in the same country and the prices from the non-GTA source were determined to be aberrational. We do not have the same situation here. Further, the petitioner’s reliance on the same labor-related-*Chlorinated-Isocyanurates* argument<sup>83</sup> raised above is misplaced; diamond powder is a material input, not a labor value, and there is only a single source of data on the record. Also, in *Propane Cylinders*,<sup>84</sup> we looked outside the primary surrogate country when we determined the data from that country was from a private source, and here we have determined that International Trade Centre data are not private data.

The petitioner argues that Chengdu Huifeng claimed in Chengdu Huifeng’s Additional SV Comments to have corrected the value for diamond powder; however, the value remained unchanged from Chengdu Huifeng’s Initial SV Submission. The petitioner also claims that Chengdu Huifeng did not provide supporting calculations, which is true for diamond and some material inputs; however, our review of the data and calculations indicate that the underlying data support the reported surrogate values. The petitioner claims that it is unclear if the import data underlying Chengdu Huifeng’s AUV for diamond powder were reported in carats or kilograms; however, the underlying data are provided in kilograms as stated in the column headers of the underlying data.<sup>85</sup> The petitioner also claims that, if it was necessary for Chengdu

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<sup>78</sup> See Petitioner’s Rebuttal Surrogate Value Comments at Exhibits 1-5.

<sup>79</sup> See *Fish Fillets 2011-2012* and the accompanying IDM at comment III (to discern whether a particular value is aberrational, Commerce typically compares the prices for an input from all countries found to be at a level of economic development comparable to the NME whose products are under review).

<sup>80</sup> See *Utility Scale Wind Towers From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 75992 (December 26, 2012) (*Wind Towers*) and accompanying IDM at Comment 1 (“Given that steel plate is one of the primary inputs which drive the Department’s normal value calculations, the specificity and accuracy of the Thai tariff schedule with respect to the tariff items for steel plate is a reasonable basis to favor Thailand over South Africa and Ukraine because the Department can calculate the most accurate normal value by using Thai import data”).

<sup>81</sup> See *Photovoltaic Cells AR13-14* and the accompanying IDM at Comment 21.

<sup>82</sup> See *Photovoltaic Cells AR16-17* and the accompanying IDM at Comment 13.

<sup>83</sup> See *Chlorinated Isocyanurates* and the accompanying IDM at Comment 5C.

<sup>84</sup> See *Propane Cylinders* and the accompanying IDM at Comment 3.

<sup>85</sup> See Chengdu Huifeng’s Initial SV Comments at Exhibit 1.

Huifeng to apply a conversion, it has not provided the conversion. Chengdu Huifeng applied the conversion of 5,000 carats to 1 kilogram which is supported by its calculation. There is no information on the record that this is an incorrect conversion.

The petitioner is correct that, in *Quartz Surface Products*, Commerce recognized that Mexican import statistics are reported on an FOB rather than a CIF basis, and when applying Mexican SVs, it is our practice to increase the calculated import data AUV by an amount for international freight.<sup>86</sup> The petitioner argues that the Mexican import data employed in the *Preliminary Results* reflect AUVs based on FOB values without corresponding international freight values. We used information on the record to alleviate this data concern for the final results by valuing brokerage and handling; however, we were unable to adjust for international freight because no party placed information to value international freight on the record.

The petitioner's claim that Chengdu Huifeng calculated certain SVs based on a period other than the POR,<sup>87</sup> included import statistics for NME or "unknown" countries when calculating certain SVs;<sup>88</sup> and included import data with unidentified or mixed quantity units in the calculations for certain SVs. A review of Chengdu Huifeng's reported calculations and underlying data indicate that it: (1) used POR data to value ink pallets and paperboard; (2) correctly dropped countries with export subsidies or NME status from its calculation of labels, but did not exclude data for Georgia and Kyrgyzstan from its calculation of steel used to value grommets; and (3) included data for mixed units, tons, and pounds when calculating the value for the steel used to value grommets and magnetic strip. We recalculated the values for steel to exclude data from Georgia and Kyrgyzstan,<sup>89</sup> and to exclude data that were reported with mixed tons or pounds, considering that we have no information on the record to distinguish between what was in the mixed category and which type of pounds and tons were reported. Further, the petitioner argued that Commerce attempted to make up for shortfalls in Chengdu Huifeng's reported SVs by changing its calculations and not providing our work. For butyl acetate, we made a transcription error transferring data from the SV information provided by Chengdu Huifeng to the SV worksheet used in our margin calculations; and we did not change any SVs reported by Chengdu Huifeng in its second SV submission. For these final results, we have corrected the transcription error and recalculated the values for steel used to value grommets and magnetic strip.<sup>90</sup>

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<sup>86</sup> See *Quartz Surface Products* IDM at comment 9.

<sup>87</sup> See Petitioner's Case Brief at 11 (citing Chengdu Huifeng's Additional SV Comments at Exhibits 1 and 2 (worksheets for ink, pallets and paperboard)).

<sup>88</sup> See Petitioner's Case Brief at 11 (citing Chengdu Huifeng's Additional SV Comments at Exhibits 1 and 2 (worksheets for grommets and labels)).

<sup>89</sup> These countries are considered NMEs. See <https://www.trade.gov/nme-countries-list>.

<sup>90</sup> See Final Results SV Memo at Attachment, Surrogate Value Sheet.

## Comment 2: Valuation of Diamond Input

### *Petitioner's Comments:*

- In the *Preliminary Results*, Commerce valued Chengdu's diamond input based on the HTS subheading 7105.10 “{d}ust and powder of natural or synthetic” diamonds.<sup>91</sup> For the final results, Commerce should average the three more accurate HTS subheadings, 7102.21, 7102.29, and 7104.20 or all four HTS subcategories together.
- HTS subheading 7102.21 covers industrial diamonds and, thus, matches the scope's description of the diamond inputs used in diamond sawblade segments.
- The diamond input used in the production of diamond segments is not in the form of dust or powder. The scope of the order states that “{a} diamond sawblade segment consists of a mixture of *diamonds* (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders.”<sup>92</sup> It is the combination of industrial diamonds and metal powders which creates the “bond matrix” that forms the segment.<sup>93</sup>
- Industry experts have confirmed that “{d}iamond sawblade producers do not use diamond powder,” and that such powder “cannot be used in the manufacture of diamond sawblades,”<sup>94</sup> because it would not withstand the pressure and heat required to create diamond sawblade segments, and instead would decay into graphite through oxidization.<sup>95</sup>
- The record does not indicate that Chengdu's production process deviates from the industry norm, or that the company uses powder or dust of dust to produce diamond sawblades, rather than industrial diamonds.
- Commerce relied on a mill test certificate to determine that the input was a diamond powder but that certificate does not establish that the product is classifiable under HTS 7105, nor could it, given that diamonds and diamond powders are fundamentally different products, only one of which can be used in the production of diamond sawblades.
- The Petitioner's Affidavit is the only affirmative source of information on the record which explains why diamond powder and dust cannot be used to produce diamond sawblades – because they cannot stand the pressure and heat of production and the diamond powder would oxidize turning into graphite. Commerce's preliminary results, while citing the Petitioner's Affidavit,<sup>96</sup> does not explain the agency's basis for discounting the sworn information in it in favor of the respondent's unsubstantiated claim that it uses diamond powder.

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<sup>91</sup> See Petitioner's Case Brief at 13 (citing Preliminary Decision Memorandum accompanying *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 85 FR 2705 (January 16, 2020) (*Preliminary Results*) and the accompanying Preliminary Decision Memorandum at 7.

<sup>92</sup> See Petitioner's Case Brief at 14 (citing Petitioner's Pre-Prelim Comments at Exhibit 2, placing on the record *Diamond Sawblades and Parts Thereof From China and Korea*, Inv. Nos. 731 -TA-1 092-1093, USITC Pub. 3522 (July 2006) at 5); see also *Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea: Antidumping Duty Orders*, 74 FR 57145 (November 4, 2009) (Antidumping Duty Orders).

<sup>93</sup> See Petitioner's Case Brief at 14 (citing Petitioner's Pre-Prelim Comments at Exhibit 2 (Petitioner's Affidavit)).

<sup>94</sup> See Petitioner's Case Brief at 14 (citing *Id.*).

<sup>95</sup> See Petitioner's Case Brief at 14 (citing *Id.*).

<sup>96</sup> See Petitioner's Case Brief at 15 (citing Preliminary SV Memorandum at 5, note 17, and Petitioner's Affidavit).

- This affidavit establishes that diamonds (even very small diamonds) and diamond powder/dust are fundamentally different products used for different applications.<sup>97</sup>
- The very fact that Chengdu’s diamond input is used to produce diamond sawblades is evidence that the input is not diamond powder or dust, but industrial diamonds classifiable outside of heading 7105 of the Harmonized Tariff System.<sup>98</sup>
- Commerce preliminarily declined to rely on tariff headings 7102 and 7104 to value Chengdu’s diamond input, because the language of those headings does not define the products covered by the headings by reference to size, whereas U.S. tariff provisions under heading 7105, at the 10-digit level, apply to diamond of “80 mesh or finer”, and “other”<sup>99</sup> specifying, in at least some instances, mesh sizes.<sup>100</sup> This also discounts the International Trade Commission’s product description, that the diamonds in subject merchandise are composed of small stones or “crystals.”<sup>101</sup>
- There are no size measurements, or mesh sizes in the definition of HTS 7105.<sup>102</sup>
- The petitioner’s data from Thailand is harmonized with the HTSUS at the six-digit level.<sup>103</sup>
- As explained in *Well Luck Co. v. United States*, according to the General Rules of Interpretation for the HTS, tariff classification “shall be determined according to the terms of the headings and any relative chapter notes.”<sup>104</sup> Commerce did not compare the HTS categories starting with four digit groups and progressing to subheadings but rather used a 10-digit HTS (7105.10.0030) to make the determination.<sup>105</sup> The petitioner also cites *Orlando Food Corp v. United States*, which also describes the order of operations as proceeding from heading to subheading and not following the reverse when determining a classification.<sup>106</sup> In this case, the headings do not define the products classifiable

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<sup>97</sup> See Petitioner’s Case Brief at 18 (citing Petitioner’s Affidavit).

<sup>98</sup> See Petitioner’s Case Brief at 19 (even a visual inspection that whole, intact, industrial diamonds are used in the manufacture of diamond sawblades does not mean that any such diamonds, even if very small, are therefore the same as diamonds that have been crushed into powder).

<sup>99</sup> See Petitioner’s Case Brief at 15 (citing Mesh size refers to the number of openings per linear inch in a sieve. The higher the mesh size, the smaller the particle. Thus, “80 mesh or finer” refers to a mesh of 80 or higher. See, e.g., Chengdu Hui Feng’s Letter “Diamond Sawblades and Parts Thereof from the People’s Republic of China: Rebuttal Comments to Petitioner’s Pre-Preliminary Comments,” (December 16, 2019) at Exhibit 3).

<sup>100</sup> See Petitioner’s Case Brief at 15 (citing *Id.* at 6 (Similarly, Commerce disregards the International Trade Commission’s product descriptions for the same reasons).

<sup>101</sup> *Id.*

<sup>102</sup> See Petitioner’s Case Brief at 16.

<sup>103</sup> See Petitioner’s Case Brief at 16 (The schedules of all countries that are part of the Harmonized System are harmonized to the six-digit level. For example, the information Chengdu placed on the record regarding Mexico’s tariff provisions for diamond powder indicates that Mexican provision 7105.10, like U.S. provision 7105.10, corresponds to dust and powder of natural or synthetic diamonds.) See Chengdu Initial SV Comments at Exhibit 1; Pre-Prelim Rebuttal at Exhibit 1.

<sup>104</sup> See Petitioner’s Case Brief at 16 (citing *Well Luck Co. v. United States*, 887 F.3d 1106, 1111 (CAFC 2018) (quoting the first General Rule of Interpretation for the HTS).

<sup>105</sup> See Petitioner’s Case Brief at 17 (citing Preliminary SV Memorandum at 6).

<sup>106</sup> See Petitioner’s Case Brief at 17 (citing *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1440 (CAFC 1998) (“Only after determining that a product is classifiable under the heading should the court look to the subheadings to find the correct classification for the merchandise .... {W} hen determining which heading is ... more appropriate for classification, a court should compare only the language of the headings and not the language of the subheadings”).

therein by mesh size.<sup>107</sup> Accordingly, Commerce’s approach from the preliminary phase would not withstand judicial review.

- In the *Preliminary Results*, Commerce assumed that any product with a mesh size is a dust or powder. Mesh size, however, simply refers to the size of the opening in a sieve that a particle can pass through.<sup>108</sup> The Hope Diamond can pass through a sieve, if the openings are sufficiently large. That does not make the Hope Diamond a powder, or dust.
- Commerce’s questionnaires recognize that the diamond inputs in diamond sawblades may have mesh sizes of “0,” which would correspond to a very large diamond indeed.<sup>109</sup> The fact that a diamond has a mesh size is, therefore, not itself evidence that it is a diamond or a powder. This underscores the degree to which Commerce’s *Preliminary Results* are not only unsupported by the record but relies on a misinterpretation of the Harmonized Tariff System and the HTSUS.

*Chengdu Huifeng’s Rebuttal Comments:*

- Commerce should continue to value Chengdu’s diamond powder input based on HTS subheading 7105.10 for diamond powder for the final results because it is most specific to the Chengdu Huifeng’s input.
- Commerce should continue to reject the petitioner’s suggestion to use three other HTS codes (7102.21, 7102.29, and 7104.20) to value the diamond material because these HTS codes do not reflect or describe the diamond input used by Chengdu Huifeng.
- In evaluating surrogate value data, “Commerce’s practice is to select surrogate values as specific to the input (or byproduct/scrap) being valued as possible.”<sup>110</sup> HTS subheading 7102 covers “{d}iamonds, whether or not worked, but not mounted or set.” Based on the Explanatory Note to the Harmonized Commodity Description and Coding System (EN) 71.02, the heading 7102 covers unworked stones, and stones worked. HTS subheading 7104 covers synthetic or reconstructed precious or semiprecious stones.<sup>111</sup>
- Chengdu Huifeng did not use diamond stones in its production of diamond sawblades. The diamond material that Chengdu Huifeng used in its production process were diamond powders or very small particles in a tight size range described in the Preliminary SV Memorandum.<sup>112</sup>
- Unlike diamond powder, stones do not have mesh numbers because mesh numbers only apply to particles in the form of powders and dust and the sieves or screens these mixtures pass through for size categorization.

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<sup>107</sup> See Petitioner’s Case Brief at 17 (“If this were not enough, the Thai tariff schedule’s provisions under Heading 7105 do not appear to be on the record.”)

<sup>108</sup> See Petitioner’s Case Brief at 18 (citing, *e.g.*, Chengdu Huifeng’s Pre-Prelim Rebuttal Comments at Exhibit 3).

<sup>109</sup> See Petitioner’s Case Brief at 18 (citing Commerce’s April 16, 2019, Initial Questionnaire (Initial Questionnaire) issued to Chengdu Huifeng, Section C, at C-7; *see also* Chengdu Huifeng’s Pre-Prelim Rebuttal Comments at Exhibit 3).

<sup>110</sup> See Chengdu Huifeng’s Rebuttal Brief at 10 (citing *SolarWorld Americas, Inc. v. United States*, 320 F. Supp. 3d 1341, 1357 at note 15 (CIT 2018)).

<sup>111</sup> See Chengdu Huifeng’s Rebuttal Brief at 10 (As stated in rebuttal comments to Petitioner’s Pre-Preliminary Comments).

<sup>112</sup> See Chengdu Huifeng’s Rebuttal Brief at 11 (Chengdu Huifeng submitted as Exhibit 2 to Chengdu Huifeng’s Rebuttal Pre-Prelim Comments).

- Chengdu Huifeng submitted a sieve size and mesh designation table from the website “The Engineering Toolbox,” which shows the mesh sizes attributed to its diamond input are smaller than 0.5 mm.<sup>113</sup>
- Chapter 71 of the HTS provides guidance for the definition of “powder” used in the chapter as “products of which 90 percent or more by weight passes through a sieve having a mesh aperture of 0.5 mm.”<sup>114</sup> Thus, Chengdu Huifeng’s diamond meet this definition of “powder.”
- The Petitioner’s Affidavit, which alleges that “diamond powder cannot be used to produce diamond sawblades”<sup>115</sup> is not reliable because: (1) the affidavit should be given weight only as to its own production processes, and does not reflect all production of diamond sawblades by all producers globally; and (2) the assertion that diamond powder cannot be used to produce diamond sawblades is belied by reasonable inferences drawn from the scope of merchandise under consideration, which provides that “{D}iamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the order.” This scope language reasonably implies that any diamonds that have a mesh size smaller than 240 can possibly be used to produce subject merchandise.
- The Petitioner’s Affidavit declares that “no diamond sawblade producer in the United States, China or elsewhere uses diamond powder in the manufacture of diamond sawblades.”<sup>116</sup> The diamond sawblades industry in the United states may not use diamond powder to make sawblades but the Chinese industry does. Chengdu Huifeng’s production experience demonstrates the exact opposite of the petitioner’s assertion.
- It is important to note that Commerce verified Chengdu Huifeng’s FOPs and analyzed a report comprising the warehouse-out summary for diamond powder and showing the “powder specifications.”<sup>117</sup> At verification, Commerce observed the “mixing of metal powders and of the mesh sizes {in question} of diamond powder according to the recipes for subject CONNUMs.”<sup>118</sup> Commerce also observed that Chengdu Huifeng’s diamond sawblades are made with diamond powder sized by the mesh sizes in question.<sup>119</sup>
- HTS 7105.10 has been used to value diamond powder since at least the 2009-2010 review under this antidumping duty order. It does not appear that the petitioner has contended in the past eight years that HTS 7105.10 is inappropriate to value the diamond input used to manufacture subject merchandise. Commerce noted that, “none of the other HTS categories promoted by the petitioner define the size of the particles to which they apply.”<sup>120</sup> As it is Commerce’s obligation to calculate antidumping duty margins as accurately as possible and to select surrogate value information to value inputs as

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<sup>113</sup> See Chengdu Huifeng’s Rebuttal Brief at 11 (citing Chengdu Huifeng’s Pre-Prelim Rebuttal Comments at Exhibit 3).

<sup>114</sup> See Chengdu Huifeng’s Rebuttal Brief End 11 (citing Chapter 71 of the Harmonized Tariff Schedule chapter notes, available on the record at Chengdu Huifeng’s Pre-Prelim Rebuttal Comments at Exhibit 1).

<sup>115</sup> See Chengdu Huifeng’s Rebuttal Brief at 11 (citing Petitioner’s Case Brief at 15).

<sup>116</sup> See Chengdu Huifeng’s Rebuttal Brief at 12 (citing Petitioner’s Case Brief at 14).

<sup>117</sup> See Chengdu Huifeng’s Rebuttal Brief at 12 (citing Verification Report at 24).

<sup>118</sup> See Chengdu Huifeng’s Rebuttal Brief at 13 (citing Preliminary SV Memorandum at 5-6).

<sup>119</sup> *Id.*

<sup>120</sup> See Chengdu Huifeng’s Rebuttal Brief at 13 (Memorandum, “Diamond Saw blades and Parts Thereof from the People’s Republic of China: Surrogate Values for the Preliminary Results of Review,” dated January 9, 2020 (Preliminary SV Memorandum) at 6).

specifically as possible, Commerce should continue to use HTS 7105.10 to value Chengdu Huifeng’s diamond powder input in the final results.<sup>121</sup>

**Commerce’s Position:** We preliminarily valued diamond powder using HTS subcategory 7105 “dust and powder of natural or synthetic precious or semi-precious stones” at the six-digit subcategory 7105.10 “of diamonds.”<sup>122</sup> The petitioner argues for averaging the HTS subcategories 7102.21, 7102.29, and 7104.20, or, alternatively, averaging all four of these six-digit HTS classifications to calculate the SV for diamond powder. The three additional HTS classifications suggested by the petitioner include two subcategories of HTS 7102 “diamonds, whether or not worked, but not mounted or set,” where HTS 7102.21 applies to “{i}ndustrial: unworked, or simply sawn, cleaved, or bruted” and HTS 7102.29 applies to “{o}ther.” The petitioner’s third suggested HTS is 7104, “{S}ynthetic or reconstructed precious or semiprecious stones, whether or not worked or graded but not strung, mounted or set; ungraded synthetic or reconstructed precious or semiprecious stones, temporarily strung for convenience of transport” at the six-digit HTS 7104.20 “other, unworked or simply sawn or roughly shaped.”

When evaluating SV data, Commerce’s practice is to select SVs as specific to the input (or byproduct/scrap) being valued as possible.<sup>123</sup> Our preference is to use the single most specific HTS classification, based on available data on the record.<sup>124</sup>

Chengdu Huifeng points to a definition of a “powder” in the HTS Chapter 71 notes which explains that powders of precious metals are mixtures of particles “of which 90 percent or more by weight passes through a sieve having a mesh aperture of 0.5 mm.”<sup>125</sup> We verified that the diamond material that Chengdu Huifeng used in its production process were powders or very small particles, which had a narrow range of mesh sizes.<sup>126</sup> These mixtures contain diamonds of all sizes up to the mesh size that determines the largest constituent parts of a powder that is sieved by the mesh. The petitioner argues that diamond material with these mesh sizes are

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<sup>121</sup> See Chengdu Huifeng’s Rebuttal Brief at 13.

<sup>122</sup> See Preliminary SV Memorandum at 5. We used data submitted in Chengdu Huifeng’s Initial SV Comments, at Exhibit 1 to value HTS 7105.10 in the preliminary results.

<sup>123</sup> See *SolarWorld Americas, Inc. v. United States*, 320 F. Supp. 3d 1341, 1357 at note 15 (CIT 2018).

<sup>124</sup> See *Xanthan Gum From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 82 FR 11428 (February 23, 2017) and the accompanying IDM at Comment 11 (“When {Commerce} has determined that a certain HTS category is the most specific category which matches the respondent’s consumed input, its practice is to use the weighted-average value of imports under that specific HTS category as the best available surrogate value”).

<sup>125</sup> The HTS Chapter 71 notes stated that for the purposes of subheadings 7106.10 (silver), 7108.11 (gold), 7110.11 (platinum), 7110.21 (palladium), 7110.31 (Rhodium) and 7110.41 (Iridium), the expressions “powder” and “in powder form” mean products of which 90 percent or more by weight passes through a sieve having a mesh aperture of 0.5 mm. precious metals. See Chengdu Huifeng’s Pre-Prelim Rebuttal Comments at Exhibit 1.

<sup>126</sup> In the preliminary results we relied on mill test certificates to establish the particle size of the input not to determine that it was a powder. We determined it was a powder using HTS definitions and we have updated our analysis for these final results. See Memorandum, “Verification of the Sales Questionnaire Responses of Chengdu Huifeng New Material Technology Co., Ltd. in the Antidumping Duty Administrative Review of Diamond Sawblades and Parts Thereof from the People’s Republic of China,” dated January 9, 2020 (Verification Report) at Exhibit VE-4D (OBSU 289 Sales Trace) and VE-10 (Raw Material Purchases); See the company-specific margin-calculation analysis memorandum for Chengdu Huifeng, “Administrative Review of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the People’s Republic of China; 2017-2018: Final Results Analysis Memorandum for Chengdu Huifeng New Material Technology Co., Ltd.,” dated concurrently with this memorandum (Chengdu Huifeng Final Analysis Memorandum).

precious gemstones (*i.e.*, diamonds of HTS 7104) or industrial diamonds (*i.e.*, diamonds of HTS 7104) which are not limited in size and are not powders, but it has not provided any record evidence that establishes size characteristics of gemstones compared to gem powders. Chengdu Huifeng purchases size-limited diamond mixtures which are accurately described by the term “powder” based on the best information available on the record, *i.e.*, the size limitation for precious metal powders in the HTS chapter notes. While this chapter note specifically ascribes this powder definition to a specific set of precious metals which do not include diamonds, this definition is instructive as to the particle size of a precious metal powder, which is similar to a gemstone powder.

Because there is no reliable gauge to determine the difference between a precious gemstone, industrial diamond, and diamond powder on the record, and taking into consideration the petitioner’s arguments that we rely on HTS numbers which are harmonized and, therefore, available for valuing the input in Mexico, we selected a six-digit HTS number that values diamond powders, rather than industrial or jeweler’s gemstones of unrestricted size. Further, for these final results, we have relied on the six-digit HTS classification definition text to determine the appropriate HTS classification to value diamond powder and continue to use HTS 7105.10 to value diamond powder. HTS 7105 applies to “powder” of “precious...stones”, and specifically “diamonds” at HTS 7105.10.

The scope of the order provides guidance as to the smallest size of the “diamonds” particles in a sawblade, at 240 mesh, or 0.065 mm. We disagree with the petitioner that there is a distinction between diamonds and diamond powders such that the use of “diamond” in the scope of the order precludes the use of diamond powder to make subject merchandise. A diamond powder consists of many tiny diamonds of different sizes, up to a mesh size that limits its largest constituent. The smallest size of diamonds allowed by the scope of the order, mesh 240, contains diamonds up to 0.065 mm in size, and appear to be powder or dust rather than gemstones that can be worked, considering their tiny size. Moreover, the scope of the order does not specifically call for diamond “stones” or “industrial” diamonds; therefore, valuing the input as a diamond powder is not contrary to the plain language of the scope. While HTS 7102 and HTS 7104 indicate that these items can be “worked” or “unworked,” HTS 7105 specifically calls for “dust” and “powder” and does not indicate that it can be “worked” like a gemstone.

We agree with Chengdu Huifeng that the Petitioner’s Affidavit that states that “{d}iamond sawblade producers do not use diamond powder” to produce diamond sawblades and that diamond powder “cannot be used in the manufacture of diamond sawblades,” because it would “not withstand the pressure and heat required to create diamond sawblade segments, and instead would “oxidize into graphite,”<sup>127</sup> is not determinative for the purposes of determining what inputs are used in Chengdu Huifeng’s production process. We verified Chengdu Huifeng’s diamond stock, recipes, and production processes and determined that it was using diamond powders of certain mesh sizes,<sup>128</sup> and we have determined that diamond mixtures of the sizes used by Chengdu Huifeng are the equivalent of powders as defined in the HTS categories.

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<sup>127</sup> See Petitioner’s Case Brief at 14 (citing Petitioner’s Affidavit).

<sup>128</sup> For further discussion which contains Chengdu Huifeng’s BPI, see the Final SV Memorandum.

The Petitioner's Affidavit may describe its production process but the petitioner has not demonstrated that Chengdu Huifeng's production process is identical to its own. To the contrary, information on the record which describes Chengdu Huifeng's production process in both its questionnaire responses and verification exhibits indicates that Chengdu Huifeng uses diamond powder.<sup>129</sup> Further, the Petitioner's Affidavit refers to diamond powder but does not provide measurements. Therefore, the size of the diamonds referenced in the affidavit is not clear. Contrary to the petitioner's claims, it appears that diamond powder is used in the production of diamond sawblades at Chengdu Huifeng's factory.

Additionally, considering their tiny size, it is unlikely that diamonds of less than a half millimeter gauge can be worked in the ways described in the classification definitions in HTS 7102 and 7104. The petitioner did not provide any information on how diamonds of a size allowed by the scope, that is up to mesh size number 240 or over 0.065 mm, or diamonds of the mesh sizes used by Chengdu Huifeng, could be "worked" in manners such as "cutting," "sawing," or "cleaving," which are indicated as possible forms of precious stones in HTS category headings for HTS 7102 and 7104.

For these final results, we have only used the HTS definitions at the four- and six-digit harmonized level to select an appropriate HTS to value diamond powder, and have not continued to rely on "80 mesh and finer" and "other" descriptors for HTS 7105.10.0030 in the Harmonized Tariff System of the United States (which contains longer classifications than the HTS) to make our determination in these final results. There are no sizes described in any of the four- or six-digit HTS number descriptions for any of the four HTS numbers in question. There are also no specific definitions of powder which relate to any of the four HTS numbers in question; in absence of any direct information we have relied on a definition of powder sizes for precious metals in the Chapter 71 notes.<sup>130</sup>

For these final results, we are continuing to use only HTS 7105.10, and there is sufficient Mexican import information on the record to value this factor in the primary surrogate country. For these final results, we continue to value Chengdu Huifeng's diamond powder input using Mexican data concerning HTS 7105.10.

### **Comment 3: Selection of Financial Statements for Surrogate Financial Ratios**

For the *Preliminary Results*, we selected Thai Gulf's 2016 financial statements over the 2016 financial statements of three other Thai companies, K.M. & A.A. Company Limited (KM), Mitsui Grinding Technology (Thailand) Co., Ltd. (Mitsui), and Tyrolit Thai Diamond Company Limited (Tyrolit), because we determined that the mix of products produced by the other three Thai companies was too broad and less representative than the products produced by Thai Gulf.

#### *Petitioner's Comments:*

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<sup>129</sup> See Verification Report at Exhibit VE-4D (OBSU 289 Sales Trace) and VE-10 (Raw Material Purchases). See also Chengdu Huifeng's June 7, 2019, section D questionnaire response (DQR) at Exhibit D-2 (The mixed powders (including the diamond powder is cold pressed and sintered at 900°C).

<sup>130</sup> See Chengdu Huifeng's Pre-Prelim Rebuttal Comments at Exhibit 1.

- The record demonstrates that Commerce should include the financial data of KM and Tyrolit in its surrogate financial ratio calculations.<sup>131</sup>
- In accordance with section 773(c)(1) of the Act, the valuation of the factors of production shall be based on the best available information regarding the values of such factors, and, in choosing surrogate financial ratios, it is Commerce’s long-standing practice to use data based on the “specificity, contemporaneity, and quality of the data”<sup>132</sup> to determine which constitutes the most comparable, and accurate information on the record.<sup>133</sup>
- Lacking support and inconsistent with agency practice, Commerce applied a product mix analysis by which it determined that KM and Tyrolit produced too great a number of non-comparable products, relative to Thai Gulf.<sup>134</sup>
- The record indicates that both Thai Gulf and KM are producers of grinding wheels, Tyrolit produces identical merchandise, and all three companies produce certain other non-comparable merchandise.<sup>135</sup>
- To the extent Commerce considers product mix to be a factor in its surrogate financial ratio calculations, it does so only where the record contains the detail necessary to identify the specific portion of identical, comparable and/or noncomparable merchandise, *i.e.*, only where the record contains a breakdown of revenues or production by product, or otherwise allows for percentage calculations, which it does not in this case.<sup>136</sup>
- In the remand determination for the 2012-2013 administrative review of this order, where financial data for KM, Tyrolit and Thai Gulf were similarly all under consideration, the only reason Commerce rejected the KM financial data was that they were less contemporaneous than the Thai Gulf financial data under consideration, which is not the case in the instant review, as the financial data for all three companies are from the same period.<sup>137</sup>
- Commerce overlooked the fact that, in its second and final remand determination for the 2012-2013 administrative review, it ultimately determined the KM financial data to be an appropriate basis for the calculation of SVs for that review.<sup>138</sup>

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<sup>131</sup> See Petitioner’s Case Brief at 20.

<sup>132</sup> See Petitioner’s Case Brief at 20-21 (citing *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People’s Republic of China*, 71 FR 29303 (May 22, 2006), and accompanying IDM at Comment 1).

<sup>133</sup> See Petitioner’s Case Brief at 20-21 (citing *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 14437 (March 18, 2008), and accompanying IDM at Comment 1).

<sup>134</sup> See Petitioner’s Case Brief at 21.

<sup>135</sup> See Petitioner’s Case Brief at 21-22.

<sup>136</sup> See Petitioner’s Case Brief at 22-23 (citing *Certain Steel Nails from the People’s Republic of China: Final Results and Final Partial Rescission of the Second Antidumping Duty Administrative Review*, 77 FR 12556 (March 1, 2012), and accompanying IDM at Comment 2; see also *Certain Steel Nails from the People’s Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014), and accompanying IDM at Comment 2).

<sup>137</sup> See Petitioner’s Case Brief at 23 (citing *Final Remand Redetermination, Diamond Sawblades Manufacturers’ Coalition v. United States*, Court No. 15-00164, Slip Op. 17-36, dated September 21, 2017, pursuant to *Diamond Sawblades Manufacturers’ Coalition v. United States*, 219 F. Supp. 3d 1368 (CIT 2017), at 14-15 (*DSBs 2012-2013 Remand*)).

<sup>138</sup> See Petitioner’s Case Brief at 23-24 (citing *DSBs 2012-2013 Second Remand* at 6; see also Petitioner’s Case Brief (citing *Diamond Sawblades Manufacturers’ Coalition v. United States*, 334 F. Supp. 3d 1354 (CIT 2018) (sustaining Commerce’s second remand redetermination)).

- In this case, not only is KM a producer of comparable merchandise, its financial data are complete, not impacted by subsidies, and contains sufficient detail to calculate the surrogate ratios.<sup>139</sup>
- Commerce rejected Tyrolit’s financial data under consideration in 2012-2013 administrative due to a lack of detail, noting that the data contained only one-line item, depreciation, as factory overhead.<sup>140</sup>
- This is not the case for Tyrolit’s 2016 financial data on the record of this review, as it specifically allows for the distinction between depreciation and other manufacturing overhead expenses included in the cost of sales as well as the distinction between that depreciation associated with the costs of sales and that captured as part of administrative expenses.<sup>141</sup>
- Where two or more statements are usable, it is Commerce’s practice to rely on multiple financial statements to calculate surrogate financial ratios. Therefore, consistent with agency practice and the record evidence, Commerce should revise its surrogate financial ratios to include the financial data for KM and Tyrolit.<sup>142</sup>

*Chengdu Huifeng’s Rebuttal Comments:*

- Commerce correctly relied on Thai Gulf’s financial statements alone to calculate the surrogate financial ratios.<sup>143</sup>
- Although “Commerce generally finds that the greatest number of financial statements yields the most representative data from the relevant manufacturing sector, Commerce is not justified in sacrificing quality for quantity,” “and Commerce must avoid averaging financial statements that would have an unjustifiably distortive effect on the resulting surrogate financial ratio.”<sup>144</sup>
- Commerce correctly determined based on substantial record evidence that Thai Gulf’s 2016 financial statements were alone the best available information on the record to calculate surrogate financial ratios.<sup>145</sup>
- Because the financial data of KM, Tyrolit and Mitsui involve more than twice as many products as Thai Gulf and, given that Chengdu Huifeng’s production consists *primarily* of in-scope merchandise, it is reasonable for Commerce to use the financial statements of a producer of comparable merchandise that does not also produce a wide variety of merchandise that is not comparable to the subject merchandise.<sup>146</sup>

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<sup>139</sup> See Petitioner’s Case Brief at 24 (citing *Certain Stilbenic Optical Brightening Agents from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17436 (March 26, 2012), and accompanying IDM at Issue 2 (*OBA’s LTFV*)).

<sup>140</sup> See Petitioner’s Case Brief at 24.

<sup>141</sup> See Petitioner’s Case Brief at 24-25.

<sup>142</sup> See Petitioner’s Case Brief at 25 (citing *Jiaying Brother*, 11 F. Supp. 3d 1326,1331, *aff’d*, 822 F.3d 1289 (CAFC 2016); also citing, *e.g.*, *Dupont Teijin Films v. United States*, 997 F. Supp. 2d 1338, 1346 (CIT 2014)).

<sup>143</sup> See Chengdu Huifeng’s Rebuttal Brief at 23.

<sup>144</sup> See Chengdu Huifeng’s Rebuttal Brief at 13-14 (citing *Downhole Pipe & Equipment LP v. United States*, 887 F. Supp. 2d 1311, 1321 (CIT 2012) (citing *Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262, 1301-1308 (CIT 2006) (*Dorbest Ltd.*)).

<sup>145</sup> See Chengdu Huifeng’s Rebuttal Brief at 14.

<sup>146</sup> *Id.*

- Commerce should continue to use only Thai Gulf’s financial statements to calculate the surrogate financial ratios for the final results, as it is a significant producer of comparable merchandise (*i.e.*, grinding wheels) and averaging Thai Gulf’s financial data with the data of KM and would have an unjustifiably distortive effect on the resulting surrogate financial ratio.<sup>147</sup>

**Commerce’s Position:** Commerce continues to find that the best available information on the record to value surrogate financial ratios is the financial data contained in the 2016 financial statements of Thai Gulf alone and, thus, we will make no changes to the surrogate financial ratios in our margin calculations for these final results.

Section 773(c)(1) of the Act directs Commerce to base the valuation of the factors of production on “the best available information regarding the values of such factors.”<sup>148</sup> In choosing surrogate financial ratios, it is Commerce’s longstanding practice to use data from surrogate companies based on the specificity, contemporaneity, and quality of the data.<sup>149</sup> Commerce evaluates the best available surrogate information on a case by case basis, and in each case, Commerce must evaluate among the surrogate value sources placed on the record to determine which constitutes the most comparable, and accurate information.<sup>150</sup> Commerce has a stated preference to average multiple usable financial statements to calculate financial ratios and, in doing so, we must consider whether these financial statements have comparable levels of detail such that averaging them would not create distortions.<sup>151</sup> As such, the amounts for labor and energy reported in the financial statements we consider as sources for surrogate financial data and the portion of each amount that relates to manufacturing or non-manufacturing activities figure prominently into the accuracy of these calculations. We also note that, where possible, we do not value financial ratios based on financial statements that show discrepancies or lack of specificity with respect to certain line items.<sup>152</sup> Finally, the CIT has recognized Commerce’s discretion in selecting the best surrogate values on the record.<sup>153</sup>

The three financial ratios we generally calculate are: (1) manufacturing overhead as a percent of raw materials, direct labor & energy; (2) selling, general, and administrative expenses (SG&A) as a percent of raw materials, direct labor, energy, manufacturing overhead, and traded/finished

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<sup>147</sup> *Id.*

<sup>148</sup> See section 773(c)(1) of the Act.

<sup>149</sup> See, e.g., *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006), and accompanying IDM at Comment 1.

<sup>150</sup> See, e.g., *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 14437 (March 18, 2008), and accompanying IDM at Comment 1.

<sup>151</sup> See *Dorbelt Ltd. v. United States*, 604 F.3d 1363, 1374 (CAFC 2010).

<sup>152</sup> See, e.g., *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 26712 (May 9, 2014), and accompanying IDM at Comment 2.

<sup>153</sup> The CIT has upheld its previous determinations that “when Commerce is faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other in their eyes, then they have the discretion to choose accordingly.” See *FMC Corporation v. United States*, Slip Op. 03-15 (CIT 2003) at 15 (affirmed 2004 U.S. Appeals Lexis 3096 (Fed. Cir. February 9, 2004) (citing *Technoimportexport, UCF America Inc. v. United States*, 783 F. Supp. 1401, 1406 (CIT 1992))).

goods; and (3) profit as a percent of raw materials, direct labor, energy, manufacturing overhead, traded/finished goods, SG&A, and interest.

As we consider the financial statements on the record for the companies, we find that contemporaneity is not an issue because all of the financial statements are from the same period, none of the financial statements contain subsidies that have been countervailed, and all companies were profitable.<sup>154</sup> Also, at least with respect to KM, Thai Gulf, and Tyrolit, the financial statements indicate that the companies produced comparable merchandise.<sup>155</sup> However, despite the petitioner's arguments to the contrary, we see in KM's and Tyrolit's financial statements a lack of detail necessary to value surrogate financial ratios. Specifically, when comparing KM's 2016 financial statements in this review to KM's 2013 financial statements in the 2012-2013 administrative review, while KM's 2013 financial statements may have provided "sufficient" detail in that proceeding by itemizing labor and electricity specific to manufacturing, which justified our ultimate reliance on the financial data in that review as a result of the DSBs 2012-2013 Second Remand, KM's 2016 financial statements in this review do not provide the same level of detail. For example, the only reference to energy expenses in KM's 2016 financial statements is "Accrued electricity expense" under "Other Current Liabilities" and, with respect to labor, is "Salary, wages and other employee benefits" under "Significant Expenses by Nature," without specifying what portion of the electricity and/or salary and wages pertain to manufacturing, sales and/or overhead. Without this line-item specificity, we are not able to value accurately the labor and energy components that make up each financial ratio, whereas we are able to do so using Thai Gulf's financial statements.

Similarly, when comparing Tyrolit's 2016 financial statements in this review to Tyrolit's 2013 financial statements in the 2012-2013 administrative review, we find that Tyrolit's 2016 financial statements do not provide sufficient detail for valuing surrogate financial ratios. While Tyrolit's 2016 financial statements compared to Tyrolit's 2013 financial statements in the 2012-2013 review may, as the petitioner argues, better distinguish between depreciation and other manufacturing overhead expenses included in the cost of sales, as well as distinguish between the depreciation associated with the costs of sales and the depreciation captured as part of administrative expenses, the 2016 financial statements do not provide sufficient detail with respect to labor and energy. Specifically, Tyrolit's 2016 financial statements do not itemize labor and energy specific to manufacturing, but rather group "Salaries and wages and other employee benefits" and "Utilities expenses" under the general heading "Expenses by Nature" and do not specify what portion of either of these expenses pertains to manufacturing and what portion pertains to non-manufacturing operations and/or overhead. Without this line-item specificity, we are not able to value accurately the labor and energy components that make up each surrogate financial ratio whereas we are able to do so using Thai Gulf's financial statements. The petitioner cites to *OBAs LTFV* in support of using KM's financial statements to value surrogate value ratios despite their lack of detail with respect to energy costs,<sup>156</sup> but fails to

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<sup>154</sup> See Petitioner's SV Comments at Exhibits 9B (KM's 2016 financial statements), 10B (Thai Gulf's 2016 financial statements), 11B (Tyrolit's 2016 financial statements), and 12B (Mitsui's 2016 financial statements).

<sup>155</sup> See Petitioner's SV Comments at Exhibits 9B, 10B and 11B.

<sup>156</sup> See Petitioner's Case Brief at 24 (citing *Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17436 (March 26, 2012) and accompanying IDM at Issue 2 (*OBAs LTFV*)).

acknowledge that, in *OBA's LTFV*, Commerce did not select certain financial statements due to their lack of detail with respect to labor,<sup>157</sup> and the petitioner fails to offer a reasonable methodology to allocate labor costs in KM's 2016 financial statements in order to calculate the surrogate overhead and SG&A ratios. Moreover, as stated above, the question is whether each statement consists of similar levels of detail.

It should also be noted that the petitioner did not argue for the use of the financial statements on the record of the fourth company, Mitsui, as a potential source for surrogate financial data. However, for purposes of selecting financial statements to source surrogate financial data, and similar to the financial statements of KM and Tyrolit, the level of detail in Mitsui's financial statements also is lacking. This is particularly the case with respect to expenses for labor and energy, where labor is identified as "Salary, Bonuses and Wages," but not segregated between manufacturing and non-manufacturing activities, and energy is identified generally as "Utilities" as part of all "Administrative Expenses." Because no party argued for the inclusion of Mitsui's financial statements for these final results, and because we find Mitsui's financial statements suffer from a similar lack of detail as compared with the Thai Gulf financial statements, we are making no change from the *Preliminary Results* and are not including Mitsui's financial statements in our financial ratios valuations.

In contrast, the Thai Gulf's 2016 financial statements itemize "Fuel and Lubricant" and "Electricity", specific to manufacturing, under "Cost of Goods Sold," and "Electricity" and "Salary", specific to non-manufacturing, under "Administrative Expenses" (overhead). For this reason, we find that Thai Gulf's financial statements provide more specific detail compared to the other companies' financial statements which lack sufficient line item specificity and do not break out labor or energy costs. We find some merit to the petitioner's argument that the four financial statements on the record do not contain the necessary detail to rely on a product mix analysis alone to select Thai Gulf's financial data and discount KM's and Tyrolit's financial data to value surrogate financial ratios. However, for purposes of these final results, our analysis rests on the fact that KM's and Tyrolit's financial statements are not as "complete" and lack certain, significant detail compared to Thai Gulf's financial statements for purposes of valuing financial ratios.

As noted above, Commerce has a stated preference to average multiple usable financial statements to calculate financial ratios. However, in doing so, we are considering whether these financial statements have comparable levels of detail such that averaging them would not otherwise create distortions or be less representative of the production experience of the relevant producer(s). In this case, there is a clear distinction in the level of detail offered by the Thai Gulf financial statements with respect to detail on labor and energy associated with manufacturing compared to the other financial statements on the record such that, if we were to average Thai Gulf's financial ratios with the ratios derived from the other financial statements, the resulting ratios would be less representative of Chengdu Huifeng's production experience.<sup>158</sup>

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<sup>157</sup> *Id.* (Where we did not select 4 out of 7 financial statements in that review because they were "not sufficiently detailed to calculate overhead and SG&A ratios because they do not allocate depreciation and labor costs among manufacturing and SG&A activities.")

<sup>158</sup> See *Dorbest Ltd.*, 462 F. Supp. 2d at 1301-1308.

Therefore, based on the added specificity for labor and energy offered by Thai Gulf's 2016 financial statements with which we are more accurately able to value the overhead, SG&A, and profit ratios, we find, product mix aside, that Thai Gulf's 2016 financial statements alone provide the best available information on the record to value surrogate financial ratios and, in turn, calculate an antidumping duty margin for Chengdu Huifeng as accurately as possible.<sup>159</sup>

#### **Comment 4: Whether to Apply Partial AFA to Chengdu Huifeng's Reported Labor FOPs**

For the *Preliminary Results*, we calculated labor costs using Chengdu Huifeng's labor rates reported in hours per piece, which are based on total labor hours over total production of all products during the POR.

##### *Petitioner's Comments:*

- Commerce should apply partial facts available with an adverse inference (AFA) to Chengdu Huifeng's reported labor FOPs.<sup>160</sup>
- Chengdu Huifeng understated its reported labor hours because it calculated direct and indirect labor hour ratios by allocating total labor hours over a quantity greater than the production quantity of merchandise under consideration to identify labor hours per piece.<sup>161</sup>
- In response to Commerce's request that Chengdu Huifeng report labor on a CONNUM-specific basis, Chengdu Huifeng explained that it does not track labor hours on a product- or CONNUM-specific basis, labor usage varies very little product by product and scope merchandise accounts for a significant proportion of its total production.<sup>162</sup>
- Chengdu Huifeng did not demonstrate or provide evidence to support the accuracy of its methodology or demonstrate the extent of the variation of labor across products to make clear there is no impact on its FOP reporting, or attempt to develop an appropriate allocation methodology that captures labor hours on a product-specific basis or distinguishes between scope and non-scope production.<sup>163</sup>
- Pursuant to 19 U.S.C. § 1677e, Commerce may base a determination on facts available when necessary information is not on the record or an interested party withholds information, fails to provide information in a timely manner, significantly impedes a proceeding, or provides unverifiable information.<sup>164</sup>
- If Commerce determines that an interested party has failed to cooperate by not acting to the best of its abilities, the agency may rely on an adverse inference in selecting among facts available.<sup>165</sup>

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<sup>159</sup> We note that we determined to rely on Thai Gulf's 2016 financial statements alone as the source for surrogate financial data when analyzing the same set of financial statements in the first remand redetermination for the 2015-2016 review, because it provides superior detail compared to the other financial statements of KM, Mitsui and Tyrolit. *See Final Results of Redetermination Pursuant to Court Remand, Bosun Tools et al. v. United States*, Consol. Court No. 18-00102, Slip Op. 19-125 (CIT September 23, 2019), dated March 9, 2020.

<sup>160</sup> *See* Petitioner's Case Brief at 25.

<sup>161</sup> *See* Petitioners' Case Brief at 25.

<sup>162</sup> *See* Petitioner's Case Brief at 26-27.

<sup>163</sup> *See* Petitioners' Case Brief at 27.

<sup>164</sup> *See* Petitioners' Case Brief at 28 (citing 19 U.S.C. § 1677e(a)).

<sup>165</sup> *See* Petitioners' Case Brief at 28 (citing 19 U.S.C. § 1677e(b)).

- The U.S. Court of Appeals for the Federal Circuit (CAFC) has explained that the statute does not require perfection, but does demand that a respondent “do the maximum it is able to do.”<sup>166</sup> Thus, whether a party has intentionally withheld information from Commerce or simply failed to be sufficiently attentive in responding or compiling information to provide to Commerce, the application of AFA is appropriate.<sup>167</sup>
- Commerce’s ability to use facts available in either scenario is important to the functioning of the trade remedy laws given that the use of AFA “is an essential investigative tool in antidumping and countervailing duty proceedings {as it} provides the only incentive to foreign exporters and producers to respond to {Commerce’s} questionnaires.”<sup>168</sup>
- Chengdu Huifeng’s refusal to revise its labor reporting and failure to otherwise demonstrate the accuracy of its reporting methodology warrants the application of partial AFA to its labor rates to account for the unreported amount.<sup>169</sup>
- As partial AFA, Commerce should revise the denominator of its labor rate calculations to best derive the total pieces of produced subject merchandise.<sup>170</sup>

*Chengdu Huifeng’s Rebuttal Comments:*

- The petitioner wrongly asserts that Chengdu Huifeng failed to report accurate labor rates and that its labor rate reporting methodology understates its reported FOPs.<sup>171</sup>
- Given that Chengdu Huifeng’s books and records as maintained in the ordinary course of business do not permit a CONNUM-specific or product-specific report of labor consumption, and Chengdu Huifeng’s development of a reasonable allocation methodology, Commerce should continue to use Chengdu Huifeng’s report labor hours in the final results.<sup>172</sup>
- There is no legal basis to apply partial facts available to Chengdu Huifeng’s reported labor FOPs, because: (1) in the normal course of business, Chengdu Huifeng does not track the labor hours on a product-specific basis, as all workers can produce scope merchandise as well as merchandise out of scope simultaneously, so Chengdu Huifeng averagely allocated the total labor hours over total production; (2) the CONNUM system developed by Commerce for antidumping proceedings are not used commercially in the ordinary course of business, as almost all companies in China, regardless of industry, do not gather and attribute costs to each individual type of product produced; and (3) Chengdu Huifeng does not record and has never recorded labor costs on a product-specific or CONNUM-specific basis.<sup>173</sup>

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<sup>166</sup> See Petitioners’ Case Brief at 28 (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (CAFC 2003) (*Nippon Steel*)).

<sup>167</sup> See Petitioners’ Case Brief at 28.

<sup>168</sup> See Petitioners’ Case Brief at 28 (citing Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, vol. I, at 868 (1994), *reprinted in* 1994 U.S.C.C.A.N 4040,4198 (SAA)).

<sup>169</sup> See Petitioners’ Case Brief at 29.

<sup>170</sup> See Petitioners’ Case Brief at 29.

<sup>171</sup> See Chengdu Huifeng’s Rebuttal Brief at 15.

<sup>172</sup> See Chengdu Huifeng’s Rebuttal Brief at 15.

<sup>173</sup> See Chengdu Huifeng’s Rebuttal Brief at 15-16.

- Chengdu Huifeng developed a reporting methodology based on its books and records given the data limitations therein.<sup>174</sup>
- Neither a piece-based allocation methodology nor a weight-based allocation methodology is a perfect approach to report labor usage.<sup>175</sup>
- The piece-based allocation methodology used by Chengdu Huifeng could result in a higher margin for Chengdu Huifeng once the net sales pass the Cohen's *d* test and an average-to-transaction method is applied.<sup>176</sup>
- The petitioner vastly overstates the difference between labor usage for self-produced and purchased cores, because a very small amount of labor is involving in punching cores, and, therefore, the difference between self-produced and purchased cores is marginal.<sup>177</sup>
- The petitioner's own calculations show that its assertions concerning understated labor usage are unfounded and overstated – Chengdu Huifeng's calculation worksheet for direct labor hours yields a rate of less than a hundredth hour per piece for direct labor compared to the petitioner's suggested calculation.<sup>178</sup>
- Commerce conducted an on-site verification of Chengdu Huifeng's FOP database, including all relevant records and documentation that Chengdu Huifeng used to report its labor inputs, where Chengdu Huifeng's officials explained that it calculated its per-unit labor rates using total production of all products and Commerce did not find any discrepancies.<sup>179</sup>
- Because labor usage varies little from product to product and scope merchandise accounts for a significant majority of Chengdu Huifeng's total production, the labor usage rates on either a per-piece basis or a per-kilogram basis do not have an appreciable impact on the total cost or normal value.<sup>180</sup>
- Chengdu Huifeng's labor FOP reporting methodology fulfills Commerce's instructions and requirements.<sup>181</sup>
- The petitioner's suggestion that Commerce apply partial AFA in the final results on the basis that Chengdu Huifeng understated its labor FOPs is without merit.<sup>182</sup>
- The record establishes that Chengdu Huifeng was a cooperative respondent that responded fully to each of Commerce's information requests, including all questions relating to the labor FOPs, so no factual or legal basis exists for Commerce to apply partial AFA to Chengdu Huifeng in this proceeding.<sup>183</sup>
- 19 U.S.C. § 1677e(a) authorizes Commerce to apply facts available only when necessary information is missing from the record, or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a

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<sup>174</sup> See Chengdu Huifeng's Rebuttal Brief at 16.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> See Chengdu Huifeng's Rebuttal Brief at 16-17.

<sup>178</sup> See Chengdu Huifeng's Rebuttal Brief at 17.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> See Chengdu Huifeng's Rebuttal Brief at 18.

<sup>183</sup> *Id.*

proceeding; or (D) provides such information but the information cannot be verified. None of these situations is applicable here.<sup>184</sup>

**Commerce’s Position:** We find that, because Chengdu Huifeng’s labor ratios are derived from a labor reporting methodology that is based on Chengdu Huifeng’s labor usage reported in the books and records maintained in the ordinary course of business, and the ratios closely reflect the labor usage for the production of merchandise under consideration, it is reasonable to continue to rely on Chengdu Huifeng’s labor reporting methodology for our margin calculations. We further find no grounds to apply partial facts available with respect to Chengdu Huifeng’s labor reporting. Further, because the record demonstrates that Chengdu Huifeng’s labor reporting methodology fulfilled Commerce’s instructions and requirements for reporting its FOPs, we find that Chengdu Huifeng cooperated to the best of its ability to respond to Commerce’s requests for information and, thus, there are no grounds for the use of adverse inferences.

Chengdu Huifeng stated in its section D and supplemental responses and explained during verification that it calculated hour-per-piece ratios for direct, indirect, and packing labor by allocating total labor hours for each labor type over “total production.”<sup>185</sup> The petitioner argues that Chengdu Huifeng understated its reported labor ratios by allocating total labor hours over a quantity greater than the production of merchandise under consideration to calculate labor hours per piece. The record demonstrates that Chengdu Huifeng calculated labor-hour-per-piece ratios for direct, indirect, and packing labor, as well as a kilowatt-hour-per-piece ratio for energy use, by allocating total labor hours for each labor type and total energy consumption over a non-product-specific quantity that is greater than the total production quantity of in-scope merchandise, which, as the petitioner correctly asserts, does result in understated labor and energy ratios.<sup>186</sup>

We did not take any action to correct the labor and energy ratio calculations in the *Preliminary Results* because: (1) scope merchandise accounted for a significant proportion of Chengdu Huifeng’s total production;<sup>187</sup> (2) we observed during verification that, with respect to Chengdu Huifeng’s production process, the punching of cores out of sheet metal is not very labor intensive, nor does it noticeably vary between product types, so the labor cost associated with the production of diamond sawblades produced with self-produced cores compared to diamond sawblades produced with purchased cores would not vary significantly; (3) Chengdu Huifeng was responsive to our requests for labor information and we found no discrepancies in Chengdu Huifeng’s labor use reported in its books and records as maintained in the ordinary course of business;<sup>188</sup> and (4) due to the small difference in quantity between the production quantity for in-scope merchandise and the quantity Chengdu Huifeng used in its calculation of the ratios, making adjustments to the labor and energy ratios would have a negligible effect on the margin calculations.

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<sup>184</sup> See Chengdu Huifeng’s Rebuttal Brief at 18 (citing 19 U.S.C. § 1677e(a)).

<sup>185</sup> See DQR at D-12, and Verification Report at 26-27, respectively.

<sup>186</sup> See Appendix D-9 to DQR. For further details that include Chengdu Huifeng’s business proprietary information (BPI), see Chengdu Huifeng Final Analysis Memorandum.

<sup>187</sup> See Chengdu Huifeng Final Analysis Memorandum for details which contains Chengdu Huifeng’s BPI.

<sup>188</sup> See Verification Report at 26.

As such, we do not agree with petitioner's assertion that Commerce should base its final results on facts available because necessary information is not on the record, Chengdu Huifeng withheld information, failed to provide information in a timely manner, significantly impeded the proceeding, and/or provided unverifiable information. On the contrary, we find that Chengdu Huifeng timely responded to our requests for information concerning its labor reporting and that Chengdu Huifeng sufficiently supported its labor reporting methodology, as much as its books and records as maintained in the ordinary course of business would allow, as representative of its labor use for the production of scope merchandise.

Section 782(e) of the Act states that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. Because Chengdu Huifeng: (1) timely submitted information we requested; (2) we verified the information; (3) the information is not so incomplete that it cannot serve as a reliable basis for calculating a margin for the final results; (4) it is clear that Chengdu Huifeng's labor reporting was based on, *i.e.*, limited to, the information provided by its books and records as maintained in the ordinary course of business, which do not permit a CONNUM-specific or product-specific report of labor consumption; and (5) the information can be used without undue difficulties and results in sufficient accuracy, we find no grounds to decline to consider Chengdu Huifeng's submitted information.

Furthermore, despite the shortcomings of Chengdu Huifeng's labor and energy calculations because they are based on a non-product-specific quantity greater than its production quantity of scope merchandise, we find little merit in the petitioner's assertion that Chengdu Huifeng did not demonstrate or provide evidence to support the accuracy of its methodology or demonstrate the extent of the variation of labor across products to make clear there is no impact on its FOP reporting. Chengdu Huifeng demonstrated that its labor reporting was based on (*i.e.*, limited to) the information provided by its books and records as maintained in the ordinary course of business which do not permit a CONNUM-specific or product-specific report of labor consumption. Chengdu Huifeng also stated that scope merchandise represents a significant proportion of its total production and that it developed a piece-based reporting methodology based on its books and records as maintained in the ordinary course of business and, given the data limitations therein, even if Chengdu Huifeng as it suggests were to try to accommodate the petitioner's demands for perfect reporting and use a different methodology, *e.g.*, based on weight instead of piece, there is no appreciable impact on the total cost or normal value, because neither a piece-based allocation methodology nor a weight-based allocation methodology are perfect approaches to report labor usage.

In addition, we note that, although it is true that the CAFC has explained that the statute demands that a respondent "do the maximum it is able to do,"<sup>189</sup> we do not find that the 'maximum' means, as the petitioner appears to argue, that Chengdu Huifeng in this instance must depart from its books and records to develop a separate methodology. Chengdu Huifeng explained in its responses, and we confirmed during verification, that its labor reporting does not distinguish

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<sup>189</sup> See *Nippon Steel*, 337 F.3d at 1382.

between products, so there are no data to gauge labor requirements among the various scope products or between scope and non-scope products, and we did not ask Chengdu to do so. Chengdu Huifeng also provided its full production and labor records with which we were able to confirm during verification that the labor reporting was accurate and is not segregated by product type. Also, as previously mentioned, during verification we observed, just as Chengdu Huifeng asserts, that in Chengdu Huifeng's production process the punching of cores out of sheet metal is not very labor intensive, nor does the labor noticeably vary by product type, so the labor cost associated with the production of diamond sawblades produced with self-produced cores compared to diamond sawblades produced with purchased cores, would not significantly vary. As such, we find that Chengdu Huifeng was sufficiently responsive to our requests for information and cooperated to the best of its ability by reporting its labor usage based on its books and records maintained in the ordinary course of business and, for this reason, there are no grounds to apply adverse inferences, as stipulated in section 776(b) of the Act, or in the SAA.

Accordingly, we find that, because Chengdu Huifeng's labor and energy ratios that are sufficiently reflective of Chengdu Huifeng's production of scope merchandise during the POR, without the application of facts available or the use of adverse inferences, we have made no changes to the calculation of these ratios for the final results.

In addition, as of these final results, we anticipate that Chengdu Huifeng has knowledge that it will need to explore options for employing a labor-reporting methodology that is on a more product-specific basis for future antidumping duty proceedings in which Chengdu Huifeng may be selected for individual examination.

#### **Comment 5: Conversions of Surrogate Values**

For the *Preliminary Results*, we converted the Mexican AUVs to U.S. dollars (USD) in our margin calculations, and we did not adjust the values to be on a 'cost, insurance and freight' (CIF) basis.

#### *Petitioner's Comments:*

- To the extent Commerce determines it appropriate to rely on surrogate values from Mexico, it should ensure proper currency conversions and apply CIF values.<sup>190</sup>
- Commerce should ensure that surrogate values that are converted to the appropriate currency where necessary.<sup>191</sup>
- Because Mexican AUVs are reported on a 'free-on-board' (FOB) basis, Commerce should ensure that the appropriate amounts are added to the AUVs so that surrogate values are denoted on a CIF basis.<sup>192</sup>

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<sup>190</sup> See Petitioner's Case Brief at 29.

<sup>191</sup> See Petitioner's Case Brief at 29-30.

<sup>192</sup> See Petitioner's Case Brief at 30.

*Chengdu Huifeng's Rebuttal Comments:*

- Chengdu Huifeng did not comment on this issue.

**Commerce's Position:** The petitioner correctly noted that the Mexican AUVs on the record were reported in U.S. dollars and on an FOB basis, and that Commerce unnecessarily converted to the AUVs to USD and did not properly adjust them to be on a CIF basis. We have made the appropriate adjustments to these AUVs for the final results.<sup>193</sup>

**VI. RECOMMENDATION**

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this administrative review and the final weighted-average dumping margins in the *Federal Register*.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

11/2/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

<sup>193</sup> See Final SV Memorandum, and the “Changes to the Margin Calculations for the Final Results” section of the Chengdu Huifeng Final Results Analysis Memorandum.