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FINAL REMAND REDTERMINATION
Diamond Sawblades Manufacturers Coalition v. United States
Court No. 13-00241, Slip Op. 14-112

Summary

The Department of Commerce (the Department) prepared these final results of remand redetermination in accordance with the order of United States Court of International Trade (CIT) in *Diamond Sawblades Manufacturers Coalition v. United States*, Court No. 13-00241, slip op. 14-112 (September 23, 2014) (*Remand Order*). The litigation involves challenges to our final results, as amended,[1] in the administrative review of the antidumping duty (AD) order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (the PRC) covering the period of review November 1, 2010, through October 31, 2011.

In its *Remand Order*, the CIT granted the Department's request for a voluntary remand to reconsider its decisions, in light of a CIT decision,[2] with respect to the separate rate determination for the ATM Single Entity,[3] whether to collapse the China Iron and Steel Research

[1] *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36166 (June 17, 2013) (*AR2 Final Results*), as amended in *Diamond Sawblades and Parts Thereof From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 42930 (July 18, 2013) (*AR2 Amended Final Results*) (collectively, *Second Review*).

[2] *See Advanced Technology & Materials Co. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013) (*Advanced Tech 2013*), *aff'd Advanced Tech. & Materials Co. v. United States*, 2014 U.S. App. LEXIS 20800 (Fed. Cir. Oct. 24, 2014) (*Advanced Tech. 2014*).

[3] The *Remand Order* refers to the ATM Single Entity as the "AT&M Entity." We will continue to refer to the ATM Single Entity herein, consistent with the *Second Review*. In the underlying investigation, we determined that Advanced Technology & Materials Co., Ltd. (AT&M), Beijing Gang Yan Diamond Products Company (BGY), and Yichang HXF Circular Saw Industrial Co., Ltd. (HXF), were affiliated and treated them as a single entity for purposes of calculating an antidumping duty margin (ATM Entity). *See 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, 29304, 29306-07 (May 22, 2006) (*LTFV Final*). In the first administrative review we also combined additional affiliates with the ATM entity, referring to the collapsed group as the "ATM Single Entity," comprised of AT&M, BGY, HXF, AT&M International Trading Co., Ltd.

Institute Group (CISRI) into the ATM Single Entity, and the rate assigned to non-selected separate rate companies. Also in the *Remand Order*, the CIT ordered the Department to explain its decisions with respect to the petitioner's targeted dumping allegation and the valuation of cores.

As discussed in detail below, for these final results, the Department finds that the ATM Single Entity is not entitled to a separate rate and, therefore, the collapsing issue concerning CISRI is moot. Also, the Department is not changing the rate assigned to the non-selected separate rate companies in *AR2 Amended Final Results*. With respect to the Department's decisions relating to the issues of targeted dumping and the valuation of cores Weihai Xiangguang Mechanical Industrial Co., Ltd. (Weihai) purchased from unaffiliated non-market economy (NME) suppliers, the Department provides further explanation.

Background

In the *Second Review*, we (1) granted a separate rate to the ATM Single Entity, (2) did not consider the targeted dumping allegation which the petitioner[4] filed for the first time in its case brief, and (3) valued cores Weihai purchased from unaffiliated NME suppliers using the surrogate values for the factors of production (FOPs) Weihei used to produce cores itself.

(ATMI), and Cliff International Ltd. (Cliff). *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part*, 76 FR 76135 (December 6, 2011) (citing Memorandum from Jerrold Freeman to Susan Kuhbach entitled, "Diamond Sawblades and Parts Thereof from the People's Republic of China: Determination to Include Additional Companies in the ATM Single Entity" dated November 30, 2011) unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2009-2010*, 78 FR 11143, 11144 (February 15, 2013) (*AR1 Final Results*). In the instant review we have continued to refer to the group designated as the ATM Single Entity in the first administrative review by the same name. *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review: 2010-2011*, 77 FR 73417 (December 10, 2012) (*AR2 Preliminary Results*) (citing Memorandum from Michael A. Romani to Susan Kuhbach entitled, ''Diamond Sawblades and Parts Thereof from the People's Republic of China: ATM Single Entity" dated December 3, 2012 (Entity Memo)), unchanged in *Second Review*. During the instant review HXF changed its name to HXF Saw Co., Ltd. *See* Entity Memo at 1-2.

[4] The petitioner in this review is Diamond Sawblades Manufacturers' Coalition.

CIT's Decision

Denial of Separate Rate Status for the ATM Single Entity

In the *Second Review*, we granted the ATM Single Entity a separate rate because we determined that it demonstrated an absence of both *de jure* and *de facto* government control over its export operations.[5] During the course of litigation concerning the less-than-fair-value investigation, we issued a remand redetermination in which we decided that the ATM Single Entity had not demonstrated an absence of *de facto* control from the government and, thus, is not entitled to a separate rate.[6] The CIT sustained the *Advanced Tech. Remand Redetermination* and the CAFC affirmed the CIT decision.[7] Following the CIT's decision concerning the Department's determination in *Advanced Tech. Remand Redetermination* to deny the separate rate status and treat ATM Single Entity as part of the PRC-wide entity, we sought a voluntary remand to reconsider the separate rate status we granted to the ATM Single Entity in the *Second Review*. The CIT granted our request for a voluntary remand.

Targeted Dumping

In the *Second Review*, we did not examine the petitioner's targeted dumping allegation against Weihai because the petitioner filed this allegation for the first time in its case brief.[8] Although there was no established deadline for filing a targeted dumping allegation in this review, we found that, *inter alia*, (1) the petitioner could have filed it well before the due date for

[5] *See AR2 Final Results* and the accompanying Issues and Decision Memorandum (I&D Memo) at Comment 1, unchanged in *AR2 Amended Final Results.*
[6] *See* Final Results of Redetermination Pursuant to Remand Order in *Advanced Tech. & Material Co. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Tech. 2012*) dated May 6, 2013 (*Advanced Tech. Remand Redetermination*) available at http://enforcement.trade.gov/remands/12-147.pdf.
[7] *See Advanced Tech. 2013* and *Advanced Tech. 2014*.
[8] *See AR2 Final Results* and the accompanying I&D Memo at Comment 4.

the preliminary results of this review and (2) the petitioner's filing of the targeted dumping allegation for the first time in its case brief raised due process concerns.[9]

The CIT stated that the statute governing the targeted dumping analysis, not the chronology of filing the targeted dumping allegation, is paramount. The CIT explained that, under section 777A(d)(1)(B) of the Tariff Act of 1930, as amended (the Act), the Department may determine whether the subject merchandise is being sold in the United States at less than fair value using the average-to-transaction comparison method if there is a pattern of export prices (EP) or constructed export prices (CEP) "that differ significantly among purchasers, regions, or periods of time" and the Department "explains why such differences cannot be taken into account" using average-to-average comparison methodology.[10] The CIT ordered that the Department explain "where in the statute or other authority it finds the non-ministerial discretion *not* to determine '*if* . . . there is a pattern' of differing EP or CEP prices based on the record as developed, with the assistance of interested parties, in these sorts of proceedings and regardless of whether an allegation is raised to that effect – and notwithstanding the agency's statutory discretion to determine whether it will employ alternative methodology even 'if' such a 'pattern is found."[11] Additionally, the CIT stated that "Commerce may attempt to persuade on remand as to the existence of reasonable ambiguity, but to this court that portion of the statute appears plain, and Commerce must reconsider the issue anew, *if* that is the correct result in consequence of this opinion."[12]

[9] *Id*.
[10] *Remand Order* at 7 quoting section 777A(d)(1)(B) of the Act.
[11] *Id*.
[12] *Id*. at 8.

Core Valuation

In the *Second Review*, we stated that our methodology for valuing cores in this review was consistent with the methodology applied in the first administrative review. The CIT stated that there is no basis for it to form an opinion on our statement.[13] The CIT remanded the *Second Review* "for clarification and further explanation, with particular attention paid and explanation provided as to why the methodology chosen from among available alternatives produces the more accurate and undistorted dumping margin as compared with the preliminary methodology."[14] The CIT specifically ordered the Department:[15]

> (1) to explain how the *Second Review* methodology for valuing Weihai's cores (purchased or produced) is "consistent" with the *First Reivew* (*sic*);
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> (2) to explain (a) why, given that companies operating with an NME are presumed distorted, "Weihai's NME experience . . . better reflects Weihai's experience of purchasing cores from NME suppliers than the methodology {Commerce} used in the Preliminary Results" and why that is a desirable goal, notwithstanding the absence of a challenge to Weihai's reported FOPs for its self-produced cores; and
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> (3) to provide to the parties a full explanation of its chosen methodology in its draft final results of redetermination, together with either the calculations for the proposed final methodology or the relevant computer programming language that would encompass the same (since those calculations and/or the intended program appear integral not only to validating whether the computed output adheres to the described methodology but also to understanding the latter in the first place) or provide a full explanation detailing why release of either of those should be considered inappropriate (or otherwise) for comment on both the final determination and the draft final results of redetermination.

Discussion

Denial of Separate Rate Status for ATM Single Entity

In the *Advanced Tech. Remand Redetermination*, we determined that, based on record evidence, "the AT&M Entity is not entitled to a separate rate based on the *de facto* criterion

[13] *Id*. at 15-16.
[14] *Id*. at 16.
[15] *Id*. at 16-17.

regarding the autonomy to select its management independent from government oversight or control" and, thus, found "the AT&M Entity to be part of the PRC-wide entity."[16] In reaching that conclusion, we recognized that:

> SASAC {State-Owned Assets Supervision and Administration Commission of the State Council of the People's Republic of China} owned 100 percent of the shares in CISRI. Additionally, CISRI held a majority share in AT&M at the outset of the period of investigation ("POI") (CISRI's ownership share changed to slightly under 50 percent during the POI, albeit CISRI remained by far the largest shareholder), and was the only shareholder able to nominate candidates for AT&M's board of directors. Because CISRI was the largest shareholder of AT&M and was the only shareholder able to nominate candidates to the board of directors, this demonstrates that it had the capacity to influence AT&M's affairs.
>
> As noted above, the record in this case shows that CISRI placed four of its senior officials (its director and three vice directors) on AT&M's board. Moreover, the record shows that these four board members were active in the selection of AT&M's management, which, as discussed in the AT&M Separate Rate Analysis Memo, raises the question about government involvement in the selection of management, as autonomy in selecting management is one of the explicit *de facto* criteria. As to the five AT&M board members that were not CISRI officials, all were nonetheless nominated by CISRI, it being the only shareholder with the right to do so. In addition, one of these five board members (the vice chairman) was in fact AT&M's own president, and CISRI was involved in his selection for that position. Lastly, AT&M's President and Vice Chairman of the Board was the Chairman of the Board and legal representative of BGY, which is important because BGY was the primary producer and exporter of subject merchandise within the AT&M Entity.[17]

Here, based on the evidence on the record of this proceeding, there is no meaningful difference between the circumstances at issue in the less-than-fair-value investigation and this review with respect to board memberships, directorships, SASAC, and ownership of CISRI and the members of the ATM Single Entity.[18] Therefore, the record in this case provides no basis for

[16] *See Advanced Tech. Remand Redetermination* at 15.
[17] *Id.* at 8-9 (citations omitted).
[18] Although CISRI's ownership decreased slightly and the composition of the interlocking boards of directors and senior management between CISRI and AT&M is different in the LTFV investigation compared to the instant review, there is sufficient evidence of ownership and selection of management in this review to conclude that CISRI had the capacity to influence AT&M's affairs; *see* Memorandum to the File entitled, "Remand Redetermination of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the People's Republic of China; 2010-

us to depart from the conclusion we reached in the *Advanced Tech. Remand Redetermination*, consistent with the CIT decisions in *Advanced Tech. 2012* and *Advanced Tech. 2013* (which was affirmed in *Advanced Tech. 2014*). Here, as in the *Advanced Tech. Remand Redetermination*, AT&M did not choose its own management autonomously, rather SASAC owns 100 percent of CISRI, CISRI is the largest shareholder in AT&M, and CISRI's ownership stake in AT&M is sufficient such that it nominated its own board members to sit on the AT&M board and, otherwise, was the only entity able to nominate candidates for AT&M's board of directors.[19] For these reasons, we conclude that CISRI had the capacity to influence AT&M's affairs and, therefore, the affairs of the ATM Single Entity, which includes AT&M. Therefore, as we explained in the *Advanced Tech. Remand Redetermination*, and consistent with the CIT's opinion in *Advanced Tech. 2012* and *Advanced Tech 2013*, given that CISRI was wholly-owned by SASAC, government control had the potential to pass from SASAC through to the ATM Single Entity *via* CISRI.

Thus, the question turns to whether this potential has been exercised. The record here demonstrates that there is no meaningful difference between the investigation and the instant review with respect to the interlocking board memberships and senior management of CISRI and members of the ATM Single Entity.[20] Business proprietary details regarding the nature of the relationship between CISRI and the ATM Single Entity are explained in a separate memorandum.[21] Consistent with the details explained therein, the record evidence demonstrates

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2011; BPI Referenced in the Draft Results of Redetermination," dated concurrently with this memorandum (Remand BPI Memorandum).

[19] *See* ATM Single Entity's March 19, 2012, Section A questionnaire response at 3, 9-11, Exhibit A-5 (ownership SASAC-CISRI and CISRI-AT&M); *see also* ATM Single Entity's October 5, 2012, supplemental questionnaire response at Exhibit SA-2 (overlap) and Exhibit SA-6 (AT&M Articles of Association, Articles 85, 101, and 199) and Entity Memo.

[20] *See Advanced Tech. Remand Redetermination* at 8-9. *See also* ATM Single Entity's October 4, 2012, supplemental questionnaire response at Exhibit SA-2.

[21] *See* Remand BPI Memorandum.

that AT&M did not choose its management autonomously. Based on these facts, we find that AT&M has not demonstrated an absence of *de facto* control over selection of its management and, therefore, the ATM Single Entity does not qualify for a separate rate. Therefore, we are denying a separate rate for the ATM Single Entity and find it to be part of the PRC-wide entity.

For these final results of redetermination, the Department has adjusted the PRC-wide rate based on the ATM Single Entity's data because neither the ATM Single Entity, nor any element of the PRC-wide entity has failed to cooperate in this review. The PRC-wide entity rate determined in the less-than-fair-value investigation[22] and applied in the *Second Review* was 164.09 percent. Ordinarily, the Department would assign the PRC-wide entity the PRC-wide entity rate existing at the time.[23] However, in some situations where a mandatory respondent has become part of the PRC-wide entity and failed to cooperate during the course of a review, the Department determined a new PRC-wide entity rate that was different from the PRC-wide entity's previous rate.[24] In this review, the ATM Single Entity, a mandatory respondent,

[22] *Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China*, 70 FR 77121, 77128-29 (December 29, 2005), unchanged in *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, 29308-9 (May 22, 2006), and *Notice of Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 35864, 35865 (June 22, 2006) (*LTFV Amended Final*) (collectively, *LTFV Determinations*).

[23] *See, e.g., Certain Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*; 2011-2012, 78 FR 26748 (May 8, 2013) and the accompanying Preliminary Decision Memorandum at 10-11, unchanged in *Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2011-2012, 78 FR 70533 (November 26, 2013) (*Activated Carbon*) (assigning the PRC-wide entity the only rate ever determined for the PRC-wide entity in the proceeding).

[24] *Compare Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546, 19549 (April 22, 2002) (selected the highest calculated rate in the review, 223.01 percent, for the PRC-wide entity rate because two companies in the segment failed to cooperate to the best of their ability), *with* the prior review, *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 20634, 20635 (April 24, 2001) (assigned a 201.63 percent PRC-wide rate from the less-than-fair-value investigation).

provided the Department sales and production data which allowed the Department to calculate a margin for an unspecified portion of the single PRC-wide entity.

In this case, we need to determine a single rate for the PRC-wide entity but we do not have necessary information, *i.e.*, sales and production data, from the remaining unspecified portion of the PRC-wide entity to calculate a margin for the unspecified portion of the PRC-wide entity. Nor is there information on the record with respect to the composition of the PRC-wide entity. In the *AR1 Final Remand Redetermination*, we applied a rate of 82.12 percent[25] to the PRC-wide entity including the ATM Single Entity in similar circumstances, *i.e.* where no element of the PRC-wide entity has failed to cooperate and the rate was changed based on the inclusion into the PRC-wide entity of a mandatory respondent which has fully cooperated such that there is sufficient record information to calculate a dumping margin.[26] This situation is analogous to the *AR1 Final Remand Redetermination* and, unlike the less-than-fair-value investigation, no part of the PRC-wide entity failed to cooperate to the best of its ability. Because we have the calculated final margin for the ATM Single Entity, which is a part of the PRC-wide entity, we used a simple average of the previously assigned PRC-wide rate (164.09 percent)[27] and the calculated final margin for the ATM Single Entity (zero percent) as the rate applicable to the PRC-wide entity. Accordingly, the Department revised the PRC-wide entity rate for this period of review to 82.05 percent for purposes of the draft remand redetermination.

We have not changed the rate for the companies that were not selected for individual examination and were found to be eligible for a separate rate. In the *AR2 Amended Final*

[25] In the *AR1 Final Results*, the calculated margin for ATM Single Entity was 0.15 percent and the PRC-wide rate was 164.09 percent. *See AR1 Final Results*, 78 FR at 11145. The simple average of these two rates is 82.12 percent.
[26] *See* Final Results of Redetermination Pursuant to Court Remand in *Diamond Sawblades Manufacturers' Coalition v. United States*, Court No. 13-00078, slip op. 14-50 (April 29, 2014) (*AR1 Final Results of Redetermination*), dated April 10, 2015, and available at http://enforcement.trade.gov/remands/14-50.pdf.
[27] *See LTFV Amended Final* 71 FR at 35865.

Results, we assigned zero percent margins to all non-selected separate rate respondents based on the average of the zero percent margins we calculated for two mandatory respondents, the ATM Single Entity and Weihai, because all preceding rates for this order were calculated using a methodology we abandoned in *Final Modification for Reviews*[28] and, therefore, could not be used to calculate the rate for the non-selected separate rate companies.[29] We continue not to use those rates for this remand redetermination. In this remand redetermination, because the ATM Single Entity is part of the PRC-wide entity, we are assigning the zero percent margin calculated for the sole other mandatory respondent, Weihai, to the non-selected separate rate respondents. Therefore, the margin for the non-selected separate rate respondents continues to be zero percent.

Targeted Dumping

Section 777A(d)(1) of the Act applies to less-than-fair-value investigations.[30] Section 777A(d)(1)(B) of the Act allows the Department to apply an "alternative comparison method" (*i.e.*, Average-to-Transaction) in less-than-fair-value investigations. Before the CIT are challenges to the Department's decisions in an administrative review. Section 777A(d)(1) of the Act does not strictly govern the Department's examination of whether to apply an average-to-transaction comparison method in administrative reviews.[31] Rather, consideration of an alternative comparison method in administrative reviews has been an agency practice which the Department established using section 777A(d)(1)(B) of the Act as guidance.[32] At the time of the

[28] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*); *see also AR2 Amended Final Results*, 78 FR at 42931, and the accompanying Decision Memorandum.
[29] *AR2 Amended Final Results* and the accompanying Decision Memorandum at 3-5.
[30] *See* section 777A(d) of the Act, which says "Determination of less than fair value" and section 777A(d)(1) of the Act, which says "Investigations."
[31] *Compare* section 777A(d)(1) of the Act *with* section 777A(d)(2) of the Act, which says "Reviews."
[32] *See Final Modification for Reviews.*

underlying administrative review, in both investigations[33] and reviews,[34] the Department required an allegation to consider an alternative comparison method by conducting a targeted dumping analysis because the Department based its analysis on the allegedly targeted purchasers, regions or time periods provided by the petitioner. Under the targeted dumping analysis, the Department did not on its own initiative consider whether an alternative to the average-to-average comparison method was appropriate to calculate a respondent's weighted-average dumping margin.[35] Instead, we established the practice of initiating a targeted dumping analysis and possibly considering an alternative comparison method upon receipt of an allegation at a reasonable time before the preliminary determinations in investigations and preliminary results in reviews, so we could allow parties an opportunity to evaluate the allegation and provide comments on the results of the targeted dumping analysis.[36] Therefore, the allegation requirement and the analysis provided by the petitioner concerning alleged targeted purchasers, regions, or time periods provided were a necessary part of the targeted dumping methodology the Department used to determine whether to apply an alternative comparison method.

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[33] *See, e.g., Large Residential Washers From the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations*, 77 FR 4007, 4011 (January 26, 2012), and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Large Residential Washers From the Republic of Korea*, 77 FR 46391, 46394-95 (August 3, 2012). We initiated the second review of the antidumping duty order on diamond sawblades from the PRC on December 30, 2011. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 76 FR 82268, 82271 (December 30, 2011) (*Initiation Notice*).

[34] *See, e.g., Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 73015 (December 7, 2012), and the Preliminary Decision Memorandum at 3-4 (applying targeted dumping methodology in preliminary results for a review published three days before *AR2 Preliminary Results*), unchanged in *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35248 (June 12, 2013), and the accompanying I&D Memo at Comment 5. We initiated the second review of the antidumping duty order on diamond sawblades from the PRC and the 2010-2011 review of the order on circular welded non-alloy steel pipe from the Republic of Korea on December 30, 2011. *See Initiation Notice.*

[35] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review, 2011-2012*, 78 FR 15699 (March 12, 2013), and the accompanying Preliminary Decision Memorandum at 19, n.88.

[36] *See Final Modification for Reviews*, 77 FR at 8111 ("Additionally, applying the new methodology prior to issuance of the preliminary results is appropriate because the Department will need to allow sufficient time for parties to comment on the application of the new methodology as it applies in the context of individual proceedings.").

Core Valuation

For this issue, we will begin by explaining how the Department valued cores Weihai purchased from unaffiliated NME suppliers in the *Second Review*. Then, we will explain how the method we used in the *Second Review* is consistent with the method we used to value cores Weihai purchased from unaffiliated NME suppliers in the *AR1 Final Results.* Thereafter, we will explain how the method we used to value cores Weihai purchased from unaffiliated NME suppliers in the *Second Review* better reflects Weihai's experience in purchasing cores from unaffiliated NME suppliers than our preliminary core valuation methodology.

1. Our Core Valuation Methodology in the *Second Review*

In the *Second Review*, there were no appropriate HTS codes or other data sources that we could rely on to value directly the cores Weihai purchased from unaffiliated NME suppliers.[37] Because of this unique circumstance, we approximated the value of such cores using a method based on surrogate values for the inputs (interchangeably referred to as inputs or FOPs) – steel, labor (direct and indirect), and electricity – that Weihai itself used to produce cores.[38] In other words, the Department used a "build-up" of the inputs (or FOPs) Weihai used to self-produce cores in order to value the cores Weihai purchased from unaffiliated NME suppliers. We first calculated the average consumption quantity for each input Weihai used to produce its own cores; thus, we determined the average kilograms of steel, hours of labor, and watts of electricity consumed. Then, we multiplied the surrogate values for steel, labor, and electricity by Weihai's average consumption for each of the inputs Weihai used to produce its own cores, *i.e.*, steel quantity, labor hours, and electricity consumption, respectively, to calculate the surrogate value for each of the three underlying inputs (*i.e.*, steel, labor, and electricity) for purposes of valuing

[37] *See AR2 Final Results* and the accompanying I&D Memo at Comment 8.
[38] *Id.*

Weihai's purchased cores. As source data for the surrogate values for these inputs, we used Thai Import Statistics from the Global Trade Atlas to value steel, the Thai National Statistics Office (NSO) data for labor and the Thai Metropolitan Electricity Authority (MEA) data for electricity.[39] Then we added these three surrogate values for the averaged inputs to calculate the surrogate value for Weihai's cores purchased from unaffiliated NME suppliers. We disclosed the computer calculation program, which includes our revised core valuation methodology, to Weihai and the petitioner after the completion of the *AR2 Final Results* and the *AR2 Amended Final Results*.[40]

2. Our Methodology for Valuing Cores Weihai Purchased from NME Suppliers in the *Second Review* Is Consistent with Our Methodology in the *AR1 Final Results*

In the *AR1 Final Results*, we stated that "we valued Weihai's purchased cores using . . . Weihai's FOPs for self-produced cores (to reflect the value of the cores Weihai purchased from NME suppliers)."[41] In the *AR2 Final Results* the Department stated, ". . .we needed an alternative method to value the cores that Weihai purchased from NME suppliers. Consistent with the prior review of this order, we are using Weihai's reported FOPs for self-produced cores."[42] Moreover, in the post-preliminary analysis memorandum, we also stated that we intended to calculate surrogate values for cores using the methodology used in the *AR1 Final*

[39] *See AR2 Final Results* and the accompanying I&D Memo at 3 and 26 (The NSO data are the industry-specific labor cost data which cover 2006 and were published in 2007 by the National Statistics Office of the Thai government); *see* memorandum to the File entitled "Diamond Sawblades and Parts Thereof from the People's Republic of China: Surrogate Values for the Final Results of Review" dated June 10, 2013, at 2 (The MEA data are the 2011 data from the Thai Metropolitan Electricity Authority).
[40] *See* the Weihai final analysis memorandum dated June 10, 2013, and the attached margin calculation program at Part 1 and log at lines 3286-3320, 3465-3501, 3615-3619, and Part 7, and the Weihai amended final analysis memorandum dated July 11, 2013, and the attached margin calculation program at Part 1 and log at 392-426, 571-607, 721-725, and Part 7.
[41] *See AR1 Final Results* and the accompanying I&D Memo at Comment 11.
[42] *See AR2 Final Results* and the accompanying I&D Memo at Comment 8.

Results.[43] Thus, we stated that our core valuation methodology in the *AR1 Final Results* is consistent with the core valuation methodology in the *Second Review*. For the *Second Review*, Weihai reported cores that it self-produced, cores purchased from unaffiliated NME suppliers, and cores purchased from market-economy suppliers.[44] For cores Weihai self-produced, Weihai reported inputs it used to produce cores, *i.e.*, steel, labor, and electricity.[45] To value cores Weihai purchased from unaffiliated NME suppliers, we applied the surrogate values for steel, labor, and electricity to the averaged input quantity for steel, labor, and electricity Weihai reported for self-produced cores and then we added the surrogate values for the averaged inputs.[46] Therefore, we valued the cores Weihai purchased from unaffiliated NME suppliers using the inputs Weihai reported for the self-produced cores and surrogate values for those inputs, which is the same valuation methodology we used in the *AR1 Final Results* as described above.

3. Our Core Valuation Methodology in the *Second Review* Better Reflects Weihai's Purchase Experience Than Our Preliminary Core Valuation Methodology

For the *AR2 Preliminary Results*, we calculated the surrogate values for cores Weihai purchased from unaffiliated NME suppliers by applying multipliers to the surrogate values for the different types of steel corresponding to the various cores used by Weihai. We calculated the multiplier as the percentage difference between the prices of the steel and cores purchased by

[43] *See* Memorandum from Senior Advisor Gary Taverman to Assistant Secretary Paul Piquado entitled, "Administrative Review of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the People's Republic of China for the 2010-2011 Period: Post-Preliminary Analysis" dated March 19, 2013.
[44] We valued the cores Weihai purchased from market economy suppliers using the purchase price Weihai paid.
[45] *See* Weihai's section D response dated April 20, 2012, at D-11 through D-18 and post-preliminary FOP database dated December 21, 2012.
[46] *See* the Weihai final analysis memorandum dated June 10, 2013, and the attached margin calculation program at Part 1 and log at lines 3286-3320, 3465-3501, 3615-3619, and Part 7, and the Weihai amended final analysis memorandum dated July 11, 2013, and the attached margin calculation program at Part 1 and log at 392-426, 571-607, 721-725, and Part 7.

Weihai from market-economy suppliers.[47] For example, if the price of a core Weihai purchased from a market-economy supplier is $3.00 and the price of steel Weihai purchased from a market-economy supplier is $1.00, the price of the core is three times the steel price; therefore, we multiply the surrogate steel value by three to calculate the surrogate value for the cores the respondent purchased from unaffiliated NME suppliers.[48]

We find that the method used in the *Second Review* follows more closely than does our preliminary multiplier methodology the statutory guidance to use surrogate data from market-economy countries at a level of economic development comparable to that of the NME country to value FOPs in an NME antidumping proceeding. The PRC is an NME country. Section 773(c)(1) of the Act directs us to base normal value, in most circumstances, on the NME producer's FOP valued in a surrogate market-economy country or countries we consider to be appropriate. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, we utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are, *inter alia*, at a level of economic development comparable to that of the NME country.[49] The multiplier methodology we preliminarily used is less consistent with the statutory guidance to value FOPs from an NME country using the prices or costs of FOPs in one or more market-economy countries that are "at a level of economic development comparable to that of the NME country" than the build-up methodology we used in the *AR2 Final Results*. This is because the multiplier methodology did not take into account whether the market-economy price paid by the respondent and used in the calculation of the multiplier percentage came from a country at a level of economic development comparable to that of the PRC, whereas the build-up

[47] *See AR2 Final Results* and the accompanying I&D Memo at Comment 8.
[48] The prices, *i.e.*, $3.00 and $1.00, are hypothetical figures we created to better demonstrate the multiplier methodology. They are not business proprietary information on the record of this review.
[49] *See AR2 Preliminary Results* and the accompanying Preliminary Decision Memorandum at 9.

methodology used surrogate values from the primary surrogate country, *i.e.*, a country that the Department determined to be at a level of economic development comparable to the PRC, in this case, Thailand. To the extent that the Court has inquired why a methodology that better reflects Weihai's experience of purchasing cores from NME suppliers is a desirable goal, as explained above, our build-up methodology in the *Second Review* is more consistent with the normal FOP practice it would have followed for FOPs purchased from an NME supplier had there been appropriate HTS codes or other data sources on the record that could have been used to value the cores directly, in accordance with the statute.[50] Therefore, we find that the *Second Review* methodology is more consistent with our normal practice for FOPs purchased from an NME supplier because it applies surrogate values from a market-economy country at a level of economic development comparable to that of the PRC to the FOPs of cores.

Moreover, because the methodology used in the *Second Review* more closely follows the statute, it results in greater accuracy of the margin calculation. Furthermore, because Weihai's production reflects the production experience in an NME country, applying surrogate values from a country at a level of economic development comparable to the PRC to Weihai's FOPs better reflects cores purchased from NME suppliers than our preliminary methodology.

INTERESTED PARTY COMMENTS

Issue 1: Denial of Separate Rate Status and the PRC-wide Rate

Petitioner's Comments

The petitioner disagrees with our application of a PRC-wide rate that averages the previous PRC-wide rate with the ATM Single Entity's rate in this review.[51] The petitioner argues that inclusion of information in the calculation of the PRC-wide rate sourced from

[50] *See* section 773(c)(1) of the Act.
[51] *See* the petitioner's April 28, 2015, Comments on Draft Results of Remand at 4.

cooperative companies that did not rebut the presumption of government control and were determined to be part of the PRC-wide entity, in this and other recent cases, is unprecedented.[52] The petitioner argues that the CIT has stated that once a company is deemed part of the PRC-wide entity, its "separate sales behavior ceases to be meaningful," such that the company "los{es} all entitlement to an individualized inquiry."[53] The petitioner inquires as to whether our position has shifted to a stance whereby the application of the PRC-wide rate is necessarily an adverse inference when the court found in *Advanced Tech 2013* that the application of the PRC-wide rate is not an assignment of an adverse rate.[54] The petitioner also disagrees with our calculation method, arguing that our simple average is purely speculative, and that we admitted that the ATM Single Entity represents an "unspecified portion" of the PRC-wide entity. In the petitioner's view, our calculation fails to take into account that the ATM Single Entity is one of 28 members of the PRC-wide entity, and the petitioner argues that the calculation should weigh the ATM Single Entity's experience as 1/28 of the PRC-wide entity rate, instead of half.[55]

ATM Single Entity's Comments

In the draft remand redetermination, the Department stated that, as part of the PRC-wide entity, the ATM Single Entity is subject to antidumping duties of 82.05 percent, an average of the 164.09 percent PRC-wide rate from the investigation (calculated based on adverse facts available, according to the ATM Single Entity), and the zero percent margin calculated for the ATM Single Entity in the instant review. The ATM Single Entity argues that, if the Department found the ATM Single Entity fully cooperative in the review and if no member of the PRC-wide

[52] *Id*, citing *AR1 Remand Redetermination* at 7-10, 13 and *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2012-2013, 80 FR 20197 (April 15, 2015) (*OTR Tires Final*) and the accompanying Issues and Decision Memorandum at Comment 1.
[53] *See* the petitioners' April 28, 2015, Comments on Draft Results of Remand at 5.
[54] *Id.*
[55] *Id.*, at 7.

entity failed to cooperate in this review, then the application of adverse facts available (AFA), even a partial AFA (the incorporation of the 164.09 percent in the calculated margin applied in the draft redetermination) cannot be applied to the ATM Single Entity because it is contrary to section 776 of the Act.[56]

According to the ATM Single Entity, sections 735(c)(1)(B)(i)(I) and (II) of the Act, provide only two means of calculating AD margins: 1) the weighted-average AD margin for each exporter and producer individually investigated, and 2) the estimated all-others rate for all exporters and producers not individually investigated.[57] The ATM Single Entity argues that in the draft redetermination, the Department used neither of these legally permissible approaches to calculate its rate, but rather relied on a hybrid of its own experience, zero percent, and the failure of certain other companies to respond during the investigation, 164.09 percent.[58] In the ATM Single Entity's view, by including the 164.09 percent in the calculation of the 82.05 percent rate applied to the PRC-wide entity, the Department has incorrectly applied half an uncorroborated AFA rate to a fully cooperative party, contrary to law.[59] The ATM Single Entity argues that its cooperation applies to the PRC-wide entity in full, because no other part of the PRC-wide entity was unresponsive (the Department did not ask questions of any other member of the PRC-wide entity), therefore, the PRC-wide entity has been fully cooperative.[60] The ATM Single Entity also argues that the 164.09 percent rate is the product of the investigation and is not before the Department in this proceeding and, therefore, cannot be applied to the ATM Single Entity either in whole or in part.[61] In the respondents view, the zero percent margin calculated by the

[56] *See* the ATM Single Entity's April 28, 2015, Comments on Draft Results of Remand at 5-6.
[57] *Id.*, at 3-4.
[58] *Id.*, at 4.
[59] *Id.*, at 5.
[60] *Id.*, at 6-7.
[61] *Id.*, at 4-5.

Department for the ATM Single Entity is the only dumping margin that can be applied to the PRC-wide entity/the ATM Single Entity.[62]

Department's Position:

We disagree with the ATM Single Entity's contention that, because it was a fully cooperative mandatory respondent and provided information from which we were able to calculate an AD margin, the statute requires us to assign the ATM Single Entity (and the PRC-wide entity) a rate based solely on the ATM Single Entity's experience. We consider the PRC to be a NME country under section 771(18) of the Act. In AD proceedings involving NME countries, such as the PRC, we have a rebuttable presumption that the export activities of all firms within the country are subject to government control and influence. Therefore, in PRC cases, we use a rate established for the PRC-wide entity, which we apply to all imports from all exporters that have not established their eligibility for a separate rate. Section 351.107(d) of the Department's regulations provides that, "in an antidumping proceeding involving imports from a nonmarket economy country, 'rates' may consist of a single dumping margin applicable to all exporters and producers."[63] Our practice of assigning a PRC-wide rate has been upheld by the CAFC. In *Sigma*, the CAFC affirmed that it was within our authority to employ a presumption for state control in a NME country and place the burden on the exporters to demonstrate an absence of central government control.[64] The CAFC acknowledged that sections 771(18)(B)(iv)-(v) of the Act recognize a close correlation between a NME economy and government control of prices, output decisions, and allocation of resources and, therefore, our presumption was

[62] *Id.*, at 8.
[63] *See 1,1,1,2-Tetrafluroethane From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 62597 (October 20, 2014) and the accompanying I&D Memo at Comment 1 (explaining the Department's practice with respect to separate rates as upheld in *Sigma Corp. v. United States*, 117 F.3d 1401, 1405-06 (Fed. Cir. 1997) (*Sigma*), and describing the Department's practice with respect to the rate assigned to the PRC-wide entity).
[64] *See Sigma*, 117 F.3d at 1405-06.

reasonable.[65] The application of a PRC-wide rate to all parties which were not eligible for a separate rate was also affirmed by the CAFC in *Transcom*.[66] The CAFC also found in *Transcom* that a rate based on "BIA" (or, "best information available," the precursor to facts available and AFA under the current statute) is not punitive.[67] Thus, contrary to the ATM Single Entity's assertions, the courts have consistently upheld the Department's authority to apply a presumption of state control in NME countries and to apply a single rate to all exporters that fail to rebut that presumption.

In the draft remand redetermination, unchanged for these final remand results, we found that the ATM Single Entity is ineligible for a separate rate due to its inability to demonstrate the absence of *de facto* government control over export activities. As such, the ATM Single Entity is a part of the PRC-wide entity. The Department must calculate a single rate for the PRC-wide entity, and in this review, we do not have the necessary information, *i.e.*, sales and production data, from the remaining portion of the PRC-wide entity.[68] Nor is there complete information on the record with respect to the composition of the PRC-wide entity, although we did name at least 27 companies beyond the ATM Single Entity that were members of the PRC-wide entity during

[65] *Id.* at 1406.

[66] *See Transcom v. United States*, 294 F.3d 1371, 1381-83 (Fed. Cir. 2002) (*Transcom*) (The PRC-wide rate, and its adverse inference are applicable to all companies which were initiated on yet failed to show their entitlement to a separate rate. "Accordingly, while section 1677e provides that Commerce may not assign a BIA-based rate to a particular party unless that party has failed to provide information to Commerce or has otherwise failed to cooperate, the statue says nothing about whether Commerce may presume that parties are entitled to *independent* treatment under 1677e in the first place" {emphasis added}); *see also Transcom*, 294 F.3d at 1376 citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990) (Instead, the objective of BIA is to aid Commerce in determining dumping margins as accurately as possible). The litigation in *Transcom* covered three periods of reviews between June 1990 and May 1993; *see Transcom*, 294 F. 3d at 1374-75, and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 65527 (December 13, 1996). During those periods, the Department called AFA the best information available (BIA). *Id.*

[67] *See Transcom*, 294 F.3d at 1376.

[68] This is discussed in greater detail in response to the petitioner's comments below.

this period of review.[69] In light of the above, we do not consider it reasonable to determine a rate for the PRC-wide entity based solely on the information provided by the ATM Single Entity. Rather, based on the unusual circumstances presented in this remand redetermination, we consider it reasonable to use the information provided by the ATM Single Entity, as well as information we have regarding the experience of the PRC-wide entity prior to the inclusion of the ATM Single Entity, to calculate a revised margin for the PRC-wide entity.[70] Specifically, we revised the margin for the PRC-wide entity, which includes the ATM Single Entity, using a simple average of the previously assigned PRC-wide rate, 164.09 percent,[71] and the calculated final margin for the ATM Single Entity, zero percent. Accordingly, the Department revised the rate for the PRC-wide entity to 82.05 percent for this final remand redetermination.

The ATM Single Entity objects to the partial application of the 164.09 percent rate to the PRC-wide entity and, thereby, the ATM Single Entity, on the basis that this rate is allegedly an AFA rate. The ATM Single Entity argues that section 776(b) of the Act requires a party's failure to cooperate to the best of its ability as a prerequisite before the Department is permitted to apply an adverse inference. Therefore, in the ATM Single Entity's view, because the ATM Single Entity has been fully cooperative, as acknowledged by the Department, the statutory requirements for AFA have not been met and the Department is not permitted to apply the 164.09 percent PRC-entity rate (which the ATM Single Entity believes is based on AFA) in any manner with respect to the ATM Single Entity's margin. However, in *Advanced Tech 2013*, the Court addressed the issue as to whether the PRC-wide rate is an adverse rate, stating "Commerce

[69] *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review: 2010-2011*, 77 FR 73417, 73419 n.19 (December 10, 2012) (*AR2 Preliminary Results*) unchanged in the *Second Review.*
[70] *See OTR Tires Final* and the accompanying I&D Memo at Comment 1 unchanged in *OTR Tires Amended Final.*
[71] *See AR2 Preliminary Results*, 77 FR at 73419 unchanged in *Second Review* (this rate applies to the liquidated entries of the PRC-wide entity in the underlying review).

did not apply adverse facts available to {the ATM Single Entity}, Commerce rather found that {the ATM Single Entity} had not rebutted the presumption of state control and assigned it the PRC-wide rate.[72] These are two distinct legal concepts: a separate AFA rate applies to a respondent which has received a separate rate but has otherwise failed to cooperate fully whereas the PRC-wide rate applies to a respondent which has not received a separate rate." [73] In the investigation at issue in that case, the PRC-wide entity received a rate based on AFA.[74] To the extent that the application of the pre-existing PRC-wide rate affects the antidumping duties assessed on the ATM Single Entity's entries as a result of this remand redetermination, this rate is not an application of AFA to the PRC-wide entity in this review; rather, it reflects, in part, the rate applied to the PRC-wide entity based on the actions of the PRC-wide entity in the investigation of which the ATM Single Entity is now a part.[75] In this remand redetermination, we are seeking to establish a new rate for the PRC-wide entity, which is under review, and a part of which was selected as a mandatory respondent, but for which we do not have complete information. Regardless, as discussed below, as a result of our instant determination, the portion of the PRC-wide entity calculation that is based on its pre-existing rate is representative of the portion of the unspecified, non-ATM Single Entity portion of the single PRC-wide entity only, whereas the ATM Single Entity portion of the single entity is reasonably represented by the ATM Single Entity's own data.[76]

[72] *See Advanced Tech 2013*, 938 F. Supp. 2d at 1351.
[73] *Id.* citing *The Watanabe Group v. United States*, 2010 Ct. Intl. Trade LEXIS 144; Court No. 09-00520, slip op 2010-139, at 9, n.8 (*Watanabe Group*). *See also Peer Bearing Company – Changshan v. United States*, 587 F. Supp. 2d 1319, 1327 (CIT 2008) ("… there is no requirement that the PRC-wide entity rate based on AFA relate specifically to the individual company. It is not directly analogous to the process used in a market economy, where there is no countrywide rate. Here, the rate must be corroborated according to its reliability and relevance to the countrywide entity as a whole.")
[74] *See LTFV Amended Final*, 71 FR at 35865.
[75] *See OTR Tires Final* and the accompanying I&D Memo at Comment 1 unchanged in *OTR Tires Amended Final*.
[76] *Id.*

Further, the ATM Single Entity argues that the Department has no basis to apply the PRC-wide rate to the ATM Single Entity based either on other parties' inability to cooperate or the failure of a party to provide information with respect to the PRC-wide entity because such information was never requested by the Department. As mentioned above, in *Sigma*, the Federal Circuit affirmed that it was within the Department's authority to employ a presumption for state control in a NME country over an enterprise's export activities and found the presumption reasonable, noting that sections 771(18)(B)(iv)-(v) of the Act recognized a close correlation between a NME economy and government control of prices, output decisions, and allocation of resources.[77] Having not demonstrated the absence of *de facto* control from the government over selection of its management, a critical component of the Department's separate rates test, the ATM Single Entity constitutes a part of the PRC-wide entity. Further, the PRC-wide entity is comprised of producers and exporters that can provide answers to questions, as evidenced by the ATM Single Entity in this review.

The ATM Single Entity also argues that the Department may not apply an uncorroborated rate to the ATM Single Entity. As noted above, the 164.09 percent rate is the rate previously determined for the PRC-wide entity in the less-than-fair-value investigation as AFA and used in the pre-litigation results of the first and second administrative reviews without adverse inferences.[78] The ATM Single Entity presented no new evidence to suggest that the petition-based country-wide rate, as corroborated by comparing the U.S. prices and normal values from the petition to the U.S. price and normal values for the respondents during the period of investigation, has lost its probative value. Nevertheless, the ATM Single Entity asserts that the Department may not apply a PRC-wide rate to the ATM Single Entity that has not been

[77] *See Sigma*, 117 F.3d at 1405-1406.
[78] *See LTFV Amended Final*, 71 FR at 35865; *see AR1 Final Results*, 78 FR at 11145, and *AR2 Final Results*, 78 FR at 36167 unchanged in *AR2 Amended Final Results*.

corroborated in this review. The ATM Single Entity's arguments are predicated on the incorrect presumption that it is distinct from the PRC-wide entity, which it is not. As is emphasized throughout this determination, we are not assigning the PRC-wide rate to the ATM Single Entity as AFA, but determining that the ATM Single Entity is a part of the PRC-wide entity to which a rate is assigned. The Department does not need to determine whether the 164.09 percent rate is reliable and relevant with respect to the ATM Single Entity; rather the PRC-wide rate must only be generally corroborated as to the PRC-wide entity.[79] As discussed above, we corroborated the 164.09 percent PRC-wide entity rate in the initial investigation. The PRC-wide rate for non-cooperative respondents need not be corroborated relative to the commercial reality of companies qualifying for a separate rate.[80]

We disagree with the petitioner's contentions regarding the usefulness of the underlying examination of the ATM Single Entity. Ordinarily, we assign the PRC-wide entity rate to a company found to be a part of the entity during a review proceeding and, in the past, we have applied the existing PRC-wide rate to a respondent once a determination was made to deny said

[79] *See, e.g., Wooden Bedroom Furniture From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2012*, 79 FR 51954 (September 2, 2014) and the accompanying I&D Memo at Comment 4.

[80] *See Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57872 (September 26, 2014) and the accompanying I&D Memo at Comment 1 ("Accordingly, we find that neither the age of the information used to corroborate the PRC-wide rate used in every segment of this proceeding, nor the fact that lower margins have been calculated for cooperative separate respondents, leads to the conclusion that the PRC-wide rate of 112.81 percent no longer has probative value and is not properly corroborated, a position that has been affirmed by the CIT"), *citing Shanghai Taoen Int'l Trading Co. v. United States*, 360 F. Supp. 2d 1339, at 1347 (CIT 2005) (where the Court explicitly stated that "both this court and the Federal Circuit have determined that in cases in which the respondent fails to provide Commerce with information necessary to calculate an accurate antidumping margin, 'it is within Commerce's discretion to presume that the highest prior margin reflects the current margins.") and *Ad Hoc Shrimp Trade Action Comm. v. United States*, 992 F. Supp. 2d 1285 (CIT 2014) ("where (as here) the non-cooperating respondent is a NME countrywide entity - definitionally presumed to set prices without regard to market conditions - the actual pricing behavior of the cooperative respondents that have demonstrated eligibility for a separate rate (precisely because they have differentiated themselves from the countrywide entity) does not bear upon the credibility of dumping allegations against the NME countrywide entity in the way that the pricing behavior of cooperative market economy respondents reflects on the credibility of dumping allegations against their similarly-situated market participants").

respondent a separate rate.[81] However, novel circumstances underpin the Department's decision in this case. In other reviews, the Department may have applied AFA to the NME-entity when a respondent deemed to be part of the NME-entity failed to cooperate to the best of its ability.[82] In other instances, where the Department denied a separate rate to an otherwise cooperative company that was under review (and no other element of the PRC-wide entity's behavior resulted in the application of AFA), the Department assigned the pre-existing NME-wide entity rate to that company, as well as to the entire NME-wide entity for that review period.[83] Moreover, while the Court established in, *e.g.*, *Watanabe Group*, *Jiangsu Changbao*, and *Advanced Tech 2013* that the denial of a separate rate (1) ends a respondent's entitlement to an individual inquiry, (2) renders further inquiry meaningless, and (3) justifies the application of the PRC-wide rate, the language does not explicitly require the Department to apply the existing PRC-wide rate, as is, in every circumstance, nor does it preclude the Department from using such information to alter the rate as appropriate to the facts of a specific case.[84]

The petitioner relies on *Advanced Tech 2013* in arguing that the margin calculated for the ATM Single Entity is meaningless and cannot inform the value of the PRC-wide rate. In *Advanced Tech 2013* the court found our application of the AFA PRC-wide rate appropriate for the ATM Single Entity's predecessor collapsed entity. In that situation, the court found that the respondent's cooperation, such that necessary information to calculate a dumping margin was available, did not extend to the entirety of the country-wide entity. Neither did it find that the ATM Single Entity's cooperation was not relevant due to the non-cooperation of 13 quantity and

[81] *See, e.g., Activated Carbon.*
[82] *See, e.g., Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013*, 80 FR 13332 (March 13, 2015). *See also Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Final Results of Administrative Review; 2012-2013*, 80 FR 13522 (March 16, 2015).
[83] *See Advanced Tech 2013*.
[84] *See OTR Tires Final* and the accompanying I&D Memo at Comment 1, unchanged in *OTR Tires Amended Final*.

value respondents that were also a part of the PRC-wide entity. Instead, it relied on *Watanabe Group* and *Jiangsu Changbao*, to find that it was permissible for the Department to apply the AFA PRC-wide rate to the ATM Single Entity's predecessor because:

1) "Commerce's permissible determination that {a respondent} is part of the PRC-wide entity means that inquiring into {that respondent}'s separate sales behavior ceases to be meaningful."[85]

2) "{A}s losing all entitlement to an individualized inquiry appears to be a necessary consequence of the way in which Commerce applies the presumption of government control, . . . applying a countrywide AFA rate without individualized findings of failure to cooperate is no different from applying such a countrywide AFA rate without individualized corroboration."[86]

The statement made by the Court in *Watanabe Group* regarding inquiring into a respondent's "separate sales behavior" was made in the context of analyzing the respondent's claim that the Department did not corroborate the PRC-wide rate to the individual respondent which was now a part of the PRC-wide entity.[87] The Court in *Watanabe Group* decided that individualized corroboration is not necessary and meaningless because the inclusion in the country-wide entity by the denial of a separate rate means that the Department does not have an obligation to corroborate the PRC-wide rate to an individual party that is a part of the PRC-wide entity.[88] However, the *Wantanabe* court's statement does not address the impact of a respondent's margin on a cooperative PRC-wide entity.[89] Again, the Court's reference to "individualized inquiry" in *Jiangsu Changbao* is specific to the Court's discussion concerning the lack of a requirement to corroborate an AFA PRC-wide rate specific to an individual member

[85] *See Advanced Tech 2013* citing *Watanabe Group*, 2010 Ct. Intl. Trade LEXIS, at *14.
[86] *Id.*, citing *Jiangsu Changbao Steel Tube Co., Ltd. v. United States*, 884 F. Supp. 2d 1295, 1312 n.21 (CIT 2012) (*Jiangsu Changbao*), referencing *Watanabe Group*.
[87] *See Wantanbe Group*, 2010 Ct. Intl. Trade LEXIS 144, at *14.
[88] *Id*. citing *Shandong Mach. Imp. & Exp. Co. v. United States*, 2009 Ct. Intl. Trade LEXIS 76, *25.
[89] *See Wantanbe Group*, 2010 Ct. Intl. Trade LEXIS 144, at *14.

of the PRC-wide entity.[90] Finally, the statement in *Advanced Tech 2013* was made in the context of evaluating whether it is appropriate to find that the PRC-wide entity is cooperative due to cooperation of a single respondent. However, the instant issue is whether the margin determined for a cooperative mandatory-respondent member of the PRC-wide entity can be incorporated into a non-AFA PRC-wide rate. This question was not addressed by the courts in *Advanced Tech 2013, Wantanabe Group,* or *Jiangsu Changbao*.

In past cases, when a respondent that is part of the PRC-wide entity has failed to cooperate, that failure to cooperate has informed the Department's determination with respect to the rate applicable to the PRC-wide entity. Just as we have found such non-cooperation appropriate to inform our decision, we likewise are determining it appropriate, given the unusual circumstances in this review, to find a cooperative firm's behavior relevant to our determination with respect to the rate applicable to the PRC-wide entity. In this review, a mandatory respondent that is part of the PRC-wide entity cooperated and provided the information necessary to calculate a weighted-average dumping margin for part of the PRC-wide entity and no part of the PRC-wide entity failed to cooperate during the underlying administrative review. Thus, we are using the cooperative mandatory respondent's information to inform our determination with respect to the rate applicable to PRC-wide entity.

We also disagree with the petitioner's argument that we should weight average the ATM Single Entity's calculated rate at 1/28 the weight of the LTFV PRC-wide rate because there are 28 specified members of the PRC-wide entity for the review period. The PRC-wide entity consists of all the exporters of diamond sawblades to the United States which operated in the PRC during the POR which did not receive a separate rate, not just those specified in our

[90] *See Jiangsu Changbao*, 884 F. Supp. 2d at 1312 n.21, citing *Watanabe Group.*

decision.[91] Additionally, our preference when conducting weighted-average calculations of antidumping duty margins is to assign weights based on volume or value, not the number of companies involved,[92] and there is no volume or value information on the record to account for the unspecified portion of the PRC-wide entity. For these reasons, the information available on the record does not provide the data to determine what share of production and exports of subject merchandise the ATM Single Entity constitutes as part of the PRC-wide entity. As facts available, because there is insufficient information on the record with respect to the portion of the PRC-wide entity accounted for by exporters other than the ATM Single Entity, we continue to find it appropriate to calculate a simple average of the previously assigned PRC-wide rate (164.09 percent) and the ATM Single Entity's calculated margin (zero percent), yielding 82.05 percent as the rate applicable to the PRC-wide entity in this final remand redetermination.

Issue 2: Targeted Dumping

Petitioner's Comments

The petitioner claims that the draft remand does not address the CIT's request that the Department explain where in the statute it discerned authority to refuse to determine whether targeted dumping is occurring.[93] The petitioner argues that the Department continues to reiterate, with no rational basis, its decision not to consider the targeted dumping allegation due to the untimely filing of the targeted dumping allegation, even when (1) the CIT found that issue

[91] The companies specified as part of the PRC-wide entity in the instant review are based on those companies for which the Department received requests for review by interested parties.

[92] For example, when calculating the weighted-average margin for companies not selected for individual examination, we weight-average the margins calculated for individually investigated companies by volume or value, not by the number of companies involved. *See, e.g. Large Power Transformers From the Republic of Korea: Amended Final Results of Antidumping Duty Administrative* Review, 80 FR 26001, 26002 n.6 (May 6, 2015) (calculation based on volume) and *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661 (September 1, 2010), and the accompanying I&D Memo at Comment 1(calculation based on value).

[93] *See* the petitioner's April 28, 2015, Comments on Draft Results of Remand at 8.

irrelevant in light of the affirmative statutory requirement that the Department conduct targeted dumping analysis and (2) the Department admits that it had established no deadlines for the filing of such allegations.[94]

The petitioner explains that it raised its targeted dumping allegations in its case brief.[95] The petitioner contends that the Department relies on the preliminary results of an administrative review issued after the submission of the petitioner's case brief to support its proposition that the Department had established a practice of not considering allegations on its own initiative.[96] Finally, the petitioner argues that, because it raised its targeted dumping allegations in its case brief, this case is different from the case which the Department relies on where no targeted dumping allegations were raised.[97]

The petitioner notes that the *Final Modification for Reviews* neither sets a deadline for filing of a targeted dumping allegation nor addresses the timing of targeted dumping allegations.[98] The petitioner states that the portion of the *Final Modification for Reviews* quoted in the draft remand only explains that the Department would apply its new methodology in proceedings with preliminary results due 60 days or more after the publication of the *Final Modification for Reviews*.[99] The petitioner contends that, even if the Department quoted that portion of the *Final Modification for Reviews* in the draft remand to support its proposition that, despite having established no deadlines for the filing of targeted dumping allegations, 60 days provide a reasonable time for the Department to conduct a targeted dumping analysis, the Department had 111 days from the day the petitioner filed its case brief to the day the

[94] *Id*.
[95] *Id*. at 9.
[96] *Id.*
[97] *Id.*
[98] *Id.* at 9-10.
[99] *Id.* at 10.

Department issued the final results.[100] Thus, the petitioner argues, the Department had 51 additional days than the days apparently deemed necessary for the targeted dumping analysis.[101] The petitioner does not believe that the draft remand (1) responds to the CIT's request regarding the Department's treatment of the targeted dumping issue or (2) articulates any reasonable basis for the continued refusal to consider the petitioner's targeted dumping allegation.

Weihai's Comments

Weihai supports the draft remand with respect to the targeted dumping issue.[102] In addition, Weihai argues that the issuance of the *Final Modification for Reviews* only six weeks after the initiation of this review should have given the petitioner fair notice that it was the Department's policy to require a targeted dumping allegation sufficiently in advance of the issuance of the *AR2 Preliminary Results* to provide all parties, including the Department, time to review and analyze such allegations.[103]

Department's Position

We disagree with the petitioner that we did not address the Court's request in the *Remand Order*. The Court referenced section 777A(d)(1)(B) of the Act and requested that the Department explain where in the statute or other authority it finds the non-ministerial discretion not to determine whether there is a pattern of different export prices or constructed export prices.[104] We addressed the Court's request by explaining in the draft remand, and above, that the statutory provision referenced by the court is silent on whether the Department should analyze whether to apply an alternative method in administrative reviews. The relevant section of the statute, section 777A(d)(1)(B) of the Act, expressly governs investigations, but is silent as

[100] *Id.*
[101] *Id.*
[102] *See* Weihai's April 28, 2015, Comments on Draft Results of Remand at 8.
[103] *Id.* at 9-10.
[104] *See Remand Order* at 7.

to reviews. Moreover, as explained in the draft remand redetermination, the Department based its targeted dumping analysis on the allegedly targeted purchasers, regions, or time periods, as provided by the petitioner. Therefore, an allegation is required as a matter of practice to conduct a targeted dumping analysis. With this explanation, we addressed the CIT's request concerning this issue in the *Remand Order*.

Moreover, the practice of not conducting a targeted dumping analysis absent an allegation was not created after the submission of the petitioner's case brief on February 19, 2013. For example, in the preliminary results for *Carboxymethylcellulose from Finland*, published on August 7, 2012, which predates the petitioner's case brief in this case, the Department recognized that it had not established a deadline for targeted dumping allegations in administrative reviews but reasoned that because the allegation in that case was submitted 45 days prior to the deadline for the preliminary results, which is normal practice for investigations, the allegation was considered timely.[105] Additionally, in recognition of the fact that the Department had not established a deadline for targeted dumping allegations in administrative reviews, in *Circular Welded Carbon Steel Pipes from Turkey*, the Department accepted a targeted dumping allegation 15 days before the preliminary results and provided parties an opportunity to comment on post-preliminary results.[106] Therefore, the practice of requiring allegations existed before the briefs in this case were due.

Finally, as stated by the petitioner, we announced in the *Final Modification for Reviews* that we would only apply the methodology discussed in that *Federal Register* notice to

[105] *See Purified Carboxymethylcellulose From Finland; Notice of Preliminary Results of Antidumping Duty Administrative Review*, 77 FR 47036, 47038 (August 7, 2012) (*Carboxymethylcellulose from Finland*) unchanged in *Purified Carboxymethylcellulose From Finland: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 11817 (February 20, 2013), and the accompanying I&D Memo at Comment 1.
[106] *See Circular Welded Carbon Steel Pipes and Tubes From Turkey; Final Results of Antidumping Duty Administrative Review; 2010 to 2011*, 77 FR 72818 (December 6, 2012), and the accompanying I&D Memo at Comment 1.

preliminary results due sixty days or more after the publication of the *Final Modification for Reviews*.[107] Therefore, the petitioner recognizes that the Department limited the application of the *Final Modification of Reviews* to determinations that had pending preliminary results. The Department explained that it would apply the new methodology prior to the issuance of the preliminary results because it allowed for sufficient time for parties to comment on the application of the new methodology.[108] If, in this case, the Department had applied the targeted dumping analysis as a result of the petitioner's request in the case brief, the targeted dumping results would be issued in the final results of the administrative review and parties would have no opportunity to comment on the application of the new methodology. Therefore, the appropriate time to allege targeted dumping is before the preliminary results and, thus, an allegation in a case brief, after the preliminary determination was issued in this proceeding, was untimely.

Issue 3: Core Valuation

Petitioner's Comments

The petitioner requests that the Department explain more adequately (1) how the build-up methodology in the *Second Review* is consistent with the build-up methodology in the *AR1 Final Results* and (2) why the build-up methodology produces more accurate results than the multiplier methodology.[109]

The petitioner claims that an inconsistency exists between the valuation methodology for cores explained in the *AR1 Final Results* and the valuation methodology for cores explained in the *Second Review*.[110] The petitioner argues that, in the *AR1 Final Results*, the Department apparently used a hybrid valuation methodology that valued all of Weihai's purchased cores

[107] *See Final Modification for Review*, 77 FR at 8111.
[108] *Id.*
[109] *See* the petitioner's April 28, 2015, Comments on Draft Results of Remand at 11.
[110] *Id.* at 11-12.

(regardless of origin) "using a quantity-weighted average of the prices Weihai paid for cores it purchased from market economy countries and Weihai's FOPs for self-produced cores (to reflect the value of the cores Weihai purchased from NME suppliers.)."[111] The petitioner explains that, in the *Remand Order*, the CIT observed that, in the *AR1 Final Results*, the Department described its valuation methodology for cores as the application of a single weighted-average formula to value all cores Weihai purchased from market economy and NME suppliers, whereas the *Second Review* describes "valuation of Weihai's NME-purchased cores separately, apart from the value assigned to Weihai's ME-purchased cores, using Weihai's reported FOPs for self-produced cores." The petitioner argues that the draft remand does not address this concern expressed in the *Remand Order*.

The Department stated in the draft remand that its multiplier methodology did not "take into account whether the market economy price paid by the respondent and used in the calculation of the multiplier percentage came from a country at a level of economic development comparable to that of the PRC."[112] The petitioner does not believe that this explanation is adequate because the multiplier methodology was applied to the Thai surrogate values for steel, which is the surrogate value from the primary surrogate country at a level of economic development of the PRC. Thus, the petitioner argues, consistent with the statute, the multiplier methodology used the surrogate value from a country at a level of economic development comparable to that of the NME country.[113]

The petitioner contends that the Department did not explain in the draft remand why the build-up methodology is more consistent than the multiplier methodology with the normal practice for FOPs that the Department would have followed had there been a viable Thai HTS

[111] *Id.*
[112] *See* the draft remand redetermination at 15.
[113] *See* the petitioner's April 28, 2015, Comments on Draft Results of Remand at 14.

code for cores for diamond sawblades. The petitioner argues that, when none of these two methodologies reflect direct valuation of cores Weihai purchased from NME suppliers, it is unclear why the Department believes that the build-up methodology is more similar to direct valuation than the multiplier methodology. According to the petitioner, the build-up methodology is more complicated and cumbersome than the multiplier methodology because the build-up methodology requires collection of data on multiple inputs into core production. For these reasons, the petitioner claims, the build-up methodology is more vulnerable to error. The petitioner claims further that the build-up methodology requires various estimations and adjustments.

The petitioner contends that the Department has not explained why its build-up methodology produces more accurate results than the multiplier methodology.[114] The petitioner argues that the Department only states that the build-up methodology is more like its normal methodology than the multiplier methodology and that the build-up methodology satisfies the statutory criteria to rely on surrogates from economically comparable countries better than the multiplier methodology.

The petitioner explains that the purpose of surrogate valuation is to approximate the market value of the input as closely as possible. According to the petitioner, Weihai purchased steel and finished cores from market economy suppliers and, because the assumption is that Weihai purchased them as cheaply as possible but at fair market values, there seems to be no reason to reject the multiplier methodology out of hand. The petitioner claims that the multiplier methodology, as applied to the Thai surrogate for steel, would provide great accuracy in that it

[114] *Id.* at 15.

represents the difference in fair market prices between steel and cores Weihai used while satisfying the statutory directive to rely on economically comparable prices.[115]

Weihai's Comments

Weihai supports the Department's explanation of the valuation methodology for cores that the company purchased from NME suppliers.[116] Weihai also believes that the Department correctly described in detail in the draft remand results the valuation methodology for cores Weihai purchased from NME suppliers.

Weihai requests, however, that the Department provide an additional explanation to remove any lingering doubt the CIT might have with respect to this issue.[117] Weihai argues that, even though the petitioner knows that the Department used the identical methodology in the *AR1 Final Results* and the *Second Review*, the petitioner still introduced some doubt in the CIT that the Department used dissimilar methodologies in the *AR1 Final Results* and the *Second Review*. According to Weihai, this is evident from the *Remand Order*, which states, in part:

> {I}t is unclear whether Commerce's methodology in the second administrative review is in fact consistent with the expressed methodology in the first administrative review. No opinion is here expressed on the reasonableness of the methodology employed in the *First Review*, but *in that review is described the application of a single weighted-average formula to value all of Weihai's purchased cores, both ME and NME. The Second Review I&D Memo describes valuation of Weihai's NME-purchased cores separately, apart from the value assigned to Weihai's ME-purchased cores, "using Weihai's reported FOPs for self-produced cores*." (Emphasis added by Weihai.)[118]

Weihai explains that the *Remand Order* is based on the CIT's belief that, while the Department employed a single methodology to value all cores that Weihai purchased from market economy and NME suppliers in *AR1 Final Results*, the Department may have used one

[115] *Id.* at 15-16.
[116] *See* Weihai's April 28, 2015, Comments on Draft Results of Remand at 2.
[117] *Id.* at 2-3.
[118] *Id.* at 3, quoting *Remand Order* at 15.

methodology to value cores Weihai purchased from market economy suppliers and another methodology to value cores Weihai purchased from NME suppliers in the *Second Review*.[119]

According to Weihai, in the *AR1 Final Results*, the Department valued cores Weihai purchased from market economy suppliers using the actual purchase prices Weihai paid in accordance with *Antidumping Methodologies: Market Economy Inputs*[120] because less than 33 percent of cores Weihai purchased came from market economy suppliers.[121] Weihai explains further that, in the *AR1 Final Results*, the Department valued all other purchased cores, *i.e.*, cores Weihai purchased from unaffiliated NME suppliers, based on Weihai's FOPs for self-produced cores, as explained in the draft remand. After these two steps, according to Weihai, the Department weight-averaged (1) the weighted average of the market economy price of the cores Weihai purchased from market economy suppliers and (2) the surrogate value of cores Weihai purchased from unaffiliated NME suppliers "according to their respective shares of the total volume of purchases," as stated in *Antidumping Methodologies: Market Economy Inputs*. Therefore, Weihai states, in the *AR1 Final Results*, the Department constructed the surrogate value of cores Weihai purchased from unaffiliated NME suppliers by aggregating the surrogate values of the FOPs (steel, labor and energy) that Weihai used to produce similar types of cores. Thus, Weihai continues, the valuation methodology for cores applied in the *AR1 Final Results* is identical with the one used in the *Second Review*, where the Department valued such cores Weihai purchased from unaffiliated NME suppliers using the FOPs that Weihai reported for the

[119] *Id.* at 3-4.
[120] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-61718 (October 19, 2006) (*Antidumping Methodologies: Market Economy Inputs*).
[121] *Id.* at 4-5.

cores that it produced. Weihai requests that, in order to remove any lingering doubt, the Department provide this additional explanation for the valuation methodology for cores.[122]

Weihai agrees with the Department's rationale in the draft remand for the selection of the build-up valuation methodology in the *Second Review* over the multiplier valuation methodology in the *AR2 Preliminary Results*.[123] Weihai supports the Department's concern that the "multiplier methodology did not take into account whether the market-economy price paid by the respondent and used in the calculation of the multiplier percentage came from a country at a level of economic development comparable to that of the PRC, whereas the build-up methodology used surrogate values from the primary surrogate country, *i.e.*,….Thailand." Weihai explains that record evidence supports the Department's statement because the multiplier methodology in the *AR2 Preliminary Results* were based on inputs purchased from Korea, which, unlike Thailand, is not economically comparable to the PRC in terms of per capita GNI data.[124] As such, according to Weihai, the Korean price data for cores and steel inputs, which were used in constructing the multiplier, are not comparable to the price paid for such inputs in a market economy country at the economically comparable level of the PRC.[125] Weihai claims that the multiplier based on non-comparable underlying price data of core and steel inputs would distort the valuation of cores Weihai purchased from unaffiliated NME suppliers.

Weihai supports the Department's build-up methodology as an accurate and reliable methodology for the following reasons: (1) it is based on "average consumption quantity for each input Weihai used to produce its own cores;" (2) there is no dispute about the accuracy of Weihai's reported FOP data for its self-produced cores; (3) it multiplies "the surrogate values for

[122] *Id.* at 6.
[123] *Id.*
[124] *Id.* at 6-7.
[125] *Id.* at 7.

steel, labor, and electricity by Weihai's average consumption for each of the inputs Weihai used to produce its own cores (*i.e.*, steel quantity, labor hours, and electricity consumption, respectively) to calculate the surrogate value for each of the three underlying inputs (*i.e.*, steel, labor, and electricity) for purposes of valuing Weihai's purchased cores;" and (4) there is no dispute about the accuracy of the Thai surrogate value data used for valuing steel, labor and electricity in the *Second Review*.[126]

Department's Position:

We agree with Weihai. In the *AR1 Final Results*, we stated the following with respect to the valuation of cores:

> Weihai purchased cores from market economy countries and NME companies. The information on the record shows that the quantities of cores Weihai purchased from market economy countries were not meaningful, *i.e.*, less than 33 percent of the total purchases of cores. Therefore, we valued Weihai's purchased cores using a quantity-weighted average of the prices Weihai paid for cores it purchased from market economy countries and Weihai's FOPs for self-produced cores (to reflect the value of the cores Weihai purchased from NME suppliers).[127]

Weihai's purchased cores came from market economy suppliers and unaffiliated NME suppliers.[128] At the time we completed the *AR1 Final Results*, our practice was to value all cores Weihai purchased using the purchase price Weihai paid to market economy suppliers if Weihai purchased 33 percent or more of cores from market economy suppliers.[129] However, as we stated in the *AR1 Final Results*, Weihai purchased less than 33 percent of cores from market economy suppliers.[130] For this reason, we separately valued cores Weihai purchased from market economy suppliers and cores Weihai purchased from unaffiliated NME suppliers. We

[126] *Id.* at 7-8.
[127] *See AR1 Final Results* and the accompanying I&D Memo at Comment 11.
[128] *Id.* ("Weihai purchased cores from market economy countries and NME companies.")
[129] *See Antidumping Methodologies: Market Economy Inputs*, 71 FR at 61717-18. *See also AR2 Preliminary Results* and the accompanying Preliminary Decision Memorandum at 18.
[130] *See AR1 Final Results* and the accompanying I&D Memo at Comment 11 ("The information on the record shows that the quantities of cores Weihai purchased from market economy countries were not meaningful, *i.e.*, less than 33 percent of the total purchases of cores.").

valued Weihai's (1) "{market economy} purchased cores using … the prices Weihai paid for cores it purchased from market economy countries" [131] and (2) "{NME} purchased cores using … Weihai's FOPs for self-produced cores (to reflect the value of the cores Weihai purchased from NME suppliers)." [132] When we valued Weihai's "{NME} purchased cores using … Weihai's FOPs for self-produced cores (to reflect the value of the cores Weihai purchased from NME suppliers)," we used the surrogate values for Weihai's FOPs for self-produced cores (*i.e.*, steel, labor, and electricity)."[133] After we made these two calculations, consistent with the *Antidumping Methodologies: Market Economy Inputs*, we weight-averaged the market economy purchase price for cores Weihai purchased from market economy suppliers and the surrogate values for the cores Weihai purchased from NME suppliers "according to their respective shares of the total volume of purchases," [134] which is, in other words, "using a quantity-weighted average."[135] We used the same methodology in the *Second Review.* After we valued (1) the cores Weihai purchased from market economy suppliers using the actual purchase price and (2) the cores Weihai purchased from NME suppliers using the surrogate values for the average consumption of steel, labor, and electricity, again, consistent with the *Antidumping Methodologies: Market Economy Inputs*, we weight-averaged the market economy purchase price for cores Weihai purchased from market economy suppliers and the surrogate values for

[131] *Id.* ("Therefore, we valued Weihai's {market economy} purchased cores using … the prices Weihai paid for cores it purchased from market economy countries….")
[132] *Id.* ("Therefore, we valued Weihai's {NME} purchased cores using … Weihai's FOPs for self-produced cores (to reflect the value of the cores Weihai purchased from NME suppliers).")
[133] *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part*, 76 FR 76135, 76140-41 (December 6, 2011) (for labor and electricity), unchanged in *AR1 Final Results*, and *AR1 Final Results* and the accompanying I&D Memo at Comment 20 (for steel).
[134] *See Antidumping Methodologies: Market Economy Inputs*, 71 FR at 61717-18.
[135] *See AR1 Final Results* and the accompanying I&D Memo at Comment 11 ("Therefore, we valued Weihai's purchased cores *using a quantity-weighted average* of the prices Weihai paid for cores it purchased from market economy countries and Weihai's FOPs for self-produced cores (to reflect the value of the cores Weihai purchased from NME suppliers) (emphasis added).").

the cores Weihai purchased from unaffiliated NME suppliers "according to their respective shares of the total volume of purchases."[136]

The petitioner's comments appear to be that we used (1) only one calculation step that involves the use of one weighted-average formula in the *AR1 Final Results* and (2) two separate calculation steps in *Second Review* in which we separately valued the cores Weihai purchased from market economy suppliers and the cores Weihai purchased from unaffiliated NME suppliers. As we explained above, in both the *AR1 Final Results* and the *Second Review*, we valued the market economy cores and NME cores separately and then weight-averaged the prices of cores Weihai purchased from market economy suppliers with the surrogate value for cores Weihai purchased from unaffiliated NME suppliers "according to their respective shares of the total volume of" cores purchased.[137]

The build-up methodology we used in the *AR1 Final Results* and the *Second Review* is not a direct valuation methodology. As we explained in the draft remand, it reflects Weihai's experience of purchasing cores from unaffiliated NME suppliers better than the preliminary multiplier methodology. As Weihai notes, the multiplier methodology used the price difference between steel and cores Weihai purchased from Korea,[138] which is not one of the countries we determined to be at the level of economic development comparable to the PRC.[139] The petitioner proposed the multiplier methodology to capture the amounts for energy and labor using the

[136] *See* the Weihai final analysis memorandum dated June 10, 2013, and the attached margin calculation program at Part 1 and log at lines 3286-3320, 3465-3501, 3615-3619, and Part 7, and the Weihai amended final analysis memorandum dated July 11, 2013, and the attached margin calculation program at Part 1 and log at 392-426, 571-607, 721-725, and Part 7. *See also* Weihai's section D response dated April 20, 2012, at Exhibit D-4.
[137] *Id; see also Antidumping Methodologies: Market Economy Inputs*, 71 FR at 61717-18.
[138] *See* Weihai's section D response dated April 20, 2012, at Exhibit D-4, ME tab and the Weihai preliminary analysis memorandum dated December 3, 2012 at 5.
[139] *See AR2 Preliminary Results* and the accompanying Preliminary Decision Memorandum at 9 ("The Department determined that Colombia, Indonesia, Peru, Philippines, South Africa, Thailand, and Ukraine are countries whose per capita gross national incomes ('GNI') are comparable to the PRC in terms of economic development.").

information on the record of this review[140] but the multiplier used in this methodology is based on the prices Weihai paid to purchase steel and cores from suppliers in Korea. Even with the multiplier applied to the Thai surrogate value for steel, the multiplier encompasses the Korean labor and electricity costs, *i.e.*, costs in a country not determined by the Department to be at the level of economic development comparable to the PRC. Therefore, the multiplier (1) does not follow the statutory guidance set forth in sections 773(c)(1) and (4) of the Act for valuation of inputs purchased from NME suppliers and (2) thus could distort the valuation of cores Weihai purchased from unaffiliated NME suppliers. The build-up methodology based on Thai surrogate values for steel, labor, and electricity values cores is more consistent with such statutory guidance than the multiplier methodology because the build-up methodology is based on Thai surrogate values, whereas the multiplier methodology is based on a multiplier derived from the actual purchase prices Weihai paid to companies in Korea.

Our build-up methodology is accurate and reliable because: (1) it is based on "average consumption quantity for each input Weihai used to produce its own cores;" (2) there is no dispute about the accuracy of Weihai's reported FOP data for its self-produced cores; (3) it multiplies the average consumption quantity of each of Weihai's inputs used to produce cores (*i.e.*, steel, labor, and electricity) by the corresponding surrogate values from the primary surrogate country (*i.e.*, Thailand); and (4) there is no dispute about the accuracy of the Thai surrogate value data used for valuing steel, labor and electricity in the *Second Review*.

In response to our explanation of the build-up methodology in the draft remand, the petitioner raises the build-up methodology's vulnerability to errors but the petitioner does not allege actual errors in our use of the build-up methodology in the *Second Review*. Therefore, we

[140] *See AR1 Final Results* and the accompanying I&D Memo at Comment 11.

find that the issues concerning the build-up methodology's complexity and vulnerability to errors are not substantiated in this final remand.

Final Results of Redetermination

Pursuant to the *Remand Order*, we have reconsidered our determination as described above and are denying the ATM Single Entity a separate rate.[141] The individual members of the ATM Single Entity are, therefore, considered to be members of the PRC-wide entity. Additionally, we have revised the dumping margin applicable to the PRC-wide entity for this period of review, from 164.09 percent to 82.05 percent. Further, non-selected separate rate respondents will continue to receive a dumping margin of zero percent. With respect to the targeted dumping allegation issue, we have provided further explanation. Finally, following the *Remand Order*, with respect to the valuation of cores, we explained how we valued cores in this remand redetermination and why the methodology in the *Second Review* better reflects Weihai's experience of purchasing cores from unaffiliated NME suppliers than the multiplier methodology the Department used in the *AR2 Preliminary Results*.

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

18 MAY 2015
Date

[141] Thus, we do not reach the issue of whether to collapse CISRI with the ATM Single Entity.