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Remand Redetermination
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China Manufacturing Alliance, LLC, et al. v. United States
Consol. Court No. 15-00124; Slip Op. 17-12 (CIT 2017)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

I. SUMMARY

The Department of Commerce (Department) prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (CIT or the Court) in *China Manufacturers Alliance, LLC et al. v. United States*, 205 F. Supp. 3d 1325 (CIT 2017) (*China Mfr. Alliance* or the Court's Order). These final results of remand redetermination concern the Department's final results of the administrative review of the antidumping duty order on certain new pneumatic off-the-road tires from the People's Republic of China (PRC), covering the period of review (POR) September 1, 2012, through August 31, 2013.[1] Previously, on May 4, 2017, the Department issued to interested parties the draft results of redetermination pursuant to remand (Draft Results of Remand Redetermination).[2]

On remand, the CIT ordered the Department to: (1) reconsider the adjustment for value-added tax (VAT) calculated for Guizhou Tyre Co., Ltd. and Guizhou Tyre Import and Export Co., Ltd. (collectively, GTC);[3] (2) reconsider the calculation of GTC's brokerage and handling

[1] *See 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), and accompanying Issues and Decision Memorandum (IDM), as amended by *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 26230 (May 7, 2015) (collectively, *Final Results of Review*).
[2] *See* "*China Manufacturers Alliance, LLC et al. v. United States*, Consol. Court No. 15-00124, Slip Op 17-12 (CIT 2017): Draft Results of Redetermination Pursuant to Court Remand," dated May 4, 2017 (Draft Results of Remand Redetermination).
[3] *See China Mfr. Alliance*, 205 F. Supp. 3d at 1351.

and ocean freight costs in light of the potential double-counting of specific charges;[4] (3) reconsider the cost-of-living adjustments applied to GTC's domestic warehouse costs;[5] and (4) assign Double Coin Holdings Ltd. (Double Coin) an individually-calculated margin, specifically, the 0.14 percent *de minimis* margin which was calculated based on Double Coin's own data, rather than the rate assigned to Double Coin as part of the PRC-wide entity.[6]

The Department addresses the Court's Order in "Section II: Final Analysis" and "Section III: Interested Parties' Comments" of these Final Results of Remand Redetermination, and determines: (1) that the Department's VAT adjustment was appropriate and supported by substantial record evidence; (2) that it is appropriate to adjust GTC's brokerage and handling and ocean freight costs to reflect that certain charges may have been double counted; (3) that it is appropriate to revise GTC's domestic warehousing costs for a cost-of-living adjustment; and (4) to assign Double Coin a 0.14 percent *de minimis* margin, pursuant to the Court's Order, under respectful protest.[7] In light of these determinations, the Department made changes to GTC's margin calculation, and changed Double Coin's weighted-average dumping margin from 105.31 percent to 0.14 percent.[8]

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[4] *Id.*, at 1358.
[5] *Id.*, at 1359.
[6] *Id.*, at 1342-43.
[7] *See Viraj Group, Ltd. v. United States,* 343 F.3d 1371, 1376 (Fed. Cir. 2003) (*Viraj Group*).
[8] *See* memorandum from the Department, "Draft Results of Redetermination Pursuant to Court Remand in the 2012-2013 Antidumping Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Remand Analysis and Surrogate Value Memorandum for Guizhou Tyre Co., Ltd. and Guizhou Tyre Import and Export Co., Ltd.," dated May 3, 2017 (GTC Draft Results Analysis and SV Memo) and "Draft Results of Redetermination Pursuant to Court Remand in the 2012-2013 Antidumping Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Draft Liquidation Instructions for Double Coin Holdings Ltd.," dated May 3, 2017 (Double Coin Draft Results Analysis Memo); *see also* memorandum from the Department, "Final Results of Redetermination Pursuant to Court Remand in the 2012-2013 Antidumping Duty Administrative of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Redetermination Analysis and Surrogate Value Memorandum for Guizhou Tyre Co., Ltd. and Guizhou Tyre Import and Export Co., Ltd.," (GTC Final Redetermination Analysis and SV Memo), dated concurrently with this redetermination.

In the Draft Results of Remand Redetermination, the Department provided new factual information to the record with respect to: 1) the potential double counting of brokerage and handling and ocean freight surrogate value expenses;[9] and 2) the deflator needed to properly calculate the cost-of-living adjustment for warehousing expenses.[10] The Department provided parties with the opportunity to provide rebuttal factual information and to comment on the Draft Results of Remand Redetermination. Titan Tire Corporation (Titan) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (USW) (collectively, the petitioners) and GTC submitted rebuttal factual information and comments.[11] No other parties provided rebuttal factual information or comments with respect to the Draft Results of Remand Redetermination. The petitioners' and GTC's comments are addressed in "Section III: Interested Party Comments," below.

As a result of our analysis of the record information and the parties' comments, we have amended the Draft Results of Remand Redetermination to reflect that certain brokerage and handling and ocean freight surrogate value expenses may have been double counted in the *Final Results of Review*.[12] Beyond this change, the Draft Results of Remand Redetermination remain

[9] *See* Draft Results of Remand Redetermination at Attachment 2.
[10] *Id.*, at Attachment 1.
[11] *See* Petitioners' Rebuttal Factual Information, "*China Manufacturing Alliance, LLC, et al. v. United States: Consol. Court No. 15-00124*; Slip Op. 17-12 (CIT 2017): Titan and USW's Remand Factual Submission," dated May 8, 2017 (Petitioners' RFI); *see also* Petitioners' Draft Comments, "*China Manufacturing Alliance, LLC, et al. v. United States: Consol. Court No. 15-00124*; Slip Op. 17-12 (CIT 2017): Titan and USW's Comments on Draft Redetermination," dated May 12, 2017 (Petitioners' Draft Comments). *See* GTC's Rebuttal Factual Information, "GTC's Factual Rebuttal Information: Remand Redetermination pursuant to Litigation in Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated May 8, 2017 (GTC's RFI); *see also* GTC's Draft Comments, "GTC's Comments on the Department's Draft Remand Redetermination – Remand Redetermination pursuant to Litigation in Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the- Road Tires from the People's Republic of China," dated May 12, 2017 (GTC's Draft Comments).
[12] *See* Issue 2 in "Section III: Interested Parties' Comments," below. *See also* GTC Final Redetermination Analysis and SV Memo.

substantively unchanged. Our consideration of parties' factual information and comments, as detailed in "Section III: Interested Parties' Comments," below, has not otherwise resulted in any substantive changes to the Draft Results of Remand Redetermination, as indicated in "Section II: Final Analysis," below.

II. FINAL ANALYSIS

1. Department's Calculation of GTC's Unrefunded/Irrecoverable VAT

Pursuant to section 772(c)(2)(B) of the Tariff Act of 1930, as amended (the Act), when the Department calculates export price, it deducts from its calculation any "export tax, duty or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States." Notably, the statute does not define "export tax, duty or other charge imposed."[13] In 2012, the Department, following notice and comment procedures, determined that these terms include, *inter alia*, "an export tax or VAT that is not fully refunded upon exportation."[14]

Interpreting section 772(c)(2)(B) of the Act to include "VAT that is not fully refunded upon exportation," *i.e.*, irrecoverable or unrefunded VAT, is a reasonable interpretation of the statute because, as the Department explained in the IDM, irrecoverable VAT "amounts to a tax, duty or other charge imposed on exports that is not imposed on domestic sales."[15] In a typical

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[13] *Id.*; *see also* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA) at 823; *Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire From the People's Republic of China*, 79 FR 25572 (May 5, 2014) (*Prestressed Wire*), and accompanying IDM at Comment 1 (stating that the statute does not define "export tax, duty or other charge imposed").

[14] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, in Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36482 (*Methodological Change*); *see also Proposed Methodology for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings; Request for Comment*, 76 FR 4866 (January 27, 2011). "VAT that is not fully refunded upon exportation" refers to irrecoverable, or unrefunded, VAT.

[15] *See* IDM at 27.

VAT system, companies receive, upon exportation, a *full* rebate of the VAT they paid on the purchase of inputs (*i.e.*, input VAT).[16] For domestic sales, companies deduct the prior-paid input VAT from the VAT imposed on the domestic sales.[17] That is, in a typical VAT system, for both domestic and foreign sales, companies are able to recover the VAT paid on inputs.

The Chinese system, by contrast, may result in companies having unrefunded or irrecoverable VAT, specifically "some portion of the input VAT that a company pays on purchases of inputs used in the production of exports is not refunded."[18] That is, under the PRC VAT system, companies do not always receive a full refund of the VAT for exports when the government-mandated VAT refund rate for a particular exported product is less than the government-mandated VAT rate (resulting in unrefunded or irrecoverable VAT). Where this occurs, irrecoverable VAT "is a net VAT burden that arises solely from, and is specific to, exports."[19] Therefore, irrecoverable VAT is an export tax. Under section 772(c)(2)(B) of the Act, the Department may deduct the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise.[20]

As the Department explains below, companies who export a good, rather than sell it domestically, build VAT unrefunded by the government into the export price itself. Adjusting for this irrecoverable VAT, which equates to an export tax, is consistent with section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer (which would

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[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*; *see also Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) (*Diamond Sawblades 11-12*) and accompanying IDM at Comment 6; and *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2011-2012*, 79 FR 26712 (May 9, 2014) (*MWF 11-12*) and accompanying IDM at Comment 3; and *Prestressed Wire IDM* at Comment 1.
[20] *See* IDM at 28.

otherwise include the unrefunded VAT in the amount charged to the U.S. customer) to a net price received. Moreover, this deduction is consistent with the Department's longstanding policy that dumping margin calculations be tax-neutral.[21]

For purposes of this antidumping administrative review, we conducted an analysis of the irrecoverable VAT information GTC placed on the record and followed the methodology set forth in the *Methodological Change*.[22] In both an initial and supplemental questionnaire, the Department instructed GTC to report value-added taxes on merchandise sold to the United States and to identify which taxes are not rebated upon export.[23] In response, GTC stated its disagreement with our product-specific methodology and reported that its total (*i.e.*, non-product-specific) VAT refund exceeded VAT paid for export sales during the POR and, thus, did not report any irrecoverable VAT.[24]

In the *Final Results of Review*, the Department analyzed GTC's submissions and, consistent with its practice not to consider allocations across all company sales or across sales of products with different VAT schedules, calculated the difference between GTC's standard VAT levy rate and the VAT refund rate for the subject merchandise as reported by GTC, and applied

[21] During the process leading to the enactment of the original Antidumping Act, the Senate approved a provision that allowed upward adjustment to U.S. price to prevent a dumping margin from arising solely due to a foreign government's forgiveness of taxes on exports. *See* S. Rep. No. 16, 67th Cong., 1st Sess. 2, 12 (1921). The House-Senate Conference Committee responsible for reconciling the bills from the separate houses of Congress adopted the Senate provision, and this version became law. *See* the Antidumping Act, Chapter 14 §§ 203, 204, 42 Stat. 9, 12, 13 (1921) (codified at 19 U.S.C. §§ 1677a(d)(l)(C), 1677b (2005)). Thus, Congress specifically endorsed adjusting U.S. price in an effort to create a tax-neutral comparison between export price and normal value. As the purpose of the Tariff Act is to ensure a measure of tax neutrality, it would be counter to Congressional intent for antidumping duties to create margins where none exist.

[22] *See* IDM at 27-31 (Describing the methodological change the Department made to reduce export price or constructed export price in certain non-market economy antidumping proceedings by the amount of export tax, duty, or other charge, pursuant to section 772(c)(2)(B) of the Act. Provided the NME government imposed an export tax, duty, or other charge on subject merchandise as contemplated by section 772(c)(2)(B) of the Act, from which the respondent was not exempted, under the methodological change, the Department will reduce the respondent's export price and constructed export price accordingly, by the amount of the tax, duty or charge paid, but not rebated).

[23] *Id*., at 29.

[24] *Id*.

the unrefunded (irrecoverable) VAT formula articulated in the relevant PRC VAT regulations on the record.[25] The information placed on the record by GTC shows that the standard VAT levy is 17 percent and that the rebate rate for subject merchandise is nine percent.[26] Therefore, relying on these particular facts and the relevant PRC regulations for the irrecoverable VAT formula, we removed from U.S. price the difference between the rates (*i.e.*, eight percent), which is commensurate with the amount of irrecoverable VAT incurred by GTC.[27]

In its decision, the Court held that the *Final Results of Review* do not include a specific finding that the PRC government imposed a tax, duty, or other charge in an amount equaling eight percent of the free on board (FOB) value of GTC's subject merchandise,[28] and that, accordingly, the Department had applied "a presumption that goods exported from China are subject to 'irrecoverable VAT' in the amount of 8 {percent} of the FOB value of the exported good."[29] Consequently, the Court held that "{h}aving failed to reach a finding that {section 772(c)(2)(B) of the Act} required, Commerce had no statutory authority to make a deduction from GTC's EP {(export price)} and CEP {(constructed export price)} starting prices."[30] In addition, the Court held that "{a}ny deduction made under {section 772(c)(2)(B) of the Act} is specific to the EP or CEP starting price. Generalized conclusions about China's VAT scheme do not suffice. Commerce may not reduce the starting price by a fixed percentage – no matter how derived – that is not the actual amount of a tax, duty, or other charge that the exporting country is found in fact to have imposed."[31]

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[25] *Id*.
[26] *See* GTC May 28, 2014 Supplemental VAT Questionnaire Response (GTC May 28, 2014 SQR) at 1-2.
[27] *See* IDM at 27-31 (citing GTC May 28, 2014 SQR at 1-2).
[28] *See China Mfr. Alliance* at 32 and 34.
[29] *Id*. at 33.
[30] *Id*. at 34 and 42.
[31] *Id*. at 41.

Analysis

For these Final Results of Remand Redetermination, the Department continues to reduce GTC's U.S. sales prices by eight percent to account for irrecoverable VAT. The Department has reviewed its determination and the record evidence, and expands upon, and further supports, its findings as to the deduction of irrecoverable VAT below.

We find that the relevant statute instructs the Department to reduce the export price or constructed export price by any export tax, duty, or other charge imposed on the subject merchandise. Specifically, it states that the Department shall deduct:

> {T}he amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in {section 771(6)(C) of the Act, defining net countervailable subsidies}.[32]

In 2012, following notice and comment and the determination to apply this provision to certain non-market economies (NMEs), the Department determined that "an export tax or VAT that is not fully refunded upon exportation" falls within the ambit of an "export tax, duty, or other charge."[33] The Department further explained that "the export tax, VAT, duty, or other charge" may be "a fixed percentage of the price," in which case the Department would adjust the export price by the same percentage.[34] "VAT that is not fully refunded upon exportation," is irrecoverable VAT (*i.e.*, unrefunded VAT).

Because the statute does not define "export tax, duty, or other charge imposed," the Department receives deference in its interpretation so long as it is reasonable.[35] The Department,

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[32] *See* section 772(c)(2)(B) of the Act.
[33] *See Methodological Change*, 77 FR at 36482.
[34] *Id*., 77 FR at 36483.
[35] *See Agro Dutch Indus. v. United States,* 508 F.3d 1024, 1029-30 (Fed. Cir. 2007); *see also Fushun Jinly Petrochemical Carbon Co., Ltd. v. United States*, Slip Op. 16-25, Ct. No. 14-00287 (CIT 2016); and *Globe Metallurgical Inc. v. United States*, 781 F. Supp. 2d 1340 (CIT 2011).

therefore, finds that "export tax, duty, or other charges" includes "a cost that arises as the result of export sales," consistent with other cases interpreting the word "charges."[36]

In this case, the record demonstrates that the Chinese VAT system can result in companies having un-refunded or irrecoverable VAT, in which some portion of the VAT that a company pays on purchases of inputs used in the production of exports of subject merchandise is not refunded. In Exhibit C-15 of its response to section C of the Department's questionnaire (the section concerning U.S. sales), GTC provided PRC government Circular 39, which sets out the PRC VAT system and its requirements for irrecoverable VAT. Article 5(3) of Circular 39 of the Chinese tax law clarifies that, "{w}here the Tax Refund Rate is lower than the applicable tax rate, the amount of tax calculated according to the difference in rates shall be included in the costs of the Exported Goods and Services."[37] While companies may still deduct input VAT from output VAT similar to companies in a typical VAT system, in the PRC VAT system, they do not receive a full rebate of the VAT for exports when the VAT refund rate for a particular product is less than the standard VAT levy rate. Circular 39 also states that: (1) the basis for determining the VAT refund of goods and services exported by manufacturing enterprises is the actual FOB price of exported goods and services on the export invoices (Article 4.1); (2) the VAT refund amount is equal to the "FOB price of exported goods x RMB conversion rate x tax refund rate of exported goods" (Article 5.1(2)); and, as discussed above, (3) irrecoverable VAT is included "{w}here the Tax Refund Rate is lower than the applicable tax rate, the amount of tax calculated

[36] *See*, *e.g.*, *Shell Oil Co. v. United States*, 751 F.3d 1282, 1291-92 (Fed. Cir. 2014) (interpreting a contract provision regarding "taxes, fees, or charges" to include "costs.")
[37] *See* GTC's February 19, 2014 Section C and D Response (GTC February 19, 2014 CDQR) at Exhibit C-15. *See also* Memorandum, "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Verification of the Sales and Factors Response of Guizhou Tyre Co., Ltd. and Affiliates," dated September 30, 2014 (GTC Sales Verification Report) at Exhibit 14. The part of the Chinese law specific to VAT was cited at footnote 98 of the IDM at 27.

according to the difference in rates shall be included in the costs of the Exported Goods and Services" (Article 5.3). The record evidence for GTC shows that the applicable standard VAT levy rate for the merchandise at issue is 17 percent, and that the tax refund rate for exports of the subject merchandise is set at nine percent of the FOB export value of the finished merchandise.[38] This results in an eight percent non-refundable VAT rate on the FOB export value of GTC's sales of the subject merchandise. Based on the above, we find that irrecoverable VAT "is a net VAT burden that arises solely from, and is specific to, exports."[39] Accordingly, we find that the costs arise as the result of export sales, as the costs are imposed upon the exportation of the subject merchandise to the United States. Therefore, to the extent that the amount of VAT paid on inputs used to produce subject merchandise is not refunded upon exportation of the finished product, section 772(c)(2)(B) supports our adjustment for irrecoverable VAT.

The purpose of the irrecoverable VAT adjustment is to arrive at a tax-neutral dumping comparison by reducing the U.S. EP or CEP downward by the amount of the irrecoverable VAT. In the underlying review, all of the information that is necessary for calculating GTC's amount of irrecoverable VAT (*i.e.*, the basic calculation formula as established under PRC law;[40] the applicable VAT levy and rebate rates;[41] and the EP data for sales of the subject merchandise[42]) is on the record.

Importantly, GTC has not established that the irrecoverable VAT adjustment the Department made is improper. GTC was not exempt from paying VAT on purchased inputs and

[38] *See* GTC May 28, 2014 SQR at 1-2, and the PRC Circular 39, Art. 5.1(2) at Exhibit 1 and GTC Sales Verification Report at Exhibit 14.
[39] *See* GTC February 19, 2014 CDQR at Exhibit C-15; s*ee also Diamond Sawblades11-12* IDM at Comment 6; and *MWF 11-12* IDM at Comment 3.
[40] *See* GTC May 28, 2014 SQR at Exhibit 1.
[41] *See* GTC May 28, 2014 SQR at 1-2.
[42] *See* GTC February 19, 2014 CDQR.

it did not present verifiable record evidence that an amount other than the standard nine percent rebate rate for the subject merchandise was applicable. GTC claimed that the FOB value of the finished merchandise is substantially higher than the price of the material inputs, asserting that the VAT refund purportedly fully compensates GTC for the input VAT.[43] However, the record evidence does not support this assertion. Specifically, GTC reported VAT paid on inputs used to produce *both* subject and non-subject merchandise, as well as VAT paid on domestic and export sales, and did not tie the VAT paid on inputs used to produce subject merchandise to the overall input VAT, or portion thereof, that it paid.

Moreover, the record of this proceeding is distinguishable from past cases in which the Department has considered information showing exemption of VAT on certain inputs.[44] The Department will adjust its calculation if a respondent can substantiate that it was exempt from paying input VAT on certain items it purchased for the production of the subject merchandise.[45] Otherwise the Department will rely on the amount of the difference between the standard VAT levy rate and the refund rate for exports of the subject merchandise to determine the irrevocable VAT adjustment. In its questionnaire responses, GTC reported a standard VAT refund rate for subject merchandise of nine percent and an input VAT levy rate of 17 percent, and recorded an eight percent unrefunded VAT amount in its own accounting records.[46] At verification, we

[43] *See* GTC February 19, 2014 CDQR at 51.
[44] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61166 (October 5, 2015) (*OTR 13-14 Prelim*), and accompanying Preliminary Decision Memorandum (PDM), unchanged in *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014,* 81 FR 23272 (April 20, 2016) (*OTR 13-14 Final*), and accompanying IDM. There, respondent Qingdao Qihang Tyre Co. Ltd. indicated that it made market economy purchases of inputs through a bonded warehouse which were used in the production of subject merchandise. The Department found that for these purchases, a bonded import adjustment is made by the PRC Government, which was taken into account in the Department's calculations. Specifically, we removed from the U.S. prices the difference between the VAT levy rate and VAT refund rate (*i.e*., eight percent), as adjusted for the bonded imports.
[45] *Id.*
[46] *See* GTC May 28, 2014, SQR at 2; and the GTC Sales Verification Report at Exhibit 14.

reviewed GTC's unrefunded VAT as part of the cost reconciliation and observed that GTC itself listed eight percent non-refundable VAT in its cost build up for export sales.[47] We continue to find GTC's argument unpersuasive, as the Department's irrecoverable VAT calculation requires specific, verifiable input VAT exemption documentation that can be tied to the exported subject merchandise. Therefore, in light of the record evidence, the Department finds that only nine percent of the 17 percent standard VAT levy rate was rebated to GTC on its exports of subject merchandise.[48] As such, we find that the portion of irrecoverable VAT for GTC's sales of subject merchandise during the POR is eight percent, which is the appropriate amount for the irrecoverable VAT adjustment.

2. GTC's Ocean (International) Freight and Brokerage and Handling

Background

For purposes of the antidumping administrative review, we valued international freight paid in RMB or provided by an NME-freight carrier using quotes posted on Descartes.[49] Specifically, in the *Preliminary Results of Review*[50] and *Final Results of Review*, the Department's international freight surrogate value did not encompass only ocean freight, but also all post-exportation expenses incurred to deliver the merchandise to the unaffiliated customer (*i.e.*, ocean freight, U.S. inland freight charges, U.S. brokerage and handling expenses, etc.) – a

[47] *See* GTC Sales Verification Report at Exhibit 14, (showing that GTC's actual unrefunded VAT rate is 8 percent). We did not observe the calculated unrefunded VAT GTC presented its GTC February 19, 2014 CDQR response in any of the records reviewed at verification.
[48] *See* GTC May 28, 2014, SQR at 1-2; *see also* GTC Sales Verification Report at Exhibit 14.
[49] *See* http://rates.descartes.com, included in GTC's April 14, 2014 Surrogate Value Submission (GTC SVS) at Exhibit 8.
[50] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 61291 (October 10, 2014) (*Preliminary Results of Review*) and accompanying PDM.

"fully-loaded" transportation charge.[51] For the *Final Results of Review*, we calculated U.S. inland truck freight delivery charges for GTC that were specific to the port of import and delivery region by assigning a region (*i.e.*, Northeast, Midwest, South, and West) for each of GTC's delivery zip codes and for each of the destinations from Descartes.[52] We valued PRC domestic brokerage and handling costs paid in RMB or provided by an NME provider based on prices included in the World Bank's *Doing Business 2014: Thailand, Trading Across Borders* report (*Doing Business*).[53] In the *Final Results of Review*, we did not exclude any charges from the Descartes ocean freight quotes, determining that they appeared to be integral to, and necessary for, the shipment of freight and did not appear to have been included in the brokerage and handling surrogate value.[54]

The Court held that, "{b}ecause the Department's finding that no double-counting occurred is not supported by substantial evidence, the court must remand the Department's decisions as to deductions from CEP for brokerage and handling, and for ocean freight, for reconsideration."[55] Specifically, the Court held that, "in reconsidering these decisions, Commerce should address specifically each of the charges in the Descartes quotes that GTC identifies as charges that may overlap with the charges Commerce obtained from the *Doing*

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[51] *See* GTC's surrogate value submission dated April 14, 2014 at Exhibit 8 and GTC's Verification Report at Exhibit 11; *see also* Memorandum, "Final Results of the 2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic off-The-Road Tires from the People's Republic of China: Surrogate Value Memorandum," dated April 8, 2015 (Final SV Memo) at 2 and Attachments I and IV; *see also* Memorandum, "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results Surrogate Value Memorandum" (Prelim SV Memo) at 15-16 and Attachments IX and X.
[52] *Id.*
[53] *See* IDM at 44.
[54] *Id.*
[55] *See China Mfr. Alliance* at 54.

Business report," ***i.e.***, "'Documentation Charges,'[56] 'Traffic Metigation {sic} fee,'[57] 'AMS Charge,'[58] 'Clean Truck Fee,' 'Chassis Usage Charges,' 'Shanghai Port Charges,' 'International Ship & Port Security charges,'[59] and 'ISD Handling Charge.'[60]"[61]

Analysis

The Court declined to decide whether "each of the charges identified by GTC necessarily was double counted,"[62] and only required that the Department "address specifically each of the charges in the Descartes quotes that GTC identifies as charges that overlap with the charges Commerce obtained from the *Doing Business* report."[63]

In accordance with the Court's holding, we have reconsidered the costs identified by GTC to determine whether they are being double counted. In the Draft Results of Remand Redetermination, the Department found the "Documentation Charges," "Traffic Mitigation Fee," "Clean Truck Fee," "Shanghai Port Charges," "ISPS – Int'l Ship & Port Security Charges," and "ISD Handling Charges" to be double counted, *i.e.* appeared in both ocean freight and shipping and handling costs. For the Final Results of Remand Redetermination, we further examined the costs included in international freight that were reported by Descartes, as well as those costs listed in the World Bank's *Doing Business* report as part of brokerage and handling, and in light of the record evidence determined that only the "Shanghai Port Surcharges" have been double counted. We have, therefore, removed this charge, already covered in the brokerage and

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56 The Descartes quote includes both "Documentation Charges" and "Document Handling Charges."
57 The Descartes quote incorrectly spelled "Mitigation fee" as "Metigation fee." The Department correctly refers to this fee as a "Mitigation fee" throughout the Final Results of Remand Redetermination.
58 Automated Manifest System (AMS).
59 International Ship and Port Security (ISPS) Charges.
60 Import Surveillance Division (ISD).
61 *Id.*, at 53-54.
62 *Id.*, at 54.
63 *Id.*, at 55.

handling surrogate value, from the international freight surrogate value calculation, using the adjusted international freight value in the margin calculation.

With respect to the seven remaining charges identified by GTC,[64] we determine that these charges are properly covered under international freight, which values all import-related expenses for delivery to the customer, and are not covered by the brokerage and handling costs reported in the World Bank's *Doing Business* report, which captures expenses prior to exportation. We find that the "Automated Manifest System (AMS) Charge," "Chassis Usage Charges," "ISPS- Int'l Ship and Port Security Charges," "ISD Handling Charges," "Traffic Mitigation Fee," "CTF- Clean Truck Fee," and "Documentation Charges," are unique to ocean freight or activities at the U.S. destination. Accordingly, for the Final Results of Remand Redetermination, we have treated these charges as international freight charges, and have not removed these charges and expenses from the surrogate value. In particular:

- The remand record shows,[65] with respect to the **AMS Charge,** that the AMS System:

  > "handles manifest information provided by the carrier … when the merchandise can be transported from the port of entry… Vessel AMS allows participants[66] to transmit manifest data electronically prior to vessel arrival. Customs can then determine in advance whether the merchandise merits examination or immediate release. Upon receiving notification from Customs, the carrier can make decisions on staging cargo and the importer can arrange for examination, release, and distribution of the merchandise."[67]

  Accordingly, we find that this cost is an ocean freight expense related arrival at the destination port, and therefore not covered by *Doing Business*. Therefore, we have not removed the AMS Charge from the surrogate value for international freight.

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[64] "Documentation Charges," "Doc. Handling Charges," "CTF- Clean Truck Fee," "Traffic Mitigation Fee," "ISPS- Int'l Ship and Post Security," "ISD Handling Charges," "AMS Charge," and "Chassis Usage Charges." *Id.* at 53.
[65] *See* Draft Results of Remand Redetermination at Attachment 2.
[66] *Id.* Sea, air and rail carriers, port authorities, service bureaus, freight forwarders, rail carriers, and container freight stations can participate in AMS.
[67] *Id.*

- The remand record shows that **Chassis Usage Charges** are the additional charges for renting the chassis to support and transport full container loads transported via ocean freight at the destination.[68] Accordingly, we find that these costs are U.S. destination charges related to destination truck freight, and therefore not covered by *Doing Business*. Therefore, we have not removed the Chassis Usage Charges from the surrogate value for international freight.
- The remand record shows that **ISPS – Int'l Ship and Port Security Charges** cover expenses for ship and dock security and that the amount varies depending on the number of ports-of-call made by the vessel.[69] Accordingly, we find that this cost is an ocean transport expense related to all maritime vessels, and not covered by *Doing Business*. Therefore, we have not removed the ISPS Charges from the surrogate value for international freight.
- The remand record shows that **ISD Handling Charges** are not related to on-ocean services, but rather are charged by the U.S. Consumer Product Safety Commission (CPSC) for inspection of cargo entering the United Sates.[70] The CPSC is authorized to charge a user fee of these inspections.[71] Accordingly, we find that this cost is a U.S. port-specific charge, and not covered by *Doing Business*. Therefore, we have not removed the ISD Handling Charges from the surrogate value for international freight.
- The remand record shows that the **Traffic Mitigation Fee** and the **CTF-Clean Truck Fee** are not expenses related to on-ocean services, but, rather, are post-ocean pass-

[68] *See* Draft Results of Redetermination at Attachment 2.
[69] *See* Petitioners' RFI at Attachment 3.
[70] *Id*., at Attachment 2.
[71] *Id*.

through fees specific to the ports of Los Angeles and Long Beach.[72] Accordingly, we find that this cost is a U.S. port-specific charge related to U.S. truck freight, and not covered by *Doing Business*. Therefore, we have not removed the Traffic Mitigation Fee and the CTF-Clean Truck Fee from the surrogate value for international freight.

Furthermore, we agree with the petitioners that the **Documentation Charges** can reasonably be attributed to costs associated with ocean freight. While the Department recognizes that the *Doing Business* report does include documentation fees, document services are not exclusive to pre-shipping activities.[73] Ocean carriers, like Descartes, require paperwork unique to their services and charge fees to create and process those documents. Though a bill of lading is created by the freight forwarder, ocean carriers are required to create a master bill of lading to cover all containers aboard their ships.[74] The remand record also shows that ocean carriers like Descartes have document charges related to U.S. destination document fees.[75] Accordingly, we find that these charges are not representative of charges that could be incurred on brokerage or handling at the port of exportation, are properly included in the "fully-loaded" international freight surrogate value, and not covered by *Doing Business*. In light of these findings, we have not removed the Document Charges from the surrogate value for international freight.

Finally, we agree with GTC that the remand record shows that the **Shanghai Port Surcharges** represent a fee that may be incurred on a pre-shipment brokerage/handling activity and could reasonably be covered within one of the general expenses included in the *Doing Business* report. The Descartes quote lists a Shanghai Port Surcharge originated in Shanghai,

[72] *Id*., at Attachments 1 and 4.
[73] *Id*., at Attachment 1.
[74] *Id*.
[75] *Id*.

which likely reflects a pre-ocean pass-through surcharge for port congestion specific to the port of Shanghai.[76] The evidence submitted by the petitioners only shows that the rate for this fee was increased, but provides no further details as to what the fee covers. Therefore, the Department continues to find that the Shanghai Port Surcharge is not a sea transport charge, and we excluded this charge from the Descartes surrogate value for international freight to avoid potential double counting.

3. Domestic Warehouse Costs

Background

For purposes of the antidumping administrative review, the Department valued GTC's domestic warehousing expenses using a publicly-available price quote from GIC Logistics Group in Indonesia.[77] For the *Preliminary Results of Review*[78] and *Final Results of Review*, we determined that the information on the record was contemporaneous with the POR and did not need to be deflated.[79]

The Court found that the Department failed to make a cost-of-living adjustment to domestic warehouse costs using the average producer price index (PPI).[80] The Court held that, as the information was accessed on April 9, 2014, the Department must "reconsider its decision not to make a cost-of-living adjustment and provide a more thorough analysis of the issue that is grounded in whatever relevant evidence exists on the record."[81]

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[76] *See* GTC SVS at Exhibit 8.
[77] *See* IDM at 45.
[78] *See Preliminary Results of Review* and accompanying PDM.
[79] *Id.* The information was accessed on April 9, 2014, but the source itself was not dated.
[80] *See China Mfr. Alliance* at 55-56.
[81] *Id.*, at 57.

Analysis

In accordance with the Court's holding that the Department reconsider its original decision not to deflate GTC's domestic warehousing costs, we have analyzed the evidence on the record and have determined that it does not provide any specific information showing that the surrogate value was, in fact contemporaneous, with the POR. Therefore, the Department has deflated the domestic warehouse costs using the PPI for April 2014 from the International Monetary Fund to match the surrogate value to the POR.[82]

4. Double Coin's Margin

Background

In the *Final Results of Review*, we stated that it is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate, unless an exporter can affirmatively demonstrate an absence of government control.[83] As the Department discussed in the *Preliminary Results of Review*, and further established in the *Final Results of Review*, we found Double Coin ineligible for a separate rate due to its inability to demonstrate the absence of government control.[84] As such, Double Coin was found to be part of the PRC-wide entity.[85]

In the *Final Results of Review*, the Department did not have certain information, *i.e.*, sales and production data, from the remaining (*i.e.*, non-Double Coin) portion of the PRC-wide entity, and also lacked information on the record with respect to the composition of the PRC-wide entity.[86] Therefore, in calculating a single rate for the PRC-wide entity, we did not consider it reasonable to rely solely on the information provided by Double Coin.[87] Rather,

[82] *See* GTC Remand Draft Analysis and SV Memo.
[83] *See* IDM at 11.
[84] *Id*., at 12-18, and PDM at 10.
[85] *Id*.
[86] *See* IDM at 18-21.
[87] *Id*., at 12.

based on the unique circumstances presented in this review, we considered it reasonable to use the information provided by Double Coin, as well as the information for the entire PRC-wide entity (*i.e.*, the investigation PRC-wide entity rate), to calculate a margin for the PRC-wide entity.[88] Specifically, we calculated the final margin for the PRC-wide entity (including Double Coin) using a simple average of the previously assigned PRC-wide rate (210.48 percent) and the calculated final margin for Double Coin (0.14 percent).[89] Accordingly, the Department revised the PRC-wide entity rate to 105.31 percent for the *Final Results of Review*.[90]

The Court held that the Department erred in assigning Double Coin the 105.31 percent rate as opposed to the 0.14 percent *de minimis* margin calculated based on its responses, and that the Department must assign Double Coin the calculated rate.[91] The Court found that the Department "could not rely on its {section 776(b)} authority in applying the 105.31 percent rate to Double Coin" because Double Coin was a cooperative respondent in the fifth review and submitted data sufficient for the calculation of the final *de minimis* margin.[92] Therefore, the Court required the Department to assign that rate to Double Coin, specifically stating that "the policy Commerce cited cannot serve to reconcile two inconsistent decisions: the Department's decision to subject Double Coin to individual examination and its decision not to assign Double Coin an individual margin."[93]

The Court stated that "the finding that Double Coin had failed to rebut the Department's presumption of government control did not prevent Commerce from assigning Double Coin an

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[88] *Id*.
[89] *Id*.
[90] *Id*.
[91] *See China Mfr. Alliance*, 205 F. Supp. 3d at 1343-44.
[92] *Id.*, at 1338.
[93] *Id.*, at 1337.

individual margin."[94] The Court also held that "the factual information upon which the 210.48 percent rate is based bears no relationship to any sales or import entries – of any party – that are the subject of the fifth review and, in any event, is not on the administrative record of the fifth review."[95] Thus, the Court held that "in using the 210.48 percent rate in determining Double Coin's margin, Commerce impermissibly relied on matters not on the record of the fifth review," and that the Department "acted contrary to law in applying the rate of 105.31 percent to entries of the subject merchandise exported by Double Coin."[96] Therefore, the Court remanded "the contested decision with the directive to assign {the} 0.14 percent {sic} *de minimis* margin to the subject merchandise of Double Coin because that is the appropriate remedy under the statute."[97]

Analysis

The Department respectfully disagrees with the Court's rationale and holding in its remand opinion and order in *China Mfr. Alliance* regarding Double Coin's rate. However, under respectful protest,[98] the Department has assigned Double Coin a 0.14 percent *de minimis* margin. Accordingly, pursuant to this Final Results of Remand Redetermination, Double Coin's weighted-average margin is 0.14 percent.

III. DISCUSSION OF INTERESTED PARTIES' COMMENTS

Issue 1: The Department's Calculation of GTC's Unrefunded/Irrecoverable VAT

The Petitioners' Comments

The petitioners agree that the record supports the eight percent adjustment the Department made to GTC's U.S. prices for irrecoverable VAT, that the adjustment is fully

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[94] *Id.*
[95] *Id.*, at 1337.
[96] *Id.*, at 1138 and 1342.
[97] *Id.*, at 1342-43.
[98] *See Viraj Group*, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

consistent with the statute, and that the adjustment is compliant with the Court's Order.[99] The petitioners argue that the Department has complied with the Court's instruction to adjust for the "actual amount... found in fact…"[100] and that the Draft Results of Remand Redetermination cite the pertinent record evidence in determining the "actual amount" of GTC's cost for irrecoverable VAT on its subject exports.[101]

The petitioners note that the statute requires that U.S. prices must be adjusted for any type of charge, in whatever form that charge arises, which is applied simply because the product in question is exported.[102] The petitioners argue that the VAT adjustment made by the Department reflects such an adjustment to U.S. price, and is appropriate because of the charge incurred by GTC on the tires it exported to the United States.[103] As described in the Draft Results of Remand Redetermination, the PRC VAT system, when applied to exports, is a unique, non-tax neutral system. They explain that with respect to domestic sales, companies offset domestic VAT paid on inputs with the VAT collected at the sale of their final products, which results in full recuperation of the VAT paid on inputs.[104] With respect to export sales, most governments allow exporting companies to receive a full rebate credit in the amount of the VAT that would have been collected had the product been sold domestically.[105] The PRC government, however, limits the amount of the VAT tax refund it will provide upon exportation by the type of

[99] *See* Petitioners' Draft Comments at 2.
[100] *Id.*
[101] *Id.*
[102] *Id.*, at 3 (citing section 772(c)(2)(B) of the Act).
[103] *Id.*
[104] *Id.*
[105] *Id.*, at 4-5.

product being exported. Because the exporting company may only claim a lower refund credit, it is able to offset less of the input VAT paid than if the product had been sold domestically.[106]

The petitioners agree that the Department correctly rejected GTC's argument that no net cost occurs under the PRC VAT system purportedly because the output VAT is calculated on the higher value of the finished merchandise, while input VAT is based on the cost of raw materials.[107] The petitioners point out that GTC's own accounting records treat the eight percent irrecoverable VAT rate as a cost of exporting.[108] By exporting, GTC elected to forgo the irrecoverable VAT amount that could have offset any of GTC's input VAT payments or have been carried over into future periods. Not only can GTC carry forward any excess VAT credits, GTC receives larger credits for making domestic sales which are used to offset VAT owed.[109] Basing the VAT adjustment on the overall total of both pools (*i.e.*, PRC input VAT paid, PRC output VAT collected), as GTC is seeking, would make the Department's adjustment reflect the aggregate VAT effects from all of GTC's purchases and sales, instead of VAT paid on inputs used in the production of subject merchandise.[110]

<u>*GTC's Comments*</u>

GTC refers to the Court's remand instructions that "Commerce may not reduce the starting price by a fixed percentage – no matter how derived – that is not the actual amount of a tax, duty, or other charge that the exporting country is found in fact to have imposed."[111] GTC argues that the Department has continued to apply the same VAT calculation to GTC based upon the same presumptions and arguments that the Court has already rejected, and fails to provide

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[106] *Id.*, at 5.
[107] *Id.* (citing the Draft Results of Remand Redetermination at 9).
[108] *Id.*, at 6.
[109] *Id.*
[110] *Id.*
[111] *See* GTC's Draft Comments at 1-2.

any persuasive reasoning.[112] Instead, GTC argues that the Department largely relies upon its own rule announcements as authority for its actions.[113]

GTC argues that Circular 39 is not specific to the subject merchandise, and that the Department errs in basing its VAT deduction on a generalized presumption.[114] Also, while Circular 39 states that, in instances where the rate of VAT refund is lower than the applicable VAT rate, the difference of the VAT amount (the amount of irrecoverable VAT) "shall be included in the costs of the Exported Goods," the Department wrongly infers that export prices must include the cost of such irrecoverable VAT by operation of law.[115] Instead, establishing the cost and prices of export goods is an individual exporter's prerogative, and the PRC government cannot mandate what cost elements are used to establish export prices to the U.S. market.[116] The phrase, "shall be included in the costs of the Exported Goods" presumably refers to PRC exporters being afforded an incentive to include an additional presumptive cost to offset their overall reported income in their income statement, so as to reduce their direct tax liability.[117]

GTC also argues that the Department continues to disregard the VAT calculation GTC provided in support of its contention that "during the POR GTC's VAT refund based upon the 9% refund rate for export sales exceeded the amount of VAT paid for inputs attributable to exported merchandise."[118] The Courts have already determined that VAT adjustments should be based upon the amount of VAT paid to prevent a "multiplier effect" if the rate is applied to a

[112] *Id*., at 3.
[113] *Id*.
[114] *Id*.
[115] *Id*., at 3-4.
[116] *Id*.
[117] *Id*.
[118] *Id*., at 4-5 (citing GTC May 28, 2014 SQR at 2-3 and Exhibit 2).

different price.[119] To comply with this and the Department's instructions, GTC tied specific numbers within the calculation to its books and records and reconciled this to GTC's monthly VAT tax returns, included as part of the submission, providing as detailed a calculation as possible.[120]

Department's Position:

As the petitioners noted, the Court directed that the Department "may not reduce the starting price by a fixed percentage – no matter how derived – that is not the actual amount of a tax, duty, or other charge that the exporting country is found in fact to have imposed."[121] Consistent with this directive, the irrecoverable VAT adjustments made by the Department reflect the unrefunded VAT cost GTC bore – in fact – on subject merchandise exported to the United States.[122] The amount is calculated based on the VAT levy rate for the merchandise at issue (17 percent), and the tax refund rate for exports of the subject merchandise (set at nine percent of the FOB export value of the finished merchandise).[123] As noted previously, this export VAT formula differs significantly from the export VAT systems utilized in most countries, *i.e.*, where exports receive a full refund of input VAT paid. Moreover, the amount the Department deducted is reflected in GTC's own books and records, specifically that GTC included the eight percent of unrefunded VAT in the cost build up to its U.S. price.[124]

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[119] *Id.* (citing *Federal Mogul v. United States*, 63 F.3d 1572 (Fed. Cir. 1995) (*Federal Mogul*) and *E. I. DuPont De Nemours & Co. v. United States*, 20 C.I.T. 373 (1996) (*E.I. DuPont*)).
[120] *Id.*, at 5 (citing GTC May 28, 2014 SQR at 2-3 and Exhibit 2).
[121] *See China Mfr. Alliance*, 205 F. Supp. 3d at 1351.
[122] As discussed in Section II.1 above, Circular 39 states that (1) the basis for determining the VAT refund of goods and services exported by manufacturing enterprises is the actual FOB price of exported goods and services on the export invoices (Article 4.1); (2) the VAT refund amount is equal to the "FOB price of exported goods x RMB conversion rate x tax refund rate of exported goods" (Article 5.1(2)); and, as discussed above, (3) irrecoverable VAT is included "{w}here the Tax Refund Rate is lower than the applicable tax rate, the amount of tax calculated according to the difference in rates shall be included in the costs of the Exported Goods and Services" (Article 5.3). *See* GTC May 28, 2014 SQR at 1-2, and the PRC Circular 39 at Exhibit 1.
[123] *Id.*
[124] *See* GTC Sales Verification Report at Exhibit 14.

As directed by the Court, the Department has made specific findings based on record evidence to determine the "actual amount" of GTC's cost for irrecoverable VAT on its exports of subject merchandise.[125] The record contains specific information on the irrecoverable VAT rate that governs GTC's exports of subject merchandise under PRC law, and demonstrates that GTC's U.S. prices, to which the rate is applied, includes the eight percent unrefunded VAT as a cost of goods sold.[126] With this information, the Department is able to determine the amount GTC includes in its selling price to its export customers, as described below.

GTC's argument that Circular 39 is not specific to the subject merchandise and, therefore, cannot be used to determine the actual amount of unrefunded VAT is unpersuasive. GTC itself provided Circular 39 when the Department requested the "relevant laws and regulations that explain in detail the Chinese VAT system, in particular with respect to VAT collection, remittance, and refund processes for inputs consumed in production of the subject merchandise, and describe the tax reporting requirements to the Chinese Government."[127] Indeed, GTC cited Circular 39 to explain that "{t}he applicable VAT Refund rate for the merchandise under consideration is 9%.... The calculation to determine the refund is: Unit VAT Price * 9%."[128] It is, thus, entirely reasonable for the Department to rely on GTC's response to this question when determining the amount of unrefunded VAT.

As the Department explained in Section II.1 above, the typical VAT regime imposes VAT on inputs, but provides mechanisms for companies to recover those VAT payments, whether they export their merchandise or sell domestically. Under these typical VAT systems,

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[125] *See* Section II.1.
[126] *See* footnote 98 of the IDM at 27; *see also* GTC February 19, 2014 CDQR at Exhibit C-15, GTC May 28, 2014 SQR at 1-2, and the PRC Circular 39, Art. 5.1(2) at Exhibit 1, and GTC Sales Verification Report at Exhibit 14.
[127] *See* GTC's May 28, 2014 SQR at 1 and Exhibit 1.
[128] *See* GTC's February 19, 2014 CQR at 51 and Exhibit C-15.

companies receive a full rebate upon exportation, and, for domestic sales, recover VAT payments by crediting them against the VAT collected from customers.[129] In a domestic sale, the full VAT bill, based on the final price of that good (*i.e.*, output VAT), falls due on the last purchaser in the chain of commerce (*e.g.* the customer buying the tire for use). The movement of input and output VAT between companies before the final sale is simple accounting.[130] To simplify the collection of tax from each company, the government allows the company to offset the amounts it has paid in input VAT against the amounts it collects on output VAT.[131] Similarly, for export sales, output VAT falls due at the sale to the last purchaser in the chain of commerce (*e.g.* the customer buying the tire for use). However, for export sales, most governments afford exporting companies a full rebate credit in the amount of the VAT that would have been collected if the product had been sold domestically. This means that the exporter can use that rebate to offset its input VAT payable, just as it can with VAT collected on domestic sales.[132]

The PRC's VAT regime differs from VAT systems typical in other countries with respect to exports, because companies do not receive a full rebate on their input VAT payments upon exportation. In the PRC, some portion of the input VAT that a company pays on materials used in the production of exported merchandise is not refunded. The amount refunded differs depending on the product being exported, and can be less than the input VAT amount paid. Put another way, exporting OTR tire companies in the PRC do not collect output VAT on their export sales from the customer (as they would on domestic sales), and, because the VAT refund rate on exported subject merchandise is lower than the actual rate paid (as input VAT) on

[129] *See* Petitioners' Draft Comments at 3-4 citing the Draft Results of Remand Redetermination at 3.
[130] *Id.*
[131] *See* Petitioners' Draft Comments at 3.
[132] *Id.*

materials used in their tire production, exporting OTR tire companies do not recover the entire input VAT remitted to the PRC government, *i.e.*, the irrevocable VAT. Thus, the refunds offset a lower amount of the VAT taxes that the company must pay on purchased inputs compared to the amount that could have been offset had the same product been sold domestically. The amount not refunded upon exportation is therefore a charge imposed by the PRC that arises solely from the act of exporting. Had exportation not occurred, the amount of irrecoverable VAT would not have been incurred by the exporter. Because irrecoverable VAT is a charge imposed only on exports, the Department reasonably concluded that it is a cost specific to "the exportation of the subject merchandise."[133] The Department, thus, makes a corresponding adjustment to the respondent's U.S. prices, to reflect the net (tax-neutral) price received, pursuant to section 772(c)(2)(B) of the Act.

GTC cites *Federal Mogul* and *E.I. Dupont* for the proposition that the Department should not apply the eight percent irrecoverable VAT rate to determine the amount of irrecoverable VAT and should, instead, use a fixed amount (in GTC's proposed calculation, the amount is 0 dollars).[134] In *Federal Mogul*, the Court examined the Department's method of determining dumping margins through a tax-neutral comparison of home market and U.S. sales (*i.e.*, by adding taxes applied in the comparison market sale to the comparable U.S. sale).[135] Specifically, the Court examined whether: (1) the Department should apply the comparison market VAT rate

[133] *See* section 772(c)(2)(B) of the Act.
[134] *See* GTC Draft Comments at 4-5, citing GTC May 28, 2014 SQR at Exhibit 2
[135] *See Federal Mogul*, 63 F.3d at 1572 (an action arising from *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan Final Results of Antidumping Duty Administrative Reviews*, 56 FR 31754 (July 11, 1991) (*Antifriction Bearings from Japan Final Results*)) and *E.I. Dupont*, 20 C.I.T. at 373 (an action arising from *Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea,* 56 FR 16305 (April 22, 1991) and the *Amended Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea*, 56 FR 25669 (June 5, 1991)), both cited by GTC's Draft Comments at 5.

(*i.e.*, the VAT rate applied to home market sales) directly to U.S. selling price to determine the VAT addition; or (2) apply the comparison market VAT rate to the comparable comparison market sale and add that amount calculated to the U.S. selling price.[136] The Court upheld the Department's determination to apply the applicable VAT rate to the sale to which it was originally applied (*i.e.*, the comparison market VAT rate to the comparison market sale) to determine a specific amount to add to the U.S. selling price.[137] In *E.I. DuPont*, the Court remanded the Department to take "'the tax amount paid in the home market for the same merchandise and {add} that amount to the price actually paid in the United States' in order to achieve a tax-neutral comparison," consistent with the opinion in *Federal Mogul*.[138]

This is precisely the approach adopted by the Department in the instant redetermination. Here, the Department is applying the applicable VAT rate (*i.e.*, the PRC input purchase VAT rate and the PRC export VAT rate) to the sale to which it was applied (*i.e.*, GTC's input purchase and GTC's export sale). Because the difference between the input VAT paid and the output VAT refunded (*i.e.*, the irrecoverable VAT) is a result of exportation of the merchandise and was included in GTC's export price, deducting the amount of the difference (as an export tax) ensures the U.S. selling price is tax-neutral, and is a reasonable approach.

GTC's argument that it incurs a net zero VAT tax is negated by GTC's own books and records, which form part of the record evidence of this review and were verified by the Department.[139] GTC states its proposed calculation is based on information reported in its VAT

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[136] *See Federal Mogul*, 63 F.3d at 1575.
[137] *Id.*, at 1582.
[138] *See E.I. Dupont*, 20 C.I.T. at 381.
[139] *See* GTC Draft Comments at 4-5, claiming its calculation demonstrates that during the POR GTC's VAT refund based upon the 9 percent refund rate for export sales exceeded the amount of VAT paid for inputs attributable to exported merchandise.

tax returns, which are drawn from liability accounts (which a company generally reports on its balance sheet).[140] However, the information GTC provided is a worksheet, which ties to the tax return only, and is not supported by verifiable information, such as audited financial records or GTC's financial system. The worksheet does include a reference to GTC's general ledger VAT liability accounts,[141] but the actual general ledger accounts, beyond the worksheet created for the review, were not provided.[142] Additionally, amounts for VAT inputs and outputs are pooled together in GTC's worksheet, making it impossible to identify or verify VAT amounts paid on inputs used in the production of *subject merchandise* or refunded upon the exportation of *subject merchandise*.[143]

As discussed above, GTC provided a worksheet with a summary of certain lines (domestic sales, export sales, and input VAT) on its VAT tax return and a detailed worksheet of input VAT that contains approximately 8,500 line items with no summary totals, referencing VAT payable accounts, as support for its proposed VAT calculation.[144] While the worksheets reconciled to the provided VAT tax returns, GTC did not provide verifiable evidence that these numbers are actually reflected in its internal accounting records, nor did it demonstrate that they reconcile to these records, *i.e.*, the general ledger or audited financial statements.[145] GTC uses liability accounts rather than its VAT expense accounts because they support its proposed net

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[140] *See* GTC May 28, 2014 SQR at Exhibit 2, GTC's proposed calculation and VAT tax worksheet, and Exhibit 3, GTC's VAT tax returns.
[141] *See* Memorandum, "Final Results of Redetermination Pursuant to Court Remand in the 2012-2013 Antidumping Duty Administrative of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Remand Analysis and Surrogate Value Memorandum for Guizhou Tyre Co., Ltd. and Guizhou Tyre Import and Export Co., Ltd.," dated concurrently with this Final Results of Redetermination (GTC Final Results Analysis Memo) for the specific account information.
[142] *Id. See also* GTC Sales Verification Report at Exhibit 4, GTC's chart of accounts.
[143] *Id. See also* Section II.1 above.
[144] *Id.*
[145] *See* GTC May 28, 2014 SQR.

zero calculation. However, liability accounts track *obligations*, not actual *expenses*. In this case, GTC's VAT *liability* accounts do not track its actual VAT expenses, but the VAT obligations GTC expects to pay over a given fiscal period. GTC properly used the VAT *expense* account[146] as verifiable support for including "8 percent unrefunded VAT" in its U.S. price build up. Therefore, had its calculation properly used actual VAT payments and refunds detailed within this *expense* account in its accounting system, based on GTC's own use of the account, it would have shown that the "8 percent unrefunded VAT" expense for each sale is passed through to the customer as part of the U.S. price, as we see in its cost reconciliation verification exhibit.[147]

Finally, GTC treats the eight percent irrevocable VAT (*i.e.*, the amount of unrefunded output VAT) as a cost of exporting OTR tires, and passes the actual unrefunded tax amount (eight percent) on to its customers as part of the U.S. price.[148] In its cost reconciliation provided at verification, GTC included a reconciliation worksheet and demonstrated to the Department the basis for its cost of goods sold (COGS) buildup, tying the total COGS to GTC's 2013 financial statements, and providing supporting documentation (*i.e.*, general ledger accounts) for each line item listed in the cost buildup.[149] The Department treats a company's cost reconciliation as the basis for reviewing the company's factors of production, which is the starting point for its selling price. GTC's cost buildup consisted of manufacturing expenses, such as material, labor and overhead, as well as non-manufacturing expenses, including an "8% non-refunded VAT," which GTC reconciled to a general ledger VAT *expense* account,[150] not a liability account, as discussed

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[146] *See* GTC Final Results Analysis Memo for information on the specific account.
[147] *See* GTC Sales Verification Report at Exhibit 14, at item 35; *see also* GTC Sales Verification Report at Exhibit 4, GTC's chart of accounts.
[148] *See* GTC Sales Verification Report at Exhibit 14.
[149] *Id.* The buildup includes direct material costs, labor, manufacturing expenses, electricity, coal, work in progress (WIP) balances and costs, finished goods (FG) balances and costs, purchases of tubes and flaps, goods delivered but not received balances, non-refundable VAT of eight percent, and the COGS of WIP.
[150] *See* GTC Final Results Analysis Memo for information on the specific account.

above.[151] This, again, demonstrates that GTC erred in basing its proposed calculation on VAT *liability* accounts, not VAT *expense* accounts.

The fact that GTC includes unrefunded VAT as part of its COGS demonstrates that GTC itself does not treat the eight percent unrefunded VAT as a net zero balance in its income statement, but instead *seeks to recover this amount by including it as a part of its export price*. Even if, as GTC asserts, "establishing the cost and prices of export goods is an individual exporter's prerogative and the PRC government cannot mandate an exporter to either include or exclude a particular cost element while establishing his export prices to the US market,"[152] record evidence shows that GTC does in fact include an unrefunded VAT amount in its export price, listed in its general ledger at eight percent. Therefore, the Department continues to deduct an eight percent irrecoverable VAT from the U.S. export price.

Issue 2: GTC's Ocean (International) Freight and Brokerage and Handling

The Petitioners' Comments

First, the petitioners support the Department's determination that the AMS Charge and the Chassis Usage Charges are unique to international freight.[153] Specifically, they agree that the information the Department placed on the record shows that the AMS System handles information provided by the carrier (*i.e.*, the ocean freight provider), and that the Chassis Usage

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[151] *Id.* GTC provided a monthly amount derived from the eight percent rate of the unrefunded VAT included in its COGS buildup.
[152] *See* GTC Draft Comments at 4.
[153] *See* Petitioners' Draft Comments at 7.

Charges are "applied at the destination after shipment and therefore would not be considered in the *Doing Business* costs, which are costs incurred in the exporting country before shipment."[154]

Second, the petitioners argue that the rebuttal factual evidence they provided shows that the six additional charges that the Department found to be potentially double counted in the Draft Results of Remand Redetermination are indeed incurred by the ocean carrier and thus cannot be double counted in the brokerage and handling surrogate value source.[155] Further, the petitioners assert that many of these costs are not incurred until arrival in the United States and, thus, would not have been considered in the *Doing Business* report, which covered port costs in Indonesia, and was used by the Department as a surrogate value for brokerage and handling charges at the port of exportation in the PRC.[156] Specifically:

- ISPS - International Ship & Port Security Charges – The petitioners note that record information demonstrates that these charges were "implemented by 'shipping lines/ship operators' in order to cover certain security arrangements with certain ports, which cover such costs as shipboard security officers and security plans at the port."[157] Accordingly, the petitioners conclude that these are charges are imposed by the ocean carriers, exclusive to ocean freight, and not attributable to pre-shipment services.[158]
- ISD Handling Charges – The petitioners cite information which states that ISD charges relate to activities of the U.S. CPSC at the port of Long Beach, who is authorized to charge a user fee.[159] As such, the petitioners assert that these charges are for post-export

[154] *Id.*
[155] *Id.*
[156] *Id.*, at 8-9 (citing Petitioners' April 14, 2014 Initial Surrogate Value Comments at Attachment 17).
[157] *Id.* (citing Petitioners' RFI at Attachment 3).
[158] *Id.*
[159] *Id.*, at 10 (citing Petitioners RFI at Attachment 2).

activities, are charged by the ocean carrier, and do not occur at the port of export covered by the *Doing Business* report.

- Traffic Mitigation Fee – The petitioners cite information demonstrating that this is a fee charged at the ports of Los Angeles and Long Beach, which are destination ports.[160] As such, the petitioners assert that these fees are for post-export activities, are charged by the ocean carrier, and do not occur at the port of export covered by the *Doing Business* report.
- CTF - Clean Truck Fee – The petitioners cite information demonstrating that this is another fee incurred at the ports of Los Angeles and Long Beach.[161] As such, the petitioners assert this is a fee for post-export activities, and is not related covered by the *Doing Business* report.
- Documentation Charges – While the *Doing Business* report includes costs for documents, the petitioners argue that such costs are not exclusive to pre-shipping activities.[162] According to the petitioners, the ocean carrier also charges documentation fees for its documentation activities, which are related to the shipping and destination portions of the freight, not to pre-shipment activities.[163]
- Shanghai Port Surcharge – The petitioners point out that this surcharge is listed on a statement on surcharges from a logistics company along with the Panama Canal

[160] *Id.* (citing Petitioners' RFI at Attachment 4 in which the Descartes tariff code report explains that the Clean Truck Fee is another fee incurred at the ports of Los Angeles and Long Beach. The report also demonstrates that the ISD Handling Charge covers requirements from the "'Import Surveillance Division,' a division of the U.S. Consumer Product Safety Commission (CPSC), which inspects import shipments at the port of Long Beach. The CPSC is authorized to charge a user fee of these inspections).
[161] *Id.*
[162] *Id.,* at 9 (citing Petitioners' RFI at Attachment 1, which includes the DXI Tariff Code Rule Report taken from the Descartes website stating the Documentation Fee is another term for the Bill of Lading Charge and lists a US Destination Documentation Fee).
[163] *Id*. (citing Petitioners' RFI at Attachment 1).

Surcharge.[164] The petitioners conclude that this represents evidence that these charges are charged by the ocean carriers, and not by other pre-shipment handlers of goods, as part of their total freight rates.[165]

The petitioners argue these charges are all unique to international freight and are not double counted under in the brokerage and handling fees contained in the *Doing Business* report.

GTC's Comments

GTC argues that the Department failed in the Draft Results of Remand Redetermination to show that the AMS Charge and Chassis Usage Charges are components of the ocean freight cost.[166] GTC asserts that the rebuttal factual information it provided directly contradicts the Department's findings with respect to the AMS Charge and Chassis Usage Charges in the Draft Results of Remand Redetermination and shows that, by failing to exclude the two charges from the Descartes price quotes, the Department impermissibly double counted these two charges.[167] Specifically, GTC contends that:

- The Department's reasoning in the Draft Results of Remand Redetermination that Chassis Usage Charges are not port charges is irrelevant and fails to address the crucial question of how the Chassis Usage Charges are a part of ocean freight costs.[168] The rebuttal factual information submitted by GTC shows that chassis usage services are typically provided by truckers and freight forwarders in the U.S. market and that this cost element is included in U.S. inland truck freight charges and, therefore, should be

[164] *Id.*, at 9-10 (citing Petitioners' RFI at Attachment 5).
[165] *Id*.
[166] *See* GTC's Draft Comments at 7.
[167] *Id.*, at 7.
[168] *Id.*, at 7-8.

excluded from the Descartes freight data in order to avoid double counting.[169]

- The Department did not explain why the AMS Charges "are unique to ocean freight" and why "charges related to this system are necessarily charged by the freight forwarder and {are} not a port charge covered by *Doing Business*."[170] Rebuttal factual information shows that the AMS system is an integral part of U.S. Customs and Border Protection and, therefore, the billing of AMS Charges is more appropriate as a U.S. inland truck freight charge. Accordingly, the AMS Charges should be excluded from the Descartes freight data in order to avoid double counting.[171]

Department's Position:

The Department determines, based on the record evidence, that all but one of the eight charges identified by GTC and the Court[172] are properly counted as international freight charges within the Descartes quote, and are, thus, not double counted with brokerage and handling expenses from the *Doing Business* report. However, we find that one charge – the Shanghai Port Surcharge – is appropriately characterized as an import-side expense that could potentially be double counted by an equivalent brokerage and handing expense. Accordingly, we have removed only the Shanghai Port Surcharge from the international freight surrogate value.

As discussed in Section II.2 above, in the *Preliminary Results of Review* and *Final Results of Review*, the Department's international freight surrogate value included all post-exportation expenses incurred to deliver the merchandise to the unaffiliated customer (*i.e.*, ocean freight, U.S. inland freight charges, U.S. brokerage and handling expenses, *etc*.), and, thus, is a

[169] *Id*. (citing GTC's RFI at Exhibits 1A, 1B and 1D).
[170] *Id*., at 9 (citing Draft Results of Remand Redetermination at 12-13).
[171] *Id*., at 10.
[172] *See China Mfr. Alliance*, 205 F. Supp. 3d at 1357-58.

"fully-loaded" transportation charge.[173] Thus, GTC's arguments that the AMS Charge and Chassis Usage Fee are more appropriately valued under U.S. inland truck freight expenses than with the Descartes quote (and should be excluded from the surrogate value) are moot, because the Descartes quote covers all post-export transportation – both U.S. inland transportation *in addition to* ocean freight. In particular, the record evidence demonstrates that: 1) these are charges incurred upon importation into the United States and that are not representative of pre-shipment (export-side) fees that might be covered by the *Doing Business* report; and 2) these charges are properly included in the "fully-loaded" surrogate value for international freight.[174]

Likewise, the ISPS - International Ship & Port Security Charges, ISD Handling Charge, Traffic Mitigation Fee, and the CTF - Clean Truck Fee are unique to international freight activities at the U.S. destination. Furthermore, we agree with the petitioners that the Documentation Charges can reasonably be attributed to costs associated with ocean freight. Ocean carriers, like Descartes, require paperwork unique to their services and charge fees to create and process those documents, and have document charges related to U.S. destination

[173] *See* GTC's surrogate value submission dated April 14, 2014 at Exhibit 8 and GTC's Verification Report at Exhibit 11; *see also* Memorandum, "Final Results of the 2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic off-The-Road Tires from the People's Republic of China: Surrogate Value Memorandum," dated April 8, 2015 (Final SV Memo) at 2 and Attachments I and IV; *see also* Memorandum, "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results Surrogate Value Memorandum" (Prelim SV Memo) at 15-16 and Attachments IX and X.

[174] We note that GTC mischaracterizes the "crucial question" as that of whether certain charges are appropriately part of the ocean freight cost. The directive of the Court is clear in instructing the Department to evaluate only brokerage and handling charges that may be double counted between the *Doing Business* and Descartes sources. As such, even though we agree with GTC that the record supports that, for instance, the Chassis Usage Fee may be more reasonably considered to be an U.S. inland freight fee than an ocean freight fee, the scope of the remand permits the Department only the discretion to evaluate fees potentially double counted with the surrogate for PRC brokerage and handling and any question regarding the removal of charges otherwise has not been raised in this litigation and is not considered by the Court. Regardless, the use of a 'fully-loaded' international freight SV renders this question moot.

document fees.[175] Therefore, we have not removed these charges and expenses from the surrogate value for international freight for the reasons stated in Section II.2 above.

Finally, we agree with GTC that the remand record shows that the Shanghai Port Surcharges represent a fee that may be incurred on a pre-shipment brokerage/handling activity and could reasonably be covered within one of the general expenses included in the *Doing Business* report. As discussed in Section II.2 above, the Shanghai Port Surcharges are likely a pre-ocean pass-through surcharge for port congestion specific to the Port of Shanghai.[176] Accordingly, we have excluded the associated charge in the Descartes international freight charges to avoid potential double counting.

Issue 3: Domestic Warehouse Costs

No parties commented on this issue. Therefore, the Department continues to deflate the domestic warehouse costs using the PPI for April 2014 from the International Monetary Fund to match the surrogate value to the POR.

Issue 4: Double Coin's Margin

The Petitioners' Comments

The petitioners respectfully disagree with the Court's holding that Double Coin must be assigned a *de minimis* margin, and support the Department's protest of the outcome directed by the Court for this redetermination.[177] The petitioners also continue to support the position set forth in their case brief in the underlying review, that the Department's revision of the PRC-wide rate (*i.e.*, to average the existing rate with the *de minimis* rate calculated for Double Coin) was

[175] *See* Petitioners' RFI at Attachment 1.
[176] *See* GTC SVS at Exhibit 8.
[177] *See* Petitioners' Draft Comments at 10-11.

improper and should have been maintained at 210.48 percent and applied to Double Coin at that rate.[178]

Department's Position:

The petitioners support the Department's decision in the Draft Results of Remand Redetermination to apply the rate identified by the Court under respectful protest, and no other party provided comment. Accordingly, we continue to assign Double Coin a 0.14 percent *de minimis* margin under respectful protest for these Final Results of Remand Redetermination.[179]

With respect to the petitioners' comments on the change made to the PRC-wide rate in the underlying *Final Results of Review*, we note that the Court did not order reconsideration of whether Double Coin is part of the PRC-wide entity.[180] Furthermore, the Court did not remand the calculation of the PRC-wide rate to the Department; rather, the Court denied the petitioners relief on their "claim that the Department's decision to assign the 105.31% rate to Double Coin, instead of the previous PRC-wide rate of 210.48%, was unreasonable and unsupported by substantial record evidence."[181] As such, we have not further addressed these issues.

IV. FINAL RESULTS OF REDETERMINATION

For the foregoing reasons, the Department made no changes since the Draft Results of Remand Redetermination to the weighted-average dumping margin assigned to Double Coin. The Department revised GTC's dumping margin calculation as a result of its revised analysis of the expenses discussed in Issue 2. These Final Results of Remand Redetermination result in a

[178] *Id.*, at 11 (citing the petitioners' December 11, 2014 Case Brief (Petitioners' Case Brief) at 2-6).
[179] *See Viraj Group*, 343 F.3d 1371, 1376 (Fed. Cir. 2003).
[180] *See China Mfr. Allianc*e, 205 F. Supp. 3d at 1343, n. 13 (stating the Department "is free to alter {the finding that Double Coin is a part of the PRC-wide entity} in complying with the court's order, should it choose to do so," and that "the court is not ordering that the finding be reconsidered.").
[181] *Id.*, at 1341.

final weighted-average dumping margin for Double Coin of 0.14 percent and for GTC of 11.33 percent.

6/21/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

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Ronald K Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance