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November 3, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Drawn Stainless Steel Sinks from the People's Republic of China:
Issues and Decision Memorandum for Decision Memorandum for
the Final Results of the Antidumping Duty Administrative Review;
2012-2014

I. SUMMARY

We analyzed the case and rebuttal briefs submitted by interested parties in the antidumping duty (AD) administrative review of drawn stainless steel sinks (drawn sinks) from the People's Republic of China (PRC). As a result of our analysis, we made changes to the Preliminary Results.¹

We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this review on which we received comments.

1. Eligibility of Respondents for a Double Remedy Pass-Through Adjustment
2. Assignment of Subsidy Rate as the Basis for the Double Remedy Pass-Through Adjustment
3. Use of Bloomberg Data
4. Statutory Authority to Consider an Alternative Comparison Method
5. Notice and Comment Process Necessary for New Differential Pricing Analysis
6. Differential Pricing Analysis
7. Zeroing
8. Definition of Purchaser and Region in the Cohen's *d* Test
9. Surrogate Financial Ratios
10. Stainless Steel Surrogate Value

¹ See Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 80 FR 26227 (May 7, 2015) (Preliminary Results), and accompanying Preliminary Decision Memorandum (Preliminary Decision Memorandum).



10. Stainless Steel Surrogate Value
11. Treatment of Labor Expenses in the Financial Ratios and Adjustment to Labor Surrogate Value
12. Calculation of the Labor Surrogate Value
13. Truck Freight Surrogate Value
14. Inclusion of Letter of Credit Costs in the Brokerage and Handling Surrogate Value
15. Weight Adjustment Made to the Brokerage and Handling and Truck Surrogate Values
16. Wooden Box Factor Calculation for Yingao
17. Packing Material Consumption Weights for Yingao
18. Dongyuan's Reported Gross Weights
19. Separate Rate Eligibility for Feidong

II. BACKGROUND

The Department of Commerce (Department) published its preliminary results on May 7, 2015.²

On June 8, 2015, the petitioner³ requested a hearing in this review.⁴

On June 8, 2015, the petitioner and the respondents, Guangdong Dongyuan Kitchenware Industrial Co., Ltd. (Dongyuan) and Guangdong Yingao Kitchen Utensils Co., Ltd. (Yingao), submitted case briefs.⁵ On June 15, 2015, both interested parties submitted rebuttal briefs.⁶

At the request of the petitioner, the Department held a hearing on August 20, 2015. On August 25, 2015, the Department postponed the final results by 60 days.⁷ Based on our analysis of the comments received, we recalculated the weighted-average dumping margins for Dongyuan and Yingao from the Preliminary Results.

III. SCOPE OF THE ORDER

The merchandise covered by the order includes drawn stainless steel sinks with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel. Mounting clips, fasteners, seals, and sound-

² Id.

³ The petitioner is Elkay Manufacturing Company.

⁴ See Letter from the Petitioner to the Secretary of Commerce, "Drawn Stainless Steel Sinks from the People's Republic of China: Petitioner's Hearing Request," dated June 8, 2015.

⁵ See Letter from Dongyuan and Yingao to the Secretary of Commerce, "Drawn Stainless Steel Sinks from the People's Republic of China – Case Brief," dated June 8, 2015 (Respondents' Case Brief); see also Letter from the Petitioner to the Secretary of Commerce, "Drawn Stainless Steel Sinks from the People's Republic of China – Petitioner's Case Brief," dated June 8, 2015 (Petitioner's Case Brief).

⁶ See Letter from Dongyuan and Yingao to the Secretary of Commerce, "Drawn Stainless Steel Sinks from the People's Republic of China – Rebuttal Brief," dated June 15, 2015 (Respondents' Rebuttal Brief); see also Letter from the Petitioner to the Secretary of Commerce, "Drawn Stainless Steel Sinks from the People's Republic of China – Petitioner's Rebuttal Brief," dated June 15, 2015 (Petitioner's Rebuttal Brief).

⁷ See the August 25, 2015, Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through Melissa Skinner, Director, Office II, from Ross Belliveau, International Trade Compliance Analyst, Office II, entitled, "Drawn Stainless Steel Sinks from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review."

deadening pads are also covered by the scope of this order if they are included within the sales price of the drawn stainless steel sinks.⁸ For purposes of this scope definition, the term “drawn” refers to a manufacturing process using metal forming technology to produce a smooth basin with seamless, smooth, and rounded corners. Drawn stainless steel sinks are available in various shapes and configurations and may be described in a number of ways including flush mount, top mount, or undermount (to indicate the attachment relative to the countertop). Stainless steel sinks with multiple drawn bowls that are joined through a welding operation to form one unit are covered by the scope of the order. Drawn stainless steel sinks are covered by the scope of the order whether or not they are sold in conjunction with non-subject accessories such as faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

Excluded from the scope of the order are stainless steel sinks with fabricated bowls. Fabricated bowls do not have seamless corners, but rather are made by notching and bending the stainless steel, and then welding and finishing the vertical corners to form the bowls. Stainless steel sinks with fabricated bowls may sometimes be referred to as “zero radius” or “near zero radius” sinks. The products covered by this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under statistical reporting number 7324.10.0000 and 7324.10.0010. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

IV. MARGIN CALCULATIONS

We calculated export price (EP) and normal value (NV) using the same methodology stated in the Preliminary Results, except as follows:⁹

- We corrected typographical errors in the SAS margin programs with respect to the respondents’ customer information for purposes of conducting our differential pricing analysis. We also relied on Dongyuan’s region information reported under the destination field (DESTU) for this analysis. See Comment 8.
- We used the financial data of three surrogate producers of comparable merchandise to derive the surrogate financial ratios in these final results. See Comment 9.

⁸ Mounting clips, fasteners, seals, and sound-deadening pads are not covered by the scope of this order if they are not included within the sales price of the drawn stainless steel sinks, regardless of whether they are shipped with or entered with drawn stainless steel sinks.

⁹ See also Memorandum from Brian Smith, Senior International Trade Analyst, AD/CVD Operations, Office II, through Irene Darzenta Tzafolias, Program Manager, AD/CVD Operations, Office II, to The File, “Antidumping Duty Administrative Review of Drawn Stainless Steel Sinks from the People’s Republic of China: Final Factor Valuation Memorandum,” dated concurrently with this memorandum; Memorandum from Brian Smith, Senior International Trade Analyst, AD/CVD Operations, Office II through Irene Darzenta Tzafolias, Program Manager, AD/CVD Operations, Office II, to The File, “Analysis of the Final Results Margin Calculation for Dongyuan,” dated concurrently with this memorandum (Dongyuan Final Analysis Memorandum); and Memorandum from Brian Smith, Senior International Trade Analyst, AD/CVD Operations, Office II through Irene Darzenta Tzafolias, Program Manager, AD/CVD Operations, Office II, to The File, “Analysis of the Final Results Margin Calculation for Yingao,” dated concurrently with this memorandum (Yingao Final Analysis Memorandum).

- We used the Global Trade Atlas (GTA) import data from only two Harmonized Tariff Schedule (HTS) subheadings specific to the grade and surface finish of the stainless steel used by the respondents to derive an average price to value stainless steel. See Comment 10.
- We recalculated the labor surrogate value using data from Tables 5 and 6 of the 2012 Thai National Statistics Office (NSO) Report. See Comment 12.
- We removed the letter of credit costs from the surrogate brokerage and handling fee used in our final margin calculation for both respondents. See Comment 14.
- We applied the surrogate value for wooden box to Yingao’s reported wooden box consumption expressed in kilograms. See Comment 16.

V. DISCUSSION OF ISSUES

Comment 1: Eligibility of Respondents for a “Double Remedy” Pass-Through Adjustment

In the Preliminary Results, we made adjustments to the calculation of the antidumping duties for Dongyuan and Yingao in this review, pursuant to section 777A(f) of the Tariff Act of 1933, as amended (the Act). Specifically, we preliminarily determined that there was a cost-to-price relationship for stainless steel¹⁰ based on the information¹¹ both respondents provided in response to the “double remedies” questionnaire and the U.S. import statistics we placed on the record.

The petitioner argues that the Department should not grant either respondent a so-called “double remedy” pass-through adjustment because record evidence does not demonstrate that subsidies impacted the respondents’ cost of manufacturing. With respect to the respondents’ claim for a “double remedy” adjustment, the petitioner argues that neither respondent has sufficiently demonstrated that there is an overlap in remedies or that an adjustment is warranted. Specifically, the petitioner claims that the respondents have not demonstrated that there is a cost-to-price relationship for stainless steel, and that the Department’s analysis of the record data¹² is deficient and incomplete with respect to supporting the respondents’ claim. For example, the petitioner contends that the Department’s examination of the respondents’ data and the U.S.

¹⁰ Dongyuan and Yingao both stated that the price of the finished product is affected by the cost of stainless steel, and they provided stainless steel costs on a monthly basis in support of their claims. Neither respondent claimed that the price of the finished product was affected by the cost of electricity. For this reason, our analysis in the Preliminary Results focused only on whether a cost-to-price linkage existed with respect to the Government Authorities Under the Provision of Stainless Steel Coil for Less than Adequate Remuneration (Stainless Steel LTAR) subsidy program.

¹¹ See Note that Yingao’s response was submitted under Dongyuan’s cover letter, and Dongyuan’s response was submitted under Yingao’s cover letter. See Letter from Dongyuan, “Drawn Stainless Steel Sinks from the People’s Republic of China – Supplemental Response” (November 12, 2014) (Yingao DR QR) at Exhibit 3; and Letter from Yingao, “Drawn Stainless Steel Sinks from the People’s Republic of China – Supplemental Response” (November 12, 2014) (Dongyuan DR QR) at Exhibit 3.

¹² The Department relied on the respondents’ monthly stainless steel costs submitted in their questionnaire responses and U.S. import statistics for subject merchandise exported from the PRC covering the POR.

import statistics does not support the respondents' claim that there is a cost-to-price relationship for stainless steel.

Moreover, the petitioner contends that neither respondent actually provided evidence or made the claim that a cost-to-price relationship exists for stainless steel. Specifically, the petitioner claims that, in response to the Department's "double remedy" questionnaire, the respondents merely reported their stainless steel cost data but did not make the case that they reduce their export prices of the subject merchandise as a result of changes in the costs of stainless steel. The petitioner goes on to explain how economic history indicates that when there is reduction in variable costs in an industry, some portion of that cost change will be passed through to the consumer, but that the Chinese producers in the stainless steel sink industry may not have the same objective of passing the cost decrease to the customer but rather may do the opposite (i.e., not pass the cost decrease to their customers) in order to maximize their profits. In addition, the petitioner claims that both respondents stated in their questionnaire responses that they did not benefit from the Stainless Steel LTAR subsidy program and therefore, it is unclear why the Department found that a subsidy-to-cost link existed for each respondent in the Preliminary Results. Finally, the petitioner argues that neither respondent provided any documentary evidence that a cost-to-price relationship existed during the period of review (POR), and that the email correspondence they did provide as evidence is after the POR and therefore should not be considered in this review. Moreover, the petitioner argues that the submitted email correspondence only shows a price increase and does not reflect a price decrease corresponding to a cost decrease.

The respondents claim that they have met the statutory criteria for the Department to make a "double remedy" adjustment to their weighted-average dumping margins. In response to the petitioner's claim that the fluctuations in the respondents' stainless steel cost data are not reflected in the U.S. import statistics of PRC exports of the subject merchandise, the respondents argue that the petitioner's analysis is flawed as it focuses on a direct month-to-month correlation which is not required by the statute. Instead, the respondents point out that the Department's focus on the fluctuations in the import unit prices of stainless steel sinks, which occurred throughout the POR, is the more appropriate approach and it is also supported by the respondents' reported price data. Moreover, the respondents contend that the adjustment of the stainless steel prices on the cost of the sinks is not immediate, and that, contrary to the petitioner's claim that there needs to be a direct correlation between price and cost, the respondents maintain that there is a necessary lag between the purchase of stainless steel and the price adjustment. Finally, the respondents argue that the petitioner is incorrect in stating that the respondents did not adequately state this correlation in their "double remedy" questionnaire responses. Specifically, the respondents reiterate that although they did not experience significant changes in the cost of stainless steel nor increase their prices during the POR, they did state that a change in stainless steel costs in the short-term would likely lead to an adjustment of each respondent's prices. However, the respondents reiterate that when their steel prices increased at the beginning of the POR, they considered adjusting their prices for sinks but when the prices went back to normal, they did not adjust their prices.

Department's Position:

In the final results of this review, we granted the respondents an adjustment under section 777A(f) of the Act for the Stainless Steel LTAR subsidy program. Consistent with the Preliminary Results, we continue to find that the respondents demonstrated a cost-to-price linkage for this material input.¹³ Specifically, we continue to rely on the explicit statements in both respondents' "double remedy" questionnaire responses linking the pricing decision to stainless steel costs.¹⁴ With regard to the subsidy-to-cost link, we note that in the final results of the companion countervailing duty (CVD) case, the Department determined that Dongyuan received a countervailable subsidy when it purchased domestic stainless steel under the Stainless Steel LTAR program.¹⁵ In this AD proceeding, both Dongyuan and Yingao claimed that this program was in place during the period of this review and there is a subsidy-to-cost linkage for this material input. Thus, consistent with Department practice,¹⁶ because both respondents received a countervailable subsidy from this program, and are in fact subject to a countervailing duty to remedy this subsidy, we are granting them an adjustment under section 777A(f) of the Act for purposes of the final results of this review.

Comment 2: Subsidy Rates Used as the Basis for the "Double Remedy" Pass-Through Adjustment

In the Preliminary Results, for purposes of determining the extent of the domestic subsidy pass-through for Dongyuan and Yingao, we relied on the subsidy rates for the Stainless Steel LTAR program from the CVD investigation. Specifically, we assigned Dongyuan the simple average rate of the rates from the two mandatory respondents¹⁷ in the CVD investigation. We assigned Yingao its own rate from the CVD investigation. To calculate the actual rate for each respondent, we multiplied the applicable Stainless Steel LTAR subsidy program rates by the documented POR ratio (based on Bloomberg data) for cost-price changes for the PRC manufacturing sector as a whole (*i.e.*, 91.84 percent), and by the gross unit price less freight expenses.¹⁸

The petitioner argues that the Department should not use subsidy rates that include facts available in calculating the "double remedy" pass-through adjustment because it rewards, rather than penalizes, respondents for not cooperating in a segment of the proceeding. Specifically, the petitioner argues that the Department should not rely on Superte's rate or Yingao's rate from the CVD investigation to derive the subsidy rates in this case because both companies' CVD

¹³ See Memorandum to the File from Reza Karamloo, International Trade Compliance Analyst, "Drawn Stainless Steel Sinks from the People's Republic of China (PRC): Double Remedies Calculation Memorandum" (April 30, 2015) (Double Remedies Calculation Memorandum), at 2.

¹⁴ See Dongyuan's DR QR at 2-6; and Yingao's DR QR at 2-6.

¹⁵ See Drawn Stainless Steel Sinks From the People's Republic of China: Final Results of Countervailing Duty Administrative Review (unpublished).

¹⁶ See, e.g., Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part, 80 FR 34893 (June 18, 2015), and accompanying Issues and Decision Memorandum at Comment 6.

¹⁷ These two companies are Superte Kitchenware Co., Ltd. (Superte) and Yingao.

¹⁸ See Double Remedies Calculation Memorandum at Attachment 2.

investigation subsidy rates were based on adverse facts available (AFA). Because these rates are based on AFA, the petitioner argues that if the Department continues to provide an offset for a subsidy rate that includes AFA, the Department is not providing respondents an incentive to cooperate and the Department must not reward a respondent for not fully cooperating with respect to the Department's requests for information.¹⁹ Moreover, the petitioner contends that rates based on AFA do not demonstrate a reduction of the average price of imports of the subject merchandise and are improper to include when estimating the extent to which the countervailable subsidy increases the dumping margin.

The respondents counter that the Department should continue to follow its practice with respect to assigning rates to respondents subject to both AD rates calculated under the Department's alternate comparison methodology,²⁰ and to CVD rates for the same merchandise. Specifically, the respondents argue that the CVD rates assigned to them in the CVD investigation were meant to measure the benefit they received from the subsidy programs. Moreover, the respondents state that the statute does not explain how the CVD rate should be calculated for purposes of determining the "double remedy" offset and it is inappropriate for the petitioner to demand that the Department revisit its practice in this case.

Department's Position:

We continued to calculate the "double remedy" offset using the rates to which the respondents in question are actually subject. The petitioner's argument that the respondents are being rewarded by the "double remedy" offset because the CVD rates being used in the calculation contain adverse inferences is incorrect. There is no reward to the respondents for this offset because they are in fact subject to a CVD rate on their imports that was based on adverse facts available. The Department is not charged with examining whether, in tandem, the respondent in question is engaged in two forms of unfair trade, but whether the respondent is in fact subject to two tariff rates on U.S. imports for the same sales which in some way cause there to be an overlapping remedy for certain unfair pricing. In other words, the question is whether a "double remedy" is being applied. If so, and if the elements of our double-remedies test have otherwise been met, an offset is warranted.

Comment 3: Use of Bloomberg Data

In the Preliminary Results, we used a Bloomberg data-based documented ratio of cost-price changes for the Chinese manufacturing sector as a whole as the estimate of the extent of subsidy pass-through to prices in accordance with Department practice. No party to this proceeding

¹⁹ In support of its argument, the petitioner cites to NSK Ltd. v. United States, 170 F. Supp. 2d 1280, 1312 (CIT 2001); Branco Peres Citrus, S.A. v. United States, 173 F. Supp. 2d 1363, 1376 (CIT 2001); Gourmet Equip. Taiwan Corp. v. United States, 24 CIT 572, 577 (2000); and F.Lii de Cecco di Filippo Fara S. Martino v. United States, 216 F.3d at 1032.

²⁰ In the Preliminary Results, the Department used the average-to-transaction method for those U.S. sales which passed the Cohen's *d* test and the average-to-average method for those U.S. sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin for Dongyuan. The Department used the average-to-transaction method for all U.S. sales to calculate the weighted-average dumping margin for Yingao. See Preliminary Decision Memorandum at 18-19.

submitted or argued for alternate data to be used to calculate company-specific estimates of the extent of subsidy pass-through to prices.

The petitioner argues that the Bloomberg data are an improper estimate of the subsidy pass-through for the subject merchandise. Specifically, the petitioner argues that the respondents' failure to provide data for company-specific estimates of the subsidy pass-through is a sufficient basis for denying the offset. If, however, the Department determines that the respondents are eligible for an offset, then the petitioner argues that the Department should not rely on the Bloomberg data as these data are not specific to the imports of the class or kind of merchandise in this case and therefore not in accordance with the statute. Specifically, the petitioner argues that the data the Department is relying on to make the offset are more appropriately measuring how subsidies affect Chinese domestic prices rather than how they affect Chinese export prices. By doing this, the petitioner contends that the Department is incorrectly assuming that that Chinese-to-U.S. export prices would respond in the same manner to changes in Chinese input prices as Chinese domestic prices. Moreover, the petitioner contends that the Department's reliance on the Bloomberg data reflects how Chinese companies respond to industry-wide changes in variable costs but does not measure the how specific Chinese companies respond to an input subsidy, which is the purpose of making the "double remedy" adjustment. In addition, the petitioner notes that the Department's use of the Bloomberg data to make the adjustment does not factor into the analysis the asymmetric nature of price responses to changes in variable costs (*i.e.*, firms do not immediately pass through changes in input costs). Given that the respondents stated in their responses only that price increases are potentially passed through to their customers, the petitioner maintains that this is further evidence that the respondents did not pass through price decreases to their U.S. customers. Finally, the petitioner further argues that the Court of International Trade (CIT) has also questioned the Department's use of the Bloomberg data as the basis for making this adjustment and its rationale that the Bloomberg data are a reasonable estimate.²¹

With respect to the petitioner's argument that the Department should not use Bloomberg data in its analysis, the respondents assert that the Department has stated in other cases that the Bloomberg data are the best means for satisfying the statutory requirement of making a reasonable estimate of the pass-through amount.²²

Department's Position:

Based on the record before the Department, we find the Bloomberg data provides the best, and in this case the only, evidence to estimate the extent to which subsidies pass through to prices during the relevant period. Although not requested, the petitioner has not provided any alternative source data nor identified any such data for use in this case. Moreover, we find the

²¹ In support of its claim, the petitioner cites to Wheatland Tube Co. v. United States, 26 F.Supp. 3d 1372, 1388 (CIT 2014) (Wheatland Tube).

²² In support of their argument, the respondents cite to Certain New Pneumatic Off-the-Road Tires: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 20197 (April 15, 2015), and accompanying Issues and Decision Memorandum at Comment 7; and Drawn Stainless Steel Sinks Final Affirmative Antidumping Duty Determination, 78 FR 13019 (February 26, 2013), and accompanying Issues and Decision Memorandum at Comment 6.

Bloomberg data to be consistent with the Department’s statutory task to identify “double remedies,” and to provide a reasonable estimate of the extent to which the subsidy has increased the weighted average dumping margin for the class or kind of merchandise. Accordingly, in this case, the Department will continue to use the Bloomberg data on the record to calculate the pass through ratio.

Regarding the petitioner’s argument that the Bloomberg ratio is not export-specific, the Department continues to believe that the ratio in question is the best, publicly-available data to be used for estimating the pass through. In a real sense, what we are measuring with the Bloomberg ratio is the extent to which other factors, such as global demand, in addition to variable cost changes, affect price, and these conditions would likely affect the home market as well as the export market. Therefore, the inclusion of non-export sales does not make the Bloomberg data irrelevant or distorted for purposes of section 777A(f) of the Act. Further, the term “estimate” means “a tentative evaluation or rough calculation.”²³ Thus, the statute does not contemplate a precise measure, which is what the petitioner is seeking in this case, nor has the petitioner demonstrated that the Bloomberg data cannot provide a reasonable estimate. As the petitioner admits, the Bloomberg data reflects how Chinese companies respond to industry-wide changes in variable costs, which although not as precise a measure as the petitioner would prefer, it nonetheless is consistent with the Department’s analytical framework focusing on the relationship between subsidies and costs to ascertain whether there is any overlap in remedies, and provides a sufficient basis upon which to draw reasonable estimates consistent with the statutory directive under section 777A(f).

Last, we find the petitioner’s reliance on Wheatland Tube to be misplaced. The issue raised in the instant case was not ruled upon in the Wheatland Tube litigation, whose focus was whether the respondents had demonstrated their entitlement to an adjustment under section 777A(f) of the Act. That opinion has no bearing on the issue raised by the petitioner here. Based upon the above, we have determined to use Bloomberg data to calculate the pass through ratio for these final results.

Comment 4: Statutory Authority to Consider an Alternative Comparison Method

In the Preliminary Results, the Department applied a “differential pricing” analysis for determining whether application of average-to-transaction (A-to-T) comparisons is appropriate pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.

For Dongyuan, the Department preliminarily found that 59.7 of its export sales confirmed the existence of a pattern of prices that differ significantly.²⁴ Moreover, the Department preliminarily determined that the average-to-average (A-to-A) method could not appropriately account for such differences because the resulting weighted-average dumping margin moved across the de minimis threshold. Accordingly, the Department preliminarily determined to use the A-to-T method for those U.S. sales which passed the Cohen’s *d* test and the A-to-A method for those U.S. sales which did not pass the Cohen’s *d* test to calculate the weighted-average dumping margin for Dongyuan.

²³ Websters II at 444.

²⁴ See Preliminary Decision Memorandum at 13.

For Yingao, the Department preliminarily found that 73.6 percent of its export sales confirmed the existence of a pattern of prices that differ significantly.²⁵ Further, the Department preliminarily determined that the A-to-A method could not appropriately account for such differences because there was a meaningful difference in the weighted-average dumping margins calculated using the A-to-A method and an alternative method based on the A-to-T method applied to all U.S. sales. Specifically, the Department preliminarily determined that the A-to-A method cannot appropriately account for such differences because the resulting weighted-average dumping margin moves across the de minimis threshold. Accordingly, the Department preliminarily determined to use the A-to-T method for all U.S. sales to calculate the weighted-average dumping margin for Yingao.

For these final results, the Department finds that 73.0 percent of Dongyuan's export sales confirmed the existence of a pattern of prices that differ significantly²⁶ and 73.7 percent of Yingao's export sales confirmed the existence of a pattern of prices that differ significantly.²⁷ Further, the Department determines for both companies that the A-to-A method cannot appropriately account for such differences because there was a meaningful difference in the weighted-average dumping margins calculated using the A-to-A method and an alternative method based on the A-to-T method applied to all U.S. sales. Specifically, the Department determines that for Dongyuan the A-to-A method cannot appropriately account for such differences because the resulting weighted-average dumping margins move across the de minimis threshold. For Yingao, the Department determines that the A-to-A method cannot appropriately account for such differences because there is a 25 percent or greater relative change in the weighted-average dumping margin between the A-to-A method and the A-to-T method where both rates are above the de minimis threshold. Accordingly, the Department determines for the final results to use the A-to-T method for all U.S. sales to calculate the weighted-average dumping margins for both Dongyuan and Yingao.

The respondents argue that the Department lacks the statutory authority to consider an alternative comparison method and conduct a differential pricing analysis in this administrative review. The respondents point out that the Department's preliminary results fail to cite any statutory provision that grants it the authority to conduct such analysis in administrative reviews. Specifically, the respondents claim that the Department's reliance on section 777(A)(d)(1)(B) of the Act²⁸ to consider an alternative comparison method in antidumping duty administrative reviews is misplaced as it only applies to less-than-fair-value (LTFV) investigations. Rather, the respondents claim that the statutory provision that applies to AD reviews²⁹ does not give the Department the authority to consider an alternative comparison method and conduct such an analysis. Therefore, the respondents contend that because there is no mention in the statutory

²⁵ Id.

²⁶ See Dongyuan Final Analysis Memorandum.

²⁷ See Yingao Final Analysis Memorandum.

²⁸ See 19 U.S.C. section 1677f-1(d)(1)(B).

²⁹ See 19 U.S.C. section 1677f-1(d)(2).

provision that applies to AD reviews that the Department has the authority to conduct a differential pricing analysis, this must mean that the Department lacks the statutory authority.³⁰

With respect to the Department's response in prior cases that it has the authority to "gap fill" in AD reviews, the respondents argue that the Department has no such authority. Furthermore, the respondents argue that the Department cannot rely on 19 CFR 351.414(b) for such authority. Respondents contend that the February 2012 amendment to this provision has no effect in light of the CIT's decision that the original "targeted dumping" provision remains in effect.³¹

The petitioner contends that the Department has already rejected in prior cases the respondents' claim that the Department lacks the statutory authority to consider an alternative comparison method and apply a differential pricing analysis in administrative reviews.³² Moreover, the petitioner points out that the CIT has confirmed the Department's authority to consider an alternative comparison method in order to address "targeted dumping" in reviews.³³

Department's Position:

We disagree with respondents' assertion that the Department has no authority to consider the application of an alternative comparison method based on the A-to-T method in administrative reviews. Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." By definition, a "dumping margin" requires a comparison of normal value and export price or constructed export price. Before making the comparison required, it is necessary to determine how to make the comparison.

The respondents argue that the Department has no statutory authority to consider the application of an alternative comparison method in administrative reviews. The respondents also state that Congress made no provision for the Department to apply an alternative comparison method in an administrative review under section 777A(d)(1)(B) of the Act, arguing, in part, "where Congress includes particular language in one section of a statute but omits it in another section of the same

³⁰ In support of this argument, the respondents cite to Nken v. Holder, 129 S. Ct. 1749, 1759 (2009) (Nken); Hamdan v. Rumsfeld, 548 U.S. 557, 578 (2006); and FAG Italia S.p.A v. United States, 291 F.3d 806, 816 (Fed. Cir. 2002).

³¹ In support of this argument, the respondents cite to Gold East Paper (Jiangsu) Co., Ltd. v. United States, 918 F.Supp. 2d 1317, 1327 (CIT 2013) (Gold East).

³² In support of its claim, the petitioner cites to Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 26712 (May 9, 2014), and accompanying Issues and Decision memorandum at Comment 1.A.; Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 24401 (April 30, 2014), and accompanying Issues and Decision Memorandum at Comment 2; and Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 23324 (April 28, 2014), and accompanying Issues and Decision Memorandum at Comment 4.

³³ In support of its claim, the petitioner cites to Apex Frozen Foods Private Ltd., v. United States, 37 F.Supp. 3d 1286, 1293 (CIT 2014) (Apex).

Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”³⁴

Indeed, section 777A(d)(1) of the Act applies to “Investigations” and section 777A(d)(2) of the Act applies to “Reviews.” Section 777A(d)(1) of the Act discusses, for investigations, the standard comparison methods (i.e., A-to-A and transaction-to-transaction (T-to-T)) and then provides for an alternative comparison method (i.e., A-to-T) that is an exception to the standard methods when certain criteria are met. Section 777A(d)(2) of the Act discusses, for reviews, the maximum length of time over which the Department may calculate weighted-average NV in administrative reviews when using the A-to-T method. Section 777A(d)(2) of the Act has no provision specifying the comparison method to be employed in administrative reviews. Thus, according to the interested parties’ logic, the statute makes no provision for comparison methods in administrative reviews at all. According to the respondents, such a conclusion would infer that Congress did not give the Department the authority to use a comparison method at all in administrative reviews, with the results that the Department would not be permitted to make a comparison of NVs and EPs or CEPs in order to calculate a dumping margin as described in section 771(35)(A) of the Act.

We find that, contrary to the respondents’ claim, the silence of the statute with regard to application of the A-to-T comparison method in administrative reviews does not preclude the Department from applying such a practice in administrative reviews. Indeed, the Department’s application of the A-to-T method as an alternative comparison method to the A-to-A method is reasonable and consistent with a series of decisions from the Court of Appeals for the Federal Circuit (CAFC) and the CIT,³⁵ including JBF RAK LLC v. United States, 790 F.3d 1358 (Fed. Cir. 2015) (JBF RAK) in which the CAFC held that the Department may apply the A-to-T method in administrative reviews and that the Act does not “mandate which comparison methods Commerce must use in administrative reviews.” In that decision the CAFC also held that the Statement of Administrative Action (SAA) “does not limit the proceedings in which Commerce may consider an alternative comparison method” when an A-to-A comparison “cannot account for a pattern of United States prices that differ significantly among purchasers, regions or time periods” in an administrative review.

To fill this gap in the statute, the Department promulgated regulations to specify how comparisons between NV and EP or CEP would be made in administrative reviews. With the implementation of the Uruguay Round Agreements Act (URAA), the Department promulgated the final rule in 1997, in which 19 CFR 351.414(c)(2) stated that the Department would normally use the A-to-T comparison method in administrative reviews. In 2010, the Department published its Proposed Modification for Reviews³⁶ pursuant to section 123(g)(1) of the URAA. This proposal was in reaction to several WTO Dispute Settlement Body panel reports which had found that the denial of offsets for non-dumped sales in administrative reviews to be inconsistent

³⁴ See Nken at 1759.

³⁵ See JBF RAK LLC v. United States, 991 F. Supp. 2d 1343, 1347 (Ct. Int’l Trade 2014); CP Kelco Oy v. United States, 978 F. Supp. 2d 1315, 1320 (Ct. Int’l Trade 2014); Timken Co., v. United States, 968 F.Supp. 2d 1279, 1286 & n.7 (Ct. Int’l Trade 2014); and Apex, 37 F. Supp. 3d at 1293.

³⁶ See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings, 75 FR 81533 (December 28, 2010) (Proposed Modification for Reviews).

with the WTO obligations of the United States. When considering the proposed revisions to 19 CFR 351.414, the Department gave proper notice and opportunity to comment to all interested parties. Pursuant to section 123(g)(1)(D) of the URAA, in September 2011, the USTR submitted a report to the House Ways and Means and Senate Finance Committees which described the proposed modifications, the reasons for the modifications, and a summary of the advice which the USTR had sought and obtained from relevant private sector advisory committees pursuant to section 123(g)(1)(B) of the URAA. Also, in September 2011, pursuant to section 123(g)(1)(E) of the URAA, the USTR, working with the Department, began consultations with both congressional committees concerning the proposed contents of the final rule and the final modification. As a result of this process, the Department published the Final Modification for Reviews.³⁷ These revisions were effective for all preliminary results of review issued after April 16, 2012.

This leads us to discussion of respondents' argument that the now-withdrawn targeted dumping regulations are applicable to this administrative review, citing to Gold East. We disagree. As a general matter, we find that our withdrawal of the targeted dumping regulations was valid. Further, the targeted dumping regulations only applied in LTFV investigations, not administrative reviews.³⁸ Likewise, the Gold East judicial proceeding involves an LTFV investigation, not an administrative review.

Sections 777A(d)(1)(A) and (B) of the Act provide that the Department in antidumping investigations "shall determine whether the subject merchandise is being sold in the United States at less than fair value" using the A-to-A or T-to-T method, unless the factors that warrant the use of the exceptional A-to-T method apply. On the other hand, no similar limiting language exists with respect to administrative reviews conducted under section 777A(d)(2) of the Act. Moreover, the Department promulgated the regulations at issue to "implement" section 777A(d) of the Act, and hence they also do not further restrict administrative review methodologies and procedures.³⁹

The context in which the Department implemented the regulations underscores that they apply only to investigations. Before the Department implemented its Final Modification for Reviews, it "typically ha{d} compared normal value and export price using the A-to-T" method.⁴⁰ Thus, the "exception" language in the Act did not apply then because the Department was already making comparisons using an A-to-T method in reviews. Indeed, when the regulations were proposed in 1996, several commentators suggested that the Department nonetheless modify its regulations to have them address comparison methodologies used in administrative reviews, as well as investigations.⁴¹ Specifically, those commentators argued that the Department's

³⁷ 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).

³⁸ See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations 73 FR 74930 (December 10, 2008) (2008 Withdrawal).

³⁹ See Antidumping Duties; Countervailing Duties, 61 FR 7308, 7348 (February 27, 1996) (proposed rules) (Proposed Preamble).

⁴⁰ See Final Modification for Reviews, 77 FR at 8101.

⁴¹ See Proposed Preamble, 61 FR at 7348.

regulations should “preclude use of the A-to-A method” with respect to administrative reviews.⁴² The Department refused and stated that “neither the statute nor the SAA affect the Department’s preexisting authority under section 777A(a) of the Act to use the A-to-A method in reviews under the appropriate circumstances.”⁴³ Accordingly, the final regulation, by its terms, applied only to investigations.⁴⁴

Moreover, the Court in Apex held that the Department was not bound to observe the withdrawn regulations in administrative reviews.⁴⁵ Therefore, the Department’s consideration of an alternative comparison method and use of a differential pricing analysis in this administrative review contradicts no applicable statute or regulation and has been affirmed by the CIT.⁴⁶

Even assuming, arguendo, that the 2008 Withdrawal was relevant to administrative reviews, the Department would nonetheless disagree with the respondents that the 2008 Withdrawal was improper. The targeted dumping regulations were properly withdrawn pursuant to the Administrative Procedures Act (APA). During the withdrawal process, the Department engaged the public to participate in its rulemaking process. Further, the Department stated in the 2008 Withdrawal that notice and an opportunity for public comment are not required under the APA’s “good cause” exception. In fact, the Department’s withdrawal of its regulations in December 2008 came after two rounds of soliciting public comments on the appropriate targeted dumping analysis. The Department solicited the first round of comments in October 2007, more than one year before it withdrew the regulation, by posting a notice in the Federal Register seeking public comments on what guidelines, thresholds, and tests it should use in conducting an analysis under section 777A(d)(1)(B) of the Act.⁴⁷ As the notice explained, because the Department had received very few targeted dumping allegations under the regulations then in effect, it solicited comments from the public to determine how best to implement the remedy provided under the statute to address masked dumping. The notice posed specific questions, and allowed the public 30 days to submit comments, which various parties did.⁴⁸ Respondents provided no information in response to the Department’s request for comments.

After considering those comments, the Department published a proposed new methodology in May 2008 and again requested public comment.⁴⁹ Among other things, the Department specifically sought comments “on what standards, if any, {it} should adopt for accepting an

⁴² Id.

⁴³ Id.

⁴⁴ See 19 C.F.R. § 351.414(f) (2008).

⁴⁵ See Apex, 37 F. Supp. 3d at 1303 (holding that the “Limiting Rule never controlled Commerce’s conduct in reviews”).

⁴⁶ In fact, the Court in Timken II recently held that the Department’s failure to perform the differential pricing analysis in the administrative review at issue in that case was unreasonable and an abuse of the Department’s discretion. See The Timken Co. v. United States, Slip Op. 15-72, at 5 (CIT 2015) (Timken II).

⁴⁷ See Targeted Dumping in Antidumping Investigations; Request for Comment, 72 FR 60651 (October 25, 2007).

⁴⁸ Id.; See also Public Comments Received December 10, 2007, Department of Commerce, <http://enforcement.trade.gov/download/targeted-dumping/comments-20071210/td-cmt-20071210-index.html> (December 10, 2007) (listing the entities that commented).

⁴⁹ See Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations; Request for Comment, 73 FR 26371, 26372 (May 9, 2008).

allegation of targeted dumping.”⁵⁰ Several of the submissions⁵¹ received from parties explained that the Department’s proposed methodology was inconsistent with the statute and should not be adopted.⁵² Moreover, several entities explicitly stated that the Department should not establish minimum thresholds for accepting allegations of targeted dumping because the statute contains no such requirements.⁵³ Respondents provided no response in this round of comments.

These comments suggested that the regulation was impeding the development of an effective remedy for masked dumping. Indeed, after considering the parties’ comments, the Department explained that because “the provisions were promulgated without the benefit of any experience on the issue of targeted dumping, the Department may have established thresholds or other criteria that have prevented the use of this comparison methodology to unmask dumping.”⁵⁴ For this reason, the Department determined that the regulation had to be withdrawn.⁵⁵ Although this withdrawal was effective immediately, the Department again invited parties to submit comments and gave them a full 30 days to do so.⁵⁶ The comment period ended on January 9, 2009, with several parties submitting comments.⁵⁷ Respondents again failed to respond to the Department’s request for comments.

The course of the Department’s decision-making demonstrates that it actively sought to engage the public. This type of public participation is fully consistent with the APA’s notice and comment requirement.⁵⁸ Moreover, various courts have rejected the idea that an agency must give the parties an opportunity to comment before every step of regulatory development.⁵⁹ Rather, where the public is given the opportunity to comment meaningfully, consistent with the statute, the APA’s requirements are satisfied. The touchstone of any APA analysis is whether the agency, as a whole, acted in a way that is consistent with the statute’s purpose.⁶⁰ Here, similar to the agency in Mineta, the Department provided the parties more than one opportunity to submit comments before issuing the final rule. As in Mineta, the Department also considered

⁵⁰ Id.

⁵¹ The public comments received on June 23, 2008, and submitted on behalf of several domestic parties can be accessed at: <http://enforcement.trade.gov/download/targeted-dumping/comments-20080623/td-cmt-20080623-index.html>.

⁵² See, e.g., Letter from AK Steel Corp., et al. to the Department: “Comments on Targeted Dumping Methodology, Comments” (June 23, 2008) (AK Steel Comments) at 2.

⁵³ See, e.g., letter from Committee to Support U.S. Trade Laws, to the Department: “Comments on Targeted Dumping Methodology” at 25; see also AK Steel Comments at 29.

⁵⁴ See 2008 Withdrawal, 73 FR at 74831.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ See Public Comments received January 23, 2009, available at <http://enforcement.trade.gov/download/targeted-dumping/comments-20090123/td-cmt-20090123-index.html> (January 23, 2009) (listing the entities that commented).

⁵⁸ See, e.g., Arizona Pub. Serv. Co. v. EPA, 211 F.3d 1280, 1299–1300 (D.C. Cir. 2000), cert denied 532 U.S. 970 (U.S. 2001) (holding that the Environmental Protection Agency’s decision to not implement a rule upon which it had sought comments did not violate the APA’s notice and comment requirements because the parties should have understood that the agency was in the process of deciding what rule would be proper).

⁵⁹ See Fed. Express Corp. v. Mineta, 373 F.3d 112, 120 (D.C. Cir. 2004) (Mineta) (holding that the Department of Transportation’s promulgation of four rules, each with immediate effect, only after the issuance of which the public was given the opportunity to comment, afforded proper notice and comment).

⁶⁰ Id.

the comments submitted and based its final decision, at least in part, upon those comments. Just as the court in Mineta found all of those facts to indicate that the agency's actions were consistent with the APA, so too do the Department's actions here demonstrate that it fulfilled the notice and comment requirements of the APA.

The APA does not require that a final rule that the agency promulgates be identical to the rule that it proposed and upon which it solicited comments.⁶¹ Here, the Department actively engaged the public in its rulemaking process; it solicited comments and considered the submissions it received. In fact, that the numerous comments prompted the Department to withdraw the regulation demonstrates that the Department provided the public with an adequate opportunity to participate. In doing so, the Department fully complied with the APA.

Further, even if the two rounds of comments that the Department solicited before the withdrawal of the regulation were insufficient to satisfy the APA's requirements, the Department properly declined to solicit further comments pursuant to the APA's "good cause" exception. This exception provides that an agency is not required to engage in notice and comment if it determines that doing so would be "impracticable, unnecessary, or contrary to the public interest."⁶² The CAFC recognized that this exception can relieve an agency from issuing notice and soliciting comment where doing so would delay the relief that Congress intended to provide.⁶³ In National Customs Brokers, the CAFC rejected a plaintiff's argument that the U.S. Customs Service failed to follow properly the APA in promulgating certain interim regulations when it had published these regulations without giving the parties a prior opportunity to comment. Moreover, although the U.S. Customs Service solicited comments on the published regulations, it stated that it "would not consider substantive comments until after it implemented the regulations and reviewed the comments in light of experience" administering those regulations.⁶⁴ The U.S. Customs Service explained that "good cause" existed to bypass the APA's usual notice and comment requirements because the new regulations did not impose new obligations on parties, and emphasized its belief that the regulations should "become effective as soon as possible" so that the public could benefit from "the relief that Congress intended."⁶⁵ The Court recognized that this explanation was a proper invocation of the "good cause" exception and explained that soliciting and considering comments was *both* unnecessary "*and* contrary to the public interest because the public would benefit from the amended regulations."⁶⁶ For this reason, the Court affirmed the regulation against the plaintiff's challenge.⁶⁷

The regulation at issue may have had the unintentional effect of preventing the Department from employing an appropriate remedy to unmask dumping. Such an effect would have been contrary to congressional intent. The Department's revocation of such a regulation without additional notice and comment was based upon a recognized invocation of the "public interest" exception.

⁶¹ See, e.g., First Am. Discount Corp. v. CFTC, 222 F.3d 1008, 1015 (D.C. Cir. 2000).

⁶² See 5 U.S.C. §553(b)(B).

⁶³ See, e.g., National Customs Brokers and Forwarders Ass'n of Am., Inc. v. United States, 59 F. 3d 1219, 1223 (Fed. Cir. 1995) (National Customs Brokers).

⁶⁴ Id., 59 F. 3d at 1220–21.

⁶⁵ Id., 59 F. 3d at 1223.

⁶⁶ Id., 59 F. 3d at 1224 (emphasis added).

⁶⁷ Id.

However, as noted above, the regulation applied to LTFV investigations and not to administrative reviews. Therefore, its withdrawal is not relevant to this review.⁶⁸

Comment 5: Notice and Comment Process Necessary for New Differential Pricing Analysis

The respondents contend that the Department failed to properly disclose its new differential pricing methodology through a notice and comment process. According to the respondents, the Department has not divulged the original source material for the test it is applying. Specifically, the respondents argue that the Department has not provided the public the historical context, mathematical formulas, and purpose of the test nor an explanation for how its former methodology differs from its new methodology.

The petitioner contends that in prior cases the Department has rejected respondents' claims that the Cohen's *d* test has not been fully disclosed.⁶⁹

Department's Position:

We disagree with the respondents' argument. We note the notice and comment requirements of the APA do not apply "to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice."⁷⁰ Further, as the Department has noted, we normally make these types of changes in practice (e.g., the change from the "P/2" test to the targeted dumping analysis, including the Nails test, or the subsequent change from the targeted dumping analysis to the current differential pricing analysis) in the context of our proceedings, on a case-by-case basis.⁷¹ As the CAFC has recognized, the Department is entitled to make changes and adopt a new approach in the context of its proceedings, provided it explains the basis for the change, and the change is a reasonable interpretation of the statute.⁷² As with the Department's prior interpretation of the provision at issue, the Department adopted the targeted dumping analysis, including the Nails test, in the context of its proceedings.⁷³ There, the Department explained the basis for its interpretation and provided parties with an opportunity to comment. Similarly, with respect to the Department's differential pricing analysis, the Department explained the basis for

⁶⁸ As a result of the withdrawal of the targeted dumping regulation, we note that the Department no longer requires petitioner to submit an allegation of targeted dumping before conducting its analysis.

⁶⁹ See, e.g., Welded Carbon Steel Standard Pipe and Tube Products from Turkey, 79 FR 71087 (December 1, 2014), and accompanying Issues and Decision Memorandum at Comment 5; Certain Activated Carbon from the People's Republic of China, 79 FR 70163 (November 25, 2014), and accompanying Issues and Decision Memorandum at Comment 2.B.; Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates, 79 FR 24401 (April 30, 2014), and accompanying Issues and Decision Memorandum at Comment 3; and Diamond Sawblades and Parts Thereof From the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013 (Diamond Sawblades), 80 FR 32344 (June 8, 2015), and accompanying Issues and Decision Memorandum at Comment 10.

⁷⁰ See 5 U.S.C. § 553(b)(3)(A).

⁷¹ See Differential Pricing Analysis; Request for Comments, 79 FR 26720, 26722 (May 9, 2014) (Differential Pricing Comment Request).

⁷² See Saha Thai Steel Pipe Company v. United States, 635 F.3d 1335, 1341 (Fed. Cir. 2011); Washington Raspberry, 859 F.2d at 902-03. See also Carlisle Tire, 634 F. Supp. at 423 (discussing exceptions to the notice and comment requirements of the APA).

⁷³ See Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008) (Nails).

the change in practice and provided respondents with an opportunity to comment on the Department's interpretation and methodology. Moreover, as the Department noted, as it "gains greater experience with addressing potentially hidden or masked dumping that can occur when the Department determines weighted-average dumping margins using the A-to-A comparison method, the Department expects to continue to develop its approach with respect to the use of an alternative comparison method."⁷⁴ Further developments and changes, along with further refinements are expected in the context of its proceedings based upon an examination of the facts and the parties' comments in each case. Accordingly, the Department's development of a differential pricing analysis and its application in this review are consistent with established law.

Comment 6: Differential Pricing Analysis

The respondents argue that the Department's differential pricing methodology is unsound.

- The Department incorrectly calculated the pooled standard deviation for the Cohen's *d* statistic. This formula is allegedly not weighing each sample variance by the number of transactions in each group.
- The Cohen's *d* test is being applied in cases, like this one, where there are too few sales transactions in the groups being compared to produce accurate results. The Department should instead use an unbiased estimator, such as Hedges' *g*, to accurately estimate effect size.
- The Cohen's *d* test is being incorrectly used as a test of statistical significance. For example, the respondents claim that it is possible for the difference between the means of two groups to not be statistically significant, but for the Cohen's *d* coefficient to be greater than 0.8 (when measuring the difference between the means of two groups).
- The Department's practice of counting sales at prices above the mean as passing the test is flawed and unreasonable because the fundamental purpose of the "targeted dumping" provision is to unmask "targeted dumped" sales; the Department should also exclude below-the-mean sales that are not dumped.

The petitioner disagrees with respondents' arguments, noting that statistical significance is irrelevant because the Cohen's *d* test is based on the entire population of the respondents' sales.⁷⁵ In addition, the petitioner asserts that in previous proceedings, the Department has considered and rejected the argument that sales above average prices cannot be reasonably characterized as targeted.⁷⁶

⁷⁴ See Preliminary Decision Memorandum at 16-18; see also Differential Pricing Comment Request, 79 FR at 26722.

⁷⁵ See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 65182 (November 3, 2014) (Citric Acid), and accompanying Issues and Decision Memorandum at Comment 1.D.

⁷⁶ See Diamond Sawblades, and accompanying Issues and Decision Memorandum at Comment 10.

Department's Position:

As a general matter, the Department disagrees with respondents' claims that the application of a differential pricing analysis, including the Cohen d and ratio tests, contradicts the statutory directive and intent, or is otherwise unreasonable. Nothing in the statute or the SAA mandates how the Department measures whether there is a pattern of prices that differs significantly, how the Department explains why one of the standard comparison methods (*i.e.*, A-to-A or the T-to-T method) cannot account for such differences, or how the Department applies the A-to-T method as an alternative comparison method. Accordingly, the Department has reasonably established a framework to determine whether the A-to-A method is appropriate,⁷⁷ and if not, then how the A-to-T method may be considered as an alternative to the standard A-to-A method based on the extent of the pattern of prices that differ significantly, as identified by the Cohen's d test.

The Department incorrectly calculated the pooled standard deviation for the Cohen's d statistic. This formula is allegedly not weighing each sample variance by the number of transactions in each group.

The Department disagrees with the respondents' argument that our calculation is incorrect. Indeed, in calculating the pooled standard deviation, the statute does not direct how we should determine whether a pattern of prices that differ significantly exists, let alone how to calculate the pooled standard deviation of the Cohen's d coefficient. Further, the respondents have provided no support to substantiate their argument. Our aim is to rely on a reasonable approach that affords predictability and we find that a simple average (*i.e.*, giving equal weight to the test and comparison groups) is the best way to accomplish this goal when we determine the pooled standard deviation. The use of a simple average equally weighs a respondent's pricing practices to each group and the magnitude of the sales to one group does not skew the outcome. This approach is reasonable and consistent with section 777A(d)(1)(B)(i) of the Act.⁷⁸

The Cohen's d test is being applied in cases, like this one, where there are too few sales transactions in the groups being compared to produce accurate results. The Department should instead use an unbiased estimator, such as Hedges' g , to accurately estimate effect size.

The Department disagrees with the respondents. Sample size is not a relevant consideration in this context. For the Department's application of the Cohen's d test, it is unnecessary to consider sample size as this analysis includes all of a respondent's sales in the U.S. market. The Cohen's d test "is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group."⁷⁹ Within the Cohen's d test, the Cohen's d coefficient is calculated based on the means and variances of the test group and the comparison group. The test and comparison groups include all of the U.S. sales of comparable merchandise reported by the respondent. As such, the means and variances calculated for these two groups are the actual values for both the test and comparison groups, and are not estimates which include sampling errors. Statistical significance is used to evaluate whether the results of

⁷⁷ See 19 CFR 351.414(c)(1).

⁷⁸ See Citric Acid, and accompanying Issues and Decision Memorandum at Comment 1.D.

⁷⁹ See Preliminary Decision Memorandum at page 17.

an analysis rise above sampling error (*i.e.*, noise) present in the analysis and is dependent upon the sampling technique and sample size. The Department's application of the Cohen's *d* test is based on the mean and variance calculated using the entire population of a respondent's sales in the U.S. market and, therefore, these values contain no sampling error.

If Congress intended to require a particular result be obtained based on an analysis of a certain minimum number of transactions as a condition for finding that there exists a pattern of prices that differ significantly, then Congress presumably would have used language beyond the stated requirement. This is what Congress did, for example, with respect to enacting the sampling provision for respondent selection in section 777A(c)(2)(A) of the Act. But it did not do so with respect to the determination of the existence of a pattern in section 777A(d)(1)(B)(i) of the Act.

The Cohen's d test is being incorrectly used as a test of statistical significance.

The Department disagrees with the respondents' characterization of its application of the Cohen's *d* test. The Cohen's *d* coefficient is one approach to quantifying an "effect size" and it "is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group."⁸⁰ In responding to a similar comment in the final determination of Xanthan Gum from the PRC, the Department noted in response to argument from Deosen, a respondent in that investigation:

Nothing in Deosen's submitted articles undermines the Department's reliance on the Cohen's *d* test. Deosen's reliance on the article "It's the Effect Size, Stupid" does not undermine the validity of the Cohen's *d* test or the Department's reliance on it to satisfy the statutory language. Interestingly, the first sentence in the abstract of the article states: "Effect size is a simple way of quantifying the difference between two groups *and has many advantages over the use of tests of statistical significance alone.*" Effect size is the measurement that is derived from the Cohen's *d* test. Although Deosen argues that effect size is a statistic that is "widely used in meta-analysis," we note that the article also states that "{e}ffect size quantifies the size of the difference between two groups, and may therefore be said to be a *true measure of the significance of the difference.*" The article points out the precise purpose for which the Department relies on Cohen's *d* test to satisfy the statutory language, to measure whether a difference is significant.⁸¹

Accordingly, the Department has relied upon a measure of effect size, namely Cohen's *d* coefficient as part of its differential pricing analysis in these final results of review as a measure of the practical significance of the observed prices differences, *i.e.*, to determine whether the observed price differences are significant. In this application, the difference in the weighted-average (*i.e.*, mean) U.S. price to a particular purchaser, region or time period (*i.e.*, the test

⁸⁰ *Id.*

⁸¹ See Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013) (Xanthan Gum from the PRC), and the accompanying Issues and Decision Memorandum at Comment 3 (emphasis in the original, internal citations omitted); quoting from Coe, "It's the Effects Size, Stupid: What effect size is and why it is important," Paper presented at the Annual Conference of British Educational Research Association (Sept. 2002), <http://www.leeds.ac.uk/educol/documents/00002182.htm>.

group) and the weighted-average U.S. price to all other purchasers, regions or time periods (*i.e.*, the comparison group) is measured relative to the variance of the U.S. prices within each of these groups (*i.e.*, all U.S. prices).

Further, within the Cohen's *d* test, the Cohen's *d* coefficient is calculated based on the means and variances of the test group and the comparison group. The test and comparison groups include all of the U.S. sales of comparable merchandise reported by the respondent. As such, the means and variances calculated for these two groups are the actual values for these measures and they are based on the universe of sales (*i.e.*, the entire population of data). Accordingly, as discussed above in the preceding comment, because the Department's analysis relies on the complete population of the respondent's sale price data in the U.S. market, there is no sampling error, or noise, in the results which must be taken into account through a measure of the statistical significance of the results.

Statistical significance is used to evaluate whether the results of an analysis rise above sampling error (*i.e.*, noise) present in the analysis. This arises in analyses which are based on sampled data from a larger population of data where the calculated measures (*e.g.*, mean and standard deviation) are estimates of the actual values of the entire population of data. The Department's application of the Cohen's *d* test is based on the mean and variance calculated using the entire population of the respondent's sales in the U.S. market, and, therefore, these values contain no sampling error. Accordingly, statistical significance is not a relevant consideration in this context.

Further, even assuming that "significance" could imply "statistical significance" and "statistical significance" would be relevant to the Department's analysis, as the respondents suggest, the Department notes that, if Congress had intended to require a particular result to ensure the "statistical significance" of price differences that mask dumping as a condition for applying an alternative comparison method, Congress presumably would have used language more precise than "differ significantly." The Department, tasked with implementing the antidumping law, resolving statutory ambiguities, and filling gaps in the statute, does not agree with the respondents that the term "significantly" in the statute can mean only "statistically significant." The Act includes no such directive. The analysis employed by the Department, including the use of the Cohen's *d* test, fills the statutory gap as to how to determine whether a pattern of prices "differ significantly." Furthermore, the Department's use of the Cohen's *d* test is based on the entire population of U.S. sales by each respondent, and, therefore, there are no estimates involved in the results and accordingly "statistical significance" is not a relevant consideration. Therefore, respondents' argument is meritless.

The Department's practice of counting sales at prices above the mean as passing the test is flawed and unreasonable because the fundamental purpose of the "targeted dumping" provision is to unmask "targeted dumped" sales; the Department should also exclude below-the-mean sales that are not dumped.

The Department disagrees with respondents on both points. Higher-priced sales are equally as capable as lower-priced sales to create a pattern of prices that differ significantly. Higher-priced sales will offset lower-priced sales, either implicitly through the calculation of a weighted-

average price or explicitly through the granting of offsets, which can mask dumping. The statute states that the Department may apply the A-to-T method if “there is a *pattern of export prices . . .* for comparable merchandise that *differ* significantly among purchasers, regions, or periods of time,” and the Department “explains why *such differences* cannot be taken into account” using the A-to-A comparison method.⁸² The statute directs the Department to consider whether there exists a pattern of prices that differ significantly. The statutory language references prices that “differ” and does not specify whether the prices differ by being lower or higher than the remaining prices.

To avoid any confusion on this point -- higher-priced sales and lower-priced sales do not operate independently; all sales are relevant to the analysis.⁸³ Higher- or lower-priced sales could be dumped or could be masking other dumped sales. When the Department applies the first stage of the differential pricing analysis, the Department is unaware for purposes of its analysis if sales are dumped or not. That is not the issue at that stage of the differential pricing analysis. The question at that stage is whether or not a pattern of prices that differ significantly exists. In answering the question of whether there is a pattern of prices that differ significantly, this analysis includes no comparisons with NVs. Indeed, section 777A(d)(1)(B)(i) of the Act requires no such comparisons.

By considering all sales, higher-priced sales and lower-priced sales, the Department is able to analyze an exporter’s pricing behavior, and to identify whether there is a pattern of prices that differ significantly. Moreover, finding such a pattern of prices that differ significantly among purchasers, regions, or periods of time, rather than a uniform pricing behavior, could signal that the exporter is exhibiting conditions in the U.S. market in which dumping could be masked. Where the evidence indicates that the exporter is engaged in a varying pricing behavior which results in such a condition where dumping may be masked, we believe that there is cause to continue with the analysis to determine whether the A-to-A method can account for such pricing behavior.

As explained in the SAA, with “targeted dumping,” “an exporter may sell at a dumped {e.g., lower} price to particular customers or regions, while selling at higher prices to other customers or regions.”⁸⁴ Thus, Congress, in recognizing the concerns regarding targeted, or masked, dumping, emphasized that this concern about masked dumping not only included lower-priced sales which may be dumped, but also higher-priced sales which could conceal or mask dumping. Accordingly, both higher- and lower-priced sales are relevant to the Department’s analysis of the exporter’s pricing behavior, consistent with the requirements of section 777A(d)(1)(B)(i) of the Act and the relevant language in the SAA.

⁸² See section 777A(d)(1)(B) of the Act (emphasis added).

⁸³ See Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013), and accompanying Issues and Decision Memorandum at Comment 5.

⁸⁴ See SAA at 842.

Comment 7: Zeroing

The respondents argue that even if the Department applies differential pricing analysis and uses an alternative method of price comparisons in this case, the Department should not set negative margins to zero. Specifically, the respondents argue that the Department should not set negative margins to zero in the context of NME cases.

The petitioner did not comment on this issue.

Department's Position:

The Department disagrees with the respondents. Zeroing, when using the A-to-T method, is fully consistent with U.S. law. The decision by the CAFC in Union Steel⁸⁵ resolved the outstanding question of whether the Department's statutory interpretation is reasonable. The CAFC affirmed the Department's explanation that it may interpret the statute to permit the denial of offsets for non-dumped sales (i.e., zeroing) with respect to the A-to-T comparison method in administrative reviews, while permitting the Department to grant offsets for non-dumped transactions when applying the A-to-A comparison method in investigations. The CAFC also affirmed the Department's explanation that it may interpret the same statutory provision differently because there are inherent differences between the comparison methods used in investigations and reviews. Indeed, the CAFC noted that although the Department recently modified its practice "to allow for offsets when making A-to-A comparisons in administrative reviews . . . {t}his modification does not foreclose the possibility of using the zeroing methodology when {the Department} employs a different comparison method to address masked dumping concerns."⁸⁶ Likewise, in U.S. Steel Corp.,⁸⁷ the CAFC sustained the Department's decision to no longer apply zeroing when employing the A-to-A comparison method in investigations while recognizing the Department's intent to continue to apply zeroing in other circumstances. Specifically, the CAFC recognized that the Department may use zeroing when applying the A-to-T comparison method where patterns of significant price differences are found.⁸⁸

The Department's application of an alternative comparison method in calculating each respondent's weighted-average dumping margin in these final results constitutes a reasonable interpretation of an otherwise silent statute that is well within the gap-filling deference that the Department receives under Chevron,⁸⁹ and that the CAFC has recognized in cases like U.S. Steel Corp.⁹⁰ As the CAFC held in U.S. Steel Corp., courts "defer to Commerce's reasonable construction of its governing statute where Congress leaves a gap in the construction of the statute that the administrative agency is explicitly authorized to fill or implicitly delegates legislative authority, as evidenced by 'the agency's generally conferred authority and other

⁸⁵ See Union Steel v. United States, 713 F. 3d 1101, 1109 (Fed. Cir. 2013) (Union Steel)

⁸⁶ Id., 713 F.3d at 1106.

⁸⁷ See U.S. Steel Corp. v. United States, 621 F. 3d 1351, 1363 (Fed. Cir. 2010) (U.S. Steel Corp.).

⁸⁸ Id., 621 F.3d. at 1351 and 1363 (recognizing that the use of the A-to-T method with zeroing would combat "targeted or masked dumping").

⁸⁹ See Chevron, U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837 (1984).

⁹⁰ See U.S. Steel Corp., 621 F.3d at 1357.

statutory circumstances.”⁹¹ Such a “gap” exists with respect to the appropriate manner for the Department to account for masked dumping concerns in antidumping administrative reviews, as the CAFC recently recognized in JBF RAK.⁹² Moreover, when the Department exercises its technical expertise to select and apply methodologies to implement the statute—in this case the statute’s authorization to use the A-to-T method—courts afford the Department “tremendous deference” that is “both greater than and distinct from that accorded the agency in interpreting the statutes it administers.”⁹³

We also disagree specifically with the respondents’ contention that setting negative margins to zero should not be applied to NME cases. The court’s decision in Union Steel was not restricted to market economy reviews in which normal value was based on comparison market sale prices. Further, the court in Since Hardware (Guangzhou) v. United States specifically addressed this issue for purposes of NME cases, sustaining the Department’s determination in that case.⁹⁴ Therefore, consistent with the Department’s normal practice in reviews involving NME countries, we are applying the A-to-T method to respondents’ sales. Further, in doing so, we are continuing to deny offsets for non-dumped transactions as part of the A-to-T methodology.

Comment 8: Definition of Purchaser and Region in the Cohen’s *d* Test

The petitioner claims, with respect to Dongyuan, that the Department incorrectly defined the purchaser and region in its Cohen’s *d* test. Specifically, the petitioner contends that the Department should have used the consolidated, or common, customer codes to define purchaser. The petitioner also claims that the region of a U.S. sale must be based on the location information on Dongyuan’s U.S. invoices (*i.e.*, as reported in the destination field DESTU).

Similarly, the petitioner claims that the Department incorrectly defined Yingao’s purchaser in its Cohen’s *d* test. For the final results, the petitioner requests the Department to correct these above-mentioned errors.

Dongyuan argues with respect to one of its customers for which it reported four different delivery locations that the customer specifically asked Dongyuan to separately invoice each facility and location. Therefore, Dongyuan claims that the Department should not consolidate this customer information in its Cohen’s *d* test as requested by the petitioner because the customer is treated in Dongyuan’s records as four distinct entities.

With respect to the region information it reported in its U.S. sales listing, Dongyuan argues that the Department should use the port of importation as this information is the most accurate for purposes of conducting its Cohen’s *d* test.

⁹¹ Id. (citations omitted).

⁹² See JBF RAK LLC v. United States, 790 F.3d 1358 (Fed. Cir. 2015) at 1364 (holding that the Department’s application of A-to-T method in an administrative review “properly” filled the gap Congress left in the statute).

⁹³ See Fujitsu Gen. Ltd. v. United States, 88 F.3d 1034, 1039 (Fed. Cir. 1996) (Fujitsu); and PSC VSMPO-Avisma Corp. v. United States, 688 F.3d 751, 764 (Fed. Cir. 2012) (quoting Fujitsu).

⁹⁴ See Since Hardware (Guangzhou) v. United States, 37 F. Supp. 3d 1354, 1361-63 CIT (2014).

Department's Position:

While the Department does not disagree with the petitioner that information pertaining to the same customer should be consolidated for purposes of the Cohen's *d* test,⁹⁵ the Department notes that the NME antidumping duty questionnaire issued in this review did not require the respondents to report consolidated customer codes, and the Department did not request such consolidation in its supplemental questionnaires. For that reason, we are not able to make the requested modification to Dongyuan's or Yingao's data without following up on this matter with each respondent. Given the timing of the petitioner's request, the Department is not able to further examine this matter at this stage in the proceeding. However, we intend to examine this matter in greater detail in any future administrative reviews involving either respondent.

Regarding the typographical errors associated with the customer names of each respondent, we revised the final margin SAS program for both Dongyuan and Yingao to correct these errors. We eliminated leading blanks before customer names and differences created by upper- and lower-case letters.

Finally, upon further examination of the record, we agree with the petitioner that the Department should use the information in the destination field⁹⁶ (*i.e.*, DESTU) rather than the information in the importation field (*i.e.*, IMPORTU) in the Cohen's *d* test. The regional data reported in the destination field reflects the customer's location on Dongyuan's U.S. invoices, and as such, more appropriately identifies the region to which the merchandise is sold/shipped than the data reported in the importation field, which reflects the "U.S. port of importation." For details, *see* Dongyuan Final Analysis Memorandum and Yingao Final Analysis Memorandum.

Comment 9: Surrogate Financial Ratios

In the *Preliminary Results*, we derived surrogate financial ratios for factory overhead, selling, general and administrative expenses, and profit, by using data taken from the fiscal year 2013 financial statements of four Thai companies: Advance Stainless Steel Co., Ltd. (Advance), Diamond Brand Co., Ltd. (Diamond), Homeware Industry Co., Ltd. (Homeware), and Stainless Steel Home Equipment Manufacturing Co., Ltd. (SS Home).⁹⁷ We also stated that all four financial statements are from producers of comparable merchandise, cover the same period and a substantial portion of the POR, are complete, and do not indicate the existence of countervailable subsidies.

The respondents argue that the Department should not rely on Diamond's financial data in the final results because Diamond's products and production are allegedly dissimilar to their

⁹⁵ *See* Preliminary Decision Memorandum at 17 ("Purchasers are based on the reported consolidated customer codes.").

⁹⁶ *Id.* ("Regions are defined using the reported destination zip code and are grouped into regions based upon standard definitions published by the U.S. Census Bureau.").

⁹⁷ *See* Preliminary Decision Memorandum at 22-23.

experiences.⁹⁸ Specifically, the respondents claim that record evidence demonstrates that Diamond does not present itself as a major sinks manufacturer, the production of its sinks are not prevalent among its webpage materials, and sinks are only one of eleven main products it produces.⁹⁹ The respondents further claim that Diamond's other main products¹⁰⁰ are significantly different in terms of their uses, the materials required to make them, and how they are made. Additionally, the respondents claim that the Department should not use Diamond's financial data because its other business (*i.e.*, the development of waste water treatment tanks and grease traps) is not only unrelated to sinks requiring a completely different production process, but also incurs research and development and other costs that the respondents do not incur.¹⁰¹ Moreover, the respondents argue that Diamond appears to incur significant advertising expenses associated with these dissimilar products which makes this company's selling experience vastly different, and therefore, not comparable to the respondents' experience.

In reply to the petitioner's argument mentioned below, the respondents claim further that the Department's practice does not require it to consider a breakdown of a surrogate producer's production or income data for purposes of determining whether a surrogate producer is or is not any less representative than other producers.¹⁰²

The petitioner argues that the Department should only rely on the financial statements of Diamond and SS Home because these two companies' data are the best available information for purposes of deriving the surrogate financial ratios in this review. With respect to Homeware, the petitioner contends that this company does not produce subject merchandise and, therefore, the Department should not use its data in the final results. Specifically, the petitioner claims that record evidence indicates that Homeware produces only comparable merchandise such as stainless steel kitchenware and household products.¹⁰³ Because Homeware allegedly does not produce subject merchandise, the petitioner argues that that Homeware's production experience

⁹⁸ In support of their position that the Department considers whether the surrogate producers are representative of the industry, the respondents cite to Certain Activated Carbon from the People's Republic of China, 74 FR 57995 (November 10, 2009) (Activated Carbon), and accompanying Issues and Decision Memorandum at Comment 2b.

⁹⁹ See the Letter from Dongyuan, "Drawn Stainless Steel Sinks from the People's Republic of China – Final Surrogate Value Submission and Pre-Preliminary Comments" (March 31, 2015) (Respondents' Final SV Submission) at Exhibit SV-11.

¹⁰⁰ According to the respondents, these products include ovens, stovetops, high pressure ranges, dishwashing machines, meat grinders, meat slicers, mixers, and vacuum packers.

¹⁰¹ In support of their argument that the Department prefers to use financial data of surrogate producers which make identical merchandise, consume the identical raw material, and have identical or comparable production experiences as the respondents, the respondents cite to Fresh Garlic from the People's Republic of China: Final Results of the 2008-2009 Administrative Review of the Antidumping Duty Order, 76 FR 37321 (June 11, 2012), and accompanying Issues and Decision Memorandum at Comment 6.

¹⁰² In support of their argument, the respondents cite to Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Final Results of First Antidumping Duty Administrative Review, 76 FR 15297 (March 21, 2011), and accompanying Issues and Decision memorandum at 10; and Synthetic Indigo from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value, 65 FR 25706 (May 3, 2000), and accompanying Issues and Decision Memorandum at Comment 6.

¹⁰³ In support of its claim, the petitioner cites to Respondents' Final SV Submission at 3-4, and Memorandum to File from Reza Karamloo, International Trade Compliance Analyst, to the File, "Antidumping Duty Review of Drawn Stainless Steel Sinks from the People's Republic of China: Additional Information" (April 30, 2015) (Additional Information Memorandum) at Attachment 6.

is less representative of the respondents' experience and that the Department should rely instead on the data of surrogate producers of identical merchandise in this review.¹⁰⁴

Similarly, the petitioner claims that Advance overwhelmingly produces non-subject merchandise and that the Department should also not rely on its data in the final results because Advance's production experience is less representative of the respondents' experience as compared to SS Home and/or Diamond. The petitioner contends that in other cases where the level of detail exists to quantify the product mix, the Department has examined the product mix of the surrogate producer to determine whether that producer should or should not be considered a producer of subject merchandise.¹⁰⁵ In this case, the petitioner claims that there is record evidence which indicates that almost 75 percent of Advance's total sales revenue was related to non-sink products.¹⁰⁶

With respect to Diamond and SS Home, the petitioner states that although these two companies produce both subject and non-subject merchandise, there is no record evidence that the production experience of either company is vastly different from the respondents' production experience. Absent such evidence, the petitioner maintains that Department practice is to assume that the surrogate company is a producer of identical merchandise and its data are a reliable source for surrogate financial ratios.¹⁰⁷

Department's Position:

For the reasons explained below, we are using the 2013 financial data of Diamond, Advance, and SS Home to calculate surrogate financial ratios in these final results. We are not using Homeware's financial data for the purposes of these calculations because our re-examination of the information on this record indicates that Homeware is not a producer of identical merchandise.¹⁰⁸

The statute directs the Department to base the valuation of the factors of production (FOPs) on "the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate..."¹⁰⁹ In complying with the statute, it is the Department's preference to use data from market-economy surrogate companies in the primary

¹⁰⁴ In support of its argument that the Department should rely on the data of surrogate producers of identical merchandise before considering surrogate producers of comparable merchandise, the petitioner cites to Nails from the People's Republic of China: Final Results of Fourth Administrative Review, 79 FR 19316 (April 8, 2014) (PRC Nails AR 2012-2013), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁰⁵ In support of its argument, the petitioner cites to Certain Steel Nails from the People's Republic of China: Final Results of the Second Antidumping Duty Administrative Review, 77 FR 12556 (March 1, 2012) (PRC Nails AR 2009-2010), and accompanying Issues and Decision memorandum at Comment 2.

¹⁰⁶ The petitioner references Advance's financial statements contained in Dongyuan's submission.

¹⁰⁷ In support of its argument, the petitioner cites to Certain Steel Nails from the People's Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review, 79 FR 19316 (April 8, 2014) (PRC Nails AR 2012-2013), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁰⁸ See Additional Information Memorandum at Attachment 6; Respondents' Final SV Submission at 3-4, and Exhibit SV-12; and Letter from the Petitioner, "Drawn Stainless Steel Sinks From The People's Republic of China: Submission Of Surrogate Values" (January 5, 2015) at Exhibit 10.

¹⁰⁹ See section 773(c)(1) of the Act.

surrogate country and policy to base the selection on the “specificity, contemporaneity, and quality of the data.”¹¹⁰

Additionally, for purposes of selecting surrogate producers, the Department examines how similar a proposed surrogate producer’s production experience is to the NME producer’s production experience.¹¹¹ The Department, however, is not required to “duplicate the exact production experience of {an NME producer},”¹¹² nor must it undertake “an item-by-item analysis in calculating factor overhead.”¹¹³

In this segment of the proceeding, like in the LTFV investigation, we find that Diamond, Advance, and SS Home are producers of both identical and comparable merchandise based on product information obtained from their websites and placed on the record of this review.¹¹⁴ In other words, each of these companies produces merchandise that is identical to the subject merchandise but also produces merchandise that we consider to be comparable to the subject merchandise. These companies are in the kitchenware industry and, as such, produce other stainless-steel products in addition to sinks.

In PRC Nails AR 2012-2013, we found that the surrogate company was a producer of identical merchandise and a reliable source for the surrogate financial ratios despite the fact that the record in that case did not contain further detail regarding the company’s product mix.¹¹⁵ In this review, like in PRC Nails AR 2012-2013, we find that Advance is a producer of identical merchandise despite the fact that the record evidence is unclear with respect to how much identical merchandise Advance produces. For this reason, we do not have a sufficient basis to exclude Advance simply because it may produce more or less comparable merchandise.

Additionally, in PRC Nails 2009-2010, we refined our practice with regard to how we determine a company is a producer of identical or comparable merchandise. In that case, we stated that the Department will analyze a surrogate company’s production data for purposes of determining whether that company is a producer of identical merchandise, when such data are available on the record. Unlike in PRC Nails 2009-2010, we find that such data are not available in this review, as we are unable to discern from the sales income data in Advance’s financial statements how much of each product the company produces. Accordingly, absent this information, we do not find a sufficient basis to exclude Advance’s data from our analysis.

Moreover, we find that the respondents’ reliance on Activated Carbon as the basis for rejecting Diamond’s data to derive the surrogate financial ratios is without merit. In Activated Carbon, we

¹¹⁰ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China, 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

¹¹¹ See Certain Activated Carbon From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 61172 (October 9, 2015), and accompanying Issues and Decision Memorandum at Comment 2.

¹¹² See Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999).

¹¹³ See Magnesium Corp. of Am. vs. United States, 166 F.3d 1364, 1372 (Fed. Cir. 1999).

¹¹⁴ See Additional Information Memorandum at Attachment 6.

¹¹⁵ See PRC Nails AR 2012-2013 at Comment 2A.

stated that one of the Department's criteria for selecting a surrogate company's financial statements must be, among other things, that the company is representative of the industry.¹¹⁶ Even though it is clear from this record that sinks are only one of Diamond's eleven main products, we find that this fact is not sufficient to determine that Diamond is not representative of the sink industry in general, particularly given the fact that both respondents in this review also produce other products besides sinks.¹¹⁷ As we stated above, the real question is how much identical merchandise this producer makes, not how many dissimilar product lines the company maintains. Absent this information, we do not find a sufficient basis to exclude Diamond's data from our analysis.

Accordingly, for these final results, we are using the 2013 financial data of Diamond, Advance, and SS Home to calculate surrogate financial ratios.

Comment 10: Stainless Steel Surrogate Value

In the Preliminary Results, we valued stainless steel using Thai import data from GTA reported under eight HTS subheadings for the POR.¹¹⁸ This information was submitted by the respondents.¹¹⁹ For input valuation purposes, we did not include in the stainless steel surrogate value calculation import data from countries the Department had previously determined to be an NME country and imports from countries that the Department had reason to believe or suspect may be dumped or subsidized.¹²⁰ We also disregarded the import data from countries for which Thailand imposed AD duties on stainless steel products (*i.e.*, Japan and Taiwan).¹²¹

The petitioner claims that in the Preliminary Results the Department deviated from the stainless steel value selection method it used in the LFTV investigation by using the Thai import data

¹¹⁶ See Activated Carbon at Comment 2b.

¹¹⁷ See Dongyuan's December 11, 2014, Supplemental Questionnaire Response at 12; see also Yingao's December 22, 2015, Supplemental Response at 2.

¹¹⁸ These HTS subheadings are: 7219.33.00.032, 7219.33.00.033, 7219.33.00.034, 7219.33.00.090, 7219.34.00.032, 7219.34.00.033, 7219.34.00.034, and 7219.34.00.090. See Memorandum to the File from Ross Belliveau and Brandon Custard, International Trade Compliance Analysts, "Factor Valuation Memorandum for the Preliminary Results in the Antidumping Duty Administrative Review of Drawn Stainless Steel Sinks from the People's Republic of China," dated concurrently with this memorandum (Preliminary Factor Valuation Memorandum) at 3.

¹¹⁹ See Letter from Dongyuan, "Drawn Stainless Steel Sinks from the People's Republic of China: Surrogate Values for Preliminary Results" (January 5, 2015) at Exhibit SV-3.

¹²⁰ These countries include India, Indonesia, South Korea and Thailand. See China Nat'l Mach. Import & Export Corp., 293 F. Supp. 2d 1334, 1336 (CIT 2003); Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651 (March 15, 2005); Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China, 69 FR 75294, 75301 (December 16, 2004), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005); see also Citric Acid and Certain Citrate Salts From the People's Republic of China: Preliminary Results of the First Administrative Review of the Antidumping Duty Order; and Partial Rescission of Administrative Review, 76 FR 34048, 34051 (June 10, 2011), unchanged in Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order, 76 FR 77772 (December 14, 2011).

¹²¹ See Final Determination of Sales at Less Than Fair Value of Drawn Stainless Steel Sinks from the People's Republic of China, 78 FR 13019 (February 26, 2013), and accompanying Issues and Decision Memorandum in Comment 2 (Drawn Sinks LTFV Final).

from two HTS sub-headings which are not specific to the stainless steel grade the respondents use to produce the subject merchandise. According to the petitioner, of the eight HTS subheadings used by the Department to value stainless steel in the Preliminary Results, only two correspond specifically to the stainless steel (in terms of grade and surface finish) used by the respondents to produce the subject merchandise during the POR. For that reason, the petitioner argues that the Department should use only these two HTS numbers for stainless steel surrogate valuation purposes. However, if the Department decides to disregard the surface finish information for purposes of selecting these HTS subheadings to value stainless steel, the petitioner argues, then it should exclude the two non-specific HTS subheadings¹²² and instead use data from another HTS subheading¹²³ which should have been included in the Department's preliminary analysis.

The respondents did not comment on this issue.

Department's Position:

When the Department applies its surrogate value selection methodology in NME proceedings, it does so with the goal of selecting the most accurate single surrogate value for the input at issue based on the information submitted on the record.

After re-examining the descriptions of the HTS subheadings for stainless steel, we noted that two of the HTS subheadings are very product specific. In fact, these two HTS subheadings match the steel grade and surface finish of the stainless steel used by the respondents in this proceeding. According to past case and court precedent, product specificity should be the primary consideration by the Department in determining the "best available information." The two HTS subheadings we selected for the final results are much more specific than the others within the eight HTS subheadings used in the preliminary results.

For these reasons, in accordance with past practice and based on the facts of our record, we will use only the two HTS subheadings specific to the grade and surface finish of the stainless steel used by the respondents to produce the subject merchandise in valuing stainless steel for these final results.

Comment 11: Treatment of Labor Expenses in the Financial Ratios and Adjustment to Labor Surrogate Value

In the Preliminary Results, we treated certain labor costs (e.g., welfare, benefits, bonus, etc.) as SG&A labor expenses, rather than direct production labor expenses, for purposes of deriving the surrogate financial ratios in instances where these expense items are designated as selling and administrative expenses, rather than production expenses, in the surrogate producers' financial reports.

For purposes of valuing labor in the Preliminary Results, we used 2011 data from the 2012 Thai National Statistics Office (NSO) Report, an authorized government agency, using the product code more specific to the sink industry, "manufacturing of other fabricated metal products" (ISIC

¹²² These HTS subheadings are 7219.33.00.090 and 7219.34.00.090.

¹²³ This additional HTS subheading is 7219.33.00.036.

Rev.4 Code: 25999), rather than the general product code for the fabricated metal products industry (ISIC Rev. 4 Code: 2599).¹²⁴

Although the NSO labor data reflects all production and non-production costs related to labor, including wages, benefits, housing, and training, we included all of these costs in deriving the labor rate consistent with the Remand Redetermination in the PRC Sinks LTFV Investigation.¹²⁵

The respondents argue that because the Department is using NSO data to value labor costs and that data include all types of employment labor (including SG&A labor), the Department should similarly treat “all” labor expenses (including welfare, benefits, bonus, etc.) as production expenses, rather than SG&A expenses, in the surrogate producers’ financial reports in order to avoid double counting.

With respect to the NSO labor data, the respondents point out that the record evidence demonstrates that the NSO data include wages and employee benefits not only for production workers, but also for sales and administrative workers. The respondents also argue that, unlike the Remand Redetermination, the record evidence in this review indicates that the wages for non-factory workers (e.g., administrative, sales, etc) are higher than the wages for production and packing workers and, therefore, the Department should adjust the labor rate used to value the labor FOPs so as not to double count SG&A labor.

The respondents argue further that the Department did not explain its reasoning for treating labor from the surrogate producers’ financial data in the above-described manner, and although its treatment of labor expenses appears to be based on the Remand Redetermination,¹²⁶ this decision represents a departure from the published Labor Methodologies.¹²⁷ Specifically, the respondents argue that the Department has not adequately explained in this review how its application of the labor rate to the reported direct and indirect labor hours in the FOP listing and its inclusion of the SG&A labor costs in the SG&A numerator of the SG&A financial ratio calculation are not contrary to what it stated in Labor Methodologies.

The petitioner contends that all of the respondents’ arguments, including double counting NSO labor and SG&A labor, were addressed and rejected by the Department in the Remand Redetermination.¹²⁸ According to the petitioner, the Department should continue to reject these same arguments for purposes of these final results and continue to include SG&A labor in the SG&A financial ratio calculation.

¹²⁴ See Preliminary Surrogate Value Memorandum at Attachment 2a-b. We note that in the preliminary results, we used data from the more specific Thai NSO code 25999 (which is a sub-category of fabricated metal products grouped in ISIC Code 2599) and valued labor accordingly.

¹²⁵ See First Results of Redetermination Pursuant to Court Remand, Elkay Manufacturing Company v. United States, Court No. 13-00176; Slip Op. 14-150 (CIT 2014) (April 22, 2015) (Remand Redetermination).

¹²⁶ See Remand Redetermination at 21.

¹²⁷ See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092, 36094 (June 21, 2011) (Labor Methodologies).

¹²⁸ In support of its argument, the petitioner cites to the Remand Redetermination at 21-24.

Department's Position:

We agree with the petitioner and have continued to treat the labor costs at issue (e.g., welfare, benefits, bonus, etc.) as SG&A labor expenses, rather than direct production labor expenses, for purposes of deriving the surrogate financial ratios in instances where these expense items are designated as selling and administrative expenses, rather than production expenses, in the surrogate producers' financial reports.

The Department addressed the same arguments posed by the respondents in the Remand Redetermination. Specifically, with respect to the respondents' argument that the Department double counted the labor SV because indirect labor is captured in the financial ratio calculations, the CIT stated in its decision that the record lacked:

substantial evidence to support the Department's conclusion that the rate Commerce applied to the hours of production labor reported by the investigated respondents overstated the value of those labor hours to such an extent as to justify the specific, compensatory adjustments that Commerce made to the SG&A/interest expense ratios.¹²⁹

The facts are no different in this review.

Regarding the respondents' claim that the evidence on this record, in contrast with the Remand Redetermination, shows that the NSO labor rate is artificially higher than it should be because it also includes SG&A wages and employee benefits, we stated in the Remand Redetermination that:

{a}lthough the record supports the contention that salaries for sales clerks are higher than those for certain manufacturing workers, we cannot discern from the data on the record how much higher the NSO labor rate for the metal manufacturing industry is than it would have been without including sales clerks, nor what percentage of the NSO labor rate is made up of wages of sales clerks in order for us to make an appropriate adjustment to the NSO rate. Thus, we are not able to make an adjustment to the NSO labor rate, nor have we changed the source of the labor surrogate value.¹³⁰

The facts are no different in this review.

Finally, we previously rejected the respondents' claim that the Department's application of the NSO labor rate to the reported direct and indirect labor FOPs and its inclusion of SG&A labor costs in the SG&A numerator of the SG&A ration calculation contradicts Labor Methodologies. In the Remand Redetermination, we explained that we changed the preferred labor data source from ILO Chapter 5B to ILO Chapter 6A because Chapter 5B data reflect only direct compensation and bonuses. In changing the labor data source, we stated that the Department was:

¹²⁹ See Elkay Mfg. Co. v. United States, 34 F.Supp. 3d 1369 (CIT 2014).

¹³⁰ See Remand Redetermination at 24.

concerned with under-counting labor costs when indirect labor cost items (such as employee pension benefits and worker training) are not itemized in financial statements and not (by definition) reflected in Chapter 5B data¹³¹ ... {and} the concern with double counting indirect labor costs contemplated in Labor Methodologies are those indirect costs associated with manufacturing included in the Chapter 6A data (such as benefits, housing, training, etc.), not SG&A activities for any given company.¹³²

The same analysis applies in this review.

Furthermore, the Department stated in the Remand Redetermination that:

under our FOP methodology for calculating the normal value for subject merchandise, labor costs capture the labor expenses associated with manufacturing, not SG&A. Thus, the SG&A labor expenses which are part of a company's SG&A costs and listed in a surrogate financial statement, as in this investigation, must be included in the surrogate SG&A ratio calculation. Thus, regardless of which labor source we relied upon to derive the surrogate labor rate (the NSO, ILO Chapter 6A, or ILO Chapter 5B), the SG&A labor expenses listed in the surrogate financial statement must be accounted for and thus be included when calculating a surrogate financial ratio.¹³³

For these reasons, the manner in which the Department handled SG&A labor in the preliminary results of this review does not contradict Labor Methodologies.

Comment 12: Calculation of the Labor Surrogate Value

In the Preliminary Results, to calculate the hourly wage rate using the yearly wage data contained in Table 6 of the Thai NSO's 2012 Business Trade and Industrial Census, we used the standard figures stated in Labor Methodologies,¹³⁴ which define a work month as 24 days, a work week as 5.5 days, and a work day as eight hours.

The respondents argue that the Department should calculate the hourly wage rate from Table 5 of the NSO data rather than the standard figures in Labor Methodologies, because the NSO data is more specific to the sinks industry.

The petitioner argues that the Department should continue to use the figures in Labor Methodologies rather than Table 5 of the NSO data. The petitioner argues that the Department has a well-established practice of relying on the figures in Labor Methodologies. The petitioner also argues that the Department should not rely on Table 5 of the NSO data because that data are not all presented in terms of distinct units (e.g., 5, 6 hours, etc.), but rather in ranged units in

¹³¹ Id. at 22.

¹³² Id. at 22-23.

¹³³ Id. at 23.

¹³⁴ See Labor Methodologies.

some instances (e.g., less than 6 hours, 8-10 hours), which requires averaging within the ranged units. For this reason, the petitioner contends the Department should not depart from using the standard figures in Labor Methodologies.

Department's Position:

The guidance provided in Labor Methodologies states that where data (e.g., surrogate value source) are not available on a per-hour basis, the Department will convert the surrogate value data to an hourly basis using an 8-hour workday, 5.5 working days per week and 24 working days per month.¹³⁵

In the instant case, we find that Table 5 of the NSO data provides the detail needed to convert the NSO yearly wage data to an hourly wage rate. The Table 5 data matches the Table 6 data with regard to industry specificity (e.g., 2599 or 25999) and the two tables contain information reported by the same companies. However, while the respondents calculated an hourly wage rate based on the general fabricated metal products industry (i.e., 2599), we find it more appropriate to calculate the hourly rate using data at the more specific industry level (i.e., 25999), which excludes certain non-sink products.

Regarding the petitioner's argument that the Table 5 data are not all compiled or presented in terms of distinct units (e.g., 5, 6 hours, etc.), but rather in terms of ranged units (e.g., less than 6 hours, 8-10 hours), we do not find this reason sufficient for rejecting the NSO data as a basis for calculating the labor rate. Specifically, the data in Table 5 enable the Department to calculate a labor rate which reflects the sinks industry more closely than the standard figures in Labor Methodologies, and as such, the use of these data results in a more accurate labor rate calculation in this review.

Accordingly, we have adjusted the hourly wage rate calculation in the final results based on the number of working days per week and working hours per day for the segment of the fabricated metal products industry that excludes certain non-sink products (i.e., 25999) found in Table 5 of the Thai NSO's 2012 Business Trade and Industrial Census.

Comment 13: Truck Freight Surrogate Value

In the Preliminary Results, we valued truck freight expenses using data from the World Bank's Doing Business 2014: Thailand (Doing Business 2014). We derived a weight- and distance-based freight rate based on a 20-foot container weighing 10 metric tons (MT) travelling an average distance of 76.67 kilometers. The average distance calculation incorporated the following two distances: (1) the distance from the industrial park area in greater Bangkok to the Bangkok port (i.e., 43.33 kilometers); and (2) the distance from the industrial park area in greater Bangkok to Laem Chabang port (i.e., 110 kilometers). We did not inflate the freight rate because it is contemporaneous with the POR.¹³⁶

The respondents argue that the freight rate in Doing Business 2014 is based on transporting a container from Bangkok to the main commercial port. Moreover, the respondents maintain that the methodology and survey information contained in Trading Across Borders notes that only

¹³⁵ See Labor Methodologies, 76 FR at 36094 n.10.

¹³⁶ See Preliminary Factor Valuation Memorandum at 6-7.

one port is used as the basis for the freight rate in Doing Business 2014, and that port is Laem Chabang. The respondents further claim that information on the record indicates that Laem Chabang, rather than Bangkok, is “Thailand’s largest, most modern and busiest deep-sea shipping port.”¹³⁷ For this reason, the respondents claim that the most accurate truck freight rate must be derived using the distance to Laem Chabang port.¹³⁸

Alternatively, if the Department continues to use the distance from both ports in its distance calculation, the respondents argue that the Department should use the 133 kilometer distance (rather than the 110 kilometer distance) between Bangkok and Laem Chabang because the 110 kilometer distance is not the actual distance by road. Rather, the respondents’ claim that the actual trucking distance by road between the two points is 133 kilometers and that the Department has used that distance in other PRC cases.¹³⁹

The petitioner asserts that the Department used the correct distance from Bangkok to Laem Chabang (i.e., 110 kilometers) in its preliminary truck freight rate surrogate value calculation, consistent with its use of that distance in its surrogate freight calculations in prior PRC cases. Moreover, the petitioner points out that the Department has averaged the distances from Bangkok to the known major ports in Thailand in other PRC cases and under similar circumstances.¹⁴⁰ The petitioner also notes that the Department used the distances from two major ports in Thailand, rather than just the Bangkok port distance, because Doing Business does not specify to which major port it is referring and there are at least two major ports in Thailand.

Department’s Position:

We agree with the petitioner and continued to use the same data and methodology employed in the Preliminary Results to derive a freight distance and rate in the final results of this review. We note that Doing Business 2014 does not specify to which major port it is referring and that there are at least two major ports in Thailand (i.e., Bangkok and Laem Chabang) based on the record evidence in this case.¹⁴¹ While the accuracy of the distance from Bangkok’s industrial park area to the Bangkok port (i.e., 44.33 kilometers)¹⁴² is not raised by the parties in this case, the distance from Bangkok’s industrial park area to the Laem Chabang port is raised. In the Preliminary Results, we relied on the Laem Chabang port distance of 110 kilometers based on

¹³⁷ See Preliminary Factor Valuation Memorandum at Attachment 5 (which contains port information obtained from aboutthailand.com)

¹³⁸ See the Respondents’ Case Brief at 13-14.

¹³⁹ In support of their argument, the respondents cite to Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013), and accompanying Issues and Decision Memorandum at Comment 6-A.

¹⁴⁰ In support of its argument, the petitioner cites to Tapered Rolling Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Results of the New Shipper Review; 2012-2013, 80 FR 4244 (January 27, 2015), and accompanying Issues and Decision Memorandum at Comment 1; Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire from the People’s Republic of China, 79 FR 25572 (May 5, 2014), and accompanying Issues and Decision Memorandum at Comment 4; and Hand Trucks and Certain Parts Thereof From the People’s Republic of China: Final Results of the Antidumping Duty Administrative Review; 2011-2012, 79 FR 44008 (July 29, 2014), and accompanying Issues and Decision Memorandum at Comment 8.

¹⁴¹ See Preliminary Factor Valuation Memorandum at Attachment 5.

¹⁴² See the petitioner’s August 21, 2013, submission at Exhibit 6.

information the Department placed on the record from www.thailand.com which clearly establishes the distance from Bangkok's industrial park area.¹⁴³ Regarding the Laem Chabang port distance of 133 kilometers, the record evidence indicates that this distance is from Bangkok city center, and not from Bangkok's industrial park area, to Laem Chabang port. Therefore, for the final results, we continued to use an average distance of 76.67 kilometers (i.e., the average of the 44.33 and 110 kilometer distances) to convert the truck freight rate in Doing Business 2014 to a distance-based rate.

Comment 14: Inclusion of Letter of Credit Costs in the Brokerage and Handling Surrogate Value

The respondents argue that record evidence indicates that the surrogate brokerage and handling (B&H) fee obtained from Doing Business 2014 includes export letter of credit fees. If the Department continues to rely on Doing Business 2014 as the basis for valuing foreign B&H, then the respondents argue that the Department must remove the export letter of credit fees in accordance with its established practice.¹⁴⁴

The petitioner contends that there is no record evidence in this case which indicates that neither respondent incurs letter of credit costs. Therefore, the petitioner argues that there is no basis for the Department to exclude the letter of credit costs from the B&H surrogate value for purposes of calculating either respondent's antidumping duty margin.

Department's Position:

The Department agrees with the respondents that the cost of obtaining letters of credit should be excluded from the total B&H costs reported in Doing Business 2014. In this case, there is record evidence that such expenses are included in the B&H costs from Doing Business 2014 and there is no record evidence that the respondents incurred such expenses. Therefore, we have removed this expense from the B&H calculation in accordance with recent Department practice articulated in PRC Nails AR 2012-2013.¹⁴⁵

Comment 15: Weight Adjustment Made to the Brokerage and Handling and Truck Surrogate Values

In the Preliminary Results, we valued brokerage and handling expenses and trucking costs using data from Doing Business 2014 and a calculation methodology based on a 20-foot container weighing 10 MT to derive a U.S. dollar-per-kilogram value for each cost component.¹⁴⁶

The respondents argue that the Department should use the maximum cargo load of the container (i.e., 28,200 kilograms) which better reflects a weight figure that reflects shipping reality.¹⁴⁷ The

¹⁴³ See Preliminary Factor Valuation Memorandum at Attachment 5.

¹⁴⁴ In support of their argument, the respondents cite to Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review: 2012-2013, 80 FR 18816 (April 8, 2015) (PRC Nails AR 2012-2013), and accompanying Issues and Decision Memorandum at Comment 6. See the Respondents' Case Brief at 15-16.

¹⁴⁵ See PRC Nails AR 2012-2013 and accompanying Issues and Decision Memorandum at Comment 6.

¹⁴⁶ See Preliminary Factor Valuation Memorandum at 7.

¹⁴⁷ See the Respondents' Case Brief at 16-19.

respondents also argue that the Department has used the maximum cargo load of a container and the same information from Doing Business 2014 in other PRC cases to value brokerage and handling and trucking costs.¹⁴⁸ With respect to the Department's reliance on the 10,000 kilogram container weight in its surrogate brokerage and handling and trucking calculations, the respondents insist that there is no evidence that the price of transportation is dependent on the weight of the container or the 10,000 kilogram figure reflected in the World Bank report.

In support of their claim that the price of transportation is not dependent on the weight of the container, the respondents timely submitted rates from an international freight forwarder they claim demonstrate that the hypothetical container weight of 10,000 kilograms noted in Doing Business 2014 is not relevant to the costs provided in Doing Business 2014. Specifically, the respondents claim that their information confirms that that brokerage and handling fees are set per container, by a percentage of the cargo value, or by bill of lading rather than by the weight or volume in the container. The respondents also claim that the CIT has ruled that the Department cannot presume that the per-container World Bank costs are related to the weight of the product inside the container.¹⁴⁹ For all of these reasons, the respondents claim that the Department should use the maximum weight of a 20-foot container when using data from Doing Business 2014 to value brokerage and handling fees and truck freight expenses.

The petitioner claims that the Department considered and rejected respondents' argument (that cost is based on the container size rather than the weight of the container) in the LTFV segment of this proceeding, as well as in other PRC cases.¹⁵⁰ Specifically, in prior PRC cases, the petitioner points out, the Department has defended its use of and reliance on the 10,000 kilogram figure in Doing Business 2014 to derive a surrogate brokerage and handling expense by stating that this figure is the weight of the shipment in a 20-foot container for which the participants in the Doing Business survey reported brokerage and handling costs. Moreover, the petitioner notes that the Department also stated in prior cases that using the 10,000 kilogram figure and the fee information from Doing Business would maintain the relationship between costs and quantity from the Doing Business survey.¹⁵¹

¹⁴⁸ In support of their argument, the respondents cite to Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 23322 (April 28, 2014), and accompanying Issues and Decision Memorandum at Comment 7.

¹⁴⁹ In support of their argument, the respondents cite to Since Hardware (Guangzhou) Co. v. United States, 977F. Supp. 2d 1347 (CIT 2014) (Since Hardware).

¹⁵⁰ In support of its argument, the petitioner cites to Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination, 78 F 13019 (February 26, 2013), and accompanying Issues and Decision Memorandum at Comment 5; Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 26712 (May 9, 2014), and accompanying Issues and Decision Memorandum at Comment 4; and PRC Nails AR 2012-2013, and accompanying Issues and Decision Memorandum at Comment 5.

¹⁵¹ In support of its argument, the petitioner cites to Certain Steel Nails from the People's Republic of China: Final Results of the Third Antidumping Duty Administrative Review, 78 FR 16651 (March 18, 2013) (PRC Steel Nails AR 2010-2011), and accompanying Issues and Decision Memorandum at Comment 3R.

Department's Position:

For the reasons explained below, we agree with the petitioner and continue to value brokerage and handling using a 20-foot container weight of 10 MT from Doing Business 2014 in the final results.

The Department has established in prior NME cases in which Doing Business was used to value truck freight that the weight of the 20-foot container in that publication is 10 MT.¹⁵² The businesses surveyed in Doing Business, including freight forwarders, reported the cost of doing business in Bangkok per 10 MT of goods shipped.

We find that the weight (i.e., 10 MT) listed in the World Bank's Doing Business 2014 publication serves as the basis for the brokerage and handling expense data collected for the World Bank's study. The Department addressed this same issue in PRC Nails AR 2012-2013 and determined in that case that the explanatory note regarding the container weight in the Doing Business publication (i.e., "{t}he traded product travels in a dry cargo, 20-foot, full container load. It weighs 10 tons...") is the parameter used by the World Bank to collect the brokerage and handling expense data contained in that study.¹⁵³ This same information is also on the record of this case.¹⁵⁴

Regarding the international service provider rates which the respondents submitted in this review, we find this information is not relevant to the World Bank study as those rates have no relationship to the rate in the World Bank study. Additionally, unlike in Since Hardware, we have no reason in this review to question the 10,000 kilogram weight used as the basis for the fee in the World Bank study or to find that the weight and fee in the World Bank study are independent of one another such that the fee is not based on the 10,000 kilogram weight.

Therefore, we find it unnecessary to adjust the brokerage and handling surrogate value on any other weight basis, as suggested by the respondents.

Comment 16: Wooden Box Factor Calculation for Yingao

In the Preliminary Results, we valued Yingao's reported wooden box consumption using a surrogate value expressed in dollars per kilogram.

The petitioner claims that although Yingao reported its wooden box consumption in both pieces and kilograms, the Department applied the surrogate value for wooden box to Yingao's reported wooden box consumption expressed in pieces, when it should have instead applied the surrogate value to Yingao's reported wooden box consumption expressed in kilograms. For the final results, the petitioner requests the Department correct this clerical error.

Yingao did not comment on this issue.

¹⁵² See, e.g., PRC Steel Nails AR 2010-2011, and accompanying Issues and Decision Memorandum at Comment 3R.

¹⁵³ Id.

¹⁵⁴ See the petitioner's November 15, 2013, submission at Exhibit 5.

Department's Position:

We agree with the petitioner and corrected the above-mentioned clerical error in the final results of this review.¹⁵⁵

Comment 17: Packing Material Consumption Weights for Yingao

The petitioner claims that Yingao's reported packing material FOPs significantly understate the total weight of packing materials for the vast majority of Yingao's product control numbers. In support of its claim, the petitioner contends that it conducted an analysis of the respondent's data after the Department's verification findings were released and found that for numerous Yingao product control numbers, the sum of all of the reported packing materials¹⁵⁶ results in a packing material weight that is significantly less than the weighted-average per-unit packing weight reported in Yingao's U.S. sales listing.

The petitioner provides an average percentage difference for this unreported packing weight and argues that for the final results, the Department should account for the unreported packing material consumption by multiplying the sum of all packing material FOPs by this percentage difference. To value the unreported packing weight, the petitioner suggests using a surrogate value that is an average of the surrogate values for all packing materials reported by Yingao. The petitioner notes that the Department encountered this same situation in a prior PRC case and proposes it take the same action in this case.¹⁵⁷

Yingao states that the Department verified without discrepancy Yingao's reported consumption and reporting of its packing material factors both on a micro- and macro-level, and that the Department should accept its reported packing material factors. Specifically, Yingao points out that the Department selected two among many packing materials and conducted a thorough examination of the data used to report those factors on a control-number specific basis in its FOP listing. In addition, Yingao notes that the Department also performed an overall cost reconciliation at verification, whereby it tied the packing cost and usage data noted in Yingao's accounting records to the usage amounts reported in its FOP listing on a control-number-specific basis. Yingao argues that there is no basis for the petitioner to doubt the Department's testing method post-verification and claim that Yingao underreported its packing material factors.

Moreover, Yingao contends that the method used by the petitioner to derive the packed weight from Yingao's reported data is flawed. Specifically, Yingao argues that in deducting the net weight from the gross weight of the finished product, the resulting difference is theoretically the weight of the packing materials. However, Yingao contends that its reported net weights do not

¹⁵⁵ See Memorandum to the File, "Analysis of the Final Results Margin Calculation for Yingao," dated concurrently with this memorandum.

¹⁵⁶ The petitioner explains in its June 8, 2015, case brief that for each product control number it summed up the per-unit FOPs for all the reported packing materials (*i.e.*, figure 1) and compared that result to the average per-unit gross weight (*i.e.*, packed weight) of the finished product reported in the U.S. sales listing (*i.e.*, figure 2). See the Petitioner's Case Brief at Exhibit A.

¹⁵⁷ In support of its argument, the petitioner cites to Utility Scale Wind Towers From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value, 77 FR 75984 (December 26, 2012), and accompanying Issues and Decision Memorandum at Comment 4 (Wind Towers from Vietnam).

include sound deadening pads and paint,¹⁵⁸ and that those inputs should be included in the net weight to determine the actual packed weight. Therefore, the respondents argue that a comparison of the reported packed weights in its U.S. sales listing with the sum of the weights reported for its packing materials in its FOP listing does not present a discrepancy.

Furthermore, Yingao asserts that the petitioner's reliance on Wind Towers from Vietnam to suggest that the Department adjust the reported packing material weights in Yingao's FOP listing is misplaced, because in this case, unlike in Wind Towers from Vietnam, Yingao has accurately accounted for its packing materials.

Department's Position:

For the reasons mentioned below, we disagree with the petitioner and made no adjustment in the final results of this review to Yingao's packing materials allocation methodology or to the per-unit packing material FOPs reported in its FOP listing. Yingao is correct that the Department extensively examined at verification its allocation methodology for reporting its FOPs. We selected two packing materials (*i.e.*, cartons and pallets) for examination, and found no discrepancies with the reported information.¹⁵⁹ Yingao is also correct that the Department performed an overall cost reconciliation examination of its packing costs and examined how those costs and the corresponding usage amounts tied to the company's accounting records (including its material subledgers). In addition, the Department linked and reconciled the usage amounts in Yingao's material subledgers to the consumption amounts used as the basis for reporting its per-unit factor amounts in the FOP listing.¹⁶⁰

With respect to the petitioner's analysis, Yingao is correct that its reported net weights in the U.S. sales listing do not include the weight of the sound deadening pad and paint.¹⁶¹ Consideration of this information has an impact on the results of the petitioner's analysis, such that for a significant number of sink models, the difference between the packed weight reported in the U.S. sales listing and the sum of the packing material amounts in the FOP listing is not significant and/or the packed weight in the U.S. sales listing is less than the packed weight in the FOP listing.¹⁶² For these reasons, we find the petitioner's reliance on Wind Towers from the PRC to be without merit. Specifically, unlike in Wind Towers from the PRC, the data submitted by the respondent in this review explains the difference mentioned above.

¹⁵⁸ In support of its claim, Yingao refers to its December 22, 2014, submission at Exhibits S2-2 and S2-18.

¹⁵⁹ See "Verification of the Sales and Factors Response of Guangdong Yingao Kitchen Utensils Co., Ltd. and Foshan Magang Kitchen Utensils Co., Ltd. in the Antidumping Duty Administrative Review of Drawn Stainless Steel Sinks from the People's Republic of China" (April 30, 2015) (Yingao Verification Report) at 38-39.

¹⁶⁰ See Yingao Verification Report at 28-29, 31-32, and 38-39.

¹⁶¹ See Yingao's December 22, 2014, Supplemental Questionnaire Response at Exhibit S2-2. This exhibit indicates that Yingao applies the paint and sound deadening pad to the sink right before the packing stage. In weighing select sink models at verification, we weighed the semi-finished sink (without pad and paint) and the finished sink (sink with pad and paint but without packing materials). The net weights reported for these selected models more closely approximate the semi-finished weights as opposed to the finished weights taken at verification. See Yingao Verification Report at VE-12.

¹⁶² For further information see Yingao Final Analysis Memorandum.

Comment 18: Dongyuan's Reported Gross Weights

In the Preliminary Results, we accepted Dongyuan's method for reporting the per-unit gross weights of the sink models included in its U.S. sales listing. Specifically, Dongyuan claimed that it did not maintain records of gross weight of its sink models, but did weigh each model to report the per-unit net weight. Dongyuan derived a per-unit gross weight amount for each sink by multiplying the net weight for each sink by a standard percentage. Dongyuan derived this standard percentage by taking the difference between the gross and net weight of specific sink models in a sample packing list.¹⁶³ We used Dongyuan's gross weight data to derive the surrogate costs for foreign inland freight, brokerage and handling fees, and international freight, and deducted these expenses from Dongyuan's reported gross unit prices to derive Dongyuan's net U.S. price for each sales transaction and to calculate its preliminary margin.

The petitioner argues that Dongyuan significantly underreported the gross weights of its sink models in the U.S. sales listing. The petitioner contends that the Department should adjust Dongyuan's reported per-unit gross weight amounts in its U.S. sales listing by multiplying them by the average percentage weight difference.¹⁶⁴

Dongyuan states that it used the same methodology for reporting its per-unit gross weight amounts in this review as it did in the LTFV segment of this proceeding, and the Department found no issue with its reporting method. Furthermore, Yingao claims that the petitioner's proposed adjustment method is flawed as it does not account for the yield loss of these inputs.

Department's Position:

For the reasons explained below, we disagree with the petitioner that there is sufficient basis to make the requested adjustment to Dongyuan's reported gross weights.

As an initial matter, Dongyuan stated in its questionnaire response that it was unable to report per-unit gross weights for each of its sink models because its packing lists only include the total gross weight of all products included in the packing list (as opposed to an itemization of each product's per-unit gross weight).¹⁶⁵ The petitioner provided comments in response to Dongyuan's statement on this matter in its questionnaire response, and the Department followed up with Dongyuan on this matter during the questionnaire response analysis stage of this review. As a result, given Dongyuan's claim that it does not maintain documentation which records the per-unit gross weights for each of its sink models, the Department requested in a supplemental questionnaire that Dongyuan provide documentation to support its claim and to devise a method for reporting the gross weights of its sink models.¹⁶⁶ Dongyuan explained in its supplemental questionnaire response that it used the aggregate gross weight information from a packing list containing a random sample of products as the basis for deriving a ratio which it applied to each

¹⁶³ See Dongyuan's December 11, 2014, supplemental questionnaire response at 5-6.

¹⁶⁴ The average percentage weight difference is the difference between the average gross weight amount reported on a control number-specific basis and the sum of the direct and packing material FOPs reported in the FOP listing for that same control number.

¹⁶⁵ See Dongyuan's October 15, 2014, Questionnaire Response at C15.

¹⁶⁶ See Department's Supplemental Questionnaire to Dongyuan, dated November 26, 2014.

reported net weight for purposes of reporting a packed weight for each sink model.¹⁶⁷ As Dongyuan explained in its rebuttal brief, it used the same method of reporting per-unit gross weights in this review that it did in the LTFV segment of this proceeding. The Department accepted and verified this method of reporting in the LTFV segment. Moreover, Dongyuan's description of its methodology in this review is consistent with that in the LTFV segment. Finally, we agree with Dongyuan that that one cannot simply add up the weights in the FOP listing and compare them to their reported gross weight, without also accounting for the yield loss of the inputs.

For these reasons, we do not find a sufficient basis in this review to adjust Dongyuan's reported gross weight as suggested by the petitioner.

Comment 19: Separate Rate Eligibility for Feidong

In the Preliminary Results, we denied Feidong separate rate status because the company failed to submit a timely response to the Department's separate rate supplemental questionnaire (SR Supplemental)¹⁶⁸ or request an extension by the established deadline. It is important to note that more than two months after the established deadline, Feidong did request an extension to submit its response to the Department's SR Supplemental. Feidong's untimely request, however, was denied because we determined that: (1) there were no extraordinary circumstances that prevented the company from filing a timely response or extension request as required by 19 CFR 351.302(c); and (2) pursuant to 19 CFR 351.302(b), good cause for granting a retroactive extension did not exist.¹⁶⁹ Similarly, we denied Feidong's second request for a retroactive extension,¹⁷⁰ and rejected, as untimely, the accompanying unsolicited response to the Department's SR supplemental.¹⁷¹

Feidong again requests that the Department reconsider its preliminary decision finding the company ineligible for separate rate status and a part of the PRC-wide entity.¹⁷² Feidong argues that the company did not receive notification from the Department regarding the SR Supplemental. According to Feidong, the Department's notification email did not reach the company's designated email address as a result of systematic problems and technical bugs.¹⁷³

¹⁶⁷ See Dongyuan's December 11, 2014, Supplemental Questionnaire Response at 5-6.

¹⁶⁸ See Letter from the Department to Feidong, "Antidumping Duty Administrative Review of Drawn Stainless Steel Sinks from the People's Republic of China" (September 22, 2014).

¹⁶⁹ See Letter from the Department to Feidong, "Antidumping Duty Administrative Review of Drawn Stainless Steel Sinks from the People's Republic of China: Retroactive Extension Request for Supplemental Questionnaire" (December 11, 2014) (Response to Feidong's Request).

¹⁷⁰ See Letter from Feidong, "Response to Separate Rate Certification Supplementary Questionnaire, Administrative Review, Drawn Stainless Steel Sinks from People's Republic of China, A-570-983" (December 15, 2014).

¹⁷¹ See Letter from the Department to Feidong, "Antidumping Duty Administrative Review of Drawn Stainless Steel Sinks from the People's Republic of China: Second Retroactive Extension Request for Supplemental Questionnaire" (December 19, 2014); see also, Memorandum to the File from Brian Smith, Senior International Trade Compliance Analyst, "Rejection of 'Response to Separate Rate Certification Supplementary Questionnaire, Administrative Review, Drawn Stainless Steel Sinks from the People's Republic of China, A-570-983, Submitted by Ray Yin & Partners P.R.C. Lawyers, on behalf of Feidong Import & Export Co., Ltd. (Feidong)'" (December 19, 2014).

¹⁷² See Letter from Feidong, "Administrative Review, Drawn Stainless Steel Sinks from People's Republic of China, A-570-983" (May 25, 2015).

¹⁷³ Id. at Attachment 1, which contains a letter from Feidong's email service provider with respect to this claim.

Feidong further contends that it was under no obligation to monitor Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). For that reason, Feidong argues, it was reasonable for the company to rely on email notifications from ACCESS to be made aware of new filings such as the Department's SR Supplemental. Finally, Feidong asserts that the company had no reason to refuse to respond to the Department's SR Supplemental. According to Feidong, the company made every effort to fully cooperate with the Department in both the original investigation and this review. In fact, Feidong argues that all of the information requested by the Department in its SR Supplemental, other than the company's financial statements, is on the record of the original investigation.

Conversely, the petitioner argues that the Department should continue to find Feidong to be part of the PRC-wide entity in these final results. According to the petitioner, as a result of Feidong's failure to provide a timely response to the Department's request for information, the company failed to cooperate to the best of its ability and failed to rebut the Department's presumption of government control.

Department's Position:

We continue to find that Feidong is ineligible for separate rate status and, therefore, a part of the PRC-wide entity. As explained above, Feidong failed to submit a response to the Department's SR Supplemental or to request an extension by the established deadline.¹⁷⁴

Despite Feidong's repeated arguments, we continue to find that the company failed to establish its eligibility for a separate rate because it failed to submit a timely response to the Department's SR Supplemental or request an extension by the established deadline. We also find the post-hoc justification (i.e., the alleged technical problems, and letter from its email service provider) submitted by Feidong in its case brief is without merit. According to our records, Feidong received an automated email notification on September 22, 2014, from ACCESS regarding the SR Supplemental. Moreover, we confirmed with ACCESS staff that this email notification was delivered to the email address provided by Feidong. Our records further indicate that Feidong received automated email notifications from ACCESS regarding subsequent documents placed on the record of this administrative review.¹⁷⁵ As such, we can only conclude that Feidong elected not to access these documents at the time it received the automated notification from ACCESS, and that Feidong's arguments in its case brief are nothing more than post-hoc justification for the company's failure to submit a timely response to the Department's SR Supplemental or request an extension by the established deadline.

As we stated in the Preliminary Results, the CIT has long recognized the need to establish and enforce time limits for filing questionnaire responses, the purpose of which is to aid the Department in the administration of the AD laws.¹⁷⁶ Accordingly, we determine that Feidong is properly denied separate rate status and considered to be a part of the PRC-wide entity.

¹⁷⁴ See Preliminary Decision Memorandum at 11-12.

¹⁷⁵ See Response to Feidong's Request, at Attachment 2.

¹⁷⁶ See, e.g., Nippon Steel Corp. v. United States, 118 F. Supp. 2d 1366, 136-77 (CIT 2000); and Seattle Marine Fishing Supply, et al. v. United States, 679 F. Supp. 1119, 1128 (CIT 1998) (it was not unreasonable for the

VI. RECOMMENDATION

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

AGREE _____

DISAGREE _____



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

3 NOVEMBER 2015
Date