U.S. Customs and Border Protection

AMENDED NOTICE OF IMPLEMENTATION OF ADDITIONAL DUTIES ON PRODUCTS OF THE PEOPLE'S REPUBLIC OF CHINA PURSUANT TO THE PRESIDENT'S FEBRUARY 1, 2025 EXECUTIVE ORDER IMPOSING DUTIES TO ADDRESS THE SYNTHETIC OPIOID SUPPLY CHAIN IN THE PEOPLE'S REPUBLIC OF CHINA

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Amended notice.

SUMMARY: In order to effectuate the President's February 1, 2025 Executive order "Imposing Duties to Address the Synthetic Opioid Supply Chain in the People's Republic of China," as amended by the President's February 5, 2025 Executive order "Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People's Republic of China," which imposed specified rates of duty on imports of articles that are products of the People's Republic of China (PRC or China), the Secretary of Homeland Security is amending its February 5, 2025 notice in the **Federal Register**, "Implementation of Additional Duties on Products of the People's Republic of China Pursuant to the President's February 1, 2025 Executive Order Imposing Duties to Address the Synthetic Opioid Supply Chain in the People's Republic of China," to reflect that appropriate action was needed to modify the Harmonized Tariff Schedule of the United States (HTSUS) as set out in the Annex to this notice as well as changes to treatment of goods under what is commonly known as the *de minimis* exemption.

DATES: The duties set out in the Annex to this document are effective with respect to products of the PRC that are entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on February 5, 2025.

FOR FURTHER INFORMATION CONTACT: Brandon Lord, Executive Director, Trade Policy and Programs, Office of Trade, U.S. Customs and Border Protection, (202) 325–6432 or by email at *traderemedy@cbp.dhs.gov.* Susan Thomas, Executive Director, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs and Border Protection, (202) 344–3401 or by email at *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: On January 20, 2025, the President declared a national emergency with respect to the grave threat to the United States posed by the influx of illegal aliens and drugs into the United States in Proclamation 10886 (Declaring a National Emergency at the Southern Border) (90 FR 8327 (January 29, 2025)). *See* National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA).

On February 1, 2025, the President expanded the scope of the national emergency declared in that proclamation to cover the failure of the People's Republic of China (PRC or China) government to arrest, seize, detain, or otherwise intercept, chemical precursor suppliers, money launderers, other transnational criminal organizations, criminals at large, and drugs. In addition, the President determined that this failure to act on the part of the PRC constitutes an unusual and extraordinary threat, which has its source in substantial part outside the United States, to the national security, foreign policy, and economy of the United States. To address this threat, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the NEA, section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), and 3 U.S.C. 301, the President imposed ad valorem tariffs on all imports that are products of the PRC, excluding those encompassed by 50 U.S.C. 1702(b). Specifically, the February 1, 2025 Executive order (E.O. 14195) (90 FR 9121 (February 7, 2025)) adjusted duties on imported products of the PRC, by imposing, consistent with law, an additional 10 percent ad valorem rate of duty as described in the Annex to this notice.

On February 5, 2025, the Secretary of Homeland Security issued a notice in the **Federal Register** (90 FR 9038), "Implementation of Additional Duties on Products of the People's Republic of China Pursuant to the President's February 1, 2025 Executive Order Imposing Duties to Address the Synthetic Opioid Supply Chain in the People's Republic of China" (hereinafter referred to as the "China Duties Notice"), to reflect the appropriate action was needed to modify the Harmonized Tariff Schedule of the United States (HTSUS) as set out in the Annex to this notice. Subsequently, on February 5, 2025, the President amended subsection (g) of section 2 of the February 1, 2025 Executive order, to modify the application of 19 U.S.C. 1321 to goods covered by subsection (a) of section 2 of the President's February 1, 2025 Executive order. *See* "Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People's Republic of China" (February 5, 2025) (E.O. 14200). Specifically, as amended, subsection (g) of section 2 of the February 1, 2025 Executive order provides that duty-free *de minimis* treatment under 19 U.S.C. 1321 is available for otherwise eligible covered articles described in the Executive order, but shall cease to be available for such articles upon

notification by the Secretary of Commerce, in consultation with the Secretary of the Treasury, to the President that adequate systems are in place to fully and expediently process and collect tariff revenue applicable pursuant to subsection (a) of section 2 of the Executive order for covered articles otherwise eligible for *de minimis* treatment.

To effectuate the changes made by the February 5, 2025 Executive order, DHS is republishing its China Duties Notice in its entirety with changes to reflect both Executive orders.

The February 1, 2025 Executive order directed the Secretary of Homeland Security, to determine and implement the necessary modifications to the Harmonized Tariff Schedule of the United States (HTSUS), consistent with law, to effectuate the Executive order.

In order to implement the rates of duty imposed by the Executive order, effective on 12:01 a.m. eastern standard time on February 4, 2025, subchapter III of chapter 99 of the HTSUS is modified by the Annex to this notice.

Articles that are the products of China, which hereinafter will include products of Hong Kong in accordance with Executive Order 13936 on Hong Kong Normalization (*see* 85 FR 43413 (July 17, 2020)), excluding those encompassed by 50 U.S.C. 1702(b), that are entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on February 4, 2025, will be subject to the additional ad valorem rate of duty provided for in new HTSUS heading 9903.01.20, except that goods entered for consumption, or withdrawn from warehouse for consumption, after 12:01 a.m. eastern standard time on February 4, 2025, that were loaded onto a vessel at the port of loading, or in transit on the final mode of transport prior to entry into the United States, before 12:01 a.m. eastern time on February 1, 2025, shall not be subject to such additional duty only if the importer certifies to CBP that the goods so qualify by declaring new HTSUS heading 9903.01.23 as described in the Annex to this notice. The exception for goods that were in transit before February 1, 2025, is time limited, to prevent importers from abusing this provision when it is no longer realistic due to the passage of time, as provided in new HTSUS heading 9903.01.23 that is described the Annex to this notice, and will only apply to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on February 4, 2025, and before 12:01 a.m. eastern standard time on March 7, 2025.

Imported products of China that are encompassed by 50 U.S.C. 1702(b) will not be subject to the additional ad valorem duty provided for in new HTSUS heading 9903.01.20, but such qualifying products, other than products for personal use included in accompanied baggage of persons arriving in the United States, must be declared and

entered under new HTSUS heading 9903.01.21 or new HTSUS heading 9903.01.22. Specifically, new HTSUS heading 9903.01.21 covers products encompassed by 50 U.S.C. 1702(b)(2) and new HTSUS heading 9903.01.22 covers products encompassed by 50 U.S.C. 1702(b)(3).[1]

The additional ad valorem duty provided for in new HTSUS heading 9903.01.20 applies in addition to all other applicable duties, taxes, fees, exactions, and charges.

Further, pursuant to the February 5, 2025 Executive order, the administrative exemption from duty and certain taxes at 19 U.S.C. 1321(a)(2)(C)—known as the *de minimis* exemption—continues to be available for articles covered by heading 9903.01.20 that are otherwise eligible for the exemption, including for eligible articles sent to the United States through the international postal network, but shall cease to be available for such articles upon notification by the Secretary of Commerce, in consultation with the Secretary of the Treasury, to the President that adequate systems are in place to fully and expediently process and collect tariff revenue applicable to articles covered by heading 9903.01.20 otherwise eligible for the *de minimis* exemption. Accordingly, articles that are the product of China, including products of Hong Kong, that are eligible for the *de minimis* exemption and are covered by heading 9903.01.20 may continue to request *de minimis* entry and clearance until such time as the Secretary of Commerce, in consultation with the Secretary of the Treasury, so notifies the President and further guidance is provided.

As of February 10, 2025, there will be no retroactive application of these changes for any shipments that would have otherwise qualified for de minimis treatment based on the February 5, 2025 Executive order "Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People's Republic of China."

Products of China that are eligible for temporary duty exemptions or reductions under subchapter II to chapter 99 shall be subject to the additional ad valorem rate of duty imposed by heading 9903.01.20.

The additional duties imposed by heading 9903.01.20 shall not apply to goods for which entry is properly claimed under a provision of chapter 98 of the tariff schedule pursuant to applicable regulations of U.S. Customs and Border Protection ("CBP"), and whenever CBP agrees that entry under such a provision is appropriate, except for

[1] 50 U.S.C. 1702(b)(1) covers "postal, telegraphic, telephonic, or other personal communication[s], which do [ ] not involve a transfer of anything of value," and hence does not encompass any imported articles of merchandise. 50 U.S.C. 1702(b)(4) covers "transactions ordinarily incident to travel to or from any country, including [1] importation of accompanied baggage for personal use, [2] maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and [3] arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages," only the first of which encompasses imported articles of merchandise.

goods entered under heading 9802.00.80; and subheadings 9802.00.40, 9802.00.50, and 9802.00.60. For subheadings 9802.00.40, 9802.00.50, and 9802.00.60, the additional duties apply to the value of repairs, alterations, or processing performed (in the PRC), as described in the applicable subheading. For heading 9802.00.80, the additional duties apply to the value of the article assembled abroad (in the PRC), less the cost or value of such products of the United States, as described.

Articles that are products of the PRC, excluding those encompassed by 50 U.S.C. 1702(b), except those that are eligible for admission to a foreign trade zone under "domestic status" as defined in 19 CFR 146.43, and are admitted into a United States foreign trade zone on or after 12:01 a.m. eastern standard time on February 4, 2025, must be admitted as "privileged foreign status" as defined in 19 CFR 146.41. Such articles will be subject, upon entry for consumption, to the duties imposed by the Executive order and the rates of duty related to the classification under the applicable HTSUS subheading in effect at the time of admission into the United States foreign trade zone.

No drawback shall be available with respect to the additional duties imposed pursuant to the Executive order.

KRISTI NOEM,
Secretary.

Annex

To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on February 5, 2025, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. by inserting the following new heading 9903.01.20 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special" and "Rates of Duty 2", respectively:

Heading/ subheading	Article description	Rates of duty		
		1		2
		General	Special	
"9903.01.20	Except for products described in headings 9903.01.21, 9903.01.22, or 9903.01.23 articles the product of China and Hong Kong, as provided for in U.S. note 2(s) to this subchapter.	The duty provided in the applicable subheading +10%.	The duty provided in the applicable subheading +10%.	No change".

2. by inserting the following new heading 9903.01.21 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special" and "Rates of Duty 2", respectively:

Heading/ subheading	Article description	Rates of duty		
		1		2
		General	Special	
"9903.01.21	Articles the product of China and Hong Kong that are donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, as provided for in U.S. note 2(t) to this subchapter.	The duty provided in the applicable subheading.	The duty provided in the applicable subheading.	No change".

3. by inserting the following new heading 9903.01.22 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special" and "Rates of Duty 2", respectively:

Heading/ subheading	Article description	Rates of duty		
		1		2
		General	Special	
"9903.01.22	Articles the product of China and Hong Kong that are informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.	The duty provided in the applicable subheading.	The duty provided in the applicable subheading.	No change".

4. by inserting the following new heading 9903.01.23 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special" and "Rates of Duty 2", respectively:

Heading/ subheading	Article description	Rates of duty		
		1		2
		General	Special	
"9903.01.23	Except for products described in headings 9903.01.21 and 9903.01.22, and other than products for personal use included in accompanied baggage of persons arriving in the United States, articles the product of China and Hong Kong that: (1) were loaded onto a vessel at the port of loading, or in transit on the final mode of transport prior to entry into the United States, before 12:01 a.m. eastern standard time on February 1, 2025; and (2) are entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on February 4, 2025, and before 12:01 a.m. eastern standard time on March 7, 2025.	The duty provided in the applicable subheading.	The duty provided in the applicable subheading.	No change".

5. by inserting the following new U.S. note 2(s) to subchapter III of chapter 99 of the HTSUS in numerical sequence:

"2. (s) For the purposes of heading 9903.01.20, products of China and Hong Kong, other than products described in heading 9903.01.21, heading 9903.01.22, heading 9903.01.23, and other than products for personal use included in accompanied baggage of persons arriving in the United States, shall be subject to an additional 10% *ad valorem* rate of duty. Notwithstanding U.S. note 1 to this subchapter, all products of China and Hong Kong that are subject to the additional *ad valorem* rate of duty imposed by heading 9903.01.20 shall also be subject to the general rates of duty imposed on

products of China and Hong Kong entered under subheadings in chapters 1 to 97 of the tariff schedule. Products of China and Hong Kong that are eligible for temporary duty exemptions or reductions under subchapter II to chapter 99 shall be subject to the additional *ad valorem* rate of duty imposed by heading 9903.01.20.

The additional duties imposed by heading 9903.01.20 shall not apply to goods for which entry is properly claimed under a provision of chapter 98 of the tariff schedule pursuant to applicable regulations of U.S. Customs and Border Protection ("CBP"), and whenever CBP agrees that entry under such a provision is appropriate, except for goods entered under heading 9802.00.80; and subheadings 9802.00.40, 9802.00.50, and 9802.00.60. For subheadings 9802.00.40, 9802.00.50, and 9802.00.60, the additional duties apply to the value of repairs, alterations, or processing performed (in China and Hong Kong), as described in the applicable subheading. For heading 9802.00.80, the additional duties apply to the value of the article assembled abroad (in China and Hong Kong), less the cost or value of such products of the United States, as described.

Products of China and Hong Kong that are provided for in heading 9903.01.20 shall continue to be subject to antidumping, countervailing, or other duties, taxes, fees, exactions and charges that apply to such products, as well as to the additional *ad valorem* rate of duty imposed by heading 9903.01.20.

Products of China and Hong Kong that are provided for in heading 9903.01.20 and that are otherwise eligible for the administrative exemption from duty and certain taxes at 19 U.S.C. 1321(a)(2)(C)—known as "*de minimis*" exemption—may continue to qualify for the exemption, but the *de minimis* exemption shall cease to be available for such articles upon notification by the Secretary of Commerce, in consultation with the Secretary of the Treasury, to the President that adequate systems are in place to fully and expediently process and collect tariff revenue applicable for covered articles otherwise eligible for the *de minimis* exemption.

(t) Heading 9903.01.21 covers only products of China and Hong Kong, that are donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 1701 of title 19 of the U.S. Code, (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances."

U.S. Court of Appeals for the Federal Circuit

PIRELLI TYRE CO., LTD., PIRELLI TYRE S.p.A., PIRELLI TIRE LLC, Plaintiffs-Appellants SHANDONG NEW CONTINENT TIRE CO., LTD., Plaintiff v. UNITED STATES, UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC, Defendants-Appellees

Appeal No. 2023–2266

Appeal from the United States Court of International Trade in No. 1:20-cv-00115-JCG, Judge Jennifer Choe-Groves.

Decided: February 11, 2025

DANIEL L. PORTER, Curtis, Mallet-Prevost, Colt & Mosle LLP, Washington, DC, argued for plaintiffs-appellants. Also represented by JAMES P. DURLING; ANA MARIA AMADOR GIL, New York, NY.

SOSUN BAE, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, argued for defendant-appellee United States. Also represented by BRIAN M. BOYNTON, PATRICIA M. MCCARTHY; AYAT MUJAIS, Office of the Chief Counsel for Trade Enforcement and Compliance, United States Department of Commerce, Washington, DC.

NICHOLAS J. BIRCH, Schagrin Associates, Washington, DC, argued for defendant-appellee United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC. Also represented by CHRISTOPHER CLOUTIER, ELIZABETH DRAKE, WILLIAM ALFRED FENNELL, JEFFREY DAVID GERRISH, LUKE A. MEISNER, ROGER BRIAN SCHAGRIN.

Before PROST, TARANTO, and CHEN, *Circuit Judges*.

TARANTO, *Circuit Judge.*

Based on the United States Department of Commerce's 2015 antidumping-duty order covering certain passenger-vehicle and light-truck tires from the People's Republic of China (PRC), Commerce conducted an administrative review under section 751 of the Tariff Act of 1930, 19 U.S.C. § 1675, of merchandise that was covered by the 2015 order and entered into the United States between August 1, 2017, and July 31, 2018 (the 2017–2018 administrative review). In that review, Commerce followed its practice, approved by this court since *Sigma Corp. v. United States*, 117 F.3d 1401, 1405–07 (Fed. Cir. 1997), of applying a rebuttable presumption that all exporters within the "non-market economy" of the PRC are subject to the PRC government's control and hence assigning such an exporter a PRC-wide

antidumping-duty rate unless the exporter demonstrates independence from government control sufficient to entitle it to a separate rate. *See* 19 U.S.C. § 1677(18). Pirelli Tyre Co., Ltd. (Pirelli China), a foreign producer and exporter of certain tires covered by the 2015 order, sought to establish such independence, but Commerce determined that it had not done so. The United States Court of International Trade (Trade Court) upheld Commerce's determination as in accordance with the law and supported by substantial evidence. We now affirm.

I

In 2015, Commerce issued an antidumping-duty order for certain passenger-vehicle and light-truck tires from the PRC. *Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 Fed. Reg. 47902 (Aug. 10, 2015). Upon request from Pirelli China and its affiliated U.S. importer, Pirelli Tire LLC (Pirelli USA), Commerce initiated the 2017–2018 administrative review to determine rates for the identified period. *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 Fed. Reg. 50077 (Oct. 4, 2018) (*Initiation Notice*). We do not repeat the recitation of the procedural history set forth by the Trade Court in upholding the ultimate results of the review (as relevant here). *Pirelli Tyre Co., v. United States*, 627 F. Supp. 3d 1322, 1326–28 (Ct. Int'l Trade 2023) (*First Opinion*), superseded by *Pirelli Tyre Co., v. United States*, 638 F. Supp. 3d 1361, 1364–67 (Ct. Int'l Trade 2023) (*Amended Opinion*).

Commerce may assign a "single dumping margin applicable to all exporters and producers" within the PRC because, as is accepted here, the PRC is a "nonmarket economy" (NME) country. 19 C.F.R. § 351.107(d); *see* 19 U.S.C. §§ 1677(18)(A) (defining an NME country as one whose economy that does "not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise"), 1673d(c)(1)(B)(i); *China Manufacturers Alliance, LLC v. United States*, 1 F.4th 1028, 1036–37 (Fed. Cir. 2021); *Michaels Stores, Inc. v. United States*, 766 F.3d 1388, 1390 (Fed. Cir. 2014); *Sigma*, 117 F.3d at 1405–06. In the current proceeding, Commerce followed its longstanding, judicially approved practice of presuming "that all companies within the [PRC] are subject to government control and, thus, should be assigned a single antidumping duty deposit rate," and requiring Pirelli China, in order to justify a separate rate for itself, to "demonstrate the absence

of both *de jure* and *de facto* government control over [its] export activities." *Initiation Notice*, 83 Fed. Reg. at 50078; *see*, *e.g.*, *Michaels Stores, Inc.*, 766 F3d at 1390, 1392. Attempting such a showing, as Commerce instructed, *id.,* required providing, in a separate-rate application, information relevant under a test set forth in a 2005 policy bulletin—which the parties here accept as controlling. *Policy Bulletin 05.1*, *Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries* 1–7 (Dep't of Commerce Apr. 5, 2005), available at https://enforcement.trade.gov/policy/bull05–1.pdf (*Separate Rate Policy Bulletin*).[1] At issue here is whether Pirelli China met the third criterion of the de-facto-control test—having "autonomy from the central, provincial and local governments in making decisions regarding the selection of its management," *Separate Rate Policy Bulletin*, at 2; *see Amended Opinion*, at 1366, 1372–73; Pirelli Opening Br. at 22, 24–25, 38.

Pirelli China (along with Pirelli USA) filed a separate-rate application. J.A. 201–42; *see also* J.A. 557–1461 (exhibits attached to application). The application disclosed an "indirect relationship" between Pirelli China and the Central State-owned Assets Supervision and Administration Commission of the State Council (SASAC): Two state-owned enterprises supervised by SASAC—the Silk Road Fund and China National Chemical Corporation (referred to in the proceedings as Chem China, ChemChina, or China Chem)—"had indirect ownership interests in Pirelli & C. S.p.A. [(Pirelli Italy)]," which was "the Italian holding company of the Pirelli Group" and "indirect controlling shareholder of [Pirelli China]."[2] J.A. 220. The application referred to Italian law in passing, but it did not include copies of relevant Italian laws or English translations (or expert analysis). J.A. 226 & n.11, 227–29.

Commerce issued its preliminary results on October 18, 2019, rejecting the separate-rate request because Pirelli China had not demonstrated an absence of de facto control by the PRC's government. *Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission, in Part; 2017–2018*, 84 Fed. Reg. 55909, 55912 (Oct. 18, 2019). Pirelli China then submitted a case

[1] After briefing was complete in this court, Commerce added 19 C.F.R. § 351.108 to its regulations, codifying a version of the separate-rate test that included two more de facto criteria. *Regulations Enhancing the Administration of the Antidumping and Countervailing Duty Trade Remedy Laws*, 89 Fed. Reg. 101694, 101699–705, 101758–60 (Dec. 16, 2024).

[2] China Chem's indirect control ran through its wholly owned subsidiary, China National Tire & Rubber Corporation, Ltd. (CNRC). *See Amended Opinion*, at 1379; Pirelli Opening Br. at 14.

brief arguing that the preliminary determination was "legally and factually wrong" and pointing to Italian law as evidence that Pirelli Italy's board of directors, Pirelli Italy, and Pirelli China are independent from SASAC entities. J.A. 1615, 1642–46, 1657–60. In April 2020, Commerce issued its final results, in which it "continue[d] to find" that Pirelli China had not demonstrated its entitlement to a separate rate. *Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017–2018*, 85 Fed. Reg. 22396, 22397 (Apr. 22, 2020). Commerce found that Pirelli China "ha[d] not demonstrated on this record that Chem China no longer retains actual or potential control and influence throughout the Pirelli companies' ownership structure (*i.e.*, Pirelli [Italy] and Pirelli China) and management, including Pirelli China's board and management," specifically identifying the failure to demonstrate "autonomy from government control over the selection of management." *Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China and Rescission, in part; 2017 2018* at 14, 17–18 (Dep't of Commerce Apr. 15, 2020) (*Final Decision Memo*). Commerce rejected Pirelli China's Italian-law arguments as unsupported by the record, which did not include the relevant provisions of Italian law. *Id.* at 15–17.

On May 21, 2020, Pirelli China, Pirelli USA, and Pirelli Tyre S.p.A. (another entity in the corporate chain between Pirelli Italy and Pirelli China[3]) (collectively, Pirelli) challenged Commerce's decision in the Trade Court. *See* 19 U.S.C. §§ 1516a(a), (d), 1677(9); 28 U.S.C. § 2631(c). After a remand for reasons not important on appeal now, the Trade Court held that Commerce's assignment of the PRC-wide rate to Pirelli China was in accordance with the law and supported by substantial evidence. *First Opinion*, at 1342. The Trade Court did not address Pirelli's arguments premised on Italian law, holding that "Commerce's rejection of Pirelli's unsupported interpretations of Italian law was reasonable." *Id.* at 1339. Pirelli moved to amend or alter the judgment, asking the Trade Court to address its Italian-law arguments. The Trade Court did so in its *Amended Opinion*, concluding that "[e]ven if Italian law had been on the record before Commerce, it would not have rebutted the presumption of de facto government control." *Amended Opinion*, at 1380; *see id.* at 1380–83.

Pirelli timely appealed. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(5).

[3] Pirelli Tyre S.p.A. is 100% owned by Pirelli Italy and is the indirect owner of Pirelli China. *Final Decision Memo*, at 15; Government Response Br. at 8.

II

We review decisions of the Trade Court by "apply[ing] anew the same standard used" by the Trade Court. *Ad Hoc Shrimp Trade Action Committee v. United States*, 802 F.3d 1339, 1348 (Fed. Cir. 2015) (alteration in original) (quoting *Mittal Steel Point Lisas Ltd. v. United States*, 548 F.3d 1375, 1380 (Fed. Cir. 2008)). We uphold Commerce's determination here unless it is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B)(i); *see also Union Steel v. United States*, 713 F.3d 1101, 1106 (Fed. Cir. 2013). "Substantial evidence means 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *China Manufacturers Alliance, LLC*, 1 F.4th at 1035 (quoting *Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 477 (1951)).

A

Pirelli argues that Commerce's analysis of whether Pirelli China was entitled to a separate rate contained two "legal flaw[s]"—first, not explicitly linking the selection of management to "export functions," and second, adopting and applying an unlawful interpretation of "rebuttable presumption." Pirelli Opening Br. at 20–37. We disagree.

Pirelli argues that the test articulated in the *Separate Rate Policy Bulletin* requires Commerce to establish on the record a link between the selection of management and influence over export activities. *Id.* at 21–31. But, as the Trade Court held, Pirelli's view is counter to the text of the accepted *Separate Rate Policy Bulletin*: The third factor for de facto control, addressing "selection of its management," omits the restrictions to "export prices" or "export sales" that appear in the first and fourth factors. *Amended Opinion*, at 1377. And there is no persuasive reason to read such restrictions into this factor, contrary to the facially plain reading: Control of selecting management may reasonably be thought to entail control of all significant management decisions such as the ones at issue here. We conclude that Commerce properly gave this factor its plain meaning as part of the multi-factor test, with the ultimate finding subject to substantial-evidence review that requires bottom-line reasonableness.

Pirelli also argues that Commerce employed a "legally flawed" approach by treating the rebuttable presumption as a "new standard of evidence" where the respondent must "prove that the presumption is affirmatively wrong to win separate rate eligibility." Pirelli Opening Br. at 31–32. We understand Pirelli to be arguing that overcoming the rebuttable presumption here is distinct from having to carry a burden

of persuasion and that the latter is not required. *See id.* at 31–37. It is enough to say that, whatever variations in usage there may be in law generally, it is clear in this context that Commerce requires the respondent in present circumstances to carry a burden of persuasion to justify a separate rate, and we have upheld that practice. *E.g.*, *Zhejiang Machinery Import & Export Corp. v. United States*, 65 F.4th 1364, 1366 (Fed. Cir. 2023) (explaining that Commerce can decline a separate-rate application "[i]f the exporter fails to meet its burden in demonstrating the absence of government control" and listing evidence that the exporter may provide to meet its burden); *Diamond Sawblades Manufacturers Coalition v. United States,* 866 F.3d 1304, 1311 (Fed. Cir. 2017) (collecting cases); *Sigma*, 117 F.3d at 1405–06 (explaining that a respondent in an NME country "must 'affirmatively demonstrate' its entitlement to a separate, company-specific margin" (citation omitted)); *Dongtai Peak Honey Industry Co., v. United States*, 777 F.3d 1343, 1350, 1354 (Fed. Cir. 2015). Because Commerce found that Pirelli did not carry that burden, it does not matter whether the burden of persuasion is part of, or additional to, the presumption.

B

Pirelli contends that Commerce's finding that Pirelli failed to show the absence of de facto government control is not supported by substantial evidence, arguing that Commerce "did not seriously address" all evidence "and instead simply relied heavily on the presumption of state control." Pirelli Opening Br. at 38–65. We disagree.

First, Pirelli's argument depends in large part on its assertions about Italian law. *See* Pirelli Opening Br. at 18, 39, 45–51, 60–64. But Commerce did not act improperly in declining to consider those arguments given that the record did not contain the relied-on provisions of Italian law, English translations of them, or expert analyses of relevant Italian law. At least where all three were missing, we agree with the Trade Court that Commerce's rejection of the Italian-law arguments was reasonable given that Commerce has "discretion in the manner in which it conducts its administrative proceedings" and that "[t]he respondent bears the burden of creating the record for Commerce's review." *First Opinion*, at 1339; *Amended Opinion*, at 1378. We note that the separate-rate application did not even include full citations to specific provisions of Italian law that Pirelli now argues should have been considered, *see*, *e.g.*, J.A. 228–29; Pirelli Opening Br. at 62–63, and that Pirelli should have been aware of the importance of providing such documentation on the record given that the separate-rate application had instructions to include English

translations of relevant documents and laws, *see*, *e.g.*, J.A. 217–18.

Second, substantial evidence supports Commerce's determination. The substantial-evidence standard requires Commerce to consider all evidence on the record, but such consideration does not necessitate explicit mention and discussion of each piece of evidence. *See Charles G. Williams Construction, Inc. v. White*, 326 F.3d 1376, 1380 (Fed. Cir. 2003) (citation omitted); *cf. Novartis AG v. Torrent Pharmaceuticals Ltd.*, 853 F.3d 1316, 1328 (Fed. Cir. 2017) (citations omitted). In explaining why it found that Pirelli had not shown "its autonomy from government control over the selection of management," Commerce recited at least the following: (1) Pirelli Italy "is the indirect majority shareholder of Pirelli China" and "selects most of [Pirelli China's] board members"; (2) "Pirelli entities share common board membership and management," including Mr. Ren Jianxin, who is the "Chairman and President of SASAC-owned China Chem and the Chairman of the Board of Pirelli [Italy]"; (3) "China Chem is the single largest indirect shareholder in Pirelli [Italy]"; (4) Pirelli's 2017 Annual Report stated that Pirelli Italy is "indirectly controlled . . . by ChemChina via [China National Tire & Rubber Corporation, Ltd.] and certain of its subsidiaries" and Commerce, with the relevant Italian-law provisions missing from the record, was "not convinced that Pirelli [Italy] must report that it is controlled by Chem China mainly for accounting purposes pursuant to the Italian Finance Code"; (5) an SASAC entity "appointed the majority of Pirelli [Italy's] board" and Commerce, lacking the relevant Italian-law provisions, was "not convinced that those members are free from control from China Chem"; and (6) the record did not support a conclusion that Pirelli Italy's CEO "has exclusive authority to select Pirelli [Italy's] management, thereby preventing board members from influencing the company's day-to-day operations." *Final Decision Memo,* at 14–17 (citations omitted). In light of the limited evidence Pirelli properly placed on the record, and Pirelli's arguments here, we see no basis for doubt that Commerce made a reasonable factual determination on the entirety of the evidence. *Amended Opinion*, at 1378–80.

III

For the foregoing reasons, we affirm the Trade Court's decision.

AFFIRMED

U.S. Court of International Trade

Slip Op. 25–14

YOUR STANDING INTERNATIONAL, INC., Plaintiff, v. UNITED STATES, Defendant, and MID CONTINENT STEEL & WIRE, INC., Defendant-Intervenor.

Before: Claire R. Kelly, Judge
Court No. 24–00055

[Sustaining the Department of Commerce's constructed value calculation.]

Dated: February 7, 2025

Lizbeth R. Levinson, *Alexander D. Keyser*, and *Brittney R. Powell*, Fox Rothschild LLP, of Washington D.C., for plaintiff Your Standing International, Inc.

Katy M. Bartelma, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for defendant United States. On the brief were *Patricia M. McCarthy*, Director, *Tara K. Hogan*, Assistant Director, and *Brian M. Boynton*, Principal Deputy Assistant Attorney General. Of counsel was *Shanni Alon*, Attorney, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, D.C.

Rosa S. Jeong, *Friederike S. Goergens*, and *Matthew L. Kanna*, Greenberg Traurig, LLP, of Washington D.C., for defendant-intervenor Mid-Continent Steel & Wire, Inc. On the brief was *Claudia H. Dunsch.*

OPINION

Kelly, Judge:

Before the Court is Plaintiff, Your Standing International Inc.'s ("Your Standing") Motion for Judgment on the Agency Record. Mot. J. on the Agency R., Aug. 26, 2024, ECF No. 23 ("Pl. 56.2 Mot."); Reply Br. of Pl. Your Standing Int'l Inc. in Support [Mot. J. on the Agency R.], Nov. 29, 2024, ECF No. 26 ("Pl. Reply"). Plaintiff claims that the United States Department of Commerce's ("Commerce") use of San Shing Fastech Corporation's ("San Shing") financial statements to calculate Your Standing's constructed value ("CV") profit and indirect selling expenses is unsupported by substantial evidence and not in accordance with law. *See generally* Pl. 56.2 Mot. Specifically, Plaintiff argues San Shing's surrogate financial statements are unsuitable because (i) they do not reflect sales in the home market of Taiwan, and (ii) San Shing and Your Standing lack a similar customer base. Pl. 56.2 Mot. at 9, 12. The Defendant and Defendant-Intervenor, Mid-Continent Steel & Wire, Inc. ("Mid-Continent"), contend (i) San Shing's financial statements are a reasonable choice given Commerce's discretion and the information on the record, and (ii) Your

Standing failed to exhaust its administrative remedies with respect to its argument that Commerce incorrectly used San Shing's financial statements because San Shing and Your Standing have different customer bases. Def. Resp. [Pl. R. 56.2 Mot. J. Upon the Agency R.] at 9, 16, Nov. 1, 2024, ECF No. 25 ("Def. Resp."); Resp. of Def.-Intv. Opp'n [Pl. Mot. J. on the Agency R.] at 13, 16, Nov. 1, 2024, ECF No. 24 ("Def.-Intv. Resp.").

BACKGROUND

On July 1, 2021, Commerce published notice giving interested parties the opportunity to request an administrative review of the antidumping duty ("ADD") order on certain steel nails from Taiwan. *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 86 Fed. Reg. 35,065–01 (Jul. 1, 2021). Subsequently, two parties, including the Defendant-Intervenor, filed requests for an administrative review, and on September 6, 2022, Commerce initiated the ADD administrative review on certain steel nails from Taiwan. Petitioner's Request for Administrative Review, PD 2, bar code 4268474–01 (Jul. 28, 2022); Faithful and Hillman Request for Administrative Review, PD 3, bar code 4269923–01 (Aug. 1, 2022); *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 Fed. Reg. 54,463–01 (Sept. 6, 2022).

On October 14, 2022, Commerce selected Your Standing as one of the two mandatory respondents for the ADD administrative review. Respondent Selection Memorandum from USDOC, PD 24, bar code 4300103–01 (Oct. 14, 2022). On May 17, 2023, Commerce requested comments on CV profit and selling expenses. Request for Constructed Value Profit and Selling Expense Comments and Information from USDOC at 1, PD 80, bar code 4377743–01 (May 17, 2023) ("CV Request for Comment and Information"). Commerce determined it could not calculate CV under 19 U.S.C. § 1677b(e)(2)(A) because Your Standing had no viable home or third country market for the sales of merchandise under consideration. *Id.* Thus, Commerce provided interested parties the opportunity to comment and submit new factual information for Commerce to calculate CV under 19 U.S.C. § 1677b(e)(2)(B). *Id.* On May 31, 2023, Defendant-Intervenor responded to Commerce's request and provided financial statements of two Taiwanese companies and two Indian companies, asking Commerce to use the financial statements it submitted to calculate the CV profit selling expenses for Your Standing. Petitioner's Comments for Constructed Value Profit and Selling Expenses, PDs 82—83, bar code 4382728–01 (May 31, 2023) ("Mid Continent Cmts."). On June 7,

2023, Plaintiff responded to Defendant-Intervenor's comments. Your Standing International ("YSI") Reply to Petitioners' CV Profit Comments, PD 84, bar code 4386153–01 (Jun. 7, 2023) ("YSI Reply Cmts.").

On August 3, 2023, Commerce issued its preliminary results, choosing the financial statements of San Shing and Chun Yu Works & Co., Ltd. ("Chun Yu") to calculate the CV profit and selling expenses for Your Standing. *Certain Steel Nails From Taiwan: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, Preliminary Determination of No Reviewable Sales, and Partial Rescission of Review; 2021–2022*, 88 Fed. Reg. 51,291–01 (Aug. 3, 2023) ("*Preliminary Results*"). Commerce used these two financial statements to calculate an ADD rate of 23.16% for Your Standing. *Preliminary Results* at 51,293.

From December 4, 2023, through December 8, 2023, Commerce verified Your Standing's responses. Verification Report of the Sales and Cost Responses of YSI from USDOC, PD 114, bar code 4481642–01 (Dec. 20, 2023). Following verification, Your Standing submitted a case brief arguing Commerce's use of San Shing's financial statements to calculate the CV profit and selling expenses was improper. YSI's Case Brief, PD 120, bar code 4484882–01 (Jan. 3, 2024) ("YSI Agency Brief").

On January 26, 2024, Commerce issued its final issues and decisions memorandum and on February 1, 2024, published its final results. *Certain Steel Nails From Taiwan: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Final Determination of No Reviewable Sales; 2021–2022*, 89 Fed. Reg. 6,503–01 (Feb. 1, 2024) ("*Final Results*"); *Issues and Decision Memorandum For the Final Results of the Antidumping Duty Administrative Review of Certain Steel Nails From Taiwan; 2021–2022*, 89 ITADOC 6,503 (Jan. 26, 2024) ("*Final IDM*"). In the Final Results, Commerce continued to use San Shing's financial statements to calculate CV profit and selling expenses because it concluded (i) San Shing produces comparable merchandise, (ii) San Shing's financial statements were contemporaneous with the period of review, and (iii) over 70% of San Shing's sales were made to entities in markets outside of the United Sates.[1] *See Final IDM* at 5, 7. Commerce found a weighted-average dumping margin of 26.28% for Your Standing. *Final Results* at 6,504.

[1] Commerce explains that the 70 percent of sales to "non-affiliated entities" are to markets outside of the United States. *Final IDM* at 7.

On April 1, 2024, Plaintiff filed its complaint. Compl., Apr. 1, 2024, ECF No. 9 ("Compl."). On August 26, 2024, Plaintiff filed a motion for judgment on the agency record. *See* Pl. 56.2 Mot. On November 1, 2024, Defendant and Defendant-Intervenor filed their responses to Plaintiff's motion for judgment on the agency record. *See* Def. Resp.; *see also* Def.-Intv. Resp. On November 29, 2024, Plaintiff filed its reply in support of its motion for judgment on the agency record. *See* Pl. Reply.

JURISDICTION AND STANDARD OF REVIEW

This Court has jurisdiction pursuant to 19 U.S.C. § 1516a(a)(2)(B)(iii) and 28 U.S.C. § 1581(c), which grant the Court authority to review actions contesting the final determination in an administrative review of an antidumping order.

"The court shall hold unlawful any determination, finding, or conclusion found to be unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B)(i). "Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Huaiyin Foreign Trade Corp. (30) v. United States*, 322 F.3d 1369, 1374 (Fed. Cir. 2003) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). The Court determines whether substantial evidence exists by considering the record as a whole, including any evidence that supports or fairly detracts from the substantiality of the evidence. *Huaiyin Foreign Trade Corp. (30)*, 322 F.3d at 1374 (quoting *Atl. Sugar, Ltd. v. United States*, 744 F.2d 1556, 1562 (Fed. Cir. 1984)). The possibility that two inconsistent conclusions may be drawn from the evidence does not prevent an agency's determination from being supported by substantial evidence. *Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 620 (1966) (citing *N.L.R.B. v. Nevada Consol. Copper Corp.*, 316 U.S. 105, 106 (1942)).

DISCUSSION

Plaintiff argues that Commerce's use of San Shing's financial statements to calculate the CV rate is not supported by substantial evidence because Commerce "largely ignored the fact that San Shing did not have substantial sales in the home market of Taiwan during the POR" and that Commerce erred by using San Shing's financial statements to calculate Your Standing's CV rate because the two companies do not have similar customer bases. Pl. 56.2 Mot. at 9—10, 12. Defendant and Defendant-Intervenor respond that Commerce's decision is supported by substantial evidence because neither the statute nor regulations require Commerce to rely upon home market sales and San Shing's sales revenue was not exclusively or predominantly

from sales to the United States market. Def. Resp. at 10, 13; Def.-Intv. Resp. at 11, 14. Defendant and Defendant-Intervenor further argue that the Court should decline to entertain Your Standing's argument related to the difference in customer bases because Your Standing failed to make that argument before Commerce, and therefore failed to exhaust its administrative remedies. Def. Resp. at 16; Def.-Intv. Resp. at 18.

I. Origin of Sales for Constructed Value Financial Statements

When calculating CV, Commerce uses the respondent's home market or third country sales, made in the ordinary course of trade. 19 U.S.C. § 1677b(e)(1)—(2)(A). However, if the respondent does not have home market or third country sales, Commerce may calculate CV using one of three alternative methods, to be decided on a "case-by-case basis" by Commerce. 19 U.S.C. § 1677b(e)(2)(B)(i)—(iii); Statement of Administrative Action for Uruguay Round Agreements Act (SAA), H.R. Rep. No. 103–316, vol. I, at 840 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4176 ("SAA"). Subsection (iii) allows Commerce to use "any other reasonable method" to calculate the CV, if the preferred data under 19 U.S.C. § 1677b(e)(1)—(2)(A) is unavailable. 19 U.S.C. § 1677b(e)(2)(B)(iii).[2] Subsection (iii) states:

> (iii) the amounts incurred and realized for selling, general, and administrative expenses, and for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers (other than the exporter or producer described in clause (i)) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise...

---

[2] The rest of the Subsection provides:

> (B) if actual data are not available with respect to the amounts described in subparagraph (A), then—
> (i) the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise,
> (ii) (ii) the weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review (other than the exporter or producer described in clause (i)) for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or

19 U.S.C. § 1677b(e)(2)(B)(i—ii).

19 U.S.C. § 1677b(e)(2)(B)(iii). Subsection (iii) specifically allows Commerce to use "any other reasonable method" to calculate CV. 19 U.S.C. § 1677b(e)(2)(B)(iii). The statute limits Commerce's discretion by stating that the "amount allowed for profit may not exceed the amount normally realized by exporters or producers." 19 U.S.C. § 1677b(e)(2)(B)(iii). This limitation contains no geographical restriction. *See* 19 U.S.C. § 1677b(e)(2)(B)(iii); *see, e.g., Thai I-Mei Frozen Foods Co., Ltd v. United States*, 31 C.I.T. 334, 345 (Ct. Int'l Trade 2007); *see also* SAA at 4176 ("The Administration intends that the selection of an alternative will be made on a case-by-case basis, and will depend, to an extent, on available data"). Further, Subsection (iii) does not require that data be for the specific exporter or producer or that the data relate to foreign-like products. *Thai I-Mei Frozen Foods Co., Ltd. v. United States*, 616 F.3d 1300, 1308 (Fed. Cir. 2010).

As a matter of practice, when determining the CV of imported merchandise under 19 U.S.C. § 1677b(e)(2)(B)(iii), Commerce weighs several factors, one of which involves whether sales occur in the home market or the United States:

> (1) the similarity of the potential surrogate company's business operations and products to the respondent; (2) the extent to which the financial data of the surrogate company reflects sales in the United States as well as the home market; (3) the contemporaneity of the surrogate data to the POI; and (4) the similarity of the customer base (i.e., retail versus OEM).

Issues and Decision Memorandum For the Antidumping Duty Investigation of Certain Color Television Receivers From Malaysia, 69 ITADOC 20,592 at cmt. 26 (Apr. 16, 2004).

Here, Commerce's use of San Shing's financial statements is supported by substantial evidence on this record. Commerce concluded (i) San Shing produces comparable merchandise, (ii) San Shing's financial statements were contemporaneous with the period of review ("POR"), and (iii) San Shing's sales were not exclusively or predominantly to the United States market because "over 70 percent of [San Shing's] sales to non-affiliated entities were to either Taiwan or third-country markets during the POR." *Final IDM* at 5, 7 (internal citations omitted). The lack of a statutory geographical restriction enables Commerce to consider the geographical source of the data as

one non-dispositive factor in Commerce's analysis.[3] *See* 19 U.S.C. § 1677b(e)(2)(B)(iii); *see also Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Color Television Receivers From Malaysia*, 69 ITADOC 20,592 at cmt. 26 (Apr. 16, 2004) (listing "(2) the extent to which the financial data of the surrogate company reflects sales in the United States as well as the home market"; one of several non-dipositive factors to consider).[4] The statute grants Commerce considerable discretion to choose financial statements on a case-by-case basis. *See* 19 U.S.C. § 1677b(e)(2)(B)(iii); *see also* SAA at 4176. Commerce reasonably exercised its discretion explaining there were "no other financial statements on the record submitted for the purpose of CV calculations" which provide "evidence of sales made predominantly in Taiwan." *Final IDM* at 7.

Finally, Plaintiff's argument that the lack of comparability between San Shing's products and Your Standing's steel nails exacerbates problems with the financial statutes is without merit. *See* Pl. 56.2 Mot. at 11. Plaintiff incorporates an argument about comparability as part of its claim challenging the volume of San Shing's sales in Taiwan, arguing that it is "highly plausible that San Shing's sales to the Taiwan market consisted of sales of this non-comparable merchandise." Pl. 56.2 Mot. at 11. However, Commerce concludes that record evidence shows "San Shing is a Taiwanese producer of fastener products, including nuts, bolts, washers, tooling, and machinery," which accounted for 83 percent of its sales in 2021 and 87 percent of its sales in 2022, making San Shing a producer of comparable merchandise. *Final IDM* at 6. The conclusion that San Shing produces comparable merchandise is reasonable based on Commerce's explanation and analysis in the Final IDM. Thus, its choice of San Shing's statements, which reflect comparable merchandise, are contempora-

[3] Plaintiff argues that Commerce "failed to engage in any meaningful analysis" of how San Shing's financial statements can be used to approximate sales in Taiwan when there is no showing of "significant sales of comparable merchandise to Taiwan." Pl. 56.2 Mot. at 12; *see also* Pl. Reply at 3. Plaintiff is incorrect. Commerce analyzes the record and explains San Shing is a Taiwanese producer of subject and comparable merchandise. *Final IDM* at 5. Commerce considers the relative percentage of sales to Taiwanese and third country markets; non-affiliated sales to the United States, and the availability of record evidence concerning Taiwanese sales. Commerce concludes that San Shing's financial statements "reflect the experience of profitable Taiwanese producers of subject merchandise and other comparable merchandise" because "over 70 percent of [San Shing's] sales to non-affiliated entities were to either Taiwan or third-country markets during the POR." *Final IDM* at 6—7.

[4] Commerce explains in the Final IDM that the "rationale for the exclusion of 'exclusively or predominantly' U.S. sales is the avoidance of using profit rates 'drawn almost exclusively from the alleged dumped sales under investigation,' where the U.S. market is alleged to have been affected by significant dumping." *Final IDM* at 7 (citing *Issues and Decision Memorandum For the Final Affirmative Determination In the Less Than Fair Value Investigation of Certain Oil Country Tubular Goods From the Republic of Korea*, 79 ITADOC 41983 at cmt. 1 (Jul. 18, 2014)).

neous with the POR, and were not exclusively or predominantly to the United States market is reasonable and supported by substantial evidence on the record.[5]

II. Distinct Customer Bases in Financial Statements

Generally, parties must exhaust their administrative remedies to obtain judicial review. *McKart v. United States*, 395 U.S. 185, 193 (1969) (internal quotations omitted) (citing *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50–51 (1938)). Requiring exhaustion acknowledges agency expertise, allows agencies to correct mistakes, and promotes efficiency. *Woodford v. Ngo*, 548 U.S. 81, 89 (2006). A plaintiff must show that it exhausted its administrative remedies, or that it qualifies for an exception to the exhaustion doctrine. *Consol. Bearings Co. v. United States*, 348 F.3d 997, 1003 (Fed. Cir. 2003) (citing 28 U.S.C. § 2637(d)). When there are a variety of non-dispositive factors an agency may consider, Commerce need not analyze every non-dispositive factor if a plaintiff does not raise an argument regarding a specific factor. *See, e.g.*, *Ventura Coastal, LLC v. United States*, 736 F.Supp.3d 1342, 1353 (Ct. Int'l Trade 2024) (collecting cases).

As discussed, when calculating CV, as a matter of practice, Commerce considers the "similarity of the customer base." *Issues and Decision Memorandum For the Antidumping Duty Investigation of Certain Color Television Receivers From Malaysia*, 69 ITADOC 20,592 at cmt. 26 (Apr. 16, 2004). However, Your Standing did not make an argument as to why the customer bases differed in this case before Commerce. In its brief before Commerce, Your Standing argued only that Commerce's use of San Shing's financial statements were inaccurate because: (i) San Shing is primarily devoted to automotive

[5] Plaintiff argues that San Shing's sales of 10 percent in Taiwan is not significant according to Commerce's "general practice" when it selects surrogate financial statements under Subsection (iii). Pl. Reply at 5 (citing *Issues and Decision Memorandum For the Final Negative Determination In the Less-than-fair-value Investigation of Wood Mouldings and Millwork Products From Brazil at cmt. 2*, 86 ITADOC 70 (Jan. 4, 2021)) ("*Wood Mouldings*"). However, in *Wood Mouldings* Commerce had three sets of data and determined that two of the sets "predominantly reflect sales in the home market", so it chose those sets to calculate CV. *Id.* at cmt. 2. It is the respondents' burden to populate the record with relevant information. *See QVD Food Co., Ltd. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011). Here, there were no other financial statements on the record showing sales made predominantly in Taiwan, therefore it could not choose other data as Plaintiff suggests, and its conclusion is reasonable given the information on the record. *See* Final IDM at 7. Likewise, Plaintiff's citation to the IDM for the *Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Fabricated Structural Steel from Canada* is also inapposite, as in that case Commerce calculated the CV profit and selling expenses pursuant to Subsection (ii), not Subsection (iii) as Commerce did here. *Issues and Decision Memorandum For the Final Affirmative Determination In the Less-than-fair-value Investigation of Certain Fabricated Structural Steel From Canada* at cmt. 14, 85 ITADOC 5,373 (Jan. 30, 2020).

products, and (ii) San Shing does not have material sales in Taiwan but rather sells mostly in the United States. YSI Agency Brief at 1. These arguments before Commerce raise concerns only about the first and second factors Commerce considers when calculating a CV rate under 19 U.S.C. § 1677b(e)(2)(B)(iii).[6] Nowhere in its brief to the agency did Your Standing raise an argument related to the fourth factor, the similarity of the customer bases. *See generally* YSI Agency Brief.[7] Instead, Your Standing argues for the first time before this Court that San Shing is "an unsuitable surrogate for the calculation of Your Standing's CV profit and selling expenses" because "it did not sell merchandise to the same types of customers." Pl. 56.2 Mot. at 12 (distinguishing between end users and distributors).

Plaintiff contends its argument related to San Shing's customer base is an extension of its argument that San Shing's financial statements should not be included in the CV calculation.[8] Pl. Reply at 8. Although Your Standing argued against the use of San Shing's financial statements before the agency generally, it did not give Commerce the opportunity to address the narrow issue of the different customer bases in its Agency Brief. Thus, Your Standing may not raise the issue

---

[6] The first and second factors Commerce considers under Subsection (iii) are the similarity of the potential surrogate company's business operations and products to the respondent and the extent to which the financial data of the surrogate company reflects sales in the United States as well as the home and United States market. *Issues and Decision Memorandum For the Antidumping Duty Investigation of Certain Color Television Receivers From Malaysia*, 69 ITADOC 20,592 at cmt. 26 (Apr. 16, 2004).

[7] Your Standing did not submit any new information to Commerce following its request for comments and information on the CV profit and selling expense rate. *See generally* CV Request for Comment and Information. In fact, Defendant-Intervenor submitted factual information for two Taiwanese companies, including San Shing, as well as two Indian companies. Mid Continent Cmts. at 2—5. Your Standing responded by stating Commerce should disregard financial statements from the Indian companies given "the availability of alternative financial data from Taiwan that better reflect actual production and sales by Taiwanese nail producers." *See* YSI Reply Cmts. at 5.

[8] Plaintiff also argues that Commerce, in prior determinations, has declined to calculate CV profit using financial statements in which sales revenue consisted largely of export sales. Pl. 56.2 Mot. at 10 (citing *Issues and Decision Memorandum For the Final Determination In the Antidumping Duty Investigation of Pure Magnesium From Israel* at cmt. 8, 66 ITADOC 49,349 (Sept. 27, 2001); *Issues and Decision Memorandum For the Less Than Fair Value Investigation of Certain Steel Nails From the United Arab Emirates* at cmts. 6—7, 77 ITADOC 17,029 (Mar. 23, 2012)). However, Commerce makes its CV calculation on a case-by-case basis depending upon the record information. *See* SAA at 4176. In the cases Plaintiff cites Commerce weighed the factors it considers when conducting an analysis under Subsection (iii) and, based upon the statements available on the record and the facts of each case, chose the best information available. *See, e.g., Certain Steel Nails from UAE: Final Determination of Sales at Less Than Fair Value*, 77 Fed. Reg. 17,029 (March 23, 2012). Here, Commerce found that, based on the record, San Shing's sales were not exclusively or predominantly to the United States market because "over 70 percent of [San Shing's] sales to non-affiliated entities were to either Taiwan or third-country markets during the POR." *Final IDM* at 5, 7 (internal citations omitted). The Court will not reweigh the evidence. *Downhole Pipe & Equip., L.P. v. United States*, 776 F.3d 1369, 1367—77 (Fed. Cir. 2015).

regarding different customer bases before this Court.[9] *See Boomerang Tube LLC v. United States*, 856 F.3d 908, 913 (Fed. Cir. 2017) (holding that failing to raise an argument in a brief before Commerce, but then raising it during judicial review, bars a reviewing court from considering the argument).

CONCLUSION

For the reasons discussed above, Commerce's use of San Shing's financial statements to calculate CV is sustained. Judgment will enter accordingly.

Dated: February 7, 2025
New York, New York

/*s*/ *Claire R. Kelly*
CLAIRE R. KELLY, JUDGE

[9] For the same reason Plaintiff's argument that Commerce erred by not disaggregating San Shing's financial statements "based on product category to its various sales market" also fails. *See* Pl. 56.2 Mot. at 11. Your Standing did not raise this argument before Commerce. *See generally* YSI Agency Brief.

Index

Customs Bulletin and Decisions
Vol. 59, No. 9, February 26, 2025

U.S. Customs and Border Protection

General Notices

U.S. Court of Appeals for the Federal Circuit

U.S. Court of International Trade
Slip Opinions

U.S. G.P.O.: 2025—431-372/30116