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REMAND
Public Document

FINAL REDETERMINATION
PURSUANT TO COURT REMAND

BRIDGESTONE AMERICAS, INC., BRIDGESTONE AMERICAS TIRE OPERATIONS,
LLC, and TITAN TIRE CORPORATION, Plaintiff,

v.

UNITED STATES, Defendant,

and

XUZHOU XUGONG TYRES CO., LTD., Defendant- Intervenor.

Court No. 08-00256

A. SUMMARY

The Department of Commerce (“the Department”) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“CIT” or “Court”) in *Bridgestone Americas Inc. et al. v. United States*, Slip Op. 09-79 (CIT, Aug. 4, 2009) (“Opinion”). This remand pertains to the treatment of Xuzhou Xugong Tyres Co., Ltd.’s (“Xugong’s”) 15 raw material inputs as indirect material inputs in the final determination of the antidumping investigation of certain new pneumatic off-the road tires from the People’s Republic of China. As set forth in detail below, in these final results, pursuant to the Court’s remand order, we have: (1) reconsidered whether each of the 15 inputs was a direct or indirect material; (2) re-opened the record to collect necessary information, as appropriate; and (3) recalculated the margin based on our findings. Specifically, for purposes of this final redetermination, we have determined that each of these 15 materials is a direct material used in the production of subject merchandise and we have recalculated the margin accordingly.

B. BACKGROUND

On July 15, 2008, the Department published in the *Federal Register* its final determination in the above-referenced investigation.¹ Upon initiation of litigation challenging that final determination, the Department requested a voluntary remand to further explain its determination regarding the classification of the 15 reported raw materials by Xugong as indirect materials. On August 4, 2009, the CIT remanded this matter to the Department to reconsider whether each of the 15 inputs was a direct or indirect material, to reopen the record as appropriate, and to recalculate the margin accordingly.²

On August 28, 2009, the Department sent a supplemental questionnaire to Xugong regarding the nature of its 15 raw material inputs. On September 11, 2009, the Department sent a letter to all interested parties regarding comments on Xugong's questionnaire response. On September 25, 2009, Xugong submitted its questionnaire response,³ and on October 2, 2009, the Department received comments from Titan Tire Corporation ("Titan") and Bridgestone Americas, Inc. and Bridgestone Americas Tire Operations, LLC (collectively, "Bridgestone") regarding Xugong's response.⁴

¹ See *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) ("*Final Determination*").

² Opinion at 13-14.

³ See Xugong's September 25, 2009, supplemental questionnaire response ("9/25/09 Response").

⁴ See Titan's October 2, 2009, Comments to 9/25/09 Response; Bridgestone's October 2, 2009, Comments to 9/25/09 Response.

On September 29, 2009, the CIT granted Xugong's request for a 60-day extension of time in which the Department may file remand results in this case, thereby extending the deadline to December 4, 2009. On December 4, 2009, the Department sent its draft remand redetermination to all parties for comment. Also on December 4, 2009, the CIT granted the Department's request for a 35-day extension of time in which the Department may file remand results in this case, thereby extending the deadline to January 8, 2010. On December 10, 2009, Xugong and Titan submitted comments regarding the Department's draft redetermination.

C. ANALYSIS

In compliance with the Court order to reconsider whether each of the 15 inputs was a direct or indirect material, the Department reopened the record to collect more information on the nature of Xugong's inputs. After consideration of all the information on the record of this proceeding, the Department intends to treat Xugong's 15 raw material inputs as direct materials in the calculation of the normal value.

In considering the proper treatment of raw materials for purposes of its dumping analysis, the Department has in the past weighed certain criteria for treating materials as direct inputs and, thus, as part of the cost of manufacturing, or as indirect inputs and, thus, as part of factory overhead. Among the criteria considered by the Department has been whether the material input is physically incorporated into, and thereby becomes part of, the finished product,⁵ whether the material input is consumed during the production process,⁶ whether the material input is required

⁵ See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Paper Clips From the People's Republic of China*, 59 FR 51168 (October 7, 1994), and accompanying Issues and Decision Memorandum at Comment 5 ("Paper Clips").

⁶ See, e.g., *Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 47587 (August 14, 2008), and accompanying Issues and Decision Memorandum at Comment 2 ("Garment Hangers"); *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), and accompanying Issues and Decision Memorandum at Comment 20E ("Nails").

for a particular segment of the production process,⁷ and whether the material input is essential to the production of the finished product.⁸ For example, the Department has stated in the past that “these chemicals appear to be significant inputs into the manufacturing process rather than miscellaneous or occasionally used materials.”⁹ Accordingly, the Department treated these chemicals as direct material inputs.¹⁰

However, not all of the criteria used in prior proceedings are applicable to the instant proceeding. For example, Bridgestone and Xugong raise the issue of the Indian surrogate producers’ treatment of these inputs. We recognize that it may be appropriate to consider how material inputs are accounted for in surrogate financial statements to avoid double counting in the calculation of normal value. However, in this case, we find that in order to consider the proper treatment of these materials for the purpose of this remand proceeding, it is appropriate to first consider the manner in which Xugong uses these materials in the production of the merchandise under consideration. We then considered whether the surrogate financial statements contained evidence on how these materials were treated, in order to avoid double counting. The only evidence contained in the surrogate financial statements is that the line item “Chemicals” is included in raw materials.¹¹ Therefore, there is no evidence that these are accounted for in the overhead expenses in the surrogate financial statements. Furthermore, the Court also instructed the Department not to consider its treatment of other respondents’ materials because it is not possible to discern whether the other respondents’ materials are the same

⁷ See, e.g., *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People’s Republic of China*, 71 FR 29303 (May 22, 2006), and accompanying Issues and decision Memorandum at Comment 2 (“*Diamond Sawblades*”).

⁸ See, e.g., *Final Determination of Sales at Less Than Fair Value: Bicycles From the People’s Republic of China*, 61 FR 19026 (April 30, 1996), and accompanying Issues and Decision Memorandum at Comment 11 (“*Bicycles*”).

⁹ See *Bicycles* at Comment 16.

¹⁰ See, e.g., *id.*

¹¹ Three of the four Indian surrogate companies list “chemicals” as part of their raw materials but do not list any further detail.

materials as those at issue here, or whether they were used in the same manner as the manner in which they were used by Xugong.¹²

With regard to all of the criteria considered by the Department in previous cases, we found physical incorporation along with essential usage in the manufacturing process to be the best indicators of whether Xugong's 15 inputs are properly treated as direct or indirect materials. Such analysis is best reflected in the Department's position in *Bicycles* where the Department "found that the chemicals in question are essential for producing the finished product and are incorporated into the product (*i.e.*, in pre-treating the components, the chemicals permeate the components and are not completely washed off)."¹³

With that in mind, we determined that the preexisting record was insufficient to make the necessary finding as to the nature of the 15 material inputs and reopened the record of this proceeding in order to provide Xugong an opportunity to provide evidence in support of its claim that the 15 material inputs at issue should be considered indirect materials because they are all used for "supplemental or cleaning purposes." See Xugong's March 10, 2008, supplemental questionnaire response at 4. We specifically requested that Xugong provide a detailed description of each of the 15 inputs in question, that Xugong describe how each is used in the production of the merchandise under consideration, and that Xugong explain whether each of the materials is physically incorporated into the merchandise under consideration. Xugong reported that "each of the materials is consumed during production," although Xugong claimed that they are not physically incorporated into the merchandise under consideration.¹⁴

With respect to Xugong's claim that the material is not physically incorporated into the final product, we have often considered materials that are not physically incorporated into the

¹² See Opinion at 13.

¹³ See *Bicycles* at Comment 11.

¹⁴ See 9/25/09 Response at 1.

final product to be “indirect” materials that are valued as part of factory overhead. This is consistent with *Fuyao Glass Indus. Group Co. v. United States*, in which the CIT endorsed the Department’s reliance on this criterion:

According to the [Indian] Compendium of Statements and Standards, in order for a material to be considered as part of factory overhead, it must assist the manufacturing process, but . . . not enter physically into the composition of the finished product. We agree that dextrin, steel shot, antirust, cutting oil, cleaning agent and dehydrating oil are indirect materials and *should be treated as part of factory overhead, because the function of these materials is to assist in the manufacturing process and [they] do not enter physically into the composition of the finished product.*¹⁵

We considered the information provided by Xugong for each of the inputs, individually, and we find that the evidence supports a conclusion that these inputs were not only consumed during production but, notwithstanding Xugong’s claim to the contrary, were indeed physically incorporated into the finished product, as discussed in more detail below. We also determined that each of the individual inputs was “essential for producing the finished product.”¹⁶

As Xugong explained in its 9/25/09 Response, all of the inputs in question are indeed required for a particular segment of the production process, and a necessary ingredient in the production of the merchandise under consideration.¹⁷ We consider these inputs essential to tire production in the same way that certain ingredients are essential to making a cake. As explained in more detail below, each of these material inputs is required for the production of finished tires, each is consumed in the production process, and each is physically incorporated into, and becomes part of, the finished tire. To analogize, several other ingredients other than flour, eggs and water, are required to make a cake. For instance, various ingredients such as baking powder,

¹⁵ *Fuyao Glass Indus. Group Co., Ltd. v. United States*, 29 C.I.T. 109, 123 (Ct. Int’l Trade 2005) (emphasis in original) (quoting *Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China*, 62 FR 9160, 9169 (Feb. 28, 1997)).

¹⁶ See *Bicycles* at Comment 11.

¹⁷ See 9/29/09 Response at Exhibit 15.

baking soda, salt, and vanilla are added during the mixing stage. While these may be relatively small quantities, each ingredient is consumed during the process, each is physically incorporated into, and becomes part of, the finished cake, and each is essential to imparting a specific attribute in making the cake (*e.g.*, the baking powder helps the cake rise, the vanilla adds a particular flavor, etc.), in precisely the same way that each of Xugong's material inputs at issue is consumed in the production process, is physically incorporated into and becomes part of the finished tire, and is essential to imparting specific qualities to the rubber consumed in making the merchandise under consideration. Specifically, each of the materials at issue is consumed during the production process as it is suffused with the natural rubber into the semi-finished rubber so that it becomes physically incorporated into the finished tire. Consequently, we find that Xugong has failed to provide evidence to support a finding that any of these inputs should be considered an indirect material. Rather, based on the information provided by Xugong, we find that each of the materials is a direct material input to the merchandise under consideration.

Bridgestone argues that it is the Department's practice to consider materials consumed during a particular production stage to be direct materials. Bridgestone maintains that even materials classified by a respondent as overhead expenses are considered by the Department to be factors of production when they are consumed for the purpose of manufacturing subject merchandise.

Additionally, Bridgestone cites to *Woven Sacks* and *Manganese Dioxide*, where the Department treated materials with long usage life as indirect inputs and materials with short usage life as direct inputs.¹⁸ There is no question of the short usage life for Xugong's 15

¹⁸ See *Laminated Woven Sacks 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 35646 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1 ("*Woven Sacks*"); *Electrolytic Manganese Dioxide*

material inputs: by Xugong’s own admission, each of the materials at issue is consumed during the production of the merchandise under consideration. In other words, unlike the printing cylinders discussed in *Woven Sacks*,¹⁹ which are not consumed in a single production cycle, but are re-used over and over again, the materials at issue in this remand are consumed in a single production cycle and must be replaced for each subsequent production cycle. Specifically, Xugong explained that “all of Armour Rubber’s raw materials used in the production of subject merchandise” are listed in the Exhibit 3a of the 3/10/08 submission, and included among them are most of the materials at issue.²⁰ In Exhibit 15 of its 9/25/09 Response, Xugong shows that most of the inputs at issue were added at the milling stage of the production process. Rubber milling, also known as rubber “mixing,” is the first stage of production to prepare semi-finished rubber, and is performed for Xugong by Xuzhou Armour Rubber Co. Ltd. (“Armour Rubber”).²¹ We also find that, notwithstanding Xugong’s claim to the contrary, materials added at this stage are indeed physically incorporated into the finished product, much as the ingredients used to make a cake are absorbed into the finished cake, thus indicating that they each have a short usage life.

Consistent with the Court’s remand, below is our analysis of each input under consideration:

1. Antioxidant RF

Contrary to Xugong’s prior claim that this input is used for “supplemental or cleaning purposes” (*see* 3/10/08 SQR at 4) Xugong now describes Antioxidant RF as a “stabilizer for

From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 48195 (August 18, 2008), and accompanying Issues and Decision Memorandum at Comment 8 (“*Manganese Dioxide*”).

¹⁹ *See Woven Sacks* and accompanying Issues and Decision Memorandum at Comment 1.

²⁰ *See* Xugong’s March 10, 2008, supplemental questionnaire response at 2 (“3/10/08 SQR”).

²¹ *See* Verification of the Sales and Factors Response of Xuzhou Xugong Tyres Co., Ltd. in the Antidumping Duty Investigation of Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China, dated May 12, 2008, at 3 (“Verification Report”).

processing natural rubber and synthetic adhesive” and as being used “during rubber material processing.” *See* 9/25/09 Response at 1. Xugong further states that the prime component of its Antioxidant RF is tri-phosphate. *See id.* Xugong goes on to explain that the production stage at which Antioxidant RF is used is “rubber masterbatch milling,” which is marked on Xugong’s production chart and shows that Antioxidant RF is added along with other inputs to the rubber at the initial milling stage of tire production. *See* 9/29/09 Response at 7 and Exhibit 15. Although not visible in the finished product, the Antioxidant RF is nevertheless physically incorporated into the finished tire. Based on Xugong’s description, Antioxidant RF is suffused with natural rubber, as a stability and oxidant agent applied to natural rubber, and along with other inputs is added at the milling stage to produce semi-finished rubber and, thus is physically incorporated into the finished tire. Antioxidant RF is a chemical entered into tire production at the milling or mixing stage, and is required for processing natural rubber into semi-finished rubber and, therefore, essential for the production of the finished tires.

In support of its description of Antioxidant RF, Xugong provided a description of “tri-phosphate” as “stability agent and oxidant agent applicable to natural rubber” from the *Handbook of Rubber Industry* (“*Handbook*”). *See* 9/25/09 Response at Exh. 1. Such description conforms with Xugong’s statement that this material is used as a “stabilizer for processing natural rubber and synthetic adhesive,” and indicates that this input imparts an essential quality (stability) to the rubber. *See id.* Specifically, the *Handbook* states that tri-phosphate brings thermal resistance to rubber, which reflects Xugong’s description of its Antioxidant RF serving to improve the high temperature resistance function during rubber material processing. *See id.* In light of the information above describing the nature and intended use of this input, in conjunction with Xugong’s explanation of where and how Antioxidant RF is used in the production process for the merchandise under consideration, and that Xugong’s own description

points to the fact that this chemical is consumed in the production and is physically incorporated into the finished product, we are treating Antioxidant RF as a direct material.

2. Homogenizer

Xugong describes Homogenizer as a “dispersing auxiliary agent used on natural rubber” and as being used “in rubber material processing.” *See* 9/25/09 Response at 2. Xugong also states that the main content of its Homogenizer is sodium stearate. *See id.* Xugong’s production chart indicates that Homogenizer is added, along with other inputs, to the rubber “masterbatch milling” stage, which is the initial milling stage of tire production. *See* 9/25/09 Response at Exh. 15. We find that the Homogenizer added at this stage is physically incorporated into the finished product because it is suffused with natural rubber as a dispersant of natural rubber. In other words, Homogenizer is a necessary ingredient that is combined with the natural rubber to make a finished tire. As explained above, materials entered into tire production at the milling stage, (also referred to as the mixing stage), are required for processing natural rubber into semi-finished rubber and, therefore, essential for the production of finished tires. Because Xugong reported Homogenizer as an input at the milling stage of production used for rubber material processing, Homogenizer is essential to the production of finished tires, is consumed in the production of finished tires, and is physically incorporated into the finished tires. Moreover, as now explained by Xugong, it is used as a dispersing auxiliary agent, not for “supplemental or cleaning purposes” as previously claimed by Xugong. *See* 9/25/09 Response at 2 and 3/10/08 SQR at 4, respectively.

In support of its description of Homogenizer, Xugong provided a description of “sodium stearate” as a “dispersant of natural latex” from the *Handbook*. *See* 9/25/09 Response at Exh. 2. Such description conforms with how Xugong explains the use of Homogenizer as a raw material input. In light of the information above describing the nature of this input, in conjunction with

Xugong's explanation of where and how Homogenizer is used in the production process for the merchandise under consideration, and the fact that Xugong's own description points to the fact that this chemical is consumed in the production and is physically incorporated into the finished product, we are treating Homogenizer as a direct material.

3. Active Agent

Xugong's production chart indicates that Active Agent (whose main component Xugong states is zinc stearate) is added, along with other inputs, to the rubber "masterbatch milling" stage, which is the initial milling stage of tire production. *See* 9/25/09 Response at Exh. 15. As a result of being incorporated at this stage of production, based on the description of the production process provided by Xugong, we are able to ascertain that the Active Agent is consumed in the production of the merchandise under consideration and is incorporated into the finished product.

In addition, Xugong describes Active Agent as an "agent of rubber composition," which "can improve the activity of rubber material surface; increase processability, enhance the dispersion level between the rubber phase and carbon black during rubber material milling." *See* 9/25/09 response at 2.

In support of its description of Active Agent, Xugong provided a description of "zinc stearate" as a "white powder with specific odor and non-toxicity" that is "mainly used as activator," which "shall make the acidity activation to improve the processing capacity" from the *Handbook*. *See* 9/25/09 Response at Exh. 3. This description conforms with how Xugong now explains the use of Active Agent as a raw material input, in comparison to its statement in its 3/10/98 SQR (at 4) that it is used "for supplemental or cleaning purposes").

We find that the Active Agent added at this stage of production is essential for tire manufacturing based on the description above (*i.e.*, that it "can improve the activity of rubber

material surface; increase processability, enhance the dispersion level between the rubber phase and carbon black during rubber material milling”) and further that it is physically incorporated into the finished product because it is suffused with natural rubber as an activator applied to natural rubber. In other words, Active Agent is a necessary ingredient that is combined with the natural rubber to make a finished tire. In view of the information discussed above describing the nature of this input, in conjunction with Xugong’s explanation of where and how Active Agent is used in the production process for the merchandise under consideration, and that Xugong’s own description points to the fact that this chemical is consumed in the production and is physically incorporated into the finished product, we are treating Active Agent as a direct material.

4. Iron Oxide

Xugong describes Iron Oxide as an “agent added during {the}milling stage,” which “is mainly used in the processing of natural rubber and synthetic adhesive to improve binding effect between the metal and adhesive material as manufacturing the steel wire product.” *See* 9/25/09 Response at 2-3. Xugong’s production chart indicates that Iron Oxide is added, along with other inputs, to the rubber “masterbatch milling” stage, which is the initial milling stage of tire production. *See* 9/25/09 Response at Exh. 15. Accordingly, we find that the Iron Oxide is consumed in the production process and is physically incorporated into the finished product because it is suffused with natural rubber, and that it is essential to the properties of the rubber because it serves as an adhesive that improves the adhesion between rubber and metal. In support of its description of Iron Oxide, Xugong provided a description of “red iron oxide” which “improve{s} adhesion power of rubber and metal” from the *Handbook*. *See* 9/25/09 Response at Exh. 4. Such description conforms with how Xugong now explains the use of Iron Oxide as a raw material input, in contrast to Xugong’s earlier statement that it is used for “supplemental or cleaning purposes.” *See* 3/10/08 SQR at 4. In other words, Iron Oxide is

combined with the natural rubber at the milling stage, (also referred to as the mixing stage), is required for processing natural rubber into semi-finished rubber and, therefore, is essential for the production of finished tires.

In light of the information discussed above describing the nature of this input, in conjunction with Xugong's explanation of where and how Iron Oxide is used in the production process for the merchandise under consideration, and that Xugong's own description points to the fact that this chemical is consumed in the production and is physically incorporated into the finished product, we are treating Iron Oxide as a direct material.

5. Coumarone

Xugong describes Coumarone as a "softener," which "can facilitate the dispersion of rubber and can be used to improve the processability of extrusion, calendaring and cohesiveness of rubber compositions." *See* 9/25/09 Response at 3. Xugong's production chart indicates that Coumarone is added, along with other inputs, to the rubber "masterbatch milling" stage, which is the initial milling stage of tire production. *See* 9/25/09 Response at Exh. 15. As with the inputs discussed above, Coumarone is a chemical added to the milling stage of production and is essential for tire manufacturing. We also find that Coumarone added at this stage is consumed in the production of the finished tires and is physically incorporated into the finished product because it is suffused with the natural rubber also consumed in this stage of production. Moreover, based on the Xugong's description of the purpose of this input, *i.e.*, as a solvent type softener that is applied to rubber to aid in the dispersion of carbon black, we find that it is essential for the production of finished tires and is not used for "supplemental or cleaning purposes" as previously claimed by Xugong in its 3/10/08 SQR at 4.

In support of its description of Coumarone, Xugong provided a description of "solid coumarone-indene resin" as a "product that has a good compatibility with the rubber" and is "a

solvent type softener in favor of carbon black dispersion” from the *Handbook*. See 9/25/09 response at Exh. 5. Such description conforms with how Xugong explains the use of Coumarone as a raw material input. In consideration of the information discussed above describing the nature of this input, in conjunction with Xugong’s explanation of where and how Coumarone is used in the production process for the merchandise under consideration, and that Xugong describes this chemical as being consumed in production and physically incorporated into the finished product, we are treating Coumarone as a direct material.

6. Paraffin Wax

Xugong describes Paraffin Wax as an “agent,” which “has a lubricating effect on rubber to facilitate rubber material to be drawn down and extruded easily.” See 9/25/09 Response at 3. Xugong’s production chart indicates that Paraffin Wax is added, along with other inputs, to the rubber “masterbatch milling” stage, which is the initial milling stage of tire production. See 9/25/09 Response at Exh. 15. In support of its description of Paraffin Wax, Xugong provided a description of “refined paraffin (wax)” as a product that “has the lubrication effect to rubber” from the *Handbook*. See 9/25/09 Response at Exh. 6. Such description conforms with how Xugong explains the use of Paraffin Wax as a raw material input in its most recent questionnaire response, thus contradicting Xugong’s prior claim that this material is used for “supplemental or cleaning purposes.” See 3/10/08 SQR at 4.

Based on the record, we find that Paraffin Wax is physically incorporated into the finished product because it is suffused with natural rubber as a lubricant added into the rubber. In other words, Paraffin Wax is a necessary ingredient that is combined with the natural rubber to make a finished tire and, is therefore, essential for the production of the finished tires.

In light of the information discussed above describing the nature of this input, in conjunction with Xugong’s explanation of where and how Paraffin Wax is used in the production

process for the merchandise under consideration, and that Xugong describes this chemical as being consumed in production and physically incorporated into the finished product, we are treating Paraffin Wax as a direct material.

7. Homogenizer 2

Xugong describes Homogenizer 2 as a “dispersing auxiliary agent used on natural rubber” and as being used “in rubber material processing.” *See* 9/25/09 Response at 3. It further states that its main content is sodium stearate. *See* 9/25/09 Response at 3. Xugong’s production chart indicates that Homogenizer 2 is added, along with other inputs, to the rubber “masterbatch milling” stage, which is the initial milling stage of tire production. *See* 9/25/09 Response at Exh. 15. We find that Homogenizer 2 is physically incorporated into the finished product because it is suffused with natural rubber as a dispersant used in natural and synthetic latex. We find Homogenizer 2 to be a necessary ingredient that is combined with the natural rubber to make a finished tire, and, therefore, essential for the production of finished tires. Because Xugong has now reported Homogenizer 2 as an input that is essential (as a dispersing agent) to the production of finished tires, and supported this claim with additional evidence (discussed below), we find that it is not used for “supplemental or cleaning purposes” as previously claimed by Xugong. *See* 3/10/08 SQR at 4.

In support of its description of Homogenizer 2, Xugong provided a description of “sodium stearate” as a “dispersant of natural latex” from the *Handbook*. *See* 9/25/09 Response at Exh. 2. Such description conforms with how Xugong explains the use of Homogenizer 2 as a raw material input. In light of the information discussed above describing the nature of this input, in conjunction with Xugong’s explanation of where and how Homogenizer 2 is used in the production process for the merchandise under consideration, and that Xugong describes this

chemical as being consumed in production and physically incorporated into the finished product, we are treating Homogenizer 2 as a direct material.

8. Cobalt Naphthenate

Xugong describes Cobalt Naphthenate as a “typical binding promoting agent that is added during the milling stage,” which “improves the binding between half finished product rubber composition and metal.” *See* 9/25/09 Response at 4. Xugong’s production chart indicates that Cobalt Naphthenate is added, along with other inputs, to the rubber “masterbatch milling” stage, which is the initial milling stage of tire production. *See* 9/25/09 Response at Exh. 15. Therefore, in spite of Xugong’s claims to the contrary, we find that Cobalt Naphthenate is physically incorporated into the finished product because it is suffused with natural rubber as a chemical that improves adhesion between rubber and metal. Moreover, according to Xugong, Cobalt Naphthenate is a necessary ingredient to improve the binding between semi-finished rubber and metal. *See* 9/25/09 Response at 4. As with many of the other inputs, this is in contrast to Xugong’s earlier claim that it is used for “supplemental or cleaning purposes.” *See* 3/10/08 SQR at 4, and we find this input to be essential to the production of the finished tire based on the current record.

In support of its description of Cobalt Naphthenate, Xugong provided a description of “cobaltnaphthenate” as a “typical adhesion promoter” from the *Handbook*. *See* 9/25/09 response at Exh. 7. Such description conforms with how Xugong currently explains the use of Cobalt Naphthenate as a raw material input. In view of the information discussed above describing the nature of this input, in conjunction with Xugong’s explanation of where and how Cobalt Naphthenate is used in the production process for the merchandise under consideration, and that Xugong describes this chemical as being consumed in production and physically incorporated into the finished product, we are treating Cobalt Naphthenate as a direct material.

9. Stearic Acid 2

Xugong describes Stearic Acid 2 as a “dispersing agent” that “shortens the milling time, lowers the milling temperature, improves the dispersion effect,” and as being used “during rubber material processing.” *See* 9/25/09 Response at 4. In addition, Xugong also states that the main composition of this input is zinc stearate. Xugong explains that Stearic Acid 2 is used in the “rubber masterbatch milling” stage. Xugong’s production chart shows that Stearic Acid 2 is added along with other inputs to the rubber at the initial milling stage of tire production. *See* 9/25/09 Response at 7 and Exh. 15. In addition, the *Handbook* describes Stearic Acid 2 or zinc stearate as a light and white powder substance, which has the dispersion, sulfurization promotion and softening effect on rubber composition. *See* 9/25/09 Response at Exh. 8. Further, we find that Stearic Acid 2 used during rubber processing, despite Xugong’s claims to the contrary, is physically incorporated into the finished product because it is suffused with natural rubber as a chemical that has a dispersing, sulfurization, and softening effect on the natural rubber. In other words, Stearic Acid 2 is a necessary ingredient that is combined with the natural rubber to make a finished tire.

In support of its explanation, Xugong provided a description of “zinc stearate,” which has the “dispersion, sulfurization promotion and softening effect” from the *Handbook*. *See* 9/25/09 response at Exh. 8. Such description conforms with how Xugong explains the use of Stearic Acid 2 as a raw material input. In light of the information discussed above describing the nature of this input, in conjunction with Xugong’s explanation of where and how Stearic Acid 2 is used in the production process for the merchandise under consideration, and that Xugong describes this chemical as being physically incorporated into the finished product, we find that it is not used for “supplemental or cleaning purposes” as previously claimed by Xugong (*see* 3/10/08

SQR at 4), but is a direct material input. Accordingly, we are treating it as such for this remand redetermination.

10. HO Oil

Xugong describes HO Oil as aromatic oil, which “is an agent for rubber, added in {the} milling process, for the purposes of softening rubber and improving its processing technical function.” *See* 9/25/09 Response at 4-5.

Xugong’s production chart indicates that HO Oil is added, along with other inputs, to the rubber “masterbatch milling” stage, which is the initial milling stage of tire production. *See* 9/25/09 Response at Exh. 15. Further, Xugong’s description that HO Oil is used to soften rubber during the production process indicates that it is physically incorporated into the finished product because it is suffused with natural rubber and other inputs added at this stage to produce semi-finished rubber. In other words, HO Oil is a necessary ingredient that is combined with the natural rubber to soften it and to make a finished tire. Because Xugong now reports HO Oil as an input that is essential to the production of finished tires, is consumed in the production of finished tires, and is physically incorporated into the finished tires, we find that it is not used for “supplemental or cleaning purposes” as previously claimed by Xugong. *See* 3/10/08 SQR at 4.

In support of its description of HO Oil, Xugong provided a description of “aromatic oil” as a softener used in conjunction with natural rubber and various compound rubbers in order to accommodate easier extrusion of the rubber composition from the Banbury mixer. *See* 9/25/09 Response at 4-5 and Exh. 10. This description conforms with how Xugong explains the use of HO Oil as a raw material input used to soften natural rubber in the production of tires. In light of the information discussed above describing the nature of this input, in conjunction with Xugong’s explanation of where and how HO Oil is used in the production process for the merchandise under consideration, and that Xugong describes this chemical as being consumed in

production and physically incorporated into the finished product, we are treating HO Oil as a direct material.

Xugong also states that it made a translation error and should have named this material “aromatic oil” in its previous questionnaire responses. Xugong provided at Exhibit 9 of the 9/25/09 Response a copy of a document from Xugong’s verification report,²² the *Handbook* description of “aromatic oil” and a Chinese dictionary translation of “aromatic oil.” All three documents indicate the same Chinese characters for “aromatic oil.” Xugong argues that if the Department determines to treat HO Oil as a direct material, as a result of this translation correction, the Department should use the harmonized tariff schedule (“HTS”) heading 2707.50²³ to value this input, in line with the Department’s valuation of aromatic oil for other respondents in the same underlying proceeding, rather than the subheading Xugong originally proposed.

Concerning the proper HTS classification, Bridgestone argues that the revaluation of HO Oil is beyond the scope of this remand and that the Department should not be considering Xugong’s claim for the change of HTS code. Bridgestone also argues that in the event the Department considers the valuation of HO Oil, it should still reject Xugong’s suggestion that it had made a translation error. Bridgestone maintains that Xugong was aware that its input is an “aromatic oil” and Xugong itself suggested the use of HTS category 2902.9090.²⁴

As an initial matter, we find that consideration of a newly proposed HTS category for valuing this input is beyond the scope of the Court’s order. Specifically, while the Court directed the Department to reconsider whether 15 inputs should be treated as direct or indirect materials, it instructed the Department to consider the proper valuation of only two inputs (neither of which

²² See Exhibit 9 of Verification Report.

²³ “Other aromatic hydrocarbon mixtures of which 65% or more by volume (including losses) distills at 250°C by the ASTM D 86 method.”

²⁴ See Exhibit 73.a of Xugong’s January 9, 2008, supplemental response (“1/9/08 SQR”) and Attachment 4 of Xugong’s January 22, 2008, supplemental response (“1/22/08 SQR”).

is HO Oil/Aromatic oil 50), in the event the Department determines these inputs to be direct materials to production. Further, we do not find record evidence to support Xugong's claim that it made a translation error in identifying this input during the original investigation. On the contrary, Xugong originally titled the input "HO Oil," and in response to the Department's supplemental request for a description, described its HO Oil as "aromatic oil 50" during the underlying investigation. *See* Xugong's November 23, 2007, Section D questionnaire response at Exhibit D-3 and 1/22/08 SQR at Attachment 4, respectively. Specifically, in Exhibit 4 of its 1/22/08 SQR, Xugong submitted a chart with two columns: (1) Variable name for the FOP, and (2) Description of the FOP. Under these two headings, Xugong reported "HO Oil" and "Aromatic oil 50," respectively. Further, while Xugong submitted this description after its 1/9/08 SQR at Exhibit 73.a (which it resubmitted as a public exhibit in its 1/18/08 SQR at Exhibit 1) where it recommended that this input be valued using HTS 2902.90.90, it did not, at any point during the underlying proceeding, indicate that HO Oil is a different product from aromatic oil 50, but rather continued to reference the input with the name HO oil and the description aromatic oil 50.

Further, while Xugong now claims that this factor should be valued using HTS subcategory 2707.50 ("Other aromatic hydrocarbon mixtures of which 65% or more by volume (including losses) distills at 250°C by the ASTM D 86 method"), rather than HTS subcategory 2902.90.90 ("Other cyclic hydrocarbons"), as it originally proposed, there is no basis on the record (including the HTS description itself) to conclude that the 2902.90.90 HTS subcategory is an inappropriate source for valuing this input. For the first time, on remand, Xugong claims that HO Oil is different than aromatic oil 50, a claim contradicted by the record in the underlying investigation. Xugong argues only that the Department valued other respondents' aromatic oils using HTS subcategory 2707.50. However, as discussed above, in its remand order the Court

instructed the Department not to consider its treatment of other respondents' materials because it is not possible to discern whether the other respondents' materials are the same materials as those at issue here, or whether they were used in the same manner as the manner in which they were used by Xugong.²⁵ In light of this, we do not find Xugong's sole argument on this issue persuasive.

Based on the above analysis, we find that consideration of a newly proposed HTS category for this input is beyond the scope of the Court's order and do not find any record evidence to substantiate Xugong's claim that an inadvertent translation error resulted in it proposing an incorrect HTS category for valuing the input in question. For those reasons, we have continued to value Xugong's HO Oil (*i.e.*, aromatic oil 50) with the HTS category 2902.90.90, consistent with the preliminary determination.

11. CTP

Xugong describes CTP as an agent "that is added during the milling {stage} to control the security of operation and to prevent from premature sulfurization without impact on the sulfurization characteristic and performance of vulcanized rubber." *See* 9/25/09 Response at 5. Xugong's production chart indicates that CTP is added, along with other inputs, to the rubber "final milling" stage, which is part of the initial milling stage of tire production. *See* 9/25/09 Response at Exh. 15. Based on Xugong's explanation of the use of the input, described above, we find that it is physically incorporated into the finished product because it is suffused with natural rubber as an anti-scorch retarder of synthetic and natural rubber. Clearly, CTP is a necessary ingredient that is combined with the processed rubber to make a finished tire. Accordingly, we find that it is not used for "supplemental or cleaning purposes" as previously claimed by Xugong. *See* 3/10/08 SQR at 4.

²⁵ *See* Opinion at 13.

In support of its description of CTP, Xugong provided a description of N-(Cyclohexylthio) phthalimide as an anti-scorch retarder of synthetic and natural rubber, which is applicable to all sulfonamide and thiazole accelerants. *See* 9/25/09 Response at Exh. 11. Such a description conforms with how Xugong explains the use of CTP as a raw material input. In light of the information discussed above describing the nature of this input, in conjunction with Xugong's explanation of where and how CTP is used in the production process for the merchandise under consideration, and that Xugong describes this chemical as being consumed in and physically incorporated into the finished product, we are treating CTP as a direct material.

12. Benzoic Acid

Xugong describes Benzoic Acid as an “inhibitor of natural rubber and synthetic adhesive sulphurization” which can “improve the critical temperature of sulphurization of many promoters, and improve the scorching ability of rubber material.” *See* 9/25/09 Response at 5. According to Xugong, it “can soften the uncured rubber and harden the cured rubber.” Xugong's production chart indicates that Benzoic Acid is added, along with other inputs, to the rubber “final milling” stage, which is the initial milling stage of tire production. *See* 9/25/09 Response at Exh. 15. In support of its description of its use of Benzoic Acid in tire production, Xugong cites the *Handbook*, which describes the use of this material as a vulcanization retardant for natural and synthetic rubber and a provides a more detailed description reflecting that already provided by Xugong. Accordingly, we find that Benzoic Acid is physically incorporated into the finished product because it is suffused with natural rubber as a vulcanization retardant for natural and synthetic rubber. *See* 9/25/09 response at Exh. 11. In addition, we find that because the Benzoic Acid changes the nature of the rubber itself, it is a necessary ingredient that is combined with the processed rubber to make a finished tire. Moreover, because the Benzoic Acid is essential to the production of finished tires, is consumed in the production of finished tires, and is

physically incorporated into the finished tires, we find that it is not used for “supplemental or cleaning purposes” as previously claimed by Xugong. *See* 3/10/08 SQR at 4.

Accordingly, given Xugong’s description of where and how Benzoic Acid is used in the production process, and that Xugong describes this chemical as being consumed in and physically incorporated into the finished product, we are treating Benzoic Acid as a direct material.

13. PCTP

Xugong describes PCTP as a “plasticizer,” which “can improve the mooney viscosity during natural rubber plastication.” *See* 9/25/09 Response at 6. Xugong’s production chart indicates that PCTP is used in the “plastication” segment of the “rubber milling process” prior to “rubber masterbatch milling.” *See* 9/25/09 Response at Exh. 15. Although this is not included in the “milling” process, PCTP is nevertheless consumed in the production process (*i.e.*, it is applied directly to the rubber) and is essential for processing semi-finished rubber, because it is used to improve “the viscosity of natural rubber,” *i.e.*, as a “peptizer,” PCTP has a stabilization effect to viscosity of rubber solution, consistent with the description of a “peptizer” in the *Handbook*. *See* 9/25/09 response at Exh. 12. It is not used for “supplemental or cleaning purposes” as claimed by Xugong. *See* 3/10/08 SQR at 4; *see* also 9/25/09 Response at 6. In other words, PCTP is a necessary ingredient that is combined with the natural rubber to make a finished tire. Moreover, we find that PCTP being is physically incorporated into the product because it is suffused with the natural rubber during the production process.

In support of its description of PCTP, Xugong provided a description of a “peptizer” of natural rubber from the *Handbook*. *See* Exhibit 12 of the 9/25/09 response. We note that the *Handbook* describes this chemical as a “slight yellow chip form wax substance,” whereas Xugong’s own test report describes it as “yellow powder.” *See* 2/7/08 SQR at Exh. 18.

Nevertheless, in light of the information from the *Handbook* describing the nature of this input, in conjunction with Xugong's explanation of where and how PCTP is used in the production process for the merchandise under consideration, and that Xugong describes this chemical as being consumed in and physically incorporated into the finished product, we are treating PCTP as a direct material.

Based on the Court order, that if the Department concludes that PCTP is a direct material, it must also consider the proper valuation of PCTP, we have examined the record evidence and determined that the most suitable category for valuing Xugong's PCTP input is Indian HTS category 3812.20 – "Compound Plasticisers for Rubber or Plastics." Bridgestone argues that the Department should use the 8-digit HTS category 3812.2090 – "Other Compound Plasticisers for Rubber or Plastic." Bridgestone maintains that the only other 8-digit subheading available is 3812.2010 – "Phthalate Plasticisers" but is not the appropriate choice because it does not match Xugong's input. According to Bridgestone, because Xugong's factor description is "pentachlorothiophend" and because the Department used 3812.2090 for other respondents who reported rubber plasticisers, the Department should use 3812.2090 for Xugong as well.

We disagree with Bridgestone's assertion that Xugong's "pentachlorothiophend" is not included in the Indian imports of "phthalate plasticisers." There is no record information to either support or refute Bridgestone's assertion. In other words, there is no record evidence to indicate which of the HTS 3812.20 subcategories, *i.e.*, 3812.2010 or 3812.2090, would contain Xugong's input. Consequently, we find that the appropriate category with which to value Xugong's input is the broader category 3812.20, which was used in the preliminary determination and is the only category that we can say with certainty would include Xugong's input.

14. Gasoline 120

Xugong describes Gasoline 120 as 1) “processing oil used to clean products and parts, which makes products and parts clean and more adhesive,” and 2) as a material which makes rubber more viscous. *See* 9/25/09 Response at 6 and 9, respectively. Furthermore, at verification “. . . company officials explained that this product is used to increase the elasticity of rubber.” *See* Xugong Verification Report at 22. Finally, Xugong’s production chart indicates that Gasoline 120 is used in the “fabric cutting,” “bead construction,” “laminating,” and “tyre building” segments of tire production. *See* 9/25/09 Response at Exh. 15. Taken together, this evidence suggests that Gasoline 120 is consumed in various stages of tire production and is also incorporated into the product at various stages of use. This is consistent with the Department’s findings from verification, where Xugong explained that Gasoline 120 is used “to increase the elasticity of rubber.” The *Handbook* reference provided by Xugong states that this product is used in manufacturing rubber solution or for product forming and it is also used as thinner of rubber adhesive. *See id* Exh. 13. Accordingly, based on this information and the fact that Xugong’s own description points to the fact that this chemical is physically incorporated into the finished product during certain stages of production, we are treating Gasoline 120 as a direct material.

Based on the Court order that if the Department concludes that Gasoline 120 is a direct material, it must also consider the proper valuation of Gasoline 120, we have examined the record evidence and determined that the most suitable category for Xugong’s Gasoline 120 is Indian HTS category 2710.11 – “Light Oils and Preparations.” Bridgestone argues that the Department should use the more specific 8-digit HTS category 2710.1120 – “Natural Gasoline Liquid.” Bridgestone maintains that 2710.1120 is the only 8-digit subheading that contains the term “gasoline.” Thus, according to Bridgestone, based on Xugong’s factor description and the

Department's verification, the Department should value Xugong's Gasoline 120 based on 2710.1120.

We disagree with Bridgestone that the Indian tariff description necessarily has the same meaning as Xugong's Gasoline 120, which was described as "solvent petrol for rubber." *See* 1/22/08 SQR at Exh. 4. There is no record evidence that Xugong's input is "natural gasoline," nor is there record evidence that definitively places Xugong's input in any of the other HTS 2710.11 subcategories, whose headings include terms such as "motor spirits" and "light oils and preparations." Because none of the subcategories is conclusive with respect to Xugong's Gasoline 120, we find that record evidence does not support excluding Gasoline 120 from any of the 8-digit Indian subheadings, and determine that the proper category with which to value Gasoline 120 is HTS 2710.11, which was used in the preliminary determination.

15. RH

Xugong describes RH as an agent that can strengthen the binding effect of rubber material. *See* 9/25/09 Response at 6-7. Xugong's production chart indicates that RH is added, along with other inputs, to the rubber "final milling," stage, which is the initial milling stage of tire production. *See* 9/25/09 Response at Exh. 15. We find that the RH added at this stage of production is essential for tire manufacturing and is physically incorporated into the finished product because it is suffused with natural rubber and serves as a formaldehyde donor which enables the temperature of the rubber mixing in the Banbury mixer to drop below 100°C. *See id* at Exh. 14. In other words, RH is a necessary ingredient that is combined with the processed rubber to make a finished tire. Additionally, the *Handbook* confirms that RH is used in the "Banbury mixer," used in the rubber milling process of tire manufacturing. *See id*. Thus, nothing on the record indicates that RH is used for "supplemental or cleaning purposes" as previously claimed by Xugong. *See* 3/10/08 SQR at 4.

In light of the information discussed above describing the nature of this input, in conjunction with Xugong's explanation of where and how RH is used in the production process for the merchandise under consideration, and that Xugong describes this chemical as being consumed in and physically incorporated into the finished product, we are treating RH as a direct material.

D. COMMENTS FROM INTERESTED PARTIES

Comment 1: Use of Additional Evidence Supporting the Department's Draft

Redetermination

Titan states that it is satisfied with the Department's draft remand results. Titan further maintains that the Department should cite to the evidence submitted in Titan's comments, dated October 2, 2009 ("Titan's 10/02/09 Comments").

Department's position:

The Department had considered Titan's comments in its draft remand redetermination as it analyzed Titan's submission of October 2, 2009. As appropriate, we have incorporated Titan's submitted evidence in our positions discussed below.

Comment 2: Valuation of HO Oil

Xugong argues that it reported an incorrect HTS category for its HO Oil, but the issue of the correct classification did not arise until Xugong reported it as an indirect material in the investigation. Xugong concludes that the error, thus, carried forward until its re-examination of the issue during the remand proceeding. Xugong disagrees with the Department's finding that there was no translation error, and submits that the Department appeared to acknowledge that the information submitted by Xugong contains different but similar characters to HO Oil. Xugong further argues that, despite the fact that it described HO Oil as "aromatic oil" in its 1/22/08 SQR at Attachment 4, this fact does not prove that there was no translation error, as it described its

HO Oil as aromatic oil only in that submission. Xugong asserts that on numerous other occasions it references the material as HO Oil, and that the only exhibit referencing aromatic oil is not accompanied by an HTS description.

Xugong argues that the Department erred in finding that the appropriate surrogate value for HO Oil is outside the scope of the remand proceeding, as the dumping margin calculations are to be performed as accurately as possible. Xugong contends that the Department made a legal error by not accepting or examining Xugong's correction to the surrogate value without giving Xugong an opportunity to demonstrate the accuracy of the correction through verification. According to Xugong, the Department should treat Xugong's correction to the surrogate value of HO Oil no differently than it would have done had the issue arisen during the underlying investigation. Xugong maintains that through no fault of its own, the issue of the valuation of HO Oil arose for the first time during the remand proceeding. Xugong maintains that if the Department issued an additional supplemental questionnaire after Xugong claimed that its materials were indirect, Xugong would have discovered its error.

Department's Position:

We disagree with Xugong's argument that the Department erred in its draft remand redetermination in not accepting Xugong's suggestion of a new HTS category for purposes of valuing HO Oil (*i.e.*, aromatic oil 50). As an initial matter we do not find Xugong's claim that naming its input HO Oil was a result of a translation error to be persuasive. On the contrary, when Xugong initially reported the input HO Oil as a direct material, the Department requested a description of HO Oil in order to determine the appropriate surrogate value. In response, Xugong provided a further description of HO Oil as aromatic oil 50. As discussed above in the Analysis section of this remand determination, Xugong, in fact, referenced the input with the name HO oil and the description aromatic oil 50, in the same chart. *See* 1/22/08 SQR at

Attachment 4. In other words, while now claiming that the correct translation for this input is aromatic oil, Xugong itself defined and translated this input (*i.e.*, HO Oil) as aromatic oil prior to the preliminary determination in the underlying investigation.

Further, we are confused by Xugong's statement that the "draft remand determination appears to acknowledge that the information Xugong submitted shows that aromatic oil involves different, albeit {similar}, characters, to HO Oil." *See* Xugong's December 10, 2009, comments at 4. On the contrary, in the draft redetermination (at 19), the Department identified multiple documents on the record regarding this input, all containing the same Chinese characters. *See* Xugong 9/25/09 SQR at Exhibit 9, which contains: (1) a copy of a Exhibit 9 from Xugong's verification report); (2) the *Handbook* description of "aromatic oil," and (3) a Chinese dictionary translation of "aromatic oil." It was not our intention in the draft redetermination results to suggest that the Chinese characters appear to be different. For further elaboration, *see* the discussion regarding this input above in the Analysis section of this remand redetermination which includes a discussion of the Chinese characters on the record and reflects the draft redetermination.

While Xugong argues that its numerous references to "HO Oil" in contrast to its single description of HO Oil "aromatic oil" supports its claim of a translation error, we find this argument unpersuasive. Xugong had described its input as "aromatic oil" in a submission dated prior to the preliminary determination in direct response to the Department's request for a further explanation of the input HO Oil. To put it another way, Xugong itself provided aromatic oil 50 as the description of HO Oil in its 1/22/08 SQR at Attachment 4, as discussed above in the Analysis section of this redetermination. Thus, any references to "HO Oil" on the record of this proceeding equate to references to aromatic oil and the record thus contains no inherent inconsistency between the two terms being used to describe the same product.

To the Department, it appears that Xugong is arguing that in the underlying investigation, it should have suggested a different HTS category to value its HO Oil/aromatic oil input. But this argument comes too late, and is beyond the scope of this remand, as discussed above. Xugong is incorrect that the issue of the proper valuation for this input did not arise until after Xugong reported that it was an indirect material and that, therefore, the Department is imposing a higher standard on Xugong's ability to correct its error by virtue of the fact that the issue arose during a remand proceeding. First, when Xugong explained to the Department that the input that it named HO Oil was in fact "aromatic oil 50," Xugong could have suggested a different HTS description than the one previously submitted to the Department, if it considered a different HTS category to be more appropriate. Second, after Xugong reviewed the surrogate values applied in the preliminary determination, it could have suggested alternative surrogate values after the preliminary determination, in accordance with 19 CFR 351.301(c)(3)(i), but it did not. Third, when Xugong claimed on March 10, 2008, that HO Oil is an indirect material, Xugong had no way of knowing at that time how the Department would treat Xugong's inputs for the final determination. Thus, pursuant to 19 CFR 351.309(c), Xugong could have commented in its case brief that, if the Department continued to treat HO Oil/aromatic oil as a direct input for the final determination, it should consider a different surrogate value already on the record.²⁶ However, Xugong did not do so.

We do not agree with Xugong that because the Department did not issue a supplemental questionnaire after Xugong's claim that this input should be should be treated as indirect, we deprived Xugong an opportunity to correct its "error," similar to the Department's handling of the issue of a translation error between "wood tar" and "pine oil." There is no comparison

²⁶ The Department is not suggesting here that Xugong should have included new factual information in its brief, but that it could have provided argument regarding facts already on the record, such as HTS subcategory 2702.50.

between these two issues. As Xugong acknowledges, it raised the issue of a translation error between wood tar and pine oil on March 19, 2008, just prior to verification in the underlying investigation, whereas the notion of a translation error with respect to HO Oil was never raised prior to the remand proceeding. The “wood tar” issue was briefed by the parties and a determination was made based on the record evidence. Moreover, not only would the Department not have known that Xugong may have made a translation error in order to issue supplemental questionnaires, but also record evidence does not demonstrate that a translation error was made in the first place. Xugong now claims that it should have translated the Chinese characters for this input as aromatic oil, but, as explained above, the record shows that Xugong already translated this input as aromatic oil when it explained that HO Oil is, in fact, aromatic oil. Therefore, we continue to find that revaluation of Xugong’s inputs with exception of the two inputs identified in the remand order is not appropriate.

Comment 3: Basis for Determination of Treatment of Xugong’s Raw Material

Xugong argues that the Department erred by not conducting a verification regarding the fifteen materials at issue in this remand determination because Xugong submitted its supplemental questionnaire response with the understanding that the Department was going to verify the information presented in Xugong’s response. According to Xugong, it did not have the opportunity to prove the nature of these materials because the Department cancelled its verification citing resource constraints. Xugong maintains that the CIT has made rulings in unrelated proceedings that resource constraints do not provide a lawful basis for rewriting the statute, citing *Zhejiang Native Produce & Animal By-Products Import & Export Corp. v. United States*, Slip Op. 09-87 (Aug. 19, 2009) and *Carpenter Technology Corp. v. United States*. Slip Op.P 09-134 (Nov. 23, 2009).

Xugong further argues that basic fairness suggests that the Department cannot inform a respondent that it will verify and then cancel verification after the respondent submitted its response. According to Xugong, the Department should have requested additional information if it believed that Xugong had not sufficiently demonstrated that each of the materials was indirect.

Finally, Xugong argues that the Department should not have treated all 15 materials as direct materials, based on a policy that it articulated for the first time in the remand determination, which included physical incorporation and essential usage. Xugong maintains that this approach is inconsistent with the approach taken in the investigation for other respondents and cites Comment 27 of the Issues and Decision Memorandum accompanying the *Final Determination*. Xugong maintains that the Department should have articulated the criteria it was going to use before Xugong submitted its response. Therefore, according to Xugong, the Department's decision to treat all 15 materials as direct is contrary to law.

Department's Position:

We disagree with Xugong that by not conducting a second verification, and by not issuing additional supplemental questionnaires, the Department erred or did not act in accordance with law by treating Xugong's materials as direct materials. The Department did not issue additional supplemental questionnaires and did not verify the information Xugong submitted because the information in Xugong's questionnaire response was sufficient to determine whether the materials were direct or not. In fact, the decision to treat the 15 inputs as direct is based on: (1) Xugong's narrative descriptions of the inputs and their usage in the production process, (2) Xugong's production chart, (3) Xugong's identification of what stage of production each item is consumed, and (4) descriptions from the *Handbook*, a secondary source not subject to verification, but provided by Xugong to support its reported descriptions of the inputs and each one's specific role in tire production.

We also disagree that there was a violation of fairness in treating “all fifteen materials as direct based on a policy that the Department articulated for the first time in the Remand Determination.” *See Xugong’s Comments* at 8. As an initial matter, the Department did not articulate a new practice or policy for the first time in the draft results of redetermination. Rather the Department analyzed the information on the record of this proceeding following past Department practice. Moreover, the cases cited by the Department in this discussion are derived from public decisions and, thus, are available for all parties to review and analyze. Further, Xugong could have addressed whether and how the Department’s prior determinations are or are not applicable to its inputs; however, it did not do so in its comments on the draft results. In fact, in responding to the draft redetermination, it made no comment regarding the relevancy of any of the specific criteria the Department used, nor did it recommend any additional criteria it deemed relevant to the analysis. Nevertheless, in its 9/25/09 SQR (submitted prior to the draft redetermination) Xugong itself acknowledged some of the same criteria, discussing consumption of the materials in the production process and whether the materials were physically incorporated into the finished product. *See 9/25/09 SQR* at 1.

Having not addressed the nature of Xugong’s inputs in detail prior to the remand proceeding, the Department addressed the criteria that appeared relevant and applicable to this case for purposes of the remand determination. In making our determination, we selected criteria commonly used by the Department in prior cases and particularly applicable to the nature of Xugong’s inputs.²⁷ For example, we reviewed the usage life (*i.e.*, whether the input is fully consumed in the production cycle), incorporation into the physical product, and whether the input is an essential component for imparting an essential attribute to the finished product.

²⁷ *See, e.g., Paper Clips* (for physical incorporation); *Nails* (for consumption in the production process); *Diamond Sawblades* and *Garment Hangers* (for requirement for particular segment of production); and *Bicycles* (for essential use in the production process).

Therefore, we determine that the Department did not err in its draft remand redetermination to treat Xugong's 15 inputs as direct materials. Rather, the determination is supported by record information, including information contained in Xugong's questionnaire responses, and is consistent with the Department's established practice.

E. FINAL RESULTS OF REMAND REDETERMINATION

We have recalculated the antidumping duty rate applicable to Xugong in accordance with this final redetermination. As a result of the changes made to the analysis for this company, Xugong's rate changes from 0.00 percent to 10.01 percent.

This redetermination is in accordance with the order of the Court in *Bridgestone Americas Inc. et al. v. United States*, Slip. Op. 09-79 (CIT, Aug. 4, 2009).

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date