A-570-952
Investigation
POI: 01/01/2009 - 6/30/2009
Public Document
IA/O4: ZW/KG

DATE July 12, 2010

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Edward C. Yang
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China

SUMMARY

The Department of Commerce ("the Department") has analyzed the case and rebuttal briefs, and other comments, submitted by interested parties in the above-referenced investigation. As a result of our analysis, we have made changes in the margin calculation for the final determination. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a list of the issues in this investigation for which we received comments from interested parties:

Comment 1: Whether the Department should recalculate the petition margin with the preliminary surrogate value for labor
Comment 2: Whether to apply a scrap offset in deriving Yama's normal value
Comment 3: Whether to set additional processing revenue to zero for all sales and cap freight revenue
Comment 4: Whether to include freight expenses for the input liquid petroleum gas
Comment 5: Whether to deduct Yama's bank charges from U.S. price
Comment 6: Whether to apply Adverse Facts Available for some of Yama's sales
Comment 7: Whether to apply Facts Available to estimate commissions on Yama's U.S. Sales
Comment 8: Whether the Department should revise its labor rate calculation
Comment 9: Whether to assign Bestpak the calculated margin assigned to Yama as its separate rate
Comment 10: Whether to select an additional respondent
Comment 11: Whether to calculate Bestpak's separate rate using its quantity and value information
Comment 12: Whether the Adverse Facts Available rate was sufficiently corroborated

Background

On February 18, 2009, the Department published its preliminary determination in the investigation of narrow woven ribbons with woven selvedge ("narrow woven ribbons") from the People's Republic of China ("PRC"). See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 7244 (February 18, 2010) ("Preliminary Determination"). We invited parties to comment on our Preliminary Determination. Berwick Offray LLC and its wholly-owned subsidiary Lion Ribbon Company, Inc. (collectively "Petitioner"), Yama Ribbons and Bows Co., Ltd. ("Yama"), a mandatory respondent in this investigation, and Yangzhou Bestpak Gifts & Crafts Co., Ltd. ("Bestpak"), a separate rate applicant, submitted case briefs on April 20, 2010. On April 26, 2010, Petitioner, Yama, and Bestpak filed rebuttal briefs.

On June 14, 2010, the Department notified parties that as a result of the recent decision in Dorbest Limited et. al. v. United States, 2009-1257,-1266 ("Dorbest"), issued by the United States Court of Appeals for the Federal Circuit ("CAFC") on May 14, 2010, the Department would be reconsidering its valuation of the labor wage rate in this review. On June 14, the Department placed export data on the record of the investigation and gave parties until June 18, 2010 to comment on the narrow issue of the labor wage value in light of the CAFC's decision.[1] On June 15, 2010, the Department placed additional export data on the record, and extended the deadline for parties to comment until June 21, 2010.[2] On June 21, 2010, Petitioner and Yama, submitted comments regarding the wage rate issue. Further, on June 22, 2010, the Department issued memorandum adding additional export data to the record related to the Department's determination of the surrogate value for labor.[3] We received no additional comments. On July 1, 2010, the Department placed further data on the record regarding the wage rate issue.[4] No party submitted comments.

Discussion of the Issues

Comment 1: Whether the Department should recalculate the petition margin with the preliminary surrogate value for labor

- Petitioner contends that the Department should recalculate the petition rate for the purposes of the final determination to incorporate the Department's non-market economy ("NME") wage rate for the PRC of US $1.39 per hour, which the Department used in the Preliminary Determination.

No other party commented.

[1] See Memorandum to The File, Antidumping Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from the People' Republic of China: Export Data, dated June 14, 2010.
[2] See Memorandum to The File, Antidumping Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from the People' Republic of China: Additional Export Data dated, June 15, 2010.
[3] See Memorandum to The File, Antidumping Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from the People' Republic of China: Additional Export Data, dated June 22, 2010.
[4] See Memorandum to The File, Antidumping Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from the People' Republic of China: Data on Labor Wage, dated July 1, 2010.

Department's Position:

The Department disagrees with Petitioner's argument that the Department should recalculate the petition margin based upon the surrogate value for labor that was used in the Department's Preliminary Determination. The Department's practice is not to recalculate dumping margins provided in petitions, but rather to corroborate the applicable petition rate when applying that rate as adverse facts available. See Certain Steel Grating from the People's Republic of China: Final Determination of Sales at Less than Fair Value, 75 FR 32366 (June 8, 2010) and accompanying Issues and Decision Memorandum at Comment 2. In the instant case, however, the surrogate wage rate used in the petition was based upon the Department's methodology that the Federal Circuit found unlawful in Dorbest. See Comment 8 below. In light of the Federal Circuit decision to invalidate the wage rate methodology, the Department has adjusted the petition rate using the surrogate value for labor used in this final determination.

Comment 2: Whether to apply a scrap offset in deriving Yama's normal value

- Petitioner requests that the Department not apply a scrap offset because there is no legitimate usage for Yama's yarn scrap and ribbon scrap.

- Petitioner argues that, even if the Department were to apply a scrap offset, there is no appropriate surrogate value. Petitioner claims that Harmonized Tariff Schedule ("HTS") number 5501.10.00, the HTS category used to determine the surrogate value for yarn scrap and ribbon scrap for the Preliminary Determination, is not appropriate because it does not define "synthetic filament tow" as scrap and is higher than the surrogate value for the raw material inputs.

- In rebuttal, Yama emphasizes that the verification team found no discrepancies in its data on scrap sales and payment, and thus the record clearly demonstrates that Yama sold scrap and was paid for it.

- Yama further states that: first, HTS 5501.10.00 is the correct surrogate value because it is a catch-all category intended to capture miscellaneous items, including scrap; second, Petitioner did not state that scrap is not found within that tariff category but rather found it inappropriate because the value is too high; third, Petitioner had the entire investigation to submit either a tariff number for scrap, or data in India on scrap sales, but chose not to do so; fourth, the Department accepted the tariff category and used it in calculating the scrap value in the Preliminary Determination; and finally, the Department has to use some number, the substantial evidence on the record supports reliance upon HTS 5501.10.00, and there is no other reasonable choice.

Bestpak did not comment.

Department's Position:

We agree with Yama that a scrap offset is appropriate because the record demonstrates that Yama sold its scrap yarn and ribbon (collectively "scrap") during the period of investigation ("POI"). During verification, we found that Yama's reported scrap offset was based on the actual sales of

scrap by Yama.[5] The Department normally allows respondents to claim an offset to the reported factors of production ("FOPs") for scrap generated during production of the merchandise under consideration and sold or reintroduced into the production process by the respondent. See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of the Eighth New Shipper Review, 70 FR 42034, 42037 (July 21, 2005), unchanged in Certain Preserved Mushrooms from the People's Republic of China: Notice of Final Results of the Eighth New Shipper Review, 70 FR 60789 (October 19, 2005). In the instant case, Yama has provided record evidence that its scrap was being sold, and this evidence was verified.[6] Therefore, for the final determination, consistent with our practice, we continue to allow the scrap offset reported by Yama. See Final Analysis Memorandum for Yama Ribbons and Bows Co. Ltd. ("Yama's Final Analysis Memo") dated July 12, 2010.

With respect to the appropriate surrogate value for scrap, on June 14, 2010, the Department placed on the record publicly available Indian import prices for HTS numbers 6310.10.90 and 6310.90.90, reported in the World Trade Atlas ("WTA"), which is published by Global Trade Information Services, Inc. (an electronic source based upon the publication Monthly Statistics of the Foreign Trade of India, Volume II: Imports).[7] As the Department stated in the accompanying memo, these numbers fall under the four-digit tariff category 6310, which covers; "Used or new rags, scrap twine, cordage, rope and cables, and worn out articles of twine, cordage, rope or cables, of textile materials: Other."[8]

Pursuant to the Department's request, both Petitioner and Yama commented upon this data. Petitioner claimed that the Department should not use import data under heading 6310 to value scrap because the scrap is not: 1) used or new rags of textile material; 2) scrap twine, cordage, rope and cables of textile material; 3) and is not worn out articles of twine, cordage, rope and cables of textile material.[9] Petitioner further claimed that, should the Department remove merchandise from these categories that is not scrap, the remaining data is simply a basket category of merchandise. However, Petitioner stated that if the Department elects to use heading 6310, the Department should utilize HTS number 6310.90.90 unless the Department is satisfied that the scrap sold by Yama was sorted before it was sold, given that 6310.10.10 is specific to "sorted" merchandise.[10] In support of this argument, Petitioner attached an excerpt from the Indian Import Tariff Schedule, Chapter 63, showing that 6310.10.10 falls under a subcategory of heading 6310 that is specific to "sorted" merchandise, and that 6310.90.90 falls under a subcategory for "other" merchandise. Additionally, Petitioner argued that the Department should consider the relationship between the price paid to Yama for its scrap and the surrogate values.

Yama also claimed that the Department should not use import data under heading 6310 to value

---

[5] See April 13, 2010 Memorandum to the File from Karine Gziryan and Zhulieta Willbrand, International Trade Compliance Specialists, AD/CVD Operations, Office 4, "Verification of the Sales and Factors Responses of Yama Ribbons and Bows Co., Ltd. in the Antidumping Investigation of Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China" at 34 and Exhibit 22 ("Verification Report").
[6] See id.
[7] See June 14, 2010 Memorandum to the File from Zhulieta Willbrand, International Trade Compliance Analyst, AD/CVD Operations, Office 4, "Investigation of Narrow Woven Ribbons With Woven Selvedge from the People's Republic of China: Surrogate Values for Scrap Yarn and Scrap Ribbon."
[8] Id.
[9] See Petitioner's June 18, 2010 submission.
[10] See id.

scrap yarn and scrap ribbon, and stated that the Department should continue to rely upon the same surrogate value used in the Preliminary Results, HTS 5501.10.00.[11] Alternatively, Yama proposed that the Department calculate the value for scrap using HTS numbers 5806.39.90 or 5806.32.00 under which the ribbons themselves are classified in the scope of this investigation. Yama stated that these HTS numbers capture the exact same product which it produces and thus "more precisely mirror" the composition of its scrap.[12]

The Department's practice when selecting the "best available information" for valuing FOPs, in accordance with section 773(c)(1) of the Tariff Act of 1930, as amended ("Act"), is to select, to the extent practicable, surrogate values which are publicly available, product-specific, representative of a broad market average, tax-exclusive and contemporaneous with the POI. See, e.g., Electrolytic Maganese Dioxide 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 2. Thus, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input. Here, the available surrogate value sources are equal with respect to their availability because they are all drawn from the WTA. They are also equal with respect to their representativeness of the market, given that they are all import prices. Additionally, they are equally contemporaneous with the POI, as they all come from the same time period. Thus, based upon the record of the instant case, the Department must determine which surrogate data source is the most specific to Yama's scrap.

We have determined that HTS number 6310.90.90 is the most specific data source to value Yama's scrap. The description for the four-digit HTS heading, 6310, expressly includes "worn out articles of . . . cordage, rope or cables, of textile materials."[13] While we acknowledge Petitioner's argument that this is an imperfect match to yarn and ribbon, we find, however, that 6310.90.90 is the best approximation of Yama's scrap, which is basically discarded textile material generated in the production process. Indeed, as Yama explained, its scrap is comprised of yarn "that cannot be put into production" and "broken ribbons or ribbons that do not meet Yama's quality requirements."[14] Additionally, we agree with Petitioner that HTS number 6310.90.90 is a more appropriate surrogate than HTS number 6310.10.10 because the record does not demonstrate that Yama sorted its scrap in any manner.

We disagree with Yama that we should continue to rely upon HTS number 5501.10.00. The record does not contain a definition "synthetic filament tow," and there is no suggestion in the record that it is scrap or even similar to scrap. We also disagree with Yama that HTS numbers 5806.39.90 or 5806.32.00 are appropriate surrogate data sources for scrap. As discussed above, Yama informed the Department that its scrap cannot be used in production and does not meet its internal quality requirements, thus it would be unreasonable to determine the value for scrap based upon HTS numbers under which the finished merchandise is classified. Additionally, we disagree with Petitioner's argument that the prices charged by Yama for its scrap are probative of the appropriate surrogate value. Evaluating surrogate values based upon prices charged within the NME would be improper because prices set according to non-market conditions, such as Yama's scrap prices, are

[11] See Yama's June 18, 2010 submission.
[12] See id.
[13] Petitioner's June 18, 2010 submission at Attachment 1.
[14] See Yama's December 23, 2009 submission at 37.

not an appropriate benchmark for prices set in market conditions, namely the Indian import data relied upon by the Department.

Thus, based on record evidence, we recommend that the "best information available" to value Yama's scrap yarn and scrap ribbon is HTS 6310.90.90 because, among the data available on the record, it is the most product-specific. See Yama's Final Analysis Memo.

Comment 3: Whether to set additional processing revenue to zero for all sales and cap freight revenue

- Petitioner notes that the Department preliminarily capped reported freight revenue by the amount of actual transaction-specific movement expenses imparted to specific transactions,[15] and requests that the Department similarly cap the amount of additional processing revenue reported on specific transactions by the cost of providing such services on a transaction-specific basis or set the additional processing revenue to zero, if transaction-specific information on the costs of providing these services is absent.

- In rebuttal, Yama argues that, during verification, the Department inspected the additional revenue generated by Yama and its allocation methodology for miscellaneous items and found no discrepancies.

- Yama argues that if substantial evidence indicates that Yama received income from fees and charges for dyeing, printing and molding, then they must be included in gross income.

- Yama states that the Department incorrectly capped freight revenue and because the standard for calculating dumping margins as accurately as possible requires the Department to apply the full income for all fees, the Department should not cap the revenue from freight.

Bestpak did not comment.

Department's Position:

The Department disagrees with Petitioner that additional processing charges should be capped or set to zero. Specifically, we determine that Yama's allocation methodology for its additional processing charges is sufficiently specific to satisfy our regulatory standards. Pursuant to 19 CFR 351.401(g)(1), the Department may consider allocated expenses when transaction-specific reporting is not feasible, provided that the Department is satisfied that the allocation method used does not cause inaccuracies or distortions. Additionally, a respondent that reports an expense on an allocated basis must demonstrate that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology does not cause inaccuracies or distortions. See 19 CFR 351.401(g)(2). The Department examines whether the respondent's methodology is feasible based upon the party's record, as well as other factors, such as accounting practices and the number of sales made by the party. See 19 CFR 351.401(g)(3).

Here, the Department is satisfied that Yama's allocation methodology is sufficiently specific. In the

[15] See Preliminary Determination, 75 FR at 7252.

normal course of business, Yama charges its customers for the expenses incurred in meeting the customer's special requirements in product design or color, such as dyeing fee, printing fee, molding fee, etc. [16] During verification, company officials stated that in cases when the processing fee was incurred only for part of the transactions on the same delivery note, Yama allocated additional processing charges only to the transactions which incurred the additional processing charges. However, company officials noted that in cases when it was impossible to trace additional processing fees to specific transactions, Yama allocated the additional processing fees over all transactions included on the same delivery note or invoice.[17] Thus, Yama demonstrated that the allocation is calculated on as specific a basis as possible and does not cause inaccuracies and distortions.

Additionally, during verification, Yama demonstrated that it had accounted for all FOPs utilized in the production of narrow woven ribbons, including additional processing, and that it has received payment associated with these additional processing charges.[18] Thus, in sum: 1) the additional processing charges are associated directly with the production of the merchandise under consideration; 2) the customer paid for the additional processing performed; and 3) we have determined that Yama demonstrated that it accounted for the additional FOPs utilized in additional processing.[19] As a result, we find it appropriate to add the full amount of processing charges to the gross unit price of relevant merchandise as reported by Yama.

With respect to the freight-related revenue, the Department disagrees with Yama's argument that capping freight revenue for the purposes of the Preliminary Determination was in error, and that there is no authority, policy, or practice of the Department to cap such income. In past cases, the Department has declined to treat freight-related revenue as an addition to U.S. price under section 772(c) of the Act or as price adjustments under 19 CFR 351.102(b).[20] We based our determination on the fact that freight revenue is not listed in the statute under section 772(c)(1) of the Act. Section 772(c)(1) of the Act provides that the Department may increase the price used to establish export price ("EP") or constructed export price ("CEP") in the following three instances:

> (a) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to place the subject merchandise in condition packed ready for shipment to the United States,
> (b) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States, and
> (c) the amount of any countervailing duty imposed on the subject merchandise under subtitle A to offset an export subsidy.

Further, according to section 772(c)(2) of the Act, freight revenue relates to the movement and transportation of subject merchandise, and freight revenue is used to offset freight expenses that are

[16] See Verification Report at 20.
[17] See id.
[18] See id.
[19] See id.
[20] See Certain Woven Electric Blankets From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 38459 (July 2, 2010)("Woven Electric Blankets Final"); see also Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 6857 (February 11, 2009) and accompanying Issues and Decision Memorandum at Comment 4.

deducted from U.S. price. Section 772(c)(2) of the Act provides that the Department may reduce the price used to establish EP or CEP in the following instances:

> (A) except as provided in paragraph (1)(C), the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States, and
>
> (B) the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in section 771(6)(C).

We further note that 19 CFR 351.401(c) directs the Department to use, in calculating U.S. price, a price which is net of any price adjustment that is reasonably attributable to the subject merchandise. The term "price adjustments" is defined under 19 CFR 351.102(b) as a "change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay." Freight revenue is not included in this definition. In past cases, we have incorporated freight-related revenues as offsets to movement expenses because they relate to the movement and transportation of subject merchandise. [21] Therefore, we continue to treat freight revenue as an offset to freight costs.

In this case, however, the freight revenue earned by Yama exceeded the freight cost, i.e., Yama had a profit on sales of freight services. We find that it would be inappropriate to increase the gross unit price for subject merchandise as a result of profit earned on the sale of services (i.e., freight). Such profit should be attributable to the sale of the freight service, but not the subject merchandise. Therefore, we are capping freight revenue by the corresponding amount of freight cost (in NME cases, using the surrogate value for freight). By capping the freight revenue, we have not included the profit earned on the sales of freight services, thus, we did not adjust the gross unit price for profit earned on sales of freight services.[22] Therefore, for the final determination, we recommend continuing to cap the amount of freight revenue deducted from the movement expenses. See Yama's Final Analysis Memo.

Comment 4: Whether to include freight expenses for the input liquid petroleum gas

- Petitioner notes that Yama reported that it utilized liquid petroleum gas ("LPG") and provided in its FOPs the mode of transportation to its production facility and the respective distance. Thus, Petitioner argues that the Department should assign freight expenses to Yama's transportation of LPG.

No other party commented.

---

[21] See Certain Woven Electric Blankets From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 5567 (February 3, 2010), unchanged in Woven Electric Blankets Final; Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, 74 FR 40167 (August 11, 2009) and accompanying Issues and Decision Memorandum at Comment 3 ("Orange Juice Final"); See Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 6857 (February 11, 2009) and accompanying Issues and Decision Memorandum at Comment 6.

[22] See Orange Juice Final, and accompanying Issues and Decision Memorandum at Comment 3.

Department's Position: Yama provided the mode of transportation for its LPG input to its production facility and the respective distance.[23] We agree with Petitioner that an expense for freight for the transportation of LPG should be added to Yama's freight expenses. For the final determination, we recommend including an expense for freight to transport LPG to Yama's factory.[24]

Comment 5: Whether to deduct Yama's bank charges from U.S. price

- Petitioner asserts that Yama incurred bank charges in receiving payment from its customers which it failed to report in its sales listing.

- Petitioner argues that the Department should derive an amount for bank charges and account for this item in its final margin calculation.

- Petitioner argues as facts available, the Department should derive bank charges for each U.S. transaction by applying a ratio (i.e., subtract the payment received through the bank from the invoice value and divide by the invoice value) to reported gross price for each transaction.

- In rebuttal, Yama states that traditionally the Department does not include bank charges in PRC cases.

- Yama argued that bank charges are already included in the selling general and administrative ("SG&A") expense calculations within the SG&A expenses in the surrogate country's financial statement and, thus, accepting the Petitioner's argument will result in double counting of these expenses.[25]

Bestpak did not comment.

Department's Position:

We agree with Yama that bank charges are accounted for in the SG&A expenses of the surrogate financial statement; thus, accepting the Petitioner's argument would result in double counting of these expenses. It is the Department's practice in NME cases to treat bank charges, including those paid in a market economy currency, as a selling expense because it is an expense incidental to selling the merchandise to the customer. See Certain Cut-to-Length Carbon Steel Plate From Romania: Final Results of Antidumping Duty Administrative Review, 66 FR 2879 (January 12, 2001) and accompanying Issues and Decisions Memorandum at 7b. Thus, such expenses would be included in the SG&A expense ratio added to normal value ("NV") based on the surrogate producer's experience. Therefore, the Department will continue to not deduct bank charges from

[23] See Yama's November 2, 2009 submission at Exhibit D-6.
[24] See Yama's Final Analysis Memo.
[25] See Memorandum to the File from Zhulieta Willbrand, International Trade Compliance Analyst, AD/CVD Operations, Office 4, "Investigation of Narrow Woven Ribbons With Woven Selvedge from the People's Republic of China: Surrogate Values for the Preliminary Determination" ("SV Memo") at Exhibit 7.

Yama's gross U.S. sales prices, because to do so would result in the double counting of these expenses.

In addition, we note that Petitioner's argument is rooted in the presumption that the Department can make circumstances of sale ("COS") adjustments in the NME context. However, while the statute directs the Department to make COS adjustments in the determination of NV for market economy cases, pursuant to section 773(a) of the Act, the statute is silent concerning such adjustments in the determination of NV using the NME methodology, pursuant to section 773(c) of the Act. Consequently, in our NME practice, we do not make COS adjustments where the necessary data to calculate such adjustments cannot be relied upon due to the fact that the relevant expenses are incurred and priced under NME conditions and the surrogate producer's experience as evidenced on financial statements is often not sufficiently detailed for us to make such adjustments. 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) and accompanying Issues and Decision Memorandum at Comment 52; see also Chrome-Plated Lug Nuts From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review, 63 FR 31719, 31722 (June 10, 1998).

Thus, as reducing the U.S. price to account for bank charges would be tantamount to double counting, for the final determination, we recommend continuing to account for bank charges as part of the surrogate SG&A expense.[26]

Comment 6: Whether to apply Adverse Facts Available for some of Yama's sales

- Petitioner argues that there are instances where Yama underreported its FOPs and that the explanation Yama provided during the verification does not account for all differences between reported sales weight and the reported FOP data.

- Using the most recent U.S. sales data and FOP data submitted to the Department on March 1, 2010, Petitioner attached to its case brief a list that compared the reported sales weight from Yama's bill of materials ("BOM") to the sum of Yama's reported inputs (i.e., Fully Drawn Yarn, Drawn Textured Yarn, nylon yarn, purchased velvet ribbon, and printing ink), minus the allocated per CONNUM scrap yarn and scrap ribbon. Based upon this comparison Petitioner claims that there are instances in which the FOP data are underreported.

- Thus, Petitioner requests that the Department apply adverse facts available ("AFA") to U.S. sales in which Yama underreported its FOP data.

- In rebuttal, Yama states that it demonstrated at verification that it has not underreported the FOPs, and that the record shows that all FOPs were reported and tied to the audited financial statement.[27] Yama contests Petitioner's allegations that Yama underreported FOPs for certain U.S. sales.

[26] See SV Memo at 5 and Exhibit 7.
[27] See Verification Report at 34-36 and Verification Exhibit 19.

- Yama states that, as it demonstrated during verification, the same CONNUM covers many products with different standard BOM weights and different unit consumptions, which naturally causes the result of a single CONNUM weighted average FOP to be either higher or lower than some of the standard product code specific BOM weights used by Yama to report the weight in the sales file.

- Yama requests that the Department reject Petitioner's argument and refuse to apply AFA for any of Yama's FOPs.

Bestpak did not comment.

Department's Position:

We disagree with Petitioner that the Department should apply AFA to U.S. sales where, Petitioner claims, Yama underreported its FOP data. As explained below, we do not need to rely upon facts available for these sales because our verification of Yama's reported FOPs demonstrates that Yama has provided reliable information to calculate its dumping margin. Additionally, we have no reason to rely upon an adverse inference because Yama has not withheld any information nor impeded this investigation in any way.

At the outset, we note that this issue was first raised by Petitioner in its pre-verification comments. There, Petitioner provided a list of products for which, according to Petitioner, the reported weight of narrow woven ribbons per-piece in Yama's U.S. sales listing is higher than the sum of Yama's reported FOPs. In its pre-verification comments, Petitioner asked the Department to examine how Yama derived the reported factor usage weights and the basis for the reported quantity in kilograms in Yama's sales listing. See Petitioner's Comments in Advance of Verification, dated March 4, 2010, at 6-7. At verification, we requested that Yama respond to Petitioner's March 4 comments. Yama explained that the reported quantity in kilograms in its sales listing was obtained from the respective BOMs for a corresponding product. See Verification Report at 19; Yama's December 23, 2009, submission at 18. Yama also explained that different products included in the same CONNUM have different BOMs. See Exhibit 19 of the Verification Report at 3, 16. Therefore, for example, two different products included in the same CONNUM will have two different quantities in kilogram-per-unit reported in the sales listing. However, these two different products would have the same FOP in the FOP database because the FOPs are calculated as weighted average of unit consumptions for multiple products included in one CONNUM. See Verification Report at 34-36; Yama's November 2, 2009 submission at D-10.

Yama demonstrated at verification that the products identified in Petitioner's pre-verification comments in the U.S. sales database represent single products that were weight-averaged with other products with different BOM weights within CONNUMs to derive the reported FOPs for those CONNUMs. Additionally, our examination of this issue at verification found that a single CONNUM weighted-average FOP could be either lower or higher than the standard product code specific BOM weight of the different products included in the CONNUM. See Exhibit 19 of the Verification Report at 1, 3, and 16; Yama's FOP database. Further, our examination indicated that comparing the weight of a single product (BOM weight reported in the sales listing) to the weighted-average weight of many products comprising a CONNUM (reported FOP weight) may result in the weight of that product (BOM weight reported in the sales listing) being higher or lower

than the average weight (reported FOP weight). See Verification Report at 34, 35, and Exhibit 19.

Therefore, pursuant to our examination of this issue at verification, we have determined that the fact that the BOM weights of the products listed by Petitioner are higher than their respective FOPs does not necessarily mean that the FOPs are under-reported. See July 12, 2010 Memorandum to the File from Karine Gziryan, Senior Financial Analyst, Office 4, NME Unit, "Antidumping Investigation of Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Proprietary Memorandum regarding applying Adverse Facts Available for some of Yama's sales". Rather, as Yama demonstrated at verification, the FOP weights are lower than the BOM weights in some instances simply because the CONNUMs are comprised of multiple products with different BOMs and, within each CONNUM, the weighted-average of the BOM may be higher or lower than the product-specific BOM.

In Attachment 1 to its case brief, Petitioner provided additional information with respect to other products to challenge the reliability of our verification findings. However, this is the first time Petitioner has raised these specific set of product codes. Petitioner had an opportunity to request that the Department review these specific products at verification, along with products that the Department verified pursuant to Petitioner's request, so the Department would have access to all the necessary information to specifically examine the relationship between the products' specific BOM and weighted-average FOP within the relevant CONNUM. However, because Petitioner had not highlighted any concerns with respect to these product codes until the case briefs, the Department does not have the necessary information on the record to perform the same analysis that it did at verification. Specifically, the record does not contain the product specific BOM weights of all products included in CONNUMs listed by Petitioner. Accordingly, because the record does not contain all the information necessary to address the issue with regard to the specific products listed by Petitioner in its case brief, we find that Petitioner's presentation of the issue is inconclusive. Moreover, we believe the information and explanations provided by Yama with respect to the products that we did examine at verification give us sufficient confidence in the overall accuracy and integrity of the database submitted to the Department by Yama. In sum, we agree with Yama that its explanation at verification and our verification findings with regard to products listed in Petitioner's pre-verification comments are equally applicable to the new products listed in Petitioner's case brief.

Therefore, for the reasons stated above, we recommend finding that the application of AFA with regard to Yama's reported FOPs is not warranted.

Comment 7: Whether to apply Facts Available to estimate commissions on Yama's U.S. Sales

- Petitioner notes that, during the POI, Yama utilized a commission agent for some U.S. sales, and indicated at verification and in its responses that it paid a commission for certain sales.

- Petitioner further notes that a review of documentation provided by Yama at verification and Yama's U.S. sales listing indicates that Yama failed to report the commission expenses in its sales listing.

- Petitioner argues that, for the final determination, the Department should apply as facts

available the standard commission rate disclosed by Yama, and account for that commission expense in its final margin calculation.

- In rebuttal, Yama notes that, as explained in its questionnaire responses, its sales commissions were not uniform and, for some sales, Yama was not even charged a commission.[28]

- Yama notes that the Department's questionnaire only instructs respondents to report commissions on CEP sales and since Yama had only EP sales, it did not report commissions and, thus, correctly reported its data in accordance with the Department's instructions.

Bestpak did not comment.

Department's Position:

During verification, Yama stated that it utilized an unaffiliated trading company, which acted as a commissioned agent, for some of its U.S. sales.[29] In its case brief, Petitioner argued that Yama did not report these commissions and supported its argument with Exhibit 13 of the Verification Report. However, we disagree that these expenses demonstrate that Yama failed to properly report its expenses. We note that all of Yama's U.S. sales were EP sales, and regardless of the location of the unaffiliated trading company or the currency in which the commission was paid, in NME proceedings, sales commissions paid by an exporter to non-U.S. entities represent standard selling expenses.[30] As discussed in Comment 5, section 773(c) of the Act is silent with respect to the Department's treatment of COS adjustments, such as selling expenses, in the determination of NV in NME cases. In our NME practice, we do not make COS adjustments where the necessary data to calculate such adjustments cannot be relied upon due to the fact that the relevant expenses are incurred and priced under NME conditions and the financial statements of the surrogate producer on which the SG&A ratios are based are rarely detailed enough for us to make such adjustments. Here, Yama's reported sales commissions are selling expenses incurred by a PRC exporter. Selling expenses borne by an NME exporter are reflected in the SG&A ratio added to NV, regardless of whether a specific line item on the surrogate financial statement is evidenced, as we often cannot replicate exactly the selling experiences of the respondent with those of the surrogate producer. Therefore, the Department disagrees with Petitioner that Yama has failed to properly report its sales commissions or that such expenses have not been accounted for.

Consequently, since commissions are already accounted for in the surrogate SG&A, we recommend determining that accounting for commissions elsewhere in the dumping margin calculation would be tantamount to double counting and finding that no adjustment for Yama's commissions is warranted.

[28] See Yama's November 25, 2009 submission at 16. See also Verification Exhibit 13 at 11.
[29] See Verification Report at 11.
[30] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1996-1997 Antidumping Duty Administrative Review and New Shipper Review and Determination Not To Revoke Order in Part, 63 FR 63842, 64852-53 (November 17, 1998).

Comment 8: Whether the Department should revise its labor rate calculation

May 20, 2010 and May 26, 2010, briefs and rebuttal briefs

- Yama argues that the Department failed to offer a valid justification for adopting a regression based labor calculation in the Preliminary Determination that violates the plain language of the statute and contradicts the basic principles underlying the NME methodology.

- Yama states that the Department should use the same primary country to value the wage rate as it used for the majority of surrogate values of other FOPs, and should derive the surrogate value for labor form the publicly available, country-wide data from India.

- Yama asserts that while the Department identified six countries[31] that were at an economic level similar to the PRC as potential surrogate countries for factor valuation purposes, the Department did not use any wage rate data from four of them[32] in its regression analysis in the Preliminary Determination. Yama argues that this omission was in error, given that statistics published by the International Labor Organization for 2007 shows that wage data is available for three of the missing countries.[33]

- Yama notes that the Department's regression-based labor calculation is flawed because it arbitrarily excluded available data for more than 140 countries but included wage data from highly developed countries,[34] which does not meet the statutory test of using countries at a similar level of economic development and that are significant producers of comparable merchandise.

- Yama notes the U.S. Court of International Trade ("CIT") has concluded that "both the methodology Commerce used to develop the {surrogate labor rate} and the regulation under which that methodology was applied are inconsistent with the governing statute."[35]

- Yama argues that, if the Department continues to value labor using its regression analysis based on wage rates and gross national income ("GNI") for countries throughout the world, the Department should revise its calculations to include all missing market-economy countries for which per capita GNI for 2006-2007 and wage data is available.

- Yama argues that the Department should only use wage rate data derived from countries that are significant producers of the comparable merchandise and at a comparable level of economic development to the PRC.

- Petitioner asserts that the Department should continue to use its regression-based wage rate for the PRC for purposes of valuing labor.

No other party commented.

[31] India, Indonesia, the Philippines, Columbia, Thailand, and Peru.
[32] Indonesia, the Philippines, Thailand or Peru.
[33] Indonesia, the Philippines, and Peru.
[34] Denmark, Iceland, Germany, Norway, the United Kingdom, and the United States.
[35] See generally Allied Pacific Food (Dalian) Co., Ltd. et al v. United States, 587 F. Supp. 2d 1351-61(CIT 2008).

June 21, 2010 comments to the Department's June 14, 2010, and June 15, 2010 memoranda

- Petitioner stated that the Department should not rely on a single country as the basis for its surrogate rate.

- Petitioner stated that the Department should derive a surrogate wage rate based on an average of available wage rates from countries at a level of economic development comparable to the PRC that are also significant producers of comparable merchandise.

- Yama stated that the Department should follow its long-standing policy to value all factors in the primary surrogate country, including labor, using Indian data on the record.

- Yama claimed that none of the data from other countries placed on the record by the Department is appropriate for valuing labor.

Department's position:

As a consequence of the CAFC's ruling in Dorbest, the Department is no longer relying on the regression-based wage rate described in 19 CFR 351.408(c)(3). The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. For the purposes of the final determination, we have calculated an hourly wage rate to use in valuing Yama's reported labor input by averaging earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.

The Department disagrees with Yama's argument that we should use the hourly wage rate for India from the ILO as an alternative to our previous regression-based wage rate. Additionally, we note that Yama did not provide any support to its claim that none of the data from other countries placed on the record by the Department is appropriate for valuing labor. While information from a single surrogate country can reliably be used to value other FOPs, wage data from a single surrogate country does not constitute the best available information for purposes of valuing the labor input due to the variability that exists between wages and GNI. While there is a strong worldwide relationship between wage rates and GNI, too much variation exists among the wage rates of comparable market economy countries. As a result, we find reliance on wage data from a single country to be unreliable and arbitrary. For example, when examining the most recent wage data, even for countries that are relatively comparable in terms of GNI for purposes of factor valuation (e.g., countries with GNIs between USD 950 and USD 4,100), the wage rate spans from USD 0.41 to USD 2.08.[36] Additionally, although both India and Guatemala have GNIs below USD 2500, and both could be considered economically comparable to the PRC, India's observed wage rate is USD 0.47, as compared to Guatemala's observed wage rate of USD 1.14 – over double that of India.[37] There are many socio-economic, political and institutional factors that cause the variance in wage levels between countries. For example, labor policies are dictated by politics with often little relationship to the size or strength in the economy. Additionally, some countries, such as El Salvador, Thailand and Ecuador, may have economies that are comparable to, or even larger (on a basis of GNI) than the PRC, but their average labor rates may be drastically different for various

[36] See "Expected Wages of Selected NME Countries," revised in December 2009, available at <http://ia.ita.doc.gov/wages/index.html>.
[37] Id.

social and political reasons, including the strength of unions and the level of minimum wage.[38] For this reason, and because labor is not traded internationally, the cross-country variability in labor rates, as a general rule, does not characterize other production inputs or impact other factor prices. Accordingly, the large variance in these wage rates illustrates the arbitrariness of relying on a wage rate from a single country. For these reasons, the Department maintains its longstanding position that, even when not employing a regression methodology, more data are still better than less data for purposes of valuing labor. Accordingly, the Department's has employed a methodology that relies on a larger number of countries in order to minimize the effects of the variability that exists between wage data of comparable countries.

To achieve a labor value that is based on the best available information with which to value labor for the final determination, we have relied on labor data from several countries determined to be both economically comparable to the PRC, and significant producers of comparable merchandise.

First, in order to determine the economically comparable surrogate countries from which to calculate a surrogate wage rate, the Department looked to the Surrogate Country Memo.[39] Early in this investigation, the Department selected six countries for consideration as the surrogate country for this review. To determine which countries were at comparable levels of economic development to the PRC, the Department placed primary emphasis on GNI.[40] The Department relies on GNI to generate its initial list of countries considered to be economically comparable to the PRC. In this investigation, the list of potential surrogate countries found to be economically comparable to the PRC included India, the Philippines, Indonesia, Colombia, Thailand, and Peru. The Department used the high- and low-income countries identified in the Surrogate Country Memo list as "bookends" and then identified all countries in the World Bank's World Development Report for 2007 with per capita incomes (using the 2007 GNIs from the 2009 Expected Wages of Selected NME Countries) that placed them between these "bookends". This resulted in 52 countries, ranging from India with USD 950 GNI to Colombia with USD 4,100. [41]

Regarding the second criterion of "significant producer," the Department identified all countries which have exports of comparable merchandise (defined as HTS 580631, 580632, 580639, 580890, 581091, 581092, 581099, 590390, 590700, 630790, which are identified in the scope of this order.) between 2007 and 2009. After screening for countries that had exports of comparable merchandise, we found that 34 of the 52 countries designated as economically comparable to the PRC are also significant producers. In this case, we have defined a "significant producer" as a country that has exported comparable merchandise from 2007 through 2009. [42]

For purposes of valuing wages in this investigation, the Department determines the following 34 countries to be both economically comparable to the PRC, and significant producers of comparable merchandise: Albania, Algeria, Belize, Bolivia, Bosnia & Herzegovina, Cape Verde, Colombia, Dominican Republic, Ecuador, Egypt, El Salvador, Fiji, Guatemala, Guyana, Honduras, India, Indonesia, Jordan, Macedonia, Mongolia, Morocco, Namibia, Nicaragua, Nigeria, Paraguay, Peru,

---

[38] See Data on Labor Wage.
[39] See Memorandum to Kelly Parkhill, Acting Director for Policy, Office of Policy, from Robert Bolling, Program Manager, Office 4, regarding Investigation of Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Surrogate Country Selection List, dated August 28, 2009 ("Surrogate Country Memo").
[40] See 19 CFR 351.408(b).
[41] See Data on Labor Wage.
[42] The export data is obtained from the Global Trade Atlas. See Data on Labor Wage.

Philippines, Sri Lanka, Swaziland, Syria, Thailand, Tunisia, Ukraine, and Yemen.

Third, from the 34 countries that the Department determined were both economically comparable to the PRC and significant producers of comparable merchandise, the Department identified those with the necessary wage data. In doing so, the Department has continued to rely upon ILO Chapter 5B data "earnings", if available and "wages" if not.[43] We used the most recent data within five years of the base year (2007) and adjusted to the base year using the relevant Consumer Price Index.[44] Of the 34 countries that the Department has determined are both economically comparable and significant producers of comparable merchandise, 12 countries, *i.e.*, Algeria, Belize, Bolivia, Cape Verde, Morocco, Namibia, Nicaragua, Nigeria, Swaziland, Syria, Tunisia, and Yemen, were not used in the wage rate valuation because there was no earnings or wage data available. The remaining countries reported either earnings or wage rate data to the ILO within the last five years. [45]

The Department relied on data from the following countries to arrive at its wage rate in the final determination: Albania, Bosnia & Herzegovina, Colombia, Dominican Republic, Ecuador, Egypt, El Salvador, Fiji, Guatemala, Guyana, Honduras, India, Indonesia, Jordan, Macedonia, Mongolia, Paraguay, Peru, Philippines, Sri Lanka, Thailand, and Ukraine. The Department calculated a simple average of the wage rates from these 22 countries. This resulted in a wage rate derived from comparable economies that are also significant producers of the comparable merchandise, consistent with the CAFC's ruling in Dorbest and the statutory requirements of section 773(c) of the Act.

[43] The Department maintains its current preference for "earnings" over "wages" data under Chapter 5B. However, under the previous practice, the Department was typically able to obtain data from somewhere between 50-60+ countries. Given that the current basket now includes 16 countries, the Department found that our long-standing preference for a robust basket outweighs our exclusive preference for "earnings" data. We note that several countries that met the statutory criteria for economic comparability and significant production, such as Indonesia and Thailand, reported only a "wage" rate. Thus, if earnings data is unavailable from the base year (2007) of the previous five years (2002-2006) for certain countries that are economically comparable and significant producers of comparable merchandise, the Department will use "wage" data, if available, from the base year or previous five years. The hierarchy for data suitability described in the 2006 Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, (October 19, 2006) ("Antidumping Methodologies") still applies for selecting among multiple data points within the "earnings" or "wage" data. This allows the Department to maintain consistency as much as possible across the basket.

[44] Under the Department's regression analysis, the Department limited the years of data it would analyze to a two-year period. See Antidumping Methodologies, 71 FR at 61720. However, because the overall number of countries being considered in the regression methodology was much larger than the list of countries now being considered in the Department's calculations, the pool of wage rates from which we could draw from two years-worth of data was still significantly larger than the pool from which we may now draw using five years worth of data. Therefore, the Department believes it is acceptable to review ILO data up to five years prior to the base year as necessary (as we have previously), albeit adjusted using the Consumer Price Index. See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 FR 37761, 37762 (June 30, 2005). In this manner, the Department will be able to capture the maximum amount of countries that are significant producers of comparable merchandise, including those countries that choose not to report their data on an annual basis. See also CPI data placed on record, obtained from the International Monetary Fund's International Financial Statistics.

[45] See ILO's Yearbook of Labour Statistics.

Comment 9: Whether to assign Bestpak the calculated margin assigned to Yama as its separate rate

- Bestpak argues that using an AFA rate for the calculation of the separate rate should only be used in "unusual circumstances," and the failure of one of the two mandatory respondents selected to respond to the questionnaire is not unusual.

- Bestpak notes that dumping rates based on AFA have an inherent escalatory factor designed to ensure that companies do not benefit from ignoring the administrative proceedings.[46] Bestpak argued that, by using Ningbo Jintian Import & Export Co., Ltd.'s ("Ningbo Jintian")_AFA rate as one half of the calculation of the separate rate, Bestpak's rate necessarily includes the deterrence factor to ensure that Ningbo Jintian would not benefit from being uncooperative.

- Bestpak asserts that the Department should grant Bestpak the only calculated rate on record, instead of applying a partial AFA rate to a cooperative respondent.

- In rebuttal, Petitioner notes that at the time of the Preliminary Determination, there were no rates other than de minimis or those based on AFA. Consistent with the statute and its established practice, the Department reasonably determined to take a simple average of the AFA rate applied to the PRC-wide entity and Yama's de minimis rate.[47]

- Petitioner argues for the final determination, the Department should continue to follow its established practice for assigning separate rates in this investigation by applying a simple average of the AFA rate applied to the PRC-wide entity and de minimis rate calculated for Yama.

Yama did not comment.

Department's Position:

The Department agrees with Petitioner that it should follow its established practice by using a simple average of the AFA rate assigned to the PRC-wide Entity, which includes Ningbo Jintian and Yama's de minimis rate as the separate rate. See, e.g., 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 10545, 10546 (March 11, 2009) and accompanying Issues and Decision Memorandum at Comment 6 ("HEDP Final"); Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Light-Walled Rectangular Pipe and Tube From the Republic of Korea, 73 FR 5794, 5800 (January 31, 2008), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from the Republic of Korea, 73 FR 35655 (June 24, 2008)(collectively, "LWR Pipe from Korea").

In cases where the estimated weighted average dumping margins for all individually investigated respondents are zero, de minimis, or based entirely on AFA, the Department may use any

[46] See, e.g., D&L Supply Co. v. United States, 113 F.3d 1220, 1223 (Fed. Cir. 1997).
[47] See Section 735(c)(5)(B) of the Act; and HEDP Final, 74 FR at 10546, and accompanying Issues and Decision Memorandum at Comment 6.

reasonable method to assign a rate to the separate rate companies. Specifically, section 735(c)(5)(B) of the Act provides that, where the weighted-average dumping margins established for all exporters and producers individually investigated are zero or de minimis, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exports not individually investigated. The Statement of Administrative Action ("SAA") further states that, "The expected method in such cases will be to weight-average the zero and de minimis margins and margins determined pursuant to the facts available, provided that volume data is available." Where the data do not permit weight-averaging rates, such as in the instant case, the statute and the SAA provide that we may use any reasonable method to determine the all others rate.[48]

Additionally, the Department does not consider the use of an AFA rate in an average to be an application of an adverse inference because the statute explicitly permits such averaging.[49] Moreover, the CIT has upheld Department's use of AFA rates and de minimis rates to determine a "sample" rate to be applied to uninvestigated parties. See Laizhou Auto Brake Equipment Co. v. United States, Court No. 06-00430, Slip Op. 08-71 (2008), at 24-25.

The Department disagrees with Bestpak that it should not assign the simple average of the AFA rate and the de minimis rate, calculated for Yama, to the separate rate applicants. The cases cited by Bestpak are factually distinguishable from the instant case and therefore not instructive. For example, in Certain Frozen Warmwater Shrimp,[50] the two mandatory respondents received de minimis margins. Moreover, the Department clarified in the final results of Certain Frozen Warmwater Shrimp that the separate rate methodology that it relied upon, which drew from rates calculated during prior segments of the proceeding, would not be applicable in an investigation because the Department has no prior information to draw from.[51]

Additionally, in the Brake Drums and Brake Rotors investigation, the Department excluded a respondent's facts available rate from the weighted-average separate rate based upon the unique circumstances of that case.[52] Brake Rotors and Brake Rotors is not instructive in this case because the Department is not using a weighted-average of zero and de minimis and AFA rates but rather is applying a simple average which does not involve the weighting of any individual exporter. Moreover, Bestpak's reliance upon Honey from Argentina and the 2006-07 administrative review of brake drums and brake rotors for the proposition that the Department has previously assigned a de minimis to non-selected respondents is unpersuasive because, in those cases, all of the mandatory respondents received de minimis rates.[53]

---

[48] See SAA accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316 at 872 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4200.

[49] See Section 735(c)(5)(B) of the Act.

[50] See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 73 FR 52273 (September 9, 2008) and accompanying Issues and Decision Memorandum at Comment 6.

[51] See id.

[52] Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Rotors From the People's Republic of China, 62 FR 9160, 9173-74 (February 28, 1997), as amended, 62 FR 15655 (April 2, 1997)("Brake Drums and Brake Rotors"); see also Coalition for the Preservation of Am. Brake Drum and Rotor Aftermarket Mfrs. v. United States, 23 CIT 88, 111 (1999).

[53] See Brake Rotors From the People's Republic of China: Final Results of 2006-2007 Administrative Review and New Shipper Reviews and Partial Rescission of 2006-2007 Administrative Review, 73 FR 32678 (June 10, 2008); Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part,

Therefore, consistent with our past practice, for purposes of determining the separate rate margin for the companies determined to be eligible for a separate rate, because there are no rates other than de minimis or those based on AFA, we recommend taking a simple average of the AFA rate assigned to the PRC-wide entity, which includes Ningbo Jintian, and the de minimis rate calculated for Yama, as a reasonable method pursuant to section 735(c)(5)(B) of the Act.

Comment 10: Whether to select an additional respondent

- Bestpak states that the decision to select only two respondents was contrary to section 777A of the Act because the Department relied on factors other than the "large number exporters" when limiting individual investigation to two companies, and also because two respondents is not a "reasonable number."

- Bestpak notes that the only exception available to the Department is to examine the "exporters accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined"[54] and that the only reason that the Department can cite to invoke this exception is that there are a large number of exporters.[55] Bestpak argues that the Department, by creating a hybrid standard that combines "large number of exporters" with other, non-statutory factors in a single step such as "our available resources,"[56] is in direct contradiction with the CIT's reasoning in Zhejiang.[57]

- Bestpak states that limiting the mandatory respondents to two was "not a reasonable number,"[58] and that the Department in the past has chosen a replacement respondent where it was clear that one mandatory company would not participate.[59] However, Bestpak indicated that in this case the Department decided to investigate only one company after it became aware that Ningbo Jintian (a mandatory respondent) would not participate. Therefore, the Department should re-open the record and select one or more additional respondents in order to comply with the statute.

- In rebuttal, Petitioner states that the Department followed its established practice in selecting the two mandatory respondents, consistent with section 777A (c)(2)(B) of the Act.

- Petitioner further argues that the Department does not have time available within its statutory time constrains for completing this investigation to re-open the record and select additional respondents.

---

73 FR 24220 (May 2, 2008).

[54] See 19 U.S.C. 1677f-1(c)(2)(B).

[55] See Zhejiang Native Produce & Animal By-Products Imp. & Exp. Corp. v. United States, 637 F. Supp. 2d 1260, 1263 (2009) ("Zhejiang").

[56] See Memorandum to the File, from Maisha Cryor, International Trade Compliance Analyst, through Robert Bolling, Program Manager, to Abdelali Elouaradia, Director, Office 4, regarding Respondent Selection in the Antidumping Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China, dated September 11, 2009 ("Respondent Selection Memo") at 3.

[57] See Zhejiang, 637 F. Supp. 2d at 1263-64.

[58] See Carpenter Tech Corp. v. United States, 33 CIT __, __, 662 F. Supp. 2d 1337, 1345 (2009).

[59] See Prestressed Concrete Steel Wire Strand from the People's Republic of China: Postponement of the Preliminary Determination of the Antidumping Duty Investigation, 74 FR 61104 (November 23, 2009).

- Petitioner further notes that no other party, including Bestpak, offered to be a mandatory respondent at any point in the course of this investigation, even after it became obvious that Ningbo Jintian would not participate.

- Petitioner requests that the Department continue to base its determination on the two selected mandatory respondents, Yama and Ningbo Jintian.

Yama did not comment.

Department's Position:

The Department disagrees with Bestpak's argument that it should investigate an additional respondent at this late stage in the investigation. Put simply, given the statutory time constraints of an investigation, it is not feasible at this time to identify an additional respondent, provide that respondent with time to respond to our questionnaires, analyze the data and develop a preliminary determination, provide parties with an opportunity to comment upon the determination, solicit rebuttal comments, and then develop a final determination. These labor-intensive efforts take several months to complete and, because Bestpak first suggested that we consider an additional respondent in its case brief, less than three months remained in statutory time period to complete the investigation.

We note that Bestpak did not take advantage of earlier opportunities to present its argument that the Department should review several respondents. Specifically, in its Initiation Notice, the Department solicited comments from interested parties on its respondent selection methodology.[60] The only party that commented on respondent selection was Yama, i.e., a respondent, who filed comments on respondent selection.[61]

Moreover, to the extent that Bestpak's argument follows from Ningbo Jintian's failure to participate in the investigation, Bestpak did not present its suggestion that the Department investigate an additional respondent at a point in the proceeding where the Department could have acted upon its request. Pursuant to Bestpak's argument that Ningbo Jintian's failure to participate in the investigation should have been apparent around the time that it missed the deadline to respond to the Department's questionnaire, Bestpak had ample opportunity to raise this issue as early as October 2009, when Ningbo Jintian missed the deadline to respond to the Department's Sections C and D questionnaire. We reject the underlying implication of Bestpak's argument, which is that the Department is obligated to investigate additional respondents when a mandatory respondent fails to cooperate. Though section 777A(c)(2) of the Act affords the Department discretion to limit the total number of respondents selected for review, it contains no corresponding instruction that the Department must expand its investigation when a selected respondent fails to cooperate. The statute is silent on this point.

Moreover, we also note that no interested parties submitted a voluntary response to the

[60] See Initiation Notice, 74 FR at 39291, 39296.
[61] See Letter from Yama to The Honorable Gary F. Locke, "Narrow Woven Ribbons from the People's Republic of China: Comments on Ningbo Jintian's Quantity and Value Data," dated September 3, 2009.

Department's full antidumping questionnaire.[62] Further, Ningbo Jintian never stated its intent not to participate in the investigation, which distinguishes the instant case from Prestressed Concrete Steel Wire Strand from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 28560, 28562 (May 21, 2010).

Furthermore, we disagree with Bestpak's argument that our selection of two respondents is contrary to the statute or precluded by Zheijiang and Carpenter Tech. Section 777A(c)(2) of the Act allows the Department to limit its examination of exporters and producers if "[i]t is not practicable to make individual weighted average dumping margin determinations...because of the large number of exporters or producers involved in the investigation." There were 19 potential respondents in this investigation, which we expressly identified as a large number of companies in the Respondent Selection Memo.[63] With respect to our reliance upon limited resources as part of our basis for limiting the number of respondents, although the CIT rejected this reasoning in Zheijiang, the Federal Circuit has recognized the Department is afforded broad discretion in allocating its enforcement resources. See Torrington v. United States, 68 F.3d 1347, 1351 (1995) (citing Heckler v. Chaney, 470 U.S. 821, 831 (1985)). Moreover, the Zheijiang case was dismissed pursuant to the plaintiff's request. With respect to Bestpak's reliance upon Carpenter Tech., the decision is not final and the Department's remand results are pending before the Court at this time.

Therefore, we recommend determining that our respondent selection methodology in this investigation is in full compliance with 777A(c)(2)(B) of the Act, and not selecting an additional mandatory respondent at this late stage in the investigation.

Comment 11: Whether to calculate a rate using Bestpak's quantity and value information

- Bestpak argues that if the Department does not assign to Bestpak the margin assigned to Yama, the only other fair and accurate method that would comply with the Department's statutory duty would be to construct a margin using Bestpak's quantity and value information.[64] Alternatively, Bestpak argues that the Department could query the separate rate companies for information regarding their narrow woven ribbon sales and then match that data to publicly ranged data reflecting Yama's FOPs.

- Petitioner argues that Bestpak did not offer any relevant precedent for the unusual approach it recommended and did not explain how the Department should collect the additional information from the separate rate respondents on the average unit values of specific narrow woven ribbons' CONNUMs.

- Petitioner argues that, for the final determination, the Department should continue to follow its established practice for assigning separate rates in this investigation by applying Yama's rate in case an above de minimis and non-AFA margin is derived for Yama or applying a simple average of the AFA rate applied to the "PRC-wide entity" and de minimis rate

[62] See 19 CFR 351.204(d).
[63] See Respondent Selection Memo, at 1.
[64] See Helmerich & Payne v. United States, 22 CIT 928, 938, 24 F. Supp. 2d 304, 313 (1998) ("Fair and accurate determinations are fundamental to the proper administration of our dumping laws"); Mittal Steel USA, Inc. v. United States, 31 CIT 1395, 1398 (2007) (noting the Department's "duty to calculate antidumping rates as accurately as possible").

calculated for Yama in case a de minimis margin is derived for Yama.

Yama did not comment.

Department's Position:

We disagree with Bestpak that, if the Department does not assign it Yama's rate, the only other fair and accurate method that would comply with the Department's statutory duty would be to construct a margin using Bestpak's quantity and value information. We note that the statute states that the Department may use any reasonable method to establish the estimated "all others" rate for exports not individually investigated. As explained above with respect to Comment 10, for purposes of determining the separate rate margin, because there are no rates other than de minimis or those based on AFA, we have determined to take a simple average of the AFA rate and the de minimis rate calculated for Yama as a reasonable method pursuant to section 735(c)(5)(B) of the Act. We note that this methodology is based on verified data and is consistent with our past practice in antidumping investigations.[65]

The Department notes that Bestpak's proposal to request additional information on the average unit values of specific narrow woven ribbon CONNUMs sold by the separate rate respondents and then match that data to publicly ranged Yama FOPs is not feasible, given the statutory time constraints of this investigation. Bestpak raised this proposal for the first time in its case brief, and given statutory time constraints of this investigation, the Department does not have sufficient time is to obtain, evaluate, and employ additional factual information from the separate rate companies in its calculations for the final determination. Moreover, reliance upon the separate rate companies' average unit values and publicly ranged FOP data would not lead to greater accuracy in the dumping margin caculation. We note that: 1) average unit values are not as accurate as actual data that has been verified; 2) publicly ranged FOP data can vary by plus or minus ten percent from the actual data; and 3) there is no information on the record to suggest that the separate rate companies' FOPs are similar to those of Yama, and thus Yama's publicly ranged FOP data may not be representative of the separate rate applicants' FOPs. Thus, we find that Bestpak's arguments and proposed methodology do not render the Department's methodology unreasonable.

Additionally, the evidentiary support cited by Bestpak in support of their proposed methodology is inapposite because it concerns a surrogate value for ocean freight, not a calculation methodology for a separate rate respondent.[66] Therefore, for the final determination, we recommend continuing to calculate a separate rate based on a simple average of the AFA rate applied to the "PRC-wide entity" and de minimis rate calculated for Yama.

Comment 12: Whether the AFA rate was sufficiently corroborated

- Bestpak states that the Department claimed that the petition rate of 231.40 percent was corroborated by individual margins for Yama. However, Bestpak argues that even if the

[65] See, e,g., LWR Pipe from Korea.

[66] See Zhengzhou Harmoni Spice Co. v. United States, 33 CIT _, __, 617 F. Supp. 2d 1281, 1308-09 (2009) ("Commerce has failed to establish, through citations to record evidence, that the Maersk price quotes are in fact more accurate than the ranged data reflecting the ocean freight rates that the respondents actually paid to ship their actual merchandise during the period of review at issue here").

petition rate is "in the range" of some transaction-specific margins for Yama, the fact that Yama's overall margin was de minimis, in light of the CAFC's reasoning in Gallant,[67] shows that the AFA rate used in narrow woven ribbons has no basis in commercial reality.

- Bestpak further argues that the 231.40 percent rate cannot be deemed a reasonable estimate of the AFA margin, nor can one half of this rate be used to calculate the rate for Bestpak and the other separate rate respondents. Therefore, Bestpak contends that the 231.40 percent AFA rate should not be used in the final determination and should not be used as a basis for determining the separate rate for Bestpak.

- Petitioner notes that in its Preliminary Determination, the Department corroborated the selected AFA rate and found that the selected rate had probative value because it was in the range of the model-specific margins that were found for Yama.[68] Petitioner argues that for the final determination, the Department should continue to find that the selected AFA rate has been corroborated.

Yama did not comment.

Department's Position:

We recommend continuing to find that the petition margin, which was used as AFA in this investigation, is properly corroborated within the meaning of section 776(c) of the Act. Specifically, the statute provides that the Department must, to the extent practicable, corroborate information used as AFA with independent sources reasonably at its disposal. As we explained in our Preliminary Determination, to corroborate the petition margin, we compared it to Yama's model-specific dumping margins and determined that it had probative value because it is in the range of Yama's model-specific margins. See Preliminary Determination, 75 FR at 7521. Thus, the Department followed the same practice recently upheld by the Federal Circuit, namely it used data from the cooperating respondent to demonstrate the probative value of the AFA rate applied to uncooperative respondents. See KYD v. United States, 2009-1366, at 11-12 (Fed. Cir. May 28, 2010) (upholding reliance upon cooperative party's transaction-specific dumping margins to corroborate AFA rate applied to uncooperative party). The Department has relied on the same methodology to corroborate petition/initiation margins in recent investigations. See Certain Woven Electric Blankets From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 38459 (July 2, 2010).

Bestpak does not provide an evidentiary rebuttal to the Department's factual finding that the AFA rate falls within the range of Yama's model-specific dumping margins. Nonetheless, Bestpak claims that the separate rate is "not based on substantial evidence" because it is based upon, in part, the AFA rate. Bestpak has failed to support this evidentiary claim because it does not provide a substantive, evidence-based rebuttal to the Department's factual finding with respect to its corroboration of the AFA rate.

Moreover, the Gallant decision is distinguishable from the instant case. There, the Federal Circuit found that the rate the Department applied as AFA was not supported by substantial evidence

[67] Gallant Ocean (Thail.) Co. v. United States, 602 F.3d 1319 (Fed. Cir. 2010) ("Gallant").
[68] See Section 776(c) of the Act; Preliminary Determination, 75 FR at 7251.

because the Department used a very small percentage of the mandatory respondents' transactions as corroborative evidence. Gallant, 602 F.3d at 1324. By constrast, in the instant case the Department examined the dumping margins on a model-specific basis and found that for several models the dumping margins demonstrated that the petition rate has probative value. See July 12, 2010 Memorandum to the File from Karine Gziryan, Senior Financial Analyst, Office 4, NME Unit, "Proprietary Memorandum regarding Corroboration: Final Determination of the Antidumping Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China." ("Corroboration Memo"). Moreover, in Gallant, the Federal Circuit found that the Department used "unusually high" dumping margin transactions to corroborate the petition rate. Here, however, the model-specific dumping margins used to corroborate the petition rate do not reflect "unusually high" dumping margins relative to the other model-specific rates determined for the cooperating respondent. Although the Department cannot identify any relationship between the dumping margins of models used for corroborative purposes and Ningbo Jintian's actual rate, because there is no independent information on the record pertaining to Ningbo Jintian as that company failed to cooperate in this investigation, the Department is satisfied that the dumping margins used for corroborative purposes reflect commercial reality because they are based upon real transactions that occurred during the POI, were subject to verification by the Department, and were sufficient in number both in terms of the number of models and as a percentage of total sales quantity. See Corroboration Memo.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of this investigation in the Federal Register.

Agree _____ Disagree _____

_____
Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

_____
(Date)