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International Trade Administration
Washington, D.C. 20230

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DATE: September 29, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for Preliminary Determination in the Antidumping Duty Investigation of 1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China

I. SUMMARY

The Department of Commerce ("Department") preliminarily determines that 1,1,1,2 Tetrafluoroethane-("R-134a") from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less-than-fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("Act"). The estimated weighted-average dumping margins are shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

II. BACKGROUND

On March 3, 2016, the Department received an antidumping duty ("AD") petition covering imports of R-134a from the PRC,[1] which was filed in proper form by the American HFC Coalition and its individual members, as well as District Lodge 154 of the International Association of Machinists and Aerospace Workers (collectively "Petitioners"). The Department published a notice of initiation of this investigation on April 1, 2016.[2]

On March 28, 2016, the Department requested quantity and value ("Q&V") information from the 33 companies that Petitioners identified in the Petition for the purposes of respondent selection. On April 26, 2016, the Department selected the two exporters accounting for the largest volume of R-134a from the PRC during the period of investigation ("POI"), *i.e.*, Zhejiang Quzhou Lianzhou Refrigerants Co., Ltd. ("Lianzhou") and Zhejiang Sanmei Chemical Industry Co., Ltd.

[1] *See* Petitions for the Imposition of Antidumping Duties on Imports of 1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China, dated March 3, 2016 ("the Petition").
[2] *See 1,1,1,2-Tetrafluoroethane (R-134a) from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 81 FR 18830 (April 1, 2016) ("*Initiation Notice*").

("Sanmei"), for individual examination.[3] Lianzhou and Sanmei accounted for the largest volume of exports of subject merchandise entering the United States during the POI.[4]

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in non-market economy ("NME") investigations.[5] The process requires exporters and producers to submit a separate rate application ("SRA")[6] that demonstrates an absence of both *de jure* and *de facto* government control over their export activities. In the *Initiation Notice*, we stated that the SRA would be due 30 days after publication of the notice, or on May 2, 2016.[7] The Department received timely responses from seven applicants, including both mandatory respondents, as discussed in the "Separate Rates" section, below.

Also in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of R-134a, as reported by respondents in the Department's AD questionnaire.[8] On April 12, 2016, Petitioners filed comments as to the product's characteristics.[9] No party filed comments on the scope of the investigation.

On April 18, 2016, the U.S. International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that imports of R-134a from the PRC are materially injuring a United States industry due to selling at less than fair value.[10]

On May 3, 2016, the Department placed on the record a list of potential surrogate countries and invited interested parties to comment on the selection of the primary surrogate country and provide surrogate value ("SV") information.[11] We received comments on the selection of the primary surrogate country[12] and SV information[13] from Petitioners, Lianzhou, and Sanmei. Petitioners submitted a rebuttal to the SV information.[14]

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[3] *See* Memorandum, "Antidumping Duty Investigation of 1,1,1,2-Tetrafluoroethane (R-134a) from the People's Republic of China: Respondent Selection," dated April 26, 2016 ("Respondent Selection Memo").
[4] *Id.*
[5] *See Initiation Notice*, 81 FR at 18834.
[6] *See* Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005) ("Policy Bulletin 05.1"), available at http://enforcement.trade.gov/policy/bull05-1.pdf.
[7] *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, as Amended*, 70 FR 24533 (May 10, 2005).
[8] *See Initiation Notice*, 81 FR at 18834.
[9] *See* Letter from Petitioners, "1,1,1,2-Tetrafluoroethane (R-134a) from the People's Republic of China: Comments on Product Characteristics," dated April 12, 2016.
[10] *See 1,1,1,2-Tetrafluoroethane (R-134a) From China; Determination*, 81 FR 23750 (April 22, 2016) ("*ITC Preliminary Determination*").
[11] *See* the memorandum to all interested parties, "Antidumping Duty Investigation of 1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated May 3, 2016 ("Request and SC List").
[12] *See* Lianzhou's letter, "1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Surrogate Country Comments," dated June 6, 2016 ("Lianzhou's Surrogate Country Comments"). *See also*, Petitioners' letter "1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China," dated June 6, 2016 ("Petitioners' Surrogate Country Comments"). *See also*, Sanmei's letter, "1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Surrogate Country Comments," dated June 6, 2016 ("Sanmei's Surrogate Country Comments").

On April 27, 2016, we issued the initial AD questionnaire to mandatory respondents Lianzhou and Sanmei. Both respondents timely provided responses to relevant sections of the initial AD questionnaire. The Department further issued supplemental questionnaires to Sanmei, to which Sanmei timely provided responses, as requested. The Department did not issue supplemental questionnaires to Lianzhou because, based on their initial response to Section A, we preliminarily find that Lianzhou is ineligible for a separate rate.[15]

On August 30, 2016, Petitioners submitted comments for the Department's consideration with respect to the preliminary determination.[16] On September 9, 2016 Sanmei submitted rebuttal comments to Petitioners' Preliminary Comments.[17] On September 9, 2016, Petitioners submitted an allegation of critical circumstances.[18] On September 12, 2016, the Department issued a letter to Sanmei requesting monthly quantity and value shipment data.[19]

We are conducting this investigation in accordance with section 733(b) of the Act.

III. SELECTION OF RESPONDENTS

Section 777A(c)(l) of the Act directs the Department to calculate an individual weighted-average dumping margin for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted-average dumping margin determinations because of the large number of exporters and producers involved in the investigation. Pursuant to section 777A(c)(2) of the Act, the Department may limit its examination to: (A) a sample of exporters, producers or types of products that the Department determines is statistically valid based on the information available to the Department at the time of selection, or (B) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that the Department determines can be reasonably examined. In selecting respondents in this AD proceeding, the

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[13] *See* Lianzhou's letter, "1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Direct Surrogate Values," dated July 7, 2016 ("Lianzhou's First SV Submission"), Sanmei's letter, 1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Direct Surrogate Values," dated July 7, 2016 ("Sanmei's First SV Submission"), and Petitioners' letter, "1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Direct Surrogate Values," dated July 7, 2016 ("Petitioners' First SV Submission").

[14] *See* Petitioners' letter, "1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Rebuttal to Surrogate Value Submissions of Sanmei and Lianzhou," dated July 18, 2016.

[15] *See* the "Companies Not Receiving a Separate Rate," section, below.

[16] *See* Petitioners' letter, "1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Preliminary Determination Comments and Submission of Factual Information," dated August 30, 2016 ("Preliminary Comments").

[17] *See* Sanmei's letter, "1,1,1,2-Tetrafluoroethane (R134a) from the People's Republic of China: Rebuttal Comments to Petitioner's Preliminary Determination Comments and Submission of Rebuttal Factual Information," dated September 9, 2016.

[18] *See* Petitioners' letter, "1.1.1.2 Tetrafluoroethane (R-134a) from the People's Republic of China: Critical Circumstances Allegation," dated September 9, 2016 ("Critical Circumstances Allegation").

[19] *See* the Department's letter, "Antidumping/Countervailing Duty Investigation of 1,1,1,2-Tetrafluoroethane from the People's Republic of China: Request for Monthly Quantity and Value Shipment Data," dated September 12, 2016.

Department found that, because of the large number of companies involved in the investigation and its limited resources, it was most appropriate to select respondents that account for the largest volume of the subject merchandise that can reasonably be examined, pursuant to section 777A(c)(2)(B) of the Act.

In the *Initiation Notice*, we stated our intent to base respondent selection on the responses to Q&V questionnaires and indicated we would issue a Q&V questionnaire to each potential respondent and post the Q&V questionnaire along with filing instructions on our website.[20] We further stated that the Department would base respondent selection in this investigation on responses to the Q&V questionnaire and all PRC exporters/producers must submit responses no later than April 6, 2016.[21] On March 28, 2016, the Department requested Q&V information from the 33 companies that Petitioners identified in their Petition as producers/exporters of R-134a.[22] On April 6, 2016, the Department received timely filed Q&V questionnaire responses from Sanmei, Lianzhou, Weitron International Refrigeration Equipment Co., Ltd. ("Weitron"), T.T. International Co., Ltd. ("T.T. International"), Jiangsu Bluestar Green Technology Co., Ltd. ("Bluestar"), Zhejiang Quhua Fluor-Chemistry Co., Ltd. ("Quhua Fluor"), and Sinochem Environmental Protection Chemicals (Taicang) Co. Ltd. ("Sinochem Taicang"). We confirmed that Q&Vs sent to three companies were undeliverable, one company received the Q&V questionnaire after the deadline to file the Q&V responses,[23] one company refused delivery of the Q&V questionnaire, and the remainder were confirmed as delivered, but no response was provided.[24]

On April 26, 2016, the Department limited the number of respondents selected for individual examination to the two exporters accounting for the largest volume of exports from the PRC and selected Lianzhou and Sanmei as mandatory respondents in this investigation based on their Q&V questionnaire responses.[25]

Weitron requested that in the event it was not selected as a mandatory respondent, that it be treated as a voluntary respondent pursuant to section 782(a) of the Act and 19 CFR 351.204(d).[26] When the Department limits the number of exporters examined in an investigation pursuant to section 777A(c)(2) of the Act, section 782(a) of the Act directs the Department to calculate individual weighted-average dumping margins for companies not initially selected for individual examination who voluntarily provide the information requested of the mandatory respondents if (1) the information is submitted by the due date specified for the mandatory respondents and (2) the number of such companies that have voluntarily provided such information is not so large that individual examination would be unduly burdensome and inhibit the timely completion of the investigation. We note that Weitron did not provide any subsequent submission to the record

[20] *See Initiation Notice*, 81 FR at 18833.
[21] *Id.*, 81 FR at 18834.
[22] *See* the Department's letter to all interested parties, dated March 28, 2016.
[23] This company did not contact the Department for an extension to the deadline to respond.
[24] *See* the memorandum to the file, "Antidumping Duty Investigation: 1,1,1,2-Tetrafluoroethane from the People's Republic of China: FedEx Questionnaire Delivery Confirmations," dated April 15, 2016 ("Q&V Delivery Memo").
[25] *See* Respondent Selection Memo.
[26] *See* Weitron's letter, "Antidumping Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China," dated April 8, 2016.

of this review, and thus failed to provide requisite information submitted by the due date specified for the mandatory respondents, as required for the consideration of a voluntary respondent pursuant to 351.204(d)(2). Accordingly, we have not further considered Weitron's request for consideration as a voluntary respondent.

IV. PERIOD OF INVESTIGATION

The POI is July 1, 2015, through December 31, 2015. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition, which was March 3, 2016.[27]

V. SCOPE COMMENTS

In accordance with the *Preamble* to the Department's regulations,[28] as noted in the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage, and we stated that all such comments were required to be filed within 20 calendar days of the signature date of the *Initiation Notice*.[29] No interested party submitted comments on the scope of this investigation.

VI. SCOPE OF THE INVESTIGATION

The product subject to this investigation is 1,1,1,2-Tetrafluoroethane, R-134a, or its chemical equivalent, regardless of form, type, or purity level. The chemical formula for 1,1,1,2-Tetrafluoroethane is CF_3-CH_2F, and the Chemical Abstracts Service registry number is CAS 811-97-2.[30]

Merchandise covered by the scope of this investigation is currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 2903.39.2020. Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

VII. POSTPONEMENT OF PRELIMINARY DETERMINATION

Pursuant to section 703(c)(1)(A) of the Act, on July 13, 2016, Petitioners requested that the Department postpone the preliminary determination.[31] The Department postponed its preliminary determination to 190 days after the date the Department initiated its investigation in accordance with 19 CFR 351.205(b)(2).[32]

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[27] *See* 19 CFR 351.204(b)(1).

[28] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) ("*Preamble*").

[29] *See Initiation Notice*; *see also Preamble*, 62 FR at 27323.

[30] 1,1,1,2-Tetrafluoroethane is sold under a number of trade names including Klea 134a and Zephex 134a (Mexichem Fluor); Genetron 134a (Honeywell); Freon™ 134a, Suva 134a, Dymel 134a, and Dymel P134a (Chemours); Solkane 134a (Solvay); and Forane 134a (Arkema). Generically, 1,1,1,2-Tetrafluoroethane has been sold as Fluorocarbon 134a, R-134a, HFC-134a, HF A-134a, Refrigerant 134a, and UN3159.

[31] *See* letter from Petitioners, "1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Petitioners' Request for Extension of the Antidumping Investigation Preliminary Determination," dated July 13, 2016.

[32] *See Antidumping Duty Investigation of 1,1,1,2 Tetrafluoroethane (R-134a) From the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 81 FR 49624 (July 28, 2016).

VIII. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Pursuant to section 735(a)(2) of the Act, on September 29, 2016, Sanmei requested that the Department postpone the final determination and extend provisional measures from four months to six months.[33] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because: (1) our preliminary determination is affirmative; (2) the requesting exporter, Sanmei, accounts for a significant proportion of exports of the subject merchandise; and, (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

VIX. PRODUCT CHARACTERISTICS

In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product characteristics. As noted above, on April 12, 2016, Petitioners filed comments as to the product characteristics. We received no comments from other interested parties concerning product characteristics. We took the Petitioners comments into consideration in determining the physical characteristics in the AD questionnaire.

X. CRITICAL CIRCUMSTANCES

In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination. Petitioners alleged that critical circumstances exist with respect to imports of the subject merchandise, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), on September 9, 2016.[34]

A. Legal Framework

Section 733(e)(1) of the Act provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should know that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there were massive imports of the subject merchandise over a relatively short period.

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[33] *See* Letter from Sanmei, "1,1,1,2-Tetrafluoroethane (R134a) from the People's Republic of China: Request for Extension to Supplemental Section C&D Response," dated Septmber 29, 2016.

[34] *See* Critical Circumstances Allegation.

Further, 19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, "{i}n general, unless the imports during the 'relatively short period' . . . have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive." A "relatively short period" is generally defined as the period starting on the date the proceeding begins (*i.e.*, the date the Petition is filed) and ending at least three months later.[35] If the Department "finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely," then the Department may consider a period of not less than three months from that earlier time.[36]

B. Critical Circumstances Allegation

Petitioners allege critical circumstances exist with respect to the PRC under both prongs of section 733(e)(1)(A) of the Act, which states that critical circumstances may be found if (1) "there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise," or (2) "the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales." In addition to showing a history of injurious dumping or imputed importer knowledge of ongoing injurious dumping under section 733(e)(1)(A), Petitioners must also demonstrate "massive imports" under section 733(e)(1)(B).

Petitioners maintain that there is an established history of injurious dumping as exemplified by the Department's previous affirmative finding that R-134a from the People's Republic of China was being sold in the United States at less-than-fair-value and that importers knew or should have known that Chinese R-134a was likely to cause material injury. The Department found in October 2014 that R-134a was being sold in the United States at less-than-fair-value, by a margin of 280.67 percent. Petitioners argue that the Department typically considers margins of at least twenty-five percent for export price sales and at least fifteen percent for constructed export price sales sufficient to impute knowledge. In addition, Petitioners argue that knowledge maybe imputed to importers of R-134a on the basis of the ITC's preliminary affirmative finding of material injury. The ITC unanimously determined that there is a "reasonable indication" of material injury to the domestic industry by reason of the subject import of R-134a.

Petitioners claim further that imports of the subject merchandise have been massive over a relatively short period, beginning in March 2016, five months prior to the filing of the Petition.[37] Using a base and comparison period of five months before and after March 2016, Petitioners found that imports increased by 81.47 percent by volume and 120.30 percent by value during the comparison period.[38]

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[35] *See* 19 CFR 351.206(i).
[36] *Id.*
[37] *See* Critical Circumstances Allegation at 8.
[38] *Id.*, at 15.

C. Analysis

The Department's normal practice in determining whether critical circumstances exist pursuant to the statutory criteria has been to examine evidence available to the Department, such as: (1) the evidence presented in the petitioners' critical circumstances allegation; (2) import statistics released by the ITC; and (3) shipment information submitted to the Department by the respondents selected for individual examination. As further provided below, in determining whether the above statutory criteria have been satisfied in this case, we have examined: (1) the evidence presented in Petitioners' Critical Circumstances Allegation; (2) information obtained since the initiation of this investigation; and (3) the ITC's preliminary injury determination.

We considered each of the statutory criteria for finding critical circumstances below. Because we find a history of injurious dumping under section 773(e)(1)(A)(i) of the Act and massive imports under section 773(e)(1)(B), we preliminarily determine that critical circumstances exist, in part.

Section 733(e)(1)(A)(i) of the Act: History of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise

In determining whether a history of dumping and material injury exists, the Department generally considers current and previous AD orders on subject merchandise from the country in question in the United States and current orders in any other country on imports of subject merchandise.[39] As noted above, the Department previously found in October 2014 that R-134a was being sold in the United States at less-than-fair-value, by a margin of 280.67 percent.[40] Furthermore, in the antidumping investigation covering hydrofluorocarbon blends and components thereof from the PRC, ("HFC Blends"), which is comparable merchandise, *i.e.*, refrigerants, the Department calculated dumping margins ranging from 101.82 percent to 216.37 percent.[41] Thus, the Department preliminarily finds that there is a history of injurious dumping of R-134a from the PRC pursuant to section 733(e)(1)(A)(i) of the Act.

A preliminary affirmative finding of material injury by the ITC provides a reasonable basis for the Department to determine that importers knew or should have known that dumped subject imports were likely to cause material injury. The ITC determined that there is a "reasonable

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[39] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970, 31972 (June 5, 2008) ("*Carbon Steel Pipe Final Determination*"); *see also Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 2049 (January 14, 2009) ("*SDGE Final Determination*").

[40] *See 1,1,1,2-Tetrafluroethane From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 62597 (October 20, 2014) ("*1,1,1,2-Tetrafluroethane Final Determination*"). However, the ITC made a negative finding in that proceeding. *See 1,1,1,2-Tetrafluoroethanefrom China*, Inv. Nos. 701-TA-509 and 731-TA-1244 (Final), Exhibit 1-1 (USITC Pub. 4503) (December 2014), *appeals docketed sub nom. Mexichem Fluor Inc. v. United States*, No. 15-00004 Fed Cir. (January 6, 2015), *and E.I du Pont de Nemours and Company* v. *United States*, No. 15-00005 Fed Cir. (January 7, 2015).

[41] *See Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016) ("*HFC Blends Final*").

indication" of material injury to the domestic industry by reason of the import of subject merchandise.[42] Moreover, the ITC found that the "subject imports took market share from the domestic industry" and the resulting lower prices led "to a poor and declining financial performance."[43] Furthermore, for purposes of initiation of this investigation, the Department found that estimated dumping margins for subject merchandise from the PRC ranged from 153.68 to 220.87 percent.[44] Both of these factors demonstrate that importers knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury to a domestic industry.

Section 733(e)(1)(B) of the Act: Whether There Have Been Massive Imports Over a Relatively Short Period

In determining whether imports of the subject merchandise were "massive," the Department normally will examine the volume and value of the imports, seasonal trends, and the share of domestic consumption accounted for by the imports.[45] In determining whether there are "massive imports" over a "relatively short period," pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the Petition (*i.e.*, the "base period") to a comparable period of at least three months following the filing of the Petition (*i.e.*, the "comparison period"). If the Department finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.[46] Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.[47]

Moreover, it is the Department's practice to base its critical circumstances analysis on all available data, using base and comparison periods of no less than three months.[48] Based on these practices, the Department compared import data for the period March 2016 through July 2016 (the last month for which import data is currently available) with the preceding five-month period of October 2015 through February 2016.[49] These base and comparison periods satisfy the

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[42] *See 1,1,1,2 - Tetrafluoroethane (R-134a) from China Investigation, No. 731-TA-1313 (Preliminary)*, USITC Publication 4606, April 2016 ("*ITC Preliminary Determination*") at 23750.
[43] *See ITC Preliminary Determination* at 19.
[44] *See Initiation Notice*, 81 FR at 18833.
[45] *See* 19 CFR 351.206(h)(1).
[46] *See* 19 CFR 351.206(i).
[47] *Id.*
[48] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 47111, 47118-47119 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 76916 (December 23, 2004); and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 3.
[49] *See* the memorandum to the file, "Calculations for Preliminary Determination of Critical Circumstances in the Antidumping Duty Investigations of 1,1,1,2-Tetrafluoroethane (R-134a) from the People's Republic of China," dated concurrently with this memorandum. ("Critical Circumstances Memo").

regulatory provisions that the comparison period be at least three months long and the base period have a comparable duration.

a. Sanmei

It is the Department's practice to conduct its massive imports analysis with respect to the mandatory respondents based on their reported monthly shipment data.[50] We found that Sanmei's reported shipments of subject merchandise during the five-month March 2016 to July 2016 comparison period did not increase by more than 15 percent over their respective imports in the five-month October 2015 to February 2016 base period.[51] Accordingly, we preliminarily find that there were not massive imports of subject merchandise from Sanmei, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).[52]

b. Non-Individually Examined Respondents

In order to determine whether the non-selected separate rate respondents have massive imports, it is the Department's practice to rely upon Global Trade Atlas ("GTA") import statistics specific to HTS 2903.39.20.20: 1,1,1,2-TETRAFLUOROETHANE (HFC-134A), less the mandatory respondents' reported shipment data, to determine if imports in the five-month March 2016 to July 2016 comparison period for the subject merchandise were massive in relation to imports in the similar the five-month October 2015 to February 2016 base period. The Department found that these imports were massive as well. From this data, it is clear that there was an increase in imports of more than 15 percent during a "relatively short period" of time, in accordance with 19 CFR 351.206(h) and (i). Therefore, we preliminarily find there to be massive imports for the non-selected separate rate respondents, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).

c. PRC-wide Entity

In determining whether imports of the subject merchandise have been "massive" for the PRC-wide entity, we make our preliminary determination with respect to whether or not there were massive imports on facts otherwise available, with an adverse inference, because the PRC-wide entity has been uncooperative with the Department as explained below. Specifically, with respect to critical circumstances, we are making an adverse inference the PRC-wide entity dumped "massive imports" over a "relatively short period."

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[50] *See, e.g., Carbon Steel Pipe Final Determination* and accompanying Issues and Decision Memorandum at Comment 14; *see also SDGE Final Determination* at 2052.

[51] *See* the Critical Circumstances Memo at Attachment I.

[52] *See Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014) and accompanying Preliminary Decision Memorandum 11-16, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determinotions of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014); *see also SDGE Final Determination*, 74 FR at 2052-2053.

Based on the Department's finding of a history of injurious dumping and massive imports, the Department preliminarily determines that critical circumstances exist for the non-individually examined companies receiving a separate rate and the PRC-wide entity. *See* the section below: "Application of Facts Available and Adverse Inferences."

XI. AFFILIATION DETERMINATION

Section 771(33) of the Act, provides that:

The following persons shall be considered to be 'affiliated' or 'affiliated persons':

- (A) Members of a family, including brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants.
- (B) Any officer or director of an organization and such organization.
- (C) Partners.
- (D) Employer and employee.
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
- (G) Any person who controls any other person and such other person.

The Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreement Act states the following:

> The traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm "operationally in a position to exercise restraint or direction" over another in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchise or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.[53]

19 CFR 351.102(b)(3) defines affiliated persons and affiliated parties as having the same meaning as in section 771(33) of the Act. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Department considers the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The regulation directs the Department not to find that control exists on the basis of these factors unless the relationship has "the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product." The regulation also directs the Department to consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

[53] *See* SAA, H.R. Doc. No. 316, Vol. I, 103d Cong., 2d Sess. (1994), at 838.

19 CFR 351.401(f), which outlines the criteria for treating affiliated producers as a single entity for purposes of AD proceedings, states the following:

> (1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
>
> (2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:
>
> (i) The level of common ownership;
>
> (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
>
> (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.[54]

Based on the evidence on the record in this investigation, including information submitted by Sanmei in its questionnaire responses, the Department preliminarily finds affiliation between Sanmei a producer/exporter of subject merchandise and Jiangsu Sanmei Chemicals Co., Ltd. ("Jiangsu Sanmei"), a producer of subject merchandise, pursuant to section 771(33)(B)(E) and (F) of the Act. Further, based on the evidence presented in Sanmei's questionnaire responses, we preliminarily find that Sanmei and Jiangsu Sanmei should be treated as a single entity for the purposes of this investigation, pursuant to 19 CFR 351.401(f)(2), because there exists a significant potential for manipulation of price or production.[55]

[54] *See* 19 CFR 351.401(f).

[55] For a detailed discussion of this issue, *see* the memorandum, "Antidumping Duty Investigation of 1,1,1,2 Tetrafluoroethane-(R-134a) from the People's Republic of China, Preliminary Determination Regarding Affiliation and Collapsing of Zhejiang Sanmei Chemical Industry Co., Ltd. and Jiangsu Sanmei Chemicals Co., Ltd." ("Sanmei Affiliation Memo"), dated concurrently with this memorandum.

XII. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy ("NME") Country

The Department considers the PRC to be an NME country.[56] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination.

B. Separate Rates

Pursuant to section 771(18)(C)(i) of the Act, a designation of a country as an NME remains in effect until it is revoked by the Department. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.[57]

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.[58] It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure)* and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,[59] as further developed by *Silicon Carbide*.[60] However, if the Department determines that a company is wholly foreign-owned, then a separate-rate analysis is not necessary to determine whether it is independent from government control, and thus eligible for a separate rate.[61]

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[56] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results*, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012).

[57] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006).

[58] *See Initiation Notice*, 81 FR at 18834.

[59] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*").

[60] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

[61] *See, e.g., Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169, (September 8, 2014), and unchanged in *Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 79 FR 68860 (November 19, 2014).

The Department continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from the PRC AD proceeding, and its determinations therein.[62] In particular, in litigation involving the diamond sawblades from the PRC proceeding, the CIT found the Department's existing separate rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity exercised control over the respondent exporter.[63] Following the Court's reasoning, in recent proceedings, we have concluded that where a government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, this interest in and of itself means that the respondent is not eligible for a separate rate.[64] Otherwise, we will analyze the impact of government ownership within the context of the de facto criteria as established above. This may include control over, for example, the selection of board members and management, key factors in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with our normal separate rate practice, any ability to control, or possess an interest in controlling, the operations of the company (including the selection of board members, management, and the profit distribution of the company) by a government entity is subject to the Department's rebuttable presumption that all companies within the NME country are subject to government control.

C. Separate Rate Recipients

The Department preliminary determines that Weitron, Sanmei, T.T. International, and Bluestar are eligible to receive a separate rate, as explained below.

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[62] *See* Final Results of Redetermination pursuant to *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) ("*Advanced Technology I*"), available at http://enforcement.trade.gov/remands/12-147.pdf, *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014) ("*Advanced Technology II*"), *aff'd Advanced Technology & Materials Co., Ltd. et. al. v.* United States, 2014 U.S. App. LEXIS 201800 (Fed. Cir. Oct. 24, 2014) (*Advanced Technology II*). *See also Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013) and accompanying Preliminary Decision Memorandum at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying Issues and Decision Memorandum at Comment 1.

[63] *See, e.g., Advanced Technology I*, 885 F. Supp. 2d at 1349 (CIT 2012) ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *Id.*, at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {state-owned assets supervision and administration commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor de jure 'separation' that Commerce concludes.") (footnotes omitted); *Id.*, at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); *Id.*, at 1357 ("AT&M itself identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.") (footnotes omitted).

[64] *See Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying Preliminary Decision Memorandum at 5-9.

Weitron reported that it is a wholly market economy-owned enterprise.[65] Given that there is no evidence of PRC ownership of Weitron and, because the Department has no evidence indicating that Weitron is under the control of the PRC government, a separate rates analysis is not necessary.[66]

Bluestar,[67] Sanmei,[68] and T.T. International,[69] provided either evidence that they are Chinese joint-stock limited companies or wholly Chinese-owned companies. The Department analyzed whether each of these companies has demonstrated an absence of *de jure* and *de facto* government control over their respective export activities.

a. Absence of *De Jure* Control

The Department considers the following *de jure* criteria when determining whether an individual company will receive a separate rate:

(1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses;

(2) legislative enactments decentralizing control over export activities of the companies; and

(3) other formal measures by the government decentralizing control over export activities of companies.[70]

The evidence provided by Bluestar, Sanmei, and T.T. International supports a preliminary finding of an absence of *de jure* government control for each of these companies based on the following:

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[65] *See* Letter from Weitron, "Separate Rate Application for Weitron: Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components Thereof From the People's Republic of China," dated May 2, 2016 ("Weitron SRA"). Note: although this letter was submitted under the title including "Hydrofluorocarbon Blends and Components," it was submitted under case number A-570-044 and accompanying certifications reference 1,1,1,2 Tetrafluoroethene (R-134a) and the correct case number, A-570-044.

[66] *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007); *Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001), unchanged in *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104 (December 20, 1999).

[67] *See, e.g.*, Letter from Bluestar, "1,1,1,2-tetrafluoroethane (R-134a) from the People's Republic of China: Separate Rate Application," dated May 2, 2016 ("Bluestar SRA") at 8-11and Exhibits 3and 4.

[68] *See, e.g.*, Letter from Sanmei, "1,1,1,2-Tetrafluoroethane (R134a) from the People's Republic of China: Initial Section A Response – Zhejiang Sanmei Chemical Industry Co. Ltd.," dated May 31, 2016 ("Sanmei AQR") at 9-13 and Exhibits A-2 and A-3.

[69] *See, e.g.*, Letter from T.T. International, "1,1,1,2-Tetrafluoroethane (R134a) from the People's Republic of China: Separate Rate Application of T.T. International Co. Ltd." dated May 9, 2016 ("T.T. Int'l SRA") at 7-13 and Exhibit 4.

[70] *See Sparklers*, 56 FR at 20589.

(1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses;
(2) the existence of applicable legislative enactments decentralizing control of the companies; and
(3) the implementation of formal measures by the government decentralizing control of Chinese companies.[71]

b. Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions:

(1) whether the export prices ("EP") are set by, or are subject to the approval of, a government agency;

(2) whether the respondent has authority to negotiate and sign contracts and other agreements;

(3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and

(4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.[72] The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control, which would preclude the Department from assigning separate rates.

The evidence provided by Bluestar,[73] Sanmei,[74] and T.T. International[75] supports a preliminary finding of an absence of *de facto* government control based on record statements and supporting documentation showing that the companies:

(1) set their own EPs independent of the government and without the approval of a government authority;

(2) have the authority to negotiate and sign contracts and other agreements;

(3) maintain autonomy from the government in making decisions regarding the selection of management; and

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[71] *See, e.g.*, Bluestar SRA at 8-11 and Exhibit 3-4; Sanmei AQR at 9-13 and Exhibit A 2-3; T.T. Int'l SRA at 7-13 and Exhibit 4.
[72] *See Silicon Carbide*, 59 FR at 22586-87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).
[73] *See* Bluestar SRA.
[74] *See* Sanmei AQR.
[75] *See* T.T. Int'l SRA.

(4) retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses.

Therefore, the evidence placed on the record of this investigation by Bluestar, Sanmei, and T.T. International demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, the Department preliminarily grants separate rates to Bluestar, Sanmei, and T.T. International.[76]

D. Companies Not Receiving a Separate Rate

The Department has not granted a separate rate to the following separate rate applicants:

1. Quhua Fluor
2. Lianzhou
3. Sinochem Taicang

Lianzhou's section A questionnaire response stated that it is 100 percent owned by Zhejiang Juhua, which is 55.86 percent owned by the Juhua Group, a state-owned company supervised by the State-Owned Assets Supervision and Administration Commission ("SASAC") of Zhejiang province. Based on this factor, and other business proprietary information ("BPI"), we find that Juhua Group SASAC controls the selection of Zhejiang Juhua's management and thus *de facto* control over Lianzhou exists.[77] Because we preliminarily determine, based on Lianzhou's section A response, that it is under *de facto* government control, we have not requested additional information from Lianzhou after we received its section A response. We are preliminarily denying a separate rate to Lianzhou. We also preliminarily determine that Quhua Fluor is not eligible for a separate rate because it is under *de facto* government control.[78] In addition, we find that Sinochem Taicang is not eligible for a separate rate because it is under *de facto* government control. Sinochem Taicang's intermediate shareholder is owned by Zhejiang Province and an entity controlled by SASAC.[79]

In addition, companies that did not submit an SRA will be treated as part of the PRC-wide entity.

E. Margin for the Separate Rate Companies

Normally, the Department's practice is to assign to separate rate entities that were not individually examined a rate equal to the average of the rates calculated for the individually examined respondent(s), excluding any rates that are zero, *de minimis*, or based entirely on

[76] *See* "Preliminary Determination" section below.
[77] *Id.*, at 13 and *see* the BPI memorandum to the file, "Preliminary Denial of Separate Rates in the Antidumping Duty Investigation of 1,1,1,2-Tetrafluoroethane (R-134a) from the People's Republic of China," dated concurrently with this memorandum ("SR Memo").
[78] *See* the SR Memo.
[79] *See* Sinochem Taicang's SRA at 9 and exhibit 6 and the SR Memo.

adverse facts available ("AFA"), in accordance with section 735(c)(5)(A) of the Act.[80] For this preliminary determination, we have calculated a weighted-average dumping margin for Sanmei, the one mandatory respondent found to be eligible for a separate rate that is not zero, *de minimis*, or based entirely on facts available. Therefore, we assigned this rate to the separate rate applicants not individually examined.

F. Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation.[81] This practice is described in Policy Bulletin 05.1.

G. The PRC-wide Entity

Nantong Xinhai Refrigerant Co., Ltd. refused delivery of the Department's quantity and value questionnaire.[82] Further, the record indicates that there are other PRC exporters and/or producers of the subject merchandise during the POI that did not respond to the Department's requests for information. Specifically, the Department did not receive timely responses to its Q&V questionnaire from 26 PRC exporters and/or producers of subject merchandise that were named in the Petition and to whom the Department issued Q&V questionnaires.[83] Because non-responsive PRC companies have not demonstrated that they are eligible for separate rate status, the Department finds that they have not rebutted the presumption of government control and, thus the Department considers them to be part of the PRC-wide entity. Furthermore, as explained below, we preliminarily are determining the PRC-wide rate on the basis of AFA.

H. Application of Facts Available and Adverse Inferences

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party: (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

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[80] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).

[81] *Id.*

[82] *See* Q&V Delivery Memo.

[83] *Id.* The Department also posted a copy of the Q&V questionnaire to which it referred in the *Initiation Notice* on its website. Additionally, all 33 companies identified by Petitioners in Exhibit I-9 of the Petition were issued Q&V questionnaires. However, only the following seven exporters/producers timely submitted Q&V questionnaire responses: Weitron, Sanmei, T.T. International, Bluestar, Quhua Fluor, Lianzhou, and Sinochem Taicang.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping and countervailing duty law, including amendments to section 776(b) and (c) of the Act and the addition of section 776(d) of the Act.[84] The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.[85]

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[86] The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.

1. Use of Facts Available

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[84] *See* Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, *129 Stat. 362* (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) ("*Application Notice*").

[85] *See Application Notice*, 80 FR at 46794-95. The 2015 amendments may be found at https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.

[86] *See* SAA at 870.

The Department preliminarily finds that the PRC-wide entity, which includes certain PRC exporters and/or producers that did not respond to the Department's requests for information, withheld information requested by the Department and significantly impeded this proceeding by not submitting the requested information. Specifically, 26 companies within the PRC-wide entity failed to respond to the Department's request for Q&V information.[87] Although one company within the PRC-wide entity, Lianzhou, has responded to portions of the Department's questionnaire, the entity as a whole overwhelmingly has withheld requested information, failed to provide such information in a timely manner or in the form or manner requested by the Department, and significantly impeded the proceeding. Therefore the Department preliminarily determines that the use of facts available is warranted in determining the rate of the PRC-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.[88]

2. Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that in selecting from among the facts otherwise available, the Department may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The Department finds that the PRC-wide entity's lack of participation, including the failure of certain parts of the PRC-wide entity to submit Q&V information, constitutes circumstances under which it is reasonable to conclude that the PRC-wide entity as a whole failed to cooperate to the best of its ability to comply with the Department's request for information.[89] With respect to the missing information, no documents were filed indicating any difficulty providing the information, nor was there a request to allow the information to be submitted in an alternate form. Therefore, we preliminarily find that an adverse inference is warranted in selecting from among the facts otherwise available with respect to the PRC-wide entity in accordance with section 776(b) of the Act and 19 CFR 351.308(a).[90]

3. Selection of the AFA rate

In applying an adverse inference, the Department may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.[91] In selecting an AFA rate, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[92] In an investigation, the

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[87] *See* Q&V Delivery Memo.

[88] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

[89] *See Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (*i.e.*, information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.")).

[90] *Id.*, 337 F.3d 1373, 1382-83.

[91] *See* section 776(b) of the Act.

[92] *See* SAA at 870.

Department's practice with respect to the assignment of an AFA rate is to select the higher of (1) the highest dumping margin alleged in the petition or (2) the highest calculated dumping margin of any respondent in the investigation.[93]

4. Selection and Corroboration of the AFA Rate

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the Petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the Petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[95] The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value,[96] although under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.[97] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used, although under the TPEA, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.[98] Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins.[99]

In order to determine the probative value of the dumping margin alleged in the petition for assigning an AFA rate, we examined the information on the record. When we compared the highest petition dumping margin of 220.90 percent to the transaction-specific dumping margins calculated for Sanmei, we found that the highest petition dumping margin is higher than each of the transaction-specific dumping margins calculated for Sanmei. Therefore, we were unable to corroborate the highest dumping margin contained in the petition.

Therefore, for the preliminary determination, we assigned to the PRC-wide entity a dumping margin of 188.94 percent, which is the highest model-specific dumping margin for Sanmei.[100] It

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[93] *See, e.g., Certain Uncoated Paper From Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016).
[95] *See* SAA at 870.
[96] *Id.*; *see also* 19 CFR 351.308(d).
[97] *See* section 776(c)(2) of the Act; TPEA, section 502.
[98] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).
[99] *See* section 776(d)(1)-(2) of the Act; TPEA, section 502(3).
[100] *See, e.g., Silica Bricks and Shapes From the People's Republic of China: Preliminary Determination of Antidumping Duty Investigation and Postponement of Final Determination*, 78 FR 37203 (June 20, 2013), and

is unnecessary to corroborate this rate because it was obtained in the course of this investigation and, therefore, is not secondary information.[100] The transactions underlying this dumping margin are neither unusual in terms of transaction quantities nor otherwise atypical.[101] For further information, see the Corroboration Memorandum.

I. Surrogate Country and Surrogate Value Data

Generally, the Department selects a surrogate country that is at the same level of economic development as the NME, unless it is determined that none of the countries are viable options because:

(a) they either are not significant producers of comparable merchandise,

(b) do not provide sufficient reliable sources of publicly available SV data, or

(c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.

The Department issued its list of surrogate countries on May 3, 2016.[102] On June 6, 2016, both Lianzhou and Sanmei, as well as Petitioners, submitted comments with respect to surrogate country selection.[103] On July 7, 2016, Lianzhou, Sanmei, and Petitioners submitted comments on the selection of SVs.[104] Our analysis of these comments and the relevant record evidence follow below.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production ("FOP"), valued in a surrogate market economy ("ME") country or countries considered to be

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accompanying Preliminary Decision Memorandum at Comment 3.

[100] *See* section 776(c) of the Act; see also SAA at 870 (providing examples of secondary information); *Certain Corrosion-Resistant Steel Products From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 75 (January 4, 2016) and accompanying Preliminary Decision Memorandum at Section VI.E (Application of Facts Available and Adverse Inferences) (unchanged in *Certain Corrosion-Resistant Steel Products From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35316 (June 2, 2016).

[101] See *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partiol Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

[102] *See* Memorandum from Carole Showers, Director, Office of Policy, Enforcement and Compliance, "Request for a List of Surrogate Countries for a Less-Than-Fair Value: Investigation of 1,1,1,2 Tetrafluoroethane ("R-134a") from the People's Republic of China (China)," dated May 3, 2106 ("Surrogate Country Memo").

[103] *See* Lianzhou's Surrogate Country Comments. *See also*, Petitioners' Surrogate Country Comments. *See also*, Sanmei's Surrogate Country Comments.

[104] *See* Lianzhou's First SV Submission; Sanmei's First SV Submission; and Petitioners' First SV Submission.

appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[107] The Department determined that Bulgaria, Ecuador, Mexico, Romania, South Africa, and Thailand are countries at the same level of economic development as the PRC based on per capita gross national income (GNI).[108] The sources of the SVs we used in this investigation are discussed in the "Normal Value" section below.

In its June 6, 2016 surrogate country comment letter, Lianzhou argues Thailand is the best choice as a surrogate country for FOP valuation.[109] Lianzhou further argues the Department has already considered Thailand to be at the same level of economic development as the PRC in previous investigations, including the previous R-134a investigation.[110] Moreover, Lianzhou argues that Thailand is a significant producer of comparable merchandise.[111] Additionally, Lianzhou asserts that surrogate values from Thailand are of high quality.[112] However, in its July 7, 2016 and July 11, 2016 surrogate value comments, Lianzhou submitted Mexican import data and other publicly available information to value all FOPs except one, compressed air.[113]

In its June 6, 2016 surrogate country comments, Sanmei argues that Mexico and Thailand are at a level of economic development that is comparable to the PRC and that both countries are significant producers of the subject merchandise; thus both countries are appropriate surrogate countries. However, in its July 7, 2016 surrogate value comments, Sanmei states, "{w}ith respect to the availability of reliable data and financial statements from Mexico and Thailand to value respondent's factors of production, Sanmei believes that Mexico is a more reliable and consistent source to value all the inputs . . ."[114]

In Petitioners' June 6, 2016 surrogate country comments, Petitioners argue that Mexican data is likely to be more reliable than Thai data.[115] Petitioners acknowledge that the Department valued FOPs using Thai data in its previous R-134a investigation,[116] but state that Mexico was not on the Department's surrogate country list in that investigation. Furthermore, Petitioners note that the Department relied on Mexican data to value FOPs in the recent AD investigation of hydrofluorocarbon blends and components thereof from the PRC.[117]

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[107] *See* Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) ("Policy Bulletin 04.1").
[108] *See* Surrogate Country Memo at 2.
[109] *See* Lianzhou's Surrogate Country Comments at 1.
[110] *See 1,1,1,2-Tetrafluoroethane Final Determination.*
[111] *See* Lianzhou's Surrogate Country Comments at 3-4.
[112] *Id.*, at 4.
[113] *See* Lianzhou's First SV Submission. *See also*, Lianzhou's Letter, "Lianzhou's Final Surrogate Value Comments in the Antidumping Duty Investigation on 1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China," dated July 11, 2016 ("Lianzhou's Final Surrogate Value Comments").
[114] *See* Sanmei's First SV Submission at 3.
[115] *See* Petitioners' Surrogate Country Comments at 2.
[116] *Id. 1,1,1,2-Tetrafluoroethane Final Determination* and accompanying Issues and Decision Memorandum at 23-26.
[117] *See HFC Blends Final* and accompanying Preliminary Decision Memorandum at Comment 19.

Economic Comparability

As explained in the Surrogate Country Memo,[118] the Department considers Bulgaria, Ecuador, Mexico, Romania, South Africa, and Thailand all to be at the same level of economic development as the PRC.[119] Section 773(c)(1) of the Act is silent with respect to how the Department may determine that a country is at the same level of economic development as the NME country. As explained in the Department's Policy Bulletin 04.1., "{t}he surrogate countries on the list are not ranked." This lack of ranking reflects the Department's long-standing practice that, for the purpose of surrogate country selection, the countries on the list "should be considered equivalent" from the standpoint of their level of economic development, based on per capita GNI as compared to the PRC's level of economic development.[120] This also recognizes that the "level" in an economic development context necessarily implies a range of per capita GNI, not a specific per capita GNI.[121] The Department's long-standing practice of selecting, if possible, a surrogate country from a non-exhaustive list of countries at the same level of economic development as the NME country, or another country at the same level of economic development, fulfills the statutory requirement to value factors of production, to the extent possible, using data from "one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country . . . ."[122] In this regard, "countries that are at a level of economic development comparable to that of the NME country" necessarily includes countries that are at the same level of economic development as the NME country.

Accordingly, as stated above, we will rely on data from one of these countries unless it is determined that none of the countries are viable options because:

(i) they either are not significant producers of comparable merchandise;

(ii) do not provide sufficient reliable sources of publicly available SV data; or

(iii) are not suitable for use based on other reasons.

Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.[123]

Significant Producers of Identical or Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable

[118] *See* Surrogate Country Memo.
[119] *Id.*, at 2.
[120] *Id.*
[121] *Id.*
[122] *See* section 773(c)(4) of the Act.
[123] *See* Surrogate Country Memo.

merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as Policy Bulletin 04.1 for guidance on defining comparable merchandise. Policy Bulletin 04.1 states, "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise. In cases where the identical merchandise is not produced, the team must determine if other merchandise that is comparable is produced." Further, the statute grants the Department discretion to examine various data sources for determining the best available information.[124] In order to determine whether the above-referenced countries are significant producers of comparable merchandise, the Department's practice generally is to examine which countries on the surrogate country list exported merchandise comparable to the subject merchandise.

In this case, the record shows that Bulgaria, Mexico, Romania, South Africa, and Thailand are significant producers of comparable merchandise.[125] The Department could not definitively disqualify any of these countries as surrogate countries through the above analysis; thus the Department examined the availability of SV data to determine the most appropriate surrogate country.

Data Availability

When evaluating SV data, the Department considers several factors including whether the SV data is publicly available, contemporaneous with the POI, representative of broad-market averages, from an approved surrogate country, tax and duty-exclusive, and specific to the input.[126] There is no hierarchy among these criteria. The Department carefully considers the available evidence in light of the particular facts of each industry when undertaking its analysis.[127]

Lianzhou placed Mexican import data and other publicly available Mexican information on the record to be used to value FOPs in this investigation. Sanmei placed Mexican and Thai import data and other publicly available information on the record to value FOPs.[128] Petitioners placed Mexican data on the record to value FOPs.[129] Given that 1) the Mexican surrogate value data on the record is complete and reliable, 2) Mexico is a significant producer of subject merchandise, and 3) the Department's preference is to value FOPs using data from a single surrogate country, we preliminarily are selecting Mexico as the surrogate country for purposes of calculating NV in this investigation. In summary, Mexico:

(i) is at the same level of economic development as the PRC;

(ii) is a significant producer of comparable merchandise; and

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[124] *See* section 773(c) of the Act; *see also Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999).

[125] *See* Sanmei's First SV Submission and Petitioners' First SV Submission at Exhibit 1.

[126] *See, e.g., Certain Activated Carbon from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 77 FR 67337 (November 9, 2012), and accompanying Issues and Decision Memorandum at 8.

[127] *See* Policy Bulletin 04.1.

[128] *See* Sanmei's First SV Submission.

[129] *See* Petitioners' First SV Submission.

(iii) provides publicly available data that are representative of a broad market average, tax and duty-exclusive, specific to the inputs being valued, and contemporaneous with or closest in time to the POI.

Therefore, the Department preliminarily selects Mexico as the surrogate country in this investigation.[136] A detailed explanation of the SVs is in the "Normal Value" section of this notice.

J. Date of Sale

In identifying the date of sale of the subject merchandise under consideration, the Department will normally, in accordance with 19 CFR 351.401(i), "use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms.[137] Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.[138] Sanmei reported the invoice date as the date of sale. However, Sanmei stated in its section C questionnaire response that "{i}n some instances, Zhejiang Sanmei shipped material prior to invoicing."[139] The Department has a longstanding practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.[140] Therefore, for the preliminary determination, where Sanmei shipped subject merchandise to the United States prior to the reported date of sale, based on invoice date, the Department will use the date of shipment as the date of sale.

K. Fair Value Comparisons

In accordance with section 777A(d)(1)(A) of the Act, the Department compared the weighted-average price of the U.S. sales of the subject merchandise to the weighted-average NV to determine whether the mandatory respondent sold subject merchandise to the United States at LTFV during the POI.[141]

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[136] *See* the memorandum, "Surrogate Country Selection," dated concurrently with this memorandum.

[137] *See, e.g., Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Comment 1.

[138] *See* 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

[139] *See* Sanmei's letter, "1,1,1,2-Tetrafluoroethane (R134a) from the People's Republic of China: Initial Section C Response Zhejiang Sanmei Chemical Industry Co. Ltd.," dated June 16, 2016 ("Sanmei's CQR") at 12.

[140] *See*, e.g., *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 36881 (June 8, 2016), and accompanying Preliminary Decision Memorandum at Section VII.

[141] *See* "Export Price" and "Normal Value" sections below.

L. Export Price

In accordance with section 772(a) of the Act, the Department defined the U.S. price of subject merchandise based on the EP of all of the sales reported by Sanmei. The Department calculated the EP based on the prices at which subject merchandise was sold to unaffiliated purchasers in the United States.

The Department made deductions, as appropriate, from the reported U.S. price for movement expenses (*i.e.*, domestic and foreign inland freight, domestic and foreign brokerage and handling).[142] The Department based movement expenses on surrogate values where the service was purchased from a PRC company.[143]

M. Value-Added Tax

In 2012, the Department announced a change of methodology with respect to the calculation of EP and constructed export price ("CEP") to include an adjustment of any un-refunded (herein "irrecoverable") value-added tax ("VAT") in certain NME countries in accordance with section 772(c)(2)(B) of the Act.[144] The Department explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.[145] Where the irrecoverable VAT is a fixed percentage of EP or CEP, the Department explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. EP or CEP downward by this same percentage.[146]

The Department's methodology, as explained above and applied in this investigation, incorporates two basic steps: (1) determine the irrecoverable VAT on subject merchandise, and (2) reduce U.S. price by the amount determined in step one. Information placed on the record of this investigation by Sanmei indicates that according to the PRC VAT schedule, the standard VAT levy applicable to the subject merchandise is 17 percent and the applicable rebate rate is 13 percent.[147] For the purposes of this preliminary determination, therefore, we applied the difference between the rates (*i.e.*, four percent) to the U.S. free on board ("FOB") price, which is the irrecoverable VAT as defined under PRC tax law and regulation, as reported by Sanmei.[148]

N. Normal Value

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[142] *See* section 772(c)(2)(A) of the Act.
[143] *See* "Factor Valuation Methodology" section below.
[144] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012).
[145] *Id.*; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) and accompanying Issues and Decision Memorandum at Comment 5.A.
[146] *Id.*
[147] *See* Sanmei's CQR at 35 – 38.
[148] *Id.*

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(e) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. The Department's questionnaire requires that the respondents provide information regarding the weighted-average FOPs on a CONNUM-specific basis, either using actual quantities or develop a reasonable methodology, across all of the companies' plants and suppliers that produce the subject merchandise, not just the FOPs from a single plant or supplier.[149] This methodology ensures that the Department's calculations are as accurate as possible.[150]

The Department calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). Under section 773(c)(3) of the Act, FOPs used by the respondent in the production of nails include, but are not limited to, (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department based NV on the respondent's reported FOPs for materials, energy, and labor.

O. Factor Valuations

In accordance with section 773(c) of the Act, for subject merchandise produced by the respondent, the Department calculated NV based on the FOPs it reported for the POI. The Department used Mexican import data and other publicly available Mexican sources in order to calculate SVs. To calculate NV, the Department multiplied the reported per-unit FOP quantities by the input-specific SVs calculated by the Department. The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.[151]

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to Mexican import SVs a surrogate-freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where it relied on an import value. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). Additionally, where necessary, the Department adjusted SVs for inflation, exchange rates, and taxes, and converted all applicable FOPs to a per-kilogram basis.

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[149] *See* the Department's AD Questionnaire at Section D and D-2.

[150] *See, e.g., Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 68 FR 61395 (October 28, 2003), and accompanying Issues and Decision Memorandum at Comment 19.

[151] *See, e.g., Electrolytic Manganese 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.

Furthermore, with regard to the Mexican import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized.[152] We have reason to believe or suspect that prices of inputs from India, Indonesia, Thailand and South Korea may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.[153] Based on the existence of the subsidy programs that were generally available to all exporters and producers in these countries at the time of the POI, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an "unspecified" country from the average value because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.[154] Therefore, we have not used prices from these countries either in calculating the Mexican import-based SVs or in calculating ME input values.

For the preliminary determination, the Department used Mexican Import Statistics from the GTA to value certain raw materials, byproducts, and packing material inputs that Sanmei used to produce subject merchandise during the POI, except where listed below. Parties placed data from the GTA for Mexico on the record for the aforementioned items, and the GTA is a source that is regularly used by the Department because the data therein meet the Department's SV criteria.

Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing from the International Labor Organization ("ILO") Yearbook of Labor Statistics ("Yearbook"), which reflects all costs related to labor, including wages, benefits, housing, training, etc.

It is the Department's preference to use data reported under the most recent revision. In this case, we found that Mexico's most recent reported revision is ISIC-Rev. 3. Within ISIC-Rev. 3, the Department identified the three-digit series most specific to R-134a as "Economic Activity 242. Manufacture of other chemical products."[155] However, because Mexico did not report

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[152] *See* section 773(c)(5) of the Act, as amended in section 505 of the TPEA to permit the Department to disregard price or cost values without further investigation if it has determined that certain subsidies existed with respect to those values; *see also, Application Notice*, 80 FR at 46795.

[153] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20.; *Certain Lined Paper Products From Indonesia: Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 76 FR 73592 (November 29, 2011), and accompanying Issues and Decision Memorandum at 1; *Certain Frozen Warmwater Shrimp From Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013), and accompanying Issues and Decision Memorandum at IV.

[154] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China*, 69 FR 75294, 75300 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502 (May 10, 2005).

[155] *See* "Antidumping Duty Investigation of 1,1,1,2-Tetrafluoroethane (R-134a) from the People's Republic of China: Surrogate Values for the Preliminary Affirmative Determination of Sales at Less Than Fair Value," dated

wage data specific to this three-digit description for the POI, we used the most recently reported wage data specific to the three-digit description noted above. Thus, the Department calculated the surrogate labor value using total labor data reported by Mexico to the ILO in 2008, in accordance with section 773(c)(4) of the Act, and inflated that value to the POI using the consumer price index ("CPI"), in accordance with our normal practice.

We valued water using data from The National Water Commission - Comisión Nacional del Agua - *Estadisticas del Agua en Mexico, Edicion 2014* and inflated the price using CPI data.[156]

We valued truck freight expenses using data from *Doing Business 2016 Mexico* and used a calculation methodology based on a 15 metric ton containerized shipment over 219 kilometers.[157]

We valued brokerage and handling expenses using data from *Doing Business 2016 – Mexico*.[158]

Petitioners placed the publicly available 2015 annual report of CYSDA S.A. de C.V. ("CYSDA"), a Mexican producer of several commercial, industrial and domestic refrigerants on the record to be used to calculate surrogate financial ratios.[159] Lianzhou submitted a 2014 financial statement for Mexichem, a producer of comparable merchandise, located in Mexico to be used to calculate financial ratios.[160] Sanmei placed Mexichem's 2015 financial statement on the record to be used for this purpose.[161] Therefore, pursuant to 19 CFR 351.408(c)(2) and in accordance with our preference for valuing all factors in the primary surrogate county, we preliminarily determine to calculate surrogate financial ratios using the 2015 Mexican financial statements from CYSDA and Mexichem.[162]

P. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Sanmei's sales of the subject merchandise from the PRC to the United States were made at less than fair value, the Department compared the export price to the normal value as described in the "Export Price" and "Normal Value" sections of this memorandum.

a. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average normal values to weighted-average export prices (or constructed export prices) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations,

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concurrently with this memorandum ("Preliminary SV Memo").
[156] *Id.*
[157] *See* Sanmei's First SV Submission at Exhibit SV-35.
[158] *Id.*, at Exhibit SV-37.
[159] *See* Petitioners' First SV Submission at Exhibit 10.
[160] *See* "Data Availability" section, above.
[161] *See* Sanmei's First SV Submission at Exhibits 38 39.
[162] *See* Preliminary SV Memo.

the Department examines whether to compare weighted-average normal values with the export prices (or constructed export prices) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.[163] The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of investigation based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between export price (or constructed export price) and normal value for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other

[163] *See, e.g., Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

b. Results of the Differential Pricing Analysis

For Sanmei, based on the results of the differential pricing analysis, the Department preliminarily finds that 100 percent of the value of U.S. sales pass the Cohen's *d* test,[164] and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Sanmei.

Q. Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

XIII. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information used to calculate the dumping margin for Sanmei and upon which we will rely in making our final determination.

XIV. U.S. INTERNATIONAL TRADE COMMISSION NOTIFICATION

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of boltless steel shelving, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

As further discussed in the accompanying *Federal Register* notice, we will make our final determination no later than 75 days after the date of publication of this preliminary determination, pursuant to section 735(a)(1) of the Act.

[164] *See* the Memorandum to the File from Paul Stolz, "Analysis for the Preliminary Determination of the Less-Than-Fair-Value Investigation of 1,1,1,2-Tetrafluoroethane (R134a) from the People's Republic of China," dated concurrently with this memorandum.

XV. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

29 SEPTEMBER 2016
(Date)