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Administrative Review
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June 29, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the 2015-2016 Antidumping Duty Administrative Review and Preliminary Rescission of New Shipper Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China

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SUMMARY

In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review and a new shipper review (NSR) of the antidumping duty (AD) order on tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the People's Republic of China (PRC) for the period of review (POR) June 1, 2015, through May 31, 2016. With respect to the administrative review, we preliminarily find that sales of the subject merchandise have been made at prices below normal value (NV) for one of the companies selected for mandatory examination (*i.e.*, Zhejiang Zhaofeng Mechanical & Electronic Co., Ltd. (Zhaofeng)), as well for three companies qualifying for separate rates (*i.e.*, GSP Automotive Group Wenzhou Co. Ltd. (GSP), Hangzhou Yonggu Auto-Parts Co., Ltd. (Hangzhou Yonggu); and Zhejiang CTL Auto Parts Manufacturing Incorporated Co., Ltd. (CTL)). We preliminarily find that two additional companies, Yantai CMC Bearing Co. Ltd. (Yantai CMC) and Zhejiang Zhengda Bearing Co., Ltd. (Zhengda) do not qualify for separate rates, and accordingly, we are preliminarily treating them as part of the PRC-wide entity.

With respect to the NSR, we preliminarily find that the single U.S. sale made by Zhejiang Jingli Bearing Technology Co. Ltd. (Zhejiang Jingli) is not *bona fide* and, therefore, are preliminarily rescinding the NSR.

Background

On June 15, 1987, the Department published in the *Federal Register* the antidumping duty order on TRBs from the PRC.[1] On June 2, 2016, the Department published in the *Federal Register* a notice of opportunity to request an administrative review of the AD order on TRBs from the PRC for the period of June 1, 2015, through May 31, 2016.[2]

In June 2016, the Department received timely requests from interested parties, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(1), (2) and (3) to conduct an administrative review of the AD order on TRBs from the PRC. One of these interested parties, GSP, notified the Department in its request for review that it intended to participate as a voluntary respondent.[3] Also in June 2016, the Department received a timely request, pursuant to section 751(a)(2)(B) of the Act, 19 CFR 351.214(b), and 19 CFR 351.214(d)(1), from Zhejiang Jingli to conduct an NSR of the TRBs order.

In August 2016, the Department published in the *Federal Register* a notice of initiation of an NSR with respect to Zhejiang Jingli,[4] and we issued the non-market economy (NME) AD questionnaire to it. Also in the same month, the Department published a notice of initiation of administrative review with respect to eight companies.[5] In the *Initiation Notice*, the Department indicated that, in the event that we limit the number of respondents selected for individual examination in accordance with section 777A(c)(2) of the Act, we would select mandatory respondents for individual examination based upon U.S. Customs and Border Protection entry data.[6] Thereafter, we received comments on the issue of respondent selection from the petitioner in this proceeding (*i.e.*, the Timken Company).

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[1] *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Notice of Antidumping Duty Order*, 52 FR 22667 (June 15, 1987).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 81 FR 35301 (June 2, 2016).

[3] *See* GSP's Letter, "Tapered Roller Bearing from China; Administrative Review Request," dated June 22, 2016. Although GSP subsequently filed timely a response to the Department's questionnaire, we did not analyze this response due to the Department's resource constraints. For further discussion, *see* Memorandum, "Antidumping Duty Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Selection of Voluntary Respondent," dated April 4, 2017 (Voluntary Respondent Memorandum) and the "Determination Not to Select GSP as a Voluntary Respondent" section, below.

[4] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 81 FR 51185 (August 3, 2016) (*Initiation Notice*).

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 53121 (August 11, 2016) (*Initiation Notice*). The eight companies listed in the *Initiation Notice* are: 1) Changshan Peer Bearing Co., Ltd. (CPZ/SKF); 2) GGB Bearing Technology (Suzhou) Co., Ltd. (GGB); 3) GSP; 4) Hangzhou Yonggu; 5) Yantai CMC; 6) CTL; 7) Zhaofeng; and 8) Zhengda. With respect to Yantai CMC, we note that the *Initiation Notice* listed this company as "Yantai CMC Bearing Co. Ltd./CMC Bearings Co. Ltd." However, the review request was for Yantai CMC Bearing Co. Ltd/CMC Bearing Co. Ltd. This determination corrects the notice of initiation and clarifies that this review covers Yantai CMC Bearing Co. Ltd./CMC Bearing Co. Ltd.

[6] *See Initiation Notice*, 81 FR 53121.

In September 2016, we received separate rate applications (SRAs) from CTL, GSP, and Hangzhou Yonggu, as well as separate rate certifications (SRCs) from CPZ/SKF, GGB, Zhaofeng, and Zhengda. We also received Zhejiang Jingli's response to section A of the questionnaire (*i.e.*, the section relating to general information).

Also in September 2016, after considering the large number of potential respondents involved in this administrative review, and the resources available to the Department, we determined that it was not practicable to examine all exporters of subject merchandise for which an administrative review was requested.[7] As a result, pursuant to section 777A(c)(2)(B) of the Act, we determined that we could reasonably individually examine only the two exporters accounting for the largest volume of entries of TRBs from the PRC during the POR. These companies were CPZ/SKF and Zhengda. Accordingly, we issued the NME AD questionnaire to these two companies. However, on September 29, 2016, CPZ/SKF withdrew its request for administrative review. Because no other interested party requested a review of CPZ/SKF, on October 3, 2016, the Department selected for individual examination the next largest exporter that claimed eligibility for a separate rate, GGB, and issued it the questionnaire.[8] Subsequently, GGB also withdrew its request for administrative review;[9] therefore, on October 13, 2016, we selected the next largest exporter for individual examination, Zhaofeng,[10] and issued it the questionnaire as well.

Also in October 2016, the Department aligned the NSR with the administrative review,[11] and Zhejiang Jingli responded to sections C and D of the questionnaire (*i.e.*, the sections relating to U.S. sales and factors of production (FOP), respectively).

In November 2016, Zhengda and Zhaofeng responded to section A of the questionnaire, and Zhengda responded to section C and D of the questionnaire. We also issued a supplemental questionnaire to the importer listed in Zhejiang Jingli's questionnaire responses.[12]

In December 2016, Zhaofeng responded to sections C and D of the questionnaire. Also in December 2016, we received comments on the selection of the appropriate surrogate country to be used in these segments of the proceeding from the petitioner and Zhengda. From December 2016 through June 2017, we received comments on the selection of surrogate values (SVs) from

[7] *See* Memorandum, "Selection of Respondents for Individual Review," dated September 27, 2016.

[8] *See* Memorandum, "Selection of Respondents for Individual Review," dated October 3, 2016.

[9] Because requests for review of CPZ/SKF and GGB were timely withdrawn, we rescinded the review with respect to those companies pursuant to 19 CFR 351.213(d)(1). *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Rescission, in Part, of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 4299 (January 13, 2017).

[10] *See* Memorandum, "Selection of Respondents for Individual Review," dated October 13, 2016.

[11] *See* Memorandum, "Alignment of New Shipper Review with 29th Administrative Review," dated October 19, 2016.

[12] *See* Department Letter re: New Shipper in Tapered Roller Bearings and Parts Thereof, Finished or Unfinished from the People's Republic of China: Questionnaire for the Importer of Record, [. . .]; *see also* Memorandum, "Confirmation of Delivery of Importer Supplemental Questionnaire," dated November 21, 2016.

the petitioner, Zhaofeng, Zhengda, and Zhejiang Jingli, as well as rebuttal SV comments from the petitioner.

In January 2017, we extended the time period to issue the preliminary results in the instant reviews by 120 days.[13] From January through April 2017, we issued supplemental questionnaires to Zhengda and Zhaofeng. We received timely responses to most of these questionnaires during the same time frame; however, Zhengda failed to respond to the final supplemental questionnaire issued. Therefore, we find that Zhengda does not qualify for a separate rate in this segment of the proceeding. For further discussion, *see* the "Separate Rates" section, below.

In May 2017, we issued a supplemental questionnaire to CTL regarding its SRA, and we received CTL's timely response. In this month, we also verified Zhaofeng's questionnaire responses at its facilities in Zhejiang, PRC[14]; thereafter, the petitioner alleged that Zhaofeng failed to report a substantial number of sales of subject merchandise during the POR. For further discussion, *see* the "Application of Facts Available and Use of Adverse Inferences" section, below.

Finally, in May 2017, Yantai CMC submitted an SRA. Because this application was due in September 2016, we rejected Yantai CMC's submission.[15] Therefore, as with Zhengda, we find that Yantai CMC does not qualify for a separate rate in this segment of the proceeding. For further discussion, *see* the "Separate Rates" section, below.

<u>Scope of the Order</u>

Imports covered by the order are shipments of tapered roller bearings and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.70.6060, 8708.99.2300, 8708.99.4850, 8708.99.6890, 8708.99.8115, and 8708.99.8180. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

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[13] *See* Memorandum, "Tapered Rollers Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review," dated January 25, 2017.

[14] *See* Memorandum, "Verification of the Response of Zhejiang Zhaofeng Mechanical and Electronic Co., Ltd. in the 2015-2016 Administrative Review of Tapered Roller Bearings and Parts Thereof from the People's Republic of China," dated June 29, 2017 (Verification Report).

[15] *See* Department Letter re: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China, dated May 17, 2017 (Yantai CMC SRA Rejection Letter).

Determination Not to Select GSP as a Voluntary Respondent

Section 777A(c)(1) of the Act directs the Department to calculate an individual weighted-average dumping margin for each known exporter or 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 review. When the Department limits the number of exporters examined in a review pursuant to section 777A(c)(2) of the Act, section 782(a)(1) of the Act directs the Department to calculate individual weighted-average dumping margins for companies not initially selected for individual examination that voluntarily provide the information requested of the mandatory respondents if: 1) the information is submitted by the due date specified for exporters or producers initially selected for examination; and 2) the number of companies subject to the review is not so large that any additional individual examination of companies that have voluntarily provided information would be unduly burdensome and inhibit the timely completion of the review.[16]

Under section 782(a) of the Act, as amended by the TPEA, in determining whether it would be unduly burdensome to examine a voluntary respondent, the Department may consider: 1) the complexity of the issues or information presented in the proceeding, including questionnaires and any responses thereto; 2) any prior experience of the Department in the same or similar proceedings; 3) the total number of investigations or reviews being conducted by the Department; and 4) such other factors relating to the timely completion of those investigations and reviews. In *Grobest*, the Court of International Trade (CIT) remanded to the Department its decision not to review a voluntary respondent in light of the administrative burden associated with reviewing the number of mandatory respondents selected.[17] The CIT held that "Commerce {must} separately determine whether reviewing the voluntary respondents would be unduly burdensome and inhibit the timely completion of the investigation."[18]

As explained in its April 4, 2017, memorandum declining to select GSP as a voluntary respondent, the Department considered the criteria in section 782(a)(2) of the Act to determine whether it would be unduly burdensome to review a voluntary respondent at that time.[19] Pursuant to section 782(a) of the Act, as amended by the TPEA, we determined that examining GSP as a voluntary respondent would be unduly burdensome and may inhibit the timely completion of the administrative review. In coming to our determination, we considered the

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[16] 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 AD and countervailing duty (CVD) law, including amendments to section 782(a) of the Act. *See* the TPEA, Public Law 114-27. 129 Stat. 362 (2015). The amendments to the Act are applicable to determinations made on or after August 6, 2015, and, therefore, apply to this review. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015: Interpretive Rule*, 80 FR 46793 (August 6, 2015) (*TPEA Application Dates*).

[17] *See Grobest & I-Mei Industrial (Vietnam) Co. v. United States*, 815 F. Supp. 2d 1342, 1362 (CIT 2012) (*Grobest*).

[18] *Id*. (citation omitted).

[19] *See* Voluntary Respondent Memorandum, at 3-5.

following factors: 1) the complexity of the issues or information presented in this review; 2) any prior experience of the Department in the same or similar proceedings; 3) the total number of investigations or reviews being conducted by the Department; and 4) such other factors relating to the timely completion of those investigations and reviews.[20] Based on these criteria, the Department found that, because of the complexity of the information presented in the proceeding and the total number of investigations and reviews being conducted as of the date of the determination, it only had sufficient resources to examine two mandatory respondents.

Subsequent to that determination, Zhengda ceased participating in the administrative review. However, because this occurred two months prior to the preliminary results,[21] it was too late to analyze GSP's voluntary questionnaire responses. Thus, consistent with section 782(a) of the Act, the Department has not considered GSP's unsolicited questionnaire responses.

Bona Fides Analysis

Pursuant to section 751(a)(2)(B)(iv) of the Act, any individual dumping margin determined in an NSR shall be solely based on *bona fide* U.S. sales during the POR.[22] Section 751(a)(2)(B)(iv) of the Act also sets forth criteria for the Department's consideration in determining if sales, such as the sale by Zhejiang Jingli under review in this NSR, are *bona fide*. In evaluating whether the sale in an NSR is commercially reasonable or typical of normal business practices, and, therefore, *bona fide*, the Department considers, "depending on the circumstances surrounding such sales":

> (I) the prices of such sales; (II) whether such sales were made in commercial quantities; (III) the timing of such sales; (IV) the expenses arising from such sales; (V) whether the subject merchandise involved in such sales was resold in the United States at a profit; (VI) whether such sales were made on an arms-length basis; and (VII) any other factor {it} determines to be relevant as to whether such sales are, or are not, likely to be typical of those the exporter or producer will make after completion of the review.[23]

Although some *bona fides* issues may share commonalities across various Department cases, the Department examines the *bona fide* nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale. Accordingly, the Department considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise."[24] In *TTPC*, the CIT also affirmed the Department's

[20] *Id.*, at 4-5.

[21] *See* Department Letter re: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China, dated April 24, 2017, establishing the deadline for Zhengda's response to the Department's April 10, 2017, supplemental questionnaire as April 26, 2017. Zhengda did not respond to this questionnaire.

[22] *See* section 433 of the Trade Facilitation and Trade Enforcement Act of 2015, Pub. Law 114-125 (February 24, 2016) (adding a new section 751(a)(2)(B)(iv) entitled, "Determinations based on *bona fide* sales").

[23] *Id*.

[24] *See Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (*New*

decision that any factor which indicated that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,[25] and found that the weight given to each factor investigated will depend on the circumstances surrounding the sale.[26] Finally, in *New Donghua*, the CIT affirmed the Department's practice of evaluating the circumstances surrounding an NSR sale so that a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the producer's usual commercial practice would dictate.[27] The Department's practice makes clear that the Department will examine objective, verifiable factors to ensure that a sale is not being made to circumvent an AD order.[28] Thus, a respondent is on notice that it is unlikely to establish the *bona fides* of a sale merely by claiming to have sold in a manner representative of its future commercial practice.[29] Where the Department finds that a sale is not *bona fide,* the Department will exclude the sale from its U.S. price calculations.[30]

In this NSR, our analysis of the information submitted on the record by Zhejiang Jingli shows that the sale at issue is not *bona fide*. The following factors suggest that the sale is not indicative of normal business practices: 1) price and quantity of the sale; 2) whether the goods were resold at a profit; 3) whether the sale was made on an arm's-length basis; and 4) other relevant issues such as the business practices of the importer and the future likelihood of such sales. Further, Zhejiang Jingli made only a single sale to the United States during the POR, giving the Department little data from which to draw inferences on Zhejiang Jingli's future selling practices. Because much of the factual information used in our analysis of the *bona fides* of this respondent's transaction involves business proprietary information, the full discussion of the basis for our preliminary finding that the sale is *bona fide* is set forth in the *bona fides* memorandum.[31] The Department preliminarily finds that we cannot rely on Zhejiang Jingli's sale to calculate a dumping margin, and, therefore, there are no sales on which we can base this review. Consequently, we are preliminarily rescinding this NSR.[32]

Donghua) (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002)).

[25] *See Tianjin Tiancheng Pharmaceutical Co. v. United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005) (*TTPC*).

[26] *Id.*, at 1263.

[27] *See New Donghua,* 374 F. Supp. 2d, at 1344.

[28] *Id.*, at 1339

[29] *Id.*

[30] *See TTPC*, 366 F. Supp. 2d, at 1249.

[31] *See* Memorandum, "New Shipper Review of Tapered Roller Bearings and Parts Thereof from the People's Republic of China: Analysis of Zhejiang Jingli Bearing Technology Co., Ltd.'s *Bona Fides* as a New Shipper," dated June 29, 2017.

[32] *See, e.g., TTPC*, 366 F. Supp. 2d, at 1249.

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country Status

The Department considers the PRC to be an NME country.[33] 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 these preliminary results.

Separate Rates

In NME proceedings, there is a rebuttable presumption that companies are subject to government control and, thus, should be assessed a single antidumping duty rate.[34] 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.[35] It is the Department's policy to assign exporters of the subject merchandise from an NME country 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 a NME country under the test established in *Sparklers*,[36] as amplified by *Silicon Carbide*.[37] However, if the Department determines that a company is wholly foreign-owned, then consideration of the *de jure* and *de facto* criteria is not necessary to determine whether it is independent from government control.[38]

Under the separate rates test, the Department considers the following *de jure* criteria in determining whether an individual company may be granted 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)

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[33] *See, e.g., Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70267, 70268 (November 25, 2013), unchanged in *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 26712 (May 9, 2014).

[34] *See 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); *see also Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

[35] *See Initiation Notice*, 81 FR 53121.

[36] *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*).

[37] *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*).

[38] *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007) (*Candles from the PRC*).

other formal measures by the government decentralizing control over export activities of companies.[39]

Further, the Department typically considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices 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.[40]

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 the Department's determinations therein.[41] In particular, we note that in litigation involving the Diamond Sawblades proceeding, the CIT found the Department's existing separate rates analysis deficient in the circumstances of that case, in which a government-controlled entity had significant ownership in the respondent exporter.[42] We have concluded that, where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises or has the potential to exercise control over the company's operations generally, which may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government,

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

[40] *See Silicon Carbide*, 59 FR, at 22586-89; *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).

[41] *See* Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China (May 6, 2013) in *Advanced Technology & Materials Co., Ltd. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology*), affirmed in *Advanced Technology & Materials Co., Ltd. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013). This remand redetermination is on the Enforcement and Compliance website at *http://enforcement.trade.gov/remands/12-147.pdf*. *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 (IDM), at Comment 1.

[42] *See, e.g., Advanced Technology*, 885 F. Supp. 2d, at 1349 ("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).

to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company. Accordingly, we have considered the level of government ownership where necessary.

Separate Rate Recipients

In accordance with our practice, the Department analyzed whether CTL, GSP, Hangzhou Yonggu, and Zhaofeng demonstrated the absence of *de jure* and *de facto* governmental control over their respective export activities. In the instant review, we preliminarily find no evidence of PRC government ownership of CTL, GSP, Hangzhou Yonggu, or Zhaofeng and that those companies otherwise are entitled to a separate rate in this review.[43]

Zhaofeng, GSP, and Hangzhou Yonggu stated that they are joint ventures between non-PRC and PRC-owned companies, while CTL stated that it is a wholly PRC-owned company.[44] In accordance with our practice, the Department analyzed whether these companies demonstrated the absence of *de jure* and *de facto* governmental control over their respective export activities.

a) Absence of *De Jure* Control

The evidence provided by CTL, GSP, Hangzhou Yonggu, and Zhaofeng supports a preliminary finding of an absence of *de jure* government control based on the following: (1) there is an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the company[45]; and (3) there are formal measures by the government decentralizing control of the companies.[46]

b) Absence of *De Facto* Control

The evidence provided by CTL, GSP, Hangzhou Yonggu, and Zhaofeng 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 export prices 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 (4) retain the proceeds of their respective export sales and make independent decisions regarding the disposition of profits or financing of losses.[47]

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[43] As set forth below in the section entitled "Companies not Receiving Separate Rates," we preliminarily find that Yantai CMC and Zhengda have not established their eligibility for separate rates.

[44] *See* CTL's September 12, 2016, SRA, at 7 (CTL SRA); GSP's September 12, 2016 SRA), at 4-11 (GSP SRA; Hangzhou Yonggu's September 12, 2016, SRA, at 11 (Hangzhou Yonggu SRA); and Zhaofeng's January 26, 2017 Supplemental Section A Questionnaire Response, at 2- 3.

[45] *See* CTL SRA, at 9; GSP SRA, at 10; Hangzhou Yonggu SRA, at 9-10; and Zhaofeng's November 17, 2016, Section A Questionnaire Response, at 3 (Zhaofeng November 17, 2016 AQR).

[46] *Id*.

[47] *See* CTL SRA, at 15; GSP SRA, at 17; Hangzhou Yonggu SRA, at 15; and Zhaofeng November 17, 2016, AQR, at 3.

Therefore, the evidence placed on the record of this review by CTL, GSP, Hangzhou Yonggu, and Zhaofeng 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 a separate rate to CTL, GSP, Hangzhou Yonggu, and Zhaofeng.

Companies Not Receiving a Separate Rate

a) *Yantai CMC*

Yantai CMC failed to timely submit an SRA.[48] Because Yantai CMC did not establish in this administrative review that it is eligible for a separate rate, it will be treated as part of the PRC-wide entity in accordance with the Department's practice.

b) Zhengda

In the *Initiation Notice*, we stated that "for exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents."[49]

Zhengda filed an SRC, in which it stated that it was wholly-owned by entities located in the PRC.[50] In addition, Zhengda filed an initial response to sections A, C, and D of the questionnaire. However, Zhengda failed to respond to the Department's second supplemental questionnaire concerning its sales and FOP information.[51] The supplemental questionnaire pertained to many deficiencies in Zhengda's initial filings. As a result of Zhengda's failure to respond to this questionnaire, we were unable to obtain all information needed to make a separate rate determination. Further, we were unable to conduct verification of Zhengda's responses. Therefore, we find that Zhengda is not eligible for a separate rate, and it will also be treated as part of the PRC-wide entity in accordance with the Department's practice.[52]

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[48] Yantai CMC submitted an SRA on May 12, 2017. However, the deadline for submitting SRAs in this segment of the proceeding was September 10, 2016. *See Initiation Notice*, 81 FR 53122. Therefore, we rejected Yantai CMC's SRA. *See* Yantai CMC SRA Rejection Letter.

[49] *See Initiation Notice*, 81 FR at 53122.

[50] *See* Zhengda's SRC, at Question 2.

[51] *See* Department Letter re: 2015-2016 Administrative Review of Tapered Rollers Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Second Supplemental Sections C and D Questionnaire, dated April 10, 2017.

[52] *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).

Separate Rate Assigned to Non-Selected Companies

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual respondents not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate-rate respondents which we did not examine individually in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that we not calculate an all-others rate using rates for individually-examined respondents which are zero, *de minimis*, or based entirely on facts available. Accordingly, the Department's usual practice in determining the rate for separate-rate respondents not selected for individual examination has been to average the weighted-average dumping margins for the selected companies, excluding rates that are zero, *de minimis*, or based entirely on facts available.[53]

For these preliminary results, we calculated a margin of above *de minimis* for Zhaofeng, the sole company for which we calculated a margin. Therefore, consistent with the Department's practice,[54] we determine that the weighted-average dumping margin to be assigned to CTL, GSP, and Hangzhou Yonggu, the separate rate respondents not individually examined, should be the weighted-average dumping margin calculated for the mandatory respondent, Zhaofeng.

The PRC-Wide Entity

For the reasons detailed above, the Department preliminarily determines that Yantai CMC and Zhengda have not demonstrated that they are eligible for separate rates. Accordingly, the Department preliminarily determines Yantai CMC and Zhengda to be properly considered part of the PRC-wide entity.

The Department's change in policy regarding conditional review of the PRC-wide entity applies to this administrative review.[55] Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review and the entity's rate is not subject to change. Therefore, if our determination is

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[53] *See Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (CIT 2008) (affirming the Department's determination to assign a 4.22 percent dumping margin to the separate rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent); *see also Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656, 36660 (July 24, 2009) (*Kitchen Racks Final*).

[54] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2011-2012 Antidumping Duty Administrative Review and New Shipper Reviews,* 79 FR 4328 (January 27, 2014).

[55] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

unchanged in the final results, entries from Yantai CMC and Zhengda will be liquidated at the rate previously established for the PRC-wide entity (*i.e.*, 92.84 percent).[56]

Application of Facts Available and Use of Adverse Inferences

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party or any other person (1) withholds information that has been requested by the Department; (2) fails to provide information within the established deadlines or in the form or manner requested, subject to section 782(c)(1) and section 782(e) of the Act; (3) significantly impedes a proceeding; or (4) provides information but the information cannot be verified, then the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Moreover, section 776(b) of the Act provides that, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the SAA explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[57]

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (CAFC) noted that while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort."[58] Thus, according to the CAFC, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The CAFC indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best of its ability. While the CAFC noted that the "best of its ability" standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.[59] The "best of its ability" standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" its ability to do so.[60]

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[56] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3987, 3989 (January 22, 2009), where the Department established the rate of 92.84 percent for the PRC-wide entity.

[57] *See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994)* (*SAA*) at 870*; see also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

[58] *See Nippon Steel*, 337 F.3d at, 1382-83.

[59] *Id., at 1382.*

[60] *Id.*

Application of Partial AFA for Zhaofeng

In May 2017, the Department verified Zhaofeng's sales and FOP information at Zhaofeng's offices in Zhejiang, PRC. At verification, we noted no omissions in the universe of Zhaofeng's U.S. sales reported to the Department. However, after verification, the petitioner alleged that Zhaofeng failed to report a substantial volume of U.S. sales.[61] As support for this claim, the petitioner pointed to a document provided by Zhaofeng at verification[62] which shows shipments to the United States to a customer not included in the U.S. sales listing, and of model numbers categorized by Zhaofeng as subject merchandise. The petitioner requested that the Department assign Zhaofeng a preliminary dumping margin based on total AFA, given the seriousness of the omission.[63] Zhaofeng did not respond to the petitioner's allegation.

We examined the document cited by the petitioner and agree that the transactions at issue appear to be unreported U.S. sales of subject merchandise made during the POR.[64] Because Zhaofeng failed to report these sales, and it did not identify them for the verification team,[65] we also agree that the application of facts available is appropriate under sections 776(a)(1) and (2) of the Act is warranted. As evidenced by information contained in the documents taken at verification, it is clear that Zhaofeng possessed the necessary records to provide a complete and accurate U.S. sales database, but failed to do so. Therefore, in accordance with section 776(a)(1) of the Act, the record therefore lacks the necessary sales information. Further, we find that Zhaofeng withheld information that the Department requested, failed to provide information by the deadlines for submission of the information in the form and manner requested, and impeded this proceeding, in accordance with sections 776(a)(2)(A), (B), and (C) of the Act.

[61] *See* Petitioner's Letter, "Administrative Review in Tapered Roller Bearings and Parts Thereof, Finished or Unfinished from the People's Republic of China; - Petitioner's Pre-Preliminary Determination Comments" (Petitioner's Pre-Prelim Comments), at 2-3.

[62] *See* Verification Report at Verification Exhibit 9 (at pages 71-72).

[63] *See* Petitioner's Pre-Prelim Comments, at 6-7.

[64] Specifically, this document contains a listing of Zhaofeng's export sales during a particular month of the POR. Although Zhaofeng labeled the sales in question as non-subject merchandise, they are TRB models sold to a customer in the United States and the model numbers match to product codes for subject merchandise in Zhaofeng's product list. *See* Verification Report, at verification exhibit 9.

[65] Given the voluminous amount of information available for review and the limited time to conduct verification, the Department is unable to examine every transaction presented or trace every sale or expense to source documentation. Thus, verification, by its nature, is an exercise in sampling. It is incumbent upon respondents to disclose unreported or misreported data to the Department at the start of verification, so that the Department may assess whether the missing or erroneous data is significant. In this case, the sales at issue represent approximately eight percent of Zhaofeng's sales during a particular month, and potentially greater than 20 percent of its U.S. sales, overall. *See* Memorandum, "Calculations Performed for the 29th Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China," dated June 29, 2017 (Preliminary Calculation Memo). Further, we intend to refer this issue to Customs and Border Protection for investigation for potential misreporting at the border.

In addition, we find that Zhaofeng's failures to report the requested information, accurately and in the manner requested, using the records over which it maintained control at all times, indicates that Zhaofeng did not act to the best of its ability to comply with our requests for information. Further, in accordance with section 782(d) of the Act, the Department provided Zhaofeng with opportunities to identify and remedy any deficiencies in its initial responses relating to unreported sales.[66] Hence, we find that the application of AFA is appropriate under section 776(b) of the Act for Zhaofeng's unreported U.S. sales of subject merchandise.

Because we noted no other issues during verification, we are preliminarily applying partial AFA, pursuant to section 776(b) of the Act, to Zhaofeng's unreported sales. As partial AFA, we have assigned the highest non-aberrational, transaction-specific rate calculated for Zhaofeng to the estimated unreported dollar value of Zhaofeng's sales.[67] In light of the fact that we are relying on Zhaofeng's own information obtained during the course of this review, there is no need to corroborate this information pursuant to section 776(c) of the Act.

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 FOPs, valued in a surrogate ME country or countries considered to be 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.[68] As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME country unless it is determined that none of the countries are viable options because they (a) 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.[69] 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. To determine which countries are at the same level of economic development, the Department

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[66] *See* Department's Letter re: 2015-2016 Administrative Review of Tapered Rollers Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Supplemental Sections A, C, and D Questionnaire, dated February 14, 2017, in which the Department requested Zhaofeng confirm its reporting of its U.S. sales universe, provide a complete sales reconciliation, and provide corrections for any other omissions or errors it made in its initial response. *See also* Zhaofeng's March 14, 2017, Supplemental ACD Questionnaire Response, at 3 and 8 (Zhaofeng March 14, 2017, Supp ACDQR), where Zhaofeng, respectively, confirmed that it had "reported all sales invoiced during the POR" and provided additional corrections to its sales database. Additionally, at 21-23 and Exhibits 27-28 of Zhaofeng March 14, 2017, Supp ACDQR, Zhaofeng provided an updated sales reconciliation and supporting documents.

[67] *See* Preliminary Calculation Memo for the partial AFA margin calculation.

[68] *See* Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004).

[69] *Id*.

generally relies on per capita gross national income (GNI) data from the World Bank's *World Development Report*.[70] Further, the Department normally values all FOPs in a single surrogate country.[71]

In this review, the Department determined that Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand are countries at the same level of economic development as the PRC, based on per capita GNI.[72] The sources of the SVs we have used in this review are discussed under the "Normal Value" section below.

With respect to the Department's selection of a surrogate country, the petitioner argues that Thailand is the most appropriate surrogate country from which to derive SVs for the PRC.[73] Although Zhengda provided comments on surrogate country selection, [74] we have not considered its comments, since Zhengda ceased to cooperate in this review by failing to respond to the Department's supplemental questionnaire. No other party commented on this issue.

The Department preliminarily selects Thailand as the surrogate country on the grounds that: (1) it is at the same level of economic development as the PRC; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from Thailand that we can use to value the FOPs.[75] Specifically, regarding significant production, UN Comtrade data for exports demonstrate that Thailand exported a significant volume of comparable merchandise in recent years.[76] With respect to reliable data to value FOPs, the record contains Global Trade Atlas (GTA) data from Thailand for each of the inputs except labor, certain transportation services, and financial ratios. GTA data are country-wide, published data, which the Department frequently uses to value FOPs. Accordingly, we have calculated NV using Thai SVs when available and appropriate to value Zhaofeng's FOPs.

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[70] *Id*.

[71] *See* 19 CFR 351.408(c)(2).

[72] *See* Department Letter re: 2015-2016 Antidumping Duty Administrative Review and 2015-2016 New Shipper Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information, dated November 8, 2016 (Surrogate Values and Comments Letter).

[73] *See* the petitioner's surrogate country comments, "Administrative Review and New Shipper Review in *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished From The People's Republic of China;* Petitioner's Surrogate Country Comments," dated December 2, 2016 (Petitioner's Surrogate Country Comments).

[74] Zhengda and Zhejiang Jingli also provided comments on SVs. We disregarded Zhengda's comments for the reason noted above and Zhejiang Jingli's comments because we are preliminarily rescinding the NSR.

[75] *See* Memorandum, "Surrogate Value Memorandum for the Preliminary Results," dated June 29, 2017 (Surrogate Value Memo); *see also* the "Factor Valuations" section of this memorandum, below.

[76] *See* Petitioner's Letter, "Administrative Review and New Shipper Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; - Petitioner's Surrogate Country Comments," at 3-4.

Date of Sale

Section 351.401(i) of the Department's regulations states that, normally, we will use the date of the invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that we may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established.[77] Finally, the Department has a long-standing 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.[78]

Zhaofeng reported that the date of sale was the earlier of the invoice date or the inventory outslip date (*i.e.*, shipment date) for sales to its unaffiliated U.S. customers.[79] Therefore, we used the earlier of the invoice date or the shipment date as the date of sale for Zhaofeng, in accordance with our regulation and practice.[80]

Normal Value Comparisons

To determine whether sales of the subject merchandise made by Zhaofeng to the United States were at prices below NV, we compared Zhaofeng's export price (EP) to NV, as described below.

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*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, the Department examines whether to compare weighted-average NVs with the EPs (or CEPs) 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. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.[81]

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[77] *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)).

[78] *See*, *e.g.*, *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying IDM, at Comment 11 (*Shrimp from Thailand*); *see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM, at Comment 2 (*SBB from Germany*).

[79] *See* Zhaofeng March 14, 2017, Supp ACDQR, at 3.

[80] *See, e.g., Shrimp from Thailand* IDM, at Comment 11; and *SBB from Germany* IDM, at Comment 2.

[81] *See Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012) and accompanying IDM, at Comment 1.

In recent investigations and reviews, pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act, the Department has applied a "differential pricing" analysis to determine whether application of average-to-transaction comparisons is appropriate in a particular situation.[82] The Department finds that the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.[83] The Department will continue to develop its approach in this area based on comments received in this and other proceedings, as well as 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 weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. 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 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 POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV 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* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data 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 net prices to a particular purchaser, region or time period differ significantly from the net prices of all other 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. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference

[82] *See, e.g.***,** *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013) (*Xanthan Gum from the PRC*), and the accompanying IDM, at Comment 3; and *Hardwood and Decorative Plywood from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013) and accompanying IDM, at Comment 3.

[83] *See, e.g., Certain Activated Carbon from the People's Republic of China: Final results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013) and accompanying IDM, at Comment 2.

was considered significant, and passed the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large threshold (*i.e.*, 0.8).

Next, the "ratio test" assesses the extent of the significance of the 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 accounts for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports 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 but less than 66 percent of the value of total sales, then the results support 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 the application 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 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, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent or greater relative change in the weighted-average dumping margin 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 margin moves across the *de minimis* threshold.

Interested parties may present arguments 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.

The value of Zhaofeng's U.S. sales passing the Cohen's *d* test meets the medium fixed threshold but does not meet the large fixed threshold (*i.e.*, is more than 33 percent but less than 66 percent). This finding supports consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test and application of the average-to-average methodology to those sales identified as not passing the Cohen's *d* test. However, we preliminarily find 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 those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, the Department is applying the average-to-average transaction method for all U.S. sales, to calculate the weighted-average dumping margin for Zhaofeng.

Export Price

A. Irrecoverable Value-Added Tax (VAT)

The Department's practice in NME cases is to adjust EP or CEP for the amount of any un-refunded (hereafter irrecoverable) VAT, in accordance with section 772(c)(2)(B) of the Act.[84] 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.[85] Where the irrecoverable VAT is a fixed percentage of CEP or EP, the Department explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. CEP or EP downward by this same percentage.[86]

The Department's methodology, as explained above and applied in this review, essentially amounts to performing two basic steps: (1) determining the irrecoverable VAT tax on subject merchandise, and (2) reducing U.S. price by the amount (or rate) determined in step one. Information placed on the record of this review by Zhaofeng indicates that, according to the Chinese VAT schedule, the standard VAT refund rate for second and third generation TRBs is 17 percent,[87] while the VAT refund rate for first generation TRBs is 15 percent.[88] For the purposes of these preliminary results, therefore, we removed from U.S. price the difference between the rates (2 percent), which is the irrecoverable VAT as defined under Chinese tax law and regulation.[89]

B. *Zhaofeng*

We used EP for sales made by Zhaofeng, in accordance with section 772(a) of the Act, because the merchandise under consideration was first sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States, prior to importation, and CEP methodology was not otherwise warranted.[90]

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[84] *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) (*Methodological Change*).

[85] *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 IDM, at Comment 5.A.

[86] *See Methodological Change*, 77 FR 36481.

[87] *See* Zhaofeng's December 12, 2016, CDQR, at C-28 and C-29.

[88] *Id.*, at C-28.

[89] *Id*. For transactions with unrefunded VAT, Zhaofeng reported this amount as a dollar amount per piece in its sales database, based upon two percent of the free on board export price.

[90] *See* Zhaofeng's December 12, 2016, Sections C and D Questionnaire Response (Zhaofeng's December 12, 2016, CDQR), at C-7.

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for movement expenses to the port of export and brokerage and handling expenses in the PRC, where appropriate, in accordance with section 772(c)(2)(A) of the Act. In instances where these expenses were incurred in the PRC, we valued these expenses using the SV methodology described in the "Factor Valuations" section of this memorandum, below.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. Under section 773(c)(3) of the Act, FOPs 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 used FOPs reported by Zhaofeng for materials, labor, and packing, but excluded energy (*i.e.*, electricity), because the financial statements used to calculate the financial ratios for these preliminary results were not sufficiently detailed to allow the Department to isolate energy expenses from other expenses such as selling, general, and administrative expenses.[91] When energy costs are not specifically broken out in a financial statement, the Department presumes that these costs are accounted for in the surrogate financial ratios.[92] Therefore, the Department was able to calculate an overhead surrogate ratio based on the full cost of manufacturing, including energy. In order to not double count Zhaofeng's energy costs, we have properly excluded energy expenses from elsewhere in our NV calculation.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by Zhaofeng for the POR.

Except as noted below, the Department used Thai import data and other publicly-available Thai sources in order to calculate SVs for Zhaofeng's FOPs. To calculate NV, the Department multiplied the reported per-unit FOP quantities by publicly-available SVs. 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.[93]

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[91] *See* Surrogate Value Memo.

[92] *See, e.g., Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 16838 (April 13, 2009) and accompanying IDM, at Comment 2.

[93] *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 IDM, at Comment 2.

For the preliminary results, in accordance with the Department's practice, we used data from the Thai import statistics in the GTA, publications by IHS Markit Inc., and other publicly-available Thai sources to calculate SVs for certain FOPs reported by Zhaofeng (*i.e.*, direct material and packing materials and certain movement expenses). The GTA reports import statistics, such as from Thailand, in the original reporting currency, and, thus, these data correspond to the original currency value reported by each country. The record shows that data in the Thai import statistics, as well as those from several other Thai sources, are contemporaneous with the POR, product-specific, and tax-exclusive.[94] In those instances where we could not obtain publicly-available information contemporaneous to the POR with which to value factors, we adjusted the SVs using the Thai Purchase Price Index (PPI), as published in the International Monetary Fund's (IMF's) International Financial Statistics.[95]

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to Thai import SVs reported on a Cost, Insurance and Freight basis 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 CAFC 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. Moreover, we converted all applicable FOPs to a per-kilogram basis.

The Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be dumped or subsidized.[96] In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, and South Korea because we have determined that these countries maintain broadly available, non-industry specific export subsidies.[97] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, and South Korea may have benefitted from these subsidies. Therefore, the Department has not used prices from those countries in calculating Thailand import-based surrogate values.

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[94] *See* Surrogate Value Memo.

[95] *See, e.g., Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 9600 (March 5, 2009) (*Kitchen Racks*), unchanged in *Kitchen Racks Final*, 74 FR 36656.

[96] *See* TPEA (amending Section 773(c)(5) of the Act to permit 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 TPEA Application Dates*, 80 FR at 46795.

[97] *See*, *e.g.*, *Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination; 2011-2012*, 78 FR 42492 (July 16, 2013), and accompanying IDM, at 7-19; *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 IDM, at 1; *Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 46770 (August 11, 2014), and accompanying IDM, at 4; and *Certain Frozen Warmwater Shrimp From Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013), and accompanying IDM, at IV.

Additionally, consistent with our practice, we disregarded prices from NME countries and excluded from the SVs imports labeled as originating from an "unspecified" country, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.[98] Therefore, we have not used prices from these countries either in calculating the Thai import-based SVs or in calculating market economy input values.

Zhaofeng reported that it purchased all its raw material inputs from NME suppliers during the POR.[99] Therefore, the Department used Thai import statistics from GTA to value raw materials and packing materials.

Further, Zhaofeng reported that steel scrap was recovered as a by-product of the production of subject merchandise. However, because Zhaofeng was unable to provide either the quantity of scrap generated during its own production process or any scrap FOPs from its tollers, we are, consistent with past precedent,[100] preliminarily not granting a by-product offset for Zhaofeng's reported steel scrap.

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.[101] In *Labor Methodologies*, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department made a determination to use Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics as its primary source for industry-specific labor rates.[102]

However, in these preliminary results, the Department calculated the labor input value using data from Thailand's National Statistics Office (NSO) Labor Force Survey data for "manufacturing" for the POR. Although the NSO Labor Force Survey data are not from the ILO, the Department finds that this fact does not preclude us from using this source for valuing labor. In *Labor Methodologies*, the Department decided to change to the use of ILO Chapter 6A from the use of ILO Chapter 5B data, on the rebuttable presumption that Chapter 6A data better account for all direct and indirect labor costs.[103] The Department did not, however, preclude all other sources for evaluating labor costs in NME AD proceedings. Rather, we continue to follow our practice

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[98] *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).

[99] *See* Zhaofeng's December 12, 2016, CDQR, at D-7.

[100] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Results of the New Shipper Review; 2012-2013*, 80 FR 4244 (January 27, 2015) and accompanying IDM, at Comment 3.

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

[102] *Id*.

[103] *Id.*, at 36093.

of selecting the best available information to determine SVs for inputs such as labor.[104] Thus, we find that the NSO Labor Force Survey data are the best available information for valuing labor for this segment of the proceeding. Specifically, the NSO Labor Force Survey data are contemporaneous and reflect the fully-loaded labor costs applicable to the bearings industry in Thailand and, thus, are the closest match to all costs covered by the ILO Chapter 6A labor data.[105] Therefore, we find that the general manufacturing labor data provide the best available information for the purposes of these preliminary results. The calculated wage rate is provided in the SV Memo.

Pursuant to 19 CFR 351.408(c)(4), the Department valued factory overhead, selling, general and administrative expenses, and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. For these preliminary results, we used ratios derived from the financial statements of JTEKT (Thailand) Co., Ltd. (JTEKT), a producer of bearings and auto parts, for the fiscal year ending December 31, 2011. We find these statements to be the best available information on the record of this review because they are from the primary surrogate country, and from a producer of comparable merchandise. Further, upon review of JTEKT's financial statements, the Department finds no reason to believe or suspect that JTEKT may have received countervailable subsidies (unlike the financial statement provided by Zhaofeng). In sum, we therefore find that JTEKT's financial statements constitute the best available information with which to determine the financial ratios.

As stated above, the Department used Thailand data reported under the 2012 NSO data, which reflects all costs related to labor, including wages, benefits, housing, training, *etc*. Because the financial statements used to calculate the surrogate financial ratios do not include an itemized detail of indirect labor costs, the Department made no adjustments to the surrogate financial ratios.

We valued brokerage and handling expenses using price data from the World Bank publication, *Doing Business 2017: Thailand* (*Doing Business 2017*). The 2017 issue of this publication based the rate on the exportation of a standardized cargo from Thailand using a container weight of 15,000 kilograms.[106] We did not inflate this price because it is contemporaneous with the POR.

We valued truck freight expenses using price data from the World Bank's *Doing Business 2017* and used a calculation methodology based on a container weight of 15,000 kilograms and a distance from Bangkok to Laem Chabang port of 129 kilometers (both of which are noted in the

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[104] *See Xanthan Gum from the PRC* and accompanying IDM, at Comment 6-C; and *Drawn Stainless Steel Sinks from the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013) and accompanying IDM, at Comment 3.

[105] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2013 – 2014*, 81 FR 1397 (January 12, 2016) and accompanying IDM, at Comment 4.

[106] *See* Surrogate Value Memo.

Doing Business 2017 study).[107] We did not inflate this price because it is contemporaneous with the POR.

Regarding ocean freight, Zhaofeng reported that it used NME service providers. Therefore, the Department valued Zhaofeng's ocean freight using data published by the Thailand Board of Investment. Since the reported prices were not contemporaneous with the POR, we deflated it, using the Thailand PPI.[108]

We valued marine insurance using a marine insurance rate for July 2010, which we obtained from RJG Consultants.[109] RJG Consultants is a market economy provider of marine insurance.

Currency Conversion

Where necessary, the Department 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.

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒	☐
Agree	Disagree

6/29/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

[107] *Id.*

[108] *Id.*

[109] *Id.*