UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

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Investigation
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October 27, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Carton-Closing Staples from the People's Republic of China

I. SUMMARY

The Department of Commerce (Department) preliminarily determines that carton-closing staples (staples) from the People's Republic of China (PRC) are being, or are 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 (the Act). The estimated weighted-average dumping margins are shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

II. BACKGROUND

On March 31, 2017, the Department received an antidumping duty (AD) petition covering imports of carton-closing staples from the PRC, filed in proper form on behalf of North American Steel & Wire, Inc./ISM Enterprises (the petitioner).[1] The Department initiated this investigation on April 20, 2016.[2] 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) LTFV investigations. The process requires exporters to submit a separate rate application (SRA)[3] and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities.

[1] *See* Petition for the Imposition of Antidumping Duties, dated March 31, 2017 (the Petition), at Volumes I and II.
[2] *See Carton-Closing Staples from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 82 FR 19351 (April 27, 2017) (*Initiation Notice*).
[3] *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.

In the "Respondent Selection" section of the *Initiation Notice*, the Department stated that, in accordance with its standard practice for respondent selection in cases involving NME countries,[4] it intended to issue quantity and value (Q&V) questionnaires to each potential respondent and base respondent selection on the responses received.[5] In its petition, the petitioner identified 35 producers/exporters of the subject merchandise.[6] The Department issued Q&V questionnaires on April 21, 2017, to the 35 exporters/producers named in the Petition[7] and posted the Q&V questionnaire, along with filing instructions, on Enforcement and Compliance's website (http://trade.gov/enforcement/news.asp).

Additionally, 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 staples to be reported in response to the Department's AD questionnaire.[8] On May 10, 2017, the Department received scope comments from Vertex Fasteners (Vertex), a division of Leggett & Platt, Incorporated.[9] No other interested party filed scope comments. On May 10, 2017, the petitioner submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes. No other interested party filed comments regarding physical characteristics.

On May 15, 2017, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of staples from the PRC.[10] On August 23, 2017, and pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), the Department published in the *Federal Register* a postponement of the preliminary determination by 50 days until no later than October 27, 2017.[11] On October 11, 2017, the petitioner filed comments regarding the preliminary determination.[12] On October 20, 2017, Yueda filed comments rebutting certain aspects of the petitioner's Pre-Prelim Comments.

The Department is conducting this investigation in accordance with section 733(b) of the Act.

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[4] In the *Initiation Notice*, we stated that the presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. *See Initiation Notice*, 82 FR at 19354-19355.
[5] *Id.*
[6] *See* the Petition at Volume I, Exhibit I-9.
[7] *See* Memorandum to the File from Irene Gorelik, Senior Analyst, Office VIII, re: "Quantity and Value Questionnaire," dated April 24, 2017.
[8] *See Initiation Notice*, 82 FR at 19352.
[9] *See* Letter from Vertex Fasteners, re: "Scope Comments," dated May 10, 2017 (Scope Comments).
[10] *See Carton Closing Staples from China; Determination*, 82 FR 23064 (May 19, 2017).
[11] *See Carton-Closing Staples from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 82 FR 39982 (August 23, 2017).
[12] *See* Letter from the petitioner, re: "Petitioner's Pre-Preliminary Determination Comments," dated October 10, 2017 (Pre-Prelim Comments). The Department is unable to consider these comments for the preliminary determination because they were filed in such close proximity to the preliminary determination deadline, and there is not sufficient time for the Department to fully analyze the comments or issue an additional supplemental questionnaire. However, the Department may issue a post-preliminary determination supplemental questionnaire and consider the petitioner's comments when conducting the on-site verifications of Yueda and its toller.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is July 1, 2016, through December 31, 2016. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition, which was March 2017.[13]

IV. SCOPE COMMENTS

In accordance with the *Preamble* to the Department's regulations,[14] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.[15] As noted above, Vertex commented on the scope of this investigation as it appeared in the *Initiation Notice*. The Department notes that no interested party suggested alternative scope language that would alter the existing framework for coverage or exclusion of products. Rather, Vertex submitted comments that examined the scope of the investigation as it is currently constructed in order to argue that its products are not covered by the language of the scope of this investigation. Accordingly, we have looked to the scope of the investigation, as published in the *Initiation Notice*, in making the following preliminary determination.

In its Scope Comments, Vertex stated that it imports staples used as a component of mattress boxspring manufacturing,[16] rather than staples for carton-closing as identified in the scope of the investigation. Vertex provided a chart of the dimensions of the staples subject to the scope of the investigation compared to the dimensions of the staples that it imported.[17] Vertex also provided a product schematic of the staples that it imported, which includes dimensions and instructions for use.[18] No interested party filed comments rebutting Vertex's scope comments.

The Department preliminarily agrees with Vertex. Based on the information in the Scope Comments and the express language of the scope of the investigation, the staples that Vertex imported are outside the scope with respect to the dimensions for nominal crown width and nominal width of the steel wire. The product schematic provided by Vertex shows a nominal crown width of 1.035 inches with a permissible tolerance range of 1.027 to 1.049 inches. However, the scope of the investigation covers a nominal crown width range of 1.125 inches to 1.375 inches. Thus, Vertex's imported staples are outside the scope with respect to nominal crown width. Further, the product schematic also shows a wire nominal width of 0.062 inches with a permissible tolerance range of 0.061 to 0.063 inches. However, the scope of the investigation covers a wire nominal width range of 0.064 inches to 0.100 inches. Thus, Vertex's imported staples are outside the scope with respect to the wire nominal width. The express language of the scope indicates that staples covered by the scope of the investigation must conform to the specified dimensions for wire size (width, thickness), leg (length), and crown (width). Because Vertex's imported staples do not meet the dimensions identified for two of four dimensional criteria specified in the scope (nominal crown width and wire nominal width), Vertex's staples do not meet the required dimensions of the staples covered by the scope

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[13] *See* 19 CFR 351.204(b)(1).
[14] *See Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).
[15] *See Initiation Notice*, 82 FR at 19352.
[16] *See* Scope Comments at 1-2.
[17] *Id.*, at 3.
[18] *Id.*, at Exhibit 1.

language. Accordingly, the Department preliminarily finds that Vertex's product is not covered by the plain language of the scope of this investigation.

V. SCOPE OF THE INVESTIGATION

For a full description of the scope of this investigation, *see* this investigation's accompanying *Federal Register* notice at Appendix I.

VI. SELECTION OF RESPONDENTS

We stated in the *Initiation Notice* that in the event respondent selection became necessary, we intended to base our selection of mandatory respondents on responses to Q&V questionnaires to be sent to each potential respondent named in the Petition.[19] On April 21, 2017, the Department issued Q&V questionnaires to the 35 companies that the petitioner identified as potential producers/exporters of staples from the PRC.[20] In addition, the Department posted the Q&V questionnaire on its website and, in the *Initiation Notice*, invited parties that did not receive a Q&V questionnaire from the Department to file a response to the Q&V questionnaire by the applicable deadline. Twenty-one of the Q&V questionnaires were successfully delivered to the addressees.[21] Thirteen producers/exporters of subject merchandise did not receive Q&V questionnaires.[22] Finally, one producer/exporter refused the Q&V package upon delivery.[23] For further information, please refer to the "PRC-wide Entity" section, below. Of the 21 companies that received our Q&V questionnaire, two provided properly filed Q&V responses. The Department received a third Q&V response which was deficient because it was missing, *inter alia*, a company certification and a certificate of service to the interested parties on the service list.[24] On May 5, 2017, the Department received timely filed Q&V questionnaire responses from four additional exporters/producers not named in the petition.

On May 30, 2017, based on responses to the Q&V questionnaires, we selected Shanghai Yueda

[19] *See Initiation Notice*, 82 FR at 19354-19355.
[20] *See* the Petition at Volume I, Exhibit I-9; *see also* the Department's Letter re; "Quantity and Value Questionnaire for the Antidumping Duty Investigation of Carton-Closing Staples from People's Republic of China," dated April 21, 2017; and Memorandum to the File, re; "Quantity and Value Questionnaire Delivery Confirmation," dated May 5, 2017 (Q&V Delivery Confirmation Memo).
[21] *See* Q&V Delivery Confirmation Memo at 1 and Attachment I.
[22] *Id*., at 2 and Attachment II.
[23] *Id*., at 2 and Attachment III.
[24] On May 5, 2017, the Department issued a letter to Unicorn (Tianjin) Fasteners Co., Ltd. notifying it of its deficient Q&V response, wherein we detailed the deficiencies and allowed the company to refile a complete Q&V response by May 9, 2017. *See* Letter from the Department to Unicorn (Tianjin) Fasteners Co., Ltd., re: "Rejection of Quantity and Value Questionnaire Response," dated May 5, 2017; see also Memorandum to the File, re: "Quantity and Value Questionnaire Deficiency Letter," dated May 8, 2017, wherein, as a one-time exception, we emailed our May 5, 2017, deficiency letter to Unicorn (Tianjin) Fasteners Co., Ltd. granting one additional day to file a complete Q&V response because the company had not filed an entry of appearance, and thus, was not notified by Enforcement and Compliance's AD and CVD Centralized Electronic Service System (ACCESS) that the Department issued a deficiency letter to it on May 5, 2017. *See also* Memorandum to the File re; "Reject and Remove Quantity and Value Questionnaire Response," dated May 11, 2017, wherein we rejected and removed Unicorn (Tianjin) Fasteners Co., Ltd.'s deficient Q&V response from the official record because the company did not refile a corrected and compliant Q&V response. The Department notified the company of its intention to do so in the May 5, 2017, letter to Unicorn (Tianjin) Fasteners Co., Ltd.

Nails Co., Ltd. (Yueda) and Zhejiang Best Nail Industrial Co., Ltd. (Best Nail) for individual examination as mandatory respondents in this AD investigation.[25] On May 30, 2017, the Department issued its AD NME questionnaires to Yueda and Best Nail.[26] On July 10, 2017, counsel for Best Nail informed the Department that it would no longer participate in the investigation and would not respond to the Department's questionnaire. Between July and September 2017, Yueda submitted timely filed questionnaire responses. Additionally, between July and September 2017, the Department issued supplemental questionnaires to Yueda. During the same time frame, the petitioner submitted comments regarding Yueda's questionnaire responses.

VII. DISCUSSION OF THE METHODOLOGY

A. <u>Non-Market Economy Country</u>

The Department considers the PRC to be an NME country.[27] 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. <u>Surrogate Country and Surrogate Value Comments</u>

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value (NV), in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate market economy (ME) country or countries considered to be appropriate by the Department. Specifically, 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 — (A) at a level of economic development comparable to that of the {NME} country; and (B) significant producers of comparable merchandise."[28] As a general rule, 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 surrogate value (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.[29] To determine which countries are at the same level of economic development, the Department generally relies

[25] *See* Memorandum, "Respondent Selection," dated May 30, 2017 (Respondent Selection Memo).
[26] *See* Department Letter re: Questionnaire, dated May 30, 2017, issued concurrently to both Yueda and Best Nail.
[27] *See*, *e.g.*, *Certain Carbon and Alloy Steel Cut-To-Length Plate from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 79450, 79451 (November 14, 2016), unchanged in *Certain Carbon and Alloy Steel Cut-To-Length Plate from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 8510 (January 26, 2017).
[28] *See* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on the Department's website at http://enforcement.trade.gov/policy/bull04-1.html.
[29] *See* Letter to All Interested Parties "Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," (July 24, 2017) (Surrogate Country Comment Letter).

on per capita gross national income (GNI) data from the World Bank's World Development Report.[30] Further, the Department normally values all FOPs in a single surrogate country.[31]

On July 5, 2017, the Department identified Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand as countries that are at the same level of economic development as the PRC based on per capita 2016 GNI data.[32] On July 24, 2017, the Department issued a letter to interested parties soliciting comments on the list of potential surrogate countries and the selection of the primary surrogate country, as well as providing deadlines for submitting SV information for consideration in the preliminary determination.[33]

On August 4, 2017, the Department received timely comments on surrogate country selection from Yueda[34] and the petitioner,[35] wherein both Yueda and the petitioner suggested that Thailand should serve as the surrogate country. On August 9, 2017, the petitioner submitted SV data for Thailand.[36] The petitioner argues that, based on its comments regarding surrogate country selection and the data therein, the Department should select Thailand as the surrogate country because it fulfills the surrogate country selection criteria and the record contains data from Thailand with which to value FOPs. The petitioner notes further that Yueda, the only other interested party to have filed surrogate country comments, also supported selecting Thailand as the surrogate country. On September 27, 2017, Yueda submitted SV data from Thailand and other countries.[37]

1. Economic Comparability

For this investigation, as noted above, the Department determines 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 gross national economic income.[38]

2. Significant Producer of 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 merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as a policy bulletin for guidance on defining comparable

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[30] *Id.*
[31] *See* 19 CFR 351.408(c)(2).
[32] *See* Surrogate Country Comment Letter at Attachment 1.
[33] *Id*.
[34] *See* Yueda's Letter to the Department re: Surrogate Country Selection Comments, dated August 4, 2017 (Yueda's Surrogate Country Comments).
[35] *See* the petitioner's Letter to the Department re: Petitioner's Surrogate Country, dated August 4, 2017 (Petitioner's Surrogate Country Comments).
[36] *See* the petitioner's Letter to the Department re: Petitioner's First Surrogate Value Submission, dated August 9, 2017 (Petitioner's SV Comments).
[37] *See* Yueda's Letter to the Department re: Submission of Surrogate Value Information, dated September 27, 2017 (Yueda SV Comments).
[38] For further discussion, *see* Memorandum, "Less-Than-Fair-Value Investigation of Carton-Closing Staples from the People's Republic of China: Surrogate Values for the Preliminary Determination," dated concurrently with this document (Preliminary SV Memorandum).

merchandise. Policy Bulletin 04.1 states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."[39] Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.[40] Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.[41] "In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise."[42] In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

> In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.[43]

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.[44] Moreover, while the legislative history provides that the term "significant producer" includes any country that is a significant "net exporter," it does not preclude reliance on additional or alternative metrics.[45] Policy Bulletin 04.1 provides that the "extent to which a country is a *significant* producer should not be judged against the NME country's production level" or those countries on the surrogate country list, but rather "a judgment should be made consistent with the characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics)."[46]

Following our practice, the Department considered whether all of the potential surrogate countries have significant exports of comparable merchandise, as defined by the HTS subheadings listed in the scope of the investigation.[47] We examined export data from the Global Trade Atlas (GTA) for the six-digit level HTS codes listed in the description of the scope of this investigation. The countries reported the following total export volumes for the POI (aggregated

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[39] *See* Enforcement and Compliance's Policy Bulletin No. 04.1, regarding, "Non-Market Economy Surrogate Country Selection Process," (March 1, 2004) (Policy Bulletin 04.1) at 2, available on the Department's website at http://enforcement.trade.gov/policy/bull04-1.pdf.

[40] Policy Bulletin 04.1 also states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." *Id.* at note 6.

[41] *See Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) ("{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.").

[42] *See* Policy Bulletin 04.1 at 2.

[43] *Id.* at 3.

[44] *See* section 773(c) of the Act; *see also Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

[45] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

[46] *See* Policy Bulletin 04.1 (emphasis in original).

[47] *See Certain Uncoated Paper from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 81 FR 3112 (January 20, 2016), and accompanying Issues and Decision Memorandum at Comment 1 (*Uncoated Paper from the PRC*).

for both HTS codes in the scope): (1) Brazil (4,485,560 kg); 2) Bulgaria (2,197 T); (3) Mexico (14,676,287 kg); 4) Romania (2,321 T); 5) South Africa (1,866,587 kg); and 6) Thailand (13,180,127 kg).[48] After reviewing this export data, the Department preliminarily determines that none of the total export volumes from Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand are insignificant.[49] Accordingly, the Department finds that Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand are significant producers of comparable merchandise (*i.e.,* exported merchandise under the six-digit basket HTS codes included in the scope), and therefore, satisfy the second criterion of section 773(c)(4) of the Act.[50, 51]

3. Data Availability

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, the Department selects the primary surrogate country based on data availability and reliability.[52] When evaluating SV data, the Department considers several factors, including whether the SVs are publicly available, contemporaneous with the POI, representative of a broad-market average, tax- and duty-exclusive, and specific to the inputs being valued.[53] There is no hierarchy among these criteria.[54] The Department's preference is to satisfy the breadth of the aforementioned selection criteria.[55] Moreover, it is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.[56] The Department must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the "best" available SV for each input.[57] Additionally, pursuant to 19 CFR 351.408(c)(2), the Department has a preference of valuing all FOPs in a single surrogate country.

The petitioner filed SV comments and data for Thailand.[58] Yueda also submitted SV comments for Thailand, as well as the other countries in the Surrogate Country List; however, Yueda did not submit labor SVs, energy SVs, or surrogate financial statements for the other countries on the Surrogate Country List. Thus, the record contains complete SV data from Thailand for the inputs (materials, labor, energy, and surrogate financial ratios) required to construct a NV.

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[48] *See* Preliminary SV Memorandum at Attachment 2.
[49] *Id*., at Attachment 2.
[50] *See* Policy Bulletin 04.1.
[51] For further discussion, please *see* the Preliminary SV Memorandum at Attachment 2.
[52] *See* Policy Bulletin 04.1.
[53] *Id.*
[54] *See*, *e.g.*, *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum at Comment 1.
[55] *See*, *e.g.*, *Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940, 51943 (August 19, 2011), and accompanying Issues and Decision Memorandum at Comment 2.
[56] *See Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) (*Sixth Mushrooms AR*), and accompanying Issues and Decision Memorandum at Comment 1; *see also Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002), and accompanying Issues and Decision Memorandum at Comment 2.
[57] *See*, *e.g.*, *Sixth Mushrooms AR* at Comment 1.
[58] *See* Petitioner's SV Comments.

Moreover, the Thai data are specific to the inputs, contemporaneous, and tax- and duty-exclusive, and represent a broad market average. Accordingly, the Department preliminarily determines, pursuant to section 773(c)(4) of the Act, that it is appropriate to use Thailand as the primary surrogate country because Thailand is: (1) at the same level of economic development as the PRC; (2) a significant producer of merchandise comparable to the subject merchandise such that can be determined from the information available; and (3) provides the best useable data and information with which to value FOPs, such as direct materials, labor, energy, and financial statements (*see* section "M" below for a detailed discussion of the data used). Therefore, the Department has calculated NV using Thailand SV data to value Yueda's FOPs.[59]

C. Separate Rates

In proceedings involving NME countries, the Department maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.[60] The Department's policy is to assign all exporters of subject merchandise that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[61] The Department analyzes whether each entity exporting the subject merchandise is sufficiently independent under a test established in *Sparklers*[62] and further developed in *Silicon Carbide*.[63] According to this separate rate test, the Department will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If, however, the Department determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

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.[64] 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 had significant ownership in the

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[59] *Id.*
[60] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (September 24, 2008).
[61] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*).
[62] *Id.*
[63] *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*).
[64] *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*), and 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*). *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.

respondent exporter.[65] Following the Court's reasoning, in recent proceedings, 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.[66] This 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, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profit distribution of the company.

A. Separate Rate Recipients

The Department preliminary determines that the following exporters are eligible to receive a separate rate, as explained below:

1) Shanghai Yueda Nails Co., Ltd.
2) Hangzhou Huayu Machinery Co., Ltd.
3) The Stanley Works (Langfang) Fastening Systems Co., Ltd.

a. Wholly Foreign-Owned Applicants

One company, The Stanley Works (Langfang) Fastening Systems Co., Ltd. (Stanley Langfang) demonstrated in its separate rate application that it is wholly foreign-owned by ME companies.[67] Therefore, as there is no PRC ownership of Stanley Langfang, and because the Department has no evidence indicating that Stanley Langfang is under the control of the PRC government, further analyses of the *de jure* and *de facto* criteria are not necessary to determine whether it is independent from government control of its export activities.[68] Therefore, we preliminarily determine that this company is preliminarily eligible for a separate rate.

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[65] *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).

[66] *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.

[67] *See* Stanley Langfang's Separate Rate Application, dated May 26, 2017, at 16-19 and Exhibits J-M.

[68] *See, e.g., 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, 71104-05 (December 20, 1999).

b. Absence of *De Jure* Control

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) other formal measures by the government decentralizing control over export activities of companies.[69]

The evidence provided by Yueda[70] and Hangzhou Huayu Machinery Co., Ltd.[71] listed above supports a preliminary finding of an absence of *de jure* government control for each of these companies based on the following: (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.

c. 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 EPs 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 the respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The evidence provided by Yueda[73] and Hangzhou Huayu Machinery Co., Ltd.[74] 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 (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 these companies demonstrates an absence of *de jure* and *de facto* government control under the criteria identified

[69] *See Sparklers*, 56 FR at 20589.
[70] *See*, *e.g.*, Yueda's Section A Questionnaire Response, dated July 3, 2017, at 5-9.
[71] *See*, *e.g.*, Hangzhou Huayu Machinery Co., Ltd.'s Separate Rate Application, dated June 6, 2017, at 8-11.
[72] *See Silicon Carbide*, 59 FR at 22586-87; *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*, *e.g.*, Yueda's Section A Questionnaire Response, dated July 3, 2017, at 9-13.
[74] *See*, *e.g.*, Hangzhou Huayu Machinery Co., Ltd.'s Separate Rate Application, dated June 6, 2017, at 11-19.

in *Sparklers* and *Silicon Carbide*. Accordingly, the Department preliminarily grants separate rates to these companies.

B. *Margin for the Separate Rate Companies*

The statute and the Department's regulations do not address the establishment of a separate rate to be applied to individual respondents not selected for individual examination when the Department limits its examination pursuant to section 777A(c)(2) of the Act. Normally, the Department's practice is to assign to separate rate entities that were not individually examined a rate equal to the weighted average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis*, or based entirely on facts available, using as guidance section 735(c)(5)(A) of the Act.[75] However, pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.[76]

As stated above, pursuant to section 735(c)(5(A) of the Act, the Department's practice is to assign to separate rate entities that were not individually examined a rate equal to the weighted average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis*, or based entirely on facts available. In this proceeding, the Department calculated an above-*de minimis* rate that is not based entirely on facts available for the single mandatory respondent remaining under individual examination. Pursuant to section 735(c)(5)(A) of the Act, when only one dumping margin for the individually investigated respondents is above *de minimis* and not based on adverse facts available, the separate rate will be equal to that single above *de minimis* rate.[77] Thus, consistent with our practice, we are assigning the rate calculated for the single remaining mandatory respondent as the rate for non-

[75] *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).
[76] *See* the Statement of Administrative Action, H.R. Rep. No. 103-316, Vol. 1 (1994) (SAA) at 870-873. *See also* section 735(c)(5)(B) of the Act.
[77] *See*, *e.g.*, *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 80 FR 51779, 51780 (August 26, 2015).

individually examined companies that have preliminarily qualified for a separate rate.[78] This long-standing practice is also Court-affirmed.[79]

D. Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation.[80] This practice is described in Policy Bulletin 05.1.

E. Affiliation and Single Entity

As indicated above, the Department selected Yueda as one of the mandatory respondents in this investigation. In responding to the Department's NME AD questionnaire, Yueda treated itself and six[81] other companies as affiliated under a single entity; *i.e.*, it collapsed itself with these six other companies. Yueda submitted consolidated questionnaire responses and provided consolidated sales and FOP databases with respect to these companies.[82]

Based on the evidence on the record in this investigation, including information submitted by Yueda in its questionnaire responses, the Department preliminarily finds Yueda affiliated with Qiushan, China Wind, High-Quality, FOPO, and Fastnail, pursuant to sections 771(33)(A) and (F) of the Act.[83] Further, based on the evidence presented in Yueda's questionnaire responses,

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[78] *See*, *e.g.*, *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, 42316 (June 29, 2016) ("Under section 735(c)(5)(A) of the Act, the rate for all other companies that have not been individually examined is normally an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins determined entirely on the basis of facts available. In this final determination, the Department has calculated a rate for TTI that is not zero, de minimis, or based entirely on facts available. Therefore, the Department has assigned to the companies that have not been individually examined, but have demonstrated their eligibility for a separate rate, a margin of 101.82 percent, which is the rate for TTI."); *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, 35317 (June 2, 2016) ("In this final determination, we calculated a weighted-average dumping margin for Yieh Phui (the only cooperating mandatory respondent) which is not zero, de minimis, or based entirely on facts available. Accordingly, we determine to use Yieh Phui's weighted-average dumping margin as the margin for the separate rate companies."); *Narrow Woven Ribbons with Woven Selvedge from Taiwan; Preliminary Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 60627, 60627 (October 7, 2015) unchanged in Narrow Woven Ribbons with Woven Selvedge from Taiwan; Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 22578 (April 18, 2016).

[79] *See*, *e.g.*, *Changzhou Wujin Fine Chemical Factory Co., Ltd., v. United States*, 942 F. Supp. 2d 1333, 1339 (CIT 2013) (*Fine Chemical*); *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, respectively).

[80] *See Initiation Notice* at 19355.

[81] These six companies are: China Dinghao Co., Limited (Dinghao), Fastnail Products Limited (Fastnail), Qiushan Printing Machine Manufacture (Shanghai) Co., Ltd. (Qiushan), China Wind International Limited (China Wind), High-Quality Fastener Ltd. (High-Quality) and Wuhan FOPO Trading Co., Ltd. (FOPO).

[82] *See*, *e.g.*, Yueda Section A Supplemental Questionnaire Response, dated August 10, 2017, at 10-14.

[83] For a detailed discussion of this issue, *see* Memorandum, "Less-Than-Fair-Value Investigation of Carton Closing Staples from the People's Republic of China: Preliminary Affiliation and Single Entity Determination" (Affiliation and Single Entity Memo), dated concurrently with this memorandum.

we preliminarily find that Yueda, Qiushan, FOPO and Fastnail should be treated as a single entity[84] for the purposes of this investigation, pursuant to 19 CFR 351.401(f).[85]

F. PRC-Wide Entity

As described above, certain companies failed to respond to the Department's Q&V questionnaire. Specifically, the Department did not receive responses to its Q&V questionnaire from 19 PRC exporters and/or producers of subject merchandise that were named in the Petition and to whom the Department issued Q&V questionnaires.[86] Additionally, one company, Fuyang Nanli Machinery Manufacturing Co., Ltd., refused the Q&V package upon delivery.[87] Because these 20 non-responsive PRC companies did not respond to our request for information and, further, have not demonstrated that they are eligible for a separate rate, the Department considers them to be part of the PRC-wide entity.

Furthermore, the Department preliminarily determines that Best Nail is part of the PRC-wide entity because it did not file a Separate Rate Application or respond to the Section A Questionnaire to establish its eligibility for a separate rate. Based on this failure to provide information, Best Nail did not demonstrate that it is sufficiently independent from government control over its export activities. Therefore, we preliminarily determine that Best Nail is part of the PRC-wide entity and subject to the PRC-wide rate. The Department's treatment of the PRC-wide entity, including Best Nail, is discussed below.

G. 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 AD 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.

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

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[84] Hereinafter referred to as the Yueda Group in this document, for ease of reference. This short form name of the single entity is not intended for any of the companies within the single entity to utilize for U.S. Customs and Border Protection purposes.
[85] *See* Affiliation and Single Entity Memo.
[86] *See* Q&V Delivery Confirmation Memo at 1 and Attachment I; *see also* Respondent Selection Memo at 2. The Department also posted a copy of the Q&V questionnaire to which it referred in the *Initiation Notice* on its website. The companies to whom Q&V questionnaires were issued that did not timely respond are: Anping County Luze Metal Wire Mesh Products Co., Ltd.; Foshan Liangu Hardware Factory; Foshan Xiongheng Staple Factory; Guangdong Meite Machinery Co., Ltd.; Rise Time Industrial Ltd.; Shaoxing Best Nail Industry Co., Ltd., Shaoxing Bestaples Stationery Co., Ltd.; Shaoxing Chengye Metal Producting Co., Ltd.; Shaoxing Fugang Tools Co., Ltd.; Shaoxing Pengfei Bedding Accessories Co., Ltd.; Shaoxing Qianjiang Pin Industry Co., Ltd.; Shaoxing Shunxing Metal Producing Co., Ltd.; Shaoxing Tiger Nail Co., Ltd.; Tianjin Taibo International Trade Co., Ltd.; Tuodao Strong Nails Manufacturing Co., Ltd.; Unicorn (Tianjin) Fasteners Co., Ltd.; Zhejiang Chaoyue Hardware and Chemical Co., Ltd.; Zhongshan Jinweilong Hardware & Machinery Factory; Zhongshan JWL Staples Factory.
[87] *See* Q&V Delivery Confirmation Memo at 1 and Attachment III; *see also* Respondent Selection Memo at 2.

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 AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.[88] The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.[89]

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.[90] 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.[91]

Under 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. 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.[92]

1. *Application of Facts Available*

The Department preliminarily finds that the PRC-wide entity, which includes Best Nail and the other PRC exporters and/or producers that did not respond to the Department's requests for information, failed to provide necessary information, withheld information requested by the Department, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. Accordingly, the Department

[88] *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) (*Applicability Notice*).
[89] *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.
[90] *See* section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).
[91] *See also* 19 CFR 351.308(c).
[92] *See* section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

preliminarily determines that 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.[93]

2. *Application of Facts Available with an Adverse Inference*

Section 776(b) of the Act provides that the Department, in selecting from among the facts otherwise available, 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 failure to provide the requested information constitutes circumstances under which it is reasonable to conclude that the PRC-wide entity did not cooperate to the best of its ability.[94] The PRC-wide entity neither filed documents indicating that it was having difficulty providing the information, nor did it request to submit the information in an alternate form. Therefore, we preliminarily find that an adverse inference is warranted in selecting from 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).[95]

3. *Selection and Corroboration of the AFA rate*

When applying 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.[96] The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value,[97] although under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.[98] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used,[99] although under the TPEA, the Department is not

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[93] *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).
[94] *See Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (*Nippon 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.")).
[95] *See Nippon 2003*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).
[96] *See* SAA at 870.
[97] *See* SAA at 870; *see also* 19 CFR 351.308(d).
[98] *See* section 776(c)(2) of the Act; TPEA, section 502(2).
[99] *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).

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. 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.[100]

In selecting a rate for AFA, the Department selects one that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce the respondents to provide the Department with complete and accurate information in a timely manner."[101] It is the Department's practice to select, as AFA, the higher of the: (a) highest margin alleged in the petition; or (b) the highest calculated rate of any respondent in the investigation.[102] However, based on the information on the record, the Department is unable to corroborate the highest petition rate of 263.40 percent in this investigation.

In attempting to corroborate that rate, the Department compared the highest petition rate of 263.40 percent to Yueda's highest transaction-specific dumping margin within the appropriate comparison method (*see* Section I.2 below) and found the petition rate to be significantly higher than Yueda's highest calculated transaction-specific dumping margin (*i.e.*, 58.93 percent). Because we were unable to corroborate the highest petition margin with individual transaction-specific margins from Yueda, we next applied a component approach and compared the NVs and net U.S. prices underlying the highest petition margin to the NVs and net U.S. prices calculated for Yueda. We found, however, that we were also unable to corroborate the highest petition margin of 263.40 percent with this component approach. Specifically, the Department finds that the NVs and net U.S. prices calculated for the single mandatory respondent, Yueda, are not within the range of the NVs and net U.S. prices underlying the highest margin alleged in the petition. Consequently, the Department determines to base the AFA rate for the PRC-wide entity on Yueda's highest transaction-specific margin of 58.93 percent. Because this rate is not secondary information, but rather is based on information obtained in the course of this investigation, the Department need not corroborate this rate pursuant to section 776(c) of the Act.

H. Date of Sale

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. 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.[103] The Court of International Trade (CIT) has stated that a "party

[100] *See* section 776(d)(1)-(2) of the Act; TPEA, section 502(3).
[101] *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, *63 FR 8909, 8932* (February 23, 1998).
[102] *See*, *e.g.*, *Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 36884 (June 8, 2016), and accompanying Preliminary Determination Memorandum at Section 3E, unchanged in *Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 81 FR 75042, 75043 (October 28, 2016).
[103] *See* 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (*Allied Tube*) (quoting 19 CFR 351.401(i)).

seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that a different date better reflects the date on which the exporter or producer establishes the material terms of sale."[104] The date of sale is generally the date on which the parties establish the material terms of the sale,[105] which normally includes the price, quantity, delivery terms and payment terms.[106] In addition, 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.[107]

Yueda reported the shipment date as the date of sale for its U.S. sales and demonstrated that the substantive terms of sale occurred on the shipment date.[108] In light of 19 CFR 351.401(i), the Department preliminarily used the shipment date as the date of sale for all of Yueda Group's sales of subject merchandise made during the POI.

I. Fair Value Comparisons

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

1. Determination of the 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 EPs (or constructed export prices (CEPs)) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, the Department examines whether to compare weighted-average normal values 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.

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.[109] The Department finds that the differential pricing analysis used in recent investigations may be instructive for

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[104] *See Allied Tube*, 132 F. Supp. 2d at 1090 (brackets and citation omitted).
[105] *See* 19 CFR 351.401(i).
[106] *See USEC Inc. v. United States*, 31 CIT 1049, 1055 (CIT 2007).
[107] *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, unchanged in Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value, 81 FR 75030 (October 28, 2016).
[108] *See* Yueda Section C Questionnaire Response dated July 26, 2017, at 13 (SCQR); *see also* Yueda's Supplemental Section A, C, D Questionnaire Response, dated September 29, 2017, at 2.
[109] *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).

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 EPs (or CEPs) 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 customer codes (CUSCODU). Regions are defined using the reported destination code (*i.e.*, zip code (DESTU)) 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 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* 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 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.

2. Results of the Differential Pricing Analysis

For Yueda Group, based on the results of the differential pricing analysis, the Department preliminarily finds that 53.40 percent of the value of U.S. sales pass the Cohen's *d* test,[110] and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping 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 this preliminary determination, the Department is 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 to calculate the weighted-average dumping margin for Yueda.

[110] *See* Memorandum regarding: "Preliminary Determination Margin Calculation for Shanghai Yueda Nails Co., Ltd," dated concurrently with this memorandum (Yueda Preliminary Calculation Memo).

J. Export Price

In accordance with section 772(a) of the Act, the Department defined the U.S. price of subject merchandise based on EP for all sales reported by Yueda Group. The Department calculated EP based on the prices at which subject merchandise was sold to unaffiliated purchasers in the United States. We find that all of Yueda Group's sales in this investigation are EP sales.

We based EP on the sales price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and domestic brokerage and handling using SVs, as applicable.[111]

K. Value-Added Tax (VAT)

In 2012, the Department announced a change of methodology with respect to the calculation of EP and CEP to include an adjustment of any irrecoverable VAT in certain NME countries in accordance with section 772(c)(2)(B) of the Act.[112] 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.[113] 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.[114]

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 Yueda indicates that according to the PRC VAT schedule, the standard VAT levy is 17 percent and the rebate rate for the subject merchandise is 5 percent.[115] While Yueda Group claims that "using a formula of 17% - 5% = 12% Irrevocable VAT overstates the actual irrevocable VAT incurred,"[116] Yueda Group's self-calculated VAT includes company-to-company transfer prices within the single entity (Quishan to Yueda and Qiushan to FOPO/Fastnail), which are not export sales values.[117] Regardless of the provisions in PRC law specific to export trading companies, because the PRC is a NME, the Department does not rely on domestic sales prices between PRC companies which, as a single entity, are not made at arms-length. Further, Yueda Group's VAT calculations also include third country export sales, VAT

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[111] *Id.*

[112] *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) (*VAT Methodological Change*).

[113] *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.

[114] *Id.*

[115] *See* Yueda's SCQR, at 36; *see also* Yueda Group's Supplemental Section C Questionnaire Response, dated August 22, 2017, at 13 ("The applicable VAT tax rate is 17%, and the export rebate rate for staples is 5%.").

[116] *See* Yueda's Supplemental Section C Questionnaire Response, dated August 22, 2017, at 13.

[117] *Id. See also* Yueda's Supplemental Section A, C, D Questionnaire Response, dated September 29, 2017

for rental income, VAT for intra-single entity energy sales, etc., the inclusion of which are inappropriate in our VAT deduction calculation.[118]

Irrecoverable VAT is: (1) the free-on-board value of the exported good, applied to the difference between; (2) the standard VAT levy rate; and (3) the VAT rebate rate applicable to exported goods.[119] The first variable, export value, is unique to each respondent and sale, while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in PRC law and regulations.[120]

Irrecoverable VAT, as defined in PRC law, is a net VAT burden that arises solely from, and is specific to, exports. It is VAT paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost.[121] We have consistently stated that irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exportation of the subject merchandise to the United States.[122] The statute does not define the terms "export tax, duty, or other charge imposed" on the exportation of subject merchandise. We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as a result of export sales. It is set forth in PRC law and, therefore, can be "imposed" by the exporting country on exportation of subject merchandise. Further, an adjustment for irrecoverable VAT achieves what is called for under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a tax-neutral net price received by the seller. This deduction is consistent with our longstanding policy, which is consistent with the intent of the statute, that dumping margin calculations be tax-neutral.[123]

Accordingly, consistent with the Department's standard methodology and based on record information, for purposes of this preliminary determination, we removed from gross U.S. price the amount calculated based on the difference between the above-specified standard rates (*i.e.*, 12 percent) applied to the U.S. export sales value, consistent with the definition of irrecoverable VAT under PRC tax law and regulation.

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[118] *See* Yueda's Supplemental Section A, C, D Questionnaire Response, dated September 29, 2017 at 6 ("To calculate the VAT payable, the output tax for domestic sales should be first calculated…During the POI, there were three sources of domestic income for Qiushan, including sales of products, selling power to Shanghai Yueda, and rent income for sharing the facility with Shanghai Yueda.").

[119] *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 82 FR 14876 (March 23, 2017) (*HEDP*), and accompanying Issues and Decision Memorandum at Comment 17; *see also Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China*, 79 FR 25572 (May 5, 2014) (*Steel Rail Tie Wire*), and accompanying Issues and Decision Memorandum at Comment 1, n.35.

[120] *See HEDP* at Comment 17; *see also Steel Rail Tie Wire* at Comment 1, n.36.

[121] *See Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57508 (September 25, 2014), and accompanying Issues and Decision Memorandum at Comment 7.

[122] *See, e.g.*, *HEDP* at Comment 17; *Frontseating Service Valves from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71385 (December 2, 2014) and accompanying Issues and Decision Memorandum at Comment 5.

[123] *See* Yueda's SCQR at Exhibit CF-4 at .pdf page 90, containing the "VAT and Consumption Tax Policies for Exported Goods and Labor Services (CN/EN Versions), within Article V(3) of Circular 39, stating that, "3. If the tax refund rate is lower than the applicable tax rate, the tax for the difference calculated accordingly shall be included in the cost of exported goods and labor services."; *see also VAT Methodological Change*, 77 FR at 36483, and *Notice of Final Rule, Antidumping Duties, Countervailing Duties*, 62 FR 27296 (May 19, 1997) (citing the SAA).

L. Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using the 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 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.[124] Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), the Department calculated NV based on FOPs. 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.[125]

M. Factor Valuation Methodology

In accordance with section 773(c) of the Act, the Department calculated NV based on FOP data reported by Yueda Group. To calculate NV, the Department multiplied the reported per-unit factor-consumption rates by publicly available SVs. When selecting the SVs, the Department considered, among other factors, the quality, specificity, and contemporaneity of the data.[126] As appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. Specifically, the Department added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory.[127] A detailed description of SVs used for the respondent can be found in the Preliminary SV Memorandum.[128]

For the preliminary determination, the Department is using Thai import data, as published by GTA, and other publicly available sources from Thailand to calculate SVs for Yueda Group's FOPs. In accordance with section 773(c)(1) of the Act, the Department applied the best available information for valuing FOPs by selecting, to the extent practicable, SVs which are: (1) tax-exclusive, non-export average values; (2) contemporaneous with, or closest in time to, the POI; (3) product-specific; and (4) broad-market averages.[129] The record shows that Thai import

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[124] *See, e.g.*, *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19703 (April 17, 2006), unchanged in *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 (September 8, 2006).

[125] *See* section 773(c)(3)(A)-(D) of the Act.

[126] *See, e.g.*, *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying Issues and Decision Memorandum at Comment 9.

[127] *See Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).

[128] *See* Preliminary SV Memorandum.

[129] *See, e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004) (*Vietnam Shrimp*), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

data obtained through GTA, as well as data from other Thai sources, are broad-market averages, product-specific, tax-exclusive, and generally contemporaneous with the POI.[130]

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.[131] In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.[132] 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 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. Therefore, the Department has not used prices from those countries in calculating the Thai import-based SVs. The Department also excluded from the calculation of the import-based per-unit SV imports labeled as originating from an "unidentified" country because the Department could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.[133]

The Department used Thai import statistics from GTA to value raw materials, packing materials, and energy inputs. We valued truck freight expenses using average truck rates from the World Bank's report, *Doing Business 2017: Thailand (Doing Business)*.[134] This World Bank report gathers information concerning the distance and cost to transport a containerized shipment weighing 15 metric tons from the peri-urban area of the economy's largest business city to the country's major port.[135] We calculated a per-kilogram/per-kilometer surrogate inland freight rate based on the methodology used by the World Bank.[136]

As no interested parties provided SVs for ocean freight, we valued ocean freight charges using data obtained from Descartes Carrier Rate Retrieval Database (Descartes). Because the rates specific to comparable steel products and the ports of exit and entry, as reported by Yueda Group, are from 2008, we inflated the value to represent a POI value.[137]

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[130] *See* Preliminary SV Memorandum.

[131] *See* Section 505 of the TPEA (amending Section 773(c)(5) of the Act 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* Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793, 46795 (August 6, 2015).

[132] *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 Issues and Decision Memorandum 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 Issues and Decision Memorandum 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 Issues and Decision Memorandum at 4; and *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.

[133] *See*, *e.g.*, *Vietnam Shrimp*, 69 FR at 42682-42683.

[134] *See* Preliminary SV Memorandum at Attachment 8; *see also* Petitioner's SV Comments at Attachment 8.

[135] *Id*.

[136] *Id*.

[137] *See* Preliminary SV Memorandum at Attachment 8

In NME AD proceedings, the Department prefers to value labor solely based on data from the primary surrogate country.[138] For this preliminary determination, pursuant to *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, Thailand. Accordingly, we valued labor using manufacturing-specific data from the quarterly-specific data contemporaneous with the POI (third quarter of 2016) from the Government of Thailand, National Statistical Office, Labor Force Survey of Whole Kingdom (POR Manufacturing-Specific NSO Data). Although the POR Manufacturing-Specific NSO Data are not from the International Labor Organization (ILO), as discussed in *Labor Methodologies*, the Department finds that this fact does not preclude us from using this source for valuing labor. In *Labor Methodologies*, the Department described its decision to use ILO Chapter 6A data, rather than ILO Chapter 5B data, as it previously had used, on the rebuttable presumption that Chapter 6A data better account for all direct and indirect labor costs.[139] The Department did not, however, preclude all other sources for evaluating labor costs in NME AD proceedings. Rather, we continue to follow our practice of selecting the "best information available" to determine SVs for inputs such as labor. Similar to other proceedings, we find that the POI Manufacturing-Specific NSO Data are the best available information for valuing labor in this preliminary determination.[140] Specifically, the Manufacturing-Specific NSO Data is contemporaneous with the POI and is manufacturing-specific. As stated above, the Department used Thai data reported under the POI Manufacturing-Specific NSO data, which reflects all costs related to labor, including wages, benefits, housing, training, etc. Additionally, where the financial statements used to calculate the surrogate financial ratios include itemized detail of labor costs, the Department made adjustments to certain labor costs in the surrogate financial ratios.

The Department's criteria for choosing surrogate financial statements from which we derive the financial ratios are the availability of contemporaneous financial statements, comparability to the respondent's experience, and publicly available information.[141] Moreover, for valuing factory overhead, selling, general, and administrative (SG&A) expenses and profit, the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.[142] In addition, the CIT has held that in the selection of surrogate producers, the Department may consider how closely the surrogate producers approximate the NME producer's experience.[143]

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

[139] For more information on the labor SV calculation, *see* the Prelim SV Memorandum.

[140] *See, e.g.*, *Certain Steel Nails from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014–2015*, 81 FR 62710 (September 12, 2016), and accompanying Preliminary Decision Memorandum at 25-26, unchanged in *Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments and Final Partial Rescission; 2014–2015*, 82 FR 14344 (March 20, 2017).

[141] *See, e.g.*, *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), and accompanying Issues and Decision Memorandum at Comment 3.

[142] *See, e.g.*, *Diamond Sawblades and Parts Thereof from the People's Republic of China, Final Determination in the Antidumping Duty Investigation*, 71 FR 29303 (May 22, 2006), and accompanying Issues and Decision Memorandum at Comment 2; *see also* section 773(c)(4) of the Act; 19 CFR 351.408(c)(4).

[143] *See Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1253-54 (CIT 2002); *see also Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005), and accompanying Issues and Decision Memorandum at Comment 1.

To value factory overhead, SG&A expenses, and profit, the Department relied on the 2015 financial statements of LS Industry Co., Ltd., because it is a Thai producer of comparable merchandise.[144] While LS Industry Co., Ltd.'s 2015 financial statements are not contemporaneous with the POI, these financial statements are the only source on the record to value factory overhead, SG&A expenses and profit; thus, represent the best available information on the record. Further, while LS Industry Co., Ltd. produces comparable rather than identical merchandise, LS Industry Co., Ltd. manufactures steel nails, which, like staples, are downstream steel products produced from steel wire rod or steel wire. Therefore, we preliminarily find that the financial data of this producer of steel nails is appropriate to approximate the financial costs of Yueda Group's production of carton-closing staples.[145]

The Department's practice is to grant the respondents an offset to the reported FOPs for by-products generated during the production of the subject merchandise if evidence is provided that such by-product has commercial value.[146] However, because Yueda Group has not claimed any byproduct offsets, we have not accounted for such offsets in the calculation of the NV.

VIII. CURRENCY CONVERSION

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

IX. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information Yueda Group submitted in response to the Department's questionnaires.

[144] For more information on the surrogate financial ratios calculations, *see* the Preliminary SV Memorandum.
[145] *Id*.
[146] *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews*, 70 FR 54897 (September 19, 2005), and accompanying Issues and Decision Memorandum at Scrap Offset.

X. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☒ ☐

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Agree Disagree

10/27/2017

X

Signed by: GARY TAVERMAN

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Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance