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Washington, D.C. 20230

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Investigation
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July 30, 2018

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
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China

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I. SUMMARY

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

II. BACKGROUND

On December 27, 2017, Commerce received petitions from Berwick Offray, LLC (the petitioner) seeking the imposition of antidumping duty (AD) and countervailing duties (CVD) on plastic ribbon from China.[1] Supplements to the petitions are described in the *Initiation Notice* and

[1] *See* Petitioner's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China: Petitions for the Imposition of Antidumping and Countervailing Duties," dated December 27, 2017 (AD and CVD Petitions).

accompanying Initiation Checklist.[2] On January 16, 2018, Commerce initiated an AD investigation of plastic ribbon from China.[3]

In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate rate status in non-market economy (NME) LTFV investigations.[4] The process requires exporters to submit a separate rate application (SRA)[5] and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities. In the *Initiation Notice*, we stated that SRAs would be due 30 days after publication of the notice, which fell on February 22, 2018.[6] In response to requests for extension of that deadline, Commerce extended the deadline to March 8, 2018.[7] In response to requests for further extension of that deadline, Commerce extended the deadline to March 15, 2018.[8] Commerce received timely filed SRAs from Sun Rich (Asia) Ltd. (Sun Rich); Joynice Gifts & Crafts Co., Ltd. (Joynice); Chiapton Gifts Decorative Limited (Chiapton); Colorart Plastic Ribbon Productions Limited (Colorart); Zheijang Shaoxing Royal Arts & Crafts Co., Ltd. (Royal Arts); Wingo Gift & Crafts (Shenzhen) Co., Ltd. (Wingo); Seng San Enterprises Co., Ltd. (Seng San); Xiangxin Decoration Factory (Xiangxin); Xinghui Packaging Co., Ltd. (Xinghui); and Shenzhen SHS Technology R&D Co., Ltd. (SHS).

On February 8, 2018, the petitioner, Berwick Offray, LLC, submitted comments regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes. On February 26, 2018, Seng Sen filed rebuttal comments regarding the physical characteristics of the merchandise under consideration. On March 16, 2018, we issued the product characteristics to be used in this investigation.[9]

We stated in the *Initiation Notice* that we intend to base our selection of mandatory respondents on responses to quantity and value (Q&V) questionnaires to be sent to each potential respondent named in the petition.[10] On January 25, 2018, we issued Q&V questionnaires to 31 of the 51 companies that the petitioner identified in the petition as potential producers/exporters of plastic

[2] *See* Memorandum, "Antidumping Duty Investigation Initiation Checklist: Certain Plastic Decorative Ribbon from the People's Republic of China," dated January 16, 2018 (Initiation Checklist); *See also Certain Plastic Decorative Ribbon from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 83 FR 3126 (January 23, 2018) (*Initiation Notice*).
[3] *Id.*
[4] *Id.* at 3129.
[5] *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 on Commerce's website at http://enforcement.trade.gov/policy/bull05-1.pdf.
[6] *See Initiation Notice*, 83 FR at 3129.
[7] *See* Memorandum, "Extension of Deadline to Submit Separate Rate Applications in the Antidumping Duty Investigation of Plastic Decorative Ribbon from the People's Republic of China," dated February 8, 2018 (First SRA Deadline Extension).
[8] *See* Memorandum, "Extension of Deadline to Submit Separate Rate Applications in the Antidumping Duty Investigation of Plastic Decorative Ribbon from the People's Republic of China," dated March 7, 2018 (Second SRA Deadline Extension).
[9] *See* Memorandum, "Product Characteristics in the Antidumping Duty Investigation of Plastic Decorative Ribbon from the People's Republic of China," dated March 16, 2018 (Product Characteristics Memorandum).
[10] *See Initiation Notice*, 83 FR at 3129.

ribbon from China that had complete addresses.[11] The remaining 20 companies that the petitioner identified had unusable addresses.[12] In addition, we posted the Q&V questionnaire on Commerce's website and, in the *Initiation Notice*, invited parties that did not receive a Q&V questionnaire from us to file a response to the Q&V questionnaire by the applicable deadline. We received timely filed Q&V questionnaire responses from 15 exporters/producers.[13] Of the 31 companies to which we sent a Q&V questionnaire, 25 did not respond.[14] On March 1, 2018, based on the responses to the Q&V questionnaires, we selected Dongguan Mei Song Plastic Industry Co., Ltd. (Mei Song), Dongguan Ricai Plastic Technology Co., Ltd. (Ricai), and Ningbo Junlong Craft Gift Co., Ltd. (Junlong) for individual examination as mandatory respondents in this AD investigation.[15]

On March 5, 2018, we issued AD NME questionnaires to Junlong, Mei Song, and Ricai.[16] Junlong, Mei Song, and Ricai submitted their individual responses to Section A of the Initial Questionnaire on April 5, 2018.[17] Junlong, Mei Song, and Ricai submitted their individual responses to Sections C and D of the Initial Questionnaire during May 2018.[18] Between May and June 2018, we issued, and the respondents replied to, multiple supplemental questionnaires (including the double remedy questionnaire). During the same time frame, the petitioner submitted comments regarding the mandatory respondents' questionnaire responses.

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[11] *See* AD and CVD Petitions at Exhibit I-6; *See also* Commerce's Letter, "Antidumping Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China: Quantity and Value Questionnaire," dated January 25, 2018 (Q&V Questionnaire).

[12] *See* Memorandum, "Antidumping Duty Investigation of Plastic Decorative Ribbon from the People's Republic of China: Respondent Selection," dated March 1, 2018 (Respondent Selection Memorandum).

[13] *Id.*

[14] Commerce issued but did not receive responses to the Q&V questionnaires from the following companies: Best Craftwork Products Co., Ltd.; Billion Trend International Ltd.; Dongguan Xinghui Packaging Co., Ltd.; Fangtai Webbing Co.; Foshan City Shunde District Fangtai Webbing Co., Ltd.; Hangzhou Jiefa Materials Co., Ltd.; Hangzhou Owner Party Co., Ltd.; Jiaxing Kaiya Textile Co., Ltd.; Long Fine Gift & Bags Factory; Nan Mei Decorative Ribbons Co., Ltd; Ningbo Qianyi Color Ribbon Co., Ltd; Ningbo Sellers Union Co., Ltd.; Qingdao Hileaders Co., Ltd.; Shanghai Foreign Trade Enterprises Pudong Co., Ltd.; Shenzhen Ao Wei Gift Co., Ltd.; Shenzhen Gary Gifts Packing Co., Ltd.; Shenzhen Guangyunda Technology Co., Ltd.; True Color Gift Packing Co., Ltd.; Wellmark Gift (Shenzhen) Co Ltd.; Wello Gift Co., Ltd.; Xiamen Golden Grand Lucky Ribbon & Bow Co., Ltd.; Xiamen Meisida Decorations Co., Ltd.; Yangzhou Bestpak Gifts & Crafts Co., Ltd.; Yiwu Eco-Tondo Artware Co., Ltd.; and, Yongjiaxin Gifts & Crafts Factory.

[15] *Id.*

[16] *See* Commerce's Letter, "Antidumping Duty Questionnaire," dated March 5, 2018 (Initial AD Questionnaires).

[17] *See* Junlong's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China - Junlong Section A Questionnaire Response," dated April 5, 2018 (Junlong Section A QR); *See also* Mei Song's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China – Mei Song Section A Questionnaire Response," dated April 5, 2018 (Mei Song Section A QR); *See also* Ricai's Letter, "Plastic Decorative Ribbons from PRC ("Decorative Ribbons"); A-570-075; Response to Section A of the Department's Initial Questionnaire," dated April 5, 2018 (Ricai Section A QR).

[18] *See* Junlong's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China - Junlong Section C and D Questionnaire Response," dated May 10, 2018 (Junlong Section CD QR); *See also* Mei Song's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China – Mei Song Section C and D Questionnaire Response," dated May 10, 2018 (Mei Song Section CD QR); *See also* Ricai's Letter, "Plastic Decorative Ribbons from PRC ("Decorative Ribbons"); A-570-075; Response to Section C and of the Department's Initial Questionnaire," dated May 8, 2018 (Ricai Section CD QR).

On February 16, 2018, 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 plastic ribbon from China.[19]

On March 28, 2018, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(f)(1), we published in the *Federal Register* a postponement of the preliminary determination by 50 days until no later than July 30, 2018.[20]

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

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is April 1, 2017, through September 30, 2017. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition, which was December 2017.[21]

IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,[22] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope, as well as the appropriate physical characteristics of certain plastic decorative ribbon (plastic ribbon) to be reported in response to Commerce's AD questionnaire.[23] On February 8, 2018, Royal Arts, a producer/exporter of the subject merchandise, and Greenbrier International, Inc., IKEA Supply AG, Target Corporation, Impact Innovations, Inc., and IG Design Group Americas Inc., U.S. importers of subject merchandise, submitted comments on the scope of this investigation. On March 6, 2018, the petitioner and Impact Innovations submitted rebuttal scope comments.

For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, see the Preliminary Scope Decision Memorandum.[24] For the reasons explained in the Preliminary Scope Decision Memorandum, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice* to exclude certain shredded plastic film/stripgrass and to clarify "exclusion (4)." The revised scope language is below.

V. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is certain plastic decorative ribbon having a width (measured at the narrowest span of the ribbon) of less than or equal to four (4) inches in actual

[19] *See Plastic Decorative Ribbon from China; Determinations*, 83 FR 7077 (*Determinations*) (February 16, 2018).
[20] *See Plastic Decorative Ribbon from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 83 FR 13256 (*Postponement of Preliminary Determination*) (March 28, 2018).
[21] *See* 19 CFR 351.204(b)(1).
[22] *See Antidumping Duties: Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).
[23] *See Initiation Notice*, 83 FR 3126.
[24] *See* Memorandum, "Certain Plastic Decorative Ribbon from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination," dated concurrently with this notice (Preliminary Scope Decision Memorandum).

measurement, including but not limited to ribbon wound onto itself; a spool, a core or a tube (with or without flanges); attached to a card or strip; wound into a keg- or egg-shaped configuration; made into bows, bow-like items, or other shapes or configurations; and whether or not packaged or labeled for retail sale. The subject merchandise is typically made of substrates of polypropylene, but may be made in whole or in part of any type of plastic, including without limitation, plastic derived from petroleum products and plastic derived from cellulose products. Unless the context otherwise clearly indicates, the word "ribbon" used in the singular includes the plural and the plural "ribbons" includes the singular.

The subject merchandise includes ribbons comprised of one or more layers of substrates made, in whole or in part, of plastics adhered to each other, regardless of the method used to adhere the layers together, including without limitation, ribbons comprised of layers of substrates adhered to each other through a lamination process. Subject merchandise also includes ribbons comprised of (a) one or more layers of substrates made, in whole or in part, of plastics adhered to (b) one or more layers of substrates made, in whole or in part, of non-plastic materials, including, without limitation, substrates made, in whole or in part, of fabric.

The ribbons subject to this investigation may be of any color or combination of colors (including without limitation, ribbons that are transparent, translucent or opaque) and may or may not bear words or images, including without limitation, those of a holiday motif. The subject merchandise includes ribbons with embellishments and/or treatments, including, without limitation, ribbons that are printed, hot-stamped, coated, laminated, flocked, crimped, die-cut, embossed (or that otherwise have impressed designs, images, words or patterns), and ribbons with holographic, metallic, glitter or iridescent finishes.

Subject merchandise includes "pull-bows" an assemblage of ribbons connected to one another, folded flat, and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage, and "pre-notched" bows, an assemblage of notched ribbon loops arranged one inside the other with the notches in alignment and affixed to each other where notched, and which the end user forms into a bow by separating and spreading the loops circularly around the notches, which form the center of the bow. Subject merchandise includes ribbons that are packaged with non-subject merchandise, including ensembles that include ribbons and other products, such as gift wrap, gift bags, gift tags and/or other gift packaging products. The ribbons are covered by the scope of this investigation; the "other products" (i.e., the other, non-subject merchandise included in the ensemble) are not covered by the scope of this investigation.

Excluded from the scope of this investigation are the following: (1) ribbons formed exclusively by weaving plastic threads together; (2) ribbons that have metal wire in, on, or along the entirety of each of the longitudinal edges of the ribbon; (3) ribbons with an adhesive coating covering the entire span between the longitudinal edges of the ribbon for the entire length of the ribbon; (4) ribbon formed into a bow without a tab or other means for attaching the bow to an object using adhesives, where the bow has: (a) an outer layer that is either flocked or made of fabric, and (b) a flexible metal wire at the base which permits attachment to an object by twist-tying; (5) elastic ribbons, meaning ribbons that elongate when stretched and return to their original dimension when the stretching load is removed; (6) ribbons affixed as a decorative detail to non-subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including

by tying) as a decorative detail to packaging containing non subject merchandise; (7) ribbons that are (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where the ribbon comprises a book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a "belly band" around a pair of pajamas, a pair of socks or a blanket; (8) imitation raffia made of plastics having a thickness not more than one (1) mil when measured in an unfolded/untwisted state; and (9) ribbons in the form of bows having a diameter of less than seven-eighths (7/8) of an inch, or having a diameter of more than 16 inches, based on actual measurement. For purposes of this exclusion, the diameter of a bow is equal to the diameter of the smallest circular ring through which the bow will pass without compressing the bow.

The scope of the investigation is not intended to include shredded plastic film or shredded plastic strip, in each case where the shred does not exceed 5 mm in width and does not exceed 18 inches in length, imported in bags.

Further, excluded from the scope of the antidumping duty investigation are any products covered by the existing antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from the People's Republic of China (China). *See Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates*, 73 FR 66595 (November 10, 2008).

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 3920.20.0015 and 3926.40.0010. Merchandise covered by this investigation also may enter under subheadings 3920.10.0000; 3920.20.0055; 3920.30.0000; 3920.43.5000; 3920.49.0000; 3920.62.0050; 3920.62.0090; 3920.69.0000; 3921.90.1100; 3921.90.1500; 3921.90.1910; 3921.90.1950; 3921.90.4010; 3921.90.4090; 3926.90.9996; 5404.90.0000; 9505.90.4000; 4601.99.9000; 4602.90.0000; 5609.00.3000; 5609.00.4000; and 6307.90.9889. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

VI. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy Country

Commerce considers China to be an NME country.[25] 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 China as an NME country for purposes of this preliminary determination.

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

B. Surrogate Country and Surrogate Value Comments

When Commerce 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 Commerce. Specifically, in accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce 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."[26] As a general rule, Commerce 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. To determine which countries are at the same level of economic development, Commerce generally relies on per capita gross national income (GNI) data from the World Bank's World Development Report. Further, Commerce normally values all FOPs in a single surrogate country.

On February 8, 2018, we identified Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand as countries that are at the same level of economic development as China based on 2016 per capita GNI data.[27] On June 15, 2018, we issued a memorandum soliciting comments from interested parties on the list of potential surrogate countries and the selection of the primary surrogate country, as well as providing deadlines for submitting surrogate value information for consideration in the preliminary determination.[28] On June 22, 2018, we issued a letter to interested parties revising the deadlines for submission of surrogate value information to be considered for the preliminary determination from June 29, 2018, to July 2, 2018.[29]

On June 19, 2018, Ricai submitted timely comments on the proposed list of surrogate countries.[30] Ricai argues that Commerce is trying to "cram" the surrogate value process into a short period of time, which is prejudicial to the respondents. In addition, Ricai asserts that Commerce used GNI data that is one year out of date and which does not overlap the POI. Ricai argues that Commerce needs to explain why it used an unequal band in proposing economically

[26] *See* Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on Commerce's website at http://enforcement.trade.gov/policy/bull04-1 html.
[27] *See* Memorandum, "Request for a List of Surrogate Countries for an Antidumping Investigation on Certain Plastic Decorative Ribbon ("PDR") from the People's Republic of China ("China")," dated February 8, 2018 (Surrogate Country Memo).
[28] *See* Memorandum, "Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information, dated June 15, 2018 (Surrogate Country Comment Memorandum).
[29] *See* Memorandum, "Extension of Deadline to Submit Surrogate Value Information in the Antidumping Duty Investigation of Plastic Decorative Ribbon from the People's Republic of China," dated June 22, 2018 (SV Deadline Extension).
[30] *See* Ricai's Letter, "Plastic Decorative Ribbons from PRC ("Decorative Ribbons"); A-570-075; Comments on Economic Comparability," dated June 19, 2018 (Ricai Comments on Economic Comparability).

comparable countries (*i.e.*, the high end of the band is narrow, less than half the size of the low end of the band, which is particularly distortive as China continues to trend upward (and thus toward the high end of the band) while many of the countries on the lower end of the band are growing slowly and thus are becoming further separated from China). Ricai notes that Commerce's band, if it is based on out-of-date data, should be narrower on the lower end of the band in order to reflect the likely trends and the data that would result from the "perfect" data. Ricai argues that Commerce cannot simply arbitrarily decide the "width" of a band and must supply a reasoned explanation as to these diverse bands. According to Ricai, absent such an explanation, Commerce's ultimate selection is arbitrary and capricious, and is thus unlawful. To the extent that Commerce is able to legally justify this current nonequal band based on out-of-date data, Commerce should find that all countries that fall within the range are economically comparable to China and are available for potential selection as a surrogate country in this investigation, whether they appear on Commerce's list or not.

On June 22, 2018, the petitioner, Junlong, Mei Song, and Ricai submitted timely comments on surrogate countries, including information on whether certain countries are significant producers of the comparable merchandise.[31] The petitioner argues that Thailand is the most appropriate surrogate country. The petitioner asserts that Thailand: 1) is a market economy country at the same level of economic development as China; 2) is a significant producer of identical or comparable merchandise; 3) has several significant producers of plastic ribbons, including at least one publicly traded company; 4) is the largest exporter of the six identified surrogate countries; 5) has readily available import statistics which are highly specific; and 6) Commerce has used Thailand as the surrogate country in many of its determinations in recent years, and found Thailand previously to be the preferred surrogate country to value factors of production, based largely on Thailand's superior data availability and quality.

Ricai asserts that with respect to comparable level of economic development, the stale nature of the data initially used by Commerce and the established trends strongly support the rejection of Thailand as a source of surrogate values as its economic comparability is, at best, questionable. Ricai notes that the other countries listed do not appear to face the same issues. Ricai states that the quality of the data cannot be addressed until the data is on the record and available for review.

Junlong and Mei Song argue that Thailand or Mexico are the best choices for the surrogate country in this investigation. Junlong and Mei Song assert that both countries are on Commerce's list of economically comparable countries, and both countries are significant exporters of comparable merchandise (and, thus, significant producers). Finally, Junlong and Mei Song note that Thailand and Mexico have been selected as the primary surrogate country by Commerce in other cases.

[31] *See* Petitioner's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China: Comments on Surrogate Country Selection," dated June 22, 2018) (Petitioner Surrogate Country Comments); *See also* Ricai's Letter, "Plastic Decorative Ribbons from PRC ("Decorative Ribbons"); A-570- 075; Comments on Selection of Primary Surrogate Country," dated June 22, 2018 (Ricai Surrogate Country Comments); *See also* Junlong's and Mei Song's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China - Respondent Surrogate Country Comments," dated June 22, 2018 (Junlong/Mei Song Surrogate Country Comments).

The petitioner and Ricai submitted rebuttal comments on June 27, 2018.[32] The petitioner asserts that Commerce has found that the selection of the range of economically-comparable countries based on GNI data is reasonable and consistent with the Act,[33] and that Commerce's practice of identifying potential surrogate countries based on GNI data has been affirmed by the U.S. Court of International Trade (CIT).[34] The petitioner argues that Commerce previously addressed and rejected the issue of "stale" GNI data, as raised by Ricai, finding that it need not rely solely on the most recent GNI data.[35] The petitioner asserts that the data Ricai offers in support of its arguments regarding Thailand's "comparability" is not consistent with Commerce practice. Specifically, the petitioner notes that the "updated" data that Ricai provides is gross domestic product (GDP) data, not GNI data,[36] it reflects "updates" for only a limited number of countries, and it was not sourced from the World Bank. Thus, the petitioner explains, Ricai's claim that Thailand's economic comparability "is, at best, questionable" lacks merit. To the contrary, the petitioner asserts, choosing Thailand as a surrogate country is in line with Commerce's prior practice and would allow for the best calculation of surrogate values for the reasons outlined in the petitioner's prior submission.

Ricai asserts that the petitioner's comments on the economic comparability of Thailand, its proposed surrogate country, are untimely. Ricai insists that Commerce has made it "very clear," both administratively and in Court,[37] that comments with respect to economic comparability, which Ricai refers to as a "gate-keeper" criterion, are separate and distinct from comments on surrogate country and surrogate values.[38] Ricai notes that such data and comments must be submitted by strict deadlines, and comments on economic comparability were due by June 19, 2018. Ricai argues that Commerce and the Courts have made it "very clear" that the term "substantial producer," another "gate-keeper" criterion according to Ricai, is found to exist wherever a country has the ability to export the product. Ricai asserts that Commerce does not weigh the degree of substantial production in selecting the surrogate country. Ricai argues that, insofar as "substantial producer" serves as a "gate-keeper criterion," every country that passes the gate is viewed equally by Commerce for purposes of surrogate country selection. Ricai asserts that Thailand failed the first "gate-keeper" criterion concerning economic comparability, and thus the fact that it might pass the second criterion with respect to substantial producer is irrelevant as other countries pass both gate-keeper criteria.

[32] *See* Petitioner's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China: Rebuttal Comments on Surrogate Country Selection," dated June 27, 2018 (Petitioner Surrogate Country Rebuttal); *See also* Ricai's Letter, "Plastic Decorative Ribbons from PRC ("Decorative Ribbons"); A-570-075; Rebuttal Comments on Selection of Primary Surrogate Country," dated June 27, 2018 (Ricai Surrogate Country Rebuttal).
[33] *See* Petitioner Surrogate Country Rebuttal at 3.
[34] *Id.* at 4.
[35] *Id.*
[36] *Id.*
[37] *See* Ricai Surrogate Country Rebuttal at 1.
[38] *Id*. at 2.

On July 2, 2018, the petitioner, Ricai, Junlong, and Mei Song submitted surrogate value data.[39] The petitioner submitted rebuttal comments on July 9, 2018.[40]

As noted above, the petitioner recommends that Commerce use Thailand as the primary surrogate country, while Junlong and Mei Song recommend that Commerce use Thailand or Mexico as the primary surrogate country. Ricai argued for the use of another surrogate country, but nonetheless submitted surrogate value data for Thailand.

1. General

We disagree with Ricai that the surrogate value submission schedule is impermissibly compact. We typically provide parties with two opportunities to comment on factors of production: once earlier in the proceeding (for use in the preliminary determination) and once, in accordance with 19 CFR 351.301(c)(3), 30 days before the preliminary determination (with no guarantee that the commented-on factors will be used in the preliminary determination). In the instant investigation, although we released the list of potential surrogate countries early in the investigation, we inadvertently did not send out the letter setting deadlines for comments at that time. The absence of the letter does not prevent parties from submitting comments on the list.

While the surrogate value submission schedule is more compact than Commerce normally contemplates, parties had the list of potential surrogate countries since early in the proceeding. Thus, parties had adequate time to research and consider surrogate countries and surrogate values for use in the preliminary determination. Parties also had ample opportunity to submit rebuttal factual information to the surrogate values submitted by other parties. Finally, as noted above, the deadline for submission of surrogate value information in this case is the regulatory deadline. Accordingly, parties should have known that surrogate value information would be due no later than this date. In sum, we find that the parties were not disadvantaged.

2. Economic Comparability

As noted above, consistent with our practice, and section 773(c)(4) of the Act, we identified Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand as countries at the same level of economic development as China based on GNI data published in the World Bank Development Indicators database.[41]

Section 773(c)(4) of the Act states that Commerce "shall utilize, to the extent possible, the prices or costs of {FOPs} in one or more market economy countries that are . . . at a level of economic

[39] *See* Petitioner's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China: Submission of Surrogate Values," dated July 2, 2018 (Petitioner Surrogate Values Submission); *See also* Ricai's Letter, "Plastic Decorative Ribbons from PRC ("Decorative Ribbons"); A-570-075; Surrogate Value Information," dated July 2, 2018 (Ricai Surrogate Values Submission); *See also* Junlong's and Mei Song's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China - Respondent Surrogate Value Submission," July 2, 2018 (Junlong/Mei Song Surrogate Values Submission).
[40] *See* Petitioner's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China: Submission of Information to Rebut, Clarify, or Correct Information Pertaining to Surrogate Values," dated July 9, 2018 (Petitioner Surrogate Values Rebuttal).
[41] *Id.*

development comparable to that of the {NME} country." However, the applicable statute does not expressly define the phrase "level of economic development comparable" or what methodology Commerce must use in evaluating the criterion. 19 CFR 351.408(b) states that in determining whether a country is at a level of economic development comparable to the NME country, Commerce will place primary emphasis on per capita GDP as the measure of economic comparability.[42] The CIT has found the use of per capita GNI to be a "consistent, transparent, and objective metric to identify and compare a country's level of economic development" and "a reasonable interpretation of the statute."[43]

Unless it is determined that none of the countries identified above are viable options because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons, we will rely on data from one of these countries.

Ricai asserts that Commerce used GNI data that is one year out of date and which does not overlap the POI. As noted above, Commerce has already considered this argument elsewhere and has determined it is not necessary to rely solely on the most recent data.[44] Ricai argues that Commerce needs to explain why it used an unequal band in proposing economically comparable countries. As noted, Commerce's practice of identifying potential surrogate countries based on GNI data has been affirmed by the CIT.[45] Ricai has not identified any statutory or regulatory obligation to establish symmetrical "bands" of potential surrogates above and below China in terms of the range of per capita GNI. In the Surrogate Country Memo, we suggested three countries above China and three countries below. While it is important to identify countries that are economically comparable to the subject NME country, Commerce must also consider data availability in compiling the list, and the Surrogate Country memorandum indicates that other countries may be considered if they are economically comparable and significant producers of comparable merchandise. Although Ricai expressed concerns regarding the data that we used to determine economic comparability and disagreed with the petitioner's recommendation to select Thailand as the surrogate country, it did not specifically recommend any other country. Finally, it is not clear that the relative "widths" of the respective GNI bands, reflecting gaps in terms of per capital GNI between China and less developed countries on the one hand, and between China and more developed countries on the other, makes any difference, provided the countries contained within the bands are economically comparable to the subject country. As the Surrogate Country memorandum explains, potential surrogate countries are either economically comparable or they are not; we do not attempt to identify the most comparable country or weigh degrees of comparability against other considerations such as whether the country is a significant producer of comparable merchandise.

3. Significant Producer of Comparable Merchandise

[42] Commerce uses per capita GNI as a proxy for per capita GDP. GNI is GDP plus net receipt of primary income (compensation of employees and property income) from nonresident sources.
[43] *See Jiaxing Brother Fastener Co. v. United States*, 961 F. Supp. 2d 1323, 1329 (CIT 2014) (*Brother Fastener*).
[44] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010-2011*, 78 FR 17350 (dated March 21, 2013) and the accompanying Issues and Decisions Memorandum.
[45] *See Brother Fastener*, 961 F. Supp. 2d at 1329-1330, and *Lianfu Forestry*.

Section 773(c)(4)(B) of the Act requires Commerce, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor Commerce's regulations provide further guidance on what may be considered comparable merchandise. Among the factors we consider in determining whether a country is a significant producer of comparable merchandise is whether the country is an exporter of comparable merchandise. To determine whether the above-referenced countries are significant producers of comparable merchandise, Commerce's practice is to examine which countries on the surrogate country list exported merchandise comparable to the merchandise under consideration. Information on the record indicates that Thailand and Mexico were significant net exporters of merchandise covered by HTS categories identified in the scope of this investigation.[46] Accordingly, we preliminarily find that Thailand and Mexico have met the significant producer of comparable merchandise prong of the surrogate country selection criteria.

4. Data Availability

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, Commerce selects the primary surrogate country based on data availability and reliability.[47] When evaluating surrogate value data, Commerce considers several factors, including whether the surrogate values are publicly available, contemporaneous with the POI, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.[48] There is no hierarchy among these criteria.[49] It is Commerce's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.[50]

As noted above, the petitioner placed on the record SV data for Thailand, Junlong and Mei Song did the same for Mexico and Thailand, and Ricai did the same for Thailand. For material SVs, the petitioner, Junlong, and Mei Song placed on the record contemporaneous Global Trade Atlas (GTA) import price data for Thailand,[51] and Ricai placed on the record contemporaneous data sourced from the URL histats.com.[52] As for other SVs, parties provided the following Thai Data: Thai Board of Investment data to value water, electricity, and natural gas;[53] *Doing Business in Thailand 2018* data to value brokerage and handling costs as well as truck freight;[54] data from the Labor Force Survey of Thailand's National Statistical Office to value labor;[55] data

[46] *See*, *e.g.*, Petitioner Surrogate Country Comments at Exhibit 1 (providing the websites of several Thai producers of plastic ribbon) and Exhibit 2 (providing GTA data demonstrating between $5-$128 million in exports, depending on the HTS code chosen).
[47] *See* Policy Bulletin 04.1.
[48] *Id*.
[49] *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.
[50] *See* Policy Bulletin 04.1.
[51] *See* Petitioner Surrogate Values Submission and Junlong/Mei Song Surrogate Values Submission.
[52] *See* Ricai Surrogate Values Submission.
[53] *See* Petitioner Surrogate Values Submission at Exhibits 2-5 and Junlong/Mei Song Surrogate Values Submission at Exhibit SV-T5.
[54] *Id*. at Exhibits 6-8 and Exhibit SV-T6-T8.
[55] *Id*. at Exhibit 10 and Exhibit SV-T3.

from the website Metropolitan Waterworks Authority to value water;[56] and data from a publication of the Metropolitan Electricity Authority to value electricity.[57] Junlong and Mei Song provided the following Mexican sources to value "other factors:" Data from the Annual Manufacturing Industry Survey to value labor;[58] data from the International Energy Agency to value electricity;[59] data from the Mexico National Water Commission to value water;[60] and data from *Doing Business in Mexico 2018* to value moving expenses.

To value factory overhead, selling, general, and administrative expenses, and profit, the petitioner provided three financial statements of Thai producers (Polyplex (Thailand) Public Company Limited (Polyplex), Ribbons Favor Co., Ltd. (Ribbons Favor), and Nakornchaisri Industry Co., Ltd. (NCI)),[61] while Junlong and Mei Song provided three financial statements of Thai producers (Bells Ribbon Co. Ltd. (Bells Ribbon), Freetex Elastic Co., Ltd. (Freetex), and Asian Fiber Public Co., Ltd. (Asian Fiber)).[62] Junlong and Mei Song also provided the financial statements of the Mexican producer Convertidora Industrial S.A.B. de C.V. (Convertidora).

We examined the financial statements on the record. We preliminarily determine that two of the Thai financial statements (Bells Ribbon and Freetex) submitted by Junlong and Mei Song are not useable because they do not include valid auditor's reports. In addition, we preliminarily determine that one Thai financial statement (Polyplex) submitted by the petitioner is not usable because of evidence of countervailable subsidies, consistent with Commerce's finding in *Thai Shrimp Final CVD Determination*.[63] Specifically, there is evidence on the record that Polyplex is a promoted company, under the Thailand Board of Investment's IPA, which was found countervailable in previous cases.[64] Commerce's usual practice is not to rely on financial statements where there is evidence that the company received countervailable subsidies and there are other, more reliable and representative data on the record for purposes of calculating surrogate financial ratios. We preliminarily determine that the financial statements of Ribbons Favor and Convertidora are not contemporaneous with the POI,[65] while the statements of NCI and Asian Fiber are partially contemporaneous with the POI. However, the statements of Asian Fiber do not separately account for energy. Thus, the financial statements of Thai company NCI are the best financial statements available on the record.

We find that the Thai data are more complete and reliable than the Mexican data. We have data on the record to value every FOP using Thai data, but we do not have complete Mexican data, such as a contemporaneous financial statement.

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[56] *See* Ricai Surrogate Values Submission at Exhibit 3.
[57] *See* Junlong/Mei Song Surrogate Values Submission at Exhibit SV-T4.
[58] *Id*. at Exhibit SV-M3.
[59] *Id*. at Exhibit SV-M4.
[60] *Id*. at Exhibit SV-M5.
[61] *See* Petitioner Surrogate Values Submission at Exhibit 12.
[62] *See* Junlong/Mei Song Surrogate Values Submission at Exhibit SV-T9-T14.
[63] *See Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) (*Thai Shrimp Final CVD Determination*) and accompanying Issues and Decision Memorandum at 7-11.
[64] *Id.*
[65] *See, e.g., Frontseating Service Valves from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 74 FR 10886 (March 13, 2009) (*Frontseating Service Valves Final*) and accompanying Issues and Decision Memorandum at Comment 1.

Based on the foregoing, we find that Thailand better meets our criteria for a surrogate country given the completeness of the data, including financial statement data. Therefore, Commerce 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 China; (2) a significant producer of merchandise comparable to the merchandise under consideration; and (3) contains the best available data for valuing FOPs. An explanation of the surrogate values upon which Commerce is preliminarily relying can be found in the "Normal Value" section of this memorandum.

C. Separate Rates

In proceedings involving NME countries, Commerce 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.[66] Commerce's policy is to assign all exporters of merchandise under consideration 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.[67] Commerce analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*[68] and further developed in *Silicon Carbide*.[69] According to this separate rate test, Commerce 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 Commerce determines that a company is wholly foreign-owned, the separate rate analysis is not necessary to determine whether that company is independent from government control and therefore eligible for a separate rate.

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from the China AD proceeding, and its determinations therein.[70] In particular, in litigation involving the diamond sawblades from China proceeding, the CIT found Commerce'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 respondent

[66] *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).
[67] *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*).
[68] *Id.*
[69] *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*).
[70] *See Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China* (May 6, 2013) in *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), affirmed in *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd* Case No. 2014-1154 (Fed. Cir. 2014) (*Advanced Technology II*). This remand redetermination is on the Enforcement and Compliance website at http://enforcement.trade.gov/remands/12-147.pdf; *see also Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013) and accompanying Preliminary Decision Memo 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.

exporter.[71] Following the Court's reasoning, in recent proceedings, we have concluded that where a government holds a majority ownership share, directly or indirectly, in the respondent exporter, the majority holding *per se* means that the government exercises, or has the potential to exercise, control over the company's operations generally.[72] 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 profitability of the company.

The following ten firms submitted SRAs, as mentioned above: Sun Rich (Asia) Ltd. (Sun Rich),[73] Joynice Gifts & Crafts Co., Ltd. (Joynice),[74] Chiapton Gifts Decorative Limited (Chiapton Gifts),[75] Colorart Plastic Ribbon Productions Limited (Colorart),[76] Zhejiang Shaoxing Royal Arts & Crafts Co., Ltd. (Royal Arts),[77] Wingo Gift & Crafts (Shenzhen) Co., Ltd. (Wingo),[78] Seng San Enterprises Co., Ltd. (Seng San),[79] Xiangxin Decoration Factory (Xiangxin),[80] Xinghui Packaging Co., Ltd. (Xinghui Packaging),[81] and Shenzhen SHS

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[71] *See, e.g., Advanced Technology I*, 885 F. Supp. 2d at 1349 ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); and 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); and 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."); and 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).

[72] *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; unchanged in *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 79 FR 68860 (November 19, 2014).

[73] *See* Sun Rich's Letter, "Plastic Decorative Ribbons from PRC ("Decorative Ribbons"); A-570-075; Separate Rate Application," dated March 15, 2018.

[74] *See* Joynice's Letter, "Plastic Decorative Ribbons from PRC ("Decorative Ribbons"); A-570-075; Separate Rate Application," dated March 15, 2018.

[75] *See* Chiapton Gifts' Letter, "Certain Plastic Decorative Ribbons from the People's Republic of China: Separate Rate Application," dated March 15, 2018

[76] *See* Colorart's Letter, "*Certain Plastic Decorative Ribbon from the People's Republic of China* – Colorart Productions Separate Rate Application," dated March 15, 2018.

[77] *See* Royal Arts' Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China: Separate Rate Application," dated March 15, 2018.

[78] *See* Wingo's Letter, "*Certain Plastic Decorative Ribbon from the People's Republic of China* – Wingo Separate Rate Application," dated March 15, 2018.

[79] *See* Seng San's Letter, "*Certain Plastic Decorative Ribbon from the People's Republic of China* – Seng San Separate Rate Application," dated March 15, 2018.

[80] *See* Xiangxin's Letter, "*Certain Plastic Decorative Ribbon from the People's Republic of China* – Xiangxin Separate Rate Application," dated March 15, 2018.

[81] *See* Xinghui's Letter, "*Certain Plastic Decorative Ribbon from the People's Republic of China* – Xinghui Packaging Separate Rate Application," dated March 15, 2018.

Technology R&D Co., Ltd. (SHS).[82] In addition, Junlong, Mei Song, and Ricai provided answers to our separate rate questions as part of their section A questionnaire responses.

Six companies, Chiapton, Royal Arts, Seng San, Sun Rich, Wingo, and Xiangxin, provided complete SRAs and reported that they are wholly foreign-owned. Because there is no Chinese ownership of these six companies, and because Commerce has no evidence indicating that these companies are under the control of the Chinese government, further analyses of the *de jure* and *de facto* criteria are not necessary to determine whether the companies are independent from government control with respect to their export activities. Accordingly, we preliminarily determine that Chiapton, Royal Arts, Seng San, Sun Rich, Wingo, and Xiangxin are eligible for separate rates.

For the remaining seven applicants, Junlong, Mei Song, Ricai, Colorart, Joynice, Shenzhen, and Xinghui, we consider the *de jure* and *de facto* criteria below.

1. Absence of De Jure *Control*

Commerce 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 companies; and (3) other formal measures by the government decentralizing control over export activities of companies.[83]

The evidence provided by Junlong, Mei Song, Ricai, Colorart, Joynice, Shenzhen, and Xinghui 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 exporter's business and export licenses; (2) the existence of applicable legislative enactments decentralizing control over export activities of companies; and (3) the implementation of formal measures by the government decentralizing control over export activities of companies.

2. Absence of De Facto *Control*

Typically, Commerce considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the prices are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.[84] Commerce has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude Commerce from assigning separate rates.

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[82] *See* SHS's Letter, "*Certain Plastic Decorative Ribbon from the People's Republic of China* – SHS Separate Rate Application," dated March 15, 2018.
[83] *See Sparklers*, 56 FR at 20589.
[84] *See Silicon Carbide*, 59 FR at 22586-87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

The evidence provided by Junlong, Mei Song, Ricai, Colorart, Joynice, Shenzhen, and Xinghui supports a preliminary finding of an absence of *de facto* government control based on record statements and supporting documentation showing that these companies: (1) set their own prices independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding the disposition of profits or financing of losses.[85]

Based on the foregoing, we preliminarily determine that the evidence placed on the record of this investigation by Junlong, Mei Song, Ricai, Colorart, Joynice, Shenzhen, and Xinghui demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, Commerce preliminarily grants separate rates to each of these companies.

3. Margin for the Separate Rate Companies

The statute and Commerce's regulations do not address the establishment of a separate rate to be applied to individual respondents not selected for individual examination when Commerce limits its examination pursuant to section 777A(c)(2) of the Act. In accordance with Commerce's practice, we assigned to the separate rate entities that were not individually examined a rate equal to the simple average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis*, or based entirely on facts available, as per 735(c)(5)(A) of the Act.[86]

D. Affiliation and Collapsing

We have considered the evidence on the record and preliminarily determine that affiliation exists among Ricai, Dongguan Hengsheng Artwork Co., Ltd. (Hengsheng), a producer of polypropylene films and subject merchandise,[87] and Ricai Film Artwork Material Co., Limited (Ricai Hong Kong), a trading company that exported Ricai's products to the United States during

[85] *Id*. at 2258.

[86] *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).

[87] *See* Ricai Section CD QR at D-2 ("This Factors of Production ("FOP") Questionnaire Response is filed on behalf of {Ricai} . . . and Dongguan Hengsheng Artwork Co., Ltd ("Dongguan Hengsheng", the affiliated supplier of semi-finished main material)); and D-3 ("It is noted that Dongguan Hengsheng also produced the subject merchandise during the POI.").

the POI.[88] Ricai provided a questionnaire response on behalf of itself and – "collectively" – for both other companies described as its affiliates, Ricai Hong Kong and Hengsheng.[89]

Section 771(33) of the Act provides that the following persons shall be considered to be "affiliated" or "affiliated persons":

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

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

> The traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm 'operationally in a position to exercise restraint or direction' over another in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchise or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.[90]

Section 351.102(b)(3) of Commerce's regulations defines affiliated persons and affiliated parties as having the same meaning as in section 771(33) of the Act. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, Commerce considers the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The regulation directs Commerce not to find that control exists on the basis of these factors unless the relationship has "the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product."[91] The regulation also directs Commerce to consider the

[88] *See* Ricai Section A QR at 9.
[89] *See, e.g.*, Ricai Section CD QR at D-1.
[90] *See* SAA, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994) (SAA) at 838.
[91] Section 771(33) of the Act.

temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

Based on the evidence on the record, we preliminarily find that Ricai, Ricai Hong Kong, and Hengsheng are affiliated within the meaning of section 771(33)(F) of the Act.[92]

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

> (1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
> (2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:
> (i) The level of common ownership;
> (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
> (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.[93]

We preliminarily determine to treat Ricai and Hengsheng as a single entity, pursuant to 19 CFR 351.401(f). As noted above, Hengsheng is a producer of polypropylene film and subject merchandise. As such, the affiliated producers have production facilities for similar or identical products that would not require substantial retooling of either facility to restructure manufacturing priorities. Thus, the criterion in 19 CFR 351.401(f)(1) is met. Additionally, we find that the criterion in 19 CFR 351.401(f)(2), the significant potential for manipulation of price or production, is met. Further information related to Commerce's decision to treat Ricai and Hengsheng as a single entity can be found in Ricai's Analysis Memo, issued concurrently with this memorandum.

E. The China-wide Entity

The record indicates there are Chinese exporters and/or producers of the merchandise under consideration during the POI that did not respond to Commerce's requests for information. Specifically, numerous Chinese exporters and/or producers of merchandise under consideration that were named in the Petition and to whom we issued Q&V questionnaires did not provide timely responses to the Q&V questionnaire or submit a timely separate rate application.[94] Because non-responsive Chinese companies have not demonstrated that they are eligible for

[92] The details leading to Commerce's conclusion that the three companies are under common control are business proprietary and discussed in detail in the Ricai Analysis Memo, issued concurrently with this memorandum.
[93] *See* 19 CFR 351.401(f).
[94] *See* Respondent Selection Memorandum. Of the 31 Q&V questionnaire packages sent, we received timely responses from six companies. Nine additional companies also submitted timely responses.

separate rate status, Commerce considers them to be part of the Chinese-wide entity. As explained below, we preliminarily determine to calculate the China-wide rate on the basis of adverse facts available (AFA).

As discussed above, we are not granting separate rate status to certain applicants. Therefore, these applicants will be considered part of the China-wide entity.[95] We have preliminarily assigned the China-wide entity a dumping margin of 370.04 percent, which is the highest calculated rate on the record. *See* the section "*China-Wide Entity and Ricai"* below for details on how this rate was calculated.

E. Application of Facts Available and Adverse Inferences

Section 776(a) 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 Commerce, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to Sections 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, Commerce shall, subject to Section 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

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

Section 776(b) of the Act provides that Commerce 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 so doing, Commerce 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. 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.[96]

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce 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

[95] *See* Appendix III of the *Federal Register* notice issued concurrently with this memorandum.
[96] *See also* 19 CFR 351.308(c).

the Act concerning the subject merchandise.[97] The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value,[98] although, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.[99] To corroborate secondary information, Commerce shall, to the extent practicable, examine the reliability and relevance of the information to be used, although Commerce 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.[100]

Under section 776(d) of the Act, Commerce 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. When selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.

1. Use of Facts Available

China-Wide Entity

Commerce preliminarily finds that the China-wide entity, which includes Chinese exporters and/or producers that did not respond to Commerce's requests for information, failed to provide necessary information, withheld information requested by Commerce, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. Because the China-wide entity failed to provide any information, section 782(d) of the Act is inapplicable. Accordingly, we preliminarily determine that the use of facts available is warranted in determining the rate of the China-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.[101]

Ricai

As explained above, Commerce considers Ricai and its affiliated producer, Hengsheng, to be a single entity under 19 CFR 351.401(f). As noted above, Ricai filed a purportedly consolidated

[97] *See* SAA at 870.
[98] *Id*.; *see also* 19 CFR 351.308(d).
[99] *See* section 776(c)(2) of the Act.
[100] *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).
[101] *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).

response to section D of its questionnaire on behalf of itself and Hengsheng.[102] However, in response to part C of section D of the questionnaire, which asks that FOPs be provided for multiple "locations," Ricai explained: "It is noted that Dongguan Hengsheng also produced the subject merchandise during the POI. However, the subject merchandise produced by Dongguan Hengsheng were not sold to the united states {*sic*} during the POI. Its products are for domestic sales only. As a result, only the production of Dongguan Ricai is taken into account in the weighted average FOP calculation."[103] This was the first time Ricai informed Commerce that Hengsheng produced the merchandise under consideration. Previously, in response to section A of the questionnaire, Ricai stated "Hengsheng only produces and supplies some semi-finished goods for the production of subject merchandise to Dongguan Ricai."[104]

We then issued a supplemental questionnaire asking Ricai to consolidate Hengsheng's FOP information with its own. Ricai responded: "Per the requirement of the Department in this question, Ricai is reporting the FOPs for the ribbons and bows produced by Dongguan Hengsheng to take into account this portion of FOPs into the weighted average FOP calculation."[105] Ricai then provides almost no narrative explanation of how it consolidated Ricai's and Hengsheng's information. It simply notes: "See the updated FOP Calculation Worksheet in Exhibit SSD-5 for the CONNUMs assigned to 'other plastic products' produced by Hengsheng, and the calculation of FOPs related to the subject merchandise produced by Hengsheng. Only PP Ribbons fall into the same CONNUMs as Ricai U.S. Sales."[106] It also adds one sentence regarding how it determined the packing FOPs for Hengsheng. Likewise, Exhibit SSD-5 is an unannotated Excel worksheet, and there is no other narrative information provided that explains how the two sets of data were consolidated or how the new database can be tied to the income statements of Ricai and Hengsheng. Numerous cells in the electronic copy of the Excel worksheet, in fact, contain "dead links," apparent references to cells in other worksheets that Commerce cannot follow. The links create "#REF!" errors and, as stated, there is no narrative to aid Commerce or any interested party to follow the flow of values from one cell or worksheet to another.

Under these circumstances, we determine that necessary information is missing from the record: a narrative explanation supporting the conclusion that the consolidated database was compiled properly and in accordance with section D of the questionnaire, and a comprehensible reconciliation to financial statements ensuring that the revised database is complete. Essentially, Commerce has no reliable consolidated FOP database on the record of this investigation. Because the consolidated database was submitted for the first time on July 11, 2018, Commerce was not able to issue a supplemental questionnaire regarding the consolidation methodology and

[102] *See* Ricai Section CD QR at D-1.
[103] *See* Ricai Section CD QR at D-3. Which market Hengsheng's products are sold in is irrelevant: "Unless otherwise instructed by the Department, you should report factors information for all models or product types in the U.S. market sales listing submitted by you (or the exporter) in response to Section C of the questionnaire, including that portion of the production that was not destined for the United States." *See also* Initial Questionnaire to Ricai at D-1.
[104] *See* Ricai Section A QR at 26.
[105] *See* Letter from Ricai, "Plastic Decorative Ribbons from PRC ("Decorative Ribbons"); A-570-075; Initial Response to Department's Supplemental Questionnaire," dated July 11, 2018 (Ricai Initial Supplemental QR) at 19.
[106] *Id.*

reconciliation in time for this preliminary determination.[107] We therefore determine, in accordance with section 776(a)(1) of the Act, that reliance on the facts otherwise available is necessary for this preliminary determination, because necessary information from Ricai is not available on the record. Because an accurate and reliable FOP database is necessary to determine the weighted average dumping margin for a respondent, we cannot apply "partial" facts available, and will rely on the facts otherwise available (*a.k.a.* "total" facts available) to determine Ricai's dumping margin.

2. Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that Commerce, 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.

China-Wide Entity

Commerce finds that the China-wide entity's failure to provide the requested information constitutes circumstances under which it is reasonable to conclude that the China-wide entity was not fully cooperative.[108] The China-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 China-wide entity in accordance with section 776(b) of the Act and 19 CFR 351.308(a).[109]

Ricai

Commerce finds that Ricai's failure to provide a consolidated FOP database with an accompanying narrative explanation, a comprehensible reconciliation, and a working Excel worksheet, compounded by Ricai's failure at the outset of this investigation to correctly identify Hengsheng as a producer of merchandise under consideration, constitute circumstances under which it is reasonable to conclude that Ricai was not fully cooperative. As noted, Ricai initially informed Commerce that Hengsheng "only produces and supplies some semi-finished goods for the production of subject merchandise to Dongguan Ricai."[110] This inaccuracy was stated in section A of Ricai's questionnaire response, the part of the questionnaire in which fundamental information about a respondent's structure, organization, and affiliations are requested. Commerce relies on this section of the questionnaire response to determine which other potential affiliates may be relevant to the investigation. We cannot make accurate and timely

[107] In light of the circumstances here, we will provide Ricai with another opportunity to offer a complete narrative explanation of its consolidation methodology and reconciliation, to be submitted prior to verification, and if Ricai provides a timely response to this additional request for information, we will consider the response for the final determination.
[108] *See Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that Commerce 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.")).
[109] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).
[110] *See* Ricai Section A QR at 26.

determinations regarding basic questions of affiliation and "collapsing" without an accurate and timely response to this section of the questionnaire. Therefore, Ricai's failure to describe accurately the operations of Hengsheng – when first asked to do so – delayed Commerce from ensuring that consolidated FOP information from Ricai and Hengsheng was provided, which is a critical part of the investigation. Even when Ricai belatedly corrected its error in its response to section D of the questionnaire, noting for the first time that its self-described affiliate was also a producer of plastic decorative ribbons, it compounded the consequences of the delay by taking into account "only the production of {Ricai} . . . in the weighted average FOP calculation," despite its characterization of its section D response as being on behalf of itself and Hengsheng (*i.e.*, a purportedly consolidated response).[111] When Commerce requested that the FOP database be revised to incorporate all Hengsheng production, Hengsheng provided, as described above, another incomplete response, lacking any meaningful narrative or annotations explaining the new database and reconciliation, accompanied by an unworkable Excel worksheet. This second incomplete response was provided despite Commerce providing nearly three weeks for Ricai to revise the database (June 22 to July 11, 2018). Therefore, we conclude that Ricai has failed to cooperate by not acting to the best of its ability in providing complete and reliable FOP information, and thus find, in accordance with section 776(b) of the Act that the use of adverse facts available is warranted.

3. Selection and Corroboration of the Adverse Facts Available (AFA) rate

China-Wide Entity and Ricai

In applying AFA, Commerce may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. In selecting an AFA rate, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. In an investigation, Commerce's practice with respect to the assignment of an AFA rate is to select the higher of: (1) the highest dumping margin alleged in the petition; or (2) the highest calculated dumping margin of any respondent in the investigation. To determine the appropriate rate for the China-wide entity based on AFA, we first examined whether the highest petition margin was less than or equal to the highest calculated margin, and determined that the highest petition margin, 370.04 percent, was the higher of the two. Thus, for the preliminary determination, we have assigned to the China-wide entity and to Ricai a dumping margin of 370.04 percent, which is the highest calculated rate in the petition.[112] Because the AFA rate that Commerce used is from the petition, it is secondary information subject to the requirement to corroborate the information, to the extent practicable.

As discussed in detail in the Initiation Checklist, we considered the EP and NV calculations in the Petition to be reliable. Because we obtained no other information that would make us question the validity of the information supporting the U.S. price or NV calculations provided in

[111] *See* Ricai Section D QR at D-2.
[112] *See* AD and CVD Petitions at 22.

the Petition, we preliminarily consider the EP and NV calculations from the Petition, and thus the dumping margins in the Petition, to be reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. The courts acknowledge that consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry.[113]

To corroborate the 370.04 percent AFA rate that we selected, we compared the 370.04 percent margin to the transaction-specific dumping margins that we calculated for Junlong and Mei Song. We found that the dumping margin of 370.04 percent is lower than the highest transaction-specific dumping margin calculated for the two companies, and therefore is relevant and has probative value. Accordingly, we find that the rate of 370.04 percent is corroborated within the meaning of section 776(c) of the Act.

F. Date of Sale

In identifying the date of sale of the merchandise under consideration, in accordance with 19 CFR 351.401(i), Commerce will normally "use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business" unless a different date better reflects the date on which the material terms of sale (*e.g.*, price and quantity) are established.[114] Junlong and Mei Song reported invoice date as the date of sale. Commerce's normal practice is to rely on the earlier of shipment date or invoice date as the date of sale.[115] Therefore, we preliminarily use the earlier of invoice date or shipment date as the date of sale for Junlong and Mei Song.

G. Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Junlong's and Mei Song's sales of the subject merchandise from China to the United States were made at less than normal value, we compare the export price (EP) to the NV as described in the "Export Price" and "Normal Value" sections of this memorandum.

1. Export Price

Mei Song and Junlong reported that all U.S. sales during the POI were EP in accordance with section 772(a) of the Act. Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or

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[113] *See* Ferro Union, Inc. v. United States, 44 F. Supp. 2d 1310, 1334 (CIT 1999).

[114] *See, e.g., Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Comment 1.

[115] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Brazil*, 67 FR 62134 (Oct. 3, 2002); *Lightweight Thermal Paper From Germany: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 34719 (June 18, 2014), and accompanying Issues and Decision Memorandum at Comment 2; and *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007) (*Thai Shrimp Final AD Administrative Review*), and accompanying Issues and Decision Memorandum at Comment 11.

exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjuste{d}." We preliminarily determine that Junlong's and Mei Song's sales are EP sales because the subject merchandise was first sold to an unaffiliated purchaser in the United States prior to importation and the constructed export price (CEP) methodology was not otherwise warranted based on the facts of the record.

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions to the starting price for discounts and movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight and foreign brokerage and handling. We based movement expenses on surrogate values if the expense was purchased from an NME company in Chinese renminbi.[116]

a. Value-Added Tax (VAT)

In 2012, Commerce 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.[117] Commerce 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, Commerce will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.[118] Where the irrecoverable VAT is a fixed percentage of EP or CEP, Commerce 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.[119]

Commerce'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 the mandatory respondents indicates that according to the Chinese VAT schedule, the standard VAT levy is 17 percent and the rebate rate for the merchandise under consideration is 13 percent for ribbons and 15 percent for bows.[120] Consistent with Commerce's standard methodology, for purposes of this preliminary determination, we removed from U.S. price the amount calculated based on the difference between those standard rates (*i.e.*, two or four percent) applied to the export sales value, consistent with the definition of irrecoverable VAT under Chinese tax law and regulation.

[116] *See* "Factor Valuation Methodology" section below.
[117] *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).
[118] *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.
[119] *Id*.
[120] *See* Mei Song Section CD QR at 37.

2. Normal Value

Section 773(c)(1) of the Act provides that Commerce 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. Commerce 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 Commerce's normal methodologies.[121] Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), we 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.[122]

a. Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by Junlong and Mei Song. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values. When selecting the surrogate values, we considered, among other factors, the quality, specificity, and contemporaneity of the data.[123] As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we 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.[124] A detailed description of surrogate values used for the respondents can be found in the Preliminary SV Memorandum.[125]

For the preliminary determination, we are using Thai import data, as published by GTA, and other publicly available sources from Thailand to calculate surrogate values for respondents' FOPs. In accordance with section 773(c)(1) of the Act, we applied the best available information for valuing FOPs by selecting, to the extent practicable, surrogate values which are (1) non-export average values, (2) contemporaneous with, or closest in time to, the POI, (3) product-

[121] *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).
[122] *See* section 773(c)(3)(A)-(D) of the Act.
[123] *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.
[124] *See Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).
[125] *See* Memorandum to The File, "Antidumping Duty Investigation of Certain Decorative Plastic Ribbons from the People's Republic of China – Surrogate Values for the Preliminary Determination," dated July 30, 2018 (Preliminary Surrogate Values Memorandum).

specific, and (4) tax-exclusive.[126] The record shows that Thai import 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.[127]

We continue to apply our long-standing practice of disregarding surrogate values if we have a reason to believe or suspect the source data may be dumped or subsidized.[128] In this regard, Commerce 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.[129] 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, we find that it is reasonable to infer that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies. Therefore, we have not used prices from those countries in calculating Thai import-based surrogate values.

Additionally, we disregard data from NME countries when calculating Thai import-based per-unit surrogate values.[130] We also excluded from the calculation of Thai import-based per-unit surrogate values imports labeled as originating from an "unidentified" country because we cannot be certain that these imports are not from either an NME country or a country with generally available export subsidies.[131]

We used Thai import statistics from GTA to value raw materials, by-products, and packing materials. In NME AD proceedings, Commerce prefers to value labor solely based on data from the primary surrogate country.[132] In *Labor Methodologies*, Commerce determined that the best

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[126] *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), 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).
[127] *See* Preliminary Surrogate Values Memorandum.
[128] *See* Section 505 of the Trade Preferences Extension Act of 2015, Pub. Law 114-27 (June 29, 2015) (amending Section 773(c)(5) of the Act to permit Commerce 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).
[129] *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; *see also 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; *see also 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; *see also Thai Shrimp Final CVD Determination*, and accompanying Issues and Decision Memorandum at IV.
[130] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China*, 69 FR 75294, 75301 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005).
[131] *Id*.
[132] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

methodology to value labor is to use industry-specific labor rates from the primary surrogate country. Additionally, we determined that the best data source for an industry-specific labor rate is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics.[133] We do 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. In this investigation, we used the Labor Force Survey of Thailand's National Statistical Office, a source Commerce has determined previously to meet the criteria of *Labor Methodologies*.[134]

We used the electricity rate from the Electricity Generating Authority of Thailand to value electricity, and the water rate from the Metropolitan Waterworks Authority to value water. We valued truck freight (for factors of production and U.S. sales) and export brokerage and handling (for U.S. sales) using data published in the *Doing Business in Thailand* by the World Bank, and used a calculation methodology based on standard container weight.[135] We used the financial statements of the Thai company NCI to value factory overhead, selling, general, and administrative expenses, and profit.[136]

3. Determination of the Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, Commerce 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)(l)(B) of the Act. In recent investigations, Commerce 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)(l)(B) of the Act.[137] Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can

[133] *Id*.
[134] *See, e.g. Drawn Stainless Steel Sinks from the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013), and accompanying Issues and Decision Memorandum at Comment 3 and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012) and accompanying Issues and Decision Memorandum at Comment 5.
[135] *Id*.
[136] *Id*.
[137] *See, e.g., Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 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); *see also Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes for Junlong and reported customer names for Mei Song.[138] Regions are defined using the reported destination code *(i.e.*, zip code or state) 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 Commerce 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

[138] *See* Junlong's and Mei Song's Section C Questionnaire Responses.

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, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce 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 this preliminary determination including arguments for modifying the group definitions used in this proceeding.

4. Results of the Differential Pricing Analysis

For Junlong, based on the results of the differential pricing analysis, we preliminarily find that 18.2 percent of the value of U.S. sales pass the Cohen's *d* test, and thus does not confirm the existence of a pattern of prices that differs significantly among purchasers, regions or time periods.[139] Thus, for this preliminary determination, we are applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Junlong.

For Mei Song, based on the results of the differential pricing analysis, we preliminarily find that greater than 33 percent of the value of U.S. sales pass the Cohen's d test, and confirms the existence of a pattern of prices that differs significantly among purchasers, regions or time periods.[140] Further, Commerce finds that the average-to-average method appropriately accounts for such differences because there is not a meaningful difference in the weighted average dumping margins calculated for Mei Song when calculated using the average-to-average method and the average to-transaction method applied to U.S. sales that pass the Cohen's d test. Thus,

[139] *See* Junlong Preliminary Analysis Memorandum, issued concurrently with this memorandum.
[140] *See* Mei Song Preliminary Analysis Memorandum, issued concurrently with this memorandum.

for this preliminary determination, we are applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Junlong and Mei Song.

VII. CURRENCY CONVERSION

We make 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.

VIII. ADJUSTMENT UNDER SECTION 777A(F) OF THE ACT

In applying section 777A(f) of the Act, Commerce examines (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.[141] For a subsidy meeting these criteria, the statute requires Commerce to reduce the antidumping duty by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.[142]

Since Commerce has relatively recently started conducting analyses under section 777A(f) of the Act, Commerce is continuing to refine its practice in applying this section of the law. We examined whether the respondents demonstrated: (1) a subsidies-to-cost link, *e.g.*, subsidy impact on cost of manufacture (COM); and (2) a cost-to-price link, *e.g.*, respondent's prices changed as a result of changes in the COM.

A finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute. As a result of our analyses, we are preliminarily not making a domestic pass-through subsidies adjustment to the calculation of the cash deposit rates for AD duties for Junlong, Mei Song and other companies.

Based upon information they submitted, Junlong and Mei Song failed to substantiate a cost-to-price link. Junlong claims to consider the "cost of raw materials" in setting prices, and that petrochemicals, electricity, and water affect the cost of raw materials. It provided average unit values (AUVs) for these three inputs indicting how they vary by month. It provided no other information, indicating that its price setting process is simple and that such decisions are made informally by sales and production managers. Significantly, Junlong noted it had not changed prices during the POI.[143] Mei Song claims to consider major inputs such as polypropylene, polyethylene, electricity, and labor as the "primary factor" in setting prices. It provided AUVs

[141] *See* section 777A(f)(1)(A)-(C) of the Act.
[142] *See* section 777A(f)(1)-(2) of the Act.
[143] *See* Junlong's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China – Junlong Double Remedies Questionnaire Response," dated July 2, 2018 at 2.

for electricity only. It provided no other information, indicating a simple price setting process in which decisions are made informally and periodically by management.[144] Thus, although Junlong and Mei Song claimed to take plastic and electricity costs into consideration, they provided no supporting information, only charts demonstrating how AUVs of the materials and electricity vary by month, with no attempt to document a connection between that variation and any variation in prices. Consequently, we are not making an adjustment to the AD cash deposit rate for domestic pass-through subsidies for these companies.[145]

In the instant case, the non-individually examined companies eligible for a separate rate are receiving a preliminary dumping margin based on the weighted average of the dumping margins preliminarily determined for Junlong and Mei Song in this investigation. Because these companies received no adjustment, the separate rate companies also will receive no adjustment. For the China-wide entity, which receives an AFA rate as discussed above, we would normally adjust the China-wide entity's AD cash deposit rate by the lowest estimated domestic subsidy pass-through determined for any party in this investigation. In this case, the lowest and only rate is zero, so no adjustment is necessary.

IX. DISCLOSURE AND PUBLIC COMMENT

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.[146] Case briefs may be submitted to Enforcement and Compliance's AD and CVD Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the final verification report is issued in this proceeding. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[147]

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[148] This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.[149] Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a date, time, and location to be determined. Parties will be notified of the date, time, and location of any hearing.

[144] *See* Mei Song's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China – Mei Song Double Remedies Questionnaire Response," dated July 2, 2018 at 2-7.
[145] *See* Yieh Phui Preliminary Analysis Memorandum.
[146] *See* 19 CFR 351.224(b).
[147] *See* 19 CFR 351.309.
[148] *See* 19 CFR 351.309(c)(2) and (d)(2).
[149] *See* 19 CFR 351.310(c).

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.[150] Electronically-filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time on the due dates established above. [151]

X. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted in response to our questionnaires.

XI. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☒ Agree ☐ Disagree

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

July 30, 2018

Date

[150] *See* 19 CFR 351.303(b)(2)(i).
[151] *See* 19 CFR 351.303(b)(1).