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

A-570-075
Investigation
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DATE:	December 21, 2018
MEMORANDUM TO:	P. Lee Smith Deputy Assistant Secretary for Policy and Negotiations
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:	Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) determines that certain plastic decorative ribbon (plastic ribbon) from the People's Republic of China (China) is being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation is April 1, 2017, through September 30, 2017.

We analyzed the comments of the interested parties. As a result of this analysis, and based on our findings at verification, we made certain changes to the margin calculation programs of Dongguan Ricai Plastic Technology Co., Ltd. and Ricai Film Artwork Materials Co., Ltd. (collectively, Ricai), and Ningbo Junlong Craft Gift Co., Ltd. (Junlong). In addition, we recommend applying facts otherwise available, with an adverse inference (AFA), to Dongguan Mei Song Plastic Industry Co., Ltd. (Mei Song). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

Below is the complete list of the issues in this investigation on which we received comments from parties.

<u>Scope Comments</u>
Comment 1: Exclusion for Plastic Garlands and Plastic Tinsel Garlands
Comment 2: Exclusion for Bows Made from Plastic Garland
Comment 3: Exclusion for Easter Grass, Tinsel, and Decorative Packaging Shred
Comment 4: Exclusion for Fabric Ribbon

II. BACKGROUND

On August 8, 2018, Commerce published the *Preliminary Determination* of sales at LTFV of plastic ribbon from China.[1] On August 6, 2018, mandatory respondent Ricai filed an allegation that Commerce made significant ministerial errors in the *Preliminary Determination*.[2] On October 9, 2018, Commerce issued a memorandum determining that the allegations raised by Ricai were methodological in nature and did not constitute ministerial errors as defined by 19 CFR 351.224(f).[3]

On August 1, 2018, Mei Song requested a one-month extension to the company's agreed-upon verification schedule.[4] On August 8, 2018, Commerce granted Mei Song a two-week extension to the start of verification.[5] On August 9, 2018, Mei Song requested a full "exemption" from verification.[6] In response, Commerce informed Mei Song that verification is required by statute in investigations and denied Mei Song's request for an "exemption."[7] Because Mei Song did not allow Commerce to conduct verification of its questionnaire responses, Commerce was unable to verify any information submitted by Mei Song.

From August 13, 2018, to August 18, 2018, we conducted the verifications of mandatory respondents Ricai and Junlong in accordance with section 782(i) of the Act. Berwick Offray LLC (the petitioner), Ricai, and Junlong submitted case briefs on October 16, 2018 (Ricai and Junlong submitted case briefs on October 16, 2018, and petitioner resubmitted its case brief on October 22, 2018).[8] On October 26, 2018, the petitioner, Ricai, and Junlong submitted rebuttal briefs.[9] Commerce released post-preliminary calculations for Ricai on October 26, 2018 to

[1] *See Certain Plastic Decorative Ribbon from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 83 FR 39058 (August 8, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Ricai's Letter, "Plastic Decorative Ribbons from PRC ("Decorative Ribbons"); A-570- 075; Ministerial Error Allegation," dated August 6, 2018.

[3] *See* Memorandum, "Ministerial Error Memorandum for the Affirmative Preliminary Determination of the Antidumping Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China," dated October 9, 2018.

[4] *See* Mei Song's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China – Extension of Time Request for Mei Song's On-Site Verification," dated August 1, 2018.

[5] *See* Commerce's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China – Revised Dates for Verification," dated August 8, 2018.

[6] *See* Mei Song's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China – Response to Department Letter Regarding Verification," dated August 9, 2018.

[7] *See* Commerce's Letter, "Less-Than-Fair-Value Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China: Response to Mei Song's Request for Exemption from Verification," dated August 17, 2018.

[8] *See* Petitioner's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China: Resubmission of Case Brief with Certain Information Unredacted Pursuant to the Department's Request," dated October 22, 2018 (Petitioner's Case Brief); *see also* Ricai's Letter, "Re: Certain Decorative Ribbons from the PRC; A-570-075; Case Brief," dated October 16, 2018 (Ricai's Case Brief); *see also* Junlong's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China: Junlong Case Brief," dated October 16, 2018 (Junlong's Case Brief).

[9] *See* Petitioner's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China: Rebuttal Brief," dated October 26, 2018 (Petitioner's Rebuttal Brief); *see also* Ricai's Letter, "Certain Plastic Decorative Ribbon from the PRC; A-570-075; Ricai Rebuttal Case Brief," dated October 26, 2018 (Ricai's Rebuttal Brief); *see also*

incorporate additional information requested and received from Ricai, and to allow parties to comment on proposed methodologies and surrogate values in the event that we determined it appropriate to calculate a final rate for Ricai for the final determination.[10] Between November 7, 2018, and November 8, 2018, the petitioner and Ricai submitted case and rebuttal brief comments limited to issues raised in Ricai's post-preliminary calculations.[11]

On November 9, 2018, and November 12, 2018, Target Corporation and the petitioner withdrew their requests to hold a public hearing to discuss the scope of this investigation.[12] On November 16, 2018, Commerce held a public hearing to discuss general investigation issues.[13]

III. SCOPE COMMENTS

In accordance with the *Preliminary Determination*, Commerce set aside a period of time for parties to address scope issues in case briefs prior to the final determination.[14] On September 5, 2018, the petitioner submitted a scope clarification request to exclude certain plastic garlands and plastic tinsel garlands from the scope, and on September 7, 2018, Greenbrier International, Inc. (Greenbrier) submitted a response in agreement with the petitioner's request.[15] On September 17, 2018, Commerce declined to issue such a clarification, noting that the petitioner's and Greenbrier's submissions would be considered along with all other comments submitted by interested parties in the final determination.[16] On September 24, 2018, the petitioner and

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Junlong's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China – Junlong Rebuttal Brief," dated October 26, 2018 (Junlong's Rebuttal Brief).

[10] *See* Memorandum, "Ricai Post-Preliminary Analysis Memorandum," dated October 26, 2018 (Ricai Post-Prelim Calc Memo).

[11] *See* Petitioner's Letter, "Certain Plastic Decorative Ribbons from the People's Republic of China: Resubmission of Comments on the Department's Post-Preliminary Calculations for Ricai," dated November 7, 2018 (Petitioner Post-Prelim Calc Comments); *see also* Ricai's Letter, "Certain Plastic Decorative Ribbons from the PRC; A-570-075; Resubmission of Calculation Brief," dated November 8, 2018 (Ricai Post-Prelim Calc Comments); *see also* Petitioner's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China: Rebuttal Comments on the Department's Post-Preliminary Calculations for Ricai," dated November 8, 2018 (Petitioner Post-Prelim Rebuttal Calc Comments); *see also* Ricai's Letter, "Certain Plastic Decorative Ribbons from the PRC; A-570-075; Rebuttal Case Brief on Calculations Brief," dated November 8, 2018 (Ricai Post-Prelim Rebuttal Calc Comments).

[12] *See* Target's Letter, "Antidumping Duty Investigation on Certain Plastic Decorative from the People's Republic of China: Withdraw Hearing Request," dated November 9, 2018 (Target Withdrawal Request); *see also* Petitioner's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China: Partial Withdrawal of Request for Hearing," dated November 12, 2018 (Petitioner Withdrawal Request).

[13] *See* Memorandum, "Re: Less-Than-Fair-Value Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China," dated November 13, 2018 (Hearing Schedule).

[14] *See* Memorandum from Edward Yang, "Certain Plastic Decorative Ribbon from the People's Republic of China: Scope Comments Preliminary Decision Memorandum," dated July 30, 2018 (Preliminary Determination Scope Memo).

[15] *See* Letter from the petitioner, "Certain Plastic Decorative Ribbon from the People's Republic of China: Request for Scope Clarification," dated September 5, 2018 (Petitioner Scope Clarification Request), and Letter from Greenbrier, "Certain Plastic Decorative Ribbon from the People's Republic of China: Response to Petitioner's Request for Scope Clarification," dated September 7, 2018 (Greenbrier Scope Clarification Request).

[16] *See* Memorandum to the File, "Certain Plastic Decorative Ribbon from the People's Republic of China: Response to Requests for a Scope Clarification," dated September 17, 2018 (Scope Clarification Memo).

Greenbrier submitted scope case briefs,[17] and on October 1, 2018, the petitioner and Target Corporation (Target) submitted scope rebuttal briefs.[18]

In accordance with the comments discussed below, which include the petitioner's and Greenbrier's submissions regarding a scope clarification, we have made certain changes to the final scope of these investigations. These changes include clarifications regarding the measurement of the width of a bow in paragraph one; ribbon formed into a bow with non-plastic decorative coatings in clause four of paragraph five; and shredded plastic film or shredded plastic strip in paragraph six. Other changes to the scope language include additional exclusions for fabric ribbon, cords, plastic garlands and plastic tinsel garlands, and ribbon made from both plastic and non-plastic strands. The final scope of the investigation is included at Appendix I.

IV. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on our review and analysis of the comments from interested parties, minor corrections presented at verifications, and various issues identified, we made certain changes to the margin calculations for each respondent. Specifically, we made the changes discussed below.

A. Mei Song

In proceedings involving non-market economy (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.[19] In the *Initiation Notice*, Commerce notified parties of the application process by which exporters may obtain separate rate status in this investigation.[20] The process requires exporters to submit a separate rate application (SRA)[21] and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities.

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.[22] Commerce analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test

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[17] *See* Petitioner's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China: Scope Case Brief," dated September 24, 2018 (Petitioner Scope Comments), and Greenbrier's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China: Greenbrier's Scope Case Brief," dated September 24, 2018 (Greenbrier Scope Comments).
[18] *See* Petitioner's Letter, "Certain Plastic Decorative Ribbon from The People's Republic Of China: Scope Rebuttal Brief," dated October 1, 2018 (Petitioner Scope Rebuttal Comments), and Target's Letter, "Antidumping and Countervailing Duty Investigations on Certain Plastic Decorative from the People's Republic of China: Rebuttal Scope Brief," dated October 1, 2018 (Target Scope Rebuttal Comments).
[19] *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).
[20] *See Initiation Notice*.
[21] *See* Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005) (Policy Bulletin 05.1), available at http://enforcement.trade.gov/policv/bull05-1.pdf.
[22] *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*).

established in *Sparklers* and further developed in *Silicon Carbide*.[23] 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, however, Commerce determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

As discussed in the *Preliminary Determination*, Mei Song submitted a timely response to the separate rate questions included in the initial questionnaire. Commerce preliminarily granted Mei Song a separate rate based on an analysis of data provided by Mei Song with respect to *de jure* and *de facto* criteria. This information was among the information that Commerce intended to examine at verification.[24] However, as noted above, Mei Song did not allow verification of its questionnaire responses.

In case briefs, the petitioner requested that Commerce apply adverse facts available to Mei Song. We disagree. Rather, our policy with respect to mandatory respondents in NME countries that prevent us from conducting verification of its questionnaire responses, including its claim that it is not under *de facto* or *de jure* government control, is to deny eligibility for a separate rate.[25]

Although Mei Song claimed that it was not possible to participate in verification because of its limited staff, we find this claim to be unpersuasive. Companies both small and large have successfully completed verification, and Mei Song did not mention or otherwise imply any difficulties in preparing for verification until after the *Preliminary Determination*.

We are also unpersuaded by Mei Song's claim that it was "not possible to prepare verification within less than 30 days" after receiving the verification outline. Mei Song had over five months to prepare for verification and had been aware for several weeks of the exact dates during which Commerce planned to conduct verification. As we stated in the verification outline, verification is not an opportunity to submit new information; rather it is intended to retrace the steps taken by Mei Song in preparing its questionnaire responses. Therefore, if Mei Song was able to prepare the questionnaire responses, as it did, then verification should be possible. The petitioner noted these same facts in its letter requesting that Commerce not grant Mei Song an extension of time to prepare for verification. Nonetheless, following the postponement of the final determination deadline, Commerce partially granted Mei Song's last-minute request to postpone verification by offering Mei Song a two-week extension to the start of verification, and reminded Mei Song that verification is required by statute in an investigation. This extension provided Mei Song with a full twenty-two days to prepare for verification since the issuance of the verification outline. Despite the additional time, in a subsequent letter, Mei Song reiterated that it still was not

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[23] *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*).
[24] *See* Commerce Letter re: Certain Plastic Decorative Ribbon from the People's Republic of China: Verification Agenda for Dongguan Mei Song Plastic Industry Co., Ltd., dated July 30, 2018, at 7-9.
[25] *See, e.g., Certain Tool Chest and Cabinets from the Socialist Republic of Vietnam, Final Affirmative Determination of Sales at Less Than Fair Value, 83 FR 15365, (April 10, 2018) and accompanying Issues and Decision Memorandum at 3; see also Cast Iron Soil Pipe Fittings from the Peoples Republic of China, Final Affirmative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 83 FR 33205 (July 17, 2018) and accompanying Issues and Decision Memorandum at 5 and comment 1.

possible to conduct verification.

Because Mei Song prevented us from conducting verification of its questionnaire responses, including its claim that it is not under *de facto* or *de jure* government control, consistent with sections 782(e) and (i) of the Act, we find that Mei Song has failed to demonstrate its eligibility for separate rate status. Thus, for purposes of this final determination, Mei Song will be considered part of the China-wide entity.

B. Ricai

1. In the preliminary decision memorandum for this investigation, Commerce determined that certain necessary information related to Ricai's FOP database was missing from the record, and applied total adverse facts available for the *Preliminary Determination*.[26] Commerce issued a clarification questionnaire due three days after the *Preliminary Determination* in order to obtain, among other things, the explanatory FOP narrative needed to conduct Ricai's verification of its questionnaire responses.[27] Commerce received Ricai's timely clarification response on August 2, 2018, and determined that it provided sufficient explanatory narrative such that the verification of Ricai's FOP database, as well as its other questionnaire responses, could proceed on August 13, 2018.[28]
2. Commerce accepted three minor corrections from Ricai during its verification held from August 13, 2018, to August 17, 2018.[29] These corrections involved small changes to the calculated weight of reel paper core, the weighted average unit costs of certain packing materials, and the labor hours associated with metallizing company Dongguan Changsheng Packing Materials Co., Ltd. (Dongguan Changsheng).[30] Because Commerce verified the consolidated FOP database provided by Ricai that included these errors, corrections to these three issues were manually entered into the database used to calculate Ricai's final margin.
3. As noted above, on October 26, 2018, Commerce released post-preliminary calculations for Ricai to incorporate additional information requested and received from Ricai and to allow all parties to comment on proposed methodologies and surrogate values in the event that we determined it appropriate to calculate a rate for Ricai for the final determination.[31] Commerce's analysis of the record, coupled with consideration of comments from both parties, resulted in the following changes to Ricai's post-preliminary calculations:

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[26] *See* PDM at 21-24.
[27] *See* Commerce's Letter, "Re: Sections A and D Response Clarification Questionnaire in the Antidumping Duty Investigation of Plastic Decorative Ribbon from the People's republic of China," dated July 26, 2018 (Ricai Clarification Questionnaire).
[28] *See* Ricai's Letter, "Plastic Decorative Ribbons from PRC ("Decorative Ribbons); A-570-075; Response to Department's Clarification Questionnaire," dated August 2, 2018 (Ricai Clarification Response).
[29] *See* Memorandum, "Verification of the Questionnaire Responses of Dongguan Ricai Plastic Technology Co., Ltd., Ricai Film Artwork Materials Co., Ltd., Dongguan Hengsheng Artwork Co., Ltd., and Dongguan Changsheng Packing Materials Co., Ltd. in the Antidumping Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China," dated October 9, 2018 (Ricai Verification Report) at 2.
[30] *Id.* at 2 and Exhibit 1.
[31] *See* Ricai Post-Prelim Calc Memo.

a. Date of Sale: Commerce has selected the earlier of the commercial invoice date or the shipping date, rather than the shipping date alone, as the date of sale for Ricai. *See* Comment 13a below for more information.
b. Surrogate Value for Plastic Bag Input: Commerce has selected Thai HTS number 3923.29, "Sacks and Bags (Including Cones), of Plastics Nesoi," as the basis for Ricai's plastic bag surrogate value (SV) input. *See* Comment 14 below for more information.
c. Point-of-Sale Packaging: Commerce is treating all packaging inputs except for display cartons and cardboard boxes as direct material inputs. *See* Comment 20 below for more information.

C. Junlong

1. Commerce found at verification that certain single line items on some commercial invoices were reported as separate line items in the sales database, rather than as one line item. We are collapsing each of these sales (and their related costs) into a single line item (with its own control number (CONNUM)) for the final determination.[32]
2. We are changing the SV we use to value plastic cards for this final determination. *See* Comment 19 below for more information.
3. To account for certain unreported tolling expenses, we are applying partial AFA by increasing labor and energy (water and electricity) expenses. *See* Comment 12d below for more information.
4. To account for misreported product characteristics that affect the reported factors of production, we are applying partial AFA by using the highest reported FOPs for the missing factors for the sale in question. *See* Comment 12b below for more information.
5. Because Junlong misreported U.S. destination for numerous sales, we are applying AFA, and as a result, finding there is a pattern of export prices (EPs) that differ significantly among regions (*i.e.*, finding that all sales pass the Cohen's *d* test). *See* Comment 12c below for more information.
6. Certain sales which we had treated as sample sales in the *Preliminary Determination* were not sample sales. We have included these sales in this final determination. *See* Junlong Final Analysis Memorandum for a full explanation.

V. CHINA -WIDE ENTITY AND USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

In the *Preliminary Determination* we preliminarily found that the China-wide entity included numerous Chinese exporters and/or producers that did not provide timely responses to our quantity and value (Q&V) questionnaire or submit a timely separate rate application, and thus did not demonstrate their eligibility for a separate rate.[33] We preliminarily determined that the use of facts available was warranted in determining the rate for the China-wide entity.[34]

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[32] *See* Memorandum to the File, "Ningbo Junlong Craft Gift Co., Ltd.: Final Analysis Memorandum," dated concurrently with this IDM (Junlong Final Analysis Memorandum).
[33] *See* PDM at 19-20; Appendix III of *Preliminary Determination*.
[34] *See* PDM at 21.

Additionally, we preliminarily found that the application of AFA was warranted in determining a rate for the China-wide entity because the entity's failure to provide the requested information constitutes circumstances under which it was reasonable to conclude that the entity was not cooperative.[35] In the *Preliminary Determination*, we relied on the highest petition rate of 370.04 percent as the rate applicable to the China-wide entity, and corroborated this rate.[36]

No interested parties commented on these preliminary determinations. Therefore, for the final determination, we continue to apply AFA to the China-wide entity, which includes Mei Song[37] and the Chinese exporters and/or producers that did not provide timely responses to our Q&V questionnaire or submit a timely separate rate application.

VI. DISCUSSION OF THE ISSUES

Comment 1: Exclusion for Plastic Garlands and Plastic Tinsel Garlands

Petitioner's Comments:[38]

- Commerce exercises broad discretion in defining and clarifying the scope of investigations, with particular deference to the petitioner. The petitioner believes that the addition of clarifying language that excludes plastic garlands and plastic tinsel garlands from the scope will ensure that products that the petitioner never intended to be included as part of the investigation will not be treated as subject merchandise.
- Although the petitioner had previously denied Greenbrier's request to exclude bows made from plastic garland in the *Preliminary Determination*,[39] the petitioner acknowledges that certain plastic garlands and plastic tinsel garlands are clearly distinct products from plastic decorative ribbon and should thus be specifically excluded from the scope. The exclusion of certain plastic garlands and plastic tinsel garlands, based on a precise definition of such products, will allow for a necessary, yet measured, tailoring of the scope.
- The petitioner requests the following language to be added to the scope:

  Plastic garlands and plastic tinsel garlands, imported in lengths of not less than three (3) feet, are excluded from the scope of the investigation. The longitudinal base of these garlands may be made of wire or non-wire material, and these garlands may include plastic die-cut pieces. Also excluded are items of decor made of plastic garland and/or plastic tinsel where the items do not have a tab or other means for attaching the decor item to an object using adhesives, including such decor items in the shape of wreaths, trees, hearts, and animals. This exclusion does not apply to plastic garland bows, plastic tinsel bows, or other bow-like products made of plastic garland or plastic tinsel.

[35] *Id.* at 23.
[36] *Id*.
[37] See *supra* section IV.A (Changes Since the Preliminary Determination; Mei Song).
[38] *See* Petitioner Scope Clarification Request and Petitioner Scope Comments at 4-5.
[39] *See* Preliminary Determination Scope Memo at 15-16.

Greenbrier's Comments:[40]

- Greenbrier consents to the petitioner's request and its proposed language to exclude plastic garlands and plastic tinsel garlands from the scope. Greenbrier reiterates that such products are clearly a separate class of merchandise and were never intended to be subject to these investigations, and it supports Commerce's established practice of providing ample deference to petitioners with respect to the definition of products for which they seek relief during investigations.

Target's Rebuttal Comments:[41]

- Target believes that Commerce should continue to defer to the petitioner on scope issues and consents to all the petitioner's proposed modifications, as such changes are necessary to clarify the petitioner's intent and avoid confusion regarding how future orders should be applied.

Commerce Position: Given Commerce's practice of providing ample deference to the petitioner with respect to the definition of the product for which they seek relief, and the consent of Greenbrier and Target to the proposed changes, we determine that the change to the language of the scope is warranted.[42] Furthermore, the petitioner clearly states that this modification to the scope would more accurately reflect the intent of the petitioner, which warrants a change in the scope as previously defined.[43] The precise description of plastic garlands and plastic tinsel garlands to be excluded, along with the continued inclusion of bows made from these materials as subject merchandise, allows for an unambiguous tailoring of the scope in line with the intent of the petitioner. Although a change to the scope language is warranted, we believe that the list of example items is unnecessary, as the scope is intended to exclude *all* items made of plastic garland and/or plastic tinsel that do not have a means for attaching the item to an object using adhesives and are not bows or bow-like products. To be clear, we agree that those examples would be excluded from the scope, but we also believe that if those examples were described specifically in the scope, it would lead to confusion with respect to other items made of plastic garland and/or plastic tinsel. Additionally, although the proposed exclusion language references "items of *decor*" and "*decor* items" (emphasis added) we find that the use of "decor" is unnecessary and undefined, and that this undefined term would introduce ambiguity and confusion into the scope. Given that no other party has opposed this modification, we are thus partially adopting the petitioner's proposed scope language as follows:

> The scope of the investigation excludes plastic garlands and plastic tinsel garlands, imported in lengths of not less than three (3) feet. The longitudinal base of these garlands may be made of wire or non-wire material, and these garlands may include plastic die-cut pieces. Also excluded are items made of plastic garland and/or plastic tinsel where the items do not have a tab or other means for

[40] *See* Greenbrier Scope Clarification Request and Greenbrier Scope Comments at 2-5.
[41] *See* Target Scope Rebuttal Comments.
[42] *See e.g.*, *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires 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*, 80 FR 34893 (June 18, 2015) (Truck Tires) and accompanying Issues and Decision Memo (IDM) at Comment 1.
[43] *Id.* at Comment 5.

attaching item to an object using adhesives. This exclusion does not apply to plastic garland bows, plastic tinsel bows, or other bow-like products made of plastic garland or plastic tinsel.

Comment 2: Exclusion for Bows Made from Plastic Garland

Greenbrier's Comments:[44]

- Bows made from plastic tinsel garland and formed from plastic sheet are different products than bows made from plastic ribbon. As stated above, plastic ribbon is a distinct product from plastic sheet, and the current scope language refers to bows made of plastic ribbon. Greenbrier bows made from plastic garland are distinct from subject merchandise and should therefore be excluded from the scope.
- Simply because the end product is a bow does not mean that it is made of subject merchandise, as there are many other bows outside of the scope (*i.e.* clause 4 and clause 9 of paragraph five in the scope, and bows made from excluded materials).

Petitioner's Rebuttal Comments:[45]

- An exclusion of bows made from plastic garland is unnecessary, as a bow made from plastic garland is considered subject merchandise as long as it meets the physical parameter of the scope, regardless of whether it was formed from a ribbon, a sheet, or a garland. Excluding otherwise subject merchandise because it is made from garland could unduly limit the extent of the investigation.

Commerce's Position: Given the petitioner's opposition to adding the language proposed by Greenbrier, and Commerce's practice of providing ample deference to the petitioner with respect to the definition of the product for which they seek relief, we determine that the suggested change to the language of the scope is not warranted.[46] Absent a concern that the definition of a proposed scope cannot be effectively administered,[47] that there exist potential concerns of evasion and circumvention without amendment,[48] or that the scope language is inconsistent with the intent of the petitioner or industry support, Commerce generally will accept the scope as defined in the petition of the investigation. Furthermore, the petitioners clearly state that any exclusion for plastic garlands and plastic tinsel garlands does not apply to plastic garland bows (*see* Comment 1, above). We are thus not adopting the proposed exclusion language for bows made from plastic garland.

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[44] *See* Greenbrier Scope Comments at 8-9.
[45] *See* Petitioner's Rebuttal Comments at 5.
[46] *See* Truck Tires and accompanying IDM at Comment 1.
[47] *Id.* at 5.
[48] *Id.*

Comment 3: Exclusion for Easter Grass, Tinsel, and Decorative Packaging Shred

Petitioner's Comments:[49]

- Although Commerce partially adopted the petitioner's proposed language regarding these products in the *Preliminary Determination*,[50] the petitioner requests that Commerce further clarify the scope. Specifically, the new language should acknowledge that not all merchandise covered by the clarification is "imported in bags," and should include the typical labeling of such merchandise.
- The petitioner requests the following modification to the scope language (emphasis added to denote the proposed changes):

  The scope of the investigation excludes 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, *typically labeled as artificial Easter grass, tinsel, or decorative packaging shred*.

Greenbrier's Comments:[51]

- Although Greenbrier requests that Commerce continue to include certain shredded plastic film or shredded plastic strip from the scope of these investigations, it did not respond to the petitioner's proposed language.

Target's Rebuttal Comments:[52]

- Target believes that Commerce should continue to defer to the petitioner on scope issues and consents to all the petitioner's proposed modifications, as such changes are necessary to clarify the petitioner's intent and avoid confusion regarding how future orders should be applied.

Commerce Position: Given Commerce's practice of providing ample deference to the petitioner with respect to the definition of the product for which they seek relief, as well as Target's consent to the proposed language and Greenbrier's consent to exclude certain shredded plastic film or shredded plastic strip from the scope, we continue to determine that the exclusion for shredded film and plastic strip is warranted.[53] Furthermore, the petitioner clearly states that this modification to the scope would more accurately reflect the intent of the petitioner, which warrants a change in the scope as previously defined.[54] Although we find it is necessary to clarify that not all merchandise covered by the exclusion is "imported in bags," we believe that incorporating a list of typical labeling for such merchandise is unnecessary, as the scope is intended to exclude all shredded plastic film or shredded plastic strip regardless of how such merchandise is labeled. Given that no other party has opposed this modification, we are thus partially adopting the petitioner's proposed scope language by eliminating the phrase, "imported in bags," as follows:

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[49] *See* Petitioner Scope Comments at 5-6.
[50] *See* Preliminary Determination Scope Memo at 10-11.
[51] *See* Greenbrier Scope Comments at 5-6.
[52] *See* Target Scope Rebuttal Comments.
[53] *See* Truck Tires and accompanying IDM at Comment 1.
[54] *Id.* at Comment 5.

The scope of the investigation excludes 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.

Comment 4: Exclusion for Fabric Ribbon

Petitioner's Comments:[55]

- Although the petitioner had previously denied Target's request to exclude bows made from fabric ribbon in the *Preliminary Determination*,[56] the petitioner acknowledges that certain fabric ribbon is clearly distinct from plastic decorative ribbon and thus should be specifically excluded from the scope. The exclusion of certain fabric ribbon, based on a precise definition of such products, will allow for a necessary, yet measured, tailoring of the scope.
- The petitioner requests the following language to be added to the scope:

  Excluded are ribbons made exclusively of fabric formed by weaving or knitting threads together, or by matting, condensing or pressing fibers together to create felt fabric, regardless of thread or fiber composition, including without limitation, fabric ribbons of polyester, nylon, acrylic or terylene threads or fibers. This exclusion does not apply to plastic ribbons that are flocked.

Target's Rebuttal Comments:[57]

- Target believes that Commerce should continue to defer to the petitioner on scope issues and consents to all the petitioner's proposed modifications, as such changes are necessary to clarify the petitioner's intent and avoid confusion regarding how future orders should be applied.

Commerce Position: Given Commerce's practice of providing ample deference to the petitioner with respect to the definition of the product for which they seek relief, and the consent of Target to the proposed changes, we determine that the change to the language of the scope is warranted.[58] Furthermore, the petitioner clearly states that this modification to the scope would more accurately reflect the intent of the petitioner, which warrants a change in the scope as previously defined.[59] The precise description of fabric ribbon to be excluded allows for an unambiguous tailoring of the scope in line with the intent of the petitioner. Given that no other party has opposed this modification, we are thus adopting the petitioner's proposed scope language.

[55] *See* Petitioner Scope Comments at 6-7.
[56] *See* Preliminary Determination Scope Memo at 6-7.
[57] *See* Target Scope Rebuttal Comments.
[58] *See* Truck Tires and accompanying IDM at Comment 1.
[59] *Id.* at Comment 5.

Comment 5: Exclusion for Cords

Petitioner's Comments:[60]

- Although the petitioner continues to believe that the scope language is clear on its face, it requests clarifying language regarding the exclusion of cords, which the petitioner never intended to be included as part of the investigation.
- The petitioner requests the following language to be added to the scope:

  Excluded from the scope are cords, *i.e.*, multiple strands of materials that have been braided, gimped or twisted together to form a cord.

Target's Rebuttal Comments:[61]

- Target believes that Commerce should continue to defer to the petitioner on scope issues and consents to all the petitioner's proposed modifications, as such changes are necessary to clarify the petitioner's intent and avoid confusion regarding how future orders should be applied.

Commerce Position: Given Commerce's practice of providing ample deference to the petitioner with respect to the definition of the product for which they seek relief, and the consent of Target to the proposed changes, we determine that the change to the language of the scope is warranted.[62] Furthermore, the petitioner clearly states that this modification to the scope would more accurately reflect the intent of the petitioner, which warrants a change in the scope as previously defined.[63] Although an additional exclusion for cords is warranted, we believe that the description provided by the petitioner would be more precise without referencing "cord" in the definition of such merchandise. Given that no other party has opposed this modification, we are thus partially adopting the petitioner's proposed scope language as follows:

> Excluded from the scope are cords, *i.e.*, multiple strands of materials that have been braided, gimped or twisted together.

Comment 6: Clarification of the Exclusion for Ribbon Formed into a Bow with Non-Plastic Decorative Coatings

Petitioner's Comments:[64]

- Although the petitioner had previously denied Target's request to exclude ribbon formed into a bow with non-plastic decorative coatings, such as glitter, in the *Preliminary Determination*,[65] the petitioner now agrees that adding clarifying language is necessary to reflect the petitioner's intended scope of the investigation.
- The petitioner requests the following language to be added to the scope (emphasis added to denote the proposed changes):

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[60] *See* Petitioner Scope Comments at 7.
[61] *See* Target Scope Rebuttal Comments.
[62] *See* Truck Tires and accompanying IDM at Comment 1.
[63] *Id.* at Comment 5.
[64] *See* Petitioner Scope Comments at 8.
[65] *See* Preliminary Determination Scope Memo at 9.

> Excluded from the scope is ... (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 flocked, made of fabric *or covered by any other decorative coating such as glitter (whether of plastic or non-plastic materials)*, and (b) a flexible metal wire at the base which permits attachment to an object by twist-tying.

Target's Rebuttal Comments:[66]

- Target believes that Commerce should continue to defer to the petitioner on scope issues and consents to all the petitioner's proposed modifications, as such changes are necessary to clarify the petitioner's intent and avoid confusion regarding how future orders should be applied.

Commerce Position: Given Commerce's practice of providing ample deference to the petitioner with respect to the definition of the product for which they seek relief, and the consent of Target to the proposed changes, we determine that the change to the language of the scope is warranted.[67] Furthermore, the petitioner clearly states that this modification to the scope would more accurately reflect the intent of the petitioner, which warrants a change in the scope as previously defined.[68] Given that no other party has opposed this modification, we are thus adopting the petitioner's proposed scope language, but have added punctuation in the by adding a comma between the phrases "made of fabric" and "or covered by any other decorative coating."

Comment 7: Exclusion for Ribbon Made of Both Plastic and Non-Plastic Strands

Petitioner's Comments:[69]

- Although the petitioner had previously denied Target's request to exclude ribbon comprised of both plastic and non-plastic strands in the *Preliminary Determination*,[70] the petitioner now agrees that this type of ribbon is not intended to be covered in the investigation and believes that the addition of clarifying language is necessary.
- The petitioner requests the following language to be added to the scope:

> Ribbons having a width of less than 3 millimeters when incorporated by weaving into mesh material (whether flat or tubular) or fabric ribbon, meaning ribbon formed by weaving all or any of the following: man-made fibers, natural fibers, metal threads and/or metalized yarns, in each case only where the mesh material or fabric ribbon is imported in the form of a decorative bow or a decorative bow like-like item.

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[66] *See* Target Scope Rebuttal Comments.
[67] *See* Truck Tires and accompanying IDM at Comment 1.
[68] *Id.* at Comment 5.
[69] *See* Petitioner Scope Comments at 9.
[70] *See* Preliminary Determination Scope Memo, at 8.

Target's Rebuttal Comments:[71]

- Target believes that Commerce should continue to defer to the petitioner on scope issues and consents to all the petitioner's proposed modifications, as such changes are necessary to clarify the petitioner's intent and avoid confusion regarding how future orders should be applied.

Commerce's Position: Given Commerce's practice of providing ample deference to the petitioner with respect to the definition of the product for which they seek relief, and the consent of Target to the proposed changes, we determine that the change to the language of the scope is warranted.[72] Furthermore, the petitioner clearly states that this modification to the scope would more accurately reflect the intent of the petitioner, which warrants a change in the scope as previously defined.[73] The precise description of the merchandise to be excluded allows for an unambiguous tailoring of the scope in line with the intent of the petitioner. Given that no other party has opposed this modification, we are thus partially adopting the petitioner's proposed scope language as follows (which corrects a typo and adds additional punctuation):

> The scope of the investigation excludes ribbons having a width of less than three (3) mm when incorporated by weaving into mesh material (whether flat or tubular) or fabric ribbon (meaning ribbon formed by weaving all or any of the following: man-made fibers, natural fibers, metal threads and/or metalized yarns), in each case only where the mesh material or fabric ribbon is imported in the form of a decorative bow or a decorative bow-like item.

Comment 8: Clarification Regarding the Measurement of the Width of Ribbon

Petitioner Comments:[74]

- Although the petitioner had previously denied Target's request to clarify the width measurement of ribbon in the *Preliminary Determination*,[75] the petitioner now agrees that this type of clarification is necessary to reflect the intended scope of the investigation.
- The petitioner requests the following language to be added to the scope (emphasis added to denote the proposed changes):

> 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, *but disregarding any minor decorative or functional features that measure 4 inches or less in width, such as tapering or cutting at the ends or in a bow knot provided that aggregate length of such decorative features comprises no more than 20% of the length of the ribbon*.

[71] *See* Target Scope Rebuttal Comments.
[72] *See* Truck Tires and accompanying IDM at Comment 1.
[73] *Id.* at Comment 5.
[74] *See* Petitioner Scope Comments at 9-10.
[75] *See* Preliminary Determination Scope Memo at 11-12.

Target's Rebuttal Comments:[76]

- Target believes that Commerce should continue to defer to the petitioner on scope issues and consents to all the petitioner's proposed modifications, as such changes are necessary to clarify the petitioner's intent and avoid confusion regarding how future orders should be applied.

Commerce's Position: Given Commerce's practice of providing ample deference to the petitioner with respect to the definition of the product for which they seek relief, and the consent of Target to the proposed changes, we determine that the change to the language of the scope is warranted.[77] Furthermore, the petitioner clearly states that this clarification to the scope would more accurately reflect the intent of the petitioner, which warrants a change in the scope as previously defined.[78] The precise description of width measurement allows for an unambiguous tailoring of the scope in line with the intent of the petitioner. Although a change to the scope language is warranted, we believe that use of the phrase "minor decorative or functional" and the term "decorative" to describe subject features is unnecessary, and that these undefined terms would introduce ambiguity in the scope. Given that no other party has opposed this modification, we are thus partially adopting the petitioner's proposed scope language as follows:

> 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, but disregarding any features that measure 4 inches or less in width, such as tapering or cutting at the ends or in a bow knot, provided that aggregate length of such features comprises no more than 20% of the length of the ribbon.

Comment 9: Exclusion for Swirl Decorations

Greenbrier's Comments:[79]

- Swirl decorations are made by cutting a plastic sheet in a circular pattern, which can then be expanded to create a whirling/spinning effect. The petitioner has already excluded similar material in the scope, namely "imitation raffia made of plastics having a thickness not more than one mil when measured in an unfolded/untwisted state." Like imitation raffia, swirl decorations consist of long, narrow pieces of plastic that provide a decorative finish. As such, Greenbrier requests a specific exclusion for these similar products to provide consistency and an unambiguous reading of the scope for U.S. importers and Customs and Border Protection (CBP).
- Greenbrier requests the following language to be added to the scope:

> Excluded from the scope are swirl decorations, made of plastics having a thickness not more than one (1) mil when measured in an unfolded/untwisted state.

[76] *See* Target Scope Rebuttal Comments.
[77] *See* Truck Tires and accompanying IDM at Comment 1.
[78] *Id.* at Comment 5.
[79] *See* Greenbrier Scope Comments at 6-7.

Petitioner's Rebuttal Comments:[80]

- An exclusion for swirl decorations is not necessary and would unduly restrict of the scope of the investigation, as a product's inclusion or exclusion should be based on whether the merchandise in question satisfies the parameters of the scope (*i.e.* in-scope swirl decorations are subject merchandise while out-of-scope swirl decorations are not).
- If swirl decorations are similar to imitation raffia, they would simply fall under the exclusion already in the scope and would therefore not need to be otherwise excluded.

Commerce's Position: Given the petitioner's opposition to adding the language proposed by Greenbrier, and Commerce's practice of providing ample deference to the petitioner with respect to the definition of the product for which they seek relief, we determine that the suggested change to the language of the scope is not warranted.[81] Absent a concern that the definition of a proposed scope cannot be effectively administered,[82] that there exist potential concerns of evasion and circumvention without amendment,[83] or that the scope language is inconsistent with the intent of the petitioner or industry support, Commerce generally will accept the scope as defined in the petition of the investigation. Greenbrier asserts that swirl decorations are similar to imitation raffia (in that they both consists of long, narrow pieces of plastic that provide a shimmery and/or decorative finish) and should be excluded from the scope, like imitation raffia. However, the mere fact that two finished products may share some similarities is not in itself probative as to whether the merchandise is covered by the scope. Moreover, the petitioner states that Greenbrier's proposed language would unduly restrict the scope of the investigation, because whether swirl decorations are subject to the scope depends on whether the particular merchandise meets the physical description of the merchandise described in the scope. We believe that the current scope language is consistent with the intent of the petitioner and can be effectively administered. An additional exclusion for scope decorations is therefore unnecessary, as the current scope provides ample description regarding what types of products are within the scope.

Comment 10: Exclusion for Bows Made from Plastic Sheet

Greenbrier's Comments:[84]

- The scope covers certain plastic decorative ribbon, which is defined as "a long, narrow strip of fabric, used for tying something or for decoration" or "a long, narrow strip," according to the Oxford English Dictionary. The petitioner has focused on ribbon that meets this definition in the scope. Greenbrier bows, on the other hand, are made from shapes/slits cut into ribbon sheet, which is defined as "a broad flat piece of material" and cannot be included rationally within the definition of ribbon.
- In the *Preliminary Determination*, Commerce incorrectly claimed that the scope's current language, which limits the investigation to "ribbon having a width…of less than or equal to four (4) inches in actual measurement," already covers Greenbrier's proposed

[80] *See* Petitioner Scope Rebuttal Comments at 3-4.
[81] *See* Truck Tires and accompanying IDM at Comment 1.
[82] *Id.* at 5.
[83] *Id.*
[84] *See* Greenbrier Scope Comments at 7-8.

language, which requests a specific exclusion for "plastic bows formed from cut plastic sheet having a *width of at least 4 inches* (measured at the widest span of the plastic sheet) when measured in an unfolded/untwisted state."[85] This language would clarify that bows made from plastic sheet that is equal to or greater than four inches are excluded from the scope.

- Greenbrier requests the following language to be added to the scope:

  Excluded from the scope of this investigation are: Plastic bows formed from cut plastic sheet having a width of at least 4 inches (measured at the widest span of the plastic sheet) when measured in an unfolded/untwisted state.

Petitioner's Rebuttal Comments:[86]

- An exclusion for bows made from plastic sheet is overly broad and could exclude a wide range of products otherwise intended to be covered by the scope.
- Greenbrier's attempt to differentiate between "ribbon" and "sheet" is misplaced. Although a product may not originate from a "long narrow strip" of ribbon, it may still be comprised of the same plastic material, undergo a similar production process, and take the same final form as subject merchandise. A bow should be considered subject merchandise as long as it meets the physical parameters of the scope, regardless of the form of plastic from which is originated.

Commerce's Position: Given the petitioner's opposition to adding the language proposed by Greenbrier, and Commerce's practice of providing ample deference to the petitioner with respect to the definition of the product for which they seek relief, we determine that the suggested change to the language of the scope is not warranted.[87] Absent a concern that the definition of a proposed scope cannot be effectively administered,[88] that there exist potential concerns of evasion and circumvention without amendment,[89] or that the scope language is inconsistent with the intent of the petitioner or industry support, Commerce generally will accept the scope as defined in the petition of the investigation. The petitioner clearly states that Greenbrier's proposed language could exclude products that are intended to be covered by the investigation. Furthermore, whether bows made from plastic sheet are subject to the scope of the investigation depends on whether the particular merchandise meets the physical description of the merchandise described in the scope. We are therefore not adopting the proposed exclusion language, as we believe that the current scope language is consistent with the intent of the petitioner and can be effectively administered.

Comment 11: Exclusion for Flocked and Unflocked Bows with Flexible Wire, Ribbon, String, or Other Type of Tie at the Base

Greenbrier's Comments:[90]

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[85] *See* Preliminary Determination Scope Memo at 15.
[86] *See* Petitioner Scope Rebuttal Comments at 4-5.
[87] *See* Truck Tires and accompanying IDM at Comment 1.
[88] *Id.* at 5.
[89] *Id.*
[90] *See* Greenbrier's Comments at 9-11.

- The current scope language in clause four of paragraph five is overly narrow and does not include bows that are the same kind of coating as flocking and fabric, nor does it account for the multitude of component pieces that would make the exclusion realistic and administrable.
- The exclusion should include unflocked ribbons with metal wire, string, ribbon, or other type of tie at the base that is suitable for attaching the bow to an object, as such bows have the same purpose and function as flocked or fabric bows with the same design. The addition of clarifying language is consistent with Commerce's intention to "focus the investigations on the physical characteristics of ribbon," and would help avoid confusion among U.S. importers and CBP.
- Greenbrier requests the following language to be added to the scope (emphasis added to denote the proposed changes):

  (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, *unflocked* or made of fabric, and (b) a flexible metal wire*, string, ribbon, or other type of tie* at the base which permits attachments to an object by twist-tying;…

Petitioner's Rebuttal Comments:[91]

- Greenbrier's proposed language needlessly expands the scope's exclusion, as the current language is unambiguous. The proposed language would, in fact, exclude products that the petitioner intends to be covered by the investigation, as bows that satisfy the parameters of the scope remain covered by the scope and thus subject to the investigation.

Commerce's Position: Greenbrier has requested an exclusion for flocked[92] and unflocked bows with ties at the base. Given the petitioner's opposition to adding the language proposed by Greenbrier, and Commerce's practice of providing ample deference to the petitioner with respect to the definition of the product for which they seek relief, we determine that the suggested change to the language of the scope is not warranted.[93] Absent a concern that the definition of a proposed scope cannot be effectively administered,[94] that there exist potential concerns of evasion and circumvention without amendment,[95] or that the scope language is inconsistent with the intent of the petitioner or industry support, Commerce generally will accept the scope as defined in the petition of the investigation. The petitioner clearly states that Greenbrier's proposed language would exclude products that are intended to be covered by the investigation.

[91] *See* Petitioner Scope Rebuttal Comments at 6.
[92] Although the scope language does not contain a description of flocked ribbons, the U.S. International Trade Commission (ITC) has defined flocking as "a process in which short chopped lengths of fiber (flock) are applied to an adhesive coated backing fabric or other substrate." *See* Publication 4763 by the ITC, *Plastic Decorative Ribbon from China Investigation Nos. 701-TA-592 and 731-TA-1400 (Preliminary)*, dated February 2018, at I-11.
[93] *See* Truck Tires and accompanying IDM at Comment 1.
[94] *Id.* at 5.
[95] *Id.*

We are therefore not adopting the proposed exclusion language, as we believe that the current scope language is consistent with the intent of the petitioner and can be effectively administered.

Comment 12: Whether to Apply Total AFA to Junlong

Petitioner's Case Brief [96]

- Commerce should apply total AFA to Junlong. The Junlong Verification Report identifies and describes several critical errors in Junlong's reported data and information regarding essential elements of its questionnaire responses. These errors relate to U.S. sales, misreported dates of sale, misreported physical characteristics, errors in the reported U.S. sales destination codes, the improper use of average payment dates, tollers, and unverifiable amounts.[97] *See* discussion under comments 12a-12f below.
- In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (CAFC) clarified that the "best of its ability" standard of section 776(b) of the Act means to put forth maximum effort to provide full and complete answers to all inquiries.[98] The CAFC further held that "{t}he statutory trigger for Commerce's consideration of an adverse inference is simply a failure to cooperate to the best of respondent's ability, regardless of motivation or intent." The reporting errors found at verification are the type of information that Junlong should have reasonably been able to provide. In such instances, Commerce's practice is to apply total AFA to a respondent's margin where the company fails to provide information essential to Commerce's ability to calculate a dumping margin.[99]
- Given the nature of the discrepancies identified below, Commerce should apply total AFA to Junlong's margin for the final determination.

[96] *See* Petitioner's Case Brief at 6-20.
[97] *See* Junlong Verification Report at 2, 9, 15 and 25-26
[98] *See Nippon Steel Corp.* v. *United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) ("Compliance with the 'best of the ability' standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.") The CAFC specifically stated that "the statute requires a factual assessment of the extent to which a respondent keeps and maintains reasonable records and the degree to which the respondent cooperates in investigating those records and in providing Commerce with the requested information. In preparing a response to an inquiry from Commerce, it is presumed that respondents are familiar with their own records. It is not an excuse that the employee assigned to prepare a response does not know what files exist, or where they are kept, or did not think through inadvertence, neglect, or otherwise to look beyond the files immediately available."
[99] *See Biodiesel From Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018) and accompanying IDM at 49 ("We continue to find that Musim Mas' home market sales reconciliation, CONNUM-specific production quantities, and estimated RIN vales for its U.S. sales constitute necessary information that is missing from the record within the meaning of section 776(a)(1) of the Act. We also continue to find that Musim Mas withheld information that had been requested by Commerce, and significantly impeded this proceeding under sections 776(a)(2)(A) and (C) of the Act, respectively. As we explained in the *Preliminary Determination*, all of this information is core to Commerce's ability to calculate Musim Mas' dumping margin. We also find that the fact that this core information is missing was exacerbated by Musim Mas' failure to cooperate to the best of its ability in this investigation, within the meaning of section 776(b) of the Act. Therefore, Commerce has continued to apply total AFA to Musim Mas for this final determination.")

Junlong's Rebuttal Brief [100]

- Almost all of the petitioner's arguments have no merit and, as such, Commerce should not apply AFA to Junlong. *See* discussion under comments 12a-12f below.

<u>*Comment 12a: Date of Sale*</u>

Petitioner's Case Brief [101]

- First, Commerce confirmed that Junlong should have reported the purchase order date as the date of sale. In its Section A initial questionnaire response, Junlong disclosed that all of its U.S. sales were made using "purchase order/pro forma invoices."[102] In response to Commerce's question regarding changes between initial agreement date and invoice, Junlong reported that "{n}o changes occurred after the initial agreement that affect the terms of the sale."[103] As such, very early on in this proceeding Junlong established that, according to Commerce's normal rules, it should have used the date of purchase order as the date of sale. In the petitioner's comments regarding Junlong's Section A initial questionnaire response, the petitioner requested that Commerce collect all U.S. sales with initial agreements falling within the POI.[104] However, Junlong did not do so.
- Junlong's characterization of the fixed nature of the order and sales process is not surprising. Subject merchandise is mostly a seasonal consumer product that is unique in design, materials, and retail labelling from customer to customer. Given the time sensitivity of shipments, there is no way to make material changes or reopen negotiations. Simply put, price and quantity must be fixed at the time of the order for all parties to meet the holiday demand.
- At verification, Commerce confirmed that the initial agreement date should have been reported as the date of sale. Based on the description in the Junlong Verification Report, the purchase order/pro forma invoice date should have been used as the date of sale.[105] If there were changes, then the revised purchase order date should have been used. The verification exhibits in the Junlong Verification Report, including numerous sales traces, also support the use of purchase order date as the date of sale.[106] *See* full business proprietary discussion in Junlong Analysis Memorandum.
- Based on the record in this proceeding, there is no question that the date of purchase order is the correct date of sale under Commerce's normal rules and practices. Commerce's regulations state that the Secretary will normally use, as date of sale, the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business, but the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or

[100] *See* Junlong's Rebuttal Brief at 2-12 and 18.
[101] *See* Petitioner's Case Brief at 8-13.
[102] *See* Junlong's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China - Junlong Section A Questionnaire Response," dated April 5, 2018 at 21.
[103] *Id.* at Exhibit A-2.
[104] *See* Petitioner's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China: Deficiency Comments on Junlong Section A Initial Questionnaire Response," dated April 19, 2018 at 7-8
[105] *See* Junlong Verification Report at 9.
[106] *Id.* at Attachment 3.

producer establishes the material terms of sale.[107] While Commerce presumes invoice date to be the date of sale in most cases, that presumption can be overridden by information specific to the case at hand. For instance, in its *AD Manual*, Commerce specifically explains that, in certain instances, purchase order date can serve as the date of sale.[108] In short, the mere fact that changes may rarely occur cannot be used as the basis for overriding the use of purchase order date,[109] and Commerce explained that, even when there are infrequent revisions to original sales agreements, the date of sale should be the date of the amended agreement, and not the date of invoice.[110]

- In *Non-Alloy Steel Pipe from Mexico*, Commerce found that "there is no evidence on the record that there were any changes to the material terms of sale after the purchase order date."[111] Similarly, in accordance with 19 CFR 351.401(i), Junlong should have reported purchase order/pro forma invoice dates for all of its U.S. transactions, and it should have reported all purchase orders with dates falling within the POI. Because Junlong has done neither, Commerce does not have a complete U.S. sales file.
- Commerce has a longstanding policy of applying total AFA whenever there are significant unreported U.S. sales. For example, in *Saccharin from China*, Commerce applied total AFA because a respondent misreported its universe of U.S. sales, based on an incorrect date of sale definition.[112]
- This issue alone warrants the application of total AFA to Junlong for the final determination. *See* full summary of this issue in Junlong Final Analysis Memorandum.[113] Yet, as detailed below, there exist additional and critical errors that further warrant the application of total AFA to Junlong in the final determination.

Junlong's Rebuttal Brief [114]

- A review of the record shows that, from the outset, Commerce accepted Junlong's submission that the invoice date was the proper date of sale. The record provides no evidence that Commerce considered the possibility that the purchase order date in this case would be a more reasonable and accurate indicator of the date of Junlong's U.S. sales than the presumptive invoice date under 19 CFR 351.401(i). The petitioner is aware that Commerce must establish the proper date of sale early in the proceeding because of its impact on other aspects of Commerce's analysis.
- Commerce had sufficient impetus to consider the proper date of sale early in this investigation. For example, Junlong explained its accounting and invoicing systems at length in a letter notifying Commerce of difficulties answering the initial questionnaire, explaining that only with the completion of the production and packing of the

[107] *See* 19 CFR 351.401(i).
[108] *See* AD Manual at Chapter 10, p. 8.
[109] *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 77 FR 61738 (October 11, 2012) and accompanying IDM at 3-4.
[110] *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review*, 75 FR 18788 (April 13, 2010) (no change in final).
[111] *See Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 37518 (June 15, 2000) and accompanying IDM.
[112] *See Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 68 FR 27530 (May 20, 2003) (*Saccharin from China*).
[113] *See* Junlong Final Analysis Memorandum.
[114] *See* Junlong's Rebuttal Brief at 2-6.

merchandise for shipment can the company record the net and gross weights of its sale.

- Junlong's recording of its sales reflects the intent of 19 CFR 351.401(i), which states that Commerce will normally use the date of invoice, as recorded in the ordinary course of business. Indeed, Junlong could not complete its U.S. sales database before the subject merchandise was produced and ready for shipment, at which time Junlong issues its commercial invoice and packing list, which record the net and gross weight of the shipment.
- Prompted by the petitioner's comments, Commerce questioned Junlong further about its sales process in a supplemental questionnaire. Junlong explained that, in its normal course of business, the purchase order does not reflect the actual date when the material terms of sale are established. Sales documentation (including email correspondence and relevant purchase orders) show a whole process of price negotiation, and demonstrates that purchase orders are dated prior to the email communication between Junlong and its customer. In addition, the customer might send revised purchase orders with updated information. Thus, the purchase order date does not better reflect the date that the material terms of sales are established.
- All the substantial evidence on the record supports the conclusion that Junlong properly reported invoice date as the date of sale. The petitioner has not met the burden of proof that the purchase order date would be the correct date of sale in this case. The courts have found that an interested party proposing an alternate date of sale bears the burden of demonstrating that the material terms of sale were firmly and finally established on the proposed date. The courts have also found that to successfully rebut Commerce's presumptive selection of the invoice date, an interested party must also demonstrate that a reasonable mind has one, and only one, date of sale choice.
- Moreover, if Commerce had any doubt whether purchase order was the proper date of sale, Commerce was legally obligated to simply ask Junlong to provide a revised sales file.[115] Thus, Junlong cannot be legally penalized because Commerce issued no written deficiency notice to Junlong on this matter.

Comment 12b: Product Characteristics

Petitioner's Case Brief [116]

- At verification, Junlong failed to demonstrate that it had accurately reported its product characteristics. The incorrect physical characteristics are not immaterial because Commerce learned at verification that Junlong had used these specific physical characteristics to allocate a number of its FOP usage amounts.
- Due to time constraints, Commerce must rely on sampling techniques at verification. If a material portion of the sample cannot be verified, Commerce must assume the specific item is unverified and must apply AFA accordingly. *See* full summary of this issue in Junlong Final Analysis Memorandum.

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[115] *See* section 782(d) of the Act.
[116] *See* Petitioner's Case Brief at 14-15.

Junlong's Rebuttal Brief[117]

- Any misreported product characteristics have negligible impacts. Commerce found that Junlong misreported texture (TEXTUREU), embellishments (EMBELLU), and (perhaps) average number of ends (ENDSU) for certain observations.
- Texture and number of ends do not have any impact on the FOP usage amount. The petitioner is incorrect that labor is allocated in part based on TEXTUREU. In fact, labor was reported based on each product-specific bill of materials (BOM) that Junlong maintains in the normal course of business.
- Thus, only the observation with the misreported EMBELLU can affect the underlying FOP data. Even if the other errors affected FOP data, the errors are only for four of the 14 matching criteria, resulting in a small error rate. Thus, the errors do not impugn the reliability of Junlong's responses.
- The misreported EMBELLU is only related to a single production order with one type of merchandise. Junlong used gross weight in its allocation of FOPs, and the gross weight of the observation in question is negligible.

<u>Comment 12c: U.S. Destinations</u>

Petitioner's Case Brief[118]

- Commerce was unable to verify Junlong's U.S. destinations. Commerce's test for differential pricing uses destination codes to measure differences in price by region. If the destination codes are incorrect, then the results on the differential pricing test will be incorrect.
- In some cases, changes to the Commerce's differential pricing analysis can have a major impact on the margin. Thus, misreporting destination codes in a way that could skew the AD calculation results downward should not be treated lightly.
- In the event that Commerce does not apply total AFA to Junlong, it should at least apply partial AFA to these missing data and assume the Cohen's *d* result at a 100 percent pass rate. *See* full summary of this issue in Junlong Final Analysis Memorandum.

Junlong's Rebuttal Brief[119]

- Junlong recognizes that some codes were pulled from the port of unlading. However, as the record stands, Commerce is not necessarily able to ascertain which designations were correct and which were not.
- Commerce could analyze the reported data and if the zip code corresponds to a port then Commerce could assume it is incorrect and designate that observation as a "pass" in its Cohen's *d* test. Alternatively, Commerce could request a new database with the corrected zip code data.
- In any event, this single piece of data has no function in the AD margin calculation other than for the Cohen's *d* test. Therefore, as the petitioner suggests, in the worst case, Commerce would designate all sales as "pass" for the region portion of its test. If

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[117] *See* Junlong's Rebuttal Brief at 6-8.
[118] *See* Petitioner's Case Brief at 15-16.
[119] *See* Junlong's Rebuttal Brief at 18.

Commerce does so, it should articulate how sales differing in all regions could constitute a "pattern" of different pricing among regions under the statute as required.

Comment 12d: Unreported Toller FOPs

Petitioner's Case Brief[120]

- Junlong failed to report FOPs for certain processing and packing performed by tollers. At verification, Commerce found these expenses had been reported in overhead. This was the first indication that Junlong relied on tollers (the company made no mention of tollers in its initial or supplemental questionnaire responses).
- Clearly, the toll processing and packing involved additional labor and energy inputs (and perhaps additional raw material inputs). *See* full summary of this issue in Junlong Final Analysis Memorandum.
- If Commerce does not apply total AFA, it should at least apply partial AFA to this issue to account for the missing data. As partial AFA, Commerce should assign the highest percentage margin calculated for any single U.S. transaction to all U.S sales of the products that were toll processed. In this case, Junlong failed to identify the tollers in a timely manner, it made no effort to obtain the toller FOPs, and it failed to demonstrate the percentage of its FOPs for which its tollers account.

Junlong's Rebuttal Brief[121]

- Junlong properly reported the FOPs for the processing and packing performed by third parties. Junlong provides the materials to the third parties and the costs of these material were all recorded in the Junlong's accounting system.
- Certain items were reported by Junlong based on the BOMs, which include all steps of the production process. Commerce confirmed this at verification. Thus, Junlong had no unreported FOPs.

Comment 12e: Labor

Petitioner's Case Brief[122]

- Junlong reported CONNUM-specific labor based on unverifiable standards. Commerce requires costs to be reported on an actual basis, and the same principle applied to NME factor usage reporting.
- Commerce confirmed at verification that Junlong had used certain standards for CONNUM-specific reporting. Junlong explained that it could not provide actual labor hours as some labor was paid wholly or partly on the basis of piece rates. Junlong relied on standards from its bill of material reports, but Junlong could not provide back-up documentation showing how it arrived at standard labor times, nor did it provide any information demonstrating the accuracy and reliability of these standard labor rates.
- Commerce accepts the use of standards in only exceptional cases, and only as long as they are verifiable. That is not true in the instant case. Because Junlong's reported labor

[120] *See* Petitioner's Case Brief at 16-18.
[121] *See* Junlong's Rebuttal Brief at 8-9
[122] *See* Petitioner's Case Brief at 18-20.

cannot be tied to its actual labor, Junlong's reported FOPs are unusable and contribute to a total AFA determination.

- If Commerce does not apply total AFA, it should at least apply partial AFA to this issue and apply the highest reported FOP for any CONNUM to all CONNUMs.

Junlong's Rebuttal Brief [123]

- Junlong chose the most accurate methodology to report CONNUM-specific labor hours that reflect Junlong's actual labor hours.
- In its initial Section D questionnaire response, Junlong explained that it used product-specific BOMs for reporting labor hours because the salaries of its workers are based on production quantity rather than actual working hours. Following Commerce's instruction in a supplemental questionnaire, Junlong explained further that the labor hours it reported reflect the actual working hours to the maximum extent because Junlong does not record the working hours for each worker, paying most workers based on production quantity rather than working hours.
- At verification, Junlong provided Commerce with a detailed explanation on the calculation of working hours in each step of the production process, and Commerce traced certain standards to source documentation. Commerce found that Junlong's reported machine speed was actually higher than the speed Junlong used in its labor hours estimate. As Junlong explained, the machine speed applied to the labor hour calculation was an average speed, which was decreased to account for any machine maintenance or shift changes. Junlong therefore provided a conservative estimate for average labor hours and labor cost.
- BOMs are the documents Junlong prepares in the normal course of business and which form the basis for Junlong's costs of production. Junlong did its best to provide reasonable information, and Commerce should use Junlong's reported labor hours in the calculation of the dumping margin.[124]

<u>*Comment 12f: Payment Dates*</u>

Petitioner's Case Brief [125]

- Junlong originally reported that it derived payment dates for certain U.S. sales based on an average payment period, where the actual payment date was not indicated on the bank slips. At verification, however, Commerce discovered that this was not the case, finding that Junlong could not find the payment date for certain sales in time to compile the response. This is another example of where Junlong failed to act to the best of its ability to respond to Commerce's request in the manner and form required.
- If Commerce does not apply AFA, it should apply partial AFA and assign the longest payment period reported for any U.S. sales to the sales at issue.

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[123] *See* Junlong's Rebuttal Brief at 9-11

[124] *See* section 773(f)(1)(A) of the Act, stating that Commerce must normally use a respondent's books and records kept in the ordinary course of business as long as they are reasonable.

[125] *See* Petitioner's Case Brief at 20.

Junlong's Rebuttal Brief [126]

- Junlong applied its best efforts in reporting payment date. Moreover, reporting average payment date has no effect in NME dumping investigations.
- At verification, Junlong explained that it reported average payment dates for some sales' payments that Junlong was unable to locate in time to respond to Commerce's questionnaires. Junlong was under extreme duress during the response time, as it explained in multiple extension requests and also during verification. Indeed, one of Junlong's former employees came back to the company to assist in this investigation.
- Average payment dates were not "estimated," but rather based on the actual payment dates for other observations. Junlong acted to the best of its ability to report the most reasonable payment dates under instances where Junlong encountered difficulty with staffing participation in the investigation.
- The normal role for payment date is to calculate imputed credit expenses. However, in NME cases, there is no imputed credit expense calculation in the SAS program used by Commerce. This is due in part to the fact that finance and bank charges are already captured in the numerator of the surrogate SG&A ratio. To assess imputed credit expenses would thus double count such expenses. Indeed, the questionnaire does not require credit expenses to be reported for EP sales.
- Because average payment date does not affect the margin at all, Junlong should not be punished for answering Commerce's question to the best of it ability under personnel shortages and extreme duress.

Commerce Position:

Date of Sale

We disagree with the petitioner. Junlong reported invoice date as its date of sale in accordance with Commerce's regulations at 19 CFR 351.401(i). In a supplemental questionnaire, we asked Junlong more about its process and when terms of sale are finalized.[127] However, we did not ask Junlong to report purchase order date. Because invoice date is the default date in the regulations and because we did not ask for purchase order date, we find that the use of AFA is not appropriate.

Moreover, we found at verification that Junlong's sales are subject to change between purchase order and invoice. The details of these changes are business proprietary. *See* full details of these changes in Junlong Final Analysis Memorandum. Because the material terms of Junlong's sales are finalized at the time the invoice is issued, invoice date is the appropriate date of sale for Junlong.

[126] *See* Junlong's Rebuttal Brief at 11-12
[127] *See* Commerce's Letter, "Section A Supplemental Questionnaire in the Antidumping Duty Investigation of Plastic Decorative Ribbon from the People's Republic of China," dated May 8, 2018 at 3.

Product Characteristics

At verification, we found three sales observations had one or two product characteristics misreported.[128] Product characteristics are used to match U.S. sales to the FOPs used to produce each sale. Junlong used product-specific BOMs to assign costs, and it used certain product characteristics to allocate the material factors of production to each CONNUM produced.[129] As Junlong noted, only one of the product characteristics (embellishment) which had an error was used to allocate the FOPs among CONNUMs. In this case, the level of embellishment was underreported, and thus, certain FOPs were not allocated to the sale in question.

As noted above, sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. In addition, 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. We find that Junlong provided information that could not be verified and did not act to the best of its ability in reporting the product characteristics in question and their related FOPs. Therefore, pursuant to sections 776(a)(2)(D) and 776(b) of the Act we are applying partial AFA to determine the amount of the missing FOPs. As partial AFA, we are assigning to the CONNUM, for which certain FOPs were not reported, the highest amount reported for these missing FOPs for any other CONNUM in the FOP database. *See* Junlong Final Analysis Memorandum for full explanation.

U.S. Destinations

As the petitioner noted, we found out at verification that a number of the sales we examined at verification had destination reported incorrectly.[130] Given the number of errors found, we find that the destinations reported in Junlong's U.S. sales database, as a whole, are unreliable. We find, pursuant to sections 776(a)(2)(D) and 776(b) of the Act, that Junlong provided information that could not be verified and did not act to the best of its ability in reporting destination. Therefore, we find that partial AFA is warranted.

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. Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of

[128] *See* Junlong Verification Report at 2.
[129] *Id.* at 28.
[130] *Id.* at 2.

examining whether to apply an alternative comparison method in this investigation. The differential pricing analysis 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 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. 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. 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 normal value (NV) for the individual dumping margins.

In the first stage of the differential pricing analysis, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (i.e., 0.8) threshold.

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

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, 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.

As the parties noted, destination is only used in the first stage of the differential pricing analysis (the Cohen's *d* test) to determine whether there was pattern of price differences by region. The differential pricing analysis must be run on purchaser, region, and time period. Here, we have determined that the destinations reported in Junlong's U.S. sales database, as a whole, are unreliable. This misreporting and subsequent reliability of the destination information prevents Commerce from using the reported information in performing the first part of the differential pricing analysis (analyzing whether there was a pattern of price differences by region). Because Junlong failed to cooperate to the best of its ability in reporting the destinations of its sales, we have determined that the use of partial AFA is warranted. As a result, we are finding that all sales show a pattern of price differences by region (*i.e.*, that all sales pass the Cohen's *d* test, resulting in a ratio test percentage of 100 percent). Because we are finding that all sales pass the Cohen's *d* test (66 percent or more of the value of total sales), we find that this pattern of prices that differ significantly supports consideration of the use of the average-to-transaction method to all sales as an alternative to the average-to-average method.

Next, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, we test 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. In this case, a meaningful difference between the weighted-average dumping margins does not exist because there is less than 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. Therefore, we are using the average-to-average method to calculate Junlong's weighted average dumping margin.

Unreported Toller FOPs

As the petitioner noted, we found out at verification that Junlong recorded processing charges and packing fees related to work performed by tollers for certain processes. Junlong did not report the use of tollers in its questionnaire responses.[131] Normally, when a company uses a toller, Commerce requests the FOPs used by the toller. In this case, by failing to disclose the presence of these tollers until verification, Junlong impeded Commerce from requesting these FOPs. We found at verification that tollers did some processing and packing work, so the FOPs that the tollers likely would have incurred would be labor and energy. Although Junlong reported FOPs based on its BOMs for each sale, the BOMs detail the standard labor and energy that Junlong incurs if it did the processing or packing. There is no evidence on the record to indicate whether the tollers would use more, less, or the same labor and energy as Junlong would.

We find that Junlong withheld information that was requested within the deadlines established, and therefore did not act to the best of its ability in reporting the existence of tollers. Because necessary information is missing from the record and because Junlong impeded us from obtaining this information in a timely manner, we are applying partial AFA to account for the FOPs of the tollers, in accordance with sections 776(a)(1), (a)(2)(A) and (C), and 776(b) of the Act. We compared the amount paid to the tollers to the amount of labor paid by Junlong. As partial AFA, we are increasing labor and energy (water and electricity) by this percentage (of the amount paid to tollers versus the amount of labor paid), to account for the unreported toller FOPs.[132] We do not find that this percentage is large enough to warrant finding the entire FOP database unreliable.

Labor

As noted above, Junlong's BOMs detail the standard labor hours that it takes Junlong to produce each product. Junlong explained that some workers are paid by the hour, some workers are paid by the piece, and some workers get paid both ways.[133] We verified that Junlong does not keep track of actual total labor hours. Specifically, we saw no evidence in the documents examined at verification that Junlong documents total labor hours for all workers.[134] Rather, Junlong uses its BOMs in its normal course of business, and based the labor that it reported for each product on these BOMs. Thus, Junlong reported labor in the most product-specific way possible given the records that it keeps. Junlong's reported labor was based on the standards and reports it uses in its normal course of business. When we tested the standard times used to report product specific labor, for one process at verification, we arrived at a higher amount of merchandise produced than Junlong used in its records.[135] Junlong explained that the difference was caused by downtime and maintenance. Whereas our on-site time test of that one particular process was limited, it should be noted that standards are typically based on long-term averages. As Junlong commented, even if the times that we calculated during verification were accurate, because we calculated a higher rate of production than Junlong reported, that means Junlong would have

[131] *See* Junlong's April 5 Section A Questionnaire Response at 24, and Junlong's July 9 Supplemental Questionnaire Response at SD-6 and SD-7.
[132] *See* Junlong Final Analysis Memorandum.
[133] *See* Junlong Verification Report at 30.
[134] *Id.* at 30 and Verification Exhibit 17.
[135] *Id.* at 30

overreported labor. Therefore, we are continuing to use the labor as reported by Junlong for this final determination.

Payment Dates

In its initial Section C questionnaire response, Junlong notified us that for certain transactions where the dates are not shown on the bank slips, Junlong reported the dates by adding average payment days to each date of sale instead.[136] At verification, we found that the banks slips for the sales in question did in fact show payment dates. Junlong then explained that because the former sales manager was out earlier this year, it was not able to locate the payment date information for some sales at the time it compiled its responses.[137] Thus, Junlong reported payment date based on the average payment period of the sales for which it could find payment date information.[138] Junlong did not therefore report sales-specific payment dates when it could have done so. Still, as Junlong correctly points out, payment date is used to calculate credit expenses, but credit expenses are not used in the calculation of net U.S. price for EP sales (Junlong only had EP sales) in NME cases. Therefore, we are making no adjustment for this final determination.

Overall Total AFA Position

We disagree with the petitioner that we should apply total AFA to Junlong. While in a few situations, as indicated above, Junlong did not cooperate to the best of its ability in providing information, none of Junlong's errors, singly or in aggregate, rendered its entire responses unusable. Thus, we find the use of total AFA to be unwarranted. As noted above, we find date of invoice to be the correct date of sale. Thus, there are no unreported saless, and accordingly, no reason to apply AFA. Although Junlong did misreport some product characteristics, we determined that the errors found were random, with no evidence that the errors occurred consistently throughout the sales database. In addition, the numeric effect on the related FOPs was minimal. Therefore, we find that the product characteristics errors did not render either the U.S. sales database or the FOP database entirely unreliable, and we do not find total AFA is warranted for these errors. As discussed above, although the extent of the errors to reported U.S. destination identified at verification are sufficient to support a determination that the destinations reported in the database are unreliable, the impact is limited to Commerce's evaluation of whether there is a pattern of price differences by region. Therefore, the errors with respect to reported U.S. destination do not render the entire U.S. sales database unusable, so we do not find total AFA is warranted for these errors.

Although there is no information on the record to indicate which sales are affected by Junlong's unreported tolling expenses, we have evaluated related information available on the record (comparing the amount paid to the tollers to the amount of labor paid by Junlong) and find it reasonable to conclude that the effect on the database does not appear to be large. Thus, we find the use of total AFA unwarranted in this situation. In addition, Junlong's reported labor was based on the standards and reports it uses in its normal course of business, and thus was reported

[136] *See* Junlong's May 10 Questionnaire Response at C-21.
[137] *See* Junlong Verification Report at 15.
[138] *Id.*

in the most product-specific way possible given the records that Junlong keeps. Therefore, there is no basis to apply AFA with respect to labor. Finally, although Junlong at first inaccurately described why it did not report sales-specific payment dates when it could have done so, this error does not affect our dumping calculations or analysis, as discussed above. As such, there is no basis to apply AFA for this issue.

Even when these six issues are considered together, we find that they do not impact the overall reliability of the entire U.S. and/or FOP databases upon which our dumping calculation and analysis are based. Thus, there is no basis to apply total AFA to Junlong when considering the aggregate effect of these six separate issues.

Comment 13: Whether to Apply AFA to Ricai

Petitioner's Case Brief[139]

- Commerce's verification report indicates that essential aspects of Ricai's questionnaire responses contain serious errors related to its date of sale, selling process, and FOP reporting, as further outlined in Comments 13a-13f below.
- Commerce should apply AFA to Ricai given the respondent's failure to provide information that is critical in order to calculate a final dumping margin.

Ricai's Case Brief[140]

- Commerce performed an incomplete review of the record and overlooked critical information in its *Preliminary Determination*. Commerce's claim that Ricai failed to provide a functional consolidated FOP database and a comprehensible financial reconciliation was factually inaccurate, and Commerce was wrong to assign AFA to Ricai for the *Preliminary Determination*.
- Ricai's verification has demonstrated to Commerce that the respondent's data is full and complete, and Commerce should use this data to calculate a final margin for Ricai.
- Commerce should issue pre-final calculations to allow all parties to comment on methodology before the release of the final determination, as no calculations were released during the *Preliminary Determination* due to the assignment of AFA to Ricai.

Petitioner's Rebuttal Brief[141]

- As confirmed by Commerce's verification report, Ricai's questionnaire responses contain critical errors related to essential reporting elements. These errors render the respondent's information inaccurate and unreliable, warranting the application of AFA to Ricai.
- By requesting that Commerce release pre-final calculations for comment, Ricai erroneously assumes that its data is usable despite the serious errors it contains. Commerce rarely reissues preliminary determinations in the absence of ministerial errors,

[139] *See* Petitioner's Case Brief at 20-37 and 52-54.
[140] *See* Ricai's Case Brief at 2-6.
[141] *See* Petitioner's Rebuttal Brief at 4-8.

and Ricai has already had ample opportunity to comment on calculations and surrogate value issues related to this case, making additional pre-final comments unnecessary.

Ricai's Rebuttal Brief[142]

- Commerce should not apply AFA to Ricai for the issues raised by the petitioner in its case brief. Ricai properly reported its date of sale, timely disclosed details about its sales process, and correctly submitted information related to its FOPs and cost data.
- The petitioner's arguments are based on incorrect and mischaracterized readings of Commerce's procedures and Ricai's submissions. The record demonstrates that Ricai fully cooperated to the extent that it was able to do so, and accurately reported all information requested by Commerce.

Comment 13a: Date of Sale

Petitioner's Case Brief[143]

- Despite being asked about changes to sales terms in multiple questionnaires, Ricai only provides one example sale to support its claim that the material terms of sale are subject to change after a purchase order is issued.
- The only practical change to the updated SKU noted in Ricai's example sale is a small revision to the quantity of merchandise per packing case and the estimated shipping date, as the changes in total value, quantity, and per-unit price are insignificant. Neither shipment packing changes nor estimated shipping date changes are considered to be material sales term changes by Commerce.
- The change in Ricai's submitted example sale appears to actually be a clerical correction for which Ricai issued an updated purchase order. No record correspondence exists suggesting that the material terms of sale were renegotiated between the buyer and Ricai before the revised purchase order was issued.
- The nature of seasonal consumer merchandise requires that sales terms remain rigid between the placement and shipment of an order. Merchandise is produced to detailed customer specifications following intense design and price negotiations, and input materials are often purchased to fill one-time orders. Reopening negotiations after an order is placed can disrupt merchandise shipments, which are time-sensitive.
- The fixed nature of Ricai's sales are supported by its use of letters of credit (L/C), which are issued around the time of the purchase order and must be updated to match any changes to material sales terms, thereby reducing potential order renegotiations.
- The record supports the use of the purchase order date as the date of sale since all post-purchase order changes are established in amended purchase orders, but Ricai has not reported this information. This leaves Commerce with an incomplete sales file, and merits the application of total AFA to Ricai for the final determination.

Ricai's Rebuttal Brief[144]

- The petitioner faults Ricai for submitting evidence of only small changes in the material

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[142] *See* Ricai's Rebuttal Brief at 2-13.
[143] *See* Petitioner's Case Brief at 21-29.
[144] *See* Ricai's Rebuttal Brief at 3-7.

terms of one sale, but does not cite any cases to support the proposition that a "significant change" must be established between the purchase order and date of invoice.

- The petitioner is incorrect in claiming that Commerce's "normal rules" indicate that Ricai should have used the purchase order date as the date of sale, as 19 CFR 351.401(i) states that the Secretary will normally use the date of invoice as the date of sale.
- The petitioner errs in its characterization of Ricai's production and sales process, which may differ from the processes used by other Chinese producers. Ricai manufactures and purchases raw materials that can be used for a broad range of specific and standard products, contrary to the allegation that "special purchases" are needed to fulfill customer orders. No evidence suggests that products cannot be sold to multiple customers.
- The language of purchase orders suggests that certain terms are subject to change, such as the method of shipment or cancellation of the purchase order. It also states that vendors must submit revised quote sheets if "cost/case pack/cube or assortment" changes, indicating that purchase orders are subject to change.
- The first sales trace examined by Commerce at verification demonstrated that one of three SKUs was dropped and deferred for later shipment between the issuance of the purchase order and the commercial invoice. The correspondence regarding this change is on the record in Exhibit SA-3. This constitutes a change in material sale terms since timely delivery is critical, as acknowledged by the petitioner in its brief.
- Petitioners mistakenly believe that all L/Cs used by Ricai are order-specific, supporting the immutability of purchase orders. L/Cs are also opened for larger amounts, then drawn down over time as multiple invoices are presented against them.
- It would be unfair to penalize Ricai for not providing an alternate database based on purchase order dates this late in the investigation, as one would have been provided to Commerce upon request.

Comment 13b: Disclosure of Unaffiliated Internal Reseller

Petitioner's Case Brief[145]

- Ricai did not disclose to Commerce the full extent of its unusual relationship with an unaffiliated internal reselling company before verification. Commerce requires that resellers be disclosed in the Section A response, but Ricai intentionally evaded the question.
- Ricai disclosed its relationship with this reseller in its Section C response, but did not explain why it maintained this relationship. Ricai also did not provide any sales process documentation demonstrating this entity's intermediary purchase and resale of subject merchandise. In its supplemental Section A response, Ricai excluded the reseller from an export flow chart, stating only that it was used by Ricai to ensure that export sales were "conducted smoothly."
- Commerce didn't learn until verification that the reseller acts as a value-added tax (VAT) processing and freight brokerage entity, informally charging a percentage-based commission when payment was remitted from Ricai HK to Dongguan Ricai.
- Due to the atypical nature of this relationship and the belated nature of this disclosure, Commerce did not have sufficient time to investigate this entity or correctly value its

[145] *See* Petitioner's Case Brief at 29-33.

commission. Commerce should apply total AFA to Ricai or, at a minimum, deduct a value equal to the reseller's commission rate from the U.S. gross unit price.

Ricai's Rebuttal Brief[146]

- Ricai reported the exact position of the aforementioned reseller between Dongguan Ricai and Ricai HK in its initial Section C response. In its supplemental Section A and C questionnaires, it also described how this reseller acted as a trade facilitator and customs broker during the transition period when Dongguan Ricai was formed and a previous affiliate was being deregistered.
- The costs associated with the reseller are reflected in the surrogate value for brokerage and handling, which Commerce reviewed and confirmed during verification. The verification report states that nothing was found to contradict this.
- Because all of Ricai's sales are EP sales, any internal transactions before merchandise is sold to the first unaffiliated consumer are irrelevant.

Comment 13c: Disclosure of U.S. Selling Agent

Petitioner's Case Brief[147]

- At verification, Commerce learned that Ricai used the services of an unaffiliated sales agent to facilitate its U.S. sales during the POI. Commerce also learned that the agent was occasionally paid a commission for services performed, which included arranging shipping dates and finalizing product designs.
- Ricai had numerous opportunities to disclose the existence of this sales agent (whose name appears on all purchase orders), but deliberately chose not include the agent in the sales flowcharts from Ricai's initial and supplemental questionnaire responses.
- No record information exists that proves the identity of this selling agent, and Ricai's disclosure delay prevented Commerce from fully investigating the agent's role.

Ricai's Rebuttal Brief[148]

- All of Ricai's sales are made on an EP basis. Commerce's questionnaire expressly states that information regarding U.S. sales agents should only be reported for CEP sales.
- Information regarding this sales agent has nevertheless been placed on the record. The presence of this sales agent was first described in Ricai's Section A questionnaire (where the agent is described as a "representative" of Ricai HK), as well as in emails involving design, delivery, and order negotiations with U.S. customers.

Comment 13d: FOP Production and Consumption Weights

Petitioner's Case Brief[149]

- During verification, Commerce found that Ricai's total reported finished product weights greatly exceeded the weights of the underlying ribbon inputs consumed. Logic dictates that the weight of the merchandise inputs should only exceed the weight of finished

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[146] *See* Ricai's Rebuttal Brief at 8-9.
[147] *See* Petitioner's Case Brief at 33-36.
[148] *See* Ricai's Rebuttal Brief at 9-10.
[149] *See* Petitioner's Case Brief at 37-38.

products by the amount of scrap created in the production process.
- Ricai explains the discrepancy by stating that the total input content weights were only allocation factors that bore no relation to the total weights of inputs consumed, but an allocation factor based on the total weight of finished goods produced should have a direct relationship to the weight consumed (the difference being scrap weight). This contributes to the necessary overall application of AFA to Ricai.

Ricai's Rebuttal Brief[150]
- Commerce's verification report confirms that the July 2017 raw materials trial balance for PP consumed was tied to the quantity purchased using Dongguan Ricai's corresponding monthly inventory movement schedule, *etc*.
- The petitioner then alleges that the total POI production of the subject merchandise was vastly larger than the weight of PP Film, PET Film and PP Film consumed, and thus Ricai produced significantly more ribbon than the weight of the raw material inputs should theoretically allow. This claim, however, is unsupported. The weight of the total POI production of the subject merchandise includes packaging elements such as ribbon reels, back cards, and other display materials. The weight of the raw film is only one of several components that contribute to the weight of the subject merchandise.

Comment 13e: FOP Database Allocation Methodology

Petitioner's Case Brief [151]
- Commerce observed that Ricai allocates a number of vital material inputs equally over multiple products, including those that did not utilize those inputs during production.
- Many materials in the "general allocation pool" have high surrogate values. Although Ricai claims that the usage of these "general" materials is fairly uniform across CONNUMs, record evidence indicates that this is not the case. Lacking correct FOP allocations, Commerce should apply total AFA to Ricai.

Ricai's Rebuttal Brief [152]
- The inputs pointed out by the petitioner may have high surrogate values, but their relative total weights in relation to finished products are very small.
- Ricai provided an allocation method based on the books and records kept in its normal course of business, in accordance with Commerce's policy.

Comment 13f: Reporting of Holographic FOPs

Petitioner's Case Brief [153]
- Commerce should apply partial AFA to Ricai, as it has yet to provide full and complete information regarding its holographic film inputs. As such, Commerce should value all film FOPs reported for Ricai's U.S. sales of holographic merchandise based on Thai HTS classification 3702.32.00.090 for photographic paper.

[150] *See* Ricai's Rebuttal Brief at 10-12.
[151] *See* Petitioner's Case Brief at 38-41.
[152] *See* Ricai's Rebuttal Brief at 12.
[153] *See* Petitioner's Case Brief at 50-54.

- In Ricai's original Section D and partial Section D supplemental responses, it asserted that all film used in the production of subject merchandise is nothing more than plain "vanilla" PET and PVC film. In a supplemental questionnaire, Commerce instructed Ricai to identify and provide complete descriptions and supporting documentation for each type of film used in the production of subject merchandise. In its response, submitted only a few weeks prior to the *Preliminary Determination* and only when Commerce specifically asked about its suppliers/tollers, Ricai revealed for the first time that certain film was toll-processed by Dongguan Changsheng. Moreover, nowhere in that response did Ricai report FOPs specific to holographic film as purchased or produced. Further, it remains unclear, even after the verification, whether Ricai purchased holographic film, whether Dongguan Hengsheng produced the film for Ricai, or whether Ricai itself produced the film or if the input was toll-processed.
- Because Ricai does not explain how or where its holographic film was produced despite many opportunities to do so, Commerce should apply partial AFA to Ricai based on its incomplete reporting of information related to holographic merchandise.

Ricai's Rebuttal Brief[154]

- Ricai properly reported its FOPs for holographic embellishments. The petitioner only describes the "most common" method for producing a holographic effect on ribbon and operates under the presumption that Ricai must not have properly reported the embellishment if it did not use this method. The method used by Ricai appears as small silvered squares on a ribbon, and involves a texturing and metalizing process that does not contain an image.
- Materials involved in both of these processes were integrated into the database provided to Commerce, and any unreported materials would have prevented Commerce from reconciling Ricai's costs.

Commerce's Position:

Date of Sale

In Ricai's initial Section A questionnaire response, the company reported its POI U.S. market sales quantity[155] using the commercial invoice date as the date of sale.[156] Ricai initially explained that the commercial invoice date was the most accurate date of sale because the export sale quantity, value, and type of goods no longer changed once an invoice is issued,[157] noting that this is also "the date preferred by the Department and the most readily verifiable date."[158] Ricai also submitted evidence of product negotiations with a customer in Exhibit A-8 that included customer emails requesting a deferred delivery date for one SKU on a purchase order that had already been issued. However, in Ricai's initial Section C questionnaire, the company reported that the date of sale was actually the date of shipment, again claiming that the now-

[154] *See* Ricai's Rebuttal Brief at 12-13.
[155] *See* Ricai's April 5, 2018 Section A Questionnaire Response (Ricai April 5, 2018 AQR) at 3.
[156] *Id.* at 31.
[157] *Id.* at 32.
[158] *Id*.

revised sales quantity and value could change up until this date.[159] Ricai did not submit any further explanation as to why it revised its chosen date of sale between its initial Section A and Section C questionnaire responses, which is discussed by the petitioner in comments on Ricai's initial Section C responses.[160]

Following this unexplained change to the reported date of sale, Commerce issued a supplemental questionnaire to Ricai requesting that the company further clarify the point at which the material terms of sale are finalized (including quantity, value, and shipping terms), provide documentation to support the difference between its reported Q&Vs, and provide documentation to support the claim that terms of sale (including quantity, price, or types of goods) could change between a purchase order date and a commercial invoice or shipment date.[161] In its supplemental Section C response, Ricai cited the same sale from its initial Section C response involving three separate SKUs as its only support for the claim that the date of shipment is the first point at which the material terms of sale, inclusive of shipping terms, are finalized.[162] After issuance of the initial purchase order listing all three SKUs, further email negotiations with the customer resulted in changes to the per-unit case packing and deferred delivery of one SKU listed on the original purchase order.[163] Ricai issued one updated version of the original purchase order indicating the case pack change, and another including both the case pack and delivery window changes. According to record evidence, customer negotiations regarding sale and delivery terms continue after a purchase order was issued, after which updated purchase orders are issued to include any renegotiated material terms of sale, including changes to packaging requirements and shipment windows.

Commerce reviewed the documentation associated with this sale during its verification of Ricai's questionnaire responses.[164] Although the sale's final updated purchase order contains the same three SKUs as the original purchase order, the commercial invoice issued under the sale's purchase order identification number only lists two of the SKUs associated with the original purchase order.[165] In other sales traces collected by Commerce during verification, all SKUs listed on a purchase order also appear on the commercial invoice bearing the associated purchase order identification number.[166] Thus, the list of SKUs listed under a purchase order number on a commercial invoice may not be the only SKUs associated with that purchase order, as certain SKUs can be deferred to other commercial invoices for orders that are shipped at later dates.[167] Based on this evidence, Commerce finds that the commercial invoice date represents the first point in Ricai's system at which the material terms of a sale, including the list of SKUs

[159] *See* Ricai's May 8, 2018 Section C Questionnaire Response (Ricai May 8, 2018 CQR) at 20.
[160] *See* Petitioner's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China: Deficiency Comments on Ricai Section C-D Initial Questionnaire Responses," dated May 29, 2018 (Petitioner CD Deficiency Comments) at 7-9.
[161] *See* Commerce's Letter Re: First Supplemental ACD Questionnaire for Ricai, dated June 26, 2018 (Ricai First SACDQ) at 4.
[162] *See* Ricai's July 11, 2018 Supplemental Questionnaire Response (Ricai July 11, 2018 SQR) at 9 and Exhibit SSC-5.
[163] *Id.* at Exhibit SSC-5.
[164] *See* Ricai Verification Report at Exhibit 6 and Exhibit 10.
[165] *Id.* at Exhibit 10.
[166] *Id.*
[167] *Id.*

associated with a single invoice and shipment, are recorded under a single document identifier. Although the shipping date was used as the date of sale for Ricai's post-preliminary calculations as requested by the respondent, further examination of the record indicates that no changes to the material terms of sale occurred after the commercial invoice was issued. As such, and per its standard practice, Commerce will use Ricai's commercial invoice date as the date of sale because the record evidence indicates that the commercial invoice is the first point at which the material terms of sales are set.[168]

Regarding the petitioner's AFA concerns concerning the date of sale, we note that Commerce did not specifically request a U.S. sales database from Ricai that included purchase order dates for each sales entry.[169] Because the record supports the use of commercial invoice date as the date of sale, and because Ricai did not fail to provide a U.S. sales database with purchase order dates in response to an explicit request from Commerce, we disagree that Commerce should apply AFA to Ricai for failing to report purchase order dates.

Disclosure of Unaffiliated Internal Reseller

Ricai first disclosed that it utilized the services of an internal intermediary reseller in its initial Section C questionnaire, stating that Dongguan Ricai sold subject merchandise to an unaffiliated party that then "resold the subject the subject merchandise to Ricai Hong Kong, [*sic*] Ricai Hong Kong finally exported the goods to the United States."[170] Ricai further explained that this description was intended to be an addendum to the sales flowchart provided in Exhibit C-2, which contained a notation indicating that an unaffiliated party was involved in Ricai's export process.[171] The presence and role of this internal reseller was again revisited in Ricai's supplemental Section A and C questionnaires, the latter of which refers specifically to the internal reseller as a "trader" that "is not involved in the sales negotiation process with the U.S. customer" who purchases merchandise from Ricai Hong Kong.[172] Ricai's supplemental Section C response also reaffirms that this reseller is not affiliated with Ricai, and explains that the reseller was originally used by Ricai to facilitate its sales process as the latter deregistered its old producer and began operations with its new producer.[173]

During verification, the team asked further questions about the role of Ricai's unaffiliated internal reseller. Members of Ricai's leadership and sales teams explained that the reseller receives and remits title of the merchandise as part of the transaction, but does not actually take physical possession of the merchandise in question.[174] Although the reseller's primary responsibility is to manage the VAT export rebate process on behalf of Dongguan Ricai, it also contracts two unaffiliated transportation companies to transport merchandise directly from

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[168] *See* 19 CFR 351.401(i).
[169] *See, e.g.,* Ricai's May 8, 2018 Section C Questionnaire Response (Ricai May 8, 2018 CQR), Ricai July 11, 2018 SQR, and Ricai's August 2, 2018 Section C Clarification Questionnaire Response (Ricai August 2, 2018 CCQR).
[170] *See* Ricai May 8, 2018 CQR at 2.
[171] *Id.* at Exhibit C-2.
[172] *See* Ricai's May 22, 2018 Supplemental Questionnaire Response (Ricai May 22, 2018 SQR) at Exhibit SA-7; *see also* Ricai July 11, 2018 SQR at 10-11.
[173] *See* Ricai July 11, 2018 SQR at 11-12.
[174] *See* Ricai Verification Report at 8-9.

Dongguan Ricai's facilities to the port of exportation.[175] Ricai's representatives further explained that payment is remitted from Ricai HK to Dongguan Ricai through the unaffiliated reseller, which either collects a commission before passing along the remaining payment to Dongguan Ricai or simply retains part of the VAT export rebate for its services.[176]

Information on Ricai's unaffiliated internal reseller has been present on the record since the initial round of questionnaire responses was received, when the company's role in handling "export formalities" was explained.[177] Additionally, in its initial questionnaire response, Ricai reported "Yes" in the "DBROKU" field, indicating that it had "incurred brokerage and handling expenses prior to each shipment from China to the United States."[178] In response to Commerce's subsequent questionnaires, Ricai elaborated on the role of this intermediary reseller, including its services as a broker/reseller between Dongguan Ricai and Ricai HK that nevertheless does not interact with U.S. customers.[179] The respondent also explained that Ricai HK is both the final seller of subject merchandise to U.S. customers and the recipient of customer payments, such that the price paid by the U.S. customer includes the fees retained by the intermediary reseller.[180] At the request of the verification team, Ricai provided documentation tracing one of Ricai's pre-selected sale payments from Ricai HK through the intermediary reseller to Dongguan Ricai.[181] Further financial documentation was provided to demonstrate the overall collection of commission payments on a rolling or batch basis.[182]

Commerce concludes that there is no information on the record contradicting Ricai's claim that this intermediary reseller acts as a customs broker for export sales, and does not find that this issue warrants the application of AFA. As described above, at verification, Commerce asked several questions to confirm that the company facilitates the exportation of Ricai's sales to the United States, acting as an exporter broker for purposes of China's VAT export rebate system. Thus, no new information was discovered at verification that contradicted Ricai's questionnaire responses. Moreover, because these commission services are carried out in China, the associated costs are included in the surrogate value for brokerage and handling and are therefore part of the NV buildup, such that no adjustment to U.S. price is necessary.

Disclosure of U.S. Selling Agent

The unaffiliated U.S. sales agent used by Ricai HK to facilitate U.S. transactions first appears in Ricai's initial Section A response, where the agent appears in email correspondence between Ricai HK and a U.S. customer.[183] In these emails, the sales agent discusses certain issues with

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[175] *Id.* at 8.
[176] *Id.* at 8-9
[177] *See* Ricai May 8, 2018 CQR at 2 and Exhibit C-2.
[178] *Id.* at 30. A respondent is only required to indicate whether or not domestic brokerage and handling charges are incurred on U.S. sales in an NME antidumping investigation. It is required to provide additional information if such charges are incurred outside of China. *Id.*
[179] *See* Ricai May 22, 2018 SQR at Exhibit SA-7; *see also* Ricai July 11, 2018 SQR at 10-12.
[180] *See, e.g.,* Ricai May 22, 2018 SQR at Exhibit SA-7.
[181] *See* Ricai Verification Report at Exhibit 10.
[182] *Id.*
[183] *See* Ricai April 5, 2018 AQR at 18.

the customer on behalf of Ricai HK, and relates these issues to a member of Ricai's production team.[184] The language of these emails indicates that the sales agent performs these services on behalf of Ricai, and the name of the sales agent appears on all purchase orders placed on the record.[185] At the request of the verification team, Ricai provided further information regarding this sales agent's role in the U.S. sales process as well as the commission paid by Ricai to the agent for these services.[186]

Commerce did not ask any specific questions regarding this sales agent before Ricai's verification because all of Ricai's U.S. sales are made on an EP basis.[187] Commerce's initial Section A questionnaire expressly states that the respondent only report selling expenses incurred in the U.S. by affiliated selling agents for CEP sales, including information related to per-unit commission values (31.0, COMMU), selling agent names (32.0, SELAGENU), and selling agent relationships (33.0, SELARELU).[188] No record evidence suggests that this sales agent takes title to the subject merchandise at any point in the sales process, so the agent would not be considered a party to the transaction whose existence requires further disclosure.[189] Because all of Ricai's sales are EP sales and the company is not required to report the role of an EP sales agent whose commission is accounted for in the surrogate value for selling expenses, Commerce does not find that this issue warrants the application of AFA.

FOP Production and Consumption Weights

Ricai's financial system is designed to track the inventory movement of the three main plastic inputs used to produce ribbon and bows (*i.e.*, PP, PET, and PVC films).[190] These three inputs are tracked separately from all other direct inputs consumed specifically during the ribbon production process, as well as all packaging/packing inputs.[191] The verification team traced the raw material movements of PET, PP, and PVC films as well as packing materials in Ricai's general ledger, and tied month-end production quantities to Ricai's reported individual merchandise totals.[192] The trial balances for raw materials consumed were also tied to requisition, purchasing, and delivery documentation to support Ricai's reported production and consumption values for these accounts.[193] During the team's examination of Ricai's reported FOPs, Dongguan Ricai explained that it calculated content allocation factors that are used to allocate the plastics taken from the Q&V ledger across the various type-substrate combinations that appear in Ricai's monthly cost reports.[194] While the petitioner cites several pages from the Ricai verification report as evidence that Commerce concluded input weights had been incorrectly determined, Commerce does not agree that its report reaches any such conclusions.[195]

[184] *Id.* at Exhibit A-8.
[185] *See*, *e.g.*, Ricai's Verification Report at Exhibit 10.
[186] *See* Ricai Verification Report at 15.
[187] *See* Ricai May 8, 2018 CQR at 2.
[188] *Id.* at C-16 to C-19.
[189] *See*, *e.g.*, Ricai Verification Report at Exhibit 10.
[190] *See*, *e.g.*, Ricai Verification Report at 15-20 and Exhibit 4, Exhibit 11, and Exhibit 15.
[191] *Id.*
[192] *Id.* at 16-19 and Exhibit 11 and Exhibit 15.
[193] *Id.*
[194] *Id.* at 18-19.
[195] *See* Petitioner's Case Brief at 37-38.

In particular, pages 18-19 of the verification report note that a column labeled as "content" in Ricai's section D worksheets does not indicate the actual amount of the plastic input consumed, but is used solely for purposes of allocating the plastic amounts withdrawn from inventory among the various products.[196] The actual consumption amounts are reported in a separate column.[197] Commerce's verification confirmed that these factors correctly distributed the plastic amounts withdrawn from inventory among the several type-substrate combinations and that the amounts reported under the "consumed" column were correct. This was simply a matter of choosing a poor label for a column in an Excel worksheet.

The verification team reviewed and weighed all per-unit packing materials associated with each category of subject merchandise, comparing them to Ricai's packing FOP calculation worksheet.[198] In response to questions from the verification team, Ricai explained that the net weights in Ricai HK's sales database include all packaging and packing materials except for carton boxes and display boxes.[199] Other point-of-sale packaging materials, such as the cardboard tubes used to wind ribbons and the trays used to support firework bows, are included in the final sale weights of subject merchandise because these materials are considered to be essential elements of the final product as it is purchased by an end-use consumer.[200]

The petitioner cites a significant difference between the weight of Ricai's total POI production of subject merchandise and the total weight of PP film, PET film, and PVC films reportedly consumed in the production process, claiming that the only difference between these weights should be equal to a relatively small amount of scrap generated in the process.[201] However, it appears that the petitioner did not account for packing/packaging materials when comparing the weight of Ricai's plastic inputs with the weights of the finished merchandise as reported in Ricai's Section C database. Although plastic inputs undoubtedly contribute significantly to the overall weight of the subject merchandise, packaging also constitutes a significant portion of the finished product by weight of ribbons.[202] For instance, small plastic bows are attached to cards for retail purposes. The cards are similar in weight to the bows themselves. Because Commerce's verification team did not note any large discrepancies during Ricai's cost reconciliation, and because it appears that point-of-sale packaging contributes significantly to the overall weight of finished merchandise, Commerce does not find that this issue warrants the application of AFA.

FOP Database Allocation Methodology

Ricai's responses to Commerce's July 26, 2018 clarification questionnaire included a correctly-linked resubmission of the FOP database now titled Exhibit 3SD-1, which included a page of

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[196] *See* Ricai Verification Report at 18-19.
[197] *Id.* at Exhibit 15.
[198] *Id.* at 23-24 and Exhibit 19.
[199] *Id.*
[200] In general, "packaging" refers to an input that is part of the product purchased by the retail consumer (*e.g.*, labels, soup cans, soda bottles, a candy bar wrapper). "Packing" is material used for shipment from the factory to the retail outlet or customer, but is not an integral part of the product (*e.g.*, brown cardboard cartons, palettes, bulk sacks).
[201] *See* Petitioner's Case Brief at 37-38.
[202] *See*, *e.g.*, Ricai Verification Report at Exhibit 19.

previously submitted FOP packing values that, according to company officials, was inadvertently deleted during the submission process for Exhibit SSD-5.[203] Commerce confirmed that the corrected "dead links" now link to an FOP packing database submitted to the record separately as Exhibit D-6, as well as a hard-coded database Excel sheet and database printout.

Ricai also submitted a detailed explanation of its FOP database formulas in Exhibit 3SD-2, including a four-page narrative that explains how Dongguan Ricai, Dongguan Hengsheng and Dongguan Changsheng's per-unit FOPs were individually calculated for each company.[204] This narrative also describes how the inputs for each company were combined into the formulas included in the consolidated FOP database that could ultimately be used for Ricai's final calculations.[205] These formulas and inputs were reviewed with company representatives during Ricai's verification.[206] In light of the additional clarification provided in Ricai's post-preliminary questionnaire and verification, we determined that we had sufficient information to examine Ricai's provided FOP database during verification.

As noted above, Ricai explained during verification that the company considers PP, PET, and PVC plastics to be the only "direct" inputs for the merchandise it produces, with all other direct inputs (*e.g.*, inks, pigments, foaming agents) being placed into an overhead account in its financial system.[207] All overhead materials withdrawn from inventory are booked into this general overhead account.[208] At the end of the month, the overhead items consumed are allocated evenly over all merchandise produced during this time period, as the company is primarily concerned with allocating the specific amounts of plastic consumed by each "model" of merchandise.[209] Initially, Ricai had not reported the materials at issue as FOPs because it considered them to be part of overhead.[210] In response to a supplemental questionnaire, Ricai created FOPs for each of the items, allowing Commerce to include them as part of the cost of materials in the NV buildup.[211] Commerce did not issue any additional supplemental questionnaires directing Ricai to derive more product-specific FOPs for the overhead materials.

At verification, Commerce confirmed that the materials at issue were moved directly from inventory to general overhead in the accounting system and were never part of raw materials.[212] We also examined all monthly cost reports for the POI and confirmed the same materials were consistently allocated in this fashion.[213] Thus, Commerce confirmed that this allocation method is part of Ricai's normal books and records and is used for the company's own internal cost management purposes. Moreover, during verification, Commerce discovered no means by which Ricai could have performed the allocation more accurately in a manner that would not

[203] *See* Ricai August 2, 2018 CCQR at Exhibit 3SD-1.
[204] *Id.* at and Exhibit 3SD-2.
[205] *Id.*
[206] *See* Ricai Verification Report at 16-17.
[207] *Id.* at 18-20.
[208] *Id.*
[209] *Id.*
[210] *See, e.g.*, Ricai's May 8, 2018 Section D Questionnaire Response (Ricai May 8, 2018 DQR) at Exhibit D-1 and Exhibit D-4.
[211] *See* Ricai July 11, 2018 SQR at Exhibit SSD-5 and Exhibit SSD-9.
[212] *See* Ricai Verification Report at 18-20.
[213] *Id.*

have been unduly burdensome. Therefore, Commerce finds that the methodology used to produce Ricai's CONNUM-specific costs does not warrant the application of AFA.

Reporting of Holographic FOPs

Because the process used by Ricai to produce a "holographic" finish appears to be different from the one described by the petitioner, and because the materials involved in Ricai's "holographic" process using metalized films have been integrated into the FOP database already, we have no basis to conclude that important information regarding Ricai's holographic ribbon production is missing from the record to warrant the application of AFA. During the tour of Ricai's factory, the verification team observed a "metallized substrate being rolled through a printing machine" to produce a star pattern, which is similar to the method described by Ricai using a texturized roller to create a series of squares that are later metallized to produce a "holographic" pattern.[214] Examples of the holographic effect are present in both Ricai's questionnaire responses and Commerce's verification exhibits, and match the description provided by Ricai in its rebuttal brief.[215] The verification team did not see any evidence of processes to produce holographic finishes other than those utilizing the metallized films produced by Changsheng, which are coated in evaporated aluminum to produce a reflective surface. In particular, we verified the plastic film inputs supplied by Ricai to Changsheng and saw no indication that they were unusual or different from the film Ricai processed itself.[216] We also verified the inputs used by Changsheng to metalize that film and confirmed that the film and the metallization inputs were reported.[217] Importantly, we reviewed every single item purchased by Ricai during the POI used to process film.[218] In doing so, we necessarily verified all inputs used by Ricai to produce the holographic appearance. We saw no indication of special "holographic" materials or any other facts that would lead us to conclude the holographic appearance was produced outside of the ordinary printing and dying process.

***Overall Total AFA Position*:** Commerce determines to not apply total AFA to Ricai for the final determination, as none of the aforementioned issues represent deficiencies in Ricai's reporting. Ricai was not required by Commerce to provide purchase order dates in its U.S. sales database, and Commerce determines that Ricai's reported commercial invoice dates should be used as the date of sale for the purpose of its calculations. Commerce also finds that Ricai timely disclosed any necessary information related to its use of an internal intermediary reseller and a U.S. sales agent, and that its allocation of overhead materials, reporting of plastic consumption weights, and reporting of its holographic film production process and related inputs was sufficient and in accordance with the methods by which its books and records are kept in the normal course of business.

Comment 14: Surrogate Value for Plastic Bag Input

[214] *See* Ricai Verification Report at 20; *see also* Ricai's Rebuttal Brief at 13.
[215] *See* Ricai May 8, 2018 CQR at Exhibit C-3; *see also* Ricai Verification Report at Exhibit 10.
[216] *See* Ricai Verification Report at 11-12 and 20.
[217] *Id.*
[218] *See* Ricai's Verification Report at 19.

Petitioner's Case Brief[219]

- In the post-preliminary calculations for Ricai, Commerce based the surrogate value for the plastic bag packing input on Thai HTS number 3923.21.11.000, "Sacks and Bags (Including Cones), of Polymers of Ethylene." However, Ricai never references the material composition of these bags anywhere on the record.
- Commerce instead should base the surrogate value for these bags on Thai HTS number 3923.29, "Sacks and Bags (Including Cones), of Plastics Nesoi."

Ricai's Rebuttal Brief[220]

- Petitioner's assumption that Ricai and the other respondent use the same inputs is not factually supported by the record. All respondents in this investigation are competitors, and make independent decisions regarding their input choices.
- Ricai's descriptions of its inputs include the information built into its surrogate value submissions. The petitioner is attempting to create a "gotcha" moment by limiting what constitutes a "description" of these inputs, as they did not raise any previous concerns about allegedly insufficient input descriptions.

Commerce's Position: Commerce's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and tax and duty exclusive.[221] Commerce undertakes its analysis of valuing the FOPs on a case-by-case basis, considering the available evidence in light of the particular facts of each industry.[222] While there is no hierarchy for applying the surrogate value selection criteria, "{Commerce} must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the 'best' surrogate value for each input."[223]

We agree with the petitioner that it is more appropriate to use Thai HTS number 3923.29 to value Ricai's plastic bag input. With respect to plastic bag inputs, both HTS numbers in question are equally representative of a broad-market average, publicly available, contemporaneous with the POR, and tax and duty exclusive. However, no record evidence addresses the plastic content of Ricai's plastic bags except for Ricai's proposed surrogate value, Thai HTS number 3923.21.11.000. Although Ricai's proposed Thai HTS number specifies that the bags are made of "polymers of ethylene," Ricai's description of its own plastic bags is limited to "plastic bag,

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[219] *See* Petitioner Post-Prelim Calc Comments at 2-3.
[220] *See* Ricai Post-Prelim Rebuttal Calc Comments at 2-3.
[221] *See, e.g., First Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 1336 (January 11, 2010) (*PSF 2010)* and accompanying IDM at Comment 1
[222] *See Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005), and accompanying IDM at Comment 1.
[223] *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 (September 24, 2008) (*PET Film 2008*), and accompanying IDM at Comment 2; s*ee also Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546, 19549 (April 22, 2002), and accompanying IDM at Comment 2.

used to pack bows," which more closely matches the description of the Thai HTS number provided by the petitioner.[224]

Comment 15: Surrogate Value for Hanging Strip Input

Petitioner's Case Brief[225]

- In the post-preliminary calculations for Ricai, Commerce based the surrogate value for the hanging strip input on Thai HTS number 3916.20.20, "Monofilament … rods, sticks and prolific shapes … of plastic." However, Ricai references a more specialized plastic item "in strip form, with holes" that "also has a small hook at one end."
- Commerce instead should base the surrogate value for these strips on Thai HTS number 3926.90.99.090, "Articles of Plastics, Nesoi Other." This is consistent with Commerce's preliminary determination for the HTS number assigned to various plastic pieces used by Junlong to pack subject ribbons.

Ricai's Rebuttal Brief[226]

- As noted with the plastic bag input, the petitioner's assumption that Ricai and the other respondent use the same inputs is not factually supported by the record. All respondents are competitors making independent input decisions.
- The description accompanying the Thai HTS number proposed by the petitioner includes a "catch-all" provision, "NESOI," that is not as specific as the description of the HTS number used by Commerce. The more descriptive HTS code should be used when selecting an HTS code for a material input.

Commerce's Position: For the reasons described below, we agree with Ricai that it is more appropriate to use Thai HS 3916.20.20 to value hanging strips.

In Comment 14 above, we discussed Commerce's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act. With respect to hanging strip inputs, both HTS numbers in question are equally representative of a broad-market average, publicly available, contemporaneous with the POR, and tax and duty exclusive. Thus, we look to product specificity. With respect to the hanging strip input, the Thai HTS number used in Ricai's post-preliminary calculations was HTS 3916.20.20, "Monofilament … rods, sticks and prolific shapes … of plastic." This code indicates specific information regarding the general chemical composition and shape of the item in question, which photographs placed on the record indicate is a long strip of semi-thick plastic with punched holes in which to hang individual bows. Conversely, Thai HTS number 3926.90.00.090 appears to be a category designed to capture miscellaneous articles of plastic with minimal specificity. The use of HTS 3916.20.20 to value the hanging strip inputs indicates more specific information in accordance with section 773(c)(1) of the Act, and therefore Commerce will continue to use it as the basis for the surrogate value for Ricai's hanging strip.

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[224] *See* Ricai's Letter, "Plastic Decorative Ribbons from PRC ("Decorative Ribbons"); A-570-075; Surrogate Value Information," dated June 28, 2018 (Ricai SV Proposals) at Exhibit SV-1.
[225] *See* Petitioner Post-Prelim Calc Comments at 3-4.
[226] *See* Ricai Post-Prelim Rebuttal Calc Comments at 3-4.

Comment 16: Value Added Tax Calculation

Ricai's Case Brief[227]

- In the post-preliminary calculations released for Ricai, Commerce deducted from the U.S. price an amount for the non-deductible VAT not refunded at the time of exportation. This deduction is unlawful because this VAT is imposed at the time the goods are purchased, rather than at the time of exportation.
- This irrecoverable VAT is present in both the U.S. price and the price of the foreign like product, such that an adjustment is unnecessary to achieve tax neutrality. The unlawfulness of this practice was noted in *Qingdao Qihang Tyre Co., Ltd. v. United States* at the Court of International Trade.

Petitioner's Rebuttal Brief[228]

- Unrecoverable VATs function as an export tax, and normal VAT collection procedure is such that VAT recoveries are made upon the sale of the finished good. Because of this, the seller's loss of the VAT rebate occurs at the time of the export sale, as the non-refundable VAT is a cost that requires an adjustment in order to achieve the tax-neutral net price received by the seller.
- Ricai cites no evidence on the record that irrecoverable VAT is imbedded in normal value. Because the surrogate values from which normal value is constructed are always reported net of VAT, Ricai's claim that normal value includes Chinese VAT paid on inputs that are not rebated upon export is incorrect.
- Ricai cited *Qingdao Qihang Tyre Co., Ltd. v. United States*, which is currently in the appeals stage and should not be relied upon for the final determination. In addition, Commerce's final redetermination results indicate that the agency did not agree with the court's language stating that the adjustment for irrecoverable VAT is unlawful.

Commerce's Position: We have continued to make an irrecoverable VAT adjustment for the difference between the standard VAT levy of 17 percent, and the rebate rates for merchandise under consideration for Ricai. Pursuant to section 772(c)(1)(B) of the Act, the price used to establish export price (EP) and constructed export price (CEP) shall be reduced by "the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in section 771(6)(C)." Pursuant to 19 CFR 351.401(c), such price adjustment must be "reasonably attributable to the subject merchandise."

In 2012, Commerce announced a change in methodology with respect to the calculation of EP and CEP to include an adjustment for irrecoverable VAT in accordance with section 772(c)(2)(B) of the Act.[229] 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

[227] *See* Ricai Post-Prelim Calc Comments at 8-9.
[228] *See* Petitioner Post-Prelim Rebuttal Calc Comments at 2-5.
[229] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012) (Methodological Change).

the respondent was not exempted, Commerce will reduce the respondent's EP and CEP accordingly, by the amount of the tax, duty or charge paid, but not rebated.[230]

In a typical VAT system, companies do not incur any VAT expense for exports. Rather, upon export, they receive a full rebate of the VAT paid on inputs used in the production of exports ("input VAT"), and, in the case of domestic sales, the company can credit the VAT they paid on input purchases for those sales against the VAT they collect from customers.[231] That stands in contrast to China's VAT regime, where some portion of the input VAT that a company pays on inputs used in the production of exports is not refunded.[232] This unrefunded amount differs from the amount refunded on domestic sales and, thus, amounts to a tax, duty, or other charge imposed on exports that is not imposed on domestic sales. Where the irrecoverable VAT is a fixed percentage of U.S. price, Commerce explained in the *Methodological Change* that the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.[233]

Irrecoverable VAT, as defined in Chinese law, is a net VAT burden that arises solely from, and is specific to, exports.[234] It is VAT paid on inputs and raw materials used in the production of exports that is non-refundable and, therefore, a cost.[235] Irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exports of the subject merchandise to the United States. The statute does not define the terms "export tax, duty, or other charge imposed" on the exportation of subject merchandise. We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as the result of export sales.[236] It is set forth in Chinese law and, therefore, can be considered to be "imposed" by the exporting country on the exportation of subject merchandise. Furthermore, an adjustment for irrecoverable VAT achieves what is called for under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a net price received. This deduction is consistent with our longstanding policy, which is consistent with the intent of the statute, *i.e.*, that dumping margin calculations be tax neutral.[237]

Commerce's methodology, as applied in this investigation, consists of two basic steps: (1) determining the irrecoverable VAT on subject merchandise, and (2) reducing U.S. price by the

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[230] *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.
[231] *See, e.g., Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18733 (April 21, 2017) (OTR Tires Final 2014-15) and accompanying Issues and Decision Memorandum at Comment 8; *see also Methodological Change*, 77 FR at 36483.
[232] *Id.*
[233] *See Methodological Change*, 77 FR at 36483.
[234] *See Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57508 (September 25, 2014) and accompanying Issues and Decision Memorandum at Comment 7.
[235] *Id.*
[236] *See, e.g., OTR Tires Final 2014-15* and accompanying Issues and Decision Memorandum at Comment 8.
[237] *See Methodological Change*, 77 FR at 36483; *see also Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27369 (May 19, 1997).

amount determined in step one. Information placed on the record of this investigation by Ricai indicates that the standard VAT levy is 17 percent and the rebate rates for merchandise under consideration are 13 and 15 percent.[238] Accordingly, in Ricai's post-preliminary calculations, we removed from U.S. price the amount calculated based on the difference between those rates (*i.e.*, 2 percent or 4 percent) applied to the export sales value.[239]

We disagree with Ricai's claim that we do not have the statutory authority to adjust for irrecoverable VAT, and that our methodology unlawfully interprets section 772(c)(2)(B) of the Act. As stated above, section 772(c)(2)(B) of the Act authorizes Commerce to deduct from EP or CEP the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise. To the extent that the amount of VAT paid on inputs used to produce subject merchandise is not refunded upon exportation of the finished product, section 772(c)(2)(B) supports our adjustment for irrecoverable VAT. Where the irrecoverable VAT is a fixed percentage of U.S. price, in order to arrive at a tax-neutral dumping comparison, Commerce reduces the U.S. price downward by this same percentage.[240] This deduction is, also as recognized by the Court in *Juancheng Kangtai*, permissible under the statute.[241] Ricai cites the U.S. Court of International Trade (CIT) determination in *Qingdao Qihang Tyre Co., Ltd. v. United States* to support its claim that Commerce's practice of requiring the reduction of the export price by the amount of the irrecoverable VAT is unlawful. However, because this decision, including this VAT issue, is currently in litigation, we have not relied on this decision in making our determination here.

In Ricai's post-preliminary calculations, we reduced the U.S. price by the amount of the VAT adjustment, consistent with our practice. We made no change to this calculation for the final determination.

Comment 17: Which Surrogate Values Should be Used for PET Film, Glitter Film, Rainbow Film, and Holographic Film

Junlong's Case Brief[242]

- In the *Preliminary Determination*, Commerce valued PET film using HTS 3920.62, while glitter film, rainbow film, and holographic film were valued using HTS code 3926.90. HTS 3907.61, which Junlong submitted for PET film and holographic film, is the more accurate HTS for all four films. Alternatively, these four films could be classified under HTS 3920.62, as Commerce did for PET film in the *Preliminary Determination*.
- Commerce's selections of surrogate values used to value the FOPs are made "based on the best available information regarding the values of such factors in a market economy country."[243] In assessing what information is the "best available," it is Commerce's stated practice to use (1) investigation or review period-wide price averages; (2) prices

[238] *See* Ricai May 8, 2018 CQR at 46-48.
[239] *See* Ricai Post-Prelim Calc Memo.
[240] *See Methodological Change*, 77 FR at 36483.
[241] *See Juancheng Kangtai Chemical Co., Ltd. v. United States*, Slip Op. 17-3 (January 19, 2017) (Juancheng Kangtai) at 13.
[242] *See* Junlong's Case Brief at 1-4.
[243] *See* section 773(c)(l)(B) of the Act.

specific to the input in question; (3) prices that are net of taxes and import duties; (4) prices that are contemporaneous with the period of investigation or review; and (5) publicly available data.[244] Although Commerce has broad discretion in deciding what constitutes the best available information, the selection of information should be made in accordance with the overall purpose of the statute, which is to calculate accurate dumping margins.[245] Specificity to the input, in particular, is one of the most critical components of Commerce's selection of a surrogate value.[246]

- HTS 3926.90 is defined as "Articles of Plastics, Nesoi Other."[247] Based on the HTS definition and verification exhibits that clearly show all four films are the same type of raw material, HTS 3926.90 is not the "best available information" that Commerce could have used for glitter film, rainbow film, and holographic film.
- The three films that Junlong used are essentially PET film raw materials, and therefore should be categorized in the same HTS as PET film. Because all four films are merely different varieties (*e.g.*, color) of PET film, HTS 3907.61, which is defined as "Poly(ethylene terephthalate) Having A Viscosity Number of 78 ml/g or Higher,"[248] is on its face more specific to these inputs than HTS 3926.90, "Articles of Plastics."
- Alternatively, HTS 3920.62, which is defined as "Plates, Sheets Film, Foil and Strips of Plastics, Not Self-Adhesive, Non-Cellular, Not Reinforced Etc., of Polyethylene Terephthalate Other"[249] is also more specific to these inputs and more accurately describes the raw materials Junlong used in comparison to finished "Articles of Plastics."
- Junlong's verification exhibits also confirm that all four films are the same raw material, (*i.e.*, PET film).[250] The verifiers confirmed as much in their review of purchase and payment documents for different raw materials, as well as physical samples, warehouse records, and invoice documentation for glitter film, PET film, rainbow film, holographic film.[251]

Petitioner's Case Brief [252]

- Commerce should base the surrogate value for holographic film on the Thai HTS classification 3702.32.00.090, as laminated, holographic and other similar films used in the production of subject merchandise are highly complicated products that require expertise and expensive dedicated machinery.
- As described the petition, the manufacturing process for subject merchandise involves multiple steps. The record further demonstrates that subject ribbon and bows are

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[244] *See* "Non-Market Economy Surrogate Country Selection Process," Policy Bulletin 04.1 (2004).
[245] *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990).
[246] *See Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 366 F. Supp. 2d 1264, 1273-74 (CIT 2005) (explaining that, where agency failed to demonstrate Indian import statistics were sufficiently "product specific," it as irrelevant whether statistics satisfied other criteria); *see also Qingdao Sea-Line Trading Co. v. United States*, 766 F.3d 1378, 1386 (Fed. Cir. 2014) (surrogate value selection justified where Commerce treated product-specificity as "more important factor" than other criteria); *Ad Hoc Shrimp Trade Action Comm. v. United States*, 618 F.3d 1316, 1320 (Fed. Cir. 2010) (affirming selection of "product-specific data" as "best available information").
[247] *See* Petitioner's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China: Submission of Surrogate Values," dated July 2, 2018 at Exhibit 1.
[248] *Id.*
[249] *Id.*
[250] *See* Junlong Verification Report at Exhibit VE-14, at 74-76.
[251] *Id.* at 28-29, and Exhibit VE-14 at 35-80.
[252] *See* Petitioner's Case Brief at 50-54.

elaborate and complicated final products, with various film inputs, and are not easily manufactured. Nowhere is it more important for Commerce to capture the complexity of the production process than with regard to the respondents' film inputs.

- Junlong reports four types of film used as inputs to subject ribbon and bow production: PET film, Glitter Film, Rainbow Film, and Holographic Film. Mei Song reports five types: VMPVC film, Transparent PET film, VMPET film, Colored Pet film, and Velvet Film inputs. Mei Song's colored PET film is actually holographic film.
- In the *Preliminary Determination*, Commerce based the surrogate value for these holographic film inputs on import data under Thai HTS number 3926.90.99.090, covering other articles of plastic.
- As detailed in Exhibit 4 of the petitioner's surrogate rebuttal submission, the most common material used as a medium for holograms is very similar, if not more complex, than photographic film. A hologram is a "photographic recording of a light field" used to "display a fully three-dimensional image of the holographed subject, which is seen without the aid of special glasses or other intermediate optics." Holograms are made by "shining part of a light beam directly into the recording medium," and the other part onto "an object in such a way that some of the scattered light falls onto the recording medium."[253]
- The recording medium (*e.g.*, silver halide) is typically attached to a transparent substrate (*e.g.* glass or plastic). Given the nature of the recording medium used for holograms (and thus used as respondents' input), Thai HTS number 3702.32.00.090, which specifically refers to photographic film in rolls with a silver halide emulsion, best captures the complexity and photosensitive nature of holographic film used in the production of subject merchandise. As such, Commerce should rely on import data under Thai HTS number 3702.32.00.090 to value Mei Song's and Junlong's holographic film input.

Petitioner's Rebuttal Brief [254]

- Commerce should continue to apply HTS code 3926.90 to Junlong's glitter and rainbow film inputs, while changing the surrogate value for holographic film input to HTS code 3702.32.
- Junlong understates the complexity of its film inputs in its case brief, and misleadingly characterizes multilayered, specialized films as basic PET film. In reality, laminated, holographic, and other similar films used in the production of subject merchandise are highly complicated products that require expertise and expensive machinery.
- The various film inputs used to manufacture subject merchandise are not easily manufactured, as demonstrated by the ITC's preliminary determination: For example, "for a metallic appearance, the master roll will undergo the metallization process. This can be accomplished by purchasing rolls of metallized polyethylene terephthalate (PET) film and laminating the film to the polypropylene master roll or by metallizing the polypropylene master roll in-house... If the desired product is to have a glitter finish, the polypropylene master roll undergoes lamination in high-speed coater laminators."
- Junlong's film inputs are not simply different colors of PET film but much more complex and highly specialized downstream products that are produced in small volumes

[253] *Id.* at 51.
[254] *See* Petitioner's Rebuttal Brief at 9-13.

compared to basic PET products.

- Junlong's glitter and rainbow film inputs, in particular, take on a significantly different character as metallic and other layers are added to create unique films. As such, Commerce should continue to apply the HTS code 3926.90.99.090, which classifies these inputs as "other articles of plastic."
- The petitioner repeats its argument from the Petitioner's Case Brief, namely, that Commerce should find that the HTS code 3702.32.00.090, which refers to photographic film in rolls with a silver halide emulsion, best captures the complexity and photosensitive nature of the holographic film used in the production of subject merchandise.

Junlong's Rebuttal Brief [255]

- The proper classification of holographic film is HTS 3907.61. Junlong confirms that this HTS, which it submitted as the correct classification for PET film and holographic film, is the more accurate tariff classification for holographic film. Alternatively, holographic film should be classified under HTS 3920.62, which Commerce used for PET film in the *Preliminary Determination*. HTS 3702.32 should not be used for any classification.
- HTS 3907.61 provides for "polyacetals, other polyethers and epoxide resins in primary forms; polycarbonates, alkyd resins, polyallyl esters and other polyesters, in primary form: poly(ethylene terephthalate): having a viscosity number of 78 ml/g or higher." HTS 3920.62 provides for other plates, sheets, film, foil, and strip, of plastic, noncellular and not reinforced, laminated, supported or similarly combined with other materials: of polyethylene terephthalate. HTS 3920.90 provides for other articles of plastic. HTS 3702.32 provides for photographic film in rolls with a silver halide emulsion. A comparison of these tariff descriptions shows that 3907.61 is the most specific description and most accurate tariff classification for Junlong's holographic film.
- The petitioner's suggestion that 3702.32.00.0090 describes Junlong's holographic film lacks merit and common sense. Chapter 37 of the HTS covers photographic or cinematographic goods, and note 2 of the chapter provides that "the word 'photographic' relates to the process by which visible images are formed directly or indirectly by the action of light or other forms of radiation on photosensitive surfaces." The record evidence establishes that the holographic film used by Junlong is PET film for ribbon production, not photographic film with unexposed photosensitive surfaces.
- Junlong reiterates its argument from its case brief regarding the selection of surrogate values "based on the best available information regarding the values of such factors in a market economy country"[256] and the importance of specificity to the input.[257]
- Holographic film is PET film raw material. HTS 3907.61 (polyethylene terephthalate) is on its face more accurate and specific to these inputs than "photographic films" or

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[255] *See* Junlong's Rebuttal Brief at 14-18.
[256] *See* section 773(c)(l)(B) of the Act.
[257] *See Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 366 F. Supp. 2d 1264, 1273-74 (CIT 2005) (explaining that, where agency failed to demonstrate Indian import statistics were sufficiently "product specific," it as irrelevant whether statistics satisfied other criteria); *see also Qingdao Sea-Line Trading Co. v. United States*, 766 F.3d 1378, 1386 (Fed. Cir. 2014) (surrogate value selection justified where Commerce treated product-specificity as "more important factor" than other criteria); *Ad Hoc Shrimp Trade Action Comm. v. United States*, 618 F.3d 1316, 1320 (Fed. Cir. 2010) (affirming selection of "product-specific data" as "best available information").

"articles of plastic." Alternatively, HTS 3920.62 (defined as "sheet film…of polyethylene terephthalate") is also more specific to these inputs and more accurately describes the raw materials used by Junlong, in contrast to finished "articles of plastic."

Commerce Position: For the reasons described below, we determine it is more appropriate to use Thai HTS 3920.62 (plates, sheets, film, foil, and strip, of plastic, noncellular and not reinforced, laminated, supported or similarly combined with other materials: of polyethylene terephthalate) to value PET film, and Thai HTS TS 3926.90 (other articles of plastic) to value glitter, rainbow, and holographic films, consistent with our *Preliminary Determination*.

In Comment 14 above, we discussed Commerce's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act. With respect to the film inputs, all of the HTS numbers in question are equally representative of a broad-market average, publicly available, contemporaneous with the POR, and tax and duty exclusive. Thus, we look to product specificity.

We do not find the use of Thai HTS 3907.61 (polyacetals, other polyethers and epoxide resins in primary forms; polycarbonates, alkyd resins, polyallyl esters and other polyesters, in primary form: poly(ethylene terephthalate) to be appropriate because it covers PET in primary form, whereas PET film is in a more advanced form of PET (*i.e.*, films). Thai HTS 3920.62 covers PET in film form.

The petitioner is correct that glitter, rainbow, and holographic film require additional processing to the plain PET film.[258] They are more than just plain PET film. Thus, to value these inputs with the same HTS as plain PET film would ignore the additional processing that occurs to plain PET film to make glitter film, holographic film, and rainbow film. Using Thai HTS 3926.90 (other articles of plastic) would account for this change. PET is a form of plastic, and Junlong itself used this HTS number to describe rainbow and glitter film in its Section D response.[259] Therefore, we are continuing to use this HTS number for the final determination to value glitter, rainbow, and holographic film.

Thai HTS 3702.32 provides for photographic film in rolls with a silver halide emulsion. There is no evidence on the record that the holographic film used by Junlong has an unexposed silver halide emulsion, as provided for in HTS 3702.32. This is supported by pictures of Junlong's holographic film, which do not show a photographic film or a silver halide emulsion.[260] Thus, we disagree with the petitioner that we should use this HTS number to value holographic film, which is made of plastic not photographic film.

[258] See Junlong Verification Report at Exhibit 14, pages 65-80 (pictures).
[259] See Junlong's June 26, 2018 supplemental questionnaire responses, resubmitting Exhibit D-3 of Junlong's Initial Section D questionnaire response.
[260] See Junlong Verification Report and Verification Exhibit 14, pages 74-76.

Comment 18: Which Surrogate Financial Statements Should Be Used for Surrogate Financial Ratios

Junlong's Case Brief [261]

- To calculate surrogate financial ratios, Junlong submitted three financial statements: Bell Ribbon Co., Ltd. (Bell Ribbon), Freetex Elastic Co., Ltd. (Freetex), and Asia Fiber Public Co., Ltd.[262] In the *Preliminary Determination*, Commerce erroneously rejected all three of these financial statements and instead selected only one financial statement submitted by the petitioner.[263] Commerce should select Bell Ribbon and Freetex's financial statements in the final determination because they are complete, contemporaneous records from producers of comparable merchandise.
- Selecting one financial statement while there are other, equally good statements does not meet Commerce's obligation to use the "best available information."[264]
- It was unreasonable for Commerce to reject Bell Ribbon's and Freetex's financial statements because Junlong obtained these two statements directly from the official Thailand Revenue Department of the Ministry of Finance. Both financial statements are "prepared in accordance with the Thai Financial Reporting Standards for Non-Publicly Accountable Entities (NP AEs) under the Accounting Professions Act B.E. 254 7 (2004)," *etc*. Moreover, the financial statements are certified/signed by each company director.[265]
- There is no dispute that both companies produce comparable merchandise to Junlong's,[266] and Commerce determined that these two statements are complete, contemporaneous, and from producers of comparable merchandise, etc.[267] There is also no record evidence suggesting that a two-page pro forma auditor's cover letter is required, or that it would change any of the certified data in the submitted statement.
- Commerce has repeatedly stated its "preference for using multiple financial statements" because it provides a "broader market average for surrogate valuation purposes" and determines more accurate averaged financial ratios.[268] In *Steel Garment Hangers*, for

[261] *See* Junlong's Case Brief at 4-6.
[262] *See* Junlong Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China: Submission of Surrogate Values," July 2, 2018 (Junlong SV Letter), at Exhibits SV-T9 – SV-T13.
[263] *See* Memorandum, "Antidumping Duty Investigation of Certain Decorative Plastic Ribbons - Surrogate Values for the Preliminary Determination," July 30, 2018, at Exhibit 7.
[264] *See* section 773(c)(l)(B) of the Act.
[265] *See* Junlong SV Letter, at Exhibits SV-T9 SV – SV-T13.
[266] *Id.* at Exhibits SV-Tl0 at 2-4 and SV-T12 at 3-7.
[267] *See* Preliminary Surrogate Value Memorandum at Exhibit 7.
[268] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 75 FR 12726 (March 17, 2010) and accompanying IDM at Comment 1; *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Fifth New Shipper Review*, 75 FR 38985 (July 7, 2010) and accompanying IDM at Comment 1; *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, in Part*, 75 FR 57449 (September 21, 2010), and accompanying IDM at Comment 6; *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010), and accompanying IDM at Comment 13.

example, Commerce explained why multiple statements are superior to one statement.[269]

- According to Commerce's practice, the high-quality statements from Bell Ribbon and Freetex should be selected to ensure adequate representation of the comparable industry. Commerce has no reason to reject these statements, as they contain useful and necessary additional data points either in place of, or in addition to, the statement selected in the *Preliminary Determination*.

Petitioner's Rebuttal Brief [270]

- The financial statement of Thai producer Nakornchaisri, which was used to calculate surrogate financial ratios in the *Preliminary Determination*, is superior to all other financial statements on the record for numerous reasons: (1) Nakornchaisri was profitable in the most recently concluded fiscal year; (2) the company produces and sells ribbons; (3) the statement most closely corresponds to the POI, with a fiscal year ending in June 2017 (*i.e.* it is contemporaneous with the POI); (4) Note 12 in the financial statement details manufacturing costs and SG&A; (5) the statement has the most detailed breakdown of the cost of production compared with any other submissions; (6) there is no evidence of countervailable subsidies in the financial statement.
- Junlong does not provide any justification to exclude Nakornchaisri's financial statement, nor does it argue that Bell Ribbon's or Freetex's financial statements are better than Nakornichaisri's statement. Instead, Junlong's argument for using Bell Ribbon's and Freetex's financial statements is based on Commerce's preference for having a broader and more representative sample of the industry in question. However, Commerce also has a longstanding policy of choosing financial statements based on a number of criteria that affects their usability: closeness in line of business, level of outside review (*i.e.* whether the statement has been audited), contemporaneity, profitability, evidence of subsidies, and level of detail needed to calculate financial ratios.[271]
- In its *Preliminary Determination*, Commerce specifically chose to use the financial statement of Nakornchaisri over those of Bell Ribbon and Freetex because it was the only audited financial statement on the record. Commerce prefers to use audited financial statements over non-audited statements[272] and, although Junlong claims that Bell Ribbon's and Freetex's financial statements were obtained from the official Thailand Revenue Department of the Ministry of Finance, it cannot obscure the fact that these financial statements are not audited. There are sound reasons for Commerce's practice of using audited financial statements, as self-certified statements do not provide the same

[269] *See Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2010-2011*, 78 FR 28803 (May 16, 2013) and accompanying IDM at Comment 1D ("Using multiple financial statements allows the Department to average the factory overhead, SG&A, and profit ratios and, thus, to normalize any potential distortions that may arise from using those of a single producer. Thus, by using the average of multiple surrogate companies, we arrive at a broader-based surrogate valuation that minimizes the particular circumstances of any one producer. This is consistent with section 773(c)(3)(D) of the Act, which stipulates that when calculating NV, the Department should use representative capital costs.")
[270] *See* Petitioner's Rebuttal Brief at 13-17.
[271] *See Enforcement and Compliance Antidumping Manual*, available at http://ia.ita.doc.gov/admanual/, last updated on March 16, 2015 (AD *Manual*), at Chapter 10, 28-30.
[272] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737 (1997); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China*, 82 FR 29033 (June 27, 2017) (*Solar 2017*) and accompanying IDM at 68.

level of certainty and reliability. In this case, neither Bell Ribbon's nor Freetex's financial statements provide a similar level of detail regarding their accounting policies when compared to Nakornchaisri.

- Besides from the issue of audited financial statements, there are other reasons for not including the financial statements of Bell Ribbon and Freetex in the surrogate financial ratio calculations: (1) Bell Ribbon is primarily a woven ribbon producer, which is not the same as plastic extruded ribbon and therefore does not likely engage in the type of production operations comparable to the mandatory respondents; and (2) based on its financial statement, Freetex is clearly engaged in business that differs from plastic ribbon production (*e.g.* the production of bra straps and hooks used in intimate ware), and there is no evidence that it makes plastic ribbons of any type.
- Nakornchaisri's financial statement is superior to those of Bell Ribbon and Freetex in all respects (*e.g.* it is audited, contemporaneous, free from cost-distorting subsidies, shows a positive profit, and provides a detailed breakdown of costs) and should thus be used for calculating surrogate financial ratios in the final determination.

Commerce Position: We agree with the petitioner, and we are continuing to use only the financial statements of Nakornchaisri for the final determination.

As noted in Comment 14 above, when evaluating surrogate value data (including that used for surrogate financial ratios), 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.[273] There is no hierarchy among these criteria.[274] It is Commerce's practice to consider the available evidence in light of the particular facts of each industry when undertaking its analysis.[275] In the *Preliminary Determination*, we preliminarily determined 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.[276] We also found that Nakornchaisri, Bell Ribbon, and Freetax all produced comparable merchandise.[277] Specifically, according to their financial statements they each produce the following: Nakorchaisri (producing and selling stiches and ribbon); Bell Ribbon (sale of bow, ribbon, embroidery equipment, machinery repair and maintenance); and Freetax (wholesale and retail of elastic rubber, ribbons). In addition, all three financial statements were complete, had energy broken out separately from fixed overhead, showed no evidence of countervailable subsidies, were profitable, and were at least partially contemporaneous with the period of investigation.

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[273] *Id.*
[274] *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.
[275] *See* Policy Bulletin 04.1.
[276] *See Preliminary Determination* and accompanying PDM at 13.
[277] *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) at Exhibit 7.

Neither the Freetax nor the Bell Ribbon financial statements are audited, and thus, there is no confirmation that the data was prepared in accordance with Thai generally accepted accounting principles. Although it is not required that financial statements be audited, Commerce has established a clear preference to use audited financial statements when available.[278] Junlong mentions that Bell Ribbon's and Freetax's financial statements have a company official's certification. An auditor's opinion is more than just *pro forma*. One of the reasons for the preference for audited financial statements is that an independent auditor's opinion provides an unbiased expert evaluation regarding the information in the financial statements. Although Commerce has a preference for using multiple financial statements to provide a broader market average for surrogate valuation purposes, this only applies if all the financial statements provide the best information available. Here, Nakornchaisri's financial statements are audited, and, all else being equal, this makes them preferable to and superior to unaudited financial statements. Thus, they represent the best information available on which to calculate surrogate financial ratios.

Comment 19: Surrogate Value for Card Inputs

Petitioner's Case Brief [279]

- In its Supplemental Questionnaire Response, Junlong described the "paper card" input as "Noodle cardboard paper (T paper)," and provided information detailing the averages for tightness, lateral pressure index, burst resistance index, folding index, positive and negative water absorption, and moisture content. Junlong provided an identical description for the carton, color box, and display box inputs, and indicated that these inputs and paper card are best classified under HTS code 4819.10, which covers "Cartons, Boxes And Cases Of Corrugated Paper And Paperboard Used In Offices, Shops, Or The Like."[280] In the *Preliminary Determination*, Commerce apparently agreed with Junlong's classification and based the surrogate value for Junlong's paper card, carton, and display box inputs on import data under Thai HTS number 4819.10.
- In contrast, Mei Song reported the identical paper card input, which it describes much more specifically as "{c}oated on one side with kaolin or other inorganic substances," "in

[278] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 64 FR 39626, 39639 (July 19, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737, 9740 (1997) (noting Commerce's preference for audited financials over the same company's tax returns); *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal from the Russian Federation*, 68 FR 6885 (February 11, 2003) and accompanying IDM at Comment 9 (Commerce had used unaudited financial statements in the preliminary determination but changed to the use of audited financial statements, placed on the record after the preliminary determination, for the final determination); *Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005) and accompanying IDM at Comment 10; *High Pressure Steel Cylinders from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 26739 (May 7, 2012) and accompanying IDM at Comment II.A*;* and *Solar 2017* and accompanying IDM at 68 (declining to use financial statements without signed auditor's reports).

[279] *See* Petitioner's Case Brief at 41-45.

[280] *See* Junlong's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China Junlong Partial Section D Supplemental Questionnaire Response," dated June 26, 2018 (Junlong Section D SQR) at Exhibit D-3.

square or rectangular sheets of various sizes and weighing 150 g/m- and less."[281] In the *Preliminary Determination*, Commerce based the surrogate value for Mei Song's paper card input on a different HTS classification, HTS Number 4810.31, which refers to "Kraft Paper And Paperboard (Not For Writing, Etc.), Over 95% Wood Fiber By Chemical Process, Not Over 150 G/M2, Clay Coated, Bleached, In Rolls Etc."

- Furthermore, Ricai identifies both a "back card" and "small card" input that it describes as "coated paper with GSM of 300-350."[282] Given Commerce's preliminary determination to apply total AFA to Ricai, Commerce did not rely on its FOP methodology to calculate Ricai's margin and did not apply a surrogate value to these inputs. Ricai nevertheless indicated these inputs should be classified under 4808.10 and 4805.91, which refer to "Corrugated Paper And Paperboard, Whether Or Not Perforated, Nesoi, In Rolls Or Sheets" and "Paper & Paperboard, Uncoated, Weighing 150 G/M2 Or Less, In Rolls Or Sheets, Nesoi," respectively.
- The record in this investigation, however, demonstrates that not only are each of the respondents' "card" inputs the same material, it also demonstrates that the input material is most appropriately classified under HTS number 4810.14. For example, Junlong's and Ricai's "paper card" inputs and Ricai's "back" and "small card" inputs are not plain, uncoated paper or paperboard, or paper or paperboard cartons or box into which the subject merchandise is packed. Given the record evidence, HTS number 4819.10 *(i.e.*, the classification Commerce used to value Junlong's paper card input), as well as HTS numbers 4808.10 and 4805.91 (reported by Ricai for its back card and small card inputs) fail to capture the specific nature of the "card" material.
- As detailed in Exhibit 1 of the petitioner's SV Submission, these cards inputs are more appropriately captured under HTS heading 4810, which covers paper and paperboard, coated on one or both sides with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating, whether or not surface-colored, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size. This heading captures the nature of the paper card as not only coated, but specifically coated with kaolin as indicated in Mei Song's description, which imparts the white glossy finish evident in the record photos.
- Within that heading, the most appropriate HTS code is 4810.14, which covers "Paper and paperboard of a kind used for writing, printing or other graphic purposes, not containing fibers obtained by a mechanical or chemi-mechanical process or of which not more than 10 percent by weight of the total fiber content consists of such fibers: (con.) ... In sheets ... Weighing not more than 150 g.m2." The code specifically captures the sheet form of the input, the fact that the input has printing or graphics applied, as well as the weight limit indicated in Mei Song's description. The HTS subheading 4810.31 that Commerce applied to Mei Song's paper card input, while under the correct 4810 heading, refers specifically to paper material that is bleached. However, there is no record evidence to suggest any of the respondents' paper cards are composed of bleached material.

[281] *See* Mei Song's Letter, "Certain Plastic Decorative Ribbon from the People's Republic of China - Mei Song Partial Section D Supplemental Questionnaire Response," dated June 28, 2018 (Mei Song Section D SQR) at Exhibit SD-1.

[282] *See* Ricai's Letter, "Plastic Decorative Ribbons from PRC ("Decorative Ribbons"); A-570-075; Reply to Partial Section D Supplemental Questionnaire," dated June 26, 2018 (Ricai Section D SQR) at Exhibit PSD-1.

Rebuttal Brief

- No other interested parties commented on this issue.

Commerce Position: For the reasons described below, we agree with the petitioner that it is more appropriate to use Thai HS 4810.14 to value paper cards.

In Comment 14 above, we discussed Commerce's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act. With respect to card inputs, both HTS numbers in question are equally representative of a broad-market average, publicly available, contemporaneous with the POR, and tax and duty exclusive. Thus, we look to product specificity. Record evidence, including pictures of the merchandise, shows that paper cards are coated paper and not regular cardboard.[283] Indeed, both Mei Song and Ricai identified their card inputs as being of coated paper.[284] Therefore, using Thai HTS 4810.14 (coated paper) is more products specific to the paper card inputs used by the respondents than HTS 4819.10 (cartons, boxes and cases of corrugated paper and paperboard), which Commerce used in the *Preliminary Determination*. Therefore, the use of HTS 4810.14 to value paper card inputs is the best, most-specific information in accordance with section 773(c)(1) of the Act.

Comment 20: Whether to Treat Point-of-Sale Packaging as Direct Material Costs

Petitioner's Case Brief[285]

- Commerce has long recognized the distinction between packing costs, which refer to materials that are an integral part of the merchandise that is sold and are properly captured in the reported cost of manufacturing of the merchandise, and packaging costs, which refer to materials that are used only for the shipment of the merchandise and are properly reported in the sales listings. Given the complexity of the packing in this case, Commerce instructed the respondents to separately report the retail packaging that is considered part of the product itself under the variable RETAILU and set out specific codes to capture the various types of such materials. Commerce likewise established the POSU and WHLPKU variables for the respondents to identify and report the point of sale and wholesale packing materials related to the shipment of the subject merchandise.
- Commerce confirmed that all reported packing materials other than display boxes and carton boards/trays were point-of-sale. For its final determination, Commerce should include in COM the costs for all of Junlong's reported packing materials other than display boxes and carton boards/trays. The record indicates certain materials (excluded in the *Preliminary Determination*) were sold with subject ribbons and bows in the same retail packages. To ensure accurate margin calculations, Commerce should account for these inputs in its final margin calculations for Junlong as direct material costs.
- At verification, Commerce found that Ricai' s reported net weights include all packing materials except for carton boxes and display boxes. Based on Ricai's descriptions of its

[283] *See, e.g.*, Junlong's Section A questionnaire response at Exhibit A-12, Junlong's July 9, 2018, supplemental questionnaire response at Exhibits SC-3 and SC-6, Ricai's July 11, 2018, supplemental questionnaire response at Exhibit SD-12, and Ricai's Verification Report at Exhibit 5 and 10.
[284] *See* Ricai's June26, 2018 Supplemental Questionnaire Response at Exhibit PSD-1, and Mei Song's June 26, 2018, supplemental questionnaire response at Exhibit SD-1.
[285] *See* Petitioner's Case Brief at 45-50.

inputs, its Section C reporting and Commerce's verification, the following retail packaging material inputs should be included in the margin calculations as direct material costs: the reel paper cores (PCORE _PAK) and paper tubes used wrap subject merchandise (TUBE_PAK), the back cards (BACKCARD_PAK) and small cards (SCARD_PAK) discussed above, the plastic bags (PBAG_PAK), and the adhesive tape (ADHTAP _PAK). Ricai also reports a "flower tray" input that it describes as round plastic in sheet form that is used to fix bows in place to prevent dropping. At verification Commerce observed this material was clearly part of the retail packaging and properly treated as a direct material input.

- Mei Song's reported packing inputs are limited in comparison. For example, Mei Song reports simply a "paper box" input without identifying the different types of boxes specific to retail, point of sale or wholesale packaging.
- To the extent Commerce calculates a margin for Mei Song in its final determination, it should include all of Mei Song's reported packing inputs in COM except for the carton input, which is the only material that could reasonably been used solely for the shipment of subject bows and merchandise. Other inputs such as the paper card, paper tube and plastic tube and adhesive tape appear to be related to retail packing alone. Mei Song's plastic box and paper box inputs, however, could potentially reflect both retail and non-retail materials. Given Mei Song provided no way to make this distinction, however, Commerce in its final determination should assume both inputs to be direct materials and include their costs in the calculated COM.

Junlong's Rebuttal Brief [286]

- Junlong properly distinguished its packing materials from direct inputs, and, as such, Commerce should reject the petitioner's argument.
- The packing materials that Junlong reported are used to pack the products and are clearly different from raw materials. Packing material is not only used for shipment, as claimed by the petitioner, but also used to protect the product from damage. Moreover, packing materials are not the basic materials used to produce the product itself, and, by their very nature, packing materials should not be treated as raw materials because in this industry the product requires excessive packing materials.
- Under Commerce's normal value calculation methodology, packing materials determined to be different than direct materials, regardless of whether they are packing for shipment or retail packing, are all included in the normal value calculation. If a packing material is treated as a raw material and included in COM, and the denominator used to calculate overhead, SG&A, and profit ratios is COM, then these ratios must be recalculated based on a larger denominator (*i.e.*, if the denominator for the ratios excludes packing materials, such packing materials must not be included in raw material (and COM) in any manner, or it will be double counted.
- In the financial statements which Commerce relied on to calculate ratios, packing cost is clearly separately identified, and there is no indication that certain packing material are intentionally included in the raw material section or excluded from the packing section. In the Preliminary SV Memorandum, Commerce explicitly stated that it had moved packing material to their own category because they are not included in the calculation of

[286] *See* Junlong's Rebuttal Brief at 12-14.

overhead, SG&A, or profit in the SAS program.

- Commerce should rely on the literal mean of packing materials for the final determination. Because the three Chinese respondents treated the listed items as packing material rather than raw materials, the relevant industry practice is clearly to treat these packing materials as packing materials.

Ricai Rebuttal Brief

- Ricai did not comment on this issue.

Commerce Position: Packing costs are differentiated from packaging costs in Commerce's treatment of these two different cost components.[287] Packing costs refer to materials that are used only for the shipment of the merchandise and are a separate component the NV calculation.[288] By contrast, packaging costs refer to materials that become an integral part of the merchandise that is sold and is included in the cost of manufacture of the product.[289] When the respondents prepare their ribbons and bows for sale to customers, they place these products in plastic bags, plastic boxes, on paper cards, etc.[290] These items are sometimes placed in display boxes or carton boards/trays for display in retail stores, and then the items are put in cartons for shipment to the customer.[291] The plastic bags, plastic boxes, paper cards on which the merchandise is sold to end customers is integral part of the subject merchandise because they are inescapably purchased as part of the subject merchandise by the ultimate consumer, and as such, these are properly considered raw materials and we have added them to respondents' cost of materials accordingly. This is similar to the finding in *Chlorinated Isos from China LTV Final*.[292] Display boxes and carton boards/trays are used for retail display of the subject merchandise, but they are not an integral part of the merchandise purchased by the ultimate consumer. Similarly, cartons are used to ship the merchandise to the United States. As such, we are treating display boxes and carton boards/trays/boxes as packing materials, and the rest of the reported packing materials as packaging expenses, as part of COM.[293]

[287] We note that the petitioner has reversed the concepts of packing versus packaging in its case brief.
[288] *See Chlorinated Iscoyanurates from Japan: Final Determination of Sales at Less Than Fair Value*, 79 FR 56059 (September 18, 2014) and accompanying IDM at 25. *See also Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413 (March 26, 2012) and accompanying IDM at Comment 33, and *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52055 (September 12, 2007), and accompanying IDM at Comment 6
[289] *Id.*
[290] *See* Junlong Verification Report at 31-32 and Ricai Verification Report at 24.
[291] *Id.*
[292] *See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May I 0, 2005) (*Chlorinated Isos China LTFV)* and accompanying IDM at Comment 10.
[293] *Id.*

Comment 21: Whether to Provide an Export Subsidy Offset

Junlong's Case Brief [294]

- Commerce should grant Junlong an export subsidy offset of 10.54 percent based on an export subsidy rate calculated in the companion CVD investigation, in which Commerce applied an AFA rate of 10.54 percent for the Export Buyer's Credit for all mandatory respondents and thus also applied the all-others rate to companies, including Junlong.[295]
- In an AD investigation with a concurrent CVD investigation, it is Commerce's statutory obligation and normal practice to adjust the AD cash deposit rate downward to account for export subsidies found in the CVD investigation. Commerce should therefore adjust Junlong's AD cash deposit rate downward by 10.54 percent to account for the export subsidy in the final determination.
- Section 772 of the Act is the "export subsidy" provision that directs Commerce to increase the "price used to establish export price and constructed export price" by "the amount of any countervailable duty imposed on the subject merchandise under part 1 of this subtitle to offset an export subsidy."[296] In determining the estimated weighted-average dumping margins of the three mandatory respondents, Commerce did not make an upward adjustment to the export price and/or constructed export price, nor did it make any downward adjustments to the preliminary cash deposit. Given that in the *CVD Preliminary Determination*, Commerce determined that all three mandatory respondents benefitted from Export Buyer's Credits, an export subsidy downward adjustment of 10.54 percent to Junlong's cash deposit rate is warranted by the substantial evidence and mandatory by law.
- In the *CVD Preliminary Determination*, Commerce applied total AFA to the Export Buyer's Credits program because the Government of China "did not provide the requested information needed to allow Commerce to fully analyze this program."[297]
- Commerce cannot double-count an export subsidy program by not offsetting it from the cash deposit or increase the proportionate amount in EP and CEP. The Export Buyer's Credit applied to the all-others rate companies, including Junlong, is undisputedly an export subsidy as it could not be more than obvious from its name. In fact, the petitioner characterized the program as one of the "export credit subsidies," where the "Export-Import Bank of China provides export-contingent loans at preferential rates."[298] Commerce's longstanding practice is to treat the Export Buyer's Credits program as a prohibited export subsidy.[299]

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[294] *See* Junlong's Case Brief at 4-6.
[295] *See Certain Plastic Decorative Ribbon from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 29096 (June 22, 2018) (*CVD Preliminary Determination*) and accompanying PDM.
[296] *See* section 772(c)(l)(C) of the Act.
[297] *See CVD Preliminary Determination* and accompanying PDM at 16.
[298] *See* Petition for The Imposition of Countervailing Duties Pursuant to Section 701 of The Tariff Act of 1930, As Amended; Volume III at 77.
[299] Compare *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 47902 (August 10, 2015) and accompanying IDM at 20-21, with *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck*

- In other concurrent AD and CVD investigations,[300] Commerce explained why offsetting Export Buyer's Credits is a statutory requirement: "It is {Commerce's} practice, in AD investigations, to initially calculate a dumping margin and then to offset that figure by any export subsidy cash deposit rate calculated in the concurrent CVD investigation…The Act directs {Commerce} to increase EP or CEP by the amount of the countervailing duty 'imposed' on the subject merchandise 'to offset an export subsidy.'"[301]
- Those export subsidies, which were eventually adjusted from the AD cash deposit, all included the 10.54 percent Export Buyer's Credit, which is the same exact program that Commerce assigned in the instant *CVD Preliminary Determination*. "Offsetting the AD cash deposit rate by an export subsidy rate that is based on AFA will not have the effect of neutralizing the adverse inference applied to the respondents. Rather, such an offset ensures that the adverse inference used to calculate the export subsidy rate is applied to the respondents only once (*i.e.*, as a CVD and not through potentially higher AD duties)."[302] Commerce should therefore adjust Junlong's final AD rate in the final determination so that Commerce can prevent the "double-application" of duties.
- In *PSF Fine Denier*, Commerce decided to downwardly adjust AD rates for the two mandatory respondents and the separate rate companies, because of the export subsidies found in the companion CVD preliminary determination.[303] Although, like in other instances, Commerce did not spell out which export subsidy program warranted the downward adjust, one can easily recognize those are the Export Buyer's Credits, Export Assistance Grants, and Famous Brand based on the programs' names and assigned rates.[304] Later, in the AD final determination, Commerce reversed the offset for Export Buyer's Credits but kept the offset for Export Assistance Grants and Famous Brand without any explanation. Commerce conclusively stated that "an offset that was provided for in the *Preliminary Determination* with respect to a certain program in the companion CVD investigation is not appropriate ... because Commerce has made no findings in the

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Tires from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part, 80 FR 34888 (June 18, 2015), and accompanying Final Determination Analysis for Cooper (Kunshan) at 1, Attachment I (Chart showing the breakout of export subsidy rate of 11.13 percent, which is the sum of Export Buyer's Credit-10.54 percent and Provision of Land-Use Rights for FIEs for LTAR-0.59 percent).

[300] Compare *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 76970 (December 23, 2014) (*Solar Cells 2014*) and accompanying IDM at Comment 3 (discussing that Commerce will follow its statutory obligation to offset the export subsidy in cash deposit rate), with *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 79 FR 76962 (December 23, 2014) and accompanying IDM at 15-16 (assigning 10.54 percent as Export Buyer's Credits to mandatory respondents).

[301] *See Solar Cells 2014* and accompanying IDM at 38.

[302] *Id.* and accompanying IDM at 39.

[303] *See Fine Denier Polyester Staple Fiber from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 83 FR 665 (January 5, 2018) (*PSF Fine Denier*) and accompanying PDM at 30 (citing section 772(c)(l)(C) of the Act and various prior proceedings where the AD margin was downward adjusted to account for export subsidies).

[304] *See Fine Denier Polyester Staple Fiber from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 82 FR 51396 (November 6, 2017) and accompanying PDM.

companion CVD investigation that …are export subsidies."[305] Commerce discussion regarding Export Buyer's Credits in the CVD final determination of *PSF Fine Denier* contains nothing more than the reasoning for its AFA application, which was already cited in the CVD preliminary determination of *PSF Fine Denier*, that the Government of China implemented an alleged 2013 Administrative Measures, which eliminated the $2 million contract minimum and also loans associated with the program no longer were limited to direct disbursements through China Ex-Im Bank.[306]

- Even assuming, for the sake of the argument, that there is no minimum for loans under this program and disbursements through third-party banks are true, those facts in no way changed the program's nature of being an export subsidy, because the loan would still be contingent upon exports. Neither the conclusive statements in *PSF Fine Denier* or in this instant investigation rises to the level of "substantial evidence."
- Commerce's determination of not adjusting the AD cash deposit for the Export Buyer's Credits program is unreasonable, contradicted by the weight of record evidence, and contrary to the law.

Petitioner's Rebuttal Brief[307]

- Contrary to Junlong's claims, it is not Commerce's current practice to offset the AD deposit rates for the Ex-Im Buyer's Credit subsidy program in the CVD investigation.
- In the *Solar Cells AD Preliminary Determination*, Commerce decided that an adjustment for Ex-Im Buyer's Credit export subsidies was no longer warranted due to "non-cooperation by {China} in the companion CVD administrative review."[308] Moreover, in the *Solar Cells CVD Final Determination*, Commerce found that given China's failure to address concerns regarding China's operational program information, Commerce could not determine whether this program was countervailable or whether respondents used this program.[309] As a result, Commerce denied the offsetting export subsidy adjustment in the *Solar Cells AD Final Determination*.[310]
- In the *Preliminary Determination*, Commerce declined to adjust its preliminary AD

[305] *See Fine Denier Polyester Staple Fiber from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 24740 (May 30, 2018) and accompanying IDM at 6 (explaining in footnote 28 that "as a result of certain non-cooperation, Commerce's final determination that the alleged program provided a countervailable subsidy was based on facts available with adverse inferences, and therefore the program was not found to be an export subsidy").

[306] *See Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China: Final Affirmative Determination*, 83 FR 3120 (January 23, 2018) and accompanying IDM at 23-24.

[307] *See* Petitioner's Rebuttal Brief at 17-21.

[308] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2015-2016*, 83 FR 1018 (January 9, 2018) (*Solar Cells AD Preliminary Determination*) and accompanying PDM at 30.

[309] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 32678 (July 17, 2017) (*Solar Cells CVD Final Determination*) and accompanying IDM at Comment 1.

[310] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 35616 (July 27, 2018) (*Solar Cells AD Final Determination*) and accompanying IDM at Comment 5.

calculations for Junlong and all other mandatory respondents for the Ex-Im Buyer's Credit that was countervailed in the preliminary determination for the companion CVD investigation. Commerce should continue to deny this offset in the final determination.

Commerce Position: We agree with the petitioner. Pursuant to section 772(c)(1)(C) of the Act, Commerce increases the U.S. price by the amount of any countervailing duty imposed to offset an export subsidy. Accordingly, in antidumping investigations, where there is a concurrent CVD investigation, it is Commerce's normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent's weighted-average dumping margin to account for export subsidies found for each respective respondent in the concurrent CVD investigation. However, Commerce did not make a determination in the companion ribbon CVD investigation that the Export Buyer's Credit program was an export subsidy. Rather, Commerce's determination is to countervail the program based on facts otherwise available with an adverse inference, as a result of non-cooperation by the Government of China.[311] Commerce did not make a determination that the program in question was contingent on export performance. In other words, Commerce did not determine that the subsidies in question were export subsidies, as required for an offset under section 772(c)(1)(C) of the Act. Thus, we disagree with the respondent's argument that Commerce should make an adjustment pursuant to section 772(c)(1)(C) of the Act for this program. In *Pakistan CWP Investigation*, Commerce found that "without a determination in the companion CVD investigation that a program is an export subsidy, it is not appropriate to make an offset to the cash deposit rates in this AD investigation pursuant to section 772(c)(1)(C) of the Act."[312]

As we explained in the *Solar Cells AD Preliminary Determination*, "{a}s a result of non-cooperation by the GOC in the companion CVD administrative review, as facts available with an adverse inference, Commerce determined that Trina benefited from the Export Buyer's Credits Program but did not determine that the program in question was export contingent. Without a determination in the companion CVD administrative review that this program provides an export subsidy, we find it is not appropriate to increase Trina's U.S. prices pursuant to section 772(c)(1)(C) of the Act."[313]

Similarly, in the instant case, Commerce found in the companion CVD investigation that the AFA was warranted for the Export Buyer's Credit program because the GOC did not provide the requested information needed to allow Commerce to fully analyze this program.[314] Without a determination in the companion CVD administrative review that the Export Buyer's Credit program provides a subsidy that is contingent on export performance (*i.e.*, an export subsidy), we continue to find it is not appropriate to adjust the respondents' AD margins downward pursuant to section 772(c)(1)(C) of the Act.

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[311] *See Certain Plastic Decorative Ribbon from the People's Republic of China: Final Affirmative Countervailing Duty Determination* and accompanying IDM at Comment 13. *See also CVD Preliminary Determination* and accompanying PDM at 16-17.
[312] *See Circular Welded Carbon-Quality Steel Pipe from Pakistan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures*, 81 FR 36867 (June 8, 2016) and accompanying PDM at 13, unchanged in *Circular Welded Carbon-Quality Steel Pipe from Pakistan: Final Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 75028 (October 28, 2016).
[313] *See Solar Cells AD Preliminary Determination* and accompanying PDM at 30.
[314] *See CVD Preliminary Determination* and accompanying PDM at 16-17.

VII. RECOMMENDATION

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

☒ Agree

☐ Disagree

12/21/2018

X

Signed by: PRENTISS SMITH

P. Lee Smith
Deputy Assistant Secretary
for Policy and Negotiations

Appendix I

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, but disregarding any features that measure 4 inches or less in width, such as tapering or cutting at the ends or in a bow knot, provided that aggregate length of such features comprises no more than 20% of the length of the ribbon. Subject merchandise includes but is 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, made of fabric, or covered by any other decorative coating such as glitter (whether of plastic or non-plastic materials), 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; (9) cords, *i.e.*, multiple strands of materials that have been braided, gimped or twisted together; and (10) 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 excludes 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.

The scope of the investigation excludes plastic garlands and plastic tinsel garlands, imported in lengths of not less than three (3) feet. The longitudinal base of these garlands may be made of wire or non-wire material, and these garlands may include plastic die-cut pieces. Also excluded are items made of plastic garland and/or plastic tinsel where the items do not have a tab or other means for attaching the item to an object using adhesives. This exclusion does not apply to plastic garland bows, plastic tinsel bows, or other bow-like products made of plastic garland or plastic tinsel.

The scope of the investigation excludes ribbons made exclusively of fabric formed by weaving or knitting threads together, or by matting, condensing or pressing fibers together to create felt fabric, regardless of thread or fiber composition, including without limitation, fabric ribbons of polyester, nylon, acrylic or terylene threads or fibers. This exclusion does not apply to plastic ribbons that are flocked.

The scope of the investigation excludes ribbons having a width of less than three (3) mm when incorporated by weaving into mesh material (whether flat or tubular) or fabric ribbon (meaning ribbon formed by weaving all or any of the following: man-made fibers, natural fibers, metal threads and/or metalized yarns), in each case only where the mesh material or fabric ribbon is imported in the form of a decorative bow or a decorative bow-like item.

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.