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International Trade Administration
Washington, D.C. 20230

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Investigation
POI: 1/1/2018-6/30/2018
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July 1, 2019

**MEMORANDUM TO:** Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

**FROM:** James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for Final Affirmative Determination in the Less Than Fair Value Investigation of Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China

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## I. SUMMARY

The Department of Commerce (Commerce) determines that certain steel wheels 12 to 16.5 inches in diameter (certain steel wheels) from the People's Republic of China (China) are 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). Commerce also determines that critical circumstances exist with respect to imports from the China-wide entity and for the sole participating separate rate company. The period of investigation (POI) is January 1, 2018 through June 30, 2018.

We analyzed comments received from interested parties regarding our *Preliminary Determination*.[1] 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 for which we received comments from interested parties.

<u>List of the Issues</u>

Comment 1: Selection of the AFA Rate
Comment 2: Whether Critical Circumstances Exist

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[1] *See Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Affirmative Determination of Critical Circumstances*, 84 FR 16643 (April 22, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

Separately, we analyzed comments received from interested parties regarding the scope of this investigation and accompanying countervailing duty (CVD) investigation. As a result of this analysis, we have clarified the scope of the investigations. The full discussion of this clarification can be found in the accompanying Final Scope Decision Memorandum.[2]

## II. BACKGROUND

On April 22, 2019, we published the *Preliminary Determination*. We did not conduct verification because all mandatory respondents withdrew from the investigation.[3]

We invited parties to comment on the *Preliminary Determination*. On May 22, 2019, we received case briefs from Dexstar Wheel, a Division of Americana Development, Inc. (the petitioner), Zhejiang Jingu Co., Ltd. (Zhejiang Jingu), Trans Texas Tire, LLC (TTT), and HiSpec Wheel & Tire, Inc. (HiSpec).[4] On May 30, 2019, the petitioner and Zhejiang Jingu submitted rebuttal briefs.[5]

We received requests for hearings in this investigation.[6] However, all parties subsequently withdrew their hearing requests.[7]

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[2] *See* Memorandum, "Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Final Scope Comments Decision Memorandum," dated concurrently with this memorandum (Final Scope Decision Memorandum).

[3] *See Preliminary Determination*, 84 FR at 16645 and accompanying PDM at 3.

[4] *See* Petitioner's Letter, "Certain Steel Wheels 12 to 16.5 Inch in Diameter from China – Petitioner's Antidumping Case Brief," dated May 22, 2019 (Petitioner's Case Brief); *see also* Zhejiang Jingu's letter, "Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Case Brief," dated May 22, 2019 (Zhejiang Jingu's Case Brief); TTT's letter, "TTT's Case Brief: Antidumping Duty Investigation of Certain Steel Wheels 12 to 16.5 Inch in Diameter from the People's Republic of China," dated May 22, 2019 (TTT's Case Brief); and HiSpec's letter, "HiSpec's Case Brief: Antidumping Duty Investigation of Certain Steel Wheels 12 to 16.5 Inch in Diameter from the People's Republic of China," dated May 22, 2019 (HiSpec's Case Brief).

[5] *See* Petitioner's Letter, "Certain Steel Wheels 12 to 16.5 Inch in Diameter from China – Petitioner's Rebuttal Brief," dated May 30, 2019 (Petitioner's Rebuttal Brief); *see also* Zhejiang Jingu's letter, "Certain Steel Wheels (12 to 16.5 Inches in Diameter) from the People's Republic of China: Rebuttal Case Brief," dated May 30, 2019 (Zhejiang Jingu's Rebuttal Brief).

[6] *See* Petitioner's Letter, "Certain Steel Wheels (12 to 16.5 Inches in Diameter) from China: Petitioner's Request for a Hearing on the Department's Selection of the Adverse Facts Available (AFA) Rate," dated May 21, 2019; *see also* Petitioner's Letter, "Certain Steel Wheels (12 to 16.5 Inches in Diameter) from China: Petitioner's Request for a Hearing on Scope," dated May 21, 2019; Zhejiang Jingu's letter, "Certain Steel Wheels (12 to 16.5 Inches in Diameter) from the People's Republic of China: Hearing Request," dated May 22, 2019; Zhejiang Jingu's letter, "Certain Steel Wheels (12 to 16.5 Inches in Diameter) from the People's Republic of China: Scope Hearing Request," dated May 22, 2019; and TTT's letter, "TTT's Hearing Request: Antidumping Duty Investigation of Certain Steel Wheels 12 to 16.5 Inch in Diameter from the People's Republic of China," dated May 22, 2019.

[7] *See* Petitioner's Letter, "Certain Steel Wheels (12 to 16.5 Inches in Diameter) from China: Petitioner's Withdrawal of its May 21, 2019, Request for a Hearing on the Department's Selection of the Adverse Facts Available (AFA) Rate," dated June 7, 2019; *see also* Petitioner's Letter, "Certain Steel Wheels (12 to 16.5 Inches in Diameter) from China: Petitioner's Withdrawal of its May 21, 2019, Request for a Hearing on Scope," dated June 7, 2019; Zhejiang Jingu's letter, "Certain Steel Wheels (12 to 16.5 Inches in Diameter) from the People's Republic of China: Withdrawal of Hearing Request," dated June 7, 2019; Zhejiang Jingu's letter, "Certain Steel Wheels (12 to 16.5 Inches in Diameter) from the People's Republic of China: Withdrawal of {Scope} Hearing Request," dated June 7, 2019; and TTT's letter, "TTT's Hearing Request Withdrawal: Antidumping and Countervailing Duty

## III. PERIOD OF INVESTIGATION

The POI is January 1, 2018 through June 30, 2018.

## IV. SCOPE COMMENTS

During the course of this investigation, and the concurrent CVD investigation, Commerce received scope comments from interested parties. Commerce issued a Preliminary Scope Decision Memorandum to address these comments and set aside a period of time for parties to address scope issues in scope case and rebuttal briefs.[8] We received comments from interested parties regarding the scope of the investigations from the petitioner, TTT, HiSpec, and Allied Wheel Components, Inc. (Allied Wheel),[9] and rebuttal scope briefs from the petitioner, Zhejiang Jingu, and TTT.[10] We address these comments in the Final Scope Decision Memorandum. As a result, for this final determination, we made certain changes to the scope of these investigations from that published in the *Preliminary Determination*. For a full description of the scope of this investigation, *see* this memorandum's accompanying *Federal Register* notice at Appendix I.

## V. AFFIRMATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

Section 735(a)(3) of the Act provides that Commerce will determine that critical circumstances exist in an LTFV investigation if: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. Further, 19 CFR 351.206 provides that imports must increase by a least 15 percent during the "relatively short period" to be considered "massive" and defines a "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months

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Investigations of Certain Steel Wheels 12 to 16.5 Inch in Diameter from the People's Republic of China," dated June 7, 2019.

[8] *See* Memorandum, "Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Preliminary Scope Decision Memorandum," dated April 15, 2019 (Preliminary Scope Decision Memorandum).

[9] *See* Petitioner's Letter, "Case Brief on the Scope of the Investigations Submitted on behalf of the Petitioner, Dexstar Wheel," dated May 22, 2019; *see also* Zhejiang Jingu's letter, "Certain Steel Wheels (12 to 16.5 Inches in Diameter) from the People's Republic of China: Scope Comments," dated May 22, 2019; TTT's letter, "TTT's Scope Case Brief: Antidumping and Countervailing Duty Investigations of Certain Steel Wheels 12 to 16.5 Inch in Diameter from the People's Republic of China," dated May 22, 2019; HiSpec's letter, "HiSpec's Scope Case Brief: Antidumping and Countervailing Duty Investigations of Certain Steel Wheels 12 to 16.5 Inch in Diameter from the People's Republic of China," dated May 22, 2019; and Allied Wheel's letter, "Certain Steel Wheels (12 to 16.5 Inches in Diameter) from the People's Republic of China: Scope Comments," dated May 22, 2019.

[10] *See* Petitioner's Letter, "Certain Steel Wheels 12 to 16.5 Inch in Diameter from China – Petitioner's Rebuttal Brief," dated May 30, 2019; *see also* Zhejiang Jingu's letter, "Certain Steel Wheels (12 to 16.5 Inches in Diameter) from the People's Republic of China: Rebuttal Scope Case Brief," dated May 30, 2019; and TTT's letter, "TTT's Scope Rebuttal Brief: Antidumping and Countervailing Duty Investigations of Certain Steel Wheels 12 to 16.5 Inch in Diameter from the People's Republic of China," dated May 30, 2019.

later.[11] The regulation also provides, however, that, if the Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from that earlier time.[12]

In the *Preliminary Determination*, we noted that no parties made any claims regarding completed AD proceedings for certain steel wheels from China, and we are not aware of the existence of any active AD orders on certain steel wheels in other countries. As a result, Commerce did not find that there is a history of injurious dumping of certain steel wheels from China pursuant to section 733(e)(1)(A)(i) of the Act.[13] However, we found, pursuant to section 733(e)(1)(A)(ii) of the Act, that importers had knowledge that exporters were dumping and that there was likely to be material injury by reason of such sales.[14] Specially, we found that the preliminary rate of 44.35 percent for the China-wide entity, which includes the mandatory respondents and which was based on AFA, and the rate of 38.27 percent for the separate rate company, exceeds the threshold sufficient to impute knowledge of dumping.[15] Also, because the International Trade Commission (ITC) preliminarily found a reasonable indication that an industry in the United States is materially injured by imports of certain steel wheels from China, we preliminarily determined that importers knew or should have known that there was likely to be material injury by reason of sales of steel wheels at LTFV.[16] As no party provided comments on these preliminary findings, we continue to find for this final determination, pursuant to section 735(a)(3)(A)(ii) of the Act, that the existing rates are sufficient to impute knowledge of dumping and, on the basis of the ITC's preliminary injury finding, that importers knew or should have known that there was likely to be material injury by reason of sales of steel wheels at LTFV by the China-wide entity and the company eligible for a separate rate.

Also in the *Preliminary Determination*, we found that imports of subject merchandise for the China-wide entity (which includes mandatory respondents Xiamen Sunrise Wheel Group Co., Ltd. (Sunrise), Xingmin Intelligent Transportation System Co., Ltd. (Xingmin), and Zhejiang Jingu) were "massive" over a "relatively short period," as AFA, based on the China-wide entity's failure to cooperate by not acting to the best of its ability to comply with requests for information.[17] To determine whether the separate rate respondent, Changzhou Chungang Machinery Co., Ltd. (Chungang Machinery), had massive imports for the *Preliminary Determination*, we applied our standard practice to compare Global Trade Atlas (GTA) import statistics specific to the merchandise covered by the scope of the investigation in the largest possible periods before and after the publication of the initiation of the investigation in August 2018 (*i.e.*, a base period of February 2018, through July 2018, compared with August 2018, through January 2019), which reflected an increase of imports of 24.99 percent for the separate

[11] *See* 19 CFR 351.206(i).
[12] *Id.*
[13] *See Preliminary Determination* PDM at 6.
[14] *Id.* at 6-7.
[15] *Id.* at 6.
[16] *Id.* at 7.
[17] *Id.* at 7-8.

rate company.[18] In so doing, we found there was an increase in imports of more than 15 percent during a "relatively short period" of time, in accordance with 19 CFR 351.206(h) and (i), and preliminarily found that critical circumstances exist for the separate rate company pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).[19]

We received comments on our preliminary determination of critical circumstances from interested parties. We address the critical circumstances comments in Comment 2, *infra*. For the final determination, we continue to determine affirmatively the existence of critical circumstances for the China-wide entity and the non-selected separate rate respondent.

For this final determination, we continue to find that the China-wide entity (which includes mandatory respondents Xingmin, Zhejiang Jingu, and Sunrise) has not cooperated to the best of its ability, and, consistent with our practice, as AFA pursuant to sections 776(a) and (b) of the Act, we are determining that there was a massive increase in the volume of imports of the subject merchandise from the China-wide entity during the critical circumstances period and, thus, critical circumstances continue to exist for the China-wide entity, pursuant to sections 735(a)(3)(B) and 776(a) and (b) of the Act and 19 CFR 351.206.[20]

Because we have found that Chungang Machinery is eligible for a separate rate, we next examine whether imports were massive for the separate rate company. Consistent with the *Preliminary Determination*, to find whether massive imports exist for the separate rate company, we examined import statistics specific to the merchandise covered by the scope of this investigation.[21] It is Commerce's practice to base the critical circumstances analysis on all available data, and to limit the comparison period by the suspension of liquidation resulting from an affirmative preliminary determination. When, as is the case here, there is a companion CVD investigation, we limit the duration of the comparison period by the month that Commerce began imposing preliminary countervailing duties on subject imports.[22] We note that the import data used for Commerce's analysis of whether massive imports exist for the separate rate respondent represents the most recent data available on the record (*i.e.*, no party provided updated data subsequent to the *Preliminary Determination*, nor has any party disputed the suitability of the

[18] Normally, Commerce would deduct the mandatory respondents' reported shipment data. However, because the mandatory respondents withdrew from the investigation, the data provided could not be verified; thus, we did not make any such deductions.
[19] The petitioner has alleged seasonality in the import data. However, because the ITC import data demonstrated that the base period compared to the comparison period imports were massive (*i.e.*, 24.99 percent), any such analysis of seasonal trends is moot.
[20] *See, e.g.*, *Certain Uncoated Paper from Australia: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, In Part*, 81 FR 3108, 3109 (January 20, 2016), and accompanying IDM at 13-14.
[21] *See* memorandum, "Antidumping Duty Investigation of Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Monthly Shipment Quantity and Value Analysis for Critical Circumstances," dated April 15, 2019 (Preliminary Critical Circumstances Memorandum).
[22] *See, e.g.*, *Certain Quartz Surface Products From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23767 (May 23, 2019) (*Quartz China LTFV*), and accompanying IDM at Comment 2 (citing *Truck and Bus Tires from the People's Republic of China: Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*, 82 FR 8599 (January 27, 2017) (*Truck and Bus Tires from China LTFV*), and accompanying IDM at Comment 28).

base and comparison periods used or suggested a different period be used in the alternative).[23] As such, based on the analysis set forth in the *Preliminary Determination*, we continue find that imports from the separate rate company are massive over a short period of time (*i.e.*, the periods February 2018, through July 2018, compared with August 2018, through January 2019), and that critical circumstances exist for imports of certain steel wheels from the separate rate company.[24]

## VI. CHANGES SINCE THE *PRELIMINARY DETERMINATION*

Parties commented on our *Preliminary Determination*, specifically the calculation of the total AFA rate for the China-wide entity, as discussed in Comment 1. After considering these comments, Commerce is not making any changes to its methodology used in the *Preliminary Determination*.

## VIII. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES

In AD 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. Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S. price "shall be increased by the amount of any countervailing duty imposed on the subject merchandise . . . to offset an export subsidy."[25] In the concurrent CVD investigation, for the final determination, we are finding export subsidies for the companies receiving AFA for failure to cooperate.[26] All companies in the companion CVD investigation have export subsidies included in their final subsidy rates.[27] As such, we find that it is appropriate to make an offset to the cash deposit rates in this LTFV investigation pursuant to section 772(c)(1)(C) of the Act for the China-wide entity.[28] Accordingly, we will apply an

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[23] *See* Petitioner's Case Brief at 11. No party specifically disputes the suitability of this base and comparison window with respect to Commerce's analysis of whether the increase in imports from "all other" companies has been massive, and such data reflects the most up-to-date information available on the existing record. As such, we have used this information as a basis for our finding with respect to massive imports for "all other" companies in our final determination. *See* Memorandum, "Monthly Shipment Quantity and Value Analysis for Critical Circumstances," dated concurrently with this memorandum (Final Critical Circumstances Memorandum). Because we are finding critical circumstances based on AFA for Zhejiang Jingu, we have not subtracted the shipment data reported by Zhejiang Jingu from the ITC import data.

[24] *See Preliminary Determination* PDM at 7-8 and Preliminary Critical Circumstances Memorandum; *see also Truck and Bus Tires from China LTFV* IDM at Comment 28 ("Also, none of the respondents eligible for a separate rate requested a revision to our preliminary affirmative critical circumstances determination. Therefore, we find that the critical circumstances that we preliminarily determined continue to exist for the final determination.").

[25] *See Carbozole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 38076, 38077 (July 1, 2010), and accompanying IDM at Comment 1.

[26] *See* unpublished *Federal Register* notice, "Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Final Affirmative Countervailing Duty Determination, and Final Affirmative Determination of Critical Circumstances," signed July 1, 2019, and accompanying IDM.

[27] *Id.*

[28] S*ee, e.g., See Less-Than-Fair-Value Investigation of Rubber Bands from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 83 FR 45213 (September 6, 2018), and accompanying PDM at 11, unchanged in *Rubber*

export subsidy offset to the estimated weighted-average LTFV margin assigned to the China-wide entity.[29]

## IX. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provides 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.

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

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[30] Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the Petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.[31] When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely

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*Bands from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 58547 (November 20, 2018).

[29] As an offset for export subsidies for the China-wide entity, we have applied the lowest total export subsidy amount applied to any party in the CVD final determination (*i.e.*, 21.70 percent). *See Quartz China LTFV* and accompanying IDM at 14 n.7. This is the same export subsidy offset applied to the separate rate company for this final determination.

[30] *See* section 776(b)(1)(B) of the Act.

[31] *See also* 19 CFR 351.308(c).

manner."[32] Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[33]

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as the Petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the Petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[34] The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value,[35] although under the Act, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.[36] To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.[37]

Under section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins. Further, when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.[38]

In the *Preliminary Determination*, we relied on AFA in determining the LTFV margin for the China-wide entity. As all mandatory respondents have withdrawn from this investigation, the LTFV margin for the China-wide entity applies to all entries of the merchandise under investigation, except the entries from Chungang Machinery, the sole company found to be eligible for a separate rate. We continue to find that the use of facts available is required in determining the rate of the China-wide entity, pursuant to sections 776(a)(1) and 776(a)(2)(A)-(C) of the Act, and that an adverse inference is warranted due to the China-wide entity's failure

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[32] *See, e.g., Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).
[33] *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 at 870.
[34] *See* SAA at 870.
[35] *Id.*
[36] *See* section 776(c)(2) of the Act.
[37] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March, 13 1997).
[38] *See* section 776(d)(1)-(2) of the Act.

to cooperate by not acting to the best of its ability to comply with requests for information, pursuant to section 776(b) of the Act. Commerce received comments on the selection of the AFA rate, which are addressed below in Comment 1.

## X. DISCUSSION OF THE ISSUES

### Comment 1: Selection of the AFA Rate

*Petitioner's Comments*

- Commerce preliminarily selected the highest petition rate of 44.35 percent as the AFA rate in this investigation. In so doing, Commerce declined to use the rate proposed by the petitioner, which was based on petition information detailing factor usage rates and prices, but updated with surrogate value information submitted to the record in the course of the investigation. Commerce should reconsider this decision, as a revised AFA rate is necessary to ensure mandatory respondents do not benefit from non-cooperation.
- Commerce has recalculated rates in the past, and it should do so in this instance.[39]
    - In *SSPC from Belgium*, Commerce recalculated constructed values used to determine the AFA rate using information on the record and did so citing its need to provide an "incentive to ensure the company's future participation in reviews."[40]
    - In *PVA from Korea*, Commerce calculated a new AFA margin using publicly available data, yielding a rate higher than the highest from the petition.[41]
    - In *Sodium Thiosulfate from China*, Commerce recalculated the AFA rate using price and cost data submitted by the petitioner in that case, increasing the AFA margin from 25.57 to 148.42 percent.[42]
- The *Preliminary Determination* held that the petitioner failed to provide support for the presumption that the respondents' withdrawal is motivated by obtaining a "more favorable result" than that which would be achieved through continued participation. The petitioner does not know of any cases where Commerce has required evidence of the respondents' motivations for withdrawing from participation.[43] Requiring such proof is impractical and, instead, Commerce should examine the circumstances in which the withdrawal took place. In this case, at the time of withdrawal, Zhejiang Jingu provided all factor usage and price information, and parties submitted surrogate value information; as such, at the time of

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[39] *See* Petitioner's Case Brief at 8-10 (citing *Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 66 FR 56272 (November 7, 2001) (*SSPC from Belgium*), and accompanying IDM; *see also Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the Republic of Korea*, 68 FR 47540 (August 11, 2003) (*PVA from Korea*), and accompanying IDM; *Sodium Thiosulfate from the People's Republic of China, Final Results of Antidumping Duty Administrative Review*, 58 FR 12934 (March 8, 1993) (*Sodium Thiosulfate from China*); *Notice of Final Determination of Sales at Less Than Fair Value: Barium Carbonate from the People's Republic of China*, 68 FR 46577 (August 6, 2003) (*Barium Carbonate from China*); *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996) (*Bicycles from China*); and *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*)).

[40] *Id*. at 8-9 (citing *SSPC from Belgium* IDM at 10).

[41] *Id*. at 9-10 (citing *PVA from Korea* IDM at 4).

[42] *Id*. at 10 (citing *Sodium Thiosulfate from China*, 58 FR at 12934).

[43] *Id*. at 11.

withdrawal, the record contained all necessary information for Zhejiang Jingu to consider the range of rates that may be calculated from the record in comparison to the existing AFA rate.

- In *SSPC from Belgium*, Commerce stated that the highest petition rate may benefit the respondent based on the evidence on the record.[44] The fact pattern is similar here because at the time of its withdrawal, Zhejiang Jingu was aware that: (1) the highest petition margin in the instant case was 44.35 percent; (2) the preliminary AFA rate Commerce used in the investigation of a similar steel wheel product was 231.7 percent;[45] and (3) its own confidential information would be removed from the record after its withdrawal request (consistent with other investigations). Therefore, Zhejiang Jingu made a judgment that the highest petition margin was preferable to the margin likely to be calculated in this investigation.
- Commerce takes into account the relevancy of any selected AFA rate.[46] The petitioner has submitted more relevant Brazilian surrogate data in its initial surrogate value submission. This information better reflects the actual valuation of Zhejiang Jingu's alloy steel inputs. Zhejiang Jingu publicly stated that it uses alloy steel in ITC testimony.[47]
- Commerce should use this Brazilian data in applying AFA given that Zhejiang Jingu indicated that it used alloy steel in the production of steel wheels. Commerce asked Zhejiang Jingu, in a supplemental questionnaire, for further data on which steel grades were used in the rim and disk, but Zhejiang Jingu failed to respond after its withdrawal.[48] Additionally, though Commerce specifically identified a STEELTYPE field product characteristic in the control number (CONNUM) and requested that respondents indicate the type of steel used to produce subject merchandise in reporting factors of production, Zhejiang Jingu's initial response does not include any public information regarding the steel grade it uses to produce steel wheels.[49]

[44] *Id*. at 12 (citing *SSPC from Belgium* IDM at 2).
[45] *Id*. at 13 (citing *Certain Steel Wheels from the People's Republic of China: Preliminary Determination of Sales at Less-Than-Fair-Value*, 83 FR 54568 (October 30, 2018)).
[46] *Id*. at 13 (citing *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1334 (CIT 1999) (*Ferro Union*); *see also Automotive Replacement Glass Windshields from the People's Republic of China: Final Results of Administrative Review*, 70 FR 54355 (September 14, 2005) (*Windshields from China*); and C*hlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 26954 (June 11, 2018) (*Isocyanurates from China*) and accompanying IDM at 13).
[47] *Id*. at 14 (citing Petitioner's Letter, "Certain Steel Wheels 12 to 16.5 Inches in Diameter from China – Petitioner's Surrogate Country Selection Rebuttal Comments," dated March 4, 2019, at Attachment 1).
[48] *Id*. at 15 (citing Commerce's letter, "Antidumping Duty Investigation of Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: First Supplemental Questionnaire for the Sections A, C and D Questionnaire Responses for Zhejiang Jingu Company Limited (Zhejiang Jingu) and Shanghai Yata Industry Co., Ltd. (Shanghai Yata)," dated March 1, 2019, at questions 45 and 48).
[49] *Id*. at 15 (citing Zhejiang Jingu's letter, "Certain Steel Wheels (12 to 16.5 Inches in Diameter) from the People's Republic of China: Response of Zhejiang Jingu Company Limited to Section C of the Department's Questionnaire," dated December 3, 2018, Public Version at pages C-8, C-9, and Exhibit C-01).

*Zhejiang Jingu's Rebuttal Comments*

- Commerce should continue applying its standard practice of using the highest petition rate when selecting an AFA rate, as it has done in similar cases.[50] The petitioner acknowledges that this is standard practice.[51]
- Commerce must explain its reasoning behind any departure from standard practice and support that decision with evidence.[52]
- Zhejiang Jingu has explained that its decision to withdraw was motivated by resource considerations.[53] The petitioner's argument regarding Zhejiang Jingu's knowledge and motivations is speculative. Given Commerce's wide latitude in determining rates in investigations, Zhejiang Jingu could not know the potential outcome of the investigation.[54]
- In the *Preliminary Determination*, Commerce found no reason to depart from standard practice.[55] No new factual information has been added to the record in the interim, and, thus, there is no new basis for Commerce to alter its practice.[56]
- The cases cited by the petitioner are not analogous with the instant investigation. In *SSPC from Belgium*: (1) the AFA rate was used in an administrative review, but the respondent cooperated in the investigation; (2) the recalculation was to incorporate more recent public information for the subsequent period of review; and (3) there was a calculated rate from the investigation for the respondent to consider in its decision-making prior to withdrawal.[57]
- In *PVA from Korea*, Commerce had previously stated that it could recalculate margins from the petition as adverse facts after initially setting a profit rate of zero.[58] In the instant case, Commerce has not identified any portions or assumptions from the petition margins that would need to be calculated as part of applying adverse facts.[59]
- *Sodium Thiosulfate from China* is an example of Commerce applying its standard practice.[60] However, the segment cited by the petitioner is an administrative review where Commerce updated price and cost information that had "changed substantially since the investigation."[61]

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[50] *See* Zhejiang Jingu's Rebuttal at 2 (citing *Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 83 FR 31949 (July 10, 2018), and accompanying IDM at 14; *see also Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying IDM at 5; and *Ammonium Sulfate from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 81 FR 78776 (November 9, 2016), and accompanying IDM at 8).
[51] *Id*. at 3 (citing Petitioner's Case Brief at 5).
[52] *Id*. at 3 (citing *Taian Ziyang Food Co. v. United States*, 637 F. Supp. 2d 1093, 1140 (CIT 2009); *Save Domestic Oil, Inc. v. United States*, 240 F. Supp. 2d 1342, 1357 (CIT 2002); and *Aimcor v. United States*, 154 F.3d 1375, 1378 (Fed Cir. 1998) (quoting *Matsushita Elec. Indus. Co. v. United States*, 750 F.2d 933 (Fed. Cir. 1984))).
[53] *Id.* at 9 (citing Zhejiang Jingu's letter, "Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Notice of Withdrawal from Participation," dated March 6, 2019 (Zhejiang Jingu Withdrawal)).
[54] *Id*. at 10.
[55] *Id.* at 3 (citing *Preliminary Determination* PDM at 17).
[56] *Id.* at 3.
[57] *Id.* at 5-6 (citing *SSPC from Belgium* IDM at 9).
[58] *Id.* at 6 (citing *PVA from Korea*, 68 FR at 61591 and 61593).
[59] *Id*. at 7 (citing *Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Initiation of Less Than Fair-Value Investigations*, 83 FR 45095 (September 5, 2018), and accompanying Initiation Checklist).
[60] *Id.* at 7 (citing *Final Determination of Sales at Less Than Fair Value: Sodium Thiosulfate from the People's Republic of China*, 56 FR 2904 (January 25, 1991)).
[61] *Id*. at 8 (citing *Sodium Thiosulfate from China*, 58 FR at 12934).

- The petitioner's citations to *Barium Carbonate from China*, *Bicycles from China*, and *Saccharin from China* are not relevant to the issue in question as Commerce calculated a margin for a participating respondent and the China-wide rate was adjusted to reflect information gained in that process. In the instant investigation, there is no need to account for a more recent period of review.[62]
- Additional examples from the petitioner are also not suitable comparisons. First, *Ferro Union* is not instructive of the current matter. The relevancy issue in that case arose from an AFA margin that was calculated eight years before the period of review.[63] Second, in *Windshields from China*, Commerce compared petition rates to those calculated in a review to examine the petition rate's relevancy.[64] Finally, *Isocyanurates from China* addressed the relevancy of a selected AFA rate with respect to the use of a subsidy program.[65]

**Commerce's Position:** We disagree with the petitioner's position that our selection of the highest rate from the Petition as AFA was in error and must be adjusted for this final determination. Commerce's standard practice is to select an AFA rate from the higher of the highest dumping margin found in the Petition or the highest calculated dumping margin of any respondent in the investigation, as we explained in the *Preliminary Determination*.[66] Although we do not disagree that section 776(b) of the Act permits other options, including any other information supplied in the record, in selecting the AFA rate, we find that neither the circumstances in this case, nor the case precedent cited by the petitioner, compel a deviation from our standard practice of assigning the highest margin alleged in the petition.

The petitioner maintains that, while Commerce has "nearly always selected the highest petition margin" as an AFA rate, it has also recalculated petition rates to derive an AFA rate as necessary when petition margins were not suitable.[67] However, we find that the examples provided by the petitioner are not analogous with the facts of this investigation and are not instructive:

(1) *SSPC from Belgium* - The petitioner argues that *SSPC from Belgium* is an appropriate analogue in this case because Commerce chose not to use the highest margin from the petition as AFA for a withdrawing respondent in a subsequent administrative review and instead recalculated rates utilizing more recent public financial statements to reach a higher margin.[68] However, as Zhejiang Jingu notes, *SSPC from Belgium* is an administrative review of an order, not an investigation; thus, the recalculation of the Petition rate was necessary to induce future cooperation.[69] In the investigation, the respondent in question, ALZ, cooperated, and a LTFV

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[62] *Id.* at 8 (citing *Barium Carbonate from China*, 68 FR at 46577 and 46878; *see also Bicycles from China*, 61 FR at 19026 and 19028; and *Saccharin from China*, 68 FR at 27530 and 27531-33).
[63] *Id*. at 8 (citing *Ferro Union*, 44 F. Supp. 2d 1310, 1335).
[64] *Id.* at 8 (citing *Windshields from China*, 70 FR at 54355 and 54357).
[65] *Id*. at 8-9 (citing *Isocyanurates from China*, 83 FR at 26954).
[66] *See Preliminary Determination* at 15. *See, e.g., Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17436, 17438 (March 26, 2012); *see also Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 34660 (May 31, 2000), and accompanying IDM.
[67] *See* Petitioner's Case Brief at 3.
[68] *Id*. at 8-9 (citing *SSPC from Belgium* IDM).
[69] *See SSPC from Belgium* IDM at Comment 1 ("In this particular instance, given the fact that the respondent withdrew its data during the first administrative review, and at the time of the withdrawal confronted the possibility

margin was calculated for the company. At the time of the underlying investigation, the highest petition margin was selected as the AFA margin, consistent with Commerce's practice and the *Preliminary Determination* in the instant investigation. In *SSPC from Belgium*, ALZ stopped cooperating in the subsequent review, and Commerce elected to utilize public financial statements to update constructed value calculations from the petition, specifically mentioning their applicability to the POR.[70] There is no such issue here regarding contemporaneity of the information underlying the Petition margin, as the Petition relied on contemporaneous surrogate value information and financial statements. Moreover, *SSPC from Belgium* is factually distinguishable from the instant investigation, as the adjustment was deemed necessary for, and had a rational relationship to, a calculated margin for a respondent previously reviewed. Here, there are no participating respondents and no calculated rates. As the instant case is an investigation and no order is in place, we have no ability to evaluate whether the AFA rate is sufficiently adverse in the context of a producer/exporter's actions over a period of time under the discipline of an order.

(2) The petitioner also notes that in *PVA from Korea*, Commerce recalculated the petition margin with public data following the withdrawal of the sole respondent.[71] While this is an investigation, it differs from the instant case in that Commerce cited a lack of completeness in the petition data, specifically replacing a profit rate of zero with surrogate values. Commerce had previously indicated it would alter the profit rate in the event it needed to rely on facts available.[72] No such unusual circumstances exist (*i.e.*, doubts have not been raised specifically regarding the completeness of the data used in the petition margins for the current investigation; though we address the petitioner's concerns with respect to the question of alloy wheel inputs, *infra*) and no such notification was provided in the instant case.

(3) In *Sodium Thiosulfate from China*, Commerce updated a petition rate calculation with newer price and cost data from the petitioner. However, as with *SSPC from Belgium*, this case involved an administrative review. In its decision to alter the existing AFA rate, Commerce stated that the petitioner, "submitted information on the record in this review indicating that because costs and prices in the industry have changed substantially since the investigation, the previous rate was no longer sufficiently adverse."[73] We have no such indication in the instant investigation that costs and prices changed since the calculation of the Petition rates, which are based on contemporaneous information.

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of receiving either of the two margins (*i.e*., 16 and 9.86 percent), and that evidence available indicates that the petition margin of 16 percent may in fact benefit the respondent, we find that the 24.43 percent rate reasonably ensures that ALZ does not benefit from its failure to cooperate and encourages its future participation in a review.")

[70] *See SSPC from Belgium*, 66 FR at 56273 ("since the Preliminary Results, we have re-examined the information on which the preliminary margin, calculated on the basis of the price to constructed value (CV) comparison, was based. We found that the CV has increased in the POR. To the extent that POR information was reasonably available to us, we recalculated this margin."); *see also SSPC from Belgium* IDM at Selection of the Appropriate Adverse Facts Available Margin: Department's Position.

[71] *See* Petitioner's Case Brief at 9-10 (citing *PVA from Korea* IDM at 2 and 4).

[72] *See PVA from Korea* IDM at 3-4.

[73] *See Sodium Thiosulfate from China*, 58 FR at 12934.

(4) In *Barium Carbonate from China* and *Saccharin from China*, Commerce updated the AFA rate to account for updated information on the record from participating companies and Commerce's findings at verification regarding factors of production, as relevant to the selection of appropriate surrogate values in that case.[74] As an initial matter, we note that no precedent for updating the petition rate was cited in that case, nor has Commerce established a practice of updating petition rates based on later-discovered surrogate value information. Moreover, both cases are silent with respect to discussion of the impetus for, or necessity of, such an adjustment (*i.e.*, whether such an adjustment was necessary to ensure parties did not benefit from non-cooperation), which is central to the issue in the present case. Finally, in *Barium Carbonate from China* and *Saccharin from China*, the petition margin was updated based on verified information with respect to factor usage, and adjusted with surrogate value data provided to the record and thus subject to comment by all interested parties before being found by Commerce to be the best available data on the record for surrogate valuation purposes.[75] In the instant case, no such specific factor information has been verified, nor has a corollary surrogate value analysis been performed with respect to information on the record of this investigation.

(5) *Bicycles from China* is also an inapposite comparison. While the margins were recalculated for the final determination, it was only after Commerce, the petitioners, and the respondents found that information in the petition did not accurately reflect the relevant industry in a selected surrogate country.[76] In the current investigation, interested parties have not argued, nor has Commerce found, information from the Petition to be uncorroborated or otherwise proven inaccurate and not relevant in the course of the investigation.

Section 776(d)(3) of the Act states that Commerce is not required to (A) estimate what the margin would have been if Zhejiang Jingu continued to participate and (B) demonstrate that the margin selected "reflects an alleged commercial reality" of Zhejiang Jingu.[77] The petitioner correctly notes Commerce's concern for relevancy in the selected AFA margin, citing *Ferro Union*, a case in which Commerce's selected margin predated the period of review by eight years.[78] However, unlike in the cases listed above, we do not doubt the relevancy of the margins from the Petition, using Romanian surrogate value information provided by the petitioner to address this specific period of investigation, given the information on the record.

The petitioner also contends that its argument regarding the respondent's motivations for withdrawing from participation need not be supported by substantial evidence, as Commerce does not require proof and quantification of motivation is not practicable. To the petitioner, Commerce should instead examine the circumstances of a respondent's decision to withdraw. The petitioner holds that, in this case, Zhejiang Jingu had enough information to compare any

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[74] *See Barium Carbonate from China*, 68 FR at 46578 ("Since the preliminary determination, we have obtained new information regarding several surrogate values and factors applied in Chinese production. In order to take into account the more recent information, we recalculated the petition margin using, where possible, revised surrogate values and revised factors to value the petitioner's consumption rates."); *see also Saccharin from China*, 68 FR at 27531.
[75] *See Barium Carbonate from China* IDM at, *e.g.*, Comment 2; *see also Saccharin from China* IDM at Comment 1.
[76] *See Bicycles from China*, 61 FR at 19028.
[77] *See* section 776(d)(3) of the Act.
[78] *See* Petitioner's Case Brief at 13 (citing *Ferro Union*, 44 F. Supp. 2d at 1334).

likely AFA rate with potential calculated margins if it continued participation due to the amount of information it had supplied on the record at the time. Additionally, the petitioner argues that Zhejiang Jingu knew the preliminary margin calculated in a recent investigation covering different steel wheels and was thus able to evaluate the highest petition rate in this investigation, 44.35 percent, in comparison with the 231.70 China-wide rate established in a recent determination on a similar product.[79] Thus, to the petitioner, Commerce should find that an AFA rate drawn from the highest petition margin must not be sufficiently adverse.

The petitioner again draws from *SSPC from Belgium* to support its argument. In that instance, Commerce noted that ALZ knew its existing calculated margin and likely AFA margin from the petition and, and as described previously, recalculated the petition margin with more relevant public data to "{ensure} that ALZ does not benefit from its failure to cooperate and encourages its future participation in a review."[80] Again, however, the analogy to the extant investigation does not hold. Prior to *SSPC from Belgium*, as Zhejiang Jingu highlights, ALZ participated in the preceding investigation and received a calculated margin.[81] In the instant case, Zhejiang Jingu was not subject to any calculated margin at the time of its withdrawal. Whereas the petitioner suggests that the record at the time of withdrawal was sufficient such that Zhejiang Jingu was able to evaluate likely margins in consideration of the existing Petition margin, we cannot make a determination regarding intent based on the basis of presumptions as to what a party may have calculated based on various hypotheticals and its own suppositions with respect Commerce's decisions of a given case.

While requiring incontrovertible proof may be an impossible precondition, the petitioner's argument regarding motivation remains speculative. Zhejiang Jingu may have, as the petitioner suggests, calculated likely margins as if it had continued to participate using its proprietary information and decided that the highest of the petition margins was preferable. However, even acknowledging that any such circumstantial argument contains a certain measure of credence, we cannot ignore plausible alternatives like the respondent's stated motivation regarding resource constraints.[82] Moreover, even if we were to agree with the petitioner's inferences with respect to the circumstances of Zhejiang Jingu's withdrawal and the respondent's motivations, the record remains devoid of any evidence that the existing AFA rate is insufficiently adverse such that Zhejiang Jingu would benefit from non-cooperation. That the Petition rate may be lower than what Zhejiang Jingu may have calculated to be a likely alternative at the time of its withdrawal does not constitute evidence that application of the Petition rate represents a relative benefit such as to induce withdrawal. Accordingly, we find that the petitioner has not advanced a sufficient argument regarding adversity.

The final component of the petitioner's argument is that information revealed publicly should be used to update its assumptions and existing industry knowledge as employed in the Petition, specifically regarding the type of steel used. It posits that Commerce should make adverse

[79] *See* Petitioner's Case Brief at 11-13.
[80] *See SSPC from Belgium* IDM at Selection of the Appropriate Adverse Facts Available Margin.
[81] *See* Zhejiang Jingu's Rebuttal Brief at 6 (citing *Antidumping Duty Orders; Certain Stainless Steel Plate in Coils from Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan*, 64 FR 27756 (May 21, 1999)).
[82] *See* Zhejiang Jingu Notice of Withdrawal.

inferences in this regard as Zhejiang Jingu removed related proprietary information that could be used to corroborate inputs when it withdrew.[83] Specifically, the petitioner asks that Commerce use surrogate values from Brazil that it submitted previously.[84]

We are not compelled by the petitioner's arguments as to the necessity of altering our standard practice to apply the highest petition rate as AFA in this case based on the circumstances of withdrawal or case precedent. Similarly, we are not compelled that such an amendment is necessary to address any deficiency in the Petition later clarified by the record, specifically that such an amendment is necessary due to an indication that certain steel wheels are produced from alloy inputs, whereas non-alloy factors and surrogates were used to calculate the Petition margin. The petitioner established the record of the Petition, including surrogate country, surrogate values, factors of production, and consumption rates, and had every opportunity to establish a petition rate that reflected alloy steel consumption.[85] Though it may be unreasonable to expect a petition to anticipate precise inputs that reflect a respondent's experience for each factor of production, it is not unreasonable to expect that the petitioner would be aware of the various types of primary inputs used by its main competitors.

Moreover, we disagree that use of Brazilian data for alloy inputs suggested by the petitioner represents an appropriate adjustment. While the petitioner and the respondents submitted comments regarding surrogate values to be used in calculating LTFV margins, consideration of this issue ceased with the withdrawal of mandatory respondents. As such, the Brazilian data has not undergone scrutiny as it would have in the normal course of the investigation with participating respondents: *i.e.*, Commerce has not determined if this Brazilian data represents an appropriate surrogate. Specifically, the data has not been evaluated based on our standard SV methodology to select values from a single country deemed to be economically comparable and a significant producer of comparable merchandise, nor has the data itself been found to represent the best available information on the record in consideration of various factors.[86] Based on the foregoing, we continue to use the highest Petition rate as the AFA rate in this proceeding and have not amended this rate for the final determination.

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[83] *See* Petitioner's Case Brief at 4.
[84] *Id*.
[85] *See* Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Steel Wheels 12 – 16.5 Inches in Diameter from the People's Republic of China," dated August 8, 2018.
[86] *See, e.g.*, *Certain Plastic Decorative Ribbon from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 84 FR 1055 (February 1, 2019), and accompanying IDM at Comment 18; *see also* "Non-Market Economy Surrogate Country Selection Process," Policy Bulletin 04.1 (2004).

**Comment 2: Whether Critical Circumstances Exist**

*Zhejiang Jingu's Comments*

- Company-specific quantity and value data show that Zhejiang Jingu's imports did not reach the threshold of massive imports, *i.e.*, 15 percent, over a relatively short period of time, as Commerce generally requires.[87]
- Commerce should consider other causes of an increase of imports and adjust accordingly.[88] Specifically, Commerce failed to account for the increase in imports leading up to the Chinese New Year holiday, and the impact of Section 301 tariffs that were scheduled to increase on January 1, 2019.[89]

*TTT and HiSpec's Comments*

- Commerce should make use of the Q&V data submitted by Zhejiang Jingu and Xingmin because their decision not to participate in this investigation should not affect the use of this data in determining critical circumstances. Commerce should only reject this data if they failed verification, but Commerce has not attempted to verify the data.[90]
- Commerce failed to consider TTT's assertion that it did not know or have reason to know its imports were purchased at LTFV or that material injury would likely occur. These considerations should be made on a case-by-case basis.[91]
- TTT has also submitted to Commerce data that show that its imports of subject merchandise do not reach a massive level over a relatively short period of time.[92]
- Commerce should consider Harmonized Tariff Schedule of the United States (HTSUS) category 8716.90.50.59 when determining critical circumstances as it contains subject merchandise entering with tires. Taking this information into account shows that there has not been a massive increase in imports.[93] Commerce is required to take information like this into account.[94]

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[87] *See* Zhejiang Jingu's Case Brief at 2 (citing Zhejiang Jingu's letter, "Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Quantity and Value Data in Response to Petitioner's Critical Circumstances Allegations," dated April 15, 2018 and accompanying attached file).
[88] *Id*. at 3 (citing *Shandong Rongxin Imp. & Exp. Co. v. United States*, 163 F. Supp. 3d 1249, 1252-53 (CIT 2016)).
[89] *Id.* at 3-4.
[90] *See* TTT's Case Brief at 2 (citing *Wax and Wax/Resin Thermal Transfer Ribbons from Japan: Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 69 FR 11834 (March 12, 2004) (*Ribbons from Japan*), and accompanying IDM at Comment 2).
[91] *Id.* at 3 (citing *Zhejiang Native Produce & Animal By-Products Imp. & Exp. Corp. v. United States*, 432 F.3d 1363, 1367 (Fed. Cir. 2005); *see also Gerald Metals v. United States*, 132 F.3d 716, 720 (Fed. Cir. 1997) (*Gerald Metals*)).
[92] *Id.* at 3 (citing TTT's letter, "TTT's Response to Dexstar's Critical Circumstances Allegations, Less-Than-Fair Value & Countervailing Duty Investigations of Certain Steel Wheels 12 to 16.5 Inch in Diameter from the People's Republic of China," dated February 1, 2019, at Exhibit A).
[93] *Id*. at 3 (citing *Preliminary Determination*, 84 FR at 16646).
[94] *Id*. at 3-4 (citing *Gerald Metals*, 132 F.3d at 720).

- Commerce should address the effects of the Chinese New Year, efforts to avoid announced tariff increases under Section 301 of the Trade Act of 1974, and seasonality related to recreational vehicle usage when determining critical circumstances.[95]

*Petitioner's Rebuttal Comments*

- All parties referenced by the respondents are included in the China-wide entity and should not be considered separately after Commerce's determination of adverse inferences.[96]
- TTT and HiSpec's citation of *Ribbons from Japan* actually supports Commerce's preliminary finding. That case held that critical circumstances and LTFV determinations are "part of the same proceeding."[97]
- The respondents' arguments regarding HTSUS codes and other explanations for an increase in imports are "unavailing" because Commerce is appropriately relying on adverse inferences for the China-wide entity.[98]
- *Ribbons from Japan* is also instructive in that Commerce should similarly find that Zhejiang Jingu's shipment data submitted in April 2019 and Xingmin's data submitted in February 2019 are untimely factual information.[99]

*Zhejiang Jingu's Rebuttal Comments*

- Commerce should reach a negative determination for critical circumstances because it has not used data submitted by the parties previously referenced, that merchandise under HTSUS subheading 8716.90.50.59 was not used in the determination, and that the other explanations for increases in imports were not considered.[100]

**Commerce's Position:** We continue to find that critical circumstances exist for the China-wide entity and the separate rate company.

In accordance with section 735(a)(3) of the Act, Commerce will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the importers knew or should have known that there was likely to be material injury by reason of sales of steel certain wheels at LTFV; and (B) there have been massive imports of the subject merchandise over a relatively short period.

As discussed in Section V above, we find that pursuant to section 733(e)(1)(A)(ii) of the Act, that importers had knowledge that exporters were dumping and that there was likely to be material injury by reason of such sales.[101] Additionally, in determining whether there are

[95] *Id*. at 4.
[96] *See* Petitioner's Rebuttal Brief at 6-7 (citing *Quartz China LTFV* IDM at Comment 2).
[97] *Id.* at 7-8 (citing *Ribbons from Japan* IDM at 13).
[98] *Id*. at 9.
[99] *Id*.
[100] *See* Zhejiang Jingu's Rebuttal Brief at 11 (citing TTT's Case Brief at 1-5 and HiSpec's Case Brief at 1-4).
[101] *See Preliminary Determination* PDM at 6-7.

"massive imports" over a "relatively short period," pursuant to section 735(a)(3)(B) of the Act, Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the "base period") to a comparable period of at least three months following the same date (*i.e.*, the "comparison period"). Commerce's regulations provide that, generally, imports must increase by at least 15 percent during the "comparison period" to be considered "massive."[102] Additionally, Commerce's regulations state that, in determining whether imports of the subject merchandise have been massive under section 735(a)(3)(B) of the Act, the Secretary normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports.[103]

As discussed above, as AFA, we find that there was a massive increase in the volume of imports of the subject merchandise from the China-wide entity during the comparison period pursuant to section 735(a)(3)(B) of the Act. For the purposes of the "massive imports" analysis, Commerce's long-standing practice is to rely on respondent-specific shipment data to determine whether imports were massive in the context of critical circumstances determinations.[104] Where such verified information does not exist because of a respondent's failure to cooperate to the best of its ability in the course of the investigation, Commerce normally makes an adverse inference that imports were massive during the relevant time period.[105] Commerce's practice is not to verify information from parties that withdraw from participation as a mandatory respondent.[106] Commerce is not required to consider record information that cannot be verified, or where the party has demonstrated that it failed to act to the best of its ability in providing the information requested, and meeting the requirements established, by Commerce.[107] Here, Xingmin, Sunrise, and Zhejiang Jingu each withdrew their participation in this investigation. Therefore, we are unable to rely on their unverifiable shipment data, nor do we find that it would be appropriate to do so given that each of them part of the China-wide entity. As a result, it would be inappropriate to treat these companies separately from the China-wide in analyzing whether critical circumstances existentity is.[108] As stated above, in accordance with section 776(a)-(b) of

[102] *See* 19 CFR 351.206(h)(2).
[103] *See* 19 CFR 351.206(h)(1).
[104] *See, e.g.*, *Certain Carbon and Alloy Cut-to-Length Plate from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 16345 (April 4, 2017), and accompanying IDM at 7-8; *see also Steel Concrete Reinforcing Bar from Mexico: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination,* 79 FR 22802 (April 24, 2014) (unchanged in *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014), and accompanying IDM at 6-7).
[105] *Id.*
[106] *See* Initial Questionnaire at I-10, where we state that "Failure to allow full and complete verification of any information may affect the consideration accorded to that or any other verified or non-verified item in the responses." By withdrawing from the investigation, Zhejiang Jingu did not allow Commerce to conduct verification, and, as noted in the Initial Questionnaire, failure to respond completely to Commerce's questionnaire "may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act."
[107] *See* section 782(e) of the Act.
[108] *See Quartz China LTFV* IDM at Comment 2 ("We disagree with Hero Stone that it would be appropriate to base a determination as to whether Hero Stone's imports are massive on its reported shipment data. As noted in Comment 15, below, we continue to find that Hero Stone, Foshan Quartz Stone, and HK Hero Stone are part of the

the Act, we will use an adverse inference in selecting from the facts available, and we determine that there were massive imports from the China-wide entity over a relatively short period. As a result, we determine that critical circumstances exist for the China-wide entity.

Although TTT argues that their relevant import and quantity and value data demonstrate that imports of subject merchandise did not massively increase over a relatively short period of time, Commerce finds that it is not appropriate to consider such data. Regarding TTT's comments that we must turn to import-specific data, we have continued to make our critical circumstances determination on a company-specific basis for participating, fully cooperative mandatory respondents only. This is consistent with Commerce's past practice.[109] No party has identified a statutory or regulatory provision that would require Commerce to make importer-specific critical circumstances determinations. Additionally, Commerce has previously determined that an investigation and a critical circumstances determination are both part of the same proceeding and are intricately linked such that Commerce cannot verify only shipment data as the record is missing information relevant to the completeness and reliability of the shipment data.[110]

Certain interested parties also claim that Commerce excluded HTSUS numbers under which subject merchandise is classifiable in its critical circumstances analysis. However, consistent with our practice, we collect data based on the non-basket category HTSUS numbers listed in the scope and we do not generally evaluate imports listed in secondary "may {also} enter under" HTSUS headings listed in the scope unless such headings are exclusive to subject merchandise, which is not the case with the HTSUS headings in question.[111] Indeed, while interested parties have suggested we examine the other HTSUS subheadings included in the scope, parties acknowledge that these subheadings include non-subject merchandise. Specifically with respect to imports under HTSUS subheadings 8716.90.5030 and 8716.90.50.59,[112] we note that the former category includes all types of wheels, both steel and aluminum, and wheels for commercial semi-trailers that use much larger wheels in addition to the smaller wheels covered in these investigations, whereas the latter covers all trailer wheels with tires (other than off-highway wheels)—again including all steel and aluminum wheels, and wheels for large commercial semi-trailers. As such, both categories potentially reflect significant imports of out-of-scope merchandise, and are thus inappropriate for any such analysis of import trends. No party suggested how we could adjust the data reported under these other subheadings to remove

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China-wide entity. As a result, it would be inappropriate to treat Hero Stone, Foshan Quartz Stone, and HK Hero Stone separately from the entity for purposes of any critical circumstances determination and therefore Hero Stone's remaining arguments regarding critical circumstances are moot.").

[109] *See, e.g.*, *Ribbons from Japan* IDM at Comment 2; *see also Circular Welded Carbon Quality Steel Pipe Final* IDM at Comment 10-11; *Crystalline Silicon Photovoltaic Cells* IDM at 10.

[110] *Id*.

[111] *See, e.g.*, *Solar Cells from China* IDM at 10; *see also Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck 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 IDM at Comment 24.

[112] *See* Zhejiang Jingu's Case Brief at 2 (citing Zhejiang Jingu's letter, "Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Quantity and Value Data in Response to Petitioner's Critical Circumstances Allegations," dated April 15, 2015 and accompanying attached file), *see also* Zhejiang Jingu's Rebuttal Brief at 11 (citing TTT's Case Brief at 1-5 and HiSpec's Case Brief at 1-4).

shipments of non-subject merchandise. Thus, we will continue to use data from the non-basket category HTS number listed in the scope.

With respect to the Zhejiang Jingu, TTT, and HiSpec's assertions that the critical circumstances finding fails to account for increases in imports unrelated to the anticipation of AD/CVD tariffs, such as Section 301 duties and the Chinese New Year, we find such arguments speculative and lacking in adequate factual support. Moreover, these interested parties otherwise fail to quantify any such increases related to the alleged intervening events listed above and, thus, provide no basis to quantify any such events for the purposes of the necessary analysis. Thus, due to interested parties' failure to support or quantify increases related to the alleged intervening events, as well as both mandatory respondents withdrawing from the investigation, we decline to amend our existing analysis, as requested.

In sum, we continue to find critical circumstances exist for the mandatory respondents based on AFA and, as discussed in "Section V. Affirmative Determination of Critical Circumstances," *supra*, our final affirmative determination of critical circumstances for the separate rate company reflects a massive increase between the base and comparison periods in accordance with the standard analysis.

## XI. 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 of the investigation and the final weighted-average LTFV margins in the *Federal Register*.

☒              ☐

Agree              Disagree

7/1/2019

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance