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Investigation
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January 2, 2020

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

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

SUBJECT: Certain Collated Steel Staples from the People's Republic of China: Decision Memorandum for Preliminary Affirmative Determination of Sales at Less Than Fair Value

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that certain collated steel staples (collated staples) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). In addition, we are basing the estimated dumping margin for mandatory respondent Tianjin Jinxinshenglong Metal Products Co., Ltd. (Tianjin JXSL) and the China-wide entity on adverse facts available (AFA). The estimated weighted-average dumping margins are shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

II. BACKGROUND

On June 6, 2019, Commerce received an antidumping duty (AD) petition covering imports of collated staples from China, filed in proper form on behalf of Kyocera Senco Industrial Tools, Inc. (the petitioner).[1] On June 26, 2019, Commerce initiated this investigation.[2] In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate rate status in non-market economy (NME) LTFV investigations.[3] The process requires exporters to submit a separate rate application (SRA) and to demonstrate an

[1] *See* Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Collated Steel Staples from Korea, the People's Republic of China, and Taiwan, dated June 6, 2019 (the Petition).
[2] *See Certain Collated Steel Staples from the People's Republic of China, the Republic of Korea, and Taiwan: Initiation of Less-Than-Fair-Value Investigations*, 84 FR 31833 (July 3, 2019) (*Initiation Notice*).
[3] *Id.*, 84 FR at 31837-38

absence of both *de jure* and *de facto* government control over their export activities.[4] *See* the "Separate Rate" section for more information.

We also stated in the *Initiation Notice* that, in the event respondent selection became necessary, we intended to base our selection of mandatory respondents on responses to quantity and value (Q&V) questionnaires to be sent to each potential respondent named in the Petition.[5] On June 27, 2019, Commerce issued Q&V questionnaires to the 69 companies that the petitioner identified as potential producers/exporters of collated staples from China.[6] In addition, Commerce posted the Q&V questionnaire on its website and invited parties who did not receive a Q&V questionnaire to file a response to the Q&V questionnaire by the applicable deadline.[7] We received responses from a total of eight producers/exporters of subject merchandise, which include the two mandatory respondents.[8]

Additionally, in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of collated staples to be reported in response to Commerce's AD questionnaire.[9] We received comments from the petitioner on the appropriate physical characteristics to be reported. [10] BeA Fasteners USA, Inc. (BeA) and Peace Industries (Peace), importers of collated staples from China, submitted comments and the petitioner submitted rebuttal comments on the scope of the investigation in response to Commerce's solicitation in the *Initiation Notice*.[11] For further discussion, *see* the "Scope Comments" section, below.

On July 25, 2019, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of collated staples from China.[12]

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[4] *Id*.; *see also* Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, April 5, 2005, available at http://enforcement.trade.gov/policy/bull05-1.pdf.
[5] *See Initiation Notice*, 84 FR at 31838.
[6] *See* Memorandum, "Quantity and Value Questionnaire," dated June 28, 2019. Two of these companies had two addresses listed and, therefore, a total of 71 Q&Vs were sent out; *see also*, Petition at Volume I, Exhibit Gen-2.
[7] *See Initiation Notice*, 84 FR 31837.
[8] *See* Memorandum, "Less-Than-Fair-Value Investigation of Certain Collated Steel Staples from the People's Republic of China: Respondent Selection," dated July 30, 2019 (Respondent Selection Memorandum), at 2.
[9] *See Initiation Notice*, 84 FR at 31834-31835.
[10] *See* Petitioner's Letter, "Certain Collated Steel Staples from the People's Republic of China: Comments on Commerce August 6, 2019 Letter," dated August 14, 2019.
[11] *See* BeA's Letter, "Antidumping and Countervailing Duty Investigations on Certain Collated Steel Staples From the People's Republic of China, the Republic of Korea, and Taiwan: Scope Comments, dated July 16, 2019; Peace's Letter, "Certain Collated Steel Staples from Korea, the People's Republic of China, and Taiwan: Scope Comments," dated July 16, 2019; and Petitioner's Letter, "Certain Collated Steel Staples from the People's Republic of China: Response to Scope Comments," dated August 2, 2019.
[12] *See Certain Collated Steel Staples from China, Korea, and Taiwan: Investigation Nos. 701-TA-626 and 731-TA-141452-1454 (Preliminary)*, Publication 4939, July 2018 (ITC Publication 4939); *see also Certain Collated Steel Staples from China, Korea, and Taiwan; Determinations*, 84 FR 35884 (July 25, 2019).

On July 30, 2019, based on responses to the Q&V questionnaires, we selected Tianjin Hweschun Fasteners Manufacturing Co., Ltd. (Tianjin Hweschun) and Tianjin JXSL for individual examination as mandatory respondents.[13]

Between August 28, 2019 and September 17, 2016, Tianjin Hweschun and Tianjin JXSL submitted responses to sections A, C, and D of the antidumping questionnaire. Responses to critical circumstances questionnaires were submitted on September 30, 2019 and October 2, 2019, by Tianjin Hweschun and Tianjin JXSL, respectively. Between September 30, 2019 and November 25, 2019, Tianjin Hweschun and Tianjin JXSL submitted responses to supplemental questionnaires.

On October 29, 2017, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), Commerce published in the *Federal Register* a postponement of the preliminary determination by 50 days until no later than January 2, 2020.[14] The petitioner filed pre-preliminary determination comments on December 9, 2019.

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

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is October 1, 2018 through March 1, 2019. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition, which was June 2019.[15]

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Pursuant to section 735(a)(2) of the Act, the petitioner requested that Commerce postpone the final determination in case of a negative preliminary determination.[16] Additionally, Tianjin JXSL and Tianjin Hweschun requested that Commerce postpone the final determination and extend provisional measures from four months to six months in case of an affirmative preliminary determination.[17] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because: (1) our preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended

[13] *See* Respondent Selection Memorandum at 1.
[14] *See Certain Collated Steel Staples from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 84 FR 57845 (October 29, 2019).
[15] *See* 19 CFR 351.204(b)(1).
[16] *See* Petitioner's Letter, "*Certain Collated Steel Staples from the People's Republic of China*: Request for Postponement of the Final Determination," dated December 10, 2019.
[17] *See* Tianjin JXSL's Letter, "Collated Steel Staples from the People's Republic of China: Conditional Request for Extension of Final Determination," dated December 6, 2019; and Tianjin Hweschun's Letter, "Certain Collated Steel Staples from China: Request to Fully Extend the Final Determination," dated December 12, 2019.

accordingly.

V. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,[18] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.[19] Certain interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice*.[20] For a summary of the scope comments and rebuttal responses submitted to the record, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Memorandum. Based on our analysis of these comments, we preliminarily determined that there is insufficient information on the record to exclude hog rings from the scope of the investigation. Consequently, we have preliminarily not made revisions to the scope as it appeared in the *Initiation Notice.* We will issue a final scope decision on the records of the collated staples investigations after considering any comments received from the interested parties in the scope case and rebuttal briefs.

VI. SCOPE OF THE INVESTIGATION

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

VII. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy Country

Commerce considers China to be an NME country.[21] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat China as an NME country for purposes of this preliminary determination.

B. Surrogate Country and Surrogate Value Comments

When Commerce is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value (NV), in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate market economy (ME) country, or countries, considered to be appropriate by Commerce. Specifically, in accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce shall utilize, "to the extent possible, the prices or costs of {FOPs} in one or more ME countries that are — (A) at a level of economic development

[18] *See Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).
[19] *See Initiation Notice*, 84 FR at 31835.
[20] *See* Memorandum, "Less-Than-Fair-Value and Countervailing Duty Investigations of Certain Collated Steel Staples from the People's Republic of China: Preliminary Scope Decision Memorandum," dated November 7, 2019 (Preliminary Scope Memorandum).
[21] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017) and accompanying decision memorandum, "China's Status as a Non-Market Economy."

comparable to that of the {NME} country; and (B) significant producers of comparable merchandise."[22] As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME country unless it is determined that none of the countries are viable options because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available surrogate value (SV) data, or (c) are not suitable for use based on other reasons.[23] Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.[24] To determine which countries are at the same level of economic development, Commerce generally relies on per capita gross national income (GNI) data from the World Bank's World Development Report.[25] Further, Commerce normally values all FOPs in a single surrogate country.[26]

On August 15, 2019, Commerce identified Brazil, Bulgaria, Malaysia, Mexico, Russia, and Turkey (collectively, the 2018 Countries) as countries that are at the same level of economic development as China based on per capita 2018 GNI data.[27] On September 13, 2019, we solicited comments on the list of potential surrogate countries and the selection of the primary surrogate country, and provided deadlines for submission of SV information for consideration in the preliminary determination.[28]

On September 20, 2019, Tianjin Hweschun submitted comments regarding the economic development of the 2018 Countries.[29] Tianjin Hweschun argued that the 2018 Countries, based on GNI data from 2018, were identified by Commerce 50 days after the initiation of this investigation and that Commerce should therefore rely on the list of countries that were identified on August 2, 2018, which were based on GNI data from 2017.[30] In the alternative, Tianjin Hweschun argued, Commerce should expand the 2018 Countries to include Romania, because: (1) Commerce recognizes that the 2018 Countries are a non-exhaustive list; (2) Commerce had considered Romania to be a country at the same level of economic development during the previous five years; (3) Romania's 2018 GNI continues to be comparable to China's GNI; and (4) even if minor differences in economic development exist, Romania offers surrogate company data with which to value overhead, selling, general, and administrative (SG&A) expenses, and profit, whereas the 2018 Countries do not.[31]

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[22] *See* Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on Commerce's website at http://enforcement.trade.gov/policy/bull04-1.html.
[23] *Id*.
[24] *See* Commerce's Letter, "Antidumping Duty Investigation of Certain Steel Collated Staples from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated September 13, 2019 (Surrogate Schedule Memorandum).
[25] *Id.*
[26] *See* 19 CFR 351.408(c)(2).
[27] *See* Surrogate Schedule Memorandum.
[28] *Id*.
[29] *See* Tianjin Hweschun's Letter, "Certain Collated Steel Staples from China: Tianjin Hweschun's Economic Development Comments," September 20, 2019.
[30] *Id*. at 2.
[31] *Id*. at 3-4.

The petitioner submitted rebuttal comments on September 25, 2019, arguing that: (1) data pre-dating the list of 2018 Countries is outdated and superseded by more recent data; (2) Romania's GNI is nearly 20 per cent higher than China's and, thus, would introduce needless complexity into Commerce's analysis; and (3) Tianjin Hweschun's conclusion that the 2018 Countries do not offer surrogate financial data is premature.[32]

On September 27, 2019, we received comments on surrogate country selection from the petitioner and Tianjin Hweschun, with the petitioner suggesting Mexico as the surrogate country, and Tianjin Hweschun suggesting Russia.[33] Tianjin Hweschun added that, should usable financial statements from a Russian company not be identified, Commerce may rely on a secondary company, including a Romanian company.[34]

On October 4, 2014, the petitioner submitted additional rebuttal comments in support of selecting Mexico, noting that Russian cost and other data are affected by distortions that prevent the Russian prices from representing market-based prices that can serve as surrogate values.[35] Tianjin Hweschun submitted its rebuttal comments on the same day, arguing that data considerations favor Russia as, unlike Mexico, Russia reports its import statistics on a landed-cost basis, *i.e.*, inclusive of ocean freight and insurance.[36]

On October 15, 2019, the petitioner submitted SV data from Global Trade Atlas (GTA) to value Mexican material, labor, and energy inputs, movement expenses, and other expenses that Chinese producers incur in the production, sale, and shipment of subject merchandise.[37] With respect to financial ratio calculations, the petitioner submitted the 2018 fiscal year financial statements for the Chin Well Group, a Malaysian producer of carbon steel screws and other industrial fasteners.[38]

Also on October 15, 2019, Tianjin Hweschun submitted SV data from the International Trade Center (Int'l TC) for Russia and Romania to value the material inputs.[39] With respect to the financial ratio calculations, Tianjin Hweschun submitted the 2018 fiscal year financial statements of Metalicplas ACTIV, SA, a Romanian steel nail producer.[40] Tianjin Hweschun also submitted import statistics from Int'l TC for Mexico, Malaysia, Bulgaria, Brazil, and Turkey to value the raw material and packing inputs, arguing that, to the extent the SV data from Russia or Romania

[32] *See* Petitioner's Letter, "Certain Collated Steel Staples from the People's Republic of China: Rebuttal to Hweschun's Comments on Surrogate Country List," dated September 25, 2019.
[33] *See* Petitioner's Letter, "Certain Collated Steel Staples from the People's Republic of China: Comments on Surrogate Country" (Petitioner Surrogate Country Comments) and Tianjin Hweschun's Letter, "Certain Collated Steel Staples from China: Tianjin Hweschun's Primary Surrogate Country Comments" (Tianjin Hweschun Surrogate Country Comments), both dated September 27, 2019.
[34] *See* Tianjin Hweschun Surrogate Country Comments at 3.
[35] *See* Petitioner's Letter, "Certain Collated Steel Staples from the People's Republic of China: Rebuttal to Hweschun's Primary Surrogate Country Comments," dated October 4, 2019.
[36] *See* Tianjin Hweschun's Letter, "Certain Collated Steel Staples from China: Tianjin Hweschun's Primary Surrogate Country Rebuttal Comments," dated October 4, 2019.
[37] *See* Petitioner Letter, "Certain Collated Steel Staples from China: Petitioner's Initial Surrogate Value Submission," dated October 15, 2019 (Petitioner Surrogate Value Comments).
[38] *Id*. at Exhibit 11.
[39] *See* Tianjin Hweschun's Letter, "Certain Collated Steel Staples from China: Tianjin Hweschun's Initial Surrogate Value Submission," dated October 15, 2019 (Tianjin Hweschun Surrogate Value Comments).
[40] *Id*. at Exhibit 13.

are aberrational, Commerce may use these contemporaneous import statistics because these countries are economically comparable to China.[41]

Finally, on December 3, 2019, Tianjin Hweschun submitted the 2018 fiscal year financial statements for Novolipetsk Steel (NLMK), a Russian steel producer of long steel products, and the 2018 fiscal year financial statements of Evraz PLC, a U.K.-headquartered company with primary business and manufacturing operations in Russia.[42] The company manufactures long steel products, such as wire rod, which is used to manufacture steel wire, the primary material input to manufacture collated staples.[43] On the same day, the petitioner submitted the 2018 financial statement for Grupo Simec, SAB de CV (Simec), a Mexican producer of special steels and steel nails, and the 2019 financial statement for Chin Well Fasteners Co. Sdn Bhd., a Malaysian producer of carbon steel screws and other fasteners.[44] In its submission, the petitioner also submitted information to value international freight rates.[45]

Economic Comparability

For this investigation, as noted above, Commerce identified Brazil, Bulgaria, Malaysia, Mexico, Russia, and Turkey as countries at the same level of economic development as China, based on per capita GNI.[46] Therefore, we consider all six countries as having met this prong of the surrogate country selection criteria. The countries identified are not ranked and are considered equivalent in terms of economic comparability.

Tianjin Hweschun argued that Romania should also be considered for surrogate country selection because it has been considered economically comparable to China by Commerce in the past. However, we have preliminarily determined to make our selection from the 2018 countries identified in the Surrogate Schedule Memorandum according to our practice and preference.[47]

Significant Producer of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires Commerce, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute

[41] *Id*. at 4 and Exhibit 14.
[42] *See* Tianjin Hweschun's Letter, "Certain Collated Steel Staples from China: Tianjin Hweschun's Additional Surrogate Value Submission," dated December 3, 2019.
[43] *Id*.
[44] *See* Petitioner's Letter, "Certain Collated Steel Staples from the People's Republic of China: Translated Surrogate Financial Statement and International Freight Rates," dated December 3, 2019.
[45] *Id*.
[46] *See* Surrogate Schedule Memorandum.
[47] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2012–2013*, 79 FR 57047 (September 24, 2014) and accompanying Issues and Decision Memorandum at Comment 1 (where Commerce declined to depart from the Surrogate Country list determining that "although parties correctly note that we selected Indonesia as the primary surrogate country in {the preceding review}, we did so based on examination and analysis of evidence and the Surrogate Country List on the record of that particular administrative segment, which included GNI data for both Indonesia and Bangladesh for that POR—both of which provided usable data in that segment."), aff'd in *Tri Union Frozen Prods. v. United States*, 163 F. Supp. 3d 1255, 1276-1279 (CIT 2016), aff'd in *Tri Union Frozen Prods. v. United States*, 741 Fed. Appx. 801 (CAFC 2018).

nor Commerce's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, Commerce looks to other sources such as Policy Bulletin 04.1 for guidance on defining comparable merchandise. Policy Bulletin 04.1 states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."[48] Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.[49] Further, when selecting a surrogate country, the Act requires Commerce to consider the comparability of the merchandise, not the comparability of the industry.[50] "In cases where the identical merchandise is not produced, Commerce must determine if other merchandise that is comparable is produced. How Commerce does this depends on the subject merchandise."[51] In this regard, Commerce recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

> In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.[52]

Further, the Act grants Commerce discretion to examine various data sources for determining the best available information.[53] Moreover, while the legislative history provides that the term "significant producer" includes any country that is a significant "net exporter,"[54] it does not preclude reliance on additional or alternative metrics. It is Commerce's practice to evaluate whether production is significant based on characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics).[55]

Based on U.N. Comtrade and Russian Federation export statistic data placed on the record of this administrative review, Commerce determines that Mexico and Russia are both significant producers of comparable merchandise (*i.e.* steel fasteners such as nails or other steel staples).[56]

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[48] *See* Policy Bulletin 04.1 at 2.
[49] Policy Bulletin 04.1 also states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." *Id.* at n.6.
[50] *See, e.g.*, *Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) ("{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.").
[51] *See* Policy Bulletin 04.1 at 2.
[52] *Id.* at 3.
[53] *See* section 773(c) of the Act; *see also Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).
[54] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).
[55] *See Xanthan Gum from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2252 (January 10, 2013) and accompanying Preliminary Decision Memorandum at 4-7, unchanged in *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013).
[56] *See, e.g.*, Petitioner Surrogate Country Comments and Tianjin Hweschun Surrogate Country Comments.

Data Availability

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, Commerce selects the primary surrogate country based on data availability and reliability.[57] When evaluating SV data, Commerce considers several criteria including whether the SV data are publicly available, contemporaneous with the period under consideration, broad-market averages, tax and duty-exclusive, and specific to the inputs being valued.[58] There is no hierarchy among these criteria.[59] Commerce's preference is to satisfy the breadth of these aforementioned selection criteria.[60] Moreover, it is Commerce's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.[61] Commerce must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the "best" available SV for each input.[62] Additionally, pursuant to 19 CFR 351.408(c)(2), Commerce has a preference for valuing all FOPs in a single surrogate country.

As an initial matter, we preliminarily determine that we have complete SV data and financial ratios on the record for both Mexico and Russia that are publicly available, contemporaneous with the POI, and generally include tax-exclusive broad market average prices.[63] However, only the SV data from Mexico are sourced from GTA, which is Commerce's preferred source for SV data.[64] Additionally, we find that the Mexican financial statements are preferable to the Russian financial statements because the products produced by the Mexican company (*i.e.* fasteners) are more comparable to collated staples than the steel long products produced by the two Russian companies.[65]

Accordingly, Commerce preliminarily determines, pursuant to section 773(c)(4) of the Act, that it is appropriate to use Mexico as the primary surrogate country because it is: (1) at the same level of economic development as China; (2) a significant producer of merchandise comparable to the subject merchandise; and (3) provides the best useable data and information with which to

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[57] *See* Policy Bulletin 04.1; *see also* section 773(c)(1) of the Act.
[58] *See* Policy Bulletin 04.1
[59] *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) (*Mushrooms China*) and accompanying Issues and Decision Memorandum (IDM) at Comment 1.
[60] *See, e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 2010-2011, 78 FR 17350 (March 21, 2013) (*Frozen Fish Fillets March 2013*) and accompanying IDM at Comment I(C).
[61] *See Mushrooms China* and accompanying IDM at Comment 1.
[62] *Id.*
[63] *See* Petitioner Surrogate Value Comments; *see also* Tianjin Hweschun Surrogate Value Comments.
[64] *See, e.g., Steel Propane Cylinders from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination Measures*, 83 FR 66675 (December 27, 2018) and accompanying Preliminary Decision Memorandum. "{B}ecause neither the petitioners nor the respondents submitted data using Commerce's preferred Global Trade Atlas (GTA) source in providing import data to the record for potential surrogates…we have downloaded data for the identical HTS subcategories to corroborate the Malaysian data submitted and used the GTA data for the purposes of this preliminary determination.". *Id.* unchanged in *Steel Propane Cylinders from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 84 FR 29161 (June 21, 2019).
[65] *See* Preliminary SV Memorandum.

value FOPs, such as direct materials, labor, energy, and financial ratios. Therefore, Commerce has calculated NV using Mexican SV data to value Tianjin Hweschun's FOPs.

C. Separate Rates

In proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.[66] In the *Initiation Notice*, Commerce notified parties of the application process by which exporters may obtain separate rate status in this investigation.[67] The process requires exporters to submit a separate rate application (SRA) and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities. In the *Initiation Notice*, Commerce required that "respondents submit a response to both the Q&V questionnaire and the separate-rate application by their respective deadlines in order to receive consideration for separate-rate status."[68]

Commerce's policy is to assign all exporters of merchandise under consideration that are in an NME country a single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[69] Commerce analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*[70] and further developed in *Silicon Carbide*.[71] 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.

Commerce continues to evaluate its practice with regard to the separate-rate analysis in light of the diamond sawblades from China AD proceeding, and its determinations therein.[72] In particular, in litigation involving the diamond sawblades from China proceeding, the Court of International Trade (CIT) found Commerce's existing separate-rate analysis deficient in light of the circumstances of that case, in which a government-owned and controlled entity exercised

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[66] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (September 24, 2008).
[67] *See Initiation Notice*.
[68] *Id.*
[69] *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*).
[70] *Id.*
[71] *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*).
[72] *See* Final Results of Redetermination pursuant to *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), available at *http://enforcement.trade.gov/remands/12-147.pdf*, *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014) (*Advanced Technology II*); *see also Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013) and accompanying Preliminary Decision Memorandum at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying IDM at Comment 1.

control over the respondent exporter.[73] Following the CIT's reasoning, in recent proceedings, we have concluded that where a government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, this interest in and of itself means that the government exercises or has the potential to exercise control over the company's operations generally.[74] This may include control over, for example, the selection of board members and management, key factors in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect that a majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company. Accordingly, we have considered the level of government ownership, where necessary. From July 2019, through August 2019, we received SRAs from eight entities.[75]

1. Separate Rate Recipients

Commerce preliminarily determines that the following exporters are eligible to receive a separate rate, as explained below:

1) Tianjin Hweschun;
2) Tianjin JXSL;
3) Shuangming;
4) Best Nail;
5) China Staple Tianjin;
6) Jinyifeng;
7) Unicorn Fasteners; and
8) Shanghai Yueda.

[73] *See, e.g.*, *Advanced Technology I*, 885 F. Supp. 2d at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {state-owned assets supervision and administration commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor *de jure* 'separation' that Commerce concludes.") (footnotes omitted); *id.* at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); *id.* at 1357 ("AT&M itself identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.") (footnotes omitted).

[74] *See Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying Preliminary Decision Memorandum at 5-9.

[75] *See* Shijiazhuang Shuangming Trade Co., Ltd.'s (Shuangming) Letter, "Antidumping Duty Investigation of Certain Collated Steel Staples from the People's Republic of China – Separate Rate Application," dated August 1, 2019; *see also* Tianjin JXSL August 28, 2019 AQR, Tianjin Hweschun's Letter, "Certain Collated Steel Staples from China: Submission of Tianjin Hweschun's Separate Rate Application," dated August 2, 2019; Zhejiang Best Nails Industrial Co., Ltd.'s (Best Nail) Letter, "Certain Collated Steel Staples from China: Submission of Best Nail Separate Rate Application," dated August 9, 2019; China Staple (Tianjin) Co., Ltd.'s (China Staple Tianjin) Letter, "Certain Collated Steel Staples from China: Submission of China Staple Tianiin's Separate Rate Application," dated August 9, 2019; Tianjin Jinyifeng Hardware Co., Ltd.'s (Jinyifeng) Letter, "Certain Collated Steel Staples from China: Submission of Jinyifeng Separate Rate Application," dated August 9, 2019; Unicorn Fasteners Co., Ltd.'s (Unicorn Fasteners) Letter, "Certain Collated Steel Staples from China: Submission of Unicorn Fasteners Co., Ltd. Separate Rate Application," dated August 9, 2019; and Shanghai Yueda Nails Co., Ltd.'s (Shanghai Yueda) Letter, "Certain Collated Steel Staples from China: Submission of Shanghai Yueda Separate Rate Application," dated August 9, 2019.

a. Wholly Foreign-Owned Applicants

Two companies, Best Nail and China Staple Tianjin, reported that they are wholly-foreign owned. As there is no Chinese ownership of these two companies, and because Commerce has no evidence indicating that these companies are under the control of the Chinese government, further analyses of the *de jure* and *de facto* criteria are not necessary to determine whether they are independent from government control of their export activities.[76] Therefore, we preliminarily determine that Best Nail and China Staple Tianjin are eligible for separate rates.

b. Absence of *De Jure* Control

Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.[77]

Evidence provided by the following companies support a preliminary finding of an absence of *de jure* government control:

1) Tianjin Hweschun;
2) Tianjin JXSL;
3) Shuangming;
4) Jinyifeng;
5) Unicorn Fasteners; and
6) Shanghai Yueda.

c. Absence of *De Facto* Control

Typically, Commerce considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (EPs) or constructed export prices (CEPs) are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.[78] Commerce has determined that an analysis of *de facto* control is critical in determining

[76] *See, e.g., Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001), unchanged in *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001); *see also Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71104-05 (December 20, 1999).
[77] *See Sparklers*, at 56 FR 20589.
[78] *See Silicon Carbide*, at 59 FR 22586-87.

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

The separate rate information provided by the six companies listed above also support a preliminary finding of an absence of *de facto* government control, based on record statements and supporting documentation showing that the companies: (1) set their own EPs or CEPs independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding the disposition of profits or financing of losses.

Therefore, the evidence placed on the record of this investigation by these companies demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, Commerce preliminarily grants separate rates to these companies.

d. Margin for the Separate Rate Companies

The Act and Commerce's regulations do not address the establishment of a separate rate to be applied to companies not selected for individual examination when Commerce limits its examination pursuant to section 777A(c)(2) of the Act. Normally, Commerce's practice is to assign to separate rate entities that were not individually examined a rate equal to the weighted average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis*, or based entirely on facts available, using as guidance section 735(c)(5)(A) of the Act.[79] However, pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely under section 776 of the Act, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.[80]

As stated above, Commerce's practice is to assign to separate rate entities that were not individually examined a rate equal to the weighted average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis*, or based entirely on facts available. In this proceeding, Commerce calculated an above-*de minimis* rate that is not based entirely on facts available for one of the mandatory respondents under individual examination. Thus, consistent with our practice, we assigned the rate calculated for Tianjin Hweschun as the rate for non-individually examined companies that have preliminarily

[79] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).

[80] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA) at 870-873; *see also* section 735(c)(5)(B) of the Act.

qualified for a separate rate.[81] This long-standing practice is also Court-affirmed.[82]

D. Combination Rates

In the *Initiation Notice*, Commerce stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation.[83] This practice is described in Policy Bulletin 05.1.

E. Application of Facts Available and Adverse Facts Available

Section 776(a)(1) and (2) of the Act provides that, if necessary, information is missing from the record, or if an interested party: (A) withholds information that has been requested by Commerce, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce 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 provides that Commerce may use an adverse inference in applying

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[81] *See, e.g., Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314, 42316 (June 29, 2016) ("Under section 735(c)(5)(A) of the Act, the rate for all other companies that have not been individually examined is normally an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely on the basis of facts available. In this final determination, {Commerce} has calculated a rate for TTI that is not zero, *de minimis*, or based entirely on facts available. Therefore, {Commerce} has assigned to the companies that have not been individually examined, but have demonstrated their eligibility for a separate rate, a margin of 101.82 percent, which is the rate for TTI."); *Certain Corrosion-Resistant Steel Products From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35316, 35317 (June 2, 2016) ("In this final determination, we calculated a weighted-average dumping margin for Yieh Phui (the only cooperating mandatory respondent) which is not zero, *de minimis*, or based entirely on facts available. Accordingly, we determine to use Yieh Phui's weighted-average dumping margin as the margin for the separate rate companies."); *Narrow Woven Ribbons with Woven Selvedge from Taiwan; Preliminary Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 60627, 60627 (October 7, 2015)* unchanged in *Narrow Woven Ribbons with Woven Selvedge from Taiwan; Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 22578 (April 18, 2016).

[82] *See, e.g., Changzhou Wujin Fine Chemical Factory Co., Ltd., v. United States*, 942 F. Supp. 2d 1333, 1339 (CIT 2013) (*Fine Chemical*); and *Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (CIT 2008) (affirming Commerce's determination to assign a 4.22 percent dumping margin to the separate rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively).

[83] *See Initiation Notice*.

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. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.[84]

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as the petition) rather than information obtained in the course of an investigation or review, 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.[85] The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value, however, section 776(c)(2) of the Act provides that Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.[86] To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.[87]

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

1. Application of Facts Available

    a. Tianjin Hweschun

Tianjin Hweschun reported that it used the services of two unaffiliated tollers for wire drawing and galvanizing its steel rod in the production of the subject merchandise. Tianjin Hweschun reported that one of the tollers (T1) refused to participate in this investigation and did not provide its FOP information. The second toller (T2) provided its FOP information but was unable to reconcile its FOP reporting with respect to yield loss, calling into question the consumption rates

[84] *See* 19 CFR 351.308(c).
[85] *See* SAA at 870.
[86] *Id*.; *see also* 19 CFR 351.308(d).
[87] *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).

of all its reported FOPs. Tianjin Hweschun reported that T2 does not keep track of yield loss and simply makes up the yield loss in order to return galvanized wire converted from steel rod to Tianjin Hweschun at a 1:1 ratio.[88]

Commerce has a regular practice of moving up the value chain when valuing FOPs in an NME case where unaffiliated tollers do not participate.[89] We find that Tianjin Hweschun's reported FOPs for its unaffiliated tollers are not reliable and cannot be used to calculate an accurate cost of production for the first stage of production (drawing and galvanizing). Toller T1 was entirely uncooperative and, thus, we have no reported FOPs for wire drawn and galvanized by T1 on the record. Further, the other toller, T2, failed to support its reported FOPs and admitted that it does not track yield loss. Therefore, we have preliminarily determined that the information submitted by T2 is unusable to value the missing FOPs, both its and T1's, as it would likely understate the consumption of the primary steel inputs and it is not verifiable. Therefore, it is most accurate to start the cost buildup by valuing the material Tianjin Hweschun received from the tollers (*i.e.*, galvanized wire).

Therefore, for this preliminary determination, we have not used the FOPs provide by Tianjin Hweschun's tollers and, in accordance with sections 776(a)(1) and (a)(2)(D) of the Act, we are relying on facts available. To value the galvanized wire received from the tollers, we are using Mexican GTA import statistics for the Harmonized Tariff Schedule Code 72172001, "wire of iron or nonalloy steel plated or coated with zinc."

b. Tianjin JXSL

We further find that Tianjin JXSL did not provide necessary information, withheld information requested by Commerce, and significantly impeded this proceeding pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act. Specifically, in addition to deficiencies in response to sections A and C of the antidumping questionnaire, we issued two supplemental questionnaires to Tianjin JXSL in order to address critical deficiencies identified in its initial section D questionnaire response and first supplemental section D questionnaire response. Despite being granted numerous extensions for each questionnaire response, rather than correcting the critical deficiencies in its initial response identified in the supplemental questionnaires, with each response, JXSL provided new information that raised yet more questions. As a result, we preliminarily find that JXSL's reported data are unusable for purposes of calculating a preliminary dumping margin.

In its original section D questionnaire response, for which Commerce granted Tianjin JXSL three extensions of the due date, Tianjin JXSL reported that it calculated the consumption of its FOPs for all types of collated staples using a weighted-average method, and that it did so because it could only account for one cost for all types of staples it produces.[90] In addition, for all of its reported product control numbers (CONNUMs), Tianjin JXSL reported a single consumption

[88] *See* Tianjin Hweschun First Supplemental Section D Response dated October 29, 2019 at 9-10.
[89] *See, e.g., Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China Less than Fair Value Investigation*, 80 FR 51779 (August 26, 2015) and accompanying Issues and Decision Memorandum at Comment 10.
[90] *See* Tianjin JXSL's September 17, 2019 Section D Questionnaire Response.

rate for each reported FOP.[91] That is, Tianjin JXSL's FOP calculation methodology disregarded any physical differences between its products, and was not CONNUM-specific, precluding the possibility of Commerce making accurate normal value calculations as well as normal value and U.S. price comparisons. In the first supplemental questionnaire, we requested that Tianjin JXSL devise a reasonable method for reporting its FOPs on a CONNUM-specific basis, as requested in the original questionnaire, and we suggested that one way to accomplish that would be to use the net weight of each product.[92] We also reiterated the instructions from the original questionnaire that Tianjin JXSL report its sole toller's FOPs used to draw wire rod into black wire. In its response, Tianjin JXSL again failed to report CONNUM-specific consumption amounts as instructed, and it stated that it could not obtain its unaffiliated toller's FOPs as Commerce requested.[93]

In a second supplemental questionnaire, we provided Tianjin JXSL yet another opportunity to submit CONNUM-specific consumption rates, providing specific instructions that Tianjin JXSL calculate consumption amounts by multiplying reported consumption ratios by the net weight of the finished product represented by each CONNUM. We also requested that the respondent report its CONNUM-specific consumption of the intermediate input, black wire, in lieu of reporting its toller's FOPs.[94] In its response, Tianjin JXSL did not follow Commerce's instructions and, instead, provided a new methodology using a weighting factor based on wire diameter. However, Tianjin JXSL neither explained nor supported how it calculated this factor.[95] In response to the second supplemental questionnaire, Tianjin JXSL did report black wire consumption; however, it stated that the per-unit black wire consumption amount reported "is not an actual amount."[96] Instead, Tianjin JXSL calculated a total consumption amount of black wire and allocated it to each CONNUM using a "production-consumption rate," which it claims is "very close to the actual unit consumption amount."[97] Tianjin JXSL provided no support for this statement. Further, we note that Tianjin JXSL reported black wire "sales quantities" in the FOP database, rather than the production quantities we requested in our instructions for FOP reporting in the initial questionnaire.[98] Therefore, we find that Tianjin JXSL's reported consumption of black wire is unreliable.

Moreover, despite having been provided three opportunities (in the initial questionnaire and each of the supplemental questionnaires), Tianjin JXSL did not demonstrate how its cost reconciliation reconciles with its FOP database. Specifically, its reconciliation worksheet reconciles a "staple production" amount that differs from the production quantity used in the FOP database.[99]

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[91] *Id*.
[92] *See* Tianjin JXSL October 29, 2019 Supplemental Questionnaire Response.
[93] *Id*.
[94] *See* Commerce's Letter, "Antidumping Duty Investigation of Certain Collated Steel Staples from the People's Republic of China: Second Supplemental C and D Questionnaire," dated November 12, 2019.
[95] *Id*.
[96] *Id*. at 7.
[97] *Id*.
[98] *Id*. at Exhibit 3.
[99] *See* Tianjin JXSL November 25, 2019 Supplemental Questionnaire Response.

As described above, Tianjin JXSL's multiple failures to provide requested information has resulted in a record which does not allow Commerce to calculate an accurate preliminary margin. Therefore, we find that the use of facts available with respect to Tianjin JXSL, pursuant to sections 776(a)(1) and 776(a)(2)(A)-(C) of the Act, is appropriate for the preliminary determination.

c. China-wide Entity

Commerce finds that the non-responsive companies[100] to which we issued a Q&V questionnaire failed to submit the requested information and, further, did not provide documentation indicating that these companies were having difficulty providing the information, nor did they request to submit the information in an alternate form. Thus, this constitutes circumstances under which it is reasonable to conclude that these companies, as part of the China-wide entity, have failed to cooperate by not acting to the best of their ability.[101]

Thus, Commerce preliminarily determines that the China-wide entity did not respond to Commerce's requests for Q&V information, failed to provide necessary information, withheld information requested by Commerce, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. Accordingly, Commerce preliminarily determines that use of facts available is warranted in determining the rate of the China-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.[102]

2. Application of Facts Available with an Adverse Inference

We find that Tianjin JXSL failed to cooperate by not acting to the best of its ability to comply with our multiple requests for certain information. Therefore, we find that an adverse inference is warranted in selecting from the facts otherwise available with respect to Tianjin JXSL, in accordance with section 776(b) of the Act and 19 CFR 351.308(a).[103]

We find that the China-wide entity did not act to the best of its ability to comply with our request for Q&V data and, therefore, an adverse inference is warranted in selecting from the facts otherwise available with respect to the China-wide entity, in accordance with section 776(b) of the Act and 19 CFR 351.308(a).[104]

3. Selection and Corroboration of the AFA Rate

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[100] *See* Memorandum, "Certain Collated Steel Staples from the People's Republic of China: Quantity and Value Questionnaire Delivery Confirmation email," dated July 18, 2019 for a complete list of companies.
[101] *See Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (*Nippon 2003)* (noting that Commerce need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (*i.e.*, information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.")).
[102] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).
[103] *See Nippon Steel, 337 F.3d at 1332-83*.
[104] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

When applying facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[105] The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value,[106] however, section 776(c)(2) of the Act provides that Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.[107] To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.[108] Finally, under the new 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.[109] Section 776(d) also provides that 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.

In selecting a rate for AFA, Commerce selects one that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce the respondents to provide Commerce with complete and accurate information in a timely manner."[110] It is Commerce's practice to select, as AFA, the higher of the: (a) highest margin alleged in the petition; or (b) the highest calculated rate of any respondent in the investigation.[111]

In this case, Commerce finds that the preliminary rate calculated for the sole cooperative mandatory respondent, Tianjin Hweschun, is higher than the highest margin alleged in the Petition. Consequently, Commerce determines to base the AFA rate for Tianjin JSXL and the China-wide entity on Tianjin Hweschun's preliminary calculated weighted-average margin of 301.64 percent. Because this rate is not secondary information but, rather, is based on

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[105] *See* SAA at 870.
[106] *See* SAA at 870; *see also* 19 CFR 351.308(d).
[107] *See* section 776(c)(2) of the Act.
[108] *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).
[109] *See* section 776(d)(1)-(2) of the Act.
[110] *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random-Access Memory Semiconductors from Taiwan, 63 FR 8909, 8932* (February 23, 1998).
[111] *See, e.g., Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 36884 (June 8, 2016), and accompanying Preliminary Determination Memorandum at Section 3E, unchanged in *Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 81 FR 75042, 75043 (October 28, 2016).

information obtained in the course of this investigation, Commerce need not corroborate this rate, pursuant to section 776(c) of the Act.

F. Date of Sale

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the subject merchandise, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.[112] The Court of International Trade (CIT) has stated that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' {Commerce} that a different date better reflects the date on which the exporter or producer establishes the material terms of sale."[113] The date of sale is generally the date on which the parties establish the material terms of the sale,[114] which normally includes the price, quantity, delivery terms and payment terms.[115] In addition, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.[116]

Tianjin Hweschun reported the invoice date as the date of sale for its U.S. sales and demonstrated that the material terms of sale were established on the invoice date.[117] In light of 19 CFR 351.401(i), Commerce preliminarily used the invoice date as the date of sale for all sales of subject merchandise made during the POI.

G. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Tianjin Hweschun's sales of the subject merchandise from China to the United States were made at less than NV, Commerce compared the EP to the NV as described in the "U.S. Price" and "Normal Value" sections of this memorandum.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average normal values to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, Commerce examines whether to compare

[112] *See* 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (*Allied Tube*) (quoting 19 CFR 351.401(i)).
[113] *See Allied Tube*, 132 F. Supp. 2d at 1090 (brackets and citation omitted).
[114] *See* 19 CFR 351.401(i).
[115] *See USEC Inc. v. United States*, 31 CIT 1049, 1055 (CIT 2007).
[116] *See, e.g., Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 36881 (June 8, 2016), and accompanying Preliminary Determination Memorandum at Section VII, unchanged in *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 81 FR 75030 (October 28, 2016).
[117] *See* Tianjin JXSL August 28, 2019 AQR at 18.

weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In numerous investigations, Commerce has applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.[118] Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes (CUSCODU). Regions are defined using the reported destination code (*i.e.*, zip code (DESTU)) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that Commerce uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

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

[118] *See, e.g., Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

2. Results of the Differential Pricing Analysis

In order to determine whether to consider an alternative to the average-to-average comparison method for the preliminary determination, Commerce performed a differential pricing analysis of Tianjin Hweschun's U.S. sales. The results of the differential pricing analysis are as follows:

For Tianjin Hweschun, based on the results of the differential pricing analysis, Commerce preliminarily finds that 87.5 percent of the value of U.S. sales pass the Cohen's *d* test.[119] Given that the value of U.S. sales passing the differential pricing test is greater than 66 percent of the value of total U.S. sales, the test results confirm the existence of a pattern of EPs for comparable merchandise that differ among customers, regions, or time periods. However, the test results also show that there is not a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and the average to transaction method. Therefore, we used the average-to-average method in making comparisons of EP and NV for Tianjin Hweschun. Thus, for this preliminary determination, Commerce is applying the average-to-average method to all U.S. sales to calculate the weighted-average dumping margin for Tianjin Hweschun.

H. U.S. Price

Export Price

In accordance with section 772(a) of the Act, Commerce defined the U.S. price of subject merchandise based on EP for all sales reported by Tianjin Hweschun. Commerce calculated EP based on the prices at which subject merchandise was sold to unaffiliated purchasers in the United States.

We based EP on the packed prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, where appropriate, we made deductions from the starting price (gross unit price) for movement expenses, including foreign inland freight, domestic brokerage and handling, and international freight, using SVs, as applicable.[120]

Value-Added Tax

Commerce's recent practice in NME cases is to adjust EP (or the CEP) for the amount of any unrefunded (herein irrecoverable) value-added tax (VAT) in certain non-market economies, in accordance with section 772(c)(2)(B) of the Act.[121] In changing the practice, Commerce explained that, when an NME government imposes an export tax, duty, or other charges on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, Commerce will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.[122] Where the irrecoverable VAT is a fixed percentage of EP or CEP, Commerce explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. EP or CEP downward by this same percentage.[123]

VAT is an indirect, *ad valorem* consumption tax imposed on the purchase (sale) of goods. It is levied on the purchase (sale) price of the good, *i.e.*, it is paid by the buyer and collected by the

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[119] *See* Memorandum, "Preliminary Determination Margin Calculation for Tianjin Hweschun," dated concurrently with this memorandum (Tianjin Hweschun Preliminary Calculation Memorandum).
[120] *Id*.
[121] *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).
[122] *Id.*; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014), and accompanying IDM at Comment 5.A.
[123] *Id.*

seller. For example, if the purchase price is $100 and the VAT rate is 15 percent, the buyer pays $115 to the seller, $100 for the good and $15 in VAT. VAT is typically imposed at every stage of production. Thus, under a typical VAT system, firms: (1) pay VAT on their purchases of production inputs and raw materials ("input VAT") as well as (2) collect VAT on sales of their output ("output VAT").

Firms calculate input VAT and output VAT for tax purposes on a company-wide (not transaction-specific) basis, *i.e.*, in the case of input VAT, on the basis of *all input purchases* regardless of whether used in the production of goods for export or domestic consumption, and in the case of output VAT, on the basis of *all sales to all markets*, foreign and domestic. Thus, a firm might pay the equivalent of $60 million in total input VAT across all input purchases and collect $100 million in total output VAT across all sales. In this situation, however, the firm would remit to the government only $40 million of the $100 million in output VAT collected on its sales because of a $60 million credit for input VAT paid that the firm can claim against output VAT.[124] As a result, the firm bears no "VAT burden (cost)": the firm through the credit is refunded or recovers all of the $60 million in input VAT it paid, and the $40 million remittance to the government is simply a transfer to the government of VAT paid by (collected from) the buyer with the firm acting only as an intermediary. Thus, the cost of output VAT falls on the buyer or the good, not on the firm.

This would describe the situation under Chinese law except that producers in China, in most cases, do not recover (*i.e.*, are not refunded) the total input VAT they paid. Instead, Chinese tax law requires a *reduction in or offset to* the input VAT that can be credited against output VAT. The formula for this reduction/offset is provided in Article 5 of the 2012 Chinese government tax regulation, *Circular on Value-Added Tax and Consumption Tax Policies on Exported Goods and Services* (*2012 VAT Circular*):[125]

$$\textbf{Reduction/Offset} = (P - c) \times (T_1 - T_2),$$

where,
P = (VAT-free) free-on-board (FOB) value of export sales;
c = value of bonded (duty- and VAT-free) imports of inputs used in the production of goods for export;
T_1 = VAT rate; and,
T_2 = refund rate specific to the export good.
Using the example above, if P = $200 million, c = 0, T_1 = 17% and T_2 = 10%, then the reduction/offset = ($200 million - $0) x (17% - 10%) = $200 million x 7% = $14 million. Chinese law then requires that the firm in this example calculate creditable input VAT by subtracting the $14 million from total input VAT, as specified in Article 5.1(1) of the *2012 VAT Notice*:

Creditable input VAT = Total input VAT – Reduction/Offset

Using again the example above, the firm can credit only $60 million – $14 million = $46 million of the $60 million in input VAT against output VAT. Since the $14 million is not creditable (legally recoverable), it is not refunded to the firm. Thus, the firm incurs a cost equal to $14

[124] The credit, if not exhausted in the current period, can be carried forward.
[125] *See* Memorandum, "2012 China VAT Circular," dated October 24, 2019.

million, which is calculated on the basis of FOB export value at the *ad valorem* rate of $T_1 - T_2$. This cost therefore functions as an "export tax, duty, or other charge" because the firm does not incur it *but for* exportation of the subject merchandise, and under Chinese law must be recorded as a cost of exported goods.[126] It is for this "export tax, duty, or other charge" that Commerce makes a downward adjustment to U.S. price under section 772(c) of the Act.[127]

It is important to note that under Chinese law, the reduction/offset described above is defined in terms of, and applies to, total (company-wide) input VAT across purchases of all inputs, whether used in the production of goods for export or domestic consumption. The reduction/offset does not distinguish the VAT treatment of export sales from the VAT treatment of domestic sales from an input VAT recovery standpoint for the simple reason that such treatment under Chinese law applies to the company as a whole, not specific markets or sales. At the same time, however, the reduction/offset is calculated on the basis of the FOB value of exported goods, so it can be thought of as a tax on the company (*i.e.*, a reduction in the input VAT credit) that the company would not incur but for the export sales it makes, a tax fully allocable to export sales because the firm under Chinese law must book it as a cost of exported goods.

The VAT treatment under Chinese law of exports of goods described above concerns only export sales that are *not* subject to output VAT, the situation where the firm collects no VAT from the buyer, which applies to most exports from China. However, the *2012 VAT Circular* provides for a limited exception in which export sales of certain goods are, under Chinese law, deemed domestic sales for tax purposes and are thus subject to output VAT at the full rate.[128] The formulas discussed above from Article 5 of the *2012 VAT Circular* do not apply to firms that export these goods, and there is therefore no reduction in or offset to their creditable input VAT. For these firms creditable input VAT = total input VAT, *i.e.*, these firms recover all of their input VAT. At the same time, export sales of these firms are subject to an explicit output VAT at the full rate, T_1.[129] Commerce must therefore deduct this tax from U.S. price[130] under section 772(c) of the Act to ensure tax-neutral dumping margin calculations.[131]

As such, in the initial questionnaires, Commerce instructed the mandatory respondents to report VAT on the subject merchandise sold to the United States during the POI and to identify which

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[126] Article 5(3) of the *2012 VAT Circular* states: "If the tax refund rate is lower than the applicable tax rate, the tax for the difference calculated accordingly shall be included in the cost of exported goods and labor services."

[127] Because the $14 million is the amount of input VAT that is not refunded to the firm, it is sometimes referred to as "irrecoverable input VAT." However, that phrase is perhaps misleading because the $14 million is not a fraction or percentage of the VAT the firm paid on purchases of inputs used in the production of exports. If that were the case, the value of production inputs, not FOB export value, would appear somewhere in the formula in Article 5 of the *2012 VAT Circular* as the tax basis for the calculation. The value of production inputs does not appear in the formula. Instead, as explained above, the $14 million is simply a cost imposed on firms that is tied to export sales, as evidenced by the formula's reliance on the FOB export value as the tax basis for the calculation. The $14 million is a reduction in or offset to what is essentially a tax credit, and it is calculated based on and is proportional to the value of a company's export sales. Thus, "irrecoverable input VAT" is in fact, despite its name, an export tax within the meaning of section 772(c) of the Act.

[128] *See 2012 VAT Circular*, Article 7. For these goods, the VAT refund rate on export is zero.

[129] *See 2012 VAT Circular*, Article 7.2(1).

[130] Commerce will divide the VAT-inclusive export price by (1 + T), where T is the applicable VAT rate.

[131] Pursuant to sections 772(c) and 773(c) of the Act, the calculation of normal value based on factors of production in NME antidumping cases is calculated on a VAT-exclusive basis, so U.S. price must also be calculated on a VAT-exclusive basis to ensure tax neutrality.

taxes are unrefunded upon export.[132] Information placed on the record of this investigation indicates that according to the China VAT schedule, the standard VAT levy and rebate during the POI is as follows: the VAT rate applicable to subject merchandise is 16 percent. Prior to November 1, 2018, the VAT refund rate applied to the subject merchandise was nine percent and after November 1, 2018, the VAT refund rate applied to the subject merchandise increased to ten percent.[133]

Consistent with our standard methodology, for purposes of this preliminary determination we based the calculation of irrecoverable VAT on the difference between the standard levy (16 percent) and rebate rates, applied to an FOB price at the time of exportation.[134] Thus, because the VAT rebate rates on exports changed during the POI we used two different rebate rates. We deducted from the gross unit price an amount for irrecoverable VAT equal to seven or six percent of the gross unit price, as applicable.[135]

I. Normal Value

Section 773(c)(1) of the Act provides that Commerce shall determine NV using the FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home market prices, third-country prices, or constructed value under section 773(a) of the Act. Commerce bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under Commerce's normal methodologies.[136] Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), Commerce calculated NV based on FOPs. Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.[137]

J. Factor Valuation Methodology

In accordance with section 773(c) of the Act, Commerce calculated NV based on FOP data reported by Tianjin Hweschun. To calculate NV, Commerce multiplied the reported per-unit factor consumption rates by publicly available SVs. When selecting the SVs, Commerce

[132] *See, e.g.*, Tianjin JXSL September 13, 2019 Section C Questionnaire Response.
[133] *See* Tianjin Hweschun October 24, 2019 Supplemental Section C Questionnaire Response at 3-6 and exhibits S2-4 through Exhibit S2-9
[134] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013*, 80 FR 33241 (June 11, 2015), and accompanying IDM at Comment 5.
[135] *See* Tianjin Hweschun Preliminary Calculation Memorandum.
[136] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19703 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079 (September 8, 2006).
[137] *See* section 773(c)(3)(A)-(D) of the Act.

considered, among other factors, the quality, specificity, and contemporaneity of the data.[138] As appropriate, Commerce adjusted input prices by including freight costs to make them delivered prices. Specifically, Commerce added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory.[139] A detailed description of SVs used for the respondents can be found in the Preliminary SV Memorandum.

As discussed above, for the preliminary determination, Commerce is using Mexican import data, as published by GTA, and other publicly available sources from Mexico to calculate SVs for Tianjin Hweschun's FOPs. In accordance with section 773(c)(1) of the Act, Commerce applied the best available information for valuing FOPs by selecting, to the extent practicable, SVs which are: (1) tax-exclusive, non-export average values; (2) contemporaneous with, or closest in time to, the POI; (3) product-specific; and (4) broad-market averages.[140] The record indicates that Mexican import data obtained through GTA, as well as data from other Mexican sources, are broad-market averages, product-specific, tax-exclusive, and generally contemporaneous with the POI.[141]

Commerce continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be dumped or subsidized.[142] In this regard, Commerce has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry-specific export subsidies.[143] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POI, Commerce finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Therefore, Commerce has not used prices from those countries in calculating the Mexican import-based SVs. Commerce also excluded, from the calculation of the import-based per-unit SVs, imports labeled as originating

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

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

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

[141] *See* Preliminary SV Memorandum.

[142] *See* section 773(c)(5) of the Act.

[143] *See, e.g., Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination; 2011-2012*, 78 FR 42492 (July 16, 2013), and accompanying IDM at 7-19; *Certain Lined Paper Products from Indonesia: Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 76 FR 73592 (November 29, 2011), and accompanying IDM at 1; *Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 46770 (August 11, 2014), and accompanying IDM at 4; and *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013), and accompanying IDM at IV.

from an "unidentified" country, because Commerce could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.[144]

We used Mexican import statistics from GTA to value raw materials, packing materials, and certain energy inputs.[145] With respect to electricity, we calculated an average rate using publicly-available data from the International Energy Agency.[146] We valued truck freight, in addition to brokerage and handling, using average rates from the World Bank's report, *Doing Business 2018: Mexico* (*Doing Business*).[147] This World Bank report gathers information concerning the distance and cost to transport a containerized shipment weighing 15 metric tons in Mexico.[148] We calculated international freight using ocean shipping rates obtained from Maersk, an online provider of market-economy freight quotes.[149]

We valued water using Mexico's National Commission for Water (CONAGUA) in its "Statistics on Water 2017 Edition," and inflated the rates to the POI using the International Monetary Fund's monthly Consumer Price Index (CPI).

In NME antidumping proceedings, Commerce prefers to value labor solely based on data from the surrogate country.[150] In *Labor Methodologies*, Commerce determined that the best methodology to value labor is to use industry-specific labor rates from the surrogate country. Additionally, we determined that the best data source for industry-specific labor rates is manufacturing labor rates from ILOSTAT, the labor database compiled by the International Labor Organization.[151] In this investigation, we find that the ILOSTAT data on the record from Mexico are the best available information for valuing labor because they are specific to manufacturing and represent the closest labor valuation to the industry in question from the surrogate country.[152]

Commerce's criteria for choosing surrogate financial statements from which we derive the financial ratios are the availability of contemporaneous financial statements, comparability to the respondent's experience, and public availability of information.[153] Moreover, for valuing factory overhead, SG&A expenses, and profit, Commerce normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.[154] In

[144] *See, e.g., Vietnam Shrimp*, 69 FR at 42682-42683.
[145] *See* Preliminary SV Memorandum.
[146] *Id*.
[147] *Id*.
[148] *Id*.
[149] *Id*.
[150] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).
[151] *See* Preliminary SV Memorandum.
[152] *Id*.
[153] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005), and accompanying IDM at Comment 3.
[154] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China, Final Determination in the Antidumping Duty Investigation*, 71 FR 29303 (May 22, 2006), and accompanying IDM at Comment 2; *see also* section 773(c)(4) of the Act; 19 CFR 351.408(c)(4).

addition, the CIT has held that in the selection of surrogate producers, Commerce may consider how closely the surrogate producers approximate the NME producer's experience.[155]

To value factory overhead, SG&A expenses, and profit, Commerce relied on the 2018 financial statements of Grupo Simec, SAB de CV (Simec), because it is a Mexican producer of comparable merchandise.[156] While Simec produces comparable, rather than identical, merchandise, it is a Mexican producer of steel products including nails and fasteners of a type that are comparable to staples. Therefore, we preliminarily find that the financial data of this producer are appropriate to approximate the financial costs of the respondent's production of collated staples.[157]

Commerce's practice is to grant the respondents an offset to the reported FOPs for by-product generated during the production of the subject merchandise if evidence is provided that such by-product has commercial value and is produced during the POI.[158] Tianjin Hweschun claimed by-product offsets and provided evidence of having earned byproduct revenue during the POI. However, Tianjin Hweschun was unable to provide the records necessary to prove production of scrap, because it does not track production of scrap in the normal course of business.[159] Accordingly, we have denied the by-product offset for scrap in the calculation of the NV for Tianjin Hweschun.

VIII. CURRENCY CONVERSION

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

IX. ADJUSTMENT UNDER SECTION 777A(f) of the Act

In applying section 777A(f) of the Act, Commerce examines: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise; (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period; and (3) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.[160] For a subsidy meeting these criteria, the statute requires Commerce to reduce the AD cash deposit rate by the estimated amount of the increase in the weighted-average dumping margin subject to a

[155] *See Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1253-54 (CIT 2002); *see also Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005), and accompanying IDM at Comment 1.
[156] For more information on the surrogate financial ratios calculations, *see* the Preliminary SV Memorandum.
[157] *Id*.
[158] *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews*, 70 FR 54897 (September 19, 2005), and accompanying IDM at Scrap Offset.
[159] *See* Tianjin Hweshun first Supplemental Section D Questionnaire response, dated October 29, 2019 at 12.
[160] *See* section 777A(f)(1)(A)-(C) of the Act.

specified cap.[161]

In conducting this analysis, Commerce has not concluded that concurrent application of NME ADs and countervailing duties (CVDs) necessarily and automatically results in overlapping remedies. Rather, a finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute.

In order to examine the effects of concurrent countervailable subsidies in calculating antidumping margins for respondents in this investigation, Commerce requested that Tianjin JXSL and Tianjin Hweschun submit information with respect to subsidies relevant to their eligibility for an adjustment to the calculated weighted-average dumping margins.[162] Tianjin JXSL did not respond to the questionnaire and Tianjin Hweschun waived its right to a double remedy adjustment.[163] Thus, we made no adjustment for double remedies in this preliminary determination.

X. CRITICAL CIRCUMSTANCES

On November 4, 2019, Commerce preliminarily determined that critical circumstances exist with respect to imports of collated staples from China shipped by Tianjin Hweschun and all other Chinese producers/exporters except Tianjin JXSL.[164] We have revised our preliminary critical circumstances finding with respect to Tianjin JSXL in light of our decision to base Tianjin JSXL's margin on AFA. We based our preliminary determination as to whether imports of the subject merchandise have been "massive" for Tianjin JXSL, based on facts otherwise available, with an adverse inference, as explained above.[165] Specifically, we are making an adverse inference that Tianjin JXSL dumped "massive imports" over a "relatively short period," in accordance with sections 733(e) and 776(a) and (b) of the Act and 19 CFR 351.206. Consequently, we preliminarily find that critical circumstances exist for Tianjin JXSL, in addition to Tianjin Hweschun and all other producers/exporters of collated staples from China.[166]

We will make a final determination concerning critical circumstance when we issue our final determination of sales at LTFV for this investigation.

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[161] *See* section 777A(f)(1)-(2) of the Act.
[162] *See* Commerce's Letter, "Antidumping Duty Investigation of Certain Collated Steel Staples from the People's Republic of China: Double Remedy Questionnaire," dated October 25, 2019.
[163] *See* Tianjin Hweschun Letter, "Certain Collated Steel Staples from China: Submission of Statement In Lieu Of Tianjin Hweschun's Double Remedy Response," dated November 1, 2019.
[164] *See Certain Collated Steel Staples from the People's Republic of China: Preliminary Affirmative Determinations of Critical Circumstances in the Antidumping and Countervailing Duty Investigations*, 84 FR 59353 (November 4, 2019) (*Preliminary Critical Circumstances Determination)* and Memorandum, "Certain Collated Steel Staples from the People's Republic of China: Preliminary Massive Imports Analysis," dated October 31, 2019.
[165] *See, e.g., Non-Oriented Electrical Steel from the People's Republic of China: Preliminary Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*, 79 FR 29421 (December 6, 2013), and accompanying Preliminary Decision Memorandum at "Critical Circumstances", unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determinations of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014).
[166] *See Preliminary Critical Circumstances Determination.*

XI. ADJUSTMENT FOR COUNTERVAILABLE 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."[167]

Commerce determined in the preliminary determination of the companion CVD investigation that all companies subject to the investigation benefitted from a subsidy program contingent on export totaling 10.54 percent.[168] With respect to Tianjin Hweschun, Tianjin JXSL, and the separate rate companies, we find that the export subsidy adjustment of 10.54 percent is warranted because this is the export subsidy rate included in the CVD all-others rate, to which these companies are subject in the companion CVD proceeding. For the China-wide entity, Commerce has adjusted the China-wide entity's AD cash deposit rate by the only export subsidy rate determined for any party in the companion CVD proceeding, which is 10.54 percent.

XII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☒	☐
Agree	Disagree

1/2/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

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

[168] *See Certain Collated Steel Staples from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 61021 (Nov. 12, 2019) and accompanying Preliminary Decision Memorandum at 6-12, 20-21, and 28-29, relating to the inclusion of the Export Buyer's Credit Program in the subsidy rate for the three mandatory respondents and the all others subsidy rate.