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

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Investigation
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May 14, 2021

MEMORANDUM TO: Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations

FROM: Scot Fullerton
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Antidumping Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) determines that imports of certain walk-behind lawn mowers and parts thereof (lawn mowers) 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 735 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the "Final Determination" section of the accompanying *Federal Register* notice.

As a result of our analysis and consideration of comments submitted by interested parties, we have made changes to the *Preliminary Determination*.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of issues for which we received comments from interested parties:

Comment 1: Financial Statements
Comment 2: Global Trade Atlas (GTA) Data from Turkey
Comment 3: Surrogate Value for Grass Catcher Bags
Comment 4: Movement Expense Adjustments to Import Statistics
Comment 5: Surrogate Value for Triangle Belt
Comment 6: Ministerial Errors
Comment 7: Close-Supplier Relationship
Comment 8: Due Process

[1] *See Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 86529 (December 30, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

Comment 9: Assignment of Fujian Spring to the China-Wide Entity

II. BACKGROUND

On December 30, 2020, Commerce published its *Preliminary Determination* of sales at LTFV of lawn mowers from China.[2] The mandatory respondent is Ningbo Daye Garden Machinery, Inc. (Ningbo Daye).

On December 31, 2020, we issued a double remedies questionnaire to Ningbo Daye.[3] Ningbo Daye responded on January 15, 2021.[4] We placed our post-preliminary determination of Ningbo Daye's response on the record on February 11, 2021.[5]

On January 11, 2021, we received ministerial error comments on our *Preliminary Determination* from Ningbo Daye.[6] We addressed these comments in a memorandum to the file on February 8, 2021.[7]

On January 22, and 25, 2021, the petitioner and Ningbo Daye, respectively, requested a hearing.[8] On March 29, and 31, 2021, the petitioner and Ningbo Daye, respectively, withdrew their requests for a hearing.[9]

On February 2, 2021, we issued a questionnaire in lieu of on-site verification.[10] We withdrew the questionnaire on February 8, 2021,[11] and issued a revised version of the verification

[2] *See Preliminary Determination* PDM.
[3] *See* Commerce's Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China; Double Remedies Questionnaire," dated December 31, 2020.
[4] *See* Ningbo Daye's Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China, Case No. A-570-129: Double Remedies Questionnaire Response," dated January 15, 2021.
[5] *See* Memorandum, "Antidumping Duty Investigation of Certain Walk-Behind Lawn Mowers from the People's Republic of China; Post-Preliminary Determination," dated February 11, 2021.
[6] *See* Ningbo Daye's Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China, Case No. A-570-129: Ministerial Error Comments," dated January 11, 2021.
[7] *See* Memorandum, "Certain Walk-Behind Lawn Mowers from the People's Republic of China: Allegation of a Ministerial Error in the Preliminary Affirmative Determination of Sales in the Less-Than-Fair-Value Investigation," dated February 8, 2021 (Preliminary Ministerial Error Memorandum).
[8] The petitioner is MTD Products Inc. *See* Petitioner's Letter, "Walk- Behind Lawn Mowers from the People's Republic of China: Petitioner's Request for Public Hearing," dated January 22, 2021; and Ningbo Daye's Letter, "Antidumping Duty Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China, Case No. A-570-129; Ningbo Daye Request for Hearing," dated January 25, 2021.
[9] *See* Petitioner's Letter, "Antidumping Duty Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Withdrawal of Hearing Request," dated March 29, 2021; and Ningbo Daye's Letter, "Antidumping Duty Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China, Case No. A-570-129; Ningbo Daye Withdrawal of Request for Hearing," dated March 31, 2021.
[10] *See* Commerce's Letter dated February 2, 2021.
[11] *See* Commerce's Letter, "Certain Walk-Behind Lawn Mowers from the People's Republic of China – Withdrawal of Verification Questionnaire," dated February 8, 2021.

questionnaire on February 26, 2021.[12] Ningbo Daye submitted its response to the revised questionnaire on March 8, 2021.[13]

Between February 16, and 23, 2021, multiple interested parties submitted scope case briefs and scope rebuttal briefs.[14] On March 15, 2021, we received case briefs from the petitioner,[15] Ningbo Daye,[16] and Fujian Spring Machinery Co., Ltd., and its supplier Masport Limited (collectively, Fujian/Masport).[17] On March 15, 2021, we also received a letter in lieu of a case brief from Power Distributors, LLC (Power Distributors), a U.S. importer of the merchandise under investigation.[18] On March 22, 2021, we received rebuttal briefs from the petitioner[19] and Ningbo Daye.[20] On May 7, 2021, Commerce rejected Fujian Spring's case brief because it contained untimely argument regarding the scope of the investigations.[21] Fujian Spring re-filed a redacted version of its case brief on May 9, 2021.[22]

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is October 1, 2019, through March 31, 2020. This period corresponds to the most recently completed fiscal quarters prior to the month of the filing of the Petition, which was May 2020.[23]

IV. SCOPE COMMENTS

On December 22, 2020, Commerce issued the Preliminary Scope Decision Memorandum in which it determined to modify the language of the scope by excluding from the scope of these investigations lawnmowers that contain an engine covered by the scope of the ongoing AD and

[12] *See* Commerce's Letter dated February 26, 2021.
[13] *See* Ningbo Daye's Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China, Case No. A-570-129: Response to Questionnaire in Lieu of Verification," dated March 8, 2021.
[14] *See* "Scope Comments" section of this memorandum.
[15] *See* Petitioner's Letter, "Antidumping Duty Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: MTD Products Inc. Case Brief," dated March 15, 2021 (Petitioner Case Brief).
[16] *See* Ningbo Daye's Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China, Case No. A-570-129: Case Brief," dated March 15, 2021 (Ningbo Daye Case Brief).
[17] *See* Fujian Spring/Masport's Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China," dated March 15, 2021.
[18] *See* Power Distributors' Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China, Case No. A-570-129: Letter in Lieu of Case Brief," dated March 15, 2021 (Power Distributors Case Brief).
[19] *See* Petitioner's Letter, "Antidumping Duty Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: MTD Products Inc. Rebuttal Brief," dated March 22, 2021 (Petitioner Rebuttal Brief).
[20] *See* Ningbo Daye's Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China, Case No. A-570-129: Rebuttal Brief," dated March 22, 2021 (Ningbo Daye Rebuttal Brief).
[21] *See* Commerce's Letter, "Rejection of Case Brief in the Antidumping Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China," dated May 7, 2021.
[22] *See* Fujian Spring/Masport Resubmitted Case Brief, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Re-Submission of Case Brief," dated May 9, 2021.
[23] *See* Petitioner's Letter, "Petitions for the Imposition of Antidumping Duties on Certain Lawn Mowers from the People's Republic of China and the Socialist Republic of Vietnam and Countervailing Duties on Certain Walk-Behind Lawn Mowers from the People's Republic of China," dated May 26, 2020 (the Petition).

CVD proceedings on small vertical engines from China to address the overlap in the scopes of these proceedings.[24] Subsequently, we received comments from interested parties regarding the Preliminary Scope Decision Memorandum; we address these comments in the Final Scope Decision Memorandum.[25] As a result of our analysis, the scope of the investigation, as contained in the Preliminary Scope Decision Memorandum, remains unchanged.

V. SCOPE OF THE INVESTIGATION

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

VI. CHINA-WIDE RATE

For the final determination, we continue to base the China-wide rate on adverse facts available (AFA).[26] In the *Preliminary Determination*, we used the highest transaction-specific dumping margin calculated for Ningbo Daye to determine the AFA rate because we found that we were unable to corroborate the 313.58 percent highest dumping margin alleged in the Petition, 313.58 percent.[27] As explained below, we made changes to our calculations for Ningbo Daye and, as a result, we are now able to corroborate one of the margins in the Petition, 274.29 percent, to the extent practicable. Therefore, we have revised the AFA rate applicable to the China-wide entity to 274.29 percent.

In an LTFV investigation, Commerce's practice with respect to the assignment of an AFA rate is to select the higher of: (1) the highest dumping margin alleged in the Petition; or (2) the highest calculated dumping margin of any respondent in the investigation.[28]

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.[29] The SAA clarifies that "corroborate" means that Commerce will satisfy itself

[24] *See* Memorandum, "Antidumping and Countervailing Duty Investigations of Lawn Mowers from the People's Republic of China and the Socialist Republic of Vietnam: Preliminary Scope Decision Memorandum," dated December 22, 2020 (Preliminary Scope Decision Memorandum), uploaded to ACCESS on February 9, 2021.
[25] *See* Memorandum, "Antidumping Duty and Countervailing Duty Investigations of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China and the Socialist Republic of Vietnam: Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this memorandum (Final Scope Decision Memorandum).
[26] *See Preliminary Determination* PDM at 15-18.
[27] *See* the Petition; *see also* Petitioner's Letter, "Petitions for the Imposition of Antidumping Duties on Imports of Certain Walk-Behind Lawn Mowers from the People's Republic of China: Supplemental Questionnaire Response Volume II," dated June 2, 2020 at Exhibit S-II-6.
[28] *See, e.g.*, *Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016).
[29] *See* SAA at 870.

that the secondary information to be used has probative value,[30] although Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.[31] To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used, although Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.[32] Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of the proceeding under the applicable antidumping order when applying an adverse inference, including the highest of such margins. If Commerce is unable to corroborate the highest petition margin using individual-transaction specific margins; Commerce may use the component approach.[33]

In this final determination, we continue to find that the 313.58 percent rate alleged in the Petition is higher than Ningbo Daye's highest transaction-specific dumping margin and, thus, we have considered whether we are able to corroborate the Petition margin. As in the *Preliminary Determination*, we continue to find that we are unable to corroborate the highest Petition margin with individual transaction-specific margins, as the highest Petition margin remains significantly higher than Ningbo Daye's highest calculated transaction-specific margin. Therefore, we next applied a component approach and compared the NVs and net U.S. prices underlying the highest petition margin to the NVs and net U.S. prices calculated for Ningbo Daye. We find that we are also unable to corroborate the highest petition margin of 313.58 with this component approach. Specifically, we find that the lowest net U.S. price calculated for Ningbo Daye is not less than or equal to the U.S. price component of the highest Petition margin.

However, we find that we are able to corroborate the second highest Petition margin of 274.29 percent using the component method. Specifically, we find that the highest NVs and lowest net U.S. prices calculated for Ningbo Daye are within the range of NVs and U.S. prices calculated for the second highest margin alleged in the Petition. With respect to the NV alleged for this margin, the highest calculated NV is greater than the NV component of this Petition margin; and, for the U.S. price alleged for this Petition margin, the lowest calculated net U.S. price is lower than the U.S. price component of this Petition margin. As the 274.29 percent Petition margin is both reliable and relevant, we determine that it has probative value. Thus, we have corroborated the Petition margin of 274.29 percent to the extent practicable within the meaning of section 776(c) of the Act, using Ningbo Daye's NVs and net U.S. prices. Accordingly, for this final determination, we have applied, as AFA, a margin of 274.29 percent to the China-wide entity.

VII. ADJUSTMENT UNDER SECTION 777A(f) OF THE ACT

As discussed in the *Preliminary Determination*,[34] in applying section 777A(f) of the Act, Commerce examines: (1) whether a countervailable subsidy (other than an export subsidy) has

[30] *Id.*; *see also* 19 CFR 351.308(d).
[31] *See* section 776(c)(2) of the Act.
[32] *See* section 776(d)(3) of the Act.
[33] *See, e.g.*, *Polyester Textured Yarn from India: Final Determination of Sales at Less Than Fair Value*, 84 FR 63843 (November 19, 2019), and accompanying Issues and Decision Memorandum (IDM) at Comment 7.
[34] *See Preliminary Determination* PDM at 26.

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 normal value (NV) determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.[35] For a subsidy meeting these criteria, the statute requires Commerce to reduce the dumping margin by the estimated amount of the increase in the weighted-average dumping margin due to a countervailable subsidy, subject to a specified cap.[36] In conducting this analysis, Commerce has not concluded that concurrent application of non-market economy (NME) dumping duties and countervailing duties 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.[37]

Following our *Preliminary Determination*, upon consideration of the response from Ningbo Daye and the relevant statutory criteria, we concluded that an adjustment under section 777A(f) of the Act was not warranted in the investigation.[38] No party commented on Commerce's preliminary determination not to grant an offset to parties' cash deposit rates under section 777A(f) of the Act. Therefore, consistent with our *Preliminary Determination*, we have not made any adjustment under section 777A(f) of the Act to the rates assigned to Ningbo Daye, the separate rate applicants, or the China-wide entity in this final determination.

VIII. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES

Pursuant to section 772(c)(1)(C) of the Act, Commerce normally makes adjustments for countervailable export subsidies. In the preliminary determination of the concurrent CVD investigation, we found that Ningbo Daye benefited from countervailable export subsidies at a rate of 10.59 percent, and that the other mandatory respondent in the CVD investigation benefited from countervailable export subsidies at a rate of 10.54 percent.[39] Accordingly, pursuant to section 772(c)(1)(C) of the Act, we deducted 10.59 percent from Ningbo Daye's antidumping deposit rate, and 10.56 percent (the average of 10.54 percent and 10.59 percent, the export subsidy rates found for the two mandatory respondents in the companion CVD investigation) from the antidumping deposit rate for the respondents qualifying for a separate rate but that were not selected for individual examination. We also deducted 10.54 percent from

[35] *See* sections 777A(f)(1)(A)-(C) of the Act.
[36] *See* sections 777A(f)(1)-(2) of the Act.
[37] *See*, *e.g.*, *Fine Denier Polyester Staple Fiber from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 24740 (May 30, 2018), and accompanying IDM at Comment 2.
[38] *See* Memorandum, "Antidumping Duty Investigation of Certain Walk-Behind Lawn Mowers from the People's Republic of China; Post-Preliminary Determination," dated February 11, 2021. In particular, we found that Ningbo Daye failed to demonstrate either a subsidies-to-cost link (*e.g.*, subsidy impact on cost of manufacture) or a cost-to-price link (*e.g.*, the respondent's prices changed as a result of changes in the cost of manufacture).
[39] *See Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 85 FR 68848 (October 30, 2020), and accompanying PDM.

the dumping margin for the China-wide entity, the lowest rate, consistent with our determination to apply adverse facts available with an adverse inference to the China-wide entity.

In the final determination of the concurrent CVD investigation, Commerce made no changes to its analysis of countervailable export subsidies.[40] Therefore, in this final determination we have no changes to the adjustments we made for countervailable export subsidies that we made in the *Preliminary Determination*, as described above.

IX. CHANGES SINCE THE PRELIMINARY DETERMINATION

We calculated U.S. price and NV using the same methodology stated in the *Preliminary Determination*, except as noted below.

- We revised our selection of surrogate financial statements and revised our calculation of financial ratios derived from the financial statement of Stara S.A. Industria de Implementos Agricolas (Stara).[41]
- Where we used Brazilian GTA data, we added surrogate values to represent the cost of ocean freight, marine insurance, and brokerage and handling.[42]
- We included a surrogate value for the input "triangle belt."[43]
- We corrected the ministerial errors alleged after the *Preliminary Determination*.[44]
- We have revised the AFA rate applicable to the China-wide entity to 274.29 percent.[45]

X. DISCUSSION OF THE ISSUES

Comment 1: Financial Statements

In the *Preliminary Determination*, Commerce used Brazil as the surrogate country for purposes of calculating normal value and used the financial statements of the Brazilian companies Stara S.A. Industria de Implementos Agricolas (Stara) and Schulz S.A., Brazilian (Schulz) to calculate surrogate financial ratios.

Ningbo Daye's Comments

- The Brazilian Stara and Schulz financial statements are not appropriate sources of data for Commerce's calculation of surrogate financial ratios. Commerce should instead use the financial statement of Turkish company, Turk Traktor.
- The Stara and Schulz financial statements do not represent production of merchandise more similar to lawn mowers than do Turk Traktor's financial statements.

[40] *See Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, published concurrently with this notice, and accompanying IDM.
[41] *See* Comment 1.
[42] *See* Comment 4.
[43] *See* Comment 5.
[44] *See* Comment 6; *see also* Preliminary Ministerial Error Memorandum.
[45] *See* "China-Wide Rate" section above.

- In addition to some agricultural products, Stara produces an array of products, including software and technology equipment, that are less comparable to the merchandise under consideration than are the agricultural products produced by Turk Traktor.[46]
- Schulz is a manufacturer of compressors and auto parts, and works in "marketing of greases and lubricating oils," the provision of services such as "machining and painting of castings, prospecting, installation, maintenance and technical assistance related to the products of its industry and trade," and leasing of equipment.[47] Thus, not only is Schulz's production not comparable, but it also earns income providing services and leasing, unlike Ningbo Daye. Accordingly, the financial statements of Schulz are not indicative of a producer of the merchandise under investigation generally nor of Ningbo Daye's production.
- Both Stara and Schulz received subsidies from the Brazilian government.[48] Specifically, the financial statements of Stara and Schulz indicate that the companies received government grants.
- Conversely, Commerce has recently determined that the Turk Traktor financial statements do not include any countervailable subsidies.[49] Accordingly, for the final determination, Commerce should reject the financial statements of both Stara and Schulz in favor of the Turk Traktor financial statements.

Petitioner's Comments

- In calculating financial ratios for Schulz and Stara, Commerce classified or allocated certain expenses in a way that yielded understated ratios.
- With respect to Schulz, Commerce divided the line item "Materials, energy, third party services, and other operating expenses" equally between raw materials (*i.e.*, direct materials) and energy. However, the "materials" referenced in this line item are consumables or "stores and spares" that Commerce normally treats as manufacturing overhead expenses.[50]
- Likewise, Commerce normally treats "third party services" (usually subcontractor or tolling expenses) as manufacturing overhead expenses.
- Finally, Commerce normally treats "other operating expenses" as selling, general, and administrative (SG&A) expenses.
- Given that there is no breakdown in the Schulz financial statement for the line item "Materials, energy, third party services, and other operating expenses," in the final

[46] *See* Ningbo Daye Case Brief at 2 (citing Petitioner's Letter, "Antidumping Investigations on Certain Walk-Behind Lawn Mowers from the People's Republic of China: Petitioner's Surrogate Value Submission," dated November 2, 2020 (Petitioner's SV Submission) at Exhibit 8).
[47] *Id.* (citing Petitioner's SV Submission at Exhibit 9).
[48] *Id*. at 3 (citing Petitioner SV Submission at Exhibit 8, notes 2.15 and 23, and page 14; and Petitioner's SV Submission at Exhibit 9, note 3.21, page 45).
[49] *Id*. (citing *Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof, from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 85 FR 66932 (October 21, 2020), and accompanying IDM at 32).
[50] *Id*. at 3 (citing *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 12762 (March 19, 2007), and accompanying IDM at Comment 3c; *Certain Color Television Receivers from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 69 FR 20594 (April 16, 2004), and accompanying IDM at Comment 16).

determination Commerce should reallocate this line item equally among energy, manufacturing overhead, and SG&A expenses.

- With respect to Stara, Commerce classified the entire "salaries and social charges expense" amount as direct labor. However, note 20 of the financial statement indicates that this line item includes wages and salaries for employees associated with selling, general, and administrative functions, as well as salaries for direct labor. Therefore, in the final determination Commerce should allocate the "salaries and social charges" line item equally between direct labor and SG&A.

Ningbo Daye's Rebuttal Comments

- With respect to Schulz, the petitioner's argument conflicts with earlier comments it placed on the record in which it broke out the line item "Materials, energy, third party services, and other operating expenses" evenly between energy and manufacturing overhead. This breakout resulted in high, unrealistic ratios. The breakout the petitioners now propose results in even more unrealistic ratios.
- The petitioner's argument for reclassification of the line item at issue is purely speculative. Schulz's financial statements do not specify what is included in the line item, nor do they specify the proportions. The petitioner has provided no basis for Commerce to change the classification of this line item in the *Preliminary Determination*.
- With respect to Stara, the petitioner's argument is again based on speculation. The petitioner has provided no basis for Commerce to change its classification of the line item for "Salaries and social charges" in the *Preliminary Determination*.
- The lack of clarity in the Brazilian financial statements demonstrates why both of these financial statements are unreliable for use in this investigation because they do not contain sufficient detail to accurately calculate ratios.
- The Schulz and Stara financial statements are also less accurate than the Turkish financial statements on the record because neither of them contains any information with which to calculate a change in inventory to properly calculate cost of manufacturing (COM) (rather than cost of goods sold). Commerce requires respondents to provide factors of production on a cost of production basis, not on a cost of goods sold basis. Thus, the surrogates values Commerce uses must be on the same basis. While Turk Traktor has the necessary information to calculate an accurate change in inventory, neither Schulz's nor Stara's financial statements contain this information.

Petitioner's Rebuttal Comments

- Commerce's reasons for selecting Brazil as the primary surrogate country in the *Preliminary Determination*, including its selection of Brazilian surrogate financial statements, remain true for the final determination. The financial statements of Turkish company Turk Traktor is inferior to the financial statements of Brazilian companies Stara and Schulz, and Commerce should continue to use Brazil as the primary surrogate country on this basis.
- Commerce should not use Turk Traktor's financial statement in the final determination because Turk Traktor's production experience is not the most comparable to Ningbo Daye's production experience.
- Stara's production experience is more similar to Ningbo Daye's production experience than is Turk Traktor's.

- Ningbo Daye's arguments – that Stara and Turk Traktor produce similar merchandise because both companies produce "agricultural machines," and that Stara is less comparable to Ningbo Daye because it also produces "software and technology equipment related to agricultural precision" – are flawed.
- Stara, unlike Turk Traktor, makes products that share important features with walk-behind lawnmowers, such as cutting blades and rotating parts.
- Turk Traktor, on the other hand, produces heavy-equipment vehicles, which do not have cutting blades or assemblies with rotating parts.[51] Furthermore, Turk Traktor's vehicles are controlled and ridden by individuals, and therefore, unlike lawn mowers, contain steering and propulsion devices.
- Ningbo Daye's argument that Stara produces "software and technology equipment related to agricultural precision" is based on a single sentence in Stara's financial statement contained in a section that is not intended to provide an exhaustive list of products. The record does not contain any details about the features of this technology equipment or how it relates to precision agriculture. However, it also does not contain any details about the technological features of the "farm tractors, harvesters and other agricultural machinery and equipment" produced by Turk Traktor.[52] Given the lack of additional information on the record regarding the technological advancement of each company's products, Commerce should affirm its preliminary determination that Stara's production experience is more similar to that of Ningbo Daye.

- Schulz's production experience is also more similar to Ningbo Daye's production experience than is Turk Traktor's.
  - Unlike Turk Traktor, Schulz produces handheld products rather than heavy equipment vehicles intended for riding.[53] Moreover, Schulz produces compressors and pneumatic tools with motors more similar to those of a lawn mower than large tractors. Finally, the vacuums Schulz manufactures simulate the production experience of the grass catcher system in a walk-behind lawn mower, which closely resembles Ningbo Daye's production experience. Indeed, CBP has determined that grass-catcher bags in lawnmowers are akin to vacuum bags.[54]
  - Ningbo Daye's argument that Schulz earns income providing services and leasing ignores the fact that Turk Traktor also earns income through retail and services activities. Specifically, according to its financial statement, Turk Traktor "conducts marketing and selling activities in the domestic market, through over 300 dealers" and provides after-sales services to customers.[55] Thus, retail and service activities are not a distinguishing factor between Schulz and Turk Traktor.
- Commerce should not use Turk Traktor's financial statements because the company received countervailable subsidies; Stara and Schulz did not.

[51] *See* Petitioner Rebuttal Brief at 2 (citing Petitioner's Letter, "Antidumping Investigations on Certain Walk-Behind Lawn Mowers from the People's Republic of China: Petitioner's Surrogate Value Rebuttal Submission," dated November 9, 2020 (Petitioner Rebuttal SV Submission) at Exhibit 5).
[52] *See* Petitioner Rebuttal Brief at 3 (citing Ningbo Daye's Letter, "Surrogate Value Comments," dated November 2, 2020 (Ningbo Daye SV Submission) at Exhibit 7).
[53] *See* Petitioner Rebuttal Brief at 4 (citing Petitioner Rebuttal SV Submission at Exhibit 6).
[54] *Id.* at 9 (citing Petitioner Rebuttal SV Submission at Exhibit 1).
[55] *Id.* (citing Ningbo Daye SV Submission at Exhibit 7).

- With respect to Ningbo Daye's argument that Stara and Schulz received subsidies, Commerce's practice is not to reject financial statements when a company received subsidies unless Commerce has previously found the subsidy to be countervailable.[56]
- Here, neither Stara nor Schulz received subsidies from the Brazilian government that Commerce has previously found countervailable.
- Stara did receive a tax credit from the state of Rio Grande Do Sul,[57] but, to the petitioner's knowledge, Commerce has never found that tax credit to be countervailable.
- Ningbo Daye also asserts that the Schulz financial statements indicate receipt of government grants, but it did not specify the alleged subsidy, nor did it identify whether Commerce has found those grants to be subsidy countervailable.

- Turk Traktor received countervailable subsidies from the Turkish government.
  - Turk Traktor's financial statements identify a "Cash refund from Tubitak – Teydeb for research and development expenses."[58] Commerce has previously found such research and development grants administered by TUBITAK to be countervailable.[59]
  - Turk Traktor's financial statements also identify "incentives under the jurisdiction of the research and development law (100% corporate tax exemption, Social Security Institution incentive, etc.)"[60] Commerce has found incentives provided under Turkey's research and development law to be countervailable.[61]
  - Because Turk Traktor received subsidies that Commerce has previously found to be countervailable, while none of the subsidies listed in the Stara and Schulz financial statements have been found countervailable, Commerce should follow its practice to rely on the Stara and Schulz financial statements to calculate surrogate financial ratios for the final determination.

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[56] *Id*. at 5 (citing *Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 81 FF 75042 (October. 28, 2016), and accompanying IDM at 17 (*Steel Pipe Vietnam Final*); *Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Notice of Final Determination of Sales at Less Than Fair Value*, 77 FR 64483 (October 22, 2012), and accompanying IDM at 14; *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 55800 (September 11, 2012), and accompanying IDM at 16; *Certain Steel Threaded Rod from the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 68400 (November 4, 2011), and accompanying IDM at 11-12).

[57] *Id.* (citing Petitioner's SV Submission at Exhibit 8).

[58] *Id.* at 7 (citing Ningbo Daye SV Submission at Exhibit 7).

[59] *Id.* (citing *Prestressed Concrete Steel Wire Strand from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 85 FR 80005 (December 11, 2020), and accompanying IDM at 12-13 (countervailing "Industrial R&D Projects Grant Program" and "Research Technology Development and Innovation Projects" programs operated by TUBITAK)).

[60] *Id.* (citing Ningbo Daye's SV Submission at Exhibit 7).

[61] *Id.* (citing *Certain Quartz Surface Products from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 54841 (October 11, 2019), and accompanying IDM at 17-19; *Certain Quartz Surface Products from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, In Part*, 85 FR 25400 (May 1, 2020), and accompanying IDM at 5; *Common Alloy Aluminum Sheet from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Determination of Critical Circumstances in Part, and Alignment of Final Determination with Final Antidumping Duty Determination*, 85 FR 49629 (August 14, 2020), and accompanying IDM at 21-22; *Common Alloy Aluminum Sheet from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, in Part*, 86 FR 13315 (March 8, 2021), and accompanying IDM at 13).

Power Distributors' Comments[62]

- Commerce incorrectly used the financial statements of Stara and Schulz for purposes of calculating surrogate financial ratios.

Commerce's Position: For the final determination, we are continuing to rely on the financial statements of Brazilian company Stara and we have made certain adjustments to more accurately calculate the financial ratios. We are not relying on the financial statements of Schulz or Turk Traktor for the final determination.

When evaluating SV data, Commerce selects the best available information based on consideration of 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.[63] Regarding financial ratios in particular, Commerce considers, among other things, the specificity, contemporaneity, and quality of the data (*e.g.*, financial statements that show a profit and that are not distorted or otherwise unreliable, such as financial statements that are distorted by subsidies that Commerce has previously found to be countervailable).[64] The regulations at 19 CFR 351.408(c)(4) and related regulatory history underscore the importance of specificity when calculating financial ratios. In this regard, 19 CFR 351.408(c)(4) provides that Commerce will normally calculate financial ratios using public information "gathered from producers of identical or comparable merchandise in the surrogate country," with a goal of obtaining "data that is as specific as possible to the subject merchandise."[65] Hence, when selecting surrogate financial statements, Commerce prefers financial statements from companies that produce the most comparable merchandise provided that the SV data are not distorted or otherwise unreliable.

As an initial matter, we do not find the financial statements of Stara, Schulz, or Turk Traktor to be disqualified from consideration because of subsidies. Commerce's policy is "not to reject financial statements on the grounds that the company received export subsidies unless we have previously found the {particular} export subsidy to be countervailable."[66] Ningbo Daye claimed that Stara and Schulz received countervailable subsidies, but did not identify particular subsidy programs that Commerce has previously found to be countervailable. Instead, Ningbo Daye identifies general references to "government grants." We also do not find that Turk Traktor's financial statement evidences receipt of subsidies Commerce has previously found to be countervailable. Turk Traktor's financial statements identify receiving various incentives under

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[62] *See* Power Distributor's Case Brief at 2.

[63] For a description of our practice, *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.

[64] *See, e.g.*, *Hand Trucks and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 28801 (May 16, 2013), and accompanying IDM at Comment 2; and *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 78 FR 5414 (January 25, 2013), and accompanying IDM at Comment 1.

[65] *See Notice of Proposed Rulemaking and Request for Public Comments: Antidumping Duties; Countervailing Duties*, 61 FR 7308, 7345 (February 27, 1996).

[66] *See Steel Pipe Vietnam Final* IDM at Comment 2.

three programs: "Ankara Modernization," "Adapazari Investment," and "Adapazari Modernization" – to the extent these are subsidy programs, they are not subsidy programs that Commerce has previously found countervailable. Nor does the record reflect that the various specific incentives under these programs cited by the petitioner (*i.e.*, the research and development grants administered by TUBITAK and the incentives under the research and development law) have any relation to previous subsidy programs found countervailable by Commerce.[67] Therefore, we find that information on the record does not support finding that Stara, Schulz, or Turk Traktor received subsidies previously found by Commerce to be countervailable, and we have not disqualified their financial statements from use on this basis.

However, as we did in the *Preliminary Determination*, we continue to find that the product mixes of the Brazilian companies Stara and Schulz are closer to Ningbo Daye's production experience than is that of Turk Traktor (which, as explained above, is a key consideration in selecting surrogate financial statements). In evaluating the comparability of the financial statements on the record, we have examined the products produced by these companies to determine whether they are similar to the products produced by Ningbo Daye. In the *Preliminary Determination*, we found that the Turkish company Turk Traktor's production appeared to consist of heavy agricultural equipment, whereas the Brazilian companies Stara and Schultz appeared to produce merchandise more similar to lawn mowers.[68]

Ningbo Daye argues that Stara produces products that are less comparable to Ningbo Daye's production than are Turk Traktor's products. We disagree with Ningbo Daye. We find that record information shows that Stara's production of agricultural machinery includes products such as sprayers, planters, cornheaders, seeders, and subsoilers, which have similar components to the subject merchandise, such as rotating parts and blades for cutting, and which are more similar in size to lawn mowers than are the products produced by Turk Traktor.[69] Based on these characteristics we find that Stara produces merchandise more comparable to the walk-behind lawn mowers that are subject to this investigation, than are the products produced by Turk Traktor (described below).

Ningbo Daye also argues that Schulz produces compressors and auto parts, markets greases and lubricating oils, provides machining and maintenance services, and leases equipment. Ningbo Daye states therefore that Schulz's production is not comparable to Ningbo Daye's production. However, we find that record information shows Schulz produces compressors, combustion engines and pneumatic tools with motors, and we find that these products are more similar to lawn mowers than Turk Traktor's products.[70] Additionally, the product information on the record shows compressors with engines that appear to be more similar in size to a lawn mower engine than a tractor engine.[71] Based on the photographs of Schulz's products on the record, we find that the Schulz's products appear to be of a more comparable size and/or use to the subject

[67] *See* Ningbo Daye's SV Submission at Exhibit 7.
[68] *See Preliminary Determination* PDM at 9-10.
[69] *See* Petitioner Rebuttal SV Submission at Exhibit 5.
[70] *Id*. at Exhibit 6.
[71] *Id*. at Exhibit 4, page 3.

merchandise than Turk Traktor's products.[72] Therefore, we find that Schulz also produces merchandise comparable to lawn mowers.

Furthermore, the record contains photographs and product brochures from Turk Traktor's website, which show that, in contrast to the comparable merchandise produced by Stara and Schulz, Turk Traktor produces large tractors that are used for substantial agricultural operations.[73] Turk Traktor's vehicles also allow for individuals to ride them and, consequently, they have propulsion and steering devices that walk-behind lawn mowers do not have.[74] In addition, Turk Traktor's products do not appear to contain components such as cutting blades or rotating machinery parts, unlike lawn mowers.[75] We find that these features make Turk Traktor's products less comparable to the subject merchandise than Stara's or Schulz's products, which, as described above, are more similar in size, function, and components to subject lawn mowers.

With respect to Ningbo Daye's argument that Stara's sales of software or tech equipment and Schulz's servicing or leasing services make their financial statements unsuitable for surrogate financial ratios, we find that the record evidence shows that Turk Traktor also engages in activities that are not directly associated with production of agricultural machinery.[76] Because all three companies appear to derive income from some activities not directly related to the production of agricultural machinery, and because the financial statements lack sufficient detail to determine the exact portion of each company's revenue from each product or activity, we have continued to rely on the information available, as discussed above, to analyze whether each company produces merchandise similar to lawn mowers. We continue to find that the product mixes of the Brazilian companies Stara and Schultz are closer to Ningbo Daye's production than that of Turk Traktor.

Furthermore, since we prefer to value all inputs from a single country whenever possible,[77] if we were to use Turk Traktor's financial statement, our practice would be to value all other inputs using Turkish surrogate values. However, we do not have Turkish surrogate values on the record for all of Ningbo Daye's reported inputs. Specifically, we do not have Turkish GTA data on the record for HTS 5911.90, which we have determined (as explained in Comment 3, below) to be the most specific HTS classification for grass catcher bags. Therefore, this provides another basis for continuing to rely on Brazilian SV data in the final determination.

Notwithstanding the above, with respect to the calculation of financial ratios, we agree with the petitioner that some revisions to our calculations from the *Preliminary Determination* are warranted as explained below.

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[72] *Id.*
[73] *Id.* at Exhibit 4.
[74] *Id.*
[75] *Id.*
[76] *See* Ningbo Daye Surrogate Value Submission at Exhibit 7, p. 83.
[77] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3987 (January 22, 2009) (*TRBs China Final*), and accompanying IDM at Comment 6.

With respect to Stara's financial statements, we have recalculated the financial ratios using the income statement classifications, and we relied on note 20 of the financial statements only for the purpose of determining the overhead expenses.[78] Note 20 of Stara's financial statements does not provide a breakdown of "salaries and social charges," and thus allocating them equally between direct labor and SG&A, as the petitioner suggests, would be arbitrary. Stara's income statement provides separate line items for "cost of sales," "selling expenses" and "administrative expenses," which presents the correct assignment of "salaries and social charges" to each cost line item. In addition, we disagree with Ningbo Daye that Stara's financial statements do not contain inventory detail that would permit calculation of COM. Note 8 of Stara's financial statements includes the beginning and ending finished goods inventory amounts, and in this final determination we have used the change in finished goods inventory to calculate COM.[79] As a result of these revisions, the financial ratios for Stara have changed from those in the *Preliminary Determination*.[80]

Furthermore, upon further analysis of the Schulz's financial statements, we have determined that they do not provide the level of specificity with respect to "Materials, energy, third party services, and other operating expenses," that would be needed to assign these expenses accurately to materials, energy, overhead costs, and SG&A. Allocating these expenses equally among energy, manufacturing overhead, and SG&A, as the petitioner suggests, would be arbitrary. Because the Schulz financial statements lack the detail necessary to accurately allocate all expenses, we find that these financial statements do not represent the best information available on the record with which to calculate surrogate financial ratios. Because we have another Brazilian source of surrogate financial ratios available on the record which does provide sufficient detail to allocate all expenses (*i.e.*, the Stara financial statements), for this final determination, we have not used the Schulz financial statements, and have calculated the financial ratios using only the financial statements of Stara. Our rejection of Schulz's financial statement is consistent with prior cases in which we have rejected financial statements containing cost items not broken out in sufficient detail.[81]

Comment 2: Global Trade Atlas (GTA) Data from Turkey

Ningbo Daye's Comments

- GTA data for Turkey should be used to value Ningbo Daye's inputs for the final determination.
- Ningbo Daye provided complete, publicly available surrogate value data from Turkey sourced from GTA for all of its inputs within the regulatory time limit for submission of factual information to value factors of production.

[78] *See* Petitioner SV Submission at Exhibit 8 at 49.
[79] *Id.* at 35.
[80] *See* Final Determination Analysis Memorandum.
[81] *See, e.g.*, *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893 (June 18, 2015), and accompanying IDM at Comment 9 ("{Commerce}'s practice is to reject those financial statements that are not sufficiently detailed, and specifically, that do not contain a breakout for energy costs, when there are alternative financial statements on the record that contain a line item for energy costs.").

- The HTS classifications provided by Ningbo Daye are based on examination of the inputs and are, thus, more accurate than the classifications provided by the petitioner and used by Commerce in the *Preliminary Determination*.
- In contrast, the petitioner's proposed HTS classifications are based on speculation.
- Thus, Commerce should use the GTA surrogate value information provided by Ningbo Daye for its material inputs because they are more accurate and there is no record evidence to call their accuracy into question.

Petitioner's Rebuttal Comments

- Other than grass-catcher bags, Ningbo Daye did not identify in its brief any specific inputs that it believes were valued using incorrect HTS classifications, and Ningbo Daye did not cite any record information suggesting that its desired alternative classifications better match its inputs.
- Commerce should reject this undeveloped argument, especially given that Ningbo Daye had originally proposed classifications that are dubious. For example, Ningbo Daye proposed to value many of its inputs using data for the HTS classification corresponding to parts of automobiles, despite the subject merchandise in this case being lawn mowers.[82]

Commerce's Position: We have continued to rely on Brazilian GTA data for this final determination, because we find that is the best information available on the record with which to value Ningbo Daye's material inputs.

In the *Preliminary Determination*, we stated that, in selecting the surrogate country and surrogate values, we considered Brazilian SV data sourced from GTA and Turkish SV data sourced from Trade Data Monitor (TDM).[83] The Brazilian GTA data and the Turkish TDM data were timely submitted to the record on November 2, 2020, the deadline that Commerce established for the submission of factual information to value factors of production, for such data to be considered in the *Preliminary Determination*.[84] In addition, Ningbo Daye submitted additional Turkish SV data sourced from GTA on November 23, 2020, which was the last deadline for submission of factual information to value factors of production, pursuant to 19 CFR 351.301(c)(3).[85]

When evaluating SV data, Commerce considers several criteria including whether SV data are publicly available, contemporaneous with the period under consideration, broad-market

[82] *See* Petitioner Rebuttal Brief at 8 (citing Ningbo Daye's Letter, "Public Information to Value Factors of Production," dated November 23, 2020 at Attachment 1; and Memorandum "Surrogate Values for the Preliminary Determination of Sales at Less Than Fair Value" dated December 22, 2020 at Attachment 1 (HTS classification 84339010 described as "Parts of Lawn Mowers").
[83] *See Preliminary Determination* PDM at 9-10.
[84] *See* Memorandum, "Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated October 1, 2020; *see also* Memorandum, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China – Due Date for Surrogate Country Comments and Surrogate Value Information," dated October 16, 2020.
[85] Section 351.301(c)(3) of Commerce's regulations provides that "all submissions of factual information to value factors of production under §351.408(c) in an antidumping investigation … are due no later than 30 days before the scheduled date of the preliminary determination."

averages, tax and duty-exclusive and specific to the inputs being valued.[86] There is no hierarchy among these criteria.[87] Commerce's preference is to satisfy the breadth of these selection criteria.[88] 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 FOPs.[89] 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.[90]

In the *Preliminary Determination*, we found that the Brazilian GTA data on the record met the criteria described above (*i.e.*, the data are publicly available, reflect broad market averages, are product-specific, tax-exclusive, and generally contemporaneous with the POI).[91] We also stated that in selecting the applicable HTS subheading for specific inputs, we "used an HTS subheading selection method based on the best match between the reported physical description and function of the input and the HTS subheading description."[92] While Ningbo Daye argues that Commerce should have relied on Turkish GTA data for different HTS subheadings to value certain of Ningbo Daye's inputs, Commerce "has determined that the burden is on the party making the claim in each case to establish that a particular {surrogate value} is not appropriate based on {Commerce's} preferred criteria for selecting {surrogate values}."[93] Here, Ningbo Daye has not demonstrated that the HTS numbers Commerce used in the *Preliminary Determination* do not meet Commerce's criteria for selection of surrogate values or that the Turkish GTA data are more appropriate. Indeed, beyond grass catcher bags, Ningbo Daye has not even identified any particular inputs that it believes Commerce should value using a different HTS number l*et al*one explained with citation to record evidence why its proposed HTS numbers would be superior to those Commerce used in the *Preliminary Determination*. Therefore, we determine that Ningbo Daye has not met its burden of establishing that the HTS numbers Commerce used in the *Preliminary Determination* are not appropriate based on Commerce's established criteria for selecting SVs.

In fact, we continue to find that the record supports relying on Brazilian SVs over Turkish SVs for the final determination. Initially, as described below in response to Comment 3, we found that the record supports classifying grass catcher bags under HTS 5911.90, and Ningbo Daye has not submitted Turkish GTA data for HTS 5911.90, whereas the petitioner did submit Brazilian GTA data for it. Additionally, as described above in response to Comment 1, we have determined the financial statement of the Brazilian company Stara to be a superior source for

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[86] For a description of our practice, *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.

[87] *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 Final*), and accompanying IDM at Comment 1.

[88] *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) (*Fish Fillets from Vietnam*), and accompanying IDM at Comment I(C).

[89] *See Mushrooms China Final* IDM at Comment 1.

[90] *Id.*

[91] *See Preliminary Determination* PDM at 21.

[92] *Id.* at 20.

[93] *See TRBs China Final* IDM at Comment 6.

calculating financial ratios than that of the Turkish company Turk Traktor. Therefore, because we prefer to use surrogate value data from a single country,[94] we have continued to rely on Brazilian GTA data for this final determination, as we find that is the best information available on the record with which to value Ningbo Daye's material inputs.

Comment 3: Surrogate Value for Grass Catcher Bags

Ningbo Daye's Comments[95]

- The correct HTS classification for the input "grass catcher bag" is HTS 6305.33.10 (sacks and bags, of a kind used for the packing of goods).
- Commerce used data under HTS classification 5911.90 in the *Preliminary Determination*, apparently based on the petitioner's proposed classification. However, the petitioner's proposed classification is based on a CBP ruling that a particular grass catcher bag being imported as a finished article, with a "sleeve like extension," a "14-inch woven polypropylene strap with a Velcro-like closure," a "zipper which runs the entire length of the side," and various other attributes was classified under HTS code 5911.90.[96] However, this CBP ruling has no bearing on the classification of the input used by Ningbo Daye.
- Ningbo Daye's classification of this input is based on examination of the material input at issue, which demonstrated that the grass catcher bag is a simple nylon textile bag without any decoration or other technical attributes.
- There is no basis to assume that the input used by Ningbo Daye is similar to the one described in the CBP ruling cited by the petitioners.
- Ningbo Daye determined that HTS code 6305.33.10 (sacks and bags of a kind used for the packing of goods) is the appropriate classification, based on its examination of the input.

Petitioner's Rebuttal Comments[97]

- The HTS classification that Commerce used for grass catcher bags in the *Preliminary Determination* (*i.e.*, HTS 5911.90, "textile product and articles for technical uses") was appropriate. Ningbo Daye cited to no record evidence to support its assertion that there are physical differences between its grass-catcher bags and the bags subject to the CBP ruling.
- The CBP ruling was based on the functionality and intended use of the bag—namely that it connects to the lawn mower and is used to collect and store grass cuttings.
- The record contains pictures of Ningbo Daye's lawn mowers, including lawn mowers with the nylon grass catching bag.[98] Those pictures clearly show that the grass catcher bags are intended for use on a lawn mower and are intended to temporarily collect grass cutting, and are not "of a kind used for the packing of goods." Thus, it is appropriate to continue to use data under HTS classification 5911.90 to value the grass catcher bags.

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[94] *See TRBs China Final* IDM at Comment 6 .
[95] *See* Ningbo Daye Case Brief at 5.
[96] *Id.* (citing Petitioner's Letter, "Antidumping Investigation of Certain Walk-Behind Lawn Mowers from the People's Republic of: Petitioner's Pre-Preliminary Comments, Submission of Final Surrogate Value Factual Information, and Submission of Information to Rebut, Correct, or Clarify Daye's November 13, 2020 Section D Supplemental Response," dated November 23, 2020 at 13).
[97] *See* Petitioner Rebuttal Brief at 9.
[98] *Id.* (citing Ningbo Daye's Letter, "Section A Questionnaire Response," dated September 10, 2020 at Exhibit A-15).

Commerce's Position: We agree with the petitioner that, based on information on the record, HTS code 5911.90 is the most specific HTS classification for valuing Ningbo Daye's grass catcher bags, and we have continued to rely on this HTS classification for the final determination.

When evaluating SV data, Commerce considers several criteria including whether 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.[99] There is no hierarchy among these criteria.[100] Commerce's preference is to satisfy the breadth of these selection criteria.[101] 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 FOPs.[102] 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.[103]

The HTS classification proposed by Ningbo Daye, *i.e.*, HTS 6305.33.90 is for "sacks and bags of a kind used for the packing of goods." The photographs of grass catcher bags contained in Ningbo Daye's product brochure do not demonstrate that they are bags "of a kind used for the packing of goods"[104] and Ningbo Daye has not cited to any evidence on the record that its grass catcher bags are used for the packing of goods. Furthermore, the petitioner placed information on the record in which CBP addressed the correct HTS classification of certain grass bags for lawn mowers, stating that, "{t}he grass catcher bags at issue are classifiable under subheading 5911.90.0000, HTSUSA, as textile products and articles for technical uses …"[105] Nothing in Ningbo Daye's description of its grass catcher bag demonstrates that CBP's analysis is inapplicable to Ningbo Daye's grass catcher bags, nor is there any indication in the CBP ruling or in the HTS itself that physical features such as the presence (or absence) of polypropylene straps or zippers are relevant to classification under HTS 5911.90. Accordingly, we find based on the available record evidence that the HTS provision under which CBP has previously categorized grass catcher bags for lawn mowers (*i.e.*, HTS code 5911.90) is more specific to Ningbo Daye's grass catcher bag input than an HTS category covering sacks and bags used for the packing of goods (*i.e.*, 6305.33.10). Therefore, we have valued Ningbo Daye's grass catcher bag input under this HTS category for the final determination.

Comment 4: Movement Expense Adjustments to Import Statistics

Petitioner's Comments[106]

- In the *Preliminary Determination*, Commerce used import statistics from the GTA to value certain inputs. GTA Brazilian import statistics are reported on an FOB basis, but contrary to

[99] *See* Policy Bulletin 04.1.
[100] *See, e.g.*, *Mushrooms China Final* IDM at Comment 1.
[101] *See, e.g.*, *Fish Fillets from Vietnam* IDM at Comment I(C)
[102] *See Mushrooms China Final* IDM at Comment 1.
[103] *Id.*
[104] *See* Ningbo Daye's September 10, 2020 AQR at Exhibit A-15.
[105] *See* Petitioner Rebuttal SV Submission at Exhibit 1.
[106] *See* Petitioner's Case Brief at 4-5.

its practice,[107] in the *Preliminary Determination* Commerce did not add ocean freight, marine insurance, or brokerage and handling (B&H) to the GTA import values. It should do so in the final determination.

No other party commented on this issue.

Commerce Position: We agree with the petitioner. Commerce's practice with respect to GTA import statistics reported on an FOB basis is to adjust them to a cost, insurance, and freight (or CIF) value.[108] Therefore, consistent with our normal practice, we have revised the GTA data used to value Ningbo Daye's inputs in this final determination to include ocean freight, marine insurance, and brokerage and handling.

Comment 5: Surrogate Value for Triangle Belt

Petitioner's Comments[109]

- In the Excel calculation sheet used in the *Preliminary Determination*, Commerce did not include a value for the reported variable "TRIAN_2102600009A" (triangle belt). Thus, in the *Preliminary Determination*, this input was valued at zero.
- In the final determination, Commerce should value this input using the appropriate data for the relevant HTS number.

No other party commented on this issue.

Commerce Position: We agree with the petitioner. We inadvertently omitted the value for this variable, and we have corrected this error in this final determination.

Comment 6: Ministerial Errors

Ningbo Daye's Comments[110]

- In the *Preliminary Determination*, some of the surrogate values that Commerce used did not match the underlying data for several inputs/HTS codes. Specifically, the summary chart of surrogate values used in the margin calculation did not match the raw GTA data for many input and HTS code combinations.

[107] *Id*. at 4 (citing Policy Bulletin 10.2, "Inclusion of International Freight Costs When Import Prices Constitute Normal Value" (November 1, 2010); *Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2018-2019*, 85 FR 67709 (October 26, 2020), and accompanying IDM at 20, 23; *Certain Glass Containers from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 58333 (September 18, 2020), and accompanying IDM at Comment 2).

[108] *See* Policy Bulletin 10.2; *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2017-2018, 85 FR 10411 (February 24, 2020), and accompanying IDM at Comment 4; *Certain Glass Containers from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 58333 (September 18, 2020), and accompanying IDM at Comment 2).

[109] *See* Petitioner's Case Brief at 5-6.

[110] *See* Ningbo Daye Case Brief at 5.

- Commerce acknowledged in its preliminary ministerial error memorandum that this was a ministerial error and stated it would address these errors in its final determination**.**[111]

No other party commented on this issue.

Commerce's Position: We agree with Ningbo Daye. In Commerce's preliminary ministerial error memorandum, we stated:

> We agree with Ningbo Daye that we made a ministerial error within the meaning of 19 CFR 351.224(f). In the preliminary surrogate value spreadsheet, we unintentionally copied the incorrect average unit value (AUV) from the Master GTA tab into the Summary Sheet tab. Specifically, for six axle-assembly inputs, we intended to select the AUV corresponding to HTS code 8433.90; however, we inadvertently selected the AUV corresponding to HTS code 8433.90.10. For 19 packing adhesives inputs, we intended to select the AUV corresponding to HTS code 3506.91; however, we inadvertently selected the AUV corresponding to HTS code 3506.91.90.[112]

We further stated that, because correction of this ministerial error did not meet the "significance" threshold for amending the *Preliminary Determination*,[113] we would address the error in the final determination. Therefore, we have corrected the surrogate value spreadsheet for the final determination to reflect the correct AUVs for the selected HTS codes.

Comment 7: Close-Supplier Relationship

Petitioner's Comments[114]

- Commerce should disregard the market-economy (ME) prices between Ningbo Daye and its U.S. supplier of engines because a close-supplier relationship exists between Ningbo Daye and its engine supplier. Instead, Commerce should value Ningbo Daye's purchases of engines using import statistics for the final determination; specifically, it should rely on data under HTS subheading 8407.90 ("other combustion engines").
- In determining whether a close-supplier relationship exists, Commerce first examines **"**whether the 'relationship is significant and could not easily be replaced – that the buyer or supplier has become reliant on the other.'"[115] Commerce determines reliance based on "the exclusivity and uniqueness of the supply relationship … not the level of cooperation between parties."[116] Second, if reliance is found between the parties, Commerce will determine

[111] *Id.* at 6 (citing Preliminary Ministerial Error Memorandum).
[112] *See* Preliminary Ministerial Error Memorandum.
[113] *See* 19 CFR 351.224(e).
[114] Because certain details within the petitioner's arguments concerning this relationship cannot be discussed without reference to business proprietary information, we have summarized these proprietary arguments in a separate memorandum. *See* Memorandum, "Less-Than-Fair-Value Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Business Proprietary Analysis of Close-Supplier Relationship," dated concurrently with this memorandum (Ningbo Daye BPI Decision Memorandum).
[115] *See* Petitioner Case Brief at 8 (citing *Tension Steel Indus. Co. v. United States*, 179 F. Supp. 3d 1185, 1198 (2016) (quoting *TIJID, Inc. v. United States*, 29 CIT 307, 321 (2005))).
[116] *Id*. (citing *Mid Continent Nail Corp. v. United States*, 999 F. Supp. 2d 1307, 1315 (CIT 2014)).

whether the relationship has the "potential to impact decisions relating to subject merchandise."[117] Both of these prongs are met here with respect to Ningbo Daye and its supplier of engines.

- Given that engines are the most complex and highest value inputs in lawn mower manufacture, this necessarily means that Ningbo Daye's engine supplier exerts significant control over Ningbo Daye. Commerce has previously found a close supplier relationship to exist where a buyer sourced 50 percent of its purchases of a given input from a single supplier.[118]

Ningbo Daye's Rebuttal Comments[119]

- The petitioner's allegation that Ningbo Daye is reliant on its engine supplier is factually incorrect.[120]
- The petitioner has attempted to create an illusion of reliance by focusing on Ningbo Daye's sales to the U.S. market and one of Ningbo Daye's customers. However, Commerce's close supplier analysis is based on the respondent's overall sales, and not solely on sales in one market.[121] Reliance is not established due to the use of one supplier for a particular customer. Here, the vast majority of Ningbo Daye's sales are in the home and third-country markets.[122]
- Commerce should continue to value Ningbo Daye's engine inputs as ME purchases for the final determination.

Commerce Position: Based on the information available on the record, we disagree with the petitioner that a close-supplier relationship exists between Ningbo Daye and one of its engine suppliers.

Section 771(33) of the Act states that the term "affiliated persons" includes "any person who controls any other person and such person" and that "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person."[123] The SAA provides an illustrative list of relationships that could satisfy the control standard, including "close supplier relationships in which the supplier or

[117] *Id.* (citing *TIJID, Inc. v. United States*, 29 CIT 307, 321 (2005) (*TIJID*)).
[118] *Id.* (citing *Mitsubishi Heavy Indus. v. United States*, 54 F. Supp. 2d 1183, 1190-91 (CIT 1999) (*Mitsubishi*).
[119] Because certain details Ningbo Daye's rebuttal arguments concerning this relationship cannot be discussed without reference to business proprietary information, we have summarized these proprietary arguments in a separate memorandum. *See* Ningbo Daye BPI Decision Memorandum.
[120] *See* Ningbo Daye Rebuttal Brief at 5.
[121] *Id.* at 6 (citing *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 48.A; *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from the People's Republic of China*, 69 FR 34125 (June 18, 2004), and accompanying IDM at Comment 15; *Notice of Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation*, 65 FR 1139, 1143 (January 7, 2000); *Notice of Final Determination of Sales at Less Than Fair Value: Open-End Spun Rayon Singles Yarn from Austria*, 62 FR 43701 (August 15, 1997), and accompanying IDM at Comment 10).
[122] *Id*. at 7 (citing Ningbo Daye's Letter, "Section C Questionnaire Response," dated September 28, 2020 at Exhibit 9).
[123] *See* section 771(33)(G) of the Act.

buyer becomes reliant upon the other."[124] At 19 CFR 351.102(b)(3), Commerce's regulations further provide that Commerce will not find that control exists in a close supplier relationship "unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product." Additionally, in determining whether control exists, Commerce "will consider the temporal aspect of a relationship" and "normally, temporary circumstances will not suffice as evidence of control."[125]

Consistent with this framework, in discussing the meaning of "control" as it pertains to affiliation by reason of a close supplier relationship, the CIT has stated:

> Commerce has a two-part analysis to determine whether a close supplier relationship is a control relationship. Commerce first considers whether a party has demonstrated that "the relationship is significant and could not be easily replaced"—that the buyer or supplier has become reliant on the other. "Only if Commerce determines that there is reliance does it evaluate whether the relationship of reliance has the potential to impact decisions relating to subject merchandise."[126]

To determine whether a buyer or supplier has become "reliant" upon the other, Commerce does not just examine the extent of the transactions between the companies. Indeed, Commerce will not find reliance merely on the basis of the proportion of purchases or sales between the buyer and the supplier, even where that proportion is 100 percent.[127] Commerce has further found that:

> {i}t is important to distinguish "exclusivity" from "reliance." A party might have an exclusive relationship with a supplier, customer, or reseller, but still be perfectly capable of acting independently if the exclusive relationship is no longer in its interests. What matters is whether the first party ultimately has other options and thus is not by necessity in the exclusive relationship with the second party.[128]

Here, we have found no evidence to suggest that Ningbo Daye has become reliant on the engine supplier in question based on the standard articulated above. To the contrary, the record shows

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[124] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. 103-316, vol. 1, 103d Cong. at 838 (1994) (SAA) at 838; *see also* 19 CFR 351.102(b)(3).
[125] *See* 19 CFR 351.102(b)(3).
[126] *See Tension Steel Industries Co. v. United States*, 179 F. Supp. 3d 1185, 1198 (CIT 2016).
[127] *See Certain Oil Country Tubular Goods from Taiwan: Final Determination of Sales at Less Than Fair Value*, 79 FR 41979 (July 18, 2014), and accompanying IDM at Comment 1 ("Whether we are looking at the potential reliance of a foreign supplier on its U.S. buyer or the potential reliance of a buyer on its supplier, the fact remains that the court in *TIJID* upheld the Department's determination not to find reliance merely on the basis of the proportion of purchases or sales between the buyer and the supplier, even where that proportion was 100 percent."); *Certain Steel Nails from Taiwan: Final Determination of Sales at Less Than Fair Value*, 80 FR 28959 (May 20, 2015), and accompanying IDM at Comment 3 ("{I}n *TIJID*, the CIT affirmed {Commerce}'s finding that even in instances where companies sell 100 percent of its products to one customer, with no evidence that there is a requirement to do so, that alone is not enough to find that the two companies are affiliated. This has been consistently applied across recent {Commerce} decisions."); *Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 742 (January 7, 2016), and accompanying PDM at 8 , unchanged in *Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 46647 (July 18, 2016)).
[128] *See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 10411 (February 24, 2020), and accompanying IDM at Comment 1.

that Ningbo Daye has other supply options.[129] Thus, the record does not support the petitioner's contention that Ningbo Daye is in an exclusive relationship for the supply of engines, let alone that any such relationship arises or continues out of necessity.

Furthermore, we find *Mitsubishi* (to which the petitioner cites, and in which Commerce found affiliation through a close supplier relationship partly because the buyer sourced 50 percent of its purchases of a given input from a single supplier) inapposite. In *Mitsubishi*, Commerce based its determination not just on the buyer having purchased 50 percent or more of the input from a given supplier, but that it had done so in each year over a five year period.[130] Commerce also considered the facts that the subject merchandise "generally take multiple years to produce," and that "this degree of reliance over an extended period of time is high for custom-made merchandise."[131] These factors are not present here with respect to the merchandise at issue as neither the engines nor the mowers take multiple years to produce and are not custom made.

For the reasons discussed more fully in the Ningbo Daye BPI Decision Memorandum, we find that the record does not establish that reliance exists between Ningbo Daye and its engine supplier. We therefore determine that affiliation through a close-supplier relationship does not exist between them. Having made this determination, we need not address the separate issue of whether the relationship of reliance has the potential to impact decisions relating to the production, pricing, or sale of subject merchandise. Furthermore, because we have found no affiliation between Ningbo Daye and its engine supplier, we have continued to value Ningbo Daye's input using its ME purchase prices.

Comment 8: Due Process

Fujian Spring, Masport, and Power Distributor's Comments[132]

- Commerce failed to notify Fujian Spring and Power Distributors of the initiation of this investigation, contrary to its obligation to notify all known interested parties.[133] Under both U.S. law[134] and World Trade Organization rules,[135] this obligation is not met by publishing a notice of initiation of the investigation. Commerce's failure to notify Fujian of the initiation of this investigation constitutes a fundamental breach of the company's due process rights, which prevented Fujian Spring and Masport from participating in the preliminary stages of this investigation and defending their interests fully.
- By failing to notify Fujian Spring of this initiation of the investigation:

[129] *See* Ningbo Daye's Letter, "Section D Questionnaire Response," dated October 1, 2020 at Exhibit D-6; Ningbo Daye's Letter, "Second Supplemental Section D Questionnaire Response," dated November 12, 2020 at 9).
[130] *See Mitsubishi*, 54 F. Supp. 2d at 1191.
[131] *Id*.
[132] *See* Fujian Spring Case Brief at 4-24; *see also* Power Distributors Case Brief. Power Distributors incorporated by reference the arguments on this issue contained in the case brief submitted by Fujian Spring and Masport.
[133] *See* Fujian Spring Case Brief at 4 (citing Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, 1868 U.N.T.S. 201 (AD Agreement) at Article 12.1).
[134] *Id.* at 8 (citing *Schroeder v. City of New York*, 371 U.S. 208 (1962) (*Schroeder*); *Decca Hospitality Furnishings, LLC v. United States*, 391 F. Supp. 2d 1298 (CIT 2005) (*Decca*)).
[135] *Id*. at 6 (citing Panel Report, Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil, WT/DS241/R (April 22, 2003) at para. 7.133).

- Fujian Spring was denied an opportunity to submit a timely separate rate application and quantity and value questionnaire response so as to establish its eligibility for a separate rate; the denial of this opportunity is a violation of CAFC precedent providing that a party subject to a presumption of state control has the right to attempt to rebut the presumption.[136]
- Fujian Spring was denied an opportunity to submit timely comments on respondent selection. This denial violated U.S. obligations under Article 6.10 of the WTO AD Agreement.
  - Additionally, the CIT has held that "limiting the number of individually examined respondents is intended to be the exceptional circumstance, not the norm."[137] The CAFC has also held that "an overriding purpose of Commerce's administration of antidumping laws is to calculate the dumping margins as accurately as possible."[138] Here, by limiting its investigation to one mandatory respondent out of a total of 46 known exporters/producers, Commerce has not based the dumping margins it calculated on each company's own commercial behavior, going against the overall goal of calculating dumping margins as accurately as possible.
  - While Ningbo Daye may be responsible for a large proportion of the volume of U.S. imports during the POI, one exporter is not "a reasonable number," as is required by section 777A(c)(2) of the Act especially given that Ningbo Daye does not compete in the same market segment as Fujian and Masport.

- In light of Commerce's failure to notify Fujian Spring of the initiation of the investigation, Commerce should have granted Fujian Spring's request for voluntary respondent treatment, which was submitted at a point when sufficient time remained for the company's information to be individually examined during the course of the investigation.
  - On September 10, 2020, Fujian Spring filed a request for voluntary treatment in the AD investigation. Commerce denied this request because requests for voluntary treatment were due on September 9, 2020. However, the AD Agreement states the administering authority is required to afford voluntary treatment to an interested party that "submits the necessary information in time for that information to be considered during the course of the investigation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome."[139] For Commerce to have accepted Fujian Spring's voluntary response would not have been unduly burdensome given that (1) the deadline for Commerce to issue the preliminary determination had been postponed; (2) Fujian Spring's request for voluntary treatment was filed only one day after the initial questionnaire response from the mandatory respondents was due; and (3) it was possible for Commerce to extend both deadlines.
  - U.S. case law also supports that Commerce should have accepted Fujian Spring's request for voluntary treatment. In *Artisan*, an importer's response to the quantity and value (Q&V) questionnaire was submitted a day after the specified deadline due to a clerical error.[140] The Court determined that acceptance of the response would not have delayed

[136] *Id*. at 13 (citing *Transcom Inc. v United States*, 182 F. 3d. 876 (CAFC 1999)).
[137] *Id*. at 17 (citing *Carpenter Technology Corporation v. United States*, 662 F. Supp. 2d. 1337,1345 (CIT 2009)).
[138] *Id*. at 17 (citing *Parkdale Int'l v. United States*, 475 F.3d 1375, 1380 (CAFC 2007)).
[139] *Id*. at 20 (citing AD Agreement at Article 6.10.2).
[140] *Id.* at 22 (citing *Artisan Manufacturing Corporation v. United States*, 978 F. Supp. 2d 1334 (CIT 2014) (*Artisan*)).

the investigation in any meaningful way and that Commerce's rejection was a grossly disproportionate response to the importer's mistake.

- Because Commerce deprived Fujian Spring and Masport of their due process rights by failing to notify them of the initiation of the investigation, Commerce must: (1) start its AD investigation anew; (2) exclude Fujian Spring and Masport's products from the scope of the investigation; or (3) allow Fujian Spring and Masport to submit information in order for Commerce to calculate an individual weighted-average dumping margin for Fujian Spring.

No other party commented on this issue.

Commerce's Position: We disagree that Commerce violated Fujian Spring's, Masport's, or Power Distributors' due process rights by failing to provide notification of initiation of the investigation. To the contrary, Commerce notified the public of initiation of the investigation by publishing a notice in the *Federal Register*.[141] Under U.S. law, such publication is sufficient to give notice of the contents of the document to a person affected by it. Specifically, 44 USC § 1507 states:

> A document required by section 1505(a) of this title to be published in the Federal Register[142] is not valid as against a person who has not had actual knowledge of it until the duplicate originals or certified copies of the document have been filed with the Office of the Federal Register and a copy made available for public inspection as provided by section 1503 of this title. Unless otherwise specifically provided by statute, filing of a document, required or authorized to be published by section 1505 of this title, except in cases where notice by publication is insufficient in law, is sufficient to give notice of the contents of the document to a person subject to or affected by it....[143]

Commerce is required by statute to publish notice of a determination to initiate an LTFV investigation in the *Federal Register*.[144] Thus, under 44 USC §1507, publication of the initiation notice in the *Federal Register* constituted sufficient notification to Fujian Spring that Commerce had initiated this antidumping investigation.

The CIT and the CAFC have relied upon 44 USC 1507 when addressing similar claims that parties failed to receive notice of initiation of a Commerce proceeding.[145] For example, in *Suntec*, a respondent was not served with the petitioner's request for an administrative review of an order, but Commerce nonetheless initiated an administrative review of the respondent, and published the initiation in the *Federal Register*. Because the respondent did not submit a

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[141] *See Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 37417 (June 22, 2020).
[142] Section 1505(a) includes documents "that may be required so to be published by Act of Congress."
[143] *See* 44 USC 1507.
[144] *See* section 777(i)(1) of the Act.
[145] *See Suntec Industries v. United States*, 951 F. Supp. 2d 1341, 1348 (2013) (*Suntec*), *aff'd*, 857 F. 3d 1363, 1370 (CAFC 2017); *Huaiyang Hongda Dehydrated Vegetable Co. v. United States*, 28 C.I.T. 1944, 1949 (2004) ("{A}s a general matter, publication in the *Federal Register* is sufficient to give notice of the contents of the document to a person subject to or affected by it." (citing 44 USC 1507)).

separate rate application, it was found to be part of the China-wide entity in the final results. The respondent appealed the decision to the CIT on grounds that it had not received notice of the initiation of the review and that, as a result, the review should not have been initiated. Rejecting this argument, the CIT found that that the initiation notice published in the *Federal Register* provided sufficient notice as a matter of law:

> Neither the regulation nor the statute at issue in this case places an independent legal duty on Commerce to provide notice of the contents of a notice of initiation to {respondent} by any other means than through publication in the *Federal Register*. Thus, the petitioner's failure to provide actual notice of the review request did not render the constructive notice of the *Initiation* provided by Commerce to {respondent} "insufficient in law" under 44 USC § 1507.[146]

The CAFC later upheld the CIT's *Suntec* decision, finding based in large part on 44 USC §1507, "{u}nder the relevant provisions of Title 19, we must conclude that a Federal Register publication of a notice of a review's initiation is sufficient as a matter of law to give notice to the named foreign exporters and producers."[147]

Fujian Spring cites to *Decca* and *Schroeder* to argue that Commerce's alleged obligation under U.S. law to inform all known interested parties of the initiation of an investigation is not met by publishing a notice of initiation in the *Federal Register*. However, those cases are distinguishable from this case. In *Decca*, Commerce did not serve a section A questionnaire directly on a respondent and instead relied on a Chinese governmental agency to redirect the questionnaire. The CIT addressed whether this method of service was reasonably calculated to provide parties with actual notice, but did not consider whether a *Federal Register* notice announcing initiation of an investigation provides legally sufficient notice to potentially impacted parties.[148] Similarly, in *Schroeder*, the U.S. Supreme Court addressed whether publication of a notice in a newspaper regarding property the city of New York intended to condemn constituted sufficient notice to the party affected. Neither the adequacy of *Federal Register* notice nor an antidumping proceeding was at issue in *Schroeder*; therefore, we find that it is inapplicable to the issue raised by Fujian Spring and Masport.

Moreover, Fujian Spring's citation to the WTO AD Agreement and related WTO jurisprudence is also unavailing. Commerce's determination here is governed by U.S. law, and for reasons set forth above, Commerce has acted in accordance with U.S. law. Because U.S. law is consistent with our international obligations, we disagree that Commerce's determination conflicts with the WTO rules. In addition, Commerce has stated:

> {a}s a general matter, under U.S. law, any application of the Uruguay Round Agreements that is inconsistent with any law of the United States shall have no

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[146] *See Suntec* at 1352; *see also Transcom, Inc. v. United States*, 294 F. Supp. 3d 1371 (CAFC 2002) (*Transcom*) ("Constructive notice of initiation was sufficient to give reasonable notice of review and accordingly constitutional due process requirements were satisfied.").
[147] *See Suntec Indus. Co. v. United States*, 857 F. 3d 1363, 1371 (CAFC 2017).
[148] *See Decca*, 391 F. Supp. 2d at 1311.

> effect. *See* 19 U.S.C. § 3512(a)(1). This includes panel decisions, except to the extent that U.S. law provides for the implementation of such decisions.[149]

The CAFC has also held that WTO decisions are not binding on the United States. Specifically, it has stated:

> WTO decisions are "not binding on the United States, much less this court." Further, "no provision of any of the Uruguay Round Agreements … nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect." 19 U.S.C. § 3512(a) (2000). Neither the GATT nor any enabling international agreement outlining compliance therewith … trumps domestic legislation; if U.S. statutory provisions are inconsistent with the GATT or an enabling agreement, it is strictly a matter for Congress.[150]

In sum, we determine that Fujian Spring's failure to meet the specified deadlines for filing various submissions in this investigation is not due to Commerce's failure to provide adequate notice to parties of initiation of the investigation. Thus, Commerce did not deny Fujian Spring an opportunity to submit scope comments, to demonstrate its entitlement to a separate rate, to comment on respondent selection, or to seek voluntary respondent treatment. Fujian Spring simply failed to make the relevant submissions in accordance with the applicable deadlines.

With respect to Fujian Spring's argument that it was unreasonable for Commerce to select only one mandatory respondent, we disagree. As a preliminary consideration, we note that the CIT has stated that, "{w}hether a certain number of mandatory respondents is 'reasonable' in any particular case is likely to depend on the facts of that case … There is no magic number of respondents that must be chosen for the number to be 'reasonable.'"[151] In the respondent selection memorandum, Commerce explained why its resource constraints reasonably permitted examination of only the largest exporter/producer by volume of subject merchandise during the POI.[152] Fujian Spring does not dispute Commerce's assessment of its resource constraints, and instead argues that selecting only one mandatory respondent conflicts with Commerce's responsibility to calculate "accurate" dumping margins because Fujian Spring does not compete in the same market segment as Ningbo Daye. However, the statute requires only that Commerce examine exporters/producers accounting for the largest volume of subject merchandise that can be reasonably examined; the statute does not contemplate or require that Commerce consider other characteristics of prospective respondents.[153]

Moreover, Fujian Spring's reliance on *Carpenter* to support the alleged need to consider more than one mandatory respondent is misplaced. In *Carpenter*, the issue before the CIT was whether the total number of producers in a review constituted "a large number" such that Commerce was justified in not calculating individual dumping margins for each known

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[149] *See Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review*, 68 FR 1816 (January 14, 2003), and accompanying IDM at Comment 3.
[150] *See Corus Staal BV v. DOC*, 395 F.3d 1343, 1348 (CAFC 2005) (citations omitted).
[151] *See Husteel Co. v. United States*, 98 F. Supp. 3d 1315 (CIT 2015).
[152] *See* Memorandum, "Less-Than-Fair-Value Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Respondent Selection," dated August 11, 2020 at 3-5.
[153] *See* section 777A(c)(2)(B) of the Act.

exporter/producer. Fujian Spring expressly states that it does not dispute whether there are a large number of known exporter/producers.[154] As such, *Carpenter* is inapposite because it involves a distinct statutory provision and not whether the number of respondents Commerce ultimately selected was "a reasonable number" under section 777A(c)(2)(B) of the Act.[155]

We also disagree that Commerce should have granted Fujian Spring's request for treatment as a voluntary respondent because the request was submitted at a point when sufficient time remained in the investigation. Section 782(a)(1)(A) of the Act makes clear that a voluntary response will be considered only if it is submitted by the response deadline specified for exporters and producers that were initially selected for individual examination.[156] Fujian Spring did not meet this unambiguous statutory requirement, and in fact has never attempted to submit a complete questionnaire response on the record of this investigation (instead, Fujian Spring simply requested voluntary respondent treatment and did so after the initial questionnaire deadline).[157] We disagree that Commerce has discretion under the Act to consider responses that are filed after the deadline set forth in section 782(a) of the Act; indeed, such an interpretation would render section 782(a)(1)(A) of the Act superfluous.[158] Moreover, even if such discretion existed, the CAFC has held that it is "fully within Commerce's discretion to 'set and enforce deadlines' and {a} court "cannot set aside application of a proper administrative procedure because it believes that properly excluded evidence would yield a more accurate result if the evidence were considered."[159]

Regarding Fujian Spring's argument that Commerce's denial of its request for voluntary treatment was not consistent with the overriding goal of calculating dumping margins as accurately as possible, we note that alleged "accuracy" concerns do not override the unambiguous requirements of section 782(a)(1)(A) of the Act. In any event, the CAFC has stated that, "{a}s to {respondent}'s fairness and accuracy argument, this court has made clear Commerce's rejection of untimely-filed factual information does not violate a respondent's due process rights when the respondent had notice of the deadline and an opportunity to reply."[160] Here, the deadline for the mandatory respondent to submit its questionnaire response was clear on the record, and Fujian Spring had not submitted any questionnaire responses by that deadline.

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[154] *See* Fujian Spring Br. at 15-16.

[155] *See Carpenter*, 662 F. Supp. 2d at 1727-28; *see also Mid Continent Nail Corporation v. United States*, 949 F. Supp. 2d 1247, 1266 (CIT 2013) (recognizing procedural posture in *Carpenter*).

[156] And even then, such responses are considered only to the extent that the number of exporters/producers subject to the investigation is not so large that any additional individual examination would be unduly burdensome and inhibit timely completion of the investigation. *See* section 782(a)(1)(B) of the Act.

[157] *See* Commerce's Letter, "Antidumping Duty Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Response to Fujian Spring Machinery Co., Ltd.'s Request for Voluntary Respondent Treatment," dated September 22, 2020. Because the deadline for submitting voluntary responses is statutory, this investigation is unlike the *Artisan* case upon which Fujian Spring relies for support. In *Artisan*, the CIT considered whether Commerce abused its discretion in declining to accept a late-filed Q&V questionnaire (where the submission deadline was not established by regulation or statute). *See Artisan*, 978 F. Supp. 2d at 1341-42.

[158] *See, e.g.*, *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." (internal quotation marks omitted)).

[159] *See Dongtai Peak Honey Indus. v. United States*, 777 F.3d 1343, 1352 (CAFC 2015).

[160] *Id.* at 1353.

Therefore, because Fujian Spring had notice of the deadline and the opportunity to reply, Commerce did not violate Fujian Spring's due process rights by denying its request for voluntary respondent treatment.

Because we have determined that Commerce did not violate the due process rights Fujian Spring, Masport, or Power Distributors, we have not addressed their argument concerning an appropriate remedy for violation of due process rights, namely that Commerce should either start the investigation anew, exclude its products from the scope of the investigation, or allow it to submit information for Commerce to calculate its own individual weight-averaged dumping margin.

Comment 9: Assignment of Fujian Spring to the China-Wide Entity

Fujian Spring, Masport, and Power Distributor's Comments[161]

- Commerce's application of a rebuttable presumption that places the burden on the exporter in an NME country to demonstrate that it is not subject to government control, both in law (*de jure*) and in fact (*de facto*) is contrary to Commerce's obligations under international law. Specifically, the WTO Appellate Body has held that it must be the administering authority that determines, on the basis of information submitted, whether an exporter can be deemed to "have a relationship with the State such that they can be considered as a single entity and receive a single dumping margin and a single anti-dumping duty."[162]
- Commerce erred in applying AFA to Fujian Spring and Masport by including them in the China-wide entity. In deciding to apply AFA to the China-wide entity, Commerce reasoned that "the 'China-wide entity, ' which includes certain China exporters and/or producers that did not respond to its requests for information, withheld requested information, failed to provide such information in a timely manner or in the form or manner requested, and significantly impeded the proceeding by not submitting the requested information."[163] None of these allegations are true with respect to Fujian Spring or Masport.
  - Fujian Spring did respond to Commerce's request for information although at a later stage of the investigation.
  - Fujian Spring's response included important information about Fujian Spring, Masport, and Power Distributors' operations. Thus, these companies clearly had no intent to withhold information.
  - Commerce rejected Fujian Spring's request for voluntary treatment because it was one day late, but this lateness was due to Commerce's failure to notify Fujian Spring of the investigation, and the due date was an arbitrary deadline anyway.
  - Had Commerce accepted Fujian Spring's request, there would have been at least three months for Commerce to consider the information before the due date of the preliminary determination. Thus, Fujian Spring did not significantly impede the investigation.

[161] *See* Fujian Spring Case Brief at 25-33; *see also* Power Distributors Case Brief. Power Distributors incorporated by reference the arguments on this issue raised in the case brief submitted by Fujian Spring and Masport.
[162] *Id*. at 27 (citing Appellate Body Report, Mexico – Definitive Anti-dumping Measures on Beef and Rice, WT/DS295/AB/R (November 29, 2005) at para. 291- 292; Panel Report, United States – Certain Methodologies and Their Application to Anti-Dumping Proceedings Involving China, WT/DS471/R, (October 19, 2016) at para 7.367).
[163] *Id.* at 29 (citing *Preliminary Determination* PDM at 16).

- The option to apply facts available with an adverse inference was not open here because Commerce failed to establish that the use of facts otherwise available was warranted and, for the reasons discussed above, also did not establish that Fujian Spring failed to cooperate by not acting to the best of its ability to comply with a request for information.
  - Commerce's failure to consider the information it submitted on September 10, 2020, contravenes the clearly expressed intent of Congress to encourage interested parties to comply with Commerce's requests for information.[164]
  - Section 782(d) of the Act does not support the use of AFA on the basis of an inadvertent failure to cooperate.[165] Instead, Commerce must distinguish between a respondent's inability to cooperate and an unwillingness or refusal to cooperate.[166] The CIT has ruled that any conclusion that an interested party has not acted to the best of its ability must take into account the nature of the mistake.[167] Here, Commerce has not taken into account that its own procedural errors are the sole reason for Fujian Spring and Masport's alleged failure to cooperate.
  - Commerce should remedy the harm it has done to Fujian Spring by: (1) starting its AD investigation again; (2) allowing Fujian Spring and Masport to submit information in order for Commerce to calculate an individual weighted-average dumping margin for Fujian Spring; or (3) granting Fujian Spring separate-rate status.

No other party commented on this issue.

Commerce Position: We disagree with Fujian Spring, Masport, and Power Distributors. As explained above in response to Comment 8, Commerce's determination is governed by U.S. law and not international agreements. Under U.S. law, Commerce's authority to employ a rebuttable presumption of state control for NME exporters, and to place the burden on the exporters to demonstrate an absence of central government control, is well-established.[168] Therefore, based on U.S. law, we determine that Commerce acted within its authority in its treatment of the China-wide entity in the *Preliminary Determination*.

Furthermore, we do not agree with Fujian Spring, Masport, and Power Distributors that Commerce unlawfully applied AFA to Fujian Spring. We included Fujian Spring in the China-wide entity because it failed to establish its entitlement to a separate rate, not because we found that Fujian Spring otherwise met the criteria for application of AFA. Both the CIT and the CAFC have recognized that the fact that a China-wide entity rate may have been calculated using

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[164] *Id.* at 32 (citing *Bio-Lab Inc et al. v United States*, 435 F. Supp. 3d 1361, 1368 (CIT 2020); and *Clearon Corp. v United States*, 474 F. Supp. 3d 1339 (CIT 2020)).
[165] *Id*. (citing *Changzhou Trina Solar Energy Co., Ltd. v. United States*, 195 F. Supp. 3d 1334, 1346 (CIT 2016); and Ragan Updegraff, "Striking a Balance Between Necessity and Fairness: The Use of Adverse Facts Available in Dumping and Subsidies Investigations" Georgetown Journal of International Law 49 (2018) 709-795, 735-76).
[166] *Id*. (citing *Borden Inc. v United States*, 4. F. Supp. 2d. 1221 (CIT 1998)).
[167] *Id*. (citing *Changzhou Trina Solar Energy Co., Ltd. V. United States*, 195 F. Supp. 3d 1334, 1346 (CIT 2016)).
[168] *See, e.g.*, *Sigma Corp. v. United States*, 117 F.3d 1401, 1405 (Fed. Cir. 1997); *Diamond Sawblades Manufacturers Coalition v. United States*, 866 F.3d 1304, 1311 (Fed. Cir. 2017) ("Since our decision in *Sigma Corp.*, we consistently have sustained Commerce's application of a rebuttable presumption of government control to exporters and producers in NME countries, such as {China}."); *E. Sea Seafoods LLC v. United States*, 703 F. Supp. 2d 1336, 1354 (CIT 2010)).

AFA "does not change its applicability to a NME entity that cooperated, but ultimately failed to qualify for a separate rate."[169] For example, in *Advanced Technology*, the CIT stated:

> Commerce did not apply adverse facts available to {respondent}, Commerce rather found that {respondent} had not rebutted the presumption of state control and assigned it the {China}-wide rate. These are two distinct legal concepts: a separate AFA rate applies to a respondent who has received a separate rate but has otherwise failed to cooperate to the best of its ability whereas the {China}-wide rate applies to a respondent who has not received a separate rate.[170]

Therefore, because we find that we properly included Fujian Spring in the China-wide entity due to its failure to submit a Q&V response and separate rate application by the deadlines established, we need not address its argument that Commerce should either start the AD investigation anew, allow Fujian Spring and Masport to submit information in order for Commerce to calculate an individual weighted-average dumping margin for Fujian Spring, or grant Fujian Spring separate-rate status.

XI. RECOMMENDATION

We recommend approving all of the above positions. If these positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

☒ ☐

Agree Disagree

Invalid signature

X

Signed by: RYAN MAJERUS

Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations

[169] *See, e.g.*, *Diamond Sawblades*, 866 F.3d at 1313.
[170] *See Advanced Tech. & Materials Co. v. United States*, 938 F. Supp. 2d 1342, 1351 (CIT 2013) (citing *Watanabe Group v. United States*, 34 C.I.T. 1545 (CIT 2010), Slip Op. 10-139 at 9, n. 8).