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INVESTIGATION
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December 5, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination of the
Antidumping Duty Investigation of Prestressed Concrete Steel Rail
Tie Wire from the People's Republic of China

SUMMARY

The Department of Commerce ("Department") preliminarily determines that prestressed concrete steel tie wire ("PC tie wire") from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of the accompanying Federal Register notice.

BACKGROUND

On April 23, 2013, the Department received an antidumping duty ("AD") petition concerning imports of PC tie wire from the PRC filed in proper form by Davis Wire Corporation and Insteel Wire Products Company (collectively, "the petitioners").¹ The Department initiated an AD investigation of PC tie wire from the PRC on May 13, 2013.²

In the Initiation Notice, the Department stated that, based on information provided in the Petition, it intended to examine all known exporters/producers in this investigation, namely Silvery Dragon Group and Technology and Trading Co., Ltd. ("Silvery Dragon Tech"), Wuxi Jinyang, and Shanxi New-Mile International Trade Co., Ltd. ("Shanxi New-Mile"). The Department also stated in the Initiation Notice that in order to obtain separate-rate status in this investigation, exporters must submit a separate-rate status application no later than 60 days after

¹ See Antidumping Duty Petitions on Prestressed Concrete Steel Rail Tie Wire from the PRC, Mexico, and Thailand, filed on April 23, 2013 (petition).

² See Prestressed Concrete Steel Rail Tie Wire From Mexico, the People's Republic of China, and Thailand: Initiation of Antidumping Duty Investigations, 78 FR 29325 (May 20, 2013) (Initiation Notice).



publication of the Initiation Notice. No party submitted a separate-rate application other than Silvery Dragon Tech, which responded to the questions contained in the separate-rate application when responding to the Department's separate rate questions in the AD questionnaire.

Also in the Initiation Notice, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of PC tie wire to be reported in response to the Department's AD questionnaire.³ In June 2013, the petitioners and Silvery Dragon Tech, as well as Siam Industrial Wire Co., Ltd. ("SIW"), a respondent in the companion investigation of PC tie wire from Thailand, submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes. In June and September 2013, the petitioners and SIW submitted comments on the scope of these investigations.⁴

On June 14, 2013, the U.S. International Trade Commission preliminary determined that there is a reasonable indication that an industry in the United States was materially injured by reason of imports of PC tie wire from the PRC.⁵

On June 19, 2013, the Department issued the AD questionnaire to Silvery Dragon Tech, Wuxi Jinyang, and Shanxi New-Mile. Wuxi Jinyang and Shanxi New-Mile did not respond to the Department's AD questionnaire. In July and August 2013, Silvery Dragon Tech submitted timely responses to the Department's AD questionnaire. The petitioners submitted comments regarding those responses in August 2013. The Department issued supplemental questionnaires to Silvery Dragon Tech from August to September 2013, and Silvery Dragon Tech timely responded to those questionnaires in October 2013.

On September 4, 2013, the petitioners made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) for a 50-day postponement of the preliminary determination.⁶ On September 19, 2013, the Department published a postponement fully extending the due date of the preliminary determination to November 19, 2013.⁷

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.⁸ Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day. The revised deadline for the preliminary determination of this investigation is now December 5, 2013.

³ Id. at 29325.

⁴ See memorandum entitled "Scope Modification Requests," dated concurrently with this determination.

⁵ See Prestressed Concrete Steel Rail Tie Wire From China, Mexico, and Thailand, 78 FR 37236 (June 20, 2013).

⁶ See Letter from the Petitioners to the Secretary of Commerce, "Investigations of Prestressed Concrete Steel Rail Wire from Mexico, Thailand, and the People's Republic of China - Petitioners' Request for Extensions of Preliminary Determinations," dated September 4, 2013.

⁷ See Prestressed Concrete Steel Rail Tie Wire From Mexico, Thailand, and the People's Republic of China: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 78 FR 57619 (September 19, 2013).

⁸ See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (October 18, 2013).

On November 15, 2013, the petitioners submitted comments for consideration in the preliminary determination.⁹ To the extent we were able to consider these comments, we have done so for this preliminary determination. Any comments that were not addressed for this preliminary determination will be considered for the final determination.

On November 27, 2013, Silvery Dragon Tech submitted preliminary determination comments.¹⁰ Due to the time constraints in this investigation, we were unable to consider these comments for the preliminary determination. However, we will consider these comments for the final determination.

PERIOD OF INVESTIGATION

The period of investigation (“POI”) is October 1, 2012, through March 31, 2013. This period corresponds to the two most recent fiscal quarters prior to the month in which the petition was filed, which was on April 23, 2013.¹¹

SCOPE OF INVESTIGATION

The product covered by this investigation is high carbon steel wire; stress relieved or low relaxation; indented or otherwise deformed; meeting at a minimum the physical, mechanical, and chemical requirements of the American Society of Testing Materials (“ASTM”) A881/A881M specification; regardless of shape, size or alloy element levels; suitable for use as prestressed tendons in concrete railroad ties (“PC tie wire”). High carbon steel is defined as steel that contains 0.6 percent or more of carbon by weight.

PC tie wire is classified under the Harmonized Tariff Schedule of the United States (“HTSUS”) subheading 7217.10.8045, but may also be classified under subheadings 7217.10.7000, 7217.10.8025, 7217.10.8030, 7217.10.8090, 7217.10.9000, 7229.90.1000, 7229.90.5016, 7229.90.5031, 7229.90.5051, 7229.90.9000, and 7312.10.3012. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.¹²

POSTPONEMENT OF FINAL DETERMINATION

Pursuant to section 735(a)(2)(A) of the Act, on November 6 and 19, 2013, the petitioners and Silvery Dragon Tech each requested that the Department postpone the final determination, and Silvery Dragon Tech requested that provisional measures be extended. In accordance with

⁹ See Letter from the petitioners, “Investigation of Prestressed Concrete Steel Rail Tie Wire from the People’s Republic of China: Comments on Methodologies for the Preliminary Determination,” dated November 15, 2013.

¹⁰ See Letter from Silvery Dragon Tech, “Pre-Preliminary Comments on behalf of Silvery Dragon: Antidumping Duty Investigation of Prestressed Concrete Steel Rail Tie Wire from the People’s Republic of China,” dated November 27, 2013.

¹¹ See 19 CFR 351.204(b)(1).

¹² Since the initiation of this investigation, based on interested party comments, we modified the scope to add language to, and clarify the meaning of, the phrase “meeting at a minimum the American Society for Testing Materials (“ASTM”) A881/A881M specification,” and to include two additional HTSUS numbers. For further discussion, see the memorandum entitled “Scope Modification Requests,” dated concurrently with this determination.

section 735(a)(2)(A) of the Act and 19 CFR 351.210(b) and (e), because (1) our preliminary determination is affirmative, (2) the requesting exporter Silvery Dragon Tech accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination no later than 135 days after the publication of the preliminary determination notice in the Federal Register, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

RESPONDENT SELECTION

In the Initiation Notice, the Department stated that although we normally rely on import data from U.S. Customs and Border Protection (“CBP”) to select a limited number of exporters/producers for individual examination in AD investigations, the petition named only three companies as exporters/producers of the subject merchandise from the PRC and, absent any information suggesting there were more such companies from the PRC, the Department intended to examine all three known exporters/producers of the subject merchandise as listed in the petition.¹³ The three PRC companies selected as mandatory respondents are: Silvery Dragon Tech, Wuxi Jinyang, and Shanxi New-Mile. The Department invited interested parties to comment on respondent selection. The Department received no comments on respondent selection.

On June 19, 2013, the Department issued the AD questionnaire to the above-mentioned companies. Only Silvery Dragon Tech responded to the questionnaire (see below for further discussion).

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country

The Department considers the PRC to be a non-market economy (“NME”) country.¹⁴ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value, in most circumstances, on the NME producer’s factors of production (“FOPs”), valued in a surrogate market economy (“ME”) country or countries considered to be appropriate by the Department. Specifically, in accordance with section

¹³ See Initiation Notice, 78 FR at 29329.

¹⁴ See Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 77 FR 21734 (April 11, 2012).

773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.¹⁵ To determine which countries are at a similar level of economic development, the Department generally relies solely on per capita gross national income (“GNI”) data from the World Bank’s World Development Report.¹⁶ In addition, if more than one country satisfies the two criteria noted above, the Department narrows the field of potential surrogate countries to a single country (pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOPs in a single surrogate country) based on data availability and quality.

On June 28, 2013, the Department identified Colombia, Costa Rica, Indonesia, the Philippines, South Africa, and Thailand as being equally comparable to the PRC in terms of economic development.¹⁷ On July 19, 2013, the Department issued a letter to the interested parties soliciting comments on surrogate country selection and providing a deadline for the consideration of any submitted surrogate value information in the preliminary determination.¹⁸ On August 21, 2013, the petitioners and Silvery Dragon Tech submitted comments on the appropriate surrogate country and surrogate values.¹⁹ On August 28, 2013, the petitioners and Silvery Dragon Tech submitted rebuttal comments.²⁰ On September 3 and November 5, 2013, Silvery Dragon Tech submitted additional surrogate value information pursuant to the regulatory time limit prescribed under 19 CFR 351.301.²¹ On November 15, 2013, the petitioners submitted rebuttal comments.²²

The petitioners and Silvery Dragon Tech both argue that Thailand should be selected as the surrogate country because it is economically comparable to the PRC, there is significant production capacity and actual production of identical and comparable merchandise in Thailand, and there is Thai information on the record for all of the surrogate values that are needed to

¹⁵ See also Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004).

¹⁶ See *id.*

¹⁷ See Memorandum from Carole Showers, Director, Office of Policy, to Irene Darzenta Tzafolias, Program Manager, Office 2, Import Administration, “Request for a List of Surrogate Countries for an Antidumping Duty Investigation of Prestressed Concrete Steel Rail Tie Wire (SRTW) from the People’s Republic of China (China),” dated June 28, 2013 (“Surrogate Country Recommendation Memorandum”).

¹⁸ See Letter to All Interested Parties from Irene Darzenta Tzafolias, Program Manager, Office 2, Import Administration, “Antidumping Investigation of Prestressed Concrete Steel Rail Tie Wire from the People’s Republic of China: Request for Surrogate Country and Surrogate Value Comments,” dated July 19, 2013.

¹⁹ See Letter from the petitioners to the Honorable Penny Pritzker, Secretary of Commerce, “Investigation of Prestressed Concrete Steel Rail Wire from the People’s Republic of China-Submission of Surrogate Values,” dated August 21, 2013 (“Petitioners’ Surrogate Selection Comments”); see also letter from Silvery Dragon to the Honorable Penny Pritzker, Secretary of Commerce, “Surrogate Country and Surrogate Value Comments on behalf of Silvery Dragon: Antidumping Duty Investigation of Prestressed Concrete Steel Rail Tie Wire from the People’s Republic of China,” dated August 21, 2013 (“Silvery Dragon Tech’s Surrogate Selection Comments”).

²⁰ See Letter from the petitioners to Secretary of Commerce, “Investigation of Prestressed Concrete Steel Rail Wire from the People’s Republic of China,” dated August 28, 2013; and Letter from Silvery Dragon Tech to Secretary of Commerce, “Surrogate Value Rebuttal Submission,” dated August 28, 2013.

²¹ See Letter from Silvery Dragon Tech to Secretary of Commerce, “Second Surrogate Value Comments,” dated September 3, 2013, and Letter from Silvery Dragon Tech to Secretary of Commerce, “Third Surrogate Value Comments,” dated November 5, 2013.

²² See Letter from the petitioners to Secretary of Commerce, “Investigation of Prestressed Concrete Steel Rail Wire from the People’s Republic of China,” dated November 15, 2013.

calculate a weighted-average dumping margin.²³ We explain in greater detail below the information on the record relating to each criterion that is used to select the primary surrogate country.

As noted above, the record contains a Surrogate Country Recommendation Memorandum which identifies six countries that the Department considers to have equally satisfied the economic comparability prong of the surrogate country selection criteria. However, this list is a non-exhaustive list. In the Surrogate Country Recommendation Memorandum, the Department noted that other countries not identified by the Department as being economically comparable to the PRC may be examined for purposes of selecting a primary surrogate country if there is adequate record information to evaluate them.²⁴ The petitioners and Silvery Dragon both noted that the GNI data for Thailand from the World Bank's April 2013 World Development Indicators database (as reflected in the Surrogate Country Recommendation Memorandum) shows Thailand's GNI is within the range of the GNIs of the countries considered by the Department to be economically comparable to the PRC and listed in the Surrogate Country Recommendation Memorandum.²⁵

With respect to the significant producer of comparable merchandise criterion, the petitioners note that the existence of a parallel AD investigation of imports of PC tie wire from Thailand involving The Siam Industrial Wire Co., Ltd. (a Thai exporter/producer of PC tie wire) is the best measure that significant production of comparable merchandise is occurring in Thailand. The petitioners also state that they do not believe there is any production of PC tie wire in any of the other five potential surrogate countries.²⁶ Silvery Dragon provided data for exports of PC tie wire from Thailand and South Africa, which it claims were the only significant exporters of comparable merchandise among the potential surrogate countries.²⁷

With respect to data availability, the record contains usable Thai surrogate values for every input that must be valued.²⁸ There is no surrogate value information on the record for Colombia, Costa Rica, Indonesia, Philippines, and South Africa.

After considering the above information, we have determined that Thailand is economically comparable to the PRC, a significant producer of comparable merchandise, and the record contains reliable surrogate value information for Thailand for all of the FOPs. Thus, pursuant to section 773(c)(4) of the Act, we have preliminarily selected Thailand as the primary surrogate country.

Separate Rates

²³ See the Petitioners' Surrogate Selection Comments and Silvery Dragon Tech's Surrogate Selection Comments.

²⁴ See Surrogate Country Recommendation Memorandum at page 2.

²⁵ See the Petitioners' Surrogate Selection Comments at 2-3, and Silvery Dragon Tech's Surrogate Selection Comments at 2-3.

²⁶ See Petitioners' Surrogate Selection Comments at 4.

²⁷ See Silvery Dragon Tech's Surrogate Selection Comments at 4-5 and Exhibit 1.

²⁸ See Memorandum from Brian Smith, Senior International Trade Analyst, AD/CVD Operations, Office II through Irene Darzenta Tzafolias, Program Manager, AD/CVD Operations, Office II to The File, "Antidumping Duty Investigation of Prestressed Concrete Rail Tie Wire from the People's Republic of China: Factor Valuation Memorandum," dated concurrently with this memorandum ("Factor Valuation Memorandum").

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the NME country are subject to government control and, thus, should be assessed a single AD rate.²⁹ In the Initiation Notice, the Department notified parties of the application process by which exporters may obtain separate-rate status in NME proceedings.³⁰ It is the Department's policy to assign all exporters of merchandise under investigation that are in an NME country a single weighted-average dumping margin unless an exporter can demonstrate that it is sufficiently independent from government control so as to be entitled to a separate rate.³¹ The Department analyzes whether each entity exporting the subject merchandise is sufficiently independent from government control under a test arising from Sparklers,³² as further developed in Silicon Carbide.³³ In accordance with the separate rates criteria, the Department assigns separate rates to respondents in NME cases if respondents can demonstrate the absence of both de jure and de facto governmental control over their export activities. If, however, the Department determines that a company is wholly foreign owned, then a separate rate analysis is not necessary to determine whether it is independent from government control.

Only Silvery Dragon Tech applied for separate-rate status. As noted above, neither Wuxi Jinyang nor Shanxi New-Mile responded to the Department's AD questionnaire nor did they submit separate rate information. Therefore, we are preliminarily treating Wuxi Jinyang and Shanxi New-Mile as part of the PRC-wide entity. See below for further discussion.

Silvery Dragon Tech reported that it is wholly owned by Silvery Dragon Prestressed Materials Co., Ltd. Tianjin ("Silvery Dragon Prestressed"), and Silvery Dragon Prestressed is a joint stock limited liability company in the PRC owned by individuals and other corporate entities, which also has export rights (but no longer exports products as of the establishment of Silvery Dragon Tech). Therefore, the Department must analyze whether Silvery Dragon Tech can demonstrate the absence of both de jure and de facto government control over its export activities.³⁴

²⁹ See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079, 53082 (September 8, 2006); see also Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China, 71 FR 29303, 29307 (May 22, 2006).

³⁰ See Initiation Notice, 78 FR at 29330.

³¹ See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588, 20589 (May 6, 1991) (Sparklers), as amplified by Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide).

³² See Sparklers, 56 FR at 20588.

³³ See Silicon Carbide, 59 FR at 22585.

³⁴ See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China, 72 FR 52355, 52356 (September 13, 2007); Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review, 66 FR 1303, 1306 (January 8, 2001), unchanged in Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review, 66 FR 27063 (May 16, 2001); Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China, 64 FR 71104 (December 20, 1999).

a) Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.³⁵

The evidence provided by Silvery Dragon Tech and Silvery Dragon Prestressed supports a preliminary finding of an absence of de jure government control based on the following: (1) an absence of restrictive stipulations associated with the Silvery Dragon Tech's business and export licenses;³⁶ (2) there are applicable legislative enactments decentralizing control of companies;³⁷ and (3) there are formal measures by the government decentralizing control of companies.³⁸

b) Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to de facto government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.³⁹ The Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of government control over export activities which would preclude the Department from assigning separate rates.

For Silvery Dragon Tech, we determine that the evidence on the record supports a preliminary finding of an absence of de facto government control based on record statements and supporting documentation showing the following: (1) Silvery Dragon Tech sets its own export prices independent of the government and without the approval of a government authority; (2) Silvery Dragon Tech has the authority to negotiate and sign contracts and other agreements;⁴⁰ (3) Silvery Dragon Tech has autonomy from the government regarding the selection of management;⁴¹ and (4) Silvery Dragon Tech retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses.⁴²

³⁵ See Sparklers, 56 FR at 20589.

³⁶ See Letter from Silvery Dragon Tech the Honorable Penny Pritzker, Secretary of Commerce, "Silvery Dragon Section A Response: Antidumping Duty Investigation of Prestressed Steel Concrete Steel Rail Tie Wire from the People's Republic of China," dated July 24, 2013 (Section A Response) at 8-11.

³⁷ See Section A Response at 10-11.

³⁸ See id.

³⁹ See Silicon Carbide, 59 FR at 22586-87; see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

⁴⁰ See Section A Response at 17-18.

⁴¹ See id. at 18-19.

⁴² See id. at 19-20.

Thus, the evidence placed on the record by Silvery Dragon Tech demonstrates an absence of both de jure and de facto government control with respect to the company's exports of the merchandise under consideration, in accordance with the criteria identified in Sparklers and Silicon Carbide. Therefore, we are preliminarily granting Silvery Dragon Tech separate-rate status.

Application of Facts Available and Adverse Inferences

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

The Department did not receive a response to its AD questionnaire from either Wuxi Jinyang or Shanxi New-Mile, both of which were selected as mandatory respondents in this investigation. Because these non-responsive PRC producers/exporters have not demonstrated that they are eligible for separate-rate status, they are part of the PRC-wide entity. Thus, the record indicates that the PRC-wide entity withheld information requested by the Department, failed to provide information in a timely manner, and significantly impeded the proceeding by not submitting the requested information. As a result, pursuant to sections 776(a)(2)(A)-(C) of the Act, we find that the use of facts available is appropriate to determine the weighted-average dumping margin for the PRC-wide entity.

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may use an inference that is adverse to the interests of an interested party if that party failed to cooperate by not acting to the best of its ability to comply with requests for information. When using an adverse inference, section 776(b) of the Act states that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

We find that the PRC-wide entity's failure to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown.⁴³ The PRC-wide entity did not respond to our requests for information, and did not indicate it was having difficulty providing the information, nor did it request that it be allowed to submit the information in an alternate form. Therefore, we preliminarily find that the PRC-wide entity failed to cooperate by not acting to the best of its ability to comply with requests for information. Hence, in selecting from among the facts otherwise available, an adverse inference is appropriate.

⁴³ See Nippon Steel Corporation v. United States, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (i.e., information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown"))).

In selecting a weighted-average dumping margin for the PRC-wide entity based on adverse facts available (“AFA”), the Department’s practice is to select a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁴⁴ Specifically, it is the Department’s practice to select, as an AFA rate, the higher of: (a) the highest dumping margin alleged in the petition, or (b) the highest calculated dumping margin of any respondent in the investigation.⁴⁵ The petition dumping margin (*i.e.*, 67.43 percent)⁴⁶ is higher than the dumping margin calculated for the mandatory respondent participating in this investigation (*i.e.*, Silvery Dragon Tech). However, because the use of this rate as AFA is subject to the corroboration requirement, as explained below, we examined whether this rate can be corroborated.

Corroboration

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. 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.”⁴⁷

The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.⁴⁸ The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.⁴⁹ To corroborate secondary information, the Department will, to the extent practicable, determine whether the information used has probative value through examining the reliability and relevance of the information.⁵⁰ In order to determine the probative value of the dumping margin alleged in the petition for assigning an AFA rate, we examined the information on the record and found we were unable to corroborate the dumping margin contained in the petition.⁵¹

⁴⁴ See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland, 69 FR 77216 (December 27, 2004), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland, 70 FR 28279 (May 17, 2005).

⁴⁵ See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From the People's Republic of China, 65 FR 34660 (May 31, 2000), and accompanying Issues and Decision Memorandum, at “Facts Available.”

⁴⁶ See Initiation Notice, 78 FR at 29329.

⁴⁷ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (“SAA”), H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994).

⁴⁸ See *id.*

⁴⁹ See *id.*

⁵⁰ See 19 CFR 351.308(d).

⁵¹ For details regarding this finding, see the Memorandum from Case Analysts to James P. Maeder, Jr., Office Director, AD/CVD Operations, Office II, “Prestressed Concrete Steel Rail Tie Wire from the People’s Republic of China: Corroboration of Margin Based on Adverse Facts Available,” dated concurrently with this memorandum (“Corroboration Memorandum”).

Therefore, for the preliminary determination, we have assigned to the PRC-wide entity a weighted-average dumping margin of 18.02 percent, which is the highest transaction-specific dumping margin for Silvery Dragon Tech.⁵² It is unnecessary to corroborate this rate because it was obtained in the course of this investigation and, therefore, is not secondary information. The transaction underlying this dumping margin is neither unusual in terms of transaction quantities nor otherwise atypical. For further information, see the Corroboration Memorandum.

Date of Sale

Silvery Dragon Tech reported the date of invoice to unaffiliated U.S. customers as the date of sale.⁵³ The Department found no evidence contrary to the respondent's claims that invoice date is the appropriate date of sale. Therefore, the Department used invoice date as the date of sale for this preliminary determination in accordance with 19 CFR 351.401(i).⁵⁴

Fair Value Comparisons

In accordance with section 777A(d)(1) of the Act, to determine whether Silvery Dragon Tech sold the merchandise under consideration to the United States at LTFV during the POI, we compared, as described in the "Determination of a Comparison Method" section below, the weighted-average export price of the U.S. sales to the weighted-average normal value, as described in "Export Price" and "Normal Value" sections of this notice.

Determination of the Comparison Method

A. Differential Pricing Analysis

Pursuant to 19 CFR 351.414(c) (2013), the Department calculates dumping margins by comparing weighted-average normal values to weighted-average export prices (or constructed export prices) (the average-to-average method) unless the Secretary determines another method is appropriate in a particular situation. The Department's regulations also provide that dumping margins may be calculated by comparing normal values, based on individual transactions, to the export prices (or constructed export prices) of individual transactions (transaction-to-transaction method) or, when certain conditions are satisfied, by comparing weighted-average normal values to the export prices (or constructed export prices) of individual transactions (average-to-transaction method).⁵⁵ In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of the average-to-average method is appropriate in

⁵² See, e.g., Silica Bricks and Shapes From the People's Republic of China: Preliminary Determination of Antidumping Duty Investigation and Postponement of Final Determination, 78 FR 37203 (June 20, 2013), and accompanying Preliminary Decision Memorandum at Comment 3.

⁵³ See Letter from Silvery Dragon Tech to the Honorable Penny Prtizker, Secretary of Commerce, "Silvery Dragon Sections C and D Response: Antidumping Duty Investigation of Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China," dated August 12, 2013, at 14.

⁵⁴ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

⁵⁵ See 19 CFR 351.414(b)(1) and (2).

a particular situation pursuant to 19 CFR 351.414(c)(1).⁵⁶ The Department may determine that in particular circumstances, consistent with section 777A(d)(1)(B) of the Act, that it is appropriate to use the average-to-transaction method. The Department will continue to develop its approach in this area based on comments received in this investigation and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

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

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

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods

⁵⁶ See, e.g., Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33350 (June 4, 2013), and accompanying Issues and Decision Memorandum at Comment 3.

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

If both tests in the first stage (i.e., the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of export prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method where both rates are above the de minimis threshold, or 2) the resulting weighted-average dumping margin moves across the de minimis threshold.

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

B. Results of the Differential Pricing Analysis

For Silvery Dragon Tech, based on the results of the differential pricing analysis, the Department finds that over 66 percent of Silvery Dragon Tech's export sales confirm the existence of a pattern of export prices for comparable merchandise that differ significantly among time periods only. Further, the Department determines that the average-to-average method can appropriately account for such differences because there is not a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and the average-to-transaction method. Accordingly, the Department has preliminarily determined to use the average-to-average method for all U.S. sales in making comparisons of export price and normal value for Silvery Dragon Tech.

Export Price

In accordance with section 772(a) of the Act, we based U.S. price on export price because the first sale to an unaffiliated purchaser was made prior to importation and the use of constructed export price was not otherwise warranted. We calculated export price based on the packed prices at which the merchandise under consideration was sold to unaffiliated purchasers in the United States, or sold for exportation to the United States. In calculating export price, we made deductions from the reported U.S. price for movement expenses, as appropriate (e.g., foreign inland freight from the plant to the port of exportation, foreign brokerage and handling, marine insurance, U.S customs duties, and international freight), in accordance with section 772(c)(2)(A) of the Act. Because Silvery Dragon Tech reported that foreign inland freight, foreign brokerage and handling, and marine insurance services were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate values.⁵⁷

We relied on Silvery Dragon Tech's international freight expenses (which includes ocean freight, U.S. brokerage and handling, and U.S. inland freight expenses), based on its claim that it used an ME service provider and paid for these expenses in U.S. dollars.⁵⁸ For purposes of the preliminary determination, we have accepted Silvery Dragon's claim but have issued Silvery Dragon Tech a supplemental questionnaire to determine if the NME freight forwarder which handled the payment from Silvery Dragon to the ME service provider acted on behalf of the ME supplier in such a way that the prices, including any agent fee or commission, paid by Silvery Dragon was set by the ME service provider. We will consider this information for purposes of the final determination.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases normal value on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.⁵⁹ Thus, we calculated normal value based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.⁶⁰

⁵⁷ See "Factor Valuation Methodology" section below for further discussion of surrogate value rates.

⁵⁸ See Silver Dragon's August 21, 2013, Response to Section C of the Department's Antidumping Duty Questionnaire at pages 2, 3, and 24.

⁵⁹ See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products From the People's Republic of China, 71 FR 19695, 19703 (April 17, 2006), unchanged in Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006).

⁶⁰ See section 773(c)(3)(A)-(D) of the Act.

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated normal value based on the FOPs reported by the individually examined respondent. To calculate normal value, the Department multiplied the reported per-unit factor-consumption rates by publicly available surrogate values. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are product-specific non-export values representative of a broad market average that are exclusive of taxes and duties and contemporaneous with, or closest in time to, the POI.⁶¹ Furthermore, as appropriate, we adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added a surrogate freight cost, where appropriate, to surrogate values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory. This adjustment is in accordance with the decision of the Federal Circuit in Sigma Corp. v. United States, 117 F.3d 1401, 1408 (Fed. Cir. 1997). Additionally, where necessary, we adjusted the surrogate values for inflation, exchange rates, and taxes.

The record shows that Thai import data obtained through Global Trade Atlas ("GTA"), as well as data used from other Thai sources, are product-specific, tax-exclusive, and generally contemporaneous with the POI.⁶² Thus, for the preliminary determination, we used Thai import data, as published by GTA, and other publicly available sources from Thailand in order to calculate surrogate values for Silvery Dragon Tech's FOPs (e.g., surrogate values for direct materials, by-products, and packing materials) and certain movement expenses.⁶³ In those instances where we could not obtain publicly available Thai surrogate values contemporaneous with the POI with which to value FOPs, we adjusted the surrogate values using, where appropriate, the Thai Price Indexes as published in the International Monetary Fund's International Financial Statistics.

With regard to the Thai import-based surrogate values, we disregarded import prices that we have reason to believe or suspect may be subsidized. It is the Department's practice, guided by legislative history, not to conduct a formal investigation to ensure that such prices are not subsidized.⁶⁴ Rather, the Department bases its decision on this matter on information that is

⁶¹ See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 42672, 42682 (July 16, 2004), unchanged in Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004).

⁶² A detailed description of all surrogate values used for Silvery Dragon Tech can be found in the Factor Valuation Memorandum.

⁶³ See id.

⁶⁴ See Omnibus Trade and Competitiveness Act of 1988, Conference Report, H.R. Rep. 100-576 at 590 (1988); Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China, 72 FR 30758, 30763 (June 4, 2007), unchanged in Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007); Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 73 FR 24552, 24559 (May 5, 2008), unchanged in Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039 (September 24, 2008).

available to it at the time that it makes its determination.⁶⁵ Specifically, we have reason to believe or suspect that prices of inputs from Indonesia, India, and South Korea may have been subsidized because in other proceedings we found that these countries maintain broadly available, non-industry-specific export subsidies.⁶⁶ Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized and thus it is appropriate to disregard imports into Thailand from these countries in our calculations.⁶⁷ Additionally, consistent with our practice, we disregarded prices from NME countries and excluded from our calculation of average per-unit surrogate values imports labeled as originating from an “unspecified” country because the Department could not be certain that they were not from either an NME country or a country with generally available export subsidies.⁶⁸ Therefore, we have not used prices from such countries in calculating the Thai import-based surrogate values or in calculating ME input values. A summary of the surrogate values used for certain inputs, other than by-products, direct materials, and packing materials, is below.

With respect to labor, we valued labor using data from the Thai National Statistics Office (“NSO”), an authorized government agency, using the product specific code, “manufacturing of other fabricated metal products” (ISIC Rev.3 Code: 2899).⁶⁹

We valued electricity using the calculation methodology applied in Drawn Sinks, Sodium Hexametaphosphate, and Silicon Metal.⁷⁰ The electricity calculation is based on the 2011 tariff

⁶⁵ See *id.*

⁶⁶ See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20.

⁶⁷ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People’s Republic of China, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

⁶⁸ These countries include India, Indonesia, South Korea and Thailand. See China Nat’l Mach. Import & Export Corp. v. United States, 293 F. Supp. 2d 1334, 1336 (CIT 2003), *aff’d* 104 Fed. Appx. 183 (Fed. Cir. 2004); Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651 (March 15, 2005), and accompanying Issues and Decision Memorandum at Comment 4; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People’s Republic of China, 69 FR 75294, 75301 (December 16, 2004), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People’s Republic of China, 70 FR 24502 (May 10, 2005); see also Citric Acid and Certain Citrate Salts From the People’s Republic of China: Preliminary Results of the First Administrative Review of the Antidumping Duty Order; and Partial Rescission of Administrative Review, 76 FR 34048, 34051 (June 10, 2011), unchanged in Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order, 76 FR 77772 (December 14, 2011).

⁶⁹ See Factor Valuation Memorandum at Attachment 7.

⁷⁰ See, e.g., Drawn Stainless Steel Sinks From the People’s Republic of China: Antidumping Duty Investigation, 77 FR 60673 (October 4, 2012), unchanged in Drawn Stainless Steel Sinks From the People’s Republic of China: Investigation, Final Determination, 78 FR 13019 (February 26, 2013); see also Sodium Hexametaphosphate from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 59375 (September 27, 2012) and accompanying Issues and Decision Memorandum at Comment II; see also Silicon Metal from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 54563 (September 5, 2012).

rates applied by the Thailand Metropolitan Electricity Authority (“MEA”) for “large general service” companies.⁷¹ We find that this methodology represents the “best available” information within the meaning of the statute because the MEA rates are from an approved surrogate country, are publicly available, specific to the input, contemporaneous, and exclusive of taxes.

We valued brokerage and handling expenses using a price list for procedures necessary to export a standardized cargo of goods from Thailand using a 20-foot container weighing 10,000 kilograms. The price list was published in the World Bank publication, Doing Business 2013: Thailand. We did not inflate this price because it is contemporaneous with the POI.⁷²

We also valued truck freight expenses using data from the World Bank’s Doing Business 2013: Thailand and used a calculation methodology based on a 20-foot container weighing 10,000 kilograms and an average distance of 76.67 kilometers. We did not inflate this price because it is contemporaneous with the POI.⁷³

We valued marine insurance expenses using the broad average rate quote for shipments of comparable merchandise (i.e., steel sheets, coils and bars) outside the United States obtained from PAF Shipping Insurance’s website (<http://www.grw-products.com>).⁷⁴

To value factory overhead, selling, general, and administrative expenses, and profit, we used rates based on data taken from the 2012 financial statements of Rayong Wire Industries Public Company Limited and Vongthong Steel Wire. Both financial statements are from the producers of comparable merchandise, cover the same period, are complete, and have no indication of countervailable subsidies. The Thai financial statements cover the fiscal year ending December 31, 2012.⁷⁵

⁷¹ See Factor Valuation Memorandum at Attachment 3a-3b.

⁷² See *id.* at Attachment 5.

⁷³ See *id.* at Attachment 4.

⁷⁴ See *id.* at Attachment 6.

⁷⁵ See *id.* at Attachment 2.

