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Investigation
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July 19, 2016

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
Less-Than-Fair-Value Investigation of Large Residential Washers
from the People's Republic of China

SUMMARY

The Department of Commerce (the Department) preliminarily determines that large residential washers (LRWs) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is April 1, 2015, through September 30, 2015. The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

BACKGROUND

On December 16, 2015, the Department received an antidumping duty (AD) petition concerning imports of LRWs from the PRC, filed in proper form on behalf of Whirlpool Corporation (Petitioner).¹ The Department published the initiation of the LTFV investigation on January 12, 2016.² On February 5, 2016, the U.S. International Trade Commission (ITC) published its preliminary determination in which it determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of LRW from the PRC.³

The Petition identified only two known producers/exporters of LRWs from the PRC. In the *Initiation Notice*, the Department stated that, absent contradictory information, it intended to

¹ See the Petition for the Imposition of Antidumping Duties on Imports of Large Residential Washers from the PRC, dated December 16, 2015 (the Petition).

² See *Large Residential Washers From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 81 FR 1398 (January 12, 2016) (*Initiation Notice*).

³ See *Large Residential Washers From China; Determination*, 81 FR 6292 (February 5, 2016); see also *Large Residential Washers from China*, Investigation No. 731-TA-1306 (Preliminary), Publication 4591 (February 2016) (*ITC Preliminary*).



examine all known producers/exporters of LRWs from the PRC, as mandatory respondents in this investigation. On January 28, 2016, the two producers/exporters named in the Petition submitted a joint letter alleging that there may be other producers/exporters of the subject merchandise and requesting the Department to issue quantity and value questionnaires prior to finalizing its selection of mandatory respondents.⁴ Based on our analysis of the information contained in that submission and the petitioner's response to that submission,⁵ we found that LG and Samsung did not provide evidence demonstrating that there are other producers/exporters in the PRC of subject merchandise, nor did we find contradictory evidence that would cause us to issue quantity and value questionnaires rather than investigate the two known producers/exporters of the subject merchandise.⁶ Accordingly, we issued AD questionnaires to LG and Samsung, the mandatory respondents in this investigation, on February 8, 2016 (Section A, *i.e.*, the section relating to general information), and February 26, 2016 (Sections C and D, *i.e.* the sections relating to U.S. sales and factors of production (FOPs), respectively).

In February 2016, the Department received comments on the scope of the investigation from LG and Samsung, and rebuttal comments from the petitioner and Staber Industries, Inc. (Staber), a domestic producer of the subject merchandise.

We received responses to section A of the questionnaire from both respondents in March 2016, and to sections C and D from both respondents in April 2016. From April through June 2016, the Department issued supplemental questionnaires to LG and Samsung. We received responses to the supplemental questionnaires from April through June 2016.

On March 1, 2016, the Department placed on the record a list of potential surrogate countries. From March through June 2016, the petitioner, LG and Samsung submitted comments and rebuttal comments regarding the selection of a surrogate country and surrogate values (SV). For further discussion, *see* "Surrogate Country and Surrogate Value Comments" sections, below

On January 27, 2016, the Department tolled all deadlines for four business days due to the Federal Government closure during Snowstorm "Jonas."⁷ On May 2, 2016, the petitioner 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. Subsequently, the Department published a postponement of the preliminary determination until no later than July 19, 2016.⁸

On May 6, 2016, the petitioner alleged that critical circumstances exist with respect to imports of LRWs from the PRC. In June 2016, we requested that LG and Samsung provide information

⁴ See Letter from Suzhou Samsung Electronics Co., Ltd. and Suzhou Samsung Electronics Co. Ltd – Export (collectively, Samsung); and Nanjing LG-Panda Appliances Co., Ltd. and LG Electronics USA, Inc. (collectively, LG), dated January 28, 2016.

⁵ See Letter from the Whirlpool Corporation, dated February 1, 2016.

⁶ See cover letter to February 8, 2016, AD questionnaires issued to LG and Samsung; *see also* the Department's February 29, 2016, letter to LG and Samsung.

⁷ See Memorandum to the Record "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm Jonas," dated January 27, 2016.

⁸ See *Large Residential Washers From the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 81 FR 29531 (May 12, 2016).

regarding their recent shipments of the subject merchandise in order to make a critical circumstances determination. LG and Samsung submitted this information in July 2016.

Samsung submitted pre-preliminary determination comments on July 1, 2016. The petitioner and LG submitted their respective pre-preliminary determination comments on July 5, 2016.

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

PERIOD OF INVESTIGATION

The POI is April 1, 2015, through September 30, 2015. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was December 2015.⁹

POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

On June 27 and 29, 2016, pursuant to 19 CFR 351.210(b)(2)(ii), LG and Samsung, respectively, requested that the Department postpone its final determination and extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a period not to exceed six months. In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because: 1) our preliminary determination is affirmative, 2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and 3) no compelling reasons for denial exist, we are granting respondents' requests and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*. In this regard, the aforementioned parties submitted requests to extend the provisional measures,¹⁰ and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

SCOPE COMMENTS

In accordance with the *Preamble* to the Department's regulations,¹¹ in our *Initiation Notice* we set aside a period of time until January 25, 2016, for parties to comment on product coverage (scope) and product characteristics.¹² The Department subsequently revised the due dates for scope and rebuttal scope comments. Accordingly, on February 4, 2016, the Department received timely scope comments from LG and Samsung, and on February 18, 2016, the Department received timely rebuttal comments from the petitioner and Staber. Based on our analysis of these comments, we preliminarily find no compelling reason to amend or modify the scope of this investigation. However, we intend to request the petitioner to provide further clarification with respect to the "portions" of cabinet subassemblies that are covered by the scope for

⁹ See 19 CFR 351.204(b)(1).

¹⁰ See 19 CFR 351.210(e)(2).

¹¹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

¹² See *Initiation Notice*.

consideration in the final determination. For a full discussion of all scope comments, *see* Scope Memorandum.¹³

SCOPE OF THE INVESTIGATION

The products covered by this investigation are all large residential washers and certain parts thereof from the People's Republic of China.

For purposes of this investigation, the term "large residential washers" denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm), except as noted below.

Also covered are certain parts used in large residential washers, namely: (1) all cabinets, or portions thereof, designed for use in large residential washers; (2) all assembled tubs¹⁴ designed for use in large residential washers which incorporate, at a minimum: (a) a tub; and (b) a seal; (3) all assembled baskets¹⁵ designed for use in large residential washers which incorporate, at a minimum: (a) a side wrapper;¹⁶ (b) a base; and (c) a drive hub;¹⁷ and (4) any combination of the foregoing parts or subassemblies.

Excluded from the scope are stacked washer-dryers and commercial washers. The term "stacked washer-dryers" denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term "commercial washer" denotes an automatic clothes washing machine designed for the "pay per use" segment meeting either of the following two definitions:

(1) (a) it contains payment system electronics;¹⁸ (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners;¹⁹ or

¹³ See Memorandum entitled "Scope Issues for the Preliminary Determination of the Antidumping Duty Investigation of Large Residential Washers (LRWs) from the People's Republic of China," dated concurrently with this memorandum (Scope Memorandum).

¹⁴ A "tub" is the part of the washer designed to hold water.

¹⁵ A "basket" (sometimes referred to as a "drum") is the part of the washer designed to hold clothing or other fabrics.

¹⁶ A "side wrapper" is the cylindrical part of the basket that actually holds the clothing or other fabrics.

¹⁷ A "drive hub" is the hub at the center of the base that bears the load from the motor.

¹⁸ "Payment system electronics" denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

¹⁹ A "security fastener" is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a "center pin reject" feature to prevent standard Allen wrenches or Torx drivers from working.

(2) (a) it contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,²⁰ the unit cannot begin a wash cycle without first receiving a signal from a bona fide payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

Also excluded from the scope are automatic clothes washing machines that meet all of the following conditions: (1) have a vertical rotational axis; (2) are top loading;²¹ (3) have a drive train consisting, *inter alia*, of (a) a permanent split capacitor (PSC) motor,²² (b) a belt drive,²³ and (c) a flat wrap spring clutch.²⁴

Also excluded from the scope are automatic clothes washing machines that meet all of the following conditions: (1) have a horizontal rotational axis; (2) are front loading;²⁵ and (3) have a drive train consisting, *inter alia*, of (a) a controlled induction motor (CIM),²⁶ and (b) a belt drive.

Also excluded from the scope are automatic clothes washing machines that meet all of the following conditions: (1) have a horizontal rotational axis; (2) are front loading; and (3) have cabinet width (measured from its widest point) of more than 28.5 inches (72.39 cm).

The products subject to this investigation are currently classifiable under subheadings 8450.20.0040 and 8450.20.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to this investigation may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

PRODUCT CHARACTERISTICS

In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product characteristics. In February 2016, the petitioner, LG, and Samsung submitted comments and rebuttal comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes. After considering the comments that were submitted, the Department concurred with all parties' recommendation to match U.S. sales of

²⁰ "Normal operation" refers to the operating mode(s) available to end users (*i.e.*, not a mode designed for testing or repair by a technician).

²¹ "Top loading" means that access to the basket is from the top of the washer.

²² A "PSC motor" is an asynchronous, alternating current (AC), single phase induction motor that employs split phase capacitor technology.

²³ A "belt drive" refers to a drive system that includes a belt and pulleys.

²⁴ A "flat wrap spring clutch" is a flat metal spring that, when engaged, links abutted cylindrical pieces on the input shaft with the end of the concentric output shaft that connects to the drive hub.

²⁵ "Front loading" means that access to the basket is from the front of the washer.

²⁶ A "controlled induction motor" is an asynchronous, alternating current (AC), polyphase induction motor.

subject merchandise to normal value (NV) on a model-specific basis according to specific stock keeping unit (SKU) numbers. This methodology was reflected in the section C and D AD questionnaires issued on February 26, 2016.

CRITICAL CIRCUMSTANCES

On May 6, 2016, the petitioner filed a timely allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the merchandise under consideration. On June 22, 2016, the Department requested shipment data from LG and Samsung related to the critical circumstances allegation. The respondents responded to the Department's request for shipment data on July 5, 8, and 15, 2016.

In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination.

Legal Framework

Section 733(e)(1) of the Act provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there were massive imports of the subject merchandise over a relatively short period.

Further, 19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, "{i}n general, unless the imports during the 'relatively short period' . . . have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive." 19 CFR 351.206(i) defines "relatively short period" generally as the period starting on the date the proceeding begins (*i.e.*, the date the Petition is filed) and ending at least three months later. This section of the regulations further provides that, if the Department "finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely," then the Department may consider a period of not less than three months from that earlier time.

Critical Circumstances Allegation

In its allegation, the petitioner contends that, because the Department has not yet made its preliminary determination in this investigation, the Department may rely on the margins alleged in the Petition to decide whether importers knew, or should have known, that dumping was

occurring. The estimated dumping margins for LRWs from the PRC in the Petition range from 68.92 to 109.04 percent.²⁷ Therefore, the petitioner maintains that there is information on the record of this investigation to impute knowledge to importers that LRWs from the PRC were being sold in the United States at LTFV. The petitioner also contends that, based on the preliminary determination of injury by the ITC, there is a reasonable basis to impute importers' knowledge that material injury is likely by reason of such imports. In addition, the petitioner cites the Department's issuance of AD orders on LRWs from Korea and Mexico, which were based on LTFV investigations of LRW sales to the United States by LG (Korea) and Samsung (Korea and Mexico)²⁸ as a reasonable basis to conclude that there is a history of dumping of the subject merchandise under section 733(d)(1)(A)(i) of the Act.

Finally, as part of its allegation and pursuant to 19 CFR 351.206(h)(2), the petitioner submitted PRC export data compiled by Global Trade Information Services (GTIS) for the merchandise covered by the scope of this investigation for the period January 2015 through March 2016 as evidence of massive imports of LRWs from the PRC during a relatively short period. The petitioner provided two analyses, in which it compared the PRC export data during the "comparison" period of January – March 2016, to the following "base" periods: 1) October-December 2015; and 2) January – March 2015. The comparisons showed increases in exports of 15.4 and 23.7 percent, respectively.

Analysis

The Department's normal practice in determining whether critical circumstances exist pursuant to the statutory criteria has been to examine evidence available to the Department, such as: (1) the evidence presented in the petitioner's critical circumstances allegation; (2) import statistics released by the ITC; and (3) shipment information submitted to the Department by the respondents selected for individual examination.²⁹ As further provided below, in determining whether the above statutory criteria have been satisfied in this case, we have examined: (1) the evidence presented in the petitioner's May 6, 2016, allegation; (2) information obtained since the initiation of this investigation; and (3) the ITC's preliminary injury determination.

We considered each of the statutory criteria for finding critical circumstances below.

²⁷ See *Initiation Notice*, 81 FR at 1401.

²⁸ See *Large Residential Washers From Mexico and the Republic of Korea: Antidumping Duty Orders*, 78 FR 11148 (February 15, 2013); *Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers From the Republic of Korea*, 77 FR 75988, (December 26, 2012); and *Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from Mexico*, 77 FR 76288 (December 27, 2012).

²⁹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970, 31972-73 (June 5, 2008); and *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 2049, 2052-53 (January 14, 2009).

Section 733(e)(1)(A)(i) of the Act: History of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise

In order to determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, the Department generally considers current or previous AD duty orders on subject merchandise from the country in question in the United States and current orders in any other country with regard to imports of subject merchandise.³⁰ There have been no previous orders on LRWs from the PRC in the United States. The Department is not aware of the existence of any AD orders on LRWs from the PRC in other countries. Accordingly, the Department does not find that there is a history of injurious dumping of LRWs from the PRC pursuant to section 733(e)(1)(A)(i) of the Act.

Section 733(e)(1)(A)(ii) of the Act: Whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales

In determining whether an importer knew or should have known that the exporter was selling subject merchandise at LTFV and that there was likely to be material injury by reason of such sales, the Department must rely on the facts before it at the time the determination is made. The Department generally bases its decision with respect to knowledge on the margins calculated in the preliminary determination and the ITC's preliminary injury determination.

The Department normally considers margins of 25 percent or more for export price (EP) sales and 15 percent or more for constructed export price (CEP) sales sufficient to impute importer knowledge of sales at LTFV.³¹ In this investigation, both LG and Samsung reported only CEP sales. LG and Samsung's preliminary margins are 49.88 percent and 101.09 percent, respectively. Further, we are assigning a rate of 80.49 percent for the PRC-wide entity, as discussed below. Because the preliminary dumping margins exceed the threshold sufficient to impute knowledge of dumping, we preliminarily find, with respect to LG, Samsung, and the PRC-wide entity, that there is a reasonable basis to believe or suspect that importers knew, or should have known, that exporters were selling the merchandise under consideration at LTFV.

In determining whether an importer knew or should have known that there was likely to be material injury caused by reason of such imports, the Department normally will look to the

³⁰ See, e.g., *Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 74 FR 59117, 59120 (November 17, 2009), unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010).

³¹ See, e.g., *Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances*, 67 FR 6224, 6225 (February 11, 2002) (*Steel Wire Rod Prelim*), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Moldova*, 67 FR 55790 (August 30, 2002) (*Steel Wire Rod Final*); and *Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China*, 69 FR 59187 (October 4, 2004) (*Magnesium Metal Prelim*), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal From the People's Republic of China*, 70 FR 9037 (February 24, 2005) (*Magnesium Metal Final*).

preliminary injury determination of the ITC.³² If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports.³³ Therefore, because the ITC preliminarily found a reasonable indication that an industry in the United States is materially injured by imports of LRWs from the PRC,³⁴ the Department determines that importers knew or should have known that there was likely to be material injury by reason of sales of LRWs from the PRC at LTFV by LG, Samsung, and the PRC-wide entity.

Section 733(e)(1)(B) of the Act: Whether There Have Been Massive Imports Over a Relatively Short Period

19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise were “massive,” the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, “[i]n general, unless the imports during the ‘relatively short period’...have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.” 19 CFR 351.206(i) defines “relatively short period” generally as the period starting on the date the proceeding begins (*i.e.*, the date the Petition is filed) and ending at least three months later (*i.e.*, the comparison period). This section of the regulations further provides that, if the Department “finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,” then the Department may consider a period of not less than three months from that earlier time. The comparison period is normally compared to a corresponding period prior to the filing of the Petition (*i.e.*, the base period).

It is the Department’s practice to base the critical circumstances analysis on all available data, using base and comparison periods of no less than three months.³⁵ Based on these practices, we selected as the comparison period January 2016 through June 2016, and the corresponding base period July 2015 through December 2015, in order to determine whether imports of subject merchandise were massive.³⁶ These base and comparison periods satisfy the Department’s practice that the comparison period is at least three months.

³² See, e.g., *Certain Potassium Phosphate Salts from the People’s Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation*, 75 FR 24572, 24573 (May 5, 2010).

³³ See, e.g., *Steel Wire Rod Prelim*, 67 at 6225, unchanged in *Steel Wire Rod Final*; and *Magnesium Metal Prelim*, 70 FR at 5607, unchanged in *Magnesium Metal Final*.

³⁴ See *ITC Preliminary*.

³⁵ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 47111, 47118-47119 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India*, 69 FR 76916 (December 23, 2004); and *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 3.

³⁶ See LG’s and Samsung’s submissions of July 15, 2016. In its submission, Samsung argues that the Department

Our analysis found that imports based on Samsung's reported shipments of the merchandise under consideration during the comparison period increased by more than 15 percent over its respective shipments in the base period, and LG's did not.³⁷ Therefore, we preliminarily find there to be massive imports for Samsung but not for LG, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).

For the PRC-wide entity, because we are individually-examining the only known exporters, of the subject merchandise, and, as discussed below, we are determining the PRC-wide rate on the average of the margins calculated for the two respondents, we based our massive imports analysis for the PRC-wide entity on the experience of the two respondents. Because we found massive imports for Samsung but not for LG, we based our finding for the PRC-wide entity on the average of LG's and Samsung's increase in reported shipments during the comparison period. Our analysis found that the average increase was greater than 15 percent.³⁸ Therefore, we preliminarily find there be massive imports for the PRC-wide entity, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).

Based on the above analysis, we are preliminarily making an affirmative finding of critical circumstances for Samsung and the PRC-wide entity.

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country

The Department considers the PRC to be a non-market economy (NME) country.³⁹ 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 NV, in most circumstances, on the NME producer's factors of production

should use its reported import data, rather than shipment data, for making the massive imports determination. Samsung also contends that the Department should consider seasonal trends in making this determination. We did not have sufficient time to consider these arguments for the preliminary determination. In addition, LG reported only shipment data, consistent with the Department's instructions in our letter of June 22, 2016, and therefore we do not have comparable import data from LG. Accordingly, we relied on the reported shipment data from both respondents in making our preliminary massive imports determination.

³⁷ See Memorandum to the File entitled "Less-Than-Fair-Value Investigation of Large Residential Washers from the People's Republic of China: Critical Circumstances Massive Imports Analysis," dated July 19, 2016 (Preliminary Critical Circumstances Memorandum).

³⁸ *Id.*

³⁹ See, e.g., *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).

(FOPs), valued in a surrogate market economy (ME) country or countries considered to be appropriate by the Department. Specifically, in accordance with section 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 -- (A) at a level of economic development comparable to that of the {NME} country; and (B) significant producers of comparable merchandise.”⁴⁰ As a general rule, the Department selects a surrogate country that is at the level of economic development of the NME unless it is determined that none of the countries are viable options because: (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the level of economic development of the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development. To determine which countries are at the level of economic development of the NME, the Department generally relies on per capita gross national income (GNI) data from the World Bank’s World Development Report.⁴¹ Further, the Department normally values all FOPs in a single surrogate country.⁴²

On March 1, 2016, the Department identified Bulgaria, Ecuador, Mexico, Romania, South Africa, and Thailand as countries that are at the level of economic development of the PRC based on per capita 2014 GNI data.⁴³ On March 3, 2016, the Department issued a letter to interested parties soliciting comments on the list of countries that the Department determined, based on per capita 2014 GNI, to be at the level of economic development of the PRC, and the selection of the primary surrogate country, as well as providing deadlines for the submission of SV information to be for the preliminary determination.

The petitioner, LG, and Samsung submitted timely comments on the proposed list of countries on March 17, 2016, and each submitted rebuttal comments on March 21, 2016. In addition to the six countries identified in the Surrogate Country Memo, Samsung proposed adding Turkey to this list, stating that Turkey’s per capita GNI is only slightly higher than Mexico’s per capita GNI, and that Turkey is a major producer of large home appliances.⁴⁴

⁴⁰ For a description of our practice *see* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on the Department’s website at <http://enforcement.trade.gov/policy/bull04-1.html>.

⁴¹ *Id.*

⁴² *See* 19 CFR 351.408(c)(2).

⁴³ *See* Memorandum from Carole Showers, Director, Office of Policy, entitled “Request for a List of Surrogate Countries for the Less-Than-Fair-Value Investigation of Large Residential Washers (LRWs) from the People’s Republic of China (“China”),” dated March 1, 2016 (Surrogate Country Memo).

⁴⁴ *See* Letter from Samsung “Comments on Surrogate Country Selection,” dated March 17, 2016 (Samsung Surrogate Country Comments).

A. Economic Comparability

Consistent with its practice and section 773(c)(4) of the Act, and as stated above, the Department identified Bulgaria, Ecuador, Mexico, Romania, South Africa, and Thailand as countries at the level of economic development of the PRC based on GNI data published in the World Bank's World Development Indicators Report.⁴⁵ The countries identified are not ranked and are considered equivalent in terms of economic comparability.

B. Significant Producer of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Among the factors we consider in determining whether a country is a significant producer of comparable merchandise is whether the country is an exporter of comparable merchandise. In order to determine whether the above-referenced countries are significant producers of comparable merchandise, the Department's practice is to examine which countries on the surrogate country list exported merchandise comparable to the merchandise under consideration. Information on the record indicates that Mexico and Thailand are significant exporters of merchandise covered by HTS categories identified in the scope of this investigation,⁴⁶ while South Africa, Bulgaria, and Romania are not significant exporters of LRWs and Ecuador did not export LRWs.⁴⁷ We did not consider Turkey because it is not on the surrogate country list. Accordingly, we preliminarily find that Mexico and Thailand meet the significant producer of comparable merchandise prong of the surrogate country selection criteria but South Africa, Bulgaria, Romania, and Ecuador do not.

C. Data Availability

When evaluating SV data, the Department considers several factors including whether the SVs are publicly available, contemporaneous with the period under consideration, broad-market averages, tax and duty-exclusive, and specific to the inputs being valued. The Department's preference is to satisfy the breadth of these aforementioned selection factors.⁴⁸

All three parties have placed data on the record from Thailand.⁴⁹ In addition, LG and Samsung have placed data on the record from Mexico.⁵⁰ The Department finds that the Thai data are the

⁴⁵ See Surrogate Country Memo.

⁴⁶ See Letter from LG, "LG's Surrogate Country Comments," dated March 17, 2016 (LG Surrogate Country Comments) at Exhibit 1; see also Letter from the petitioner, "Petitioner's Surrogate Country Comments," dated March 17, 2016 (Petitioner Surrogate Country Comments) at page 3 (with respect to Thailand only); and Samsung Surrogate Country Comments at pages 4-5.

⁴⁷ See LG Surrogate Country Comments at Exhibit 1.

⁴⁸ 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), and accompanying Issues and Decision Memorandum at Comment I(C).

⁴⁹ See various surrogate value submissions and rebuttal surrogate value comments from the petitioner, LG, and Samsung submitted between March and June 2016.

⁵⁰ See Letter from LG, "LGE's Surrogate Value Submission," dated April 29, 2016 (LG SV Submission), which includes proprietary data from LG's Mexican and Thai LRW-producing affiliates; and Letter from Samsung,

best available data for valuing respondents' FOPs because we have complete, publicly-available, contemporaneous, specific Thai data for each input used by the respondents to produce the subject merchandise during the POI. In addition, the Thai surrogate financial statements on the record include publicly-available statements for companies which produce washing machines, while the Mexican surrogate financial statements are either not publicly available, or only for a producer of non-comparable merchandise (*i.e.*, aluminum sheet, aluminum foil, and kitchen products).⁵¹ Therefore, because complete surrogate value information is available from Thailand, the Department preliminarily determines that the Thai data are the best available surrogate value data.

Given the above facts, the Department selects Thailand as the primary surrogate country for this investigation. Thailand is at the level of economic development of the PRC, is a significant producer of comparable merchandise, and generally has reliable and usable SV data. A detailed description of the SVs selected by the Department is provided below in the "Normal Value" section of this notice.

Surrogate Value Comments

On April 29, 2016, the petitioner, LG, and Samsung filed surrogate factor valuation comments and SV information with which to value the FOPs in this proceeding, and on May 25 and June 10, 2016, each of these parties also filed rebuttal surrogate factor valuation comments and SV information. On June 20, 2016, the parties submitted SV information and/or comments pursuant to 19 CFR 351.301(c)(3)(i). Finally, on June 30, 2016, LG submitted rebuttal SV information pursuant to 19 CFR 351.301(c)(3)(iv). For a detailed discussion of the SVs used in this LTFV proceeding, *see* the "Factor Valuation" section below and the Preliminary SV Memorandum.⁵²

Separate Rates

In proceedings involving NME countries, the Department maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.⁵³ In the *Initiation Notice*, the Department notified parties of the application process by which exporters may obtain separate rate status in this LTFV investigation.⁵⁴ The process requires exporters to submit a separate rates application

"Revised FOP Database and Corresponding Surrogate-Value Data," dated May 16, 2016 (Samsung May 16 SQRD), which includes proprietary data from Samsung's Mexican and Thai LRW-producing affiliates.

⁵¹ See LG SV Submission at Exhibits 21, 21, 28, and 29; and Letter from the petitioner, "Petitioner's Rebuttal Surrogate Value Submission," dated May 25, 2016, at pages 18-20.

⁵² See Memorandum to the File entitled "Factor Valuation Memorandum for the Preliminary Determination of the Less Than Fair Value Investigation of Large Residential Washers from the People's Republic of China for Nanjing LG-Panda-Appliances Co., Ltd. (LG)," dated July 19, 2016 (LG Preliminary SV Memorandum); and Memorandum to the File entitled "Factor Valuation Memorandum for the Preliminary Determination of the Less Than Fair Value Investigation of Large Residential Washers from the People's Republic of China for Suzhou Samsung Electronics Co., Ltd. and Suzhou Samsung Electronics Co., Ltd. – Export (collectively Samsung)," dated July 1, 2016 (Samsung Preliminary SV Memorandum).

⁵³ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (September 24, 2008).

⁵⁴ See *Initiation Notice* at 73720.

(SRA)⁵⁵ and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities.

The Department's policy is to assign all exporters of merchandise under consideration that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.⁵⁶ The Department analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*⁵⁷ and further developed in *Silicon Carbide*.⁵⁸ According to this separate rate test, the Department will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If, however, the Department determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

The Department continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from the PRC AD proceeding, and its determinations therein.⁵⁹ In particular, in litigation involving the diamond sawblades from the PRC proceeding, the Court of International Trade (CIT) found the Department's existing separate rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity had significant ownership in the respondent exporter.⁶⁰ Following the Court's reasoning, in recent

⁵⁵ See Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries (April 5, 2005) (Policy Bulletin 05.1), available at <http://enforcement.trade.gov/policy/bull05-1.pdf>.

⁵⁶ 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*).

⁵⁷ *Id.*

⁵⁸ See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

⁵⁹ See *Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China*, (May 6, 2013) in *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), affirmed in *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), aff'd Case No. 2014-1154 (Fed. Cir. 2014) ("*Advanced Technology II*"). This remand redetermination is on the Enforcement and Compliance website at <http://enforcement.trade.gov/remands/12-147.pdf>; see also *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013), and accompanying Preliminary Decision Memo at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying Issues and Decision Memorandum at Comment 1.

⁶⁰ See, e.g., *Advanced Technology I*, 885 F. Supp. 2d at 1349 (CIT 2012) ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *Id.* at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {state-owned assets supervision and administration commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor *de jure* 'separation' that Commerce concludes.") (footnotes omitted); *Id.*, at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); *Id.*, at 1357 ("AT&M itself identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.") (footnotes omitted).

proceedings, we have concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally.⁶¹ This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company.

In the *Initiation Notice*, we stated that SRAs would be due 30 days after publication of the notice, *i.e.*, February 11, 2016.⁶² As noted above, LG and Samsung submitted responses to section A of the NME AD questionnaire, in which, each company submitted information pertaining to their eligibility for a separate rate.⁶³ No other PRC companies filed SRAs. The Department issued supplemental Section A questionnaires (including separate rate questions) to both respondents on April 7, 2016, and received responses from LG and Samsung on April 29, 2016, and April 28, 2016, respectively.⁶⁴

A. Separate Rate Analysis

The Department is preliminarily granting LG and Samsung a separate rate, as explained below. Both companies reported that they are joint ventures between Chinese and foreign companies.⁶⁵ Therefore, the Department must analyze whether LG and Samsung can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. 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) legislative enactments decentralizing control over export activities of companies; and (3) other formal measures by the government decentralizing control over export activities of companies.⁶⁶

⁶¹ See *Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying Preliminary Decision Memorandum at pages 5-9; unchanged in *Carbon and Certain Alloy Steel Wire Rod 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*, 79 FR 68860 (November 19, 2014).

⁶² See *Initiation Notice* at 1402; see also *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

⁶³ See LG's March 11, 2016, Section A Questionnaire Response (LG QRA) and Samsung's March 14, 2016, Section A Questionnaire Response (Samsung QRA), respectively.

⁶⁴ See LG's April 29, 2016, Supplemental Section A Response (LG SQRA); and Samsung's April 28, 2016, Supplemental Section A Response (Samsung SQRA).

⁶⁵ See LG QRA at pages 7 and 26, and Exhibits A-4 and A-5; and Samsung QRA at Appendices 1 and 2.

⁶⁶ See *Sparklers*, 56 FR at 20589.

The evidence provided by both LG and Samsung supports a preliminary finding of an absence of *de jure* government control for each of these companies based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the existence of applicable legislative enactments decentralizing control over export activities of companies; and (3) the implementation of formal measures by the government decentralizing control over export activities of companies.⁶⁷

2. Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the 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.⁶⁸ 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 which would preclude the Department from assigning separate rates.

The evidence provided by LG and Samsung supports a preliminary finding of an absence of *de facto* government control based on record statements and supporting documentation showing that both companies: (1) set their own prices independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding the disposition of profits or financing of losses.⁶⁹

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

B. Companies Not Receiving a Separate Rate

The Department has not granted a separate rate to any other PRC exporter of the subject merchandise because we are examining all known exporters/producers of the subject merchandise during the POI, and we have no reason to believe that there are other non-responding exporters/producers of the subject merchandise during the POI.

⁶⁷ See LG QRA at pages 7-10 and Exhibits A-3 – A-4; and Samsung QRA at Appendices 1 and 2.

⁶⁸ See *Silicon Carbide*, 59 FR at 22586-87; *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).

⁶⁹ See LG QRA at pages 10 - 20 and Exhibits A-5 – A-14; LG SQRA at Exhibits SA-14 - 21; Samsung QRA at Appendices 1 and 2; and Samsung SQRA at pages SA-8 – SA-11 and Exhibits SA-4 – SA-13.

Combination Rates

Consistent with the *Initiation Notice*, the Department calculated combination rates for LG and Samsung, both of which we preliminarily find are eligible for a separate rate in this investigation.⁷⁰ This practice is described in Policy Bulletin 05.1.

The PRC-wide Entity

In calculating rates for non-individually investigated respondents in the context of NME cases, the Department looks to section 735(c)(5)(A)-(B) of the Act, which provides instructions for calculating the all-others rate in an investigation.⁷¹ Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be equivalent to the weighted average of the estimated weighted-average dumping margins calculated for exporters and producers individually investigated, excluding any margins that are zero, *de minimis*, or based entirely on facts available. Section 735(c)(5)(B) of the Act provides that where all individually investigated exporters or producers receive rates that are zero, *de minimis*, or based entirely on facts available, then the Department may use “any reasonable method” to establish the all-others rate for those companies not individually investigated.

As discussed above, all known exporters/producers of the subject merchandise sold to the United States during the POI responded to the Department's questionnaire, and we have no reason to believe that there are other non-responding exporters/producers of the subject merchandise during the POI. In addition, no other PRC exporters of the subject merchandise during the POI established entitlement to a separate rate. Thus, no non-individually examined separate rates are being assigned in this segment. Moreover, the PRC-wide entity is not being individually investigated in this investigation. Furthermore, there currently exist no respondents that have failed to cooperate in this investigation, and there are no zero or *de minimis* margins. Accordingly, we are preliminarily determining the PRC-wide rate based on a simple average of the calculated rates determined for the mandatory respondents, in accordance with Section 735(c)(5)(A) of the Act.⁷²

Date of Sale

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁷³

⁷⁰ See *Initiation Notice* at 73720-21.

⁷¹ See *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013), and accompanying Issues and Decision Memorandum at pages 4 -5.

⁷² This determination is consistent with our practice in similar situations. See *Welded Stainless Pressure Pipe From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 79 FR 31092 -93 (May 30, 2014); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania*, 65 FR 39125, 39127 (June 23, 2000).

⁷³ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092

A. LG

LG reported sale date based on invoice date, which is identical to shipment date.⁷⁴ Consistent with our date of sale regulation, the Department preliminarily determines to use invoice date as the date of sale for LG's U.S. sales.

B. Samsung

For U.S. sales shipped directly from the factory in the PRC to an unaffiliated customer in the United States (direct shipment sales), Samsung reported the date of sale as the date the merchandise is placed in the container at the PRC production plant (container loading date), which may occur before the container actually leaves the plant. For U.S. sales made from Samsung's inventory at warehouses in the United States, Samsung reported the date of shipment from the warehouse as the date of sale.⁷⁵ The Department has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.⁷⁶ Therefore, consistent with this practice, the Department preliminarily determines to use the reported container loading or warehouse shipment date as the date of sale for Samsung's U.S. sales.

Fair Value Comparisons

For LG's and Samsung's U.S. sales, we calculated CEP in accordance with section 772(b) of the Act because the subject merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates individual dumping margins by comparing weighted-average NVs to weighted-average EPs or CEPs (*i.e.*, the average-to-average (A-A) method) unless the Department determines that another method is appropriate in a particular situation. In LTFV investigations, the Department examines whether to compare weighted-average NVs to the prices of individual sales (*i.e.*, average-to-transaction (A-T)

(CIT 2001) (*Allied Tube & Conduit Corp.*) ("As elaborated by Department practice, a date other than invoice date 'better reflects' the date when 'material terms of sale' are established if the party shows that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date.").

⁷⁴ See LG QRA at pages 28-29, and LG's April 18, 2016, Section C response (LG QRC) at pages 12-13.

⁷⁵ See Samsung QRA at page A-9, and Samsung's April 15, 2016, Sections C and D response (Samsung QRCD) at page C-18.

⁷⁶ See, *e.g.*, *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum, at Comment 11; and *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 18074, 18079-80 (April 10, 2006), unchanged in *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 72 FR 4486 (January 31, 2007), and accompanying Issues and Decision Memorandum at Comments 4 and 5.

method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In recent investigations, the Department applied a “differential pricing” analysis to determine whether application of A-T comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁷⁷ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the A-A method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, state for LG⁷⁸ and zip code for Samsung) 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 period of investigation based upon the reported date of sale.

For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is considered using the product control number⁷⁹ and all characteristics of the sales, other than purchaser, region, and time period, that the Department uses in making comparisons between U.S. price and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the

⁷⁷ See, e.g., *Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

⁷⁸ See Memorandum to the File entitled “Preliminary Determination Margin Calculation for Nanjing LG-Panda-Appliances Co., Ltd. (LG),” dated concurrently with this memorandum (LG Preliminary Determination Calculation Memorandum).

⁷⁹ As discussed above under “Product Characteristics,” we are relying on model-specific SKU numbers to define product control numbers in this investigation.

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

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

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

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

Results of the Differential Pricing Analysis

For LG, based on the results of the differential pricing analysis, the Department preliminarily finds that 27.50 percent of the value of U.S. sales pass the Cohen's *d* test,⁸⁰ and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, the Department preliminarily determines to apply the A-to-A method for all U.S. sales to calculate the weighted-average dumping margin for LG.

For Samsung, based on the results of the differential pricing analysis, the Department preliminarily finds that 44.90 percent of the value of U.S. sales pass the Cohen's *d* test,⁸¹ and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, the Department preliminarily determines to apply the A-to-A method for all U.S. sales to calculate the weighted-average dumping margin for Samsung.

U.S. Price

A. LG

We based CEP on the packed prices to unaffiliated purchasers in the United States. We increased the starting price by the amount of billing adjustments, where appropriate. We made deductions for discounts and rebates, as appropriate.

We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, marine insurance (including U.S. inland insurance), U.S. customs duties (including processing fees and harbor maintenance fees), U.S. brokerage and handling, U.S. warehousing, and U.S. inland freight. As foreign inland freight and foreign brokerage and handling expenses were incurred in the PRC or provided by an NME service provider, we valued these expenses using the SV methodology described in the "Factor Valuation Methodology" section of this memorandum, below. For certain U.S. sales, LG reported an amount for freight revenue. In accordance with our practice,⁸² we capped the freight revenue by the amount of the freight expense.

Additionally, the information on the record demonstrates that the value-added tax (VAT) levy and VAT rebate are the same (*i.e.*, the net result is zero). Accordingly, we preliminarily

⁸⁰ See LG Preliminary Determination Calculation Memorandum.

⁸¹ See Memorandum to the File entitled "Preliminary Determination Margin Calculation for Suzhou Samsung Electronics Co., Ltd. and Suzhou Samsung Electronics Co., Ltd. – Export (collectively Samsung)," dated concurrently with this memorandum (Samsung Preliminary Determination Calculation Memorandum).

⁸² See, *e.g.*, *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 2.

determine that there is no un-refunded (herein “irrecoverable”) VAT and the Department has not made a deduction for irrecoverable VAT from the reported U.S. price (*see* below).

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses, bank charges, flooring fees, advertising expenses, and warranty expenses), offset by restocking fees collected by LG, where applicable, and indirect selling expenses (including inventory carrying costs). Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with Department practice,⁸³ we calculated the CEP profit rate based on information contained in the financial statements for producers of the subject merchandise in the surrogate country selected in this investigation (*see* “Surrogate Country” and “Surrogate Value Methodology” sections for further discussion).

B. Samsung

We based CEP on the packed prices to unaffiliated purchasers in the United States. We increased the starting price by the amount of billing adjustments reported by Samsung. We made deductions for discounts and rebates, as appropriate.

We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight, foreign loading, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. customs duties (including processing fees and harbor maintenance fees), U.S. warehousing, U.S. inland insurance, and U.S. inland freight. As foreign inland freight and foreign brokerage and handling expenses were incurred in the PRC or provided by an NME service provider, we valued these expenses using the SV methodology described in the “Factor Valuation Methodology” section of this memorandum, below.

Additionally, the information on the record demonstrated that the VAT levy and VAT rebate are the same (*i.e.*, the net result is zero). Accordingly, we preliminarily determine that there is no irrecoverable VAT and the Department has not made a deduction for irrecoverable VAT from the reported U.S. price (*see* below).

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses, advertising expenses, and warranty expenses), and indirect selling expenses (including inventory carrying costs). Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with Department practice, as noted above, we calculated the CEP profit rate based on information contained in the financial statements for producers of the subject merchandise in the surrogate country selected in this investigation (*see* “Surrogate Country” and “Surrogate Value Methodology” sections for further discussion).

⁸³ *See* Import Administration Policy Bulletin 97/1: Calculation of Profit for Constructed Export Price Transactions (September 4, 1997).

VAT

In 2012, the Department announced a change of methodology with respect to the calculation of EP and CEP to include an adjustment of any irrecoverable VAT in certain NME countries in accordance with section 772(c)(2)(B) of the Act.⁸⁴ The Department explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.⁸⁵ Where the irrecoverable VAT is a fixed percentage of EP or CEP, the Department explained that the final step in arriving at a tax-neutral dumping comparison is to reduce the EP or CEP downward by this same percentage.⁸⁶

The Department's methodology, as explained above and applied in this investigation, incorporates two basic steps: (1) determine the irrecoverable VAT on subject merchandise, and (2) reduce U.S. price by the amount determined in step one. Information placed on the record of this investigation by LG and Samsung indicates that according to the PRC VAT schedule, the standard VAT levy is 17 percent and the rebate rate for the merchandise under consideration is also 17 percent.⁸⁷ Consistent with the Department's standard methodology, for purposes of this preliminary determination we based the calculation of irrecoverable VAT on the difference between those standard rates, applied to a free-on-board EP.⁸⁸ Thus, because the VAT levy and VAT rebate rate on exports are the same (and the net result is zero), the Department did not adjust either LG or Samsung's U.S. sales for irrecoverable VAT.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using the FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.⁸⁹ Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), the Department calculated NV based on FOPs. Under section 773(c)(3) of the Act, FOPs include, but are not

⁸⁴ See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012).

⁸⁵ *Id.*; see also *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014), and accompanying Issues and Decision Memorandum at Comment 5.A.

⁸⁶ *Id.*

⁸⁷ See LG QRC at pages 48-49, and Samsung QRCD at page C-51.

⁸⁸ See *Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013*, 80 FR 33241 (June 11, 2015), and accompanying Issues and Decision Memorandum at Comment 5.

⁸⁹ 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).

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.⁹⁰

Factor Valuation Methodology

In accordance with section 773(c) of the Act, the Department calculated NV based on FOP data reported by LG and Samsung. To calculate NV, the Department multiplied the reported per-unit FOP consumption rates by publicly available SVs. When selecting SVs, the Department considered, among other factors, the quality, specificity, and contemporaneity of the SV data.⁹¹ As appropriate, the Department adjusted FOP costs by including freight costs to make them delivered values. Specifically, the Department added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory.⁹² A detailed description of the SVs used can be found in the LG Preliminary SV Memorandum and Samsung Preliminary SV Memorandum.⁹³

Direct and Packing Materials

For the preliminary determination, the Department used Thai import data, as published by the Global Trade Atlas (GTA), to calculate SVs for FOPs. In accordance with section 773(c)(1) of the Act, the Department used the best available information for valuing FOPs by selecting, to the extent practicable, SVs which are: (1) broad market averages, (2) product-specific, (3) tax-exclusive, non-export average values, and (4) contemporaneous with, or closest in time to, the POI.⁹⁴

As noted in the "Surrogate Value Comments" section above, the parties made several submissions regarding the appropriate surrogate valuation of the respondents' reported material FOPs. In instances where the parties disagree with respect to the particular Harmonized Tariff System (HTS) subheading under which a particular material input (*e.g.*, washer part/component/subassembly) should be valued, the Department used an HTS subheading selection method based on the best match between the reported physical description (*e.g.*,

⁹⁰ See section 773(c)(3)(A)-(D) of the Act.

⁹¹ See, *e.g.*, *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying Issues and Decision Memorandum at Comment 9.

⁹² See *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).

⁹³ See Memorandum to the File entitled "Factor Valuation Memorandum for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Large Residential Washers from the People's Republic of China for Nanjing LG-Panda-Appliances Co., Ltd. (LG)," dated concurrently with this memorandum (LG Preliminary SV Memorandum); and Memorandum entitled "Factor Valuation Memorandum for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Large Residential Washers from the People's Republic of China for Suzhou Samsung Electronics Co., Ltd. and Suzhou Samsung Electronics Co., Ltd. – Export (collectively Samsung), dated concurrently with this memorandum (Samsung Preliminary SV Memorandum).

⁹⁴ 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).

material composition, shape, and form) and/or function (*e.g.*, general purpose) of the input and the HTS subheading description.⁹⁵

LG and Samsung both argue that the Department should use the acquisition costs (purchase prices) of inputs purchased by their affiliates in Thailand⁹⁶ which produce comparable washers, rather than the GTA import data for Thailand to value certain inputs for which they argue there is no Thai GTA import value sufficiently specific to the input, or as a benchmark in choosing the appropriate Thai GTA import value. The respondents maintain that their respective Thai affiliate's purchase price data are more accurate than the GTA data, and, while the data are not publicly available, they can be verified by the Department. In addition, Samsung argues that the Department should value the input factors that its unaffiliated vendors used to produce certain inputs purchased by Samsung during the POI,⁹⁷ rather than its factors of the purchased input. According to Samsung, valuing the factors used to produce the input is more accurate than relying on data from a "basket" HTS subheading to value it. The petitioner opposes the approaches suggested by the respondents.⁹⁸

We have not relied on either LG or Samsung's reported acquisition costs of their Thai affiliates, for input valuation purposes in the preliminary determination, as this information does not satisfy the Department's long-standing practice for selecting publicly-available SVs, as described above. In accordance with Department practice, we preliminarily find that the Thai GTA import data are (1) the most reliable publicly-available data on the record of this case; (2) representative of the broad market average prices for the particular inputs at issue (whether customized or not); (3) tax-exclusive, non-export average values, (4) contemporaneous with, or closest in time to, the POI and (5) the HTS subheadings under consideration are generally not overly broad for purposes of valuing the inputs. Although we recognize that there are numerous specific and significant inputs at issue in this case, we find that the information on the record enables the Department to value those inputs using the Thai GTA import data. Moreover, we find that the Thai GTA import data are reliable for purposes of valuing those inputs.

Furthermore, we have not relied on Samsung's unaffiliated vendors' FOP data. We note that the Department has used unaffiliated vendor FOPs only in exceptional instances where it had no reliable surrogate value on the record for a significant input consumed in the production of the subject merchandise.⁹⁹ As discussed above, in this investigation, we have reliable Thai GTA import values on the record for all of the inputs at issue.

⁹⁵ See LG Preliminary SV Memorandum and Samsung Preliminary SV Memorandum for further discussion.

⁹⁶ LG and Samsung submitted their respective Thai affiliates' POI purchase price data (*i.e.*, quantity and value) for some of the inputs which they use to make the subject merchandise. See LG SV Submission at Exhibits 5 and 7; and Samsung May 16 SQRD at Exhibits SD2-4, SD2-5, SD2-8, and SD2-9. LG and Samsung each reported the Thai purchase price data as proprietary information.

⁹⁷ Samsung submitted this unsolicited information in the Samsung QRCD.

⁹⁸ These arguments are summarized by the parties in their respective pre-preliminary determination comments submitted on July 1, 2016 (Samsung) and July 5, 2016 (LG and petitioner).

⁹⁹ See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China*, 68 FR 10685 (March 6, 2003), and accompanying Issues and Decision Memorandum at Comment 6.

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.¹⁰⁰ Where the Department finds ME purchases to be of significant quantities (*i.e.*, 85 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,¹⁰¹ the Department uses the actual purchase prices to value the inputs. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 85 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the ME purchase price with an appropriate SV, according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption. When a firm has made ME input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 85 percent threshold.¹⁰² Both LG and Samsung provided evidence that each had ME purchases of certain inputs during the POI.¹⁰³ The Department used LG and Samsung's reported ME purchase data for those inputs, where appropriate, in the preliminary determination.¹⁰⁴ The Department also added freight expenses to each respondent's reported ME prices for those inputs, where appropriate.¹⁰⁵

The record shows that for the remaining inputs, Thai import data obtained through GTA, are broad market averages, product-specific, tax-exclusive, and contemporaneous with the POI.¹⁰⁶

Pursuant to section 773(c)(5) of the Act and the Department's long-standing practice, the Department is disregarding SVs if it has a reason to believe or suspect the source data may comprise subsidized prices.¹⁰⁷ In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.¹⁰⁸ Based on the existence of the subsidy programs that were generally available to all

¹⁰⁰ See, e.g., *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

¹⁰¹ See *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013) (*Antidumping Methodologies: Market Economy Inputs*).

¹⁰² *Id.*

¹⁰³ See LG's June 20, 2016, Section D Supplemental Response at Exhibit D-05R, and Samsung's June 23, 2016, Section D Supplemental Response at Exhibit SD2-31.

¹⁰⁴ See LG Preliminary Determination Calculation Memorandum and Samsung Preliminary Determination Calculation Memorandum.

¹⁰⁵ See LG Preliminary Determination Calculation Memorandum and Samsung Preliminary Determination Calculation Memorandum.

¹⁰⁶ See LG Preliminary SV Memorandum and Samsung Preliminary SV Memorandum.

¹⁰⁷ See section 505 of the Trade Preferences Extension Act of 2015, Pub. Law 114-27 (June 29, 2015) (amending section 773(c)(5) of the Act to permit Department to disregard price or cost values without further investigation if it has determined that certain subsidies existed with respect to those values); see also *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46795 (August 6, 2015).

¹⁰⁸ See, e.g., *Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination; 2011-2012*, 78 FR 42492 (July 16, 2013), and accompanying Issues and Decision Memorandum at 7-19; see also *Certain Lined Paper Products From Indonesia: Final Results of the*

exporters and producers in these countries at the time of the POI, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Therefore, the Department has not used prices from those countries in calculating the Thai import-based SVs.

Additionally, the Department disregarded data from NME countries when calculating Thai import-based per-unit SVs. The Department also excluded from the calculation of Thai import-based per-unit SVs imports labeled as originating from an “unidentified” country because the Department could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.¹⁰⁹

Energy

We valued electricity using June 2012 data from the Provincial Electricity Authority, as compiled by the Board of Investment of Thailand. We inflated this rate using wholesale price index data from the World Bank’s *International Financial Statistics* so the rate is contemporaneous with the POI.¹¹⁰

Movement Services

As appropriate, we added freight costs to SVs. Specifically, we added surrogate inland freight costs to import values used as SVs. We calculated freight SVs using the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest port to the factory that produced the subject merchandise, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit’s decision in *Sigma Corp.*¹¹¹

We valued truck freight expenses using price data from the World Bank publication *Doing Business 2016: Thailand (Doing Business 2016)*, and a calculation methodology based on a container weighing 15,000 kilograms and a distance from Bangkok to Laem Chabang port of 129 kilometers (both of which were noted in the *Doing Business 2016* study). We did not inflate this price because it is contemporaneous with the POI.¹¹²

Expedited Sunset Review of the Countervailing Duty Order, 76 FR 73592 (November 29, 2011), and accompanying Issues and Decision Memorandum at 1; *see also Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 46770 (August 11, 2014), and accompanying Issues and Decision Memorandum at 4; *see also Certain Frozen Warmwater Shrimp From Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013), and accompanying Issues and Decision Memorandum at IV.

¹⁰⁹ *See 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).

¹¹⁰ *See* LG Preliminary SV Memorandum at Attachment 5, and Samsung Preliminary SV Memorandum at Attachment 5.

¹¹¹ *See Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997) (*Sigma Corp.*).

¹¹² *See* LG Preliminary SV Memorandum at Attachment 7, and Samsung Preliminary SV Memorandum at Attachment 7.

We valued brokerage and handling expenses using price data from *Doing Business 2016*, and a calculation methodology based on a container weighing 15,000 kilograms. We did not inflate this rate because it is contemporaneous with the POI.¹¹³

Labor

In *Labor Methodologies*,¹¹⁴ the Department determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country. Additionally, we determined that the best data source for industry-specific labor rate is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics. However, this does not mean that other sources for labor costs may not be considered.¹¹⁵ Rather, we continue to follow our practice of selecting the best available information for valuing FOPs. We valued labor using Thailand's National Statistics Office (NSO) data.¹¹⁶ The ILO cites these data as the source of its Thai labor data. We used NSO data for general manufacturing wages for quarters 2 and 3 of 2015, consistent with the POI. As these data are contemporaneous with the POI, we did not need to adjust them for inflation.¹¹⁷

Financial Ratios

According to 19 CFR 351.408(c)(4), the Department is directed to value overhead, selling, general and administrative (SG&A) expenses, and profit using non-proprietary information gathered from producers of merchandise that is identical or comparable to the merchandise under consideration in the surrogate country. For this reason, the Department did not rely on the financial data provided by LG's Thai-based affiliate, LG Electronics (Thailand) Company Limited, in our preliminary determination for purposes of deriving the surrogate financial ratios because its financial data are business proprietary in nature and therefore not on the public record.

The Department's preference is to derive surrogate overhead expenses, SG&A expenses, and profit using financial statements covering a period that is contemporaneous with the POI, that show a profit, from companies with a production experience similar to the respondents' production experience, and that are not distorted or otherwise unreliable, such as financial statements that indicate the company received subsidies.¹¹⁸

¹¹³ See LG Preliminary SV Memorandum at Attachment 6, and Samsung Preliminary SV Memorandum at Attachment 6.

¹¹⁴ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

¹¹⁵ See *Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 65616 (November 5, 2014), and Issues and Decision Memorandum at 11.

¹¹⁶ See Letter from the petitioner, "Large Residential Washers from the People's Republic of China: Petitioner's Initial Surrogate Value Submission," dated April 29, 2016, at Exhibit 5.

¹¹⁷ See LG Preliminary SV Memorandum at Attachment 4, and Samsung Preliminary SV Memorandum at Attachment 4.

¹¹⁸ See *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 Issues and Decision Memorandum at Comment 2; *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

The record contains the audited public financial statements of Haier Electric (Thailand) Public Co., Ltd. (HET), Fisher and Paykel Appliances (Thailand) Co., Ltd. (F&P), Shin Sung Delta Tech (Thailand) Co., Ltd. (Shin Sung), and Thai Samsung Electronics Company Ltd. (TSE).¹¹⁹ The HET, F&P, and Shin Sung financial statements cover the fiscal year ending December 2014, while the TSE financial statement covers the fiscal year ending December 2015. Of these four financial statements, only the TSE financial statement covers a period that is contemporaneous with the POI, and shows a profit. Record evidence indicates that TSE produces merchandise that is identical or comparable to the merchandise under consideration in Thailand. Therefore, we valued factory overhead, SG&A and profit using TSE's financial information.¹²⁰

Currency Conversion

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

VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information used to calculate the rate for LG and Samsung and upon which we will rely in making our final determination.

INTERNATIONAL TRADE COMMISSION NOTIFICATION

In accordance with section 733(f) of the Act, we will notify the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of LRWs, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of our final determination.

accompanying Issues and Decision Memorandum at Comment 1.

¹¹⁹ Samsung initially reported the TSE financial statement as a business proprietary document in the Samsung QRA at Exhibit A-15-F, but resubmitted it for the public record in the Samsung May 16 SQRD at Exhibit SD2-6.

¹²⁰ See LG Preliminary SV Memorandum at Attachment 9, and Samsung Preliminary SV Memorandum at Attachment 9.


CONCLUSION

We recommend applying the above methodology for this preliminary determination.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance



(Date)