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Investigation
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August 16, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Antidumping Duty Investigation of Certain Biaxial Integral
Geogrid Products from the People's Republic of China

I. SUMMARY

The Department of Commerce (“Department”) preliminarily determines that certain biaxial integral geogrid products (“geogrids”) 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 estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On January 13, 2016, the Department received an antidumping duty (“AD”) petition covering imports of geogrids from the PRC, which was filed in proper form by Tensar Corporation (“Petitioner”).¹ The Department initiated this investigation on February 16, 2016.²

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in non-market economy (“NME”) less than fair value (“LTFV”) investigations.³ The process requires exporters to submit a separate

¹ See “Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Biaxial Integral Geogrid Products from the People’s Republic of China,” dated January 13, 2016 (“Petition”).

² See *Certain Biaxial Integral Geogrid Products From the People’s Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 81 FR 7755 (February 16, 2016) (“*Initiation Notice*”).

³ See *Initiation Notice*, 81 FR at 7758.



rate application (“SRA”)⁴ and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities. In the *Initiation Notice*, we stated that SRAs would be due 30 days after publication of the notice, which fell on March 17, 2016.⁵ The Department notes that it did not receive any SRAs by that time. Concurrently, the Department selected BOSTD Geosynthetics Qingdao Ltd. (“BOSTD”) and Taian Modern Plastic Co., Ltd. (“Taian Modern”) as mandatory respondents and issued the non-market economy antidumping questionnaire to the mandatory respondents.⁶ Both BOSTD and Taian Modern submitted timely and complete Section A responses.⁷

Additionally, in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the appropriate physical characteristics of geogrids to be reported in response to the Department’s AD questionnaire.⁸ On February 29, 2016, BOSTD and Petitioner submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes.⁹ Then, on March 10, 2016, BOSTD and Petitioners filed rebuttal comments regarding the physical characteristics of the merchandise under consideration.¹⁰ On March 23, 2016, the Department issued the product characteristics to be used in the investigation.¹¹

On March 4, 2016, the U.S. International Trade Commission (“ITC”) preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with material injured by reason of imports of geogrids from the PRC.¹²

On June 13, 2016, and pursuant to section 733(c)(1)(B) of the Act and 19 CFR 351.205(f)(1), the Department published in the *Federal Register* a postponement of the preliminary determination by 50 days until no later than August 16, 2016.¹³

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

⁴ 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>.

⁵ See *Initiation Notice*, 80 FR at 7758.

⁶ See Memorandum to Christian Marsh, “Antidumping Duty Investigation of Certain Biaxial Integral Geogrid Products from the People’s Republic of China: Selection of Mandatory Respondents,” (March 4, 2016) (“Selection of Mandatory Respondents”); the Department’s issuance of the Non-Market Economy Questionnaire to BOSTD and Taian Modern, (March 9, 2016).

⁷ See BOSTD’s Section A Response, (April 7, 2016); Taian Modern’s Section A Response, (April 7, 2016).

⁸ *Id.*

⁹ See BOSTD’s Product Characteristics and Scope Comments; Letter from Petitioner, “Certain Biaxial Integral Geogrid Products from the People’s Republic of China: Comments on Physical Characteristics,” (February 29, 2016).

¹⁰ See Letter from BOSTD, “Certain Biaxial Integral Geogrid Products from the People’s Republic of China: Rebuttal Comments on Physical Characteristics,” (March 10, 2016); Petitioner’s Rebuttal Physical Characteristic and Scope Comments.

¹¹ See Letter to All Interested Parties from Paul Walker, “Product Characteristics for Use in Sections C and D Questionnaire Responses” (March 23, 2016).

¹² See *Certain Biaxial Geogrid Integral Products From China*, 81 FR 11591 (March 4, 2016).

¹³ See *Certain Biaxial Geogrid Integral Products from the People’s Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 81 FR 38131 (June 13, 2016).

III. PERIOD OF INVESTIGATION

The period of investigation (“POI”) is July 1, 2015, through December 31, 2015. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition, which was January 2016.¹⁴

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

On July 11, 2016, pursuant to 19 CFR 351.210(b)(2)(ii), Taian Modern requested that the Department postpone its final determination and extend the application of the provisional measures prescribed under section 773(d) of the Act and 19 CFR.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 exporter accounts for a significant proportion of the exports of the subject merchandise, and 3) no compelling reasons for denial exist, we are granting Taian Modern’s request and are postponing the final determination until no later than 120 days after the publication of the preliminary determination notice in the *Federal Register*. In this regard, Taian Modern submitted a request to extend the provisional measures,¹⁵ and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

V. SCOPE COMMENTS

In accordance with the *Preamble* to the Department’s regulations, in our *Initiation Notice* we set aside a period of time for parties to raise issues regarding product coverage, and stated that parties must submit comments by February 29, 2016.¹⁶ On February 29, 2016, one of the mandatory respondents, BOSTD, submitted comments on the scope of this investigation.¹⁷ On March 10, 2016, Petitioner submitted rebuttal scope comments in response to BOSTD.¹⁸ On July 1, 2016, BOSTD submitted its response to our request to clarify its comments.¹⁹

Based on our analysis of these comments, we preliminarily agree with Petitioner to amend the language of the scope as follows: “The products covered have integral strands that have been stretched to induce molecular orientation into the material (as evidenced by the strands being

¹⁴ See 19 CFR 351.204(b)(1).

¹⁵ See Letter to the Secretary of Commerce from Taian Modern Plastic Co., Ltd., “Certain Biaxial Integral Geogrid Products from the People’s Republic of China: Request to Extend Final Determination” (July 11, 2016) at 1-2.

¹⁶ See *Initiation Notice*, 81 FR at 7756; *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

¹⁷ See Letter from BOSTD, “Comments on Product Characteristics & Scope in the Antidumping Duty Investigation on Certain Biaxial Integral Geogrid Products from the People’s Republic of China,” (February 29, 2016) (“BOSTD’s Product Characteristics and Scope Comments”).

¹⁸ See Letter from Petitioner, “Certain Biaxial Integral Geogrid Products from the People’s Republic of China,” (March 10, 2016) (“Petitioner’s Rebuttal Physical Characteristic and Scope Comments”).

¹⁹ See Letter from BOSTD, “BOSTD Scope Clarification Response: Antidumping Duty Investigation on Certain Biaxial Integral Geogrids Products from the People’s Republic of China (A-570-036),” (July 1, 2016) (“BOSTD Scope Clarification Response”).

thinner in width toward the middle between the junctions than at the junctions themselves).”^{20, 21} For a full discussion of the scope comments, *see* Scope Memorandum.²²

VI. SELECTION OF RESPONDENTS

Section 777A(c)(1) of the Act directs the Department to calculate an individual weighted-average dumping margin for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted-average dumping margin determinations because of the large number of exporters and producers involved in the investigation.

We stated in the *Initiation Notice* that in the event respondent selection became necessary, we intended to base our selection of mandatory respondents on responses to quantity and value (“Q&V”) questionnaires to be sent to each potential respondent named in the Petition.²³ On February 9, 2016, the Department issued Q&V questionnaires to the 28 companies that Petitioner identified as potential producers/exporters of geogrids from the PRC.²⁴ In addition, the Department posted the Q&V questionnaire on its website and, in the *Initiation Notice*, invited parties that did not receive a Q&V questionnaire from the Department to file a response to the Q&V questionnaire by the applicable deadline. Twenty-four of the Q&V questionnaires were successfully delivered to the addressees; however, two of the Q&V questionnaires were refused by the recipient, and two of the Q&V questionnaires were unable to be delivered due to an incorrect address.²⁵ For further information, please refer to the “PRC-wide Entity” section, below. On February 22, 2016, the Department received timely filed Q&V questionnaire responses from two exporters/producers, BOSTD and Taian Modern. On March 4, 2016, based on the responses to the Q&V questionnaires, we selected BOSTD and Taian Modern for individual examination as mandatory respondents in this AD investigation.²⁶

On March 9, 2016, the Department issued its AD NME questionnaires to BOSTD and Taian Modern.²⁷ Between April and August 2016, BOSTD and Taian Modern submitted timely, properly filed questionnaire responses. Additionally, between April and July 2016, the Department issued multiple supplemental questionnaires to BOSTD and Taian Modern. During

²⁰ *See* section “Scope of Investigation” listed below and adopted herein with this memorandum.

²¹ This language is effective in the event that a final affirmative antidumping duty order is published in the *Federal Register*.

²² *See* Memorandum to James C. Doyle, Director, Office V, from Julia Hancock, Senior International Trade Compliance Analyst, Subject: Preliminary Determination on Antidumping Duty Investigation on Certain Biaxial Integral Geogrid Products from the People’s Republic of China: Scope Comments, (August 16, 2016) (“Scope Memorandum”).

²³ *See Initiation Notice*, 81 FR at 7758.

²⁴ *See* Petition at Exhibit I-37; *see also* Letter to Interested Parties “Antidumping Duty Investigation Certain Biaxial Integral Geogrid Products from the People's Republic of China: Quantity and Value Questionnaire,” (February 9, 2016), and Memorandum to The File, “Antidumping Duty Investigation of Certain Biaxial Integral Geogrid Products from the People's Republic of China: Quantity and Value Questionnaire Delivery Confirmation,” (February 24, 2016) (“Q&V Delivery Confirmation Memo”).

²⁵ *See* Q&V Delivery Confirmation Memo at 1 and Attachments I-III.

²⁶ *See* Selection of Mandatory Respondents.

²⁷ *See* Letters from Paul Walker to BOSTD and Taian Modern, both dated March 9, 2016 (“Initial Questionnaire”).

the same time frame, Petitioner submitted comments regarding BOSTD's and Taian Modern's respective questionnaire responses.

VII. PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART

On May 2, 2016, Petitioner filed a timely allegation, pursuant to section 773(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.²⁸ On May 5, 2016, the Department requested shipment data from BOSTD and Taian Modern concerning the critical circumstances allegation.²⁹ BOSTD and Taian Modern submitted shipment data to the Department between May 13, 2016 and July 20, 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 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 know that the exporter was selling the subject merchandise at less than fair value and that there was likely to be material injury by reason of such sales; and (B) there 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 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 and 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 that 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 point 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.

²⁸ See Letter from Petitioner, "Amendment to Petition for the Imposition of Antidumping and Countervailing Duties: Biaxial Integral Geogrid Products from the People's Republic of China" (May 2, 2016) ("CC Allegation").

²⁹ See Letter from the Department, to BOSTD and TMP, "Antidumping Duty Investigation of Certain Biaxial Integral Geogrid Products from the People's Republic of China: Request for Monthly Quantity and Value Shipment Data from Taian Modern and BOSTD," dated May 5, 2016.

Critical Circumstances Allegation

In its allegation, Petitioner contends that the margins calculated in the Petition range from 289.23 to 372.81 percent,³⁰ which clearly exceed the 25 margin percent threshold that the Department uses to impute knowledge of dumping.³¹ Accordingly based on these margins and the Department's practice, Petitioner maintains that there is information on the record of this investigation to impute knowledge to importers that geogrids from the PRC were being sold in the United States at LTFV.³² 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.³³ Additionally, Petitioner argues that when there has been no preliminary finding of present injury by the ITC, the Department considers the extent of the increase in the volume of imports of merchandise under consideration in determining whether a reasonable basis exists to impute knowledge that material was likely.³⁴ In those instances, the Department considers margins in excess of 25 percent sufficient to impute such knowledge.³⁵ In its CC Allegation, Petitioner calculates an increase from the base period to the comparison period that significantly exceeds the 25-percent level considered sufficient to demonstrate importer knowledge of injury by reasoning of dumping. As part of its allegation, Petitioner submitted import data for the base period October through December 2015 and the comparison period January through March 2016, as well as bill-of-lading information for those time periods.³⁶

Respondents' Comments

We received comments from one mandatory respondent, Taian Modern, as to how to analyze the shipment data it reported for purposes of our preliminary determination.³⁷ In general, Taian Modern argued that the Department should take into account seasonal trends in making its preliminary determination as to whether imports have been massive over a relatively short period. In particular, Taian Modern emphasizes that customers in the geogrids industry require shipments early in the year so that they have a sufficient supply of geogrids at the beginning of construction season.³⁸ To address this concern, Taian Modern also submitted shipment data for September 2014 through May 2015.³⁹

³⁰ See CC Allegation at 4 citing Second Amendment to Volume II of the Petitioner (January 28, 2016) at Exhibit Second Supp. II-19.

³¹ See, e.g., *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 (January 14, 2009), and accompanying Issues and Decision Memorandum at Comment 4. See CC Allegation at 4 citing Second Amendment to Volume II of the Petitioner (January 28, 2016) at Exhibit Second Supp. II-19.

³² *Id.*, at 4.

³³ See CC Allegation at 5.

³⁴ See *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 61964, 61967 (November 20, 1997).

³⁵ *Id.*

³⁶ See CC Allegation at 2-3 and Exhibit Supp. II-21 and Exhibit Supp. III-152.

³⁷ See Letter from Taian Modern, "Certain Biaxial Integral Geogrid Products from the People's Republic of China: Monthly Shipment Information," (June 20, 2016) ("Taian Modern Seasonality Allegation").

³⁸ *Id.*, at 2.

³⁹ *Id.*, at Exhibit 2.

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 Petitioner's critical circumstances allegation; (2) import statistics by the ITC; and (3) shipment information submitted to the Department by the respondents selected for individual examination.⁴⁰ 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 Petitioner's CC 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.

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 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 import of subject merchandise.⁴¹ There have been no previous orders on geogrids in the United States, and the Department is not aware of the existence of any active AD orders on geogrids from the PRC in other countries. As a result, the Department does not find that there is a history of injurious dumping of geogrids 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 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.

⁴⁰ 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).

⁴¹ 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).

The Department normally considers margins of 25 percent or more for export price (“EP”) sales and 15 percent or more for constructed export sales sufficient to impute importer knowledge of sales at LTFV.⁴² In this investigation, BOSTD and TMP reported only EP sales. BOSTD’s and TMP’s preliminary margins are *de minimis* and 38.92 percent, respectively. Further, we are assigning a rate of 66.74 percent for the PRC-Wide entity. Because the preliminary margin for BOSTD does not exceed the threshold sufficient to impute knowledge of dumping, we preliminarily find, with respect to BOSTD, that there is not a reasonable basis to believe or suspect that importers knew or should have known that BOSTD was selling merchandise under consideration at LTFV.⁴³ Accordingly, for BOSTD, because the statutory criteria of section 733(e)(1)(A) of the Act has not been satisfied, we did not examine whether imports from BOSTD were massive over a relatively short period, pursuant to section 733(e)(1)(B) of the Act.⁴⁴

However, for Taian Modern and the PRC-wide entity, because the preliminary margins exceed the threshold sufficient to impute knowledge of dumping, we preliminarily find that there is a reasonable basis to believe or suspect that importers knew, or should have known, that Taian Modern and the PRC-wide entity, 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 preliminary injury determination of the ITC.⁴⁵ 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.⁴⁶ Therefore, because the ITC preliminarily found a reasonable indication that an industry in the United States is materially injured by imports from the PRC of geogrids,⁴⁷ the Department determines that importers knew or should have known that there was likely to be material injury by reason of sales of geogrids at LTFV for Taian Modern and the PRC-wide entity. As mentioned above, because BOSTD received a *de minimis* margin that does not meet

⁴² 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*”).

⁴³ See, e.g., *Steel Wire Rod Prelim*, 67 FR 6224, 6225, unchanged in *Steel Wire Rod Final*, 67 FR 55790; *Magnesium Metal Prelim*, 70 FR 5606, 5607, unchanged *Magnesium Metal Final*, 70 FR 9037.

⁴⁴ *Id.*

⁴⁵ 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).

⁴⁶ See, e.g., *Steel Wire Rod Prelim*, 67 FR at 6225, unchanged in *Steel Wire Rod Final*; and *Magnesium Metal Prelim*, 70 FR at 5607, unchanged in *Magnesium Metal Final*.

⁴⁷ See *Hydrofluorocarbon Blends and Components From China; Determination*, 81 FR 2903 (January 19, 2016).

the threshold to impute knowledge, the ITC's finding only applies to Taian Modern and the PRC-wide entity.⁴⁸

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 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 proceeding begins (*i.e.*, the date the Petition is filed) and ending at least three months later (*i.e.*, the comparison period).⁴⁹ 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 period of no less than three months.⁵⁰ Based on these practices, we chose to examine the base period July 2015 through December 2015, and the corresponding comparison period January 2016 through June 2016 in order to determine whether imports of subject merchandise were massive. These base and comparison periods satisfy the Department's practice that the comparison period is at least three months.

We found that imports based on Taian Modern's reported shipments of merchandise under consideration during the comparison periods increased by more than 15 percent over their

⁴⁸ See *Certain Oil Country Tubular Goods From India: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 79 FR 10493 (February 25, 2014) and accompanying Preliminary Decision Memorandum at Critical Circumstances section (“*OCTG from India Preliminary Determination*”); *Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods From India*, 79 FR 41981 (July 18, 2014) and accompanying Issues and Decision Memorandum at Critical Circumstances section (“*OCTG from India Final Determination*”).

⁴⁹ See *OCTG from India Preliminary Determination* at Critical Circumstances section; *OCTG from India Final Determination* at Critical Circumstances section.

⁵⁰ 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, 47118-19 (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.

respective imports in the base periods.⁵¹ Therefore, we preliminarily find there to be massive imports for Taian Modern, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i). Additionally, for the PRC-wide entity, we are making an adverse inference that the PRC-wide entity dumped “massive imports” over a “relatively short period” and, therefore, that critical circumstances exist for the PRC-wide entity.⁵²

Regarding Taian Modern’s claim that the geogrids industry is seasonal, we disagree. We note that Taian Modern did not provide any suggestion as to which months should be analyzed to support their claim that seasonality exists in the geogrids industry because “{i}t is standard in {the geogrid} industry for customers to require shipments early in the year so that they have sufficient supply when construction season begins.”⁵³ Moreover, we note that U.S. import data for previous years for the same three-month base and comparison periods, as described above, are not on the record for the Department to determine whether seasonality exists with respect to critical circumstances for the geogrids industry. Therefore, we find it unnecessary to analyze whether imports by Taian Modern would have been massive over a longer period because beyond Taian Modern’s assertion there is no other record evidence to support Taian Modern’s claim, only its assertion.

Therefore, based on the above analysis, we are preliminarily making an affirmative finding of critical circumstances for Taian Modern and the PRC-wide entity. However, as explained above, we find that the statutory criteria necessary for determining affirmative critical circumstances has not been met for BOSTD and, therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of geogrids from the PRC for BOSTD.⁵⁴

VIII. SCOPE OF THE INVESTIGATION

The products covered by the scope are certain biaxial integral geogrid products. Biaxial integral geogrid products are a polymer grid or mesh material (whether or not finished, slit, cut-to-length, attached to woven or non-woven fabric or sheet material, or packaged) in which four-sided openings in the form of squares, rectangles, rhomboids, diamonds, or other four-sided figures predominate. The products covered have integral strands that have been stretched to induce molecular orientation into the material (as evidenced by the strands being thinner in width toward the middle between the junctions than at the junctions themselves) constituting the sides of the openings and integral junctions where the strands intersect. The scope includes products in which four-sided figures predominate whether or not they also contain additional strands

⁵¹ See Memorandum to the File from Susan Pulongbarit, “Antidumping Duty Investigation of Certain Biaxial Integral Geogrid Products from the People’s Republic of China, (August 16, 2016) (“Preliminary CC Memo”).

⁵² See *Certain Corrosion-Resistant Steel Products From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35316 (June 2, 2016), and accompanying Issues and Decision Memorandum at Section III (Final Determination of Critical Circumstances, In Part).

⁵³ See Taian Modern Seasonality Allegation at 2.

⁵⁴ See *Certain Uncoated Paper From Portugal: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 81 FR 3105 (January 20, 2016), and accompanying Issues and Decision Memorandum at Section VII (Negative Finding of Critical Circumstances).

intersecting the four-sided figures and whether or not the inside corners of the four-sided figures are rounded off or not sharp angles. As used herein, the term “integral” refers to strands and junctions that are homogenous with each other. The products covered have a tensile strength of greater than 5 kilonewtons per meter (“kN/m”) according to American Society for Testing and Materials (“ASTM”) Standard Test Method D6637/D6637M in any direction and average overall flexural stiffness of more than 100,000 milligram-centimeter according to the ASTM D7748/D7748M Standard Test Method for Flexural Rigidity of Geogrids, Geotextiles and Related Products, or other equivalent test method standards.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise further processed in a third country, including by trimming, slitting, coating, cutting, punching holes, stretching, attaching to woven or non-woven fabric or sheet material, or any other finishing, packaging, or other further processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the biaxial integral geogrid.

The products subject to the scope are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under the following subheading: 3926.90.9995. Subject merchandise may also enter under subheadings 3920.20.0050 and 3925.90.0000. The HTSUS subheadings set forth above are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

IX. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy Country

The Department considers the PRC to be an NME country.⁵⁵ 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.

B. Surrogate Country and Surrogate Value Comments

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

⁵⁵ 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).

of comparable merchandise.”⁵⁶ As a general rule, the Department selects a surrogate country that is at the same level of economic development as 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 surrogate value (“SV”) data, or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.⁵⁷ To determine which countries are at the same level of economic development, the Department generally relies on per capita gross national income (“GNI”) data from the World Bank’s World Development Report.⁵⁸ Further, the Department normally values all FOPs in a single surrogate country.⁵⁹

On March 18, 2016, the Department identified Bulgaria, Ecuador, Romania, South Africa, Thailand and Ukraine as countries that are at the same level of economic development as the PRC based on per capita 2014 GNI data.⁶⁰ On March 18, 2016, the Department issued a letter to interested parties soliciting comments on the list of potential surrogate countries and the selection of the primary surrogate country, as well as providing deadlines for submitting SV information for consideration in the preliminary determination.⁶¹

On May 9, 2016, BOSTD, Petitioner, and Taian Modern submitted timely comments on the proposed list of surrogate countries and SV data.⁶² On May 19, 2016, Petitioner and Taian Modern submitted timely rebuttal surrogate country and SV comments.⁶³ Additionally, on July 18, 2016, BOSTD, Petitioner, and Taian Modern submitted additional SV data.⁶⁴ The Department rejected Taian Modern’s additional SV comments for containing new factual

⁵⁶ 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>.

⁵⁷ See Letter to All Interested Parties “Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information,” (March 18, 2016) (“Surrogate Country Comment Letter”).

⁵⁸ *Id.*

⁵⁹ See 19 CFR 351.408(c)(2).

⁶⁰ See Surrogate Country Comment Letter, at Attachment 1.

⁶¹ *Id.*

⁶² See Letter from BOSTD, “Certain Biaxial Integral Geogrid Products from China: Surrogate Country Comments and Surrogate Value Data,” (May 9, 2016) (“BOSTD’s SV Comments”); Letter from Petitioner, “Certain Biaxial Integral Geogrid Products from China: Surrogate Country Comments and Surrogate Value Data,” (May 9, 2016) (“Petitioner’s SV Comments”); and Letter from Taian Modern “Certain Biaxial Integral Geogrid Products from China: Surrogate Country Comments and Surrogate Value Data,” (May 9, 2016) (“Taian Modern’s SV Comments”).

⁶³ See Letter from Petitioner, “Certain Biaxial Integral Geogrid Products from China: Rebuttal Surrogate Country and Surrogate Value Comments,” (May 19, 2016) (“Petitioner’s Rebuttal SV Comments”); and Letter from Taian Modern, “Certain Biaxial Integral Geogrid Products from China: Rebuttal Surrogate Country and Surrogate Value Comments,” (May 19, 2016) (“Taian Modern’s Rebuttal SV Comments”).

⁶⁴ See Letter from BOSTD, “Certain Biaxial Integral Geogrid Products from China: Final Surrogate Value Comments,” (July 18, 2016) (“BOSTD’s Final SV Comments”); Letter from Petitioner, “Certain Biaxial Integral Geogrid Products from China: Final Surrogate Value Comments,” (July 18, 2016) (“Petitioner’s Final SV Comments”).

information,⁶⁵ and Taian Modern properly refiled its submission without the new factual information on July 26, 2016.⁶⁶ On July 28, 2016, Petitioner, filed rebuttal SV comments.⁶⁷

Both BOSTD and Taian Modern recommended Thailand as the primary surrogate country and submitted data to value FOPs from Thailand.⁶⁸ In their respective comments, BOSTD and Taian Modern argue that Thailand is the best country to select as the primary surrogate country because list of countries at the same level of economic development as the PRC , a net exporter of comparable merchandise and is thus a significant producer, and has the best available data.⁶⁹

Petitioner recommended that South Africa as the primary surrogate country and submitted data to value FOPs from South Africa.⁷⁰ In its comments, Petitioner argues that South Africa is the best country to select as the primary surrogate country because it is on the list of countries at the same level of economic development as the PRC, it is a significant producer of comparable merchandise, and has the best available data.⁷¹

1. *Economic Comparability*

For this investigation, as noted above, the Department determines that Bulgaria, Colombia, Ecuador, Indonesia, South Africa, and Thailand, are countries at the same level of economic development as the PRC, based on per capita gross national economic income.^{72, 73}

2. *Significant Producer of Comparable Merchandise*

Section 773(c)(4)(B) of the Act requires the Department 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. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."⁷⁴ Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in

⁶⁵ See Letter from Paul Walker, Program Manager, to Taian Modern, Re: Antidumping Duty Investigation of Certain Biaxial Integral Geogrid Products ("Geogrids") from the People's Republic of China ("PRC"): Rejection of Taian Modern Plastic Co., Ltd. ("Taian Modern")'s July 18, 2016, Submission and Request to Resubmit, (July 25, 2016).

⁶⁶ See Letter from Taian Modern, "Certain Biaxial Integral Geogrid Products from China: Final Surrogate Value Comments," (July 26, 2016) ("Taian Modern's Final SV Comments").

⁶⁷ See Letter from Petitioner, "Certain Biaxial Integral Geogrid Products from China: Second Rebuttal Surrogate Value Comments," (July 28, 2016) ("Petitioner's Second Rebuttal SV Comments").

⁶⁸ See BOSTD's SV Comments at 1-7; Taian Modern's SV Comments at 1-4; BOSTD's Final SV Comments; and Taian Modern's Final SV Comments.

⁶⁹ *Id.* For further discussion, please see the Preliminary SV Memorandum.

⁷⁰ See Petitioner's SV Comments at 1-7.

⁷¹ *Id.*

⁷² See Surrogate Country Comment Memo at Attachment 1.

⁷³ For further discussion, please see the Preliminary SV Memorandum.

⁷⁴ See *Policy Bulletin* at 2.

selecting a surrogate country.⁷⁵ Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.⁷⁶ “In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise.”⁷⁷ In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.⁷⁸

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.⁷⁹ Moreover, while the legislative history provides that the term “significant producer” includes any country that is a significant “net exporter,” it does not preclude reliance on additional or alternative metrics.⁸⁰ The *Policy Bulletin* provides that the “extent to which a country is a *significant* producer should not be judged against the NME country’s production level” or those countries on the surrogate country list, but rather “a judgment should be made consistent with the characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics).”⁸¹

Following our practice, the Department considered whether all of the potential surrogate countries have significant exports of comparable merchandise, as defined by the HTS subheadings listed in the scope of the investigation.⁸² We obtained export data using the Global Trade Atlas (“GTA”) for HTS 3926.90, 3920.20, and 3925.90. The countries reported the following total export volumes for the POI: (1) Bulgaria (26,766,000 kilograms); 2) Ecuador (9,263,154 kilograms); (3) Mexico (193,884,701 kilograms); 4) Romania (16,867,000 kilograms); 5) South Africa (18,908,765 kilograms); and 6) Thailand (82,035,530 kilograms).⁸³ After reviewing this export data, the Department preliminarily determines that none of the total

⁷⁵ The *Policy Bulletin* also states that “if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.” *Id.*, at note 6.

⁷⁶ See *Sebacic Acid from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) (“{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.”).

⁷⁷ See *Policy Bulletin* at 2.

⁷⁸ *Id.*, at 3.

⁷⁹ See section 773(c) of the Act; see also *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

⁸⁰ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

⁸¹ See *Policy Bulletin* (emphasis in original).

⁸² See *Uncoated Paper from the PRC Final Determination* at Comment 1.

⁸³ See Preliminary SV Memorandum; See *Aluminum Extrusions From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 78784 (December 31, 2014), and accompanying Issues and Decision Memorandum at Comment 1A (“*Aluminum Extrusions from the PRC Final Results*”).

export volumes from Bulgaria, Ecuador, Mexico, Romania, South Africa, and Thailand are insignificant.⁸⁴ While one of the suggested countries, South Africa, may not export the same amount of comparable merchandise as the other suggested country, Thailand, we do not look into levels of comparative significance, and we find no basis that would suggest that a country which exports over 18 million kilograms of comparable merchandise in the POI is not a significant producer.⁸⁵ Accordingly, the Department finds that Bulgaria, Ecuador, Mexico, Romania, South Africa, and Thailand are significant producers of comparable merchandise (*i.e.*, exported merchandise under the six-digit basket HTS codes included in the scope), and therefore, satisfy the second criterion of section 773(c)(4) of the Act.^{86, 87}

3. *Data Availability*

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, the Department selects the primary surrogate country based on data availability and reliability.⁸⁸ When evaluating SV data, the Department considers several factors, including whether the SVs are publicly available, contemporaneous with the POI, representative of a broad-market average, tax and duty-exclusive, and specific to the inputs being valued.⁸⁹ There is no hierarchy among these criteria.⁹⁰ The Department's preference is to satisfy the breadth of the aforementioned selection criteria.⁹¹ Moreover, it is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.⁹² The Department must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the "best" available SV for each input.⁹³

No party placed FOP information on the record for Bulgaria, Ecuador, Mexico, and Romania. Moreover, no party argued that these countries be selected as the surrogate country. As a result, we have not considered these countries for surrogate country selection purposes.

⁸⁴ *See id.*

⁸⁵ *Id.*

⁸⁶ *See* Policy Bulletin 04.1.

⁸⁷ For further discussion, please *see* the Preliminary SV Memorandum.

⁸⁸ *See* Policy Bulletin 04.1.

⁸⁹ *Id.*

⁹⁰ *See, e.g., Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

⁹¹ *See, e.g., Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940, 51943 (August 19, 2011), and accompanying Issues and Decision Memorandum at Comment 2.

⁹² *See Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) ("*Sixth Mushrooms AR*"), and accompanying Issues and Decision Memorandum at Comment 1; *see also Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

⁹³ *See, e.g., Sixth Mushrooms AR* at Comment 1.

Interested parties have placed SV data on the record for South Africa and Thailand. We examined the available data, with respect to South Africa and Thailand, to determine which contained the best available information for valuing the FOPs.⁹⁴ The greatest contributor to NV is that of the primary inputs, recycled or reclaimed polypropylene chip (“recycled chip”), virgin polypropylene chip (“virgin chip”), and black masterbatch.⁹⁵

For South Africa, Petitioner suggested contemporaneous Global Trade Atlas (“GTA”) import price data for South Africa to value recycled chip, virgin chip, and black masterbatch.⁹⁶ Unlike the Thai GTA import price data that BOSTD and Taian Modern suggested for these FOPs that are basket categories, the Department finds that the South African data is specific for each FOP and, thus, the best data available on the record for valuing these FOPs.⁹⁷ The record also contains complete SV data from South Africa for all other auxiliary material inputs, packing materials, energy, labor, and by-products. Additionally, the South African SV data for the by-products, polyethylene and polypropylene scrap, is specific to each type of by-product unlike the suggested Thai SV data that is a basket category.⁹⁸ Moreover, the Department notes that the record contains complete SV data from South Africa to value movement expenses, which are broad-market average data and contemporaneous to the POI. Finally, here is a contemporaneous financial statement (FY 2015) from a South African producer, Bowlmer Metcalf Limited (“Bowlmer”), of comparable merchandise (*i.e.*, produces rigid plastic packaging from extruded polypropylene).⁹⁹ The Department notes that no party submitted arguments against the use of Bowlmer for calculating the surrogate financial ratios, and the Department finds that this financial statement is complete and contemporaneous to the POI and that there is no evidence of subsidies within this statement.¹⁰⁰

Accordingly, the Department preliminarily determines, pursuant to section 773(c)(4) of the Act, that it is appropriate to use South Africa as the primary surrogate country because South Africa is (1) at the same level of economic development as the PRC and (2) a significant producer of merchandise comparable to the merchandise under consideration such that can be determined from the information available. Additionally, the record contains South African SVs for the three primary inputs in the production of merchandise under consideration, recycled or reclaimed chip, virgin chip, and black masterbatch. Moreover, the record contains usable SVs from South Africa for all other FOPs, as explained above. Therefore, the Department has calculated NV primarily using South African SV data, when available, and appropriate to value respondents’ FOPs.¹⁰¹

⁹⁴ See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2012–2013*, 80 FR 2394 (January 16, 2015) and accompanying Issues, and Decision Memorandum at Comment 1C (“*Fish Fillets from Vietnam Final Results 2012-2013*”).

⁹⁵ See BOSTD’s Supplemental Section D Response, (July 15, 2016) at 3-7; Taian Modern’s Supplemental Section D Response, (July 8, 2016) at 2-9.

⁹⁶ See Petitioner’s SV Comments at Exhibit A-1; Taian Modern’s Rebuttal SV Comments at 2-3.

⁹⁷ For further discussion, please see Preliminary SV Memorandum.

⁹⁸ See Petitioner’s SV Comments at Exhibit A-1; Taian Modern’s SV Comments at Exhibit 2; and BOSTD’s SV Comments at Exhibit 1.

⁹⁹ See Petitioner’s SV Comments at 3-4 and Exhibit F-1.

¹⁰⁰ See Taian Modern’s Rebuttal SV Comments.

¹⁰¹ See Preliminary SV Memorandum.

C. 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.¹⁰² 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.¹⁰³ The Department analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*¹⁰⁴ and further developed in *Silicon Carbide*.¹⁰⁵ 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.

As explained above, only BOSTD and Taian Modern applied for separate rate status when each submitted Section A responses to the NME investigation questionnaire, and thus there are no other separate rate respondents subject to this investigation. The Department preliminary determines that only BOSTD and Taian Modern are eligible to receive a separate rate, as explained below.

Both BOSTD and Taian Modern provided evidence that they are either Chinese joint-stock limited companies, or are wholly Chinese-owned companies. The Department analyzed whether each of these companies have demonstrated an absence of *de jure* and *de facto* government control over their respective export activities.

a. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.¹⁰⁶

The evidence provided by BOSTD and Taian Modern 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 exporters' business and

¹⁰² 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).

¹⁰³ 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*").

¹⁰⁴ *Id.*

¹⁰⁵ 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*").

¹⁰⁶ See *Sparklers*, 56 FR at 20589.

export licenses; (2) the existence of applicable legislative enactments decentralizing control of the companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.¹⁰⁷

b. 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 export prices (“EP”) 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.¹⁰⁸ 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 BOSTD and Taian Modern supports a preliminary finding of an absence of *de facto* government control based on record statements and supporting documentation showing that the companies: (1) set their own EPs 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 disposition of profits or financing of losses.¹⁰⁹

Therefore, the evidence placed on the record of this investigation by BOSTD and Taian Modern 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 BOSTD and Taian Modern.¹¹⁰

¹⁰⁷ See, e.g., BOSTD’s Section A Response, at 2-11 and Exhibits A-1 through A-11; Taian Modern’s Section A Response, at 2-13 and Exhibits 1-11.

¹⁰⁸ 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).

¹⁰⁹ See, e.g., BOSTD’s Section A Response, at 2-11 and Exhibits A-1 through A-11; Taian Modern’s Section A Response, at 2-13 and Exhibits 1-11.

¹¹⁰ See “Preliminary Determination” section below.

D. Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation.¹¹¹ This practice is described in Policy Bulletin 05.1.

E. Affiliation

We have considered the evidence on the record and preliminarily determine we do not find that affiliation exists with respect to BOSTD and any other companies during the POI. Following the preliminary determination, we intend to gather additional information from BOSTD regarding this topic.¹¹²

F. The PRC-wide Entity

The record indicates there are PRC exporters and/or producers of the merchandise under consideration during the POI that did not respond to the Department's requests for information. Specifically, the Department did not receive timely responses to its Q&V questionnaire or separate rate applications from numerous PRC exporters and/or producers of merchandise under consideration that were named in the Petition and to whom the Department issued Q&V questionnaires.¹¹³ Because non-responsive PRC companies have not demonstrated that they are eligible for separate rate status, the Department considers them to be part of the PRC-wide entity.¹¹⁴ Furthermore, as explained below, we preliminarily determine to calculate the PRC-wide rate on the basis of adverse facts available ("AFA").

G. Application of Facts Available and Adverse Inferences

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

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the

¹¹¹ See *Initiation Notice*, 81 FR at 7759.

¹¹² See BOSTD Preliminary Analysis Memo for further discussion.

¹¹³ See Q&V Delivery Confirmation Memo. Of the 28 packages sent, 24 were delivered, 2 were refused by recipients, and 2 were unable to be delivered because of insufficient or incorrect addresses.

¹¹⁴ See *Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 75966 (December 7, 2015) and accompanying Issues and Decision Memorandum at Comment 1.

deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (“TPEA”), which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.¹¹⁵ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.¹¹⁶

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.¹¹⁷ Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.¹¹⁸

Under section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.¹¹⁹

1. *Use of Facts Available*

The Department preliminarily finds that the PRC-wide entity did not respond to the Department’s requests for information, failed to provide necessary information, withheld information requested by the Department, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. Moreover, because the PRC-wide entity failed to provide any information, section 782(d) of the Act is inapplicable. Accordingly, the Department preliminarily determines that use of facts available is

¹¹⁵ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (“*Applicability Notice*”).

¹¹⁶ *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

¹¹⁷ See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

¹¹⁸ See also 19 CFR 351.308(c).

¹¹⁹ See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

warranted in determining the rate of the PRC-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.¹²⁰

Additionally, on July 8, 2016, BOSTD reported that it attempted to obtain FOP data for certain PRC producers.¹²¹ However, in its attempts to do so, BOSTD's suppliers did not provide the information requested. In accordance with section 776(a)(1) of the Act, the Department is applying facts available to determine the NV for the sales corresponding to the FOP data that BOSTD's producer did not report. As FA, the Department is preliminarily applying the FOP usage rates reported by BOSTD for that product to the sales of merchandise produced by the BOSTD's producer.

2. *Application of Facts Available with an Adverse Inference*

Section 776(b) of the Act provides that the Department, in selecting from among the facts otherwise available, may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The Department finds that the PRC-wide entity's failure to provide the requested information constitutes circumstances under which it is reasonable to conclude that the PRC-wide entity did not cooperate to the best of its ability.¹²² The PRC-wide entity neither filed documents indicating that it was having difficulty providing the information, nor did it request to submit the information in an alternate form. Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available with respect to the PRC-wide entity in accordance with section 776(b) of the Act and 19 CFR 351.308(a).¹²³

3. *Selection and Corroboration of the AFA rate*

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the Petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹²⁴ The SAA clarifies that "corroborate" means that

¹²⁰ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

¹²¹ See Letter from BOSTD, to the Department, regarding "BOSTD Response to Supplemental Section D Questionnaire: Antidumping Duty Investigation on Certain Biaxial Integral Geogrids Products from the People's Republic of China," dated July 8, 2016.

¹²² See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (*i.e.*, information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.")).

¹²³ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

¹²⁴ See the Statement of Administrative Action, H.R. Rep. No. 103-316, Vol. 1 (1994) ("SAA") at 870.

the Department will satisfy itself that the secondary information to be used has probative value,¹²⁵ although under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.¹²⁶ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used, although under the TPEA, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.¹²⁷ Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.¹²⁸

In order to determine the probative value of the dumping margin alleged in the petition for assigning an AFA rate, we examined the information on the record. When we compared the petition dumping margins of 289.23 to 372.81 percent, to the transaction-specific dumping margins calculated for the mandatory respondents (*i.e.*, BOSTD and Taian Modern), we found that the petition dumping margins are significantly higher than each of the transaction-specific dumping margins calculated for either BOSTD and Taian Modern. Therefore, we were unable to corroborate the dumping margins contained in the petition.¹²⁹

Therefore, for the preliminary determination, we assigned to the PRC-wide entity a dumping margin of 66.74 percent, which is the highest model-specific dumping margin for Taian Modern.¹³⁰ It is unnecessary to corroborate this rate because it was obtained in the course of this investigation and, therefore, is not secondary information.¹³¹ The transactions underlying this

¹²⁵ See SAA at 870; *see also* 19 CFR 351.308(d).

¹²⁶ See section 776(c)(2) of the Act; TPEA, section 502(2).

¹²⁷ See, *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

¹²⁸ See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

¹²⁹ For details regarding this finding, *see* Memorandum to the File from Julia Hancock, Senior International Trade Compliance Analyst, “Antidumping Duty Investigation of Certain Biaxial Integral Geogrids from the People’s Republic of China: Corroboration of Margin Based on Adverse Facts Available,” dated concurrently with this memorandum (“Corroboration Memorandum”).

¹³⁰ See, *e.g.*, *Silica Bricks and Shapes From the People’s Republic of China: Preliminary Determination of Antidumping Duty Investigation and Postponement of Final Determination*, 78 FR 37203 (June 20, 2013), and accompanying Preliminary Decision Memorandum at Comment 3.

¹³¹ See section 776(c) of the Act; *see also* SAA at 870 (providing examples of secondary information); *Certain Corrosion-Resistant Steel Products From the People’s Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 75 (January 4, 2016) and accompanying Preliminary Decision Memorandum at Section VI.E (Application of Facts Available and Adverse Inferences) (unchanged in *Certain Corrosion-Resistant Steel Products From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35316 (June 2, 2016)).

dumping margin are neither unusual in terms of transaction quantities nor otherwise atypical.¹³² For further information, *see* the Corroboration Memorandum.

H. Date of Sale

19 CFR 351.401(i) 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.¹³³ The Court of International Trade ("CIT") has stated that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that a different date better reflects the date on which the exporter or producer establishes the material terms of sale."¹³⁴ The date of sale is generally the date on which the parties establish the material terms of the sale,¹³⁵ which normally includes the price, quantity, delivery terms and payment terms.¹³⁶ In addition, the Department has a long-standing practice of finding that, where the shipment date precedes the invoice data, the shipment date better reflects the data on which the material terms of sale are established.¹³⁷

For its U.S. sales, BOSTD reported the date of shipment as its date of sale because the material terms of sale (*i.e.*, quantity and price) are established on the date of shipment.¹³⁸ BOSTD stated while the purchase order does identify a quantity, only on the date of shipment is the final quantity determined.¹³⁹ As a result, following the date of shipment, BOSTD then issues an invoice to the U.S. customer confirming the final quantity and price established at the time of shipment.¹⁴⁰ Accordingly, the Department used the date of shipment as BOSTD's date of sale for its U.S. sales since the date of shipment precedes the invoice date and the material terms of sale are set by the date of shipment.¹⁴¹

For Taian Modern, it reported the invoice date to the first unaffiliated customer as the date of sale for its U.S. sales and demonstrated that the substantive terms of sale occurred on the invoice date.¹⁴² In light of 19 CFR 351.401(i), the Department preliminarily used the invoice date as the

¹³² *See 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 2.

¹³³ *See* 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) ("*Allied Tube*") (quoting 19 CFR 351.401(i)).

¹³⁴ *See Allied Tube*, 132 F. Supp. 2d at 1090 (brackets and citation omitted).

¹³⁵ *See* 19 CFR 351.401(i).

¹³⁶ *See USEC Inc. v. United States*, 31 CIT 1049, 1055 (CIT 2007).

¹³⁷ *See, e.g., Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 36881 (June 8, 2016), and accompanying Preliminary Decision Memorandum at Section VII.

¹³⁸ *See* BOSTD's Section A Response at 20 and BOSTD's Supplemental Section A Response at 11.

¹³⁹ *See* BOSTD's Supplemental Section A Response at 11.

¹⁴⁰ *Id.*

¹⁴¹ *See Union Steel Mfg. Co. v. United States*, 968 F. Supp. 2d 1297, 1323-5 (CIT 2014).

¹⁴² *See* Taian Modern's Section A Response at 18-9 and Exhibit 1.

date of sale for all of Taian Modern's sales of merchandise under consideration made during the POI.

I. Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether respondents' sales of the subject merchandise from the PRC to the United States were made at less than NV, the Department compared the export price (EP) to the NV as described in the "Export Price" and "Normal Value" sections of this memorandum.

1. *Export Price*

In accordance with section 772(a) of the Act, the Department defined the U.S. price of merchandise under consideration based on EP for all sales reported by BOSTD and Taian Modern. The Department calculated EP based on the prices at which merchandise under consideration was sold to unaffiliated purchasers in the United States.

The Department made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, U.S. inland insurance, and other U.S. transportation expenses. For ME purchases of movement expenses, it is the Department's practice to require a respondent to establish a link between payments to the ME carrier through the ME service provider's PRC agent because this link is necessary to demonstrate that the price paid to the PRC freight-forwarder was set by the ME service provider, rather than by the PRC freight forwarder or some other NME middleman between the PRC freight-forwarder and the ME movement provider.¹⁴³ In the instant case, both BOSTD and Taian Modern incurred various movement expenses from PRC freight-forwarders who in turn paid and contracted with the ultimate ME service providers.¹⁴⁴ Both BOSTD and Taian Modern provided documentation regarding payment from itself to the respective PRC freight-forwarders for these movement expenses.¹⁴⁵ However, neither company provided any payment documentation or contracts from the PRC agents to the ME service providers. Thus, the only prices on the record are those between the PRC entities, not the prices actually paid to the ultimate ME service providers. Accordingly, the Department based movement expenses on SVs where the service was purchased from a PRC company, such as a PRC freight-forwarder, and not the final ME carrier.¹⁴⁶

¹⁴³ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012).

¹⁴⁴ For further discussion and details, see BOSTD Preliminary Analysis Memo at 2-3 and Taian Modern's Preliminary Analysis Memo at 2-3.

¹⁴⁵ See Letter from BOSTD, "BOSTD Section C Supplemental Response in the Antidumping Duty Investigation on Certain Biaxial Integral Geogrid Products from the People's Republic of China," (July 30, 2016) ("BOSTD Supp C") at 2; Taian Modern's Supplemental Section C Response at 2-10; Taian Modern's Second Supplemental Section C Response at 4-15.

¹⁴⁶ See "Factor Valuation Methodology" section below.

Additionally, while Taian Modern reported that it paid U.S. duties for its U.S. sales, the Department notes that Taian Modern was billed and paid for U.S. duties to the PRC freight-forwarder in RMB. Thus the Department did not deduct this expense from the U.S. price.¹⁴⁷

2. Value-Added Tax (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.¹⁴⁸ 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.¹⁴⁹ 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 U.S. EP or CEP downward by this same percentage.¹⁵⁰

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 BOSTD and Taian Modern indicate that according to the PRC VAT schedule, the standard VAT levy is 17 percent and the rebate rate for the merchandise under consideration is 13 percent.¹⁵¹ Consistent with the Department's standard methodology, for purposes of this preliminary determination, we removed from U.S. price the amount calculated based on the difference between those standard rates (*i.e.*, four percent) applied to the export sales value, consistent with the definition of irrecoverable VAT under PRC tax law and regulation.

BOSTD claims that it is entitled to a lesser offset of non-refundable VAT based on the use of certain bonded warehouses for its imports of raw materials during the POI.¹⁵² Specifically, whereas the Department's standard offset assumes a 17% VAT levy and 13% VAT rebate for all of BOSTD's imported raw materials, BOSTD claims that it is not subject to a VAT levy on purchases of certain inputs that enter a bonded warehouse. BOSTD's response stated that it used both raw materials on which VAT is paid and raw materials on which VAT is not paid in the production of subject merchandise for the United States. While BOSTD claimed use of bonded warehouses may satisfy the requirements of the PRC government to qualify BOSTD for an exemption to paying VAT on a portion of its exports, the Department requires that a respondent

¹⁴⁷ See Taian Modern's Supplemental Section C Response, (June 27, 2016) at 20 and Exhibit SC-18.

¹⁴⁸ 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).

¹⁴⁹ See *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.

¹⁵⁰ *Id.*

¹⁵¹ See BOSTD's Section C Response, (April 28, 2016) at 28-32; Taian Modern's Section C Response, (April 28, 2016) at 43-46.

¹⁵² See BOSTD's Section C Response at 30-33.

substantiate any such claimed adjustment according to the PRC VAT regulations.¹⁵³ 19 CFR 351.401(c) requires that the Department rely on price adjustments that are “reasonably attributable to the subject merchandise.” Although BOSTD has provided certain PRC VAT regulations, it has not fully substantiated its claimed lesser VAT amount against the amount required by PRC regulations. Similar to the relevant respondent in *Copper Pipe*, BOSTD stated that it cannot trace the source of materials used in its daily production to permit a firm breakout of the portion of raw materials that are domestically sourced and that are imported.¹⁵⁴ In addition, in order to determine what portion of the inputs at issue is consumed in the production of subject merchandise exported to the United States, BOSTD needed to provide us with information demonstrating its claim, which it did not provide. We requested that BOSTD demonstrate the portion of these raw materials used to produce the merchandise under consideration, but BOSTD was not able to provide any supporting documentation as to this question.¹⁵⁵ Instead, it was only able to provide a consumption ratio of total imports to total purchases of raw materials during the POI without supporting documentation that such purchases were in fact consumed during the POI or were used in the production of subject merchandise exported to the United States.¹⁵⁶ Thus, the Department cannot conclude that BOSTD’s claimed adjustment to VAT recovery is reasonably attributable to subject merchandise exported to the United States during the POI.¹⁵⁷ Therefore, we preliminarily determine not to use the lesser irrecoverable VAT reported by BOSTD. Instead, we will calculate BOSTD’s VAT based on the difference between those standard rates (*i.e.*, four percent) applied to the export sales value, consistent with the definition of irrecoverable VAT under PRC tax law and regulation.

3. 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.¹⁵⁸ 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 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.¹⁵⁹

¹⁵³ See *Seamless Refined Copper Pipe and Tube From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32087 (June 5, 2015) (“*Copper Pipe*”), and accompanying Issues and Decision Memorandum at Comment 1.

¹⁵⁴ See *id.*; BOSTD’s Section C Response at 30-33.

¹⁵⁵ See BOSTD’s Supplemental Section C Response at 9.

¹⁵⁶ *Id.*

¹⁵⁷ See *Copper Pipe* at Comment 1.

¹⁵⁸ 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).

¹⁵⁹ See section 773(c)(3)(A)-(D) of the Act.

a. Factor Valuation Methodology

In accordance with section 773(c) of the Act, the Department calculated NV based on FOP data reported by BOSTD and Taian Modern. To calculate NV, the Department multiplied the reported per-unit factor-consumption rates by publicly available SVs. When selecting the SVs, the Department considered, among other factors, the quality, specificity, and contemporaneity of the data.¹⁶⁰ As appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. 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.¹⁶¹ A detailed description of SVs used for the respondent can be found in the Preliminary SV Memorandum.¹⁶²

For the preliminary determination, the Department is using South African import data, as published by GTA, and other publicly available sources from South Africa to calculate SVs for respondents FOPs. In accordance with section 773(c)(1) of the Act, the Department applied the best available information for valuing FOPs by selecting, to the extent practicable, SVs which are (1) tax-exclusive, non-export average values, (2) contemporaneous with, or closest in time to, the POI, (3) product-specific, and (4) broad market averages.¹⁶³ The record shows that South Africa import data obtained through GTA, as well as data from other South African sources, are broad market averages, product-specific, tax-exclusive, and generally contemporaneous with the POI.¹⁶⁴ In those instances where the Department could not obtain information contemporaneous with the POI with which to value the FOPs, the Department adjusted the SVs using, where appropriate, South Africa's consumer price index ("CPI"), as published in the International Monetary Fund's ("IMF") International Financial Statistics.¹⁶⁵

The Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be dumped or subsidized.¹⁶⁶ In this regard, the

¹⁶⁰ 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.

¹⁶¹ See *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).

¹⁶² See Memorandum to The File, "Antidumping Duty Investigation of Certain Biaxial Integral Geogrid Products from the People's Republic of China – Surrogate Values for the Preliminary Determination," (August 16, 2016) ("Preliminary SV Memorandum").

¹⁶³ 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).

¹⁶⁴ See Preliminary SV Memorandum.

¹⁶⁵ *Id.*, at 2.

¹⁶⁶ 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).

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.¹⁶⁷ Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POI, 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 South African import-based SVs.

Additionally, the Department disregarded data from NME countries when calculating South African import-based per-unit SVs.¹⁶⁸ The Department also excluded from the calculation of South African import-based per-unit SV 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.¹⁶⁹

Pursuant to 19 CFR 351.408(c)(1), where a factor is produced in one or more ME countries, purchased from one or more ME suppliers and paid for in an ME currency, the Department normally will use the prices paid to the ME suppliers if substantially all (*i.e.*, 85 percent or more) of the total volume of the factor is purchased from the ME suppliers. In those instances where less than substantially all of the total volume of the factor is produced in one or more ME countries and purchased from one or more ME suppliers, the Department will weight-average the actual prices paid for the ME portion and the SV for the NME portion by their respective quantities.¹⁷⁰

Information reported by BOSTD demonstrates that certain inputs were sourced and produced from an ME country and paid for in ME currencies.¹⁷¹ The information reported by BOSTD demonstrates that certain such inputs were not purchased in significant quantities (*i.e.*, 85 percent or more) from ME suppliers. As a consequence, we have weight-averaged the ME price(s) paid for the ME portion with the corresponding South African SV. Additionally, BOSTD also demonstrated that certain other inputs were purchased in significant quantities from ME

¹⁶⁷ 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 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.

¹⁶⁸ 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).

¹⁶⁹ *Id.*

¹⁷⁰ See *Use of Market Economy Input Prices in Nonmarket Economy Proceedings; Final Rule*, 78 FR 46799 (August 2, 2013).

¹⁷¹ See BOSTD Supplemental D Response at 8-9.

suppliers. For those inputs, the Department used BOSTD's actual ME purchase prices to value these inputs. Where appropriate, freight expenses were added to the ME price of the input.

The Department used South Africa import statistics from GTA to value raw materials, by-products, packing materials, and certain energy inputs, except as listed below.

In NME AD proceedings, the Department prefers to value labor solely based on data from the primary surrogate country.¹⁷² In *Labor Methodologies*, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department made a determination to use Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization ("ILO") Yearbook of Labor Statistics as its primary source for industry-specific labor rates which reflects all costs related to labor (*i.e.*, wages, benefits, housing, training, etc.).

It is the Department's preference to value labor using ILO Chapter 6A data under the rebuttable presumption that ILO Chapter 6A data better accounts for all direct and indirect labor costs.¹⁷³ The Department did not, however, preclude all other sources for evaluating labor costs in NME antidumping proceedings.¹⁷⁴ Rather, we continue to follow our practice of selecting the best available information to determine SVs for inputs such as labor.¹⁷⁵ For this preliminary determination, there is no ILO Chapter 6A data on the record from South Africa. As a consequence, the Department preliminarily finds that the best available information for valuing labor is South African ILOSTAT data from 2013, covering the manufacturing industry, because it is specific to the industry being examined, a broad-market average, and is the most contemporaneous information on the record for South Africa.^{176, 177}

We used the electricity rate published by the South African electricity producer, Eskom.¹⁷⁸

As noted above, the Department prefers to value all inputs from the primary surrogate country, here, South Africa. However, there is no SV data from South Africa for steam, as no party placed any steam SV information on the record or an appropriate HS number for the steam input. Thus, to obtain a SV for steam consumption, the Department used a South African HS number for natural gas, as applied in other AD proceedings, because natural gas and steam have the same British Thermal Unit.¹⁷⁹ Using the South African GTA data for the HS number for natural gas,

¹⁷² See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) ("*Labor Methodologies*").

¹⁷³ See *id.*, 76 FR at 36093.

¹⁷⁴ *Id.*

¹⁷⁵ See *Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013), and accompanying Issues and Decision Memorandum at Comment 3.

¹⁷⁶ See Preliminary SV Memorandum.

¹⁷⁷ See *Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 38673 (June 14, 2016) and accompanying Issues and Decision Memorandum at Comment 16.

¹⁷⁸ *Id.*

¹⁷⁹ See, e.g., *Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67703 at 67714 (November 2, 2011), unchanged in *Certain Steel Wheels from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and*

consistent with *Steel Wheels* and *Chlorinated Isos*, we then benchmarked steam at 14.52 percent of the value (natural gas) by volume.¹⁸⁰

We valued truck freight expenses using data from the World Bank's *Doing Business 2016 Economy Profile: South Africa* ("*Doing Business South Africa 2016*") publication and used a calculation methodology based on a 20-foot container weighing 15,000 kilograms and an average distance of 570 kilometers.¹⁸¹ We calculated a per-kilogram, per-kilometer surrogate inland freight rate based on the methodology used by the World Bank.¹⁸²

Additionally, we valued brokerage and handling expenses from *Doing Business South Africa 2016* using a price list of export procedures necessary to export a standardized cargo of goods in South Africa. This is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in South Africa.¹⁸³ The reported prices were contemporaneous with the POI.

We valued ocean freight using data obtained from the Descartes Carrier Rate Retrieval Database (Descartes), accessed through <http://descartes.com>, which publishes international ocean freight rates offered by numerous carriers.¹⁸⁴ These rates are publicly available and cover a wide range of shipping rates, which are reported on a daily basis. We did not inflate or deflate the ocean freight because these data are contemporaneous with the POI.

For marine insurance, we used P.A.F Shipping Insurance online cargo insurance rates.¹⁸⁵ Additionally, because both BOSTD and Taian Modern incurred marine insurance expenses that also included domestic inland insurance expenses, pursuant to our practice in *Uncoated Paper from the PRC*, we valued domestic inland insurance separately.¹⁸⁶ However, because there is no SV on the record for South Africa or any other potential surrogate country that is comparable to the PRC for domestic inland insurance, we are using marine insurance data for South Africa from P.A.F Shipping Insurance online cargo insurance rates as a proxy for domestic inland

Partial Affirmative Determination of Critical Circumstances, 77 FR 17021 (March 23, 2012) ("*Steel Wheels*"); *Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013) ("*Carbon AR5*"), and accompanying Issues and Decision Memorandum at Comment 9; *Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 4386 (January 22, 2013) ("*Chlorinated Isos*"), and accompanying Issues and Decision Memorandum at Comment 11.

¹⁸⁰ See *Certain Steel Wheels from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67703 (November 2, 2011) (unchanged in *Certain Steel Wheels From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012)).

¹⁸¹ See Preliminary SV Memorandum.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ See *Certain Uncoated Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 81 FR 3112 (January 20, 2016), and accompanying Issues and Decision Memorandum at Comment 16 ("*Uncoated Paper from the PRC*").

insurance.¹⁸⁷ While we note that Petitioner provided domestic inland insurance data from India dating from 2005, we are not using this data because India is not on the list of countries found to be economically comparable to the PRC.¹⁸⁸ We did not inflate or deflate the rates for marine insurance, U.S. inland insurance, and domestic inland insurance because the rates are contemporaneous with the POI.

We valued U.S. truck freight expenses using data from the World Bank's *Doing Business 2016 Economy Profile: United States* ("*Doing Business United States 2016*") publication and used a calculation methodology based on a 20-foot container weighing 15,000 kilograms with an average distance from Laredo, TX and New York, NY or El Paso, TX and Los Angeles, CA.¹⁸⁹ We calculated a per-kilogram, per-kilometer surrogate inland freight rate based on the methodology used by the World Bank.¹⁹⁰ We did not inflate or deflate the SVs for U.S. truck freight expenses and U.S. other transportation expenses because the rates are contemporaneous with the POI.

The Department's criteria for choosing surrogate financial statements from which we derive the financial ratios are the availability of contemporaneous financial statements, comparability to the respondent's experience, and publicly available information.¹⁹¹ Moreover, for valuing factory overhead, selling, general, and administrative ("SG&A") expenses and profit, the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.¹⁹² In addition, the CIT has held that in the selection of surrogate producers, the Department may consider how closely the surrogate producers approximate the NME producer's experience.¹⁹³ To value factory overhead, SG&A expenses, and profit, the Department used the 2015 financial statements from Bowler Metcalf, which is a South African producer of comparable merchandise¹⁹⁴

For by-products, Taian Modern reported that it produced polyethylene ("PET") scrap and polypropylene ("PP") scrap that both were re-introduced into the production of geogrids.¹⁹⁵ With respect to BOSTD, PP scrap was re-introduced into the production of geogrids.¹⁹⁶ Taian

¹⁸⁷ *Id.*

¹⁸⁸ See Petitioner's July 18, 2016, Surrogate Value Data, (July 18, 2016) at Exhibit A-1.

¹⁸⁹ See Preliminary SV Memorandum.

¹⁹⁰ *Id.*

¹⁹¹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 3.

¹⁹² See, e.g., *Diamond Sawblades and Parts Thereof from the People's Republic of China, Final Determination in the Antidumping Duty Investigation*, 71 FR 29303 (May 22, 2006), and accompanying Issues and Decision Memorandum at Comment 2; see also section 773(c)(4) of the Act; 19 CFR 351.408(c)(4).

¹⁹³ See *Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1253-54 (CIT 2002); see also *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005), and accompanying Issues and Decision Memorandum at Comment 1.

¹⁹⁴ For more information on the surrogate financial ratios calculations, see the Prelim SV Memo; Petitioner's SV Comments at Exhibit F(2).

¹⁹⁵ See Taian Modern's Section D Response, at 16-8 and Exhibit SD-8.

¹⁹⁶ See Letter from BOSTD, "BOSTD Response to Supplemental Section D Questionnaire: Antidumping Duty Investigation on Certain Biaxial Integral Geogrids Products from the People's Republic of China," (April 29, 2016) at Exhibit D-5; Letter from BOSTD, "BOSTD Response to Supplemental Section D Questionnaire: Antidumping

Modern explained that the PET scrap is produced from packing straps and PP scrap is produced from reclaimed PP chips.¹⁹⁷ The Department's practice, as reflected in the Department's antidumping questionnaires issued to Taian Modern and BOSTD, is to grant by-product offsets “for merchandise that is either sold or reintroduced into production during the POI/POR, up to the amount of that by-product/co-product actually produced during the POI/POR.”¹⁹⁸ Thus, to be eligible for an offset, a respondent needs to provide and substantiate the quantity of by-products it generated from the production of subject merchandise during the POR, as well as demonstrate that the by-product has commercial value.¹⁹⁹ Both Taian Modern and provided production records demonstrating their reported recovered quantities of these byproducts that the recovered quantities of their by-products were re-introduced into production.

Taian Modern reported that it received certain packing materials provided free-of-charge from Customer X for certain U.S. sales.²⁰⁰ Consistent with our practice, we valued Taian Modern's free-of-charge packing materials using SVs for these FOPs but also adjusted the U.S. price for the sales made to Customer X by adding the same per-unit value(s) as calculated in the NV build-up for the customer-provided packing materials at issue.²⁰¹ This was done to ensure: first, that we followed the statute by including this factor of production in the NV, second, that we properly accounted for the U.S. price's non-inclusion of the customer-provided inputs, and third, that we added the same amount to both the NV and U.S. price.

4. *Determination of the Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, the Department examines whether to compare weighted-average NVs with the EPs (or CEPs of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.²⁰² The Department finds that the differential pricing

Duty Investigation on Certain Biaxial Integral Geogrids Products from the People's Republic of China (A-570-036),” (July 8, 2016) (“BOSTD Supplemental D”) at 3.

¹⁹⁷ *Id.*

¹⁹⁸ See the Department's questionnaire issued to Taian Modern, (March 18, 2016).

¹⁹⁹ See *Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 41808 (July 19, 2010) (Ribbons), and accompanying Issues and Decision Memorandum at Comment 2.

²⁰⁰ Because the identity of Customer X is business proprietary information, please see Taian Modern's Supplemental Section D Response, (July 11, 2016) at 7-8.

²⁰¹ See *Certain Preserved Mushrooms From the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 70 FR 54361 (September 14, 2005), and accompanying Issues and Decision Memorandum at Comment 13.

²⁰² See, e.g., *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 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*

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 average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. For BOSTD and Taian Modern, respectively, purchasers are based on the reported customer codes.²⁰³ Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the 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 defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

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

Than Fair Value, 80 FR 61362 (October 13, 2015).

²⁰³ See BOSTD Section C Response, (April 28, 2016); Taian Modern Section C Response, (April 28, 2016).

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

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

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

a. Results of the Differential Pricing Analysis

For BOSTD, based on the results of the differential pricing analysis, the Department preliminarily finds that 39.4 percent of the value of U.S. sales pass the Cohen’s *d* test,²⁰⁴ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. However, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus,

²⁰⁴ See BOSTD Preliminary Analysis Memorandum.

for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for BOSTD.

For Taian Modern, based on the results of the differential pricing analysis, the Department preliminarily finds that 97.5 percent of the value of U.S. sales pass the Cohen's d test,²⁰⁵ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. However, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Taian Modern.

X. CURRENCY CONVERSION

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

XI. EXPORT SUBSIDY ADJUSTMENT

Section 772(c)(1)(C) of the Act states that U.S. price "shall be increased by the amount of any countervailing duty imposed on the subject merchandise . . . to offset an export subsidy."²⁰⁶ The Department determined in the preliminary results of the companion countervailing duty ("CVD") investigation that BOSTD did benefit from an export subsidy but that Taian Modern did not benefit from an export subsidy.²⁰⁷ However, because BOSTD's margin is *de minimis* and Taian Modern did not benefit from an export subsidy, the Department finds no offset to BOSTD's margin, nor to Taian Modern's margin, is necessary. Additionally, because there are no separate rate respondents, we likewise do not need to make an adjustment since there is no separate rate margin. For the PRC-wide entity, which received an adverse facts available rate based on information contained in the Petition, as an extension of the adverse inference found necessary pursuant to section 776(b) of the Act, the Department has adjusted the PRC-wide entity's AD cash deposit rate by the lowest export subsidy rate determined for any party in the companion CVD proceeding.²⁰⁸ Here, that rate is zero. Moreover, we likewise are not adjusting the cash deposit rate applicable to the PRC-wide entity for export subsidies.

²⁰⁵ See Taian Modern Preliminary Analysis Memorandum.

²⁰⁶ See *Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 38076, 38077 (July 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

²⁰⁷ See *Countervailing Duty Investigation of Certain Biaxial Integral Geogrid Products From the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 41292 (June 24, 2016) and accompanying Preliminary Decision Memorandum ("*Geogrid from the PRC CVD Prelim Determination*").

²⁰⁸ See, e.g., *Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Affirmative Determination of Critical Circumstances; In Part and Postponement of Final Determination*, 80 FR 4250 (January 27, 2015), and accompanying Issues and Decision Memorandum at 35.

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

In applying section 777A(f) of the Act, the Department examines (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether the Department can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.²⁰⁹ For a subsidy meeting these criteria, the statute requires the Department to reduce the antidumping duty by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.²¹⁰

Since the Department has relatively recently started conducting analyses under section 777A(f) of the Act, the Department is continuing to refine its practice in applying this section of the law. The Department examined whether the respondent demonstrated: (1) a subsidies-to-cost link, *e.g.*, subsidy impact on cost of manufacture (“COM”); and (2) a cost-to-price link, *e.g.*, respondent’s prices changed as a result of changes in the COM.²¹¹

Both mandatory respondents, BOSTD and Taian Modern, each submitted double remedy questionnaire responses.²¹² A finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute.

In their respective responses, both BOSTD and Taian Modern reported that they respectively benefitted from the less than adequate remuneration (“LTAR”) program for the provision of polypropylene that impacts their respective COM.²¹³ Additionally, Taian Modern also reported that it benefitted from the LTAR program for electricity that impacts its COM.²¹⁴ The Department notes that both of these programs were found to be countervailable in the *Geogrids from the PRC CVD Prelim Determination*.²¹⁵

²⁰⁹ See section 777A(f)(1)(A)-(C) of the Act.

²¹⁰ See section 777A(f)(1)-(2) of the Act.

²¹¹ See, *e.g.*, *Certain Iron Mechanical Transfer Drive Components From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 36876 (June 8, 2016), and accompanying Preliminary Decision Memorandum at 36; *Certain Corrosion-Resistant Steel Products From the People’s Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 75 (January 4, 2016), and accompanying Preliminary Decision Memorandum at 25-26.

²¹² See the Department’s Double Remedies Questionnaire issued to BOSTD and Taian Modern, (July 27, 2016) at question 9; BOSTD’s Double Remedies Questionnaire Response, (August 5, 2016); and Taian Modern’s Double Remedies Questionnaire Response, (August 5, 2016).

²¹³ See BOSTD’s Double Remedies Questionnaire Response at 4- 6; Taian Modern’s Double Remedies Questionnaire Response at 4-7.

²¹⁴ See Taian Modern’s Double Remedies Questionnaire Response at 4-7.

²¹⁵ See *Geogrid from the PRC CVD Prelim Determination* at 26-8 and 33-5.

As a result of our analyses, the Department preliminarily finds that BOSTD meets the threshold for granting an adjustment, pursuant to section 777(A)(f) of the Act. However, the Department is preliminarily not making an adjustment to the calculation of the cash deposit rate for AD duties for Taian Modern, pursuant to section 777(A)(f) of the Act. In making these adjustments, the Department has not concluded that concurrent application of NME ADs and CVDs necessarily and automatically results in overlapping remedies. Rather a finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute.²¹⁶

The Department examined the preliminary report issued by the ITC,²¹⁷ which indicates that prices of subject merchandise decreased during January 2012 to March 2015.²¹⁸ Based on this information, the Department preliminarily finds that prices of imports of the class or kind of merchandise during the relevant period decreased.

BOSTD

BOSTD demonstrated that the LTAR program for the provision of polypropylene impacted its COM and that the other subsidy programs under investigation (*e.g.*, grant programs and tax programs) did not.²¹⁹ We preliminarily determine that BOSTD's questionnaire response indicates a subsidies-to-cost linkage for the LTAR program regarding the provision of polypropylene.²²⁰ Additionally, BOSTD provided information indicating that the price at which it sells subject merchandise to its customers is impacted by the cost of raw materials and energy.²²¹ Thus, BOSTD's questionnaire response indicates a cost-to-price linkage for the Provision of Polypropylene for LTAR program that impact COM.²²² However, as explained above, because BOSTD's dumping margin for the preliminary determination is *de minimis*, the

²¹⁶ See *Drawn Stainless Steel Sinks From the People's Republic of China: Antidumping Duty Investigation*, 77 FR 60673 (October 4, 2012) and accompanying Preliminary Decision Memorandum at section "Adjustment Under Section 777A(f) of the Act"; *Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination*, 78 FR 78 FR 13019 (February 26, 2013) and accompanying Issues and Decision Memorandum at Comment 1 ("*Sinks from the PRC Final Determination*"); *Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Affirmative Determination of Critical Circumstances; In Part and Postponement of Final Determination*, 80 FR 4250 (January 27, 2015) and accompanying Preliminary Decision Memorandum at section "Adjustment Under Section 777A(f) of the Act" ("*Passenger Vehicle and Light Truck Tires from the PRC Prelim Determination*") (unchanged in *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893 (June 18, 2015) and accompanying Issues and Decision Memorandum ("*Passenger Vehicle and Light Truck Tires from the PRC Final Determination*").

²¹⁷ See *Certain Biaxial Integral Geogrid Products from China*, Investigation Nos. 701-TA-554 and 731-TA-1309 (Preliminary), U.S. International Trade Commission, Publication 4596 (March 2016) at V-5 ("*ITC Prelim Report*").

²¹⁸ *Id.*

²¹⁹ See BOSTD's Double Remedies Questionnaire Response at 4-7 and Exhibits DR-1 to DR-3; BOSTD's Preliminary Analysis Memo at 4-5; *Passenger Vehicle and Light Truck Tires from the PRC Prelim Determination* and accompanying Preliminary Decision Memorandum at section "Adjustment Under Section 777A(f) of the Act" (unchanged in *Passenger Vehicle and Light Truck Tires from the PRC Final Determination*").

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

Department finds that no adjustment to the calculation of the cash deposit rate for AD duties needs to be made for BOSTD's dumping margin.

Taian Modern

Taian Modern did not demonstrate that the LTAR programs for Electricity and the Provision of Polypropylene impacted its COM, and also did not make that demonstration for the other subsidy programs under investigation (e.g., grant programs and tax programs).²²³ Accordingly, we preliminarily determine that Taian Modern's questionnaire responses did not indicate a subsidies-to-cost linkage for certain subsidy programs. Thus, Taian Modern's questionnaire response does not indicate a cost-to-price linkage for the Electricity for LTAR and Provision of Polypropylene for LTAR programs that impact COM.²²⁴ Accordingly, the Department preliminarily finds that there is no basis to make an adjustment for Taian Modern, pursuant to section 777(A)(f) of the Act.

For the PRC-wide entity, which received an AFA rate as discussed above, we would normally adjust the PRC-wide entity's AD cash deposit rate by the lowest estimated domestic subsidy pass-through determined for any party in this investigation. In this case, the lowest and only rate is zero, therefore, no adjustment is necessary

XIII. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.²²⁵ Case briefs may be submitted to Enforcement and Compliance's AD and CVD Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the final verification report is issued in this proceeding. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.²²⁶

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.²²⁷ This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.²²⁸ Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW,

²²³ See Taian Modern's Double Remedies Questionnaire Response at 3-6; Taian Modern's Preliminary Analysis Memo at 4-5; *Passenger Vehicle and Light Truck Tires from the PRC Prelim Determination* and accompanying Preliminary Decision Memorandum at section "Adjustment Under Section 777A(f) of the Act" (unchanged in *Passenger Vehicle and Light Truck Tires from the PRC Final Determination*).

²²⁴ *Id.*

²²⁵ See 19 CFR 351.224(b).

²²⁶ See 19 CFR 351.309.

²²⁷ See 19 CFR 351.309(c)(2) and (d)(2).

²²⁸ See 19 CFR 351.310(c).

Washington, DC 20230, at a date, time, and location to be determined. Parties will be notified of the date, time, and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.²³⁰ Electronically-filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time on the due dates established above.²³¹

XIV. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted in response to the Department's questionnaires.

XV. CONCLUSION

We recommend applying the above methodology for this preliminary determination.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

16 August 2016
(Date)

²³⁰ See 19 CFR 351.303(b)(2)(i).

²³¹ See 19 CFR 351.303(b)(1).