



A-570-909
Administrative Review
POR: 8/1/2018 - 7/31/2019
Public Document
E&C/V: BB

December 14, 2020

MEMORANDUM TO: Joseph A. Laroski Jr.
Deputy Assistant Secretary
for Policy and Negotiations

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

SUBJECT: Decision Memorandum for the Preliminary Results of the
Antidumping Duty Administrative Review: Certain Steel Nails
from the People's Republic of China; 2018-2019

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain steel nails (nails) from the People's Republic of China (China) for the period of review (POR) from August 1, 2018 through July 31, 2019. We initiated this administrative review with respect to 308 companies.¹ We subsequently selected two of these companies as mandatory respondents, Shandong Oriental Cherry Hardware Group Co. Ltd. (Shandong Oriental) and Tianjin Zhonglian Metals Ware Co., Ltd. (Zhonglian).

We preliminarily determine that Zhonglian made sales of subject merchandise at prices below normal value (NV). In addition, we preliminarily determine that nine companies, including Zhonglian, are eligible for a separate rate, 10 companies had no shipments, and 287 companies, including Shandong Oriental, are part of the China-wide entity. Finally, we are rescinding this review with respect to The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker Inc. (collectively, Stanley).

¹ We note that we inadvertently initiated a review of one company twice, once as "Tianjin Jinghai County Hongli Industry & Business Co., Ltd." and again as "Tianjin Jinghai County Hongli Industry and Business Co., Ltd." We are treating these companies as the same entity for purposes of this segment of the proceeding.

II. BACKGROUND

On August 1, 2008, Commerce published the AD order on nails from China.² On August 2, 2019, we published a notice of opportunity to request an administrative review of the *Order*.³ On October 7, 2019, Commerce published the notice of initiation in the *Federal Register* with respect to 309 companies.⁴

In October 2019, Commerce released CBP data under administrative protective order (APO) to all interested parties having an APO and invited comments regarding the CBP data and respondent selection.⁵ Thereafter, Mid Continent Steel & Wire, Inc. (the petitioner) submitted comments on respondent selection in which it requested that Commerce employ its sampling methodology in this administrative review to select respondents.⁶

In October and November 2019, 11 companies requested separate rate status, and 14 companies filed no shipment certifications.⁷ In December 2019, we issued two companies who filed no shipment certifications, Mingguang Ruifeng Hardware Products Co., Ltd. (Mingguang Ruifeng) and Shanxi Pioneer Hardware Industrial Co., Ltd. (Shanxi Pioneer), supplemental questionnaires,⁸ and only Shanxi Pioneer timely responded.⁹ Also in December 2019, the petitioner withdrew its request for an administrative review of Stanley.¹⁰

² See *Notice of Antidumping Duty Order: Certain Steel Nails from the People's Republic of China*, 73 FR 44961 (August 1, 2008) (*Order*).

³ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 37834 (August 2, 2019).

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 53411, 53417-53421 (October 7, 2019) (*Initiation Notice*).

⁵ See Memorandum, "2018-2019 Administrative Review of the Antidumping Duty Order of Certain Steel Nails from the People's Republic of China: CBP Data for Respondent Selection," dated October 17, 2019 (CBP Data).

⁶ See Petitioner's Letter, "Certain Steel Nails from the People's Republic of China: Comments on CBP Data and Request for Sampling," dated October 22, 2019.

⁷ We note that three of these companies are not under review. For further discussion, see "Preliminary Determination of No Shipments" section.

⁸ See Commerce's Letter, "Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China: No Shipment Supplemental Questionnaire," dated December 5, 2019 (No Shipment Supplemental). For further discussion of Mingguang Ruifeng, see also "Preliminary Determination of No Shipments" section.

⁹ See Shanxi Pioneer's Letter, "Steel Nails from the People's Republic of China: No Shipment Supplemental Questionnaire Response," dated December 13, 2019 (Shanxi Pioneer No Shipment Supplemental Response).

¹⁰ See Petitioner's Letter, "Certain Steel Nails from China: Withdrawal of Request for Administrative Reviews," dated December 30, 2019 (Petitioner Withdrawal Letter).

In January 2020, we selected Shandong Oriental and Zhonglian as mandatory respondents,¹¹ and we issued each respondent the standard non-market economy (NME) questionnaire.¹² We received a timely response only from Zonglian.¹³

In March 19, 2020, Commerce invited interested parties to comment on surrogate country selection, provided an opportunity to submit surrogate value (SV) data, and specified the deadlines for these submissions.¹⁴ In March and April 2020, the petitioner and Zhonglian submitted surrogate country comments and rebuttal comments.¹⁵

From April through August 2020, Commerce issued supplemental questionnaires to Zhonglian.¹⁶ Zhonglian timely responded to these supplemental questionnaires from April through September 2020.¹⁷

¹¹ We determined not to apply our sampling methodology because the criteria set forth in the *Sampling Methodology Notice* were not satisfied. See Memorandum, “Antidumping Duty Administrative Review of Certain Steel Nails from the People’s Republic of China, 2018-2019: Respondent Selection,” dated January 22, 2020 (Respondent Selection Memorandum); see also *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65965 (November 4, 2013).

¹² See Commerce’s Letters, “Administrative Review of Certain Steel Nails from The People’s Republic of China: Request for Information,” dated January 22, 2020 (collectively, NME Questionnaire).

¹³ See Zhonglian’s Letter, “Certain Steel Nails from the People’s Republic of China: Section A Response of Tianjin Zhonglian,” dated March 19, 2020 (Zhonglian March 19, 2020 AQR); Zhonglian’s Letter, “Certain Steel Nails from the People’s Republic of China: Section C Response of Tianjin Zhonglian,” dated April 7, 2020; and Zhonglian’s Letter, “Certain Steel Nails from the People’s Republic of China: Section D Response of Tianjin Zhonglian,” dated April 13, 2020.

¹⁴ See Commerce’s Letter, “Antidumping Duty Administrative Review of Certain Steel Nails from the People’s Republic of China; 2018-19: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information,” dated March 19, 2020 (Surrogate Comment Request).

¹⁵ See Petitioner’s Letter, “Certain Steel Nails from China: Comments on the Surrogate Country List,” dated March 26, 2020; Zhonglian’s Letter, “Certain Steel Nails from the People’s Republic of China: Economic Development Comments on the Potential Surrogate Country List,” dated March 26, 2020; Petitioner’s Letter, “Certain Steel Nails from China: Rebuttal Comments on the Surrogate Country List,” dated March 31, 2020; Petitioner’s Letter, “Certain Steel Nails from China: Comments on Surrogate Country Selection,” dated April 2, 2020 (Petitioner SC Comments); Zhonglian’s Letter, “Certain Steel Nails from the People’s Republic of China: Primary Surrogate Country Comments,” dated April 2, 2020 (Zhonglian SC Comments); Petitioner’s Letter, “Certain Steel Nails from China: Rebuttal Comments on Surrogate Country Selection,” dated April 10, 2020 (Petitioner SC Rebuttal Comments); and Zhonglian’s Letter, “Certain Steel Nails from the People’s Republic of China: Rebuttal Comments on Primary Surrogate Country Selection,” dated April 10, 2020.

¹⁶ See Commerce’s Letter, “Antidumping Duty Administrative Review of Certain Steel Nails from the People’s Republic of China: Section A Supplemental Questionnaire,” dated April 2, 2020; Commerce’s Letter, “Antidumping Duty Administrative Review of Certain Steel Nails from the People’s Republic of China: Section C Supplemental Questionnaire,” dated April 10, 2020; Commerce’s Letter, “Antidumping Duty Administrative Review of Certain Steel Nails from the People’s Republic of China: Section C Supplemental Questionnaire,” dated April 16, 2020; Commerce’s Letter, “Antidumping Duty Administrative Review of Certain Steel Nails from the People’s Republic of China: Section D Supplemental Questionnaire,” dated April 21, 2020; and Commerce’s Letter, “Antidumping Duty Administrative Review of Certain Steel Nails from the People’s Republic of China: Section D Supplemental Questionnaire,” dated August 21, 2020.

¹⁷ See Zhonglian’s Letter, “Certain Steel Nails from the People’s Republic of China: Supplemental Section A Response of Tianjin Zhonglian,” dated April 15, 2020; Zhonglian’s Letter, “Certain Steel Nails from the People’s Republic of China: Submission of Tianjin Zhonglian Metals Ware Co., Ltd.’s Supplemental Section C Response,” dated June 22, 2020 (Zhonglian June 22, 2020 SCQR); Zhonglian’s Letter, “Certain Steel Nails from the People’s

In April 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until June 22, 2020,¹⁸ and in June 2020, Commerce extended the deadline to issue the preliminary results by an additional 117 days.¹⁹ In July 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days, extending the deadline for these results until December 15, 2020.²⁰

Between June and December 2020, Commerce received SV comments and rebuttal comments from the petitioner and Zhonglian.²¹

III. SCOPE OF THE ORDER²²

The merchandise covered by the order includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this order are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Finished nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire. Certain steel nails subject to the order are currently classified under the Harmonized Tariff Schedule of the United

Republic of China: Submission of Tianjin Zhonglian Metals Ware Co., Ltd.'s Supplemental Section D Response (Appendix I)," dated June 18, 2020; Zhonglian's Letter, "Certain Steel Nails from the People's Republic of China: Submission of Tianjin Zhonglian Metals Ware Co., Ltd.'s Supplemental Section D Response (Appendix II)," dated June 23, 2020; and Zhonglian's Letter, "Certain Steel Nails from the People's Republic of China: Submission of Tianjin Zhonglian Metals Ware Co., Ltd.'s 2nd Supplemental Section D Response," dated September 8, 2020.

¹⁸ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

¹⁹ See Memorandum, "Certain Steel Nails from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated June 15, 2020.

²⁰ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

²¹ See Petitioner's Letter, "Certain Steel Nails from the People's Republic of China: Surrogate Value Data Submission," dated June 15, 2020 (Petitioner SV Comments); Zhonglian's Letter, "Certain Steel Nails from the People's Republic of China: Initial Surrogate Value Submission," dated June 15, 2020 (Zhonglian SV Comments); Petitioner's Letter, "Certain Steel Nails from the People's Republic of China: Rebuttal Comments on Surrogate Value Data," dated June 22, 2020 (Petitioner SV Rebuttal Comments); Petitioner's Letter, "Certain Steel Nails from the People's Republic of China: Additional Surrogate Value Data Submission," dated September 16, 2020 (Petitioner Revised SV Comments); and Zhonglian's Letter, "Certain Steel Nails from the People's Republic of China: Resubmission of November 13th Submission," dated December 3, 2020 (Zhonglian Revised SV Comments).

²² See *Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review*, 84 FR 49508 (September 20, 2019).

States (HTSUS) subheadings 7317.00.55, 7317.00.65, 7317.00.75, and 7907.00.6000.²³

Excluded from the scope are steel roofing nails of all lengths and diameter, whether collated or in bulk, and whether or not galvanized. Steel roofing nails are specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails, inclusive of the following modifications: 1) Non-collated (*i.e.*, hand-driven or bulk), steel nails as described in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails, as modified by the following description: having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500” to 4”, inclusive; an actual shank diameter of 0.1015” to 0.166”, inclusive; and an actual head diameter of 0.3375” to 0.500”, inclusive; 2) Wire collated steel nails, in coils, as described in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails, as modified by the following description: having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500” to 1.75”, inclusive, an actual shank diameter of 0.116” to 0.166”, inclusive; and an actual head diameter of 0.3375” to 0.500”, inclusive; and 3) Non-collated (*i.e.*, hand-driven or bulk), as described in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails, as modified by the following description: steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75” to 3”, inclusive; an actual shank diameter of 0.131” to 0.152”, inclusive; and an actual head diameter of 0.450” to 0.813”, inclusive.

Also excluded from the scope are the following steel nails: Non-collated (*i.e.*, hand-driven or bulk), two-piece steel nails having plastic or steel washers (caps) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500” to 8”, inclusive; and an actual shank diameter of 0.1015” to 0.166”, inclusive; and an actual washer or cap diameter of 0.900” to 1.10”, inclusive.

Also excluded from the scope of the order are corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side. Also excluded from the scope of the order are fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30. Also excluded from the scope of the order are thumb tacks, which are currently classified under HTSUS 7317.00.10.00.

Also excluded from the scope of the order are certain brads and finish nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive. Also excluded from the scope of the order are fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

²³ Commerce added the Harmonized Tariff Schedule subheading 7907.00.6000, “Other articles of zinc: Other,” to the language of the AD order on nails from China. *See Certain Steel Nails from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 18816, 18816 n.5 (April 5, 2018).

IV. RESCISSION OF REVIEW, IN PART

Section 351.213(d)(1) of Commerce's regulations provides that Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review. Commerce initiated this administrative review on October 7, 2019.²⁴ On December 30, 2020, the petitioner withdrew its request for review of Stanley.²⁵

Because the review request for Stanley has been timely withdrawn, and because no other party has requested a review of Stanley, we are rescinding this review with respect to Stanley.

V. PRELIMINARY DETERMINATION OF NO SHIPMENTS

Between October 23, 2020 and November 8, 2019, the following 14 companies filed no shipment certifications indicating that they did not export subject merchandise to the United States during the POR:

- 1) Certified Products International Inc. (CPI)
- 2) Dezhou Hualude Hardware Products Co., Ltd.
- 3) Hebei Minmetals Co., Ltd.
- 4) Mingguang Ruifeng
- 5) Nanjing Caiqing Hardware Co., Ltd.
- 6) Nanjing Yuechang Hardware Co., Ltd.
- 7) Shandong Qingyun Hongyi Hardware Products Co., Ltd.
- 8) Shanxi Hairu Trade Co., Ltd.
- 9) Shanxi Pioneer
- 10) Shanxi Yuci Broad Wire Products Co., Ltd. (Yuci Broad)
- 11) Tag Fasteners Sdn. Bhd.
- 12) Tianjin Jinghai County Hongli Industry & Business Co., Ltd., a.k.a. Tianjin Jinghai County Hongli Industry and Business Co., Ltd
- 13) Tianjin Jinchi Metal Products Co., Ltd. (Tianjin Jinchi)
- 14) Xi'an Metals & Minerals Import & Export Co., Ltd.

We did not consider the no-shipment claims made by two of these companies, CPI and Yuci Broad, because we received no review request for them; as a result, neither company is under review.²⁶ Further, although Tianjin Jinchi claimed that it had no shipments during the POR, we preliminarily find that this company had reviewable transactions during the POR.²⁷ Therefore, we also did not consider Tianjini Jinchi's no-shipment claim.

In addition, when reviewing the remaining no-shipment certifications, we noted apparent discrepancies between the CBP data and the no-shipment claims made by Mingguang Ruifeng

²⁴ See *Initiation Notice*, 84 FR at 53420.

²⁵ See Petitioner Withdrawal Letter.

²⁶ See *Initiation Notice*, 85 FR at 53417-421.

²⁷ See "Separate Rates" section.

and Shanxi Pioneer.²⁸ Therefore, in December 2019, we issued supplemental questionnaires to these companies requesting that they explain the discrepancies.²⁹ We received responses to these questionnaires in the same month.

However, we rejected Mingguang Ruifeng's supplemental response because it contained an untimely-filed separate rate certification (SRC), despite the fact that the deadline for filing such a certification had passed over a month prior. Although we provided Mingguang Ruifeng the opportunity to refile its submission without the new factual information (NFI),³⁰ Mingguang Ruifeng did not do so. Instead, it requested that Commerce reconsider its decision to reject the SRC,³¹ and it did not explain the discrepancy between its no shipment statement and the CBP Data, *i.e.*, respond to our supplemental questionnaire. Because Mingguang Ruifeng submitted an untimely SRC and did not respond to our request for information, we preliminarily determine that Mingguang Ruifeng is part of the China-wide entity.

With respect to Shanxi Pioneer, in its supplemental questionnaire response, Shanxi Pioneer reiterated that it made no shipments, exports, sales or entries of subject merchandise during the POR, and it stated that, under Commerce's reseller policy, "the exports should not be attributed to Shanxi Pioneer and should be liquidated at the {China-wide} rate."³² We find no evidence that Shanxi Pioneer had knowledge that these shipments were destined for the United States, or that they otherwise constitute sales by Shanxi Pioneer to the United States. Furthermore, no party submitted evidence demonstrating an ownership or affiliation link between Shanxi Pioneer and the company listed in the CBP data. Therefore, based on Shanxi Pioneer's no-shipment certification, and our analysis of its no-shipment supplemental questionnaire response, we preliminarily determine that Shanxi Pioneer had no shipments during the POR.

Finally, with respect to the remaining nine no-shipment claims, we sent inquiries to CBP requesting that CBP inform Commerce if it had any information contrary to those companies' claims; CBP provided no such information.³³ Therefore, we preliminarily determine that Dezhou Hualude Hardware Products Co., Ltd., Hebei Minmetals Co., Ltd., Nanjing Caiqing Hardware Co., Ltd., Nanjing Yuechang Hardware Co., Ltd., Shandong Qingyun Hongyi Hardware Products Co., Ltd., Shanxi Hairu Trade Co., Ltd., Tag Fasteners Sdn. Bhd., Tianjin Jinghai County Hongli Industry & Business Co., Ltd., and Xi'an Metals & Minerals Import & Export Co., Ltd. also had no shipments during the POR.

²⁸ See CBP Data.

²⁹ See No Shipment Supplemental.

³⁰ See Commerce's Letter, "Certain Steel Nails from the People's Republic of China: Rejection of New Factual Information," dated January 17, 2020.

³¹ See Mingguang Ruifeng's Letter, "Certain Steel Nails from the People's Republic of China: Request for Reconsideration of the Submission of No Shipments Supplemental Response," dated January 29, 2020.

³² See Shanxi Pioneer No Shipment Supplemental Response (citing *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (March 6, 2003)).

³³ See Memorandum, "Certain Steel Nails from the People's Republic of China (A-570-909): No Shipment Inquiry with respect to the companies below during the period 08/01/2018 through 07/31/2019," dated January 3, 2020; Memorandum, "Certain Steel Nails from the People's Republic of China (A-570-909): No Shipment Inquiry with respect to the companies below during the period 08/01/2018 through 07/31/2019," dated February 21, 2020; and Memorandum, "Certain Steel Nails from the People's Republic of China (A-570-909): No Shipment Inquiry with respect to the company below during the period 08/01/2018 through 07/31/2019," dated September 25, 2020.

Consistent with our practice, we find that it is appropriate not to rescind this review with respect to these 10 companies; instead, we will complete the review with respect to these companies and issue appropriate instructions to CBP based on the final results of the review.³⁴ Should evidence contrary to these companies' no-shipment claims arise, we will revisit this issue in the final results.

VI. DISCUSSION OF THE METHODOLOGY

A. NME Country Status

Commerce considers China to be an NME country.³⁵ In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the Act), any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. None of the parties to this proceeding have contested such treatment. Therefore, we continue to treat China as an NME country for purposes of these preliminary results.

B. Separate Rates

In proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single antidumping margin.³⁶ In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate-rate status in NME proceedings.³⁷ It is Commerce's policy to assign all exporters of the subject merchandise from the NME country a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its exports.³⁸ To establish whether a company is sufficiently independent to be eligible for a separate, company-specific rate, Commerce analyzes each exporting entity in an NME country under the test established in *Sparklers*³⁹ and further clarified in *Silicon Carbide*.⁴⁰ However, if Commerce determines that a company is wholly foreign-owned, then a separate-rate analysis is not necessary to determine whether it is independent from government control.

³⁴ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-65695 (October 24, 2011).

³⁵ See *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

³⁶ See, e.g., *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 24892, 24899 (May 6, 2010), unchanged in *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010).

³⁷ See *Initiation Notice*, 85 FR at 53412-413.

³⁸ See Policy Bulletin 05.1, *Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries*, dated April 15, 2005, available at <https://enforcement.trade.gov/policy/bull05-1.pdf>.

³⁹ 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*).

⁴⁰ See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22587 (May 2, 1994) (*Silicon Carbide*).

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China AD proceeding, and its determinations therein.⁴¹ In particular, in litigation involving the diamond sawblades from China proceeding, the Court of International Trade (CIT) found Commerce's existing separate rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity had significant ownership in the respondent exporter.⁴² Following the Court's reasoning, in recent proceedings, we have concluded that, where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally.⁴³ This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profit distribution of the company.

In order to demonstrate eligibility for separate rate status, Commerce normally requires entities for whom a review was requested and who were assigned a separate rate in a previous segment of this proceeding to submit an SRC stating that they continue to meet the criteria for obtaining a separate rate.⁴⁴ For entities that were not assigned a separate rate in the previous segment of this proceeding, to demonstrate eligibility, Commerce requires a separate rate application (SRA).⁴⁵ Companies that submit an SRA or SRC which are subsequently selected as mandatory

⁴¹ See Final Results of Redetermination pursuant to *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), and available at <http://enforcement.trade.gov/remands/12-147.pdf>, *aff'd* *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd* *Advanced Technology & Materials Co., Ltd., et al. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014) (*Advanced Technology II*); see also *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013), and accompanying Preliminary Decision Memorandum (PDM) at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying IDM at Comment 1.

⁴² See, e.g., *Advanced Technology I*, 885 F. Supp. 2d at 1349 (CIT 2012) ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it"); *id.*, 885 F. Supp. 2d at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {state-owned assets supervision and administration commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor de jure 'separation' that Commerce concludes") (footnotes omitted); *id.*, 885 F. Supp. 2d at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations, ' including terms, financing, and inputs into finished product for export"); *id.*, 885 F. Supp. 2d at 1357 ("AT&M itself identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination") (footnotes omitted).

⁴³ See *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying PDM at 5-9.

⁴⁴ See *Initiation Notice*, 84 FR at 53412-413.

⁴⁵ *Id.*

respondents must respond to all parts of Commerce’s questionnaire in order to be eligible for separate rate status.⁴⁶

In this review, Shandong Oriental and Zhonglian requested separate rate status and subsequently were selected as mandatory respondents.⁴⁷ In addition, between October 24, 2019, and November 8, 2019, Commerce received an SRC or SRA from the additional following eight companies⁴⁸ (listed in alphabetical order):

- 1) Qingdao D&L Group Ltd. (D&L Group)
- 2) SDC International Australia Pty. Ltd. (SDC)
- 3) Shanghai Curvet Hardware Products Co., Ltd. (Curvet)
- 4) Shanghai Yueda Nails Industry Co., Ltd., a.k.a. Shanghai Yueda Nails Co., Ltd. (Yuenda Nails)
- 5) Shanxi Tianli Industries Co., Ltd. (Tianli Industries)
- 6) S-Mart (Tianjin) Technology Development Co., Ltd. (S-Mart)
- 7) Suntec Industries Co., Ltd. (Suntec)
- 8) Tianjin Jinchi

As noted above, companies that submit an SRA/SRC and which are selected as mandatory respondents must respond to all parts of Commerce’s questionnaire in order to be eligible for separate rate status. Shandong Oriental, despite its selection as a mandatory respondent, did not respond to Commerce’s requests for information following the submission of its SRA. Accordingly, we preliminarily determine that Shandong Oriental is ineligible for a separate rate and is part of the China-wide entity.

Further, Curvet, SDC, and S-Mart each reported 100 percent ownership by foreign entities.⁴⁹ As there is no Chinese ownership of these three companies, and because Commerce has no evidence indicating that these companies are under the control of the Chinese government, we find that these companies are independent from government control.⁵⁰ Consequently, we preliminarily determine that Curvet, SDC, and S-Mart meet the criteria for a separate rate.

⁴⁶ *Id.*

⁴⁷ See Shandong Oriental’s Letter, “Steel Nails from The People’s Republic of China – Separate Rate Application,” dated October 28, 2019; Zhonglian’s Letter, “Separate Rate Certification for Tianjin Zhonglian Metals Ware Co., Ltd. in the Eleventh Annual Administrative Review of the Antidumping Duty order on Certain Steel Nails from the People’s Republic of China, A-570-909,” dated November 6, 2019; and Respondent Selection Memorandum.

⁴⁸ Stanley also filed an SRC; however, as stated above, we are rescinding this review with respect to Stanley.

⁴⁹ See Curvet’s Letter, “Certain Steel Nails from the People’s Republic of China: Separate Rate Certification,” dated November 1, 2019; SDC’s Letter, “Steel Nails from the People’s Republic of China: Separate Rate Certification,” dated November 8, 2019; and S-Mart’s Letter, “Steel Nails from the People’s Republic of China: Separate Rate Certification,” dated November 8, 2019.

⁵⁰ See *Brake Rotors from the People’s Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001), unchanged in *Brake Rotors from the People’s Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001); see also *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People’s Republic of China*, 64 FR 71104 (December 20, 1999).

Finally, Tianjin Jinchi simultaneously filed a no-shipment certification indicating that it did not export subject merchandise to the United States during the POR and an SRC indicating that it had sales during the POR.⁵¹ To examine Tianjin Jinchi's claims, we examined the CBP data on the record of this review and found that the data show entries of subject merchandise during the POR under Tianjin Jinchi's assigned company-specific number of A-570-909-191. Accordingly, we preliminarily determine that Tianjin Jinchi had shipments; therefore, we examine its eligibility for separate rate status, as well as the remaining five companies, below.⁵²

1. *Absence of De Jure Control*

Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.⁵³ The evidence provided by the six companies in their SRCs supports a preliminary finding of an absence of *de jure* government control based on the following: (1) there is an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of the companies.⁵⁴

2. *Absence of De Facto Control*

Typically, Commerce considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4)

⁵¹ See Tianjin Jinchi's Letter, "No Shipment Letter for Tianjin Jinchi in the Eleventh Annual Administrative Review of the Antidumping Duty order on Certain Steel Nails from the People's Republic of China (A-570-909)," dated November 6, 2019; and Tianjin Jinchi's Letter, "Separate Rate Certification for Tianjin Jinchi Metal Products Co., Ltd. in the Eleventh Annual Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the People's Republic of China, A-570-909," dated November 6, 2019 (Tianjin Jinchi SRC).

⁵² These separate rate applicants are: D&L Group; Yueda Nails; Tianli Industries; Suntec; and Zhonglian.

⁵³ See *Sparklers*, 56 FR at 20580.

⁵⁴ See D&L Group's Letter, "Certain Steel Nails from the People's Republic of China, 11th Administrative Review; Separate Rate Certification of Qingdao D&L Group Ltd.," dated October 24, 2019 (D&L SRC) at 4; Yueda Nails' Letter, "Separate Rate Certification for Shanghai Yueda Nails Industry Co., Ltd. in the Eleventh Annual Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the People's Republic of China, A-570-909," dated November 6, 2019 (Yueda Nails SRC) at 7-8; Tianli Industries' Letter, "Separate Rate Certification for Shanxi Tianli Industries Co., Ltd. in the Eleventh Annual Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the People's Republic of China, A-570-909," dated November 6, 2019 (Tianli Industries SRC) at 7-8; Suntec's Letter, "Certain Steel Nails from the People's Republic of China: Separate Rate Certification," dated November 6, 2019 (Suntec SRC) at 8-9; Tianjin Jinchi SRC at 8; and Zhonglian's Letter, "Separate Rate Certification for Tianjin Zhonglian Metals ware Co., Ltd. in the Eleventh Annual Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the People's Republic of China, A-570-909," dated November 6, 2019 (Zhonglian SRC) at 7-8.

whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.⁵⁵

As stated in previous cases, there is evidence that certain enactments of the Chinese central government have not been implemented uniformly among different sectors and/or jurisdictions in China.⁵⁶ Therefore, an analysis of *de facto* control is critical in determining whether the companies are, in fact, subject to a degree of government control over export activities which would preclude Commerce from assigning separate rates. For all six companies, we determine that the evidence on the record supports a finding of an absence of *de facto* government control based on record statements and supporting documentation showing the following for each company: (1) the respondent sets its own export prices independent of the government and without the approval of a government authority; (2) the respondent has the authority to negotiate and sign contracts and other agreements; (3) the respondent has autonomy from the government regarding the selection of management; and (4) the respondent retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses.⁵⁷ The evidence placed on the record of this review in the SRCs for six of the applicants for which additional analysis is required demonstrates an absence of *de jure* and *de facto* government control with respect to the companies' exports of subject merchandise, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*.

3. *China-Wide Entity*

The record indicated that certain Chinese companies did not respond to Commerce's request for information. Specifically, Commerce did not receive a questionnaire response, no-shipment certification, SRA, or SRC from 285 companies that were named in the *Initiation Notice*.⁵⁸ In addition, as noted above, Mingguang Ruifeng submitted an untimely SRC and Shandong Oriental failed to respond to Commerce's questionnaire. Therefore, for the preliminary results of this administrative review, we consider these 287 companies to be part of the China-wide entity.

Because no party requested a review of the China-wide entity and Commerce no longer considers the China-wide entity as an exporter conditionally subject to administrative review, Commerce is not conducting a review of the China-wide entity.⁵⁹ Thus, the rate for the China-wide entity (*i.e.*, 118.04 percent) is not subject to change pursuant to this review.⁶⁰

⁵⁵ See *Silicon Carbide*, 59 FR at 22587; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

⁵⁶ See, *e.g.*, *Silicon Carbide*, 59 FR at 22586-87.

⁵⁷ See D&L SRC at 4-5; Yuenda Nails SRC at 8-9; Tianli Industries SRC at 8-9; Suntec SRC at 9; Tianjin Jinchi SRC at 8-9; and Zhonglian SRC at 8-9.

⁵⁸ See Attachment.

⁵⁹ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65969-70 (November 4, 2013).

⁶⁰ See *Order*, 73 FR at 44965.

C. Weighted-Average Dumping Margin for the Non-Examined Separate Rate Companies

The Act and Commerce's regulations do not address the establishment of a separate rate to be applied to companies not selected for individual examination when Commerce limits its examination pursuant to section 777A(c)(2) of the Act. Under section 735(c)(5)(A) of the Act, which refers to the establishment of the all-others rate in market economy less-than-fair-value (LTFV) investigations, and which we look to for guidance in determining the rate for non-individually-examined separate rate respondents in NME administrative reviews, the all-other rate is normally "an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available (FA)}." Accordingly, Commerce's usual practice in determining the rate for separate-rate respondents not selected for individual examination has been to average the weighted-average dumping margins for the selected companies, excluding rates that are zero, *de minimis*, or based on FA.⁶¹

In this administrative review, we have preliminarily calculated a weighted-average dumping margin for Zhonglian and consider the other respondent selected for individual examination, Shandong Oriental, to be part of the China-wide entity. Because Zhonglian's weighted-average margin is the only calculated margin available for this POR, we are preliminarily assigning this rate to the non-examined respondents which qualify for a separate rate in this review.

D. Surrogate Country and Surrogate Value Data

1. *Surrogate Country Selection*

When Commerce investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate market economy (ME) country, or countries, considered to be appropriate by Commerce. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that NME country; and (2) significant producers of comparable merchandise.⁶²

As a general rule, Commerce 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, either: (a) they are not significant producers of comparable merchandise; (b) do not provide sufficient reliable sources of publicly available SV data; or (c) are not suitable for use based on other reasons.⁶³ Surrogate countries that are not at the same level of economic

⁶¹ See *Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (CIT 2008) (affirming Commerce's determination to assign a 4.22 percent dumping margin to the separate-rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively); see also *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656, 36660 (July 24, 2009).

⁶² See Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin).

⁶³ *Id.*

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.⁶⁴ To determine which countries are at the same level of economic development, Commerce relies on gross national income (GNI) data from the World Bank's World Development Report.⁶⁵ Further, Commerce will normally value all FOPs from a single surrogate country.⁶⁶

On August 15, 2019, Commerce identified Brazil, Bulgaria, Malaysia, Mexico, the Russian Federation (Russia), and Turkey, pursuant to section 773(c)(4) of the Act, as countries that are at the same level of economic development as China based on 2018 per capita GNI data available in the World Development Report.⁶⁷

On March 26, 2020, the petitioner submitted comments in which it suggested that Commerce rely on Thailand as the surrogate country in this review,⁶⁸ and Zhonglian submitted comments in which it recommended that Commerce rely on either Romania or Russia as the surrogate country.⁶⁹ On April 10, 2020, the petitioner submitted rebuttal comments and suggested that, alternatively, Commerce should select Mexico as the best country on the list of countries at the same level of economic development as China.⁷⁰ On June 15, 2020, the petitioner provided SV data and surrogate financial ratios for Thailand and Mexico, and Zhonglian provided SV data and surrogate financial ratios for Romania and Russia.⁷¹ On June 22, 2020, the petitioner submitted rebuttal comments,⁷² and on September 16, 2020, it submitted revised SV data for certain FOPs.⁷³ On December 3, 2020, Zhonglian also submitted revised SV data for certain FOPs.⁷⁴ Our surrogate country analysis follows below.

As indicated above, when selecting among several potential surrogate countries, Commerce's practice, in accordance with section 773(c)(1) of the Act, is to select a country that provides SV data which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and free of taxes and duties.⁷⁵ There is no hierarchy among these criteria. It is Commerce's practice to carefully consider the available evidence in light of

⁶⁴ See Surrogate Comment Request.

⁶⁵ *Id.*

⁶⁶ See 19 CFR 351.408(c)(2).

⁶⁷ See Surrogate Comment Request at Attachment I.

⁶⁸ See Petitioner SC Comments.

⁶⁹ See Zhonglian SC Comments.

⁷⁰ See Petitioner SC Rebuttal Comments.

⁷¹ See Petitioner SV Comments; and Zhonglian SV Comments.

⁷² See Petitioner SV Rebuttal Comments.

⁷³ See Petitioner Revised SV Comments.

⁷⁴ See Zhonglian Revised SV Comments. Zhonglian originally timely submitted these data on November 13, 2020, but resubmitted them at Commerce's request after removing certain untimely NFI from its November 13 submission.

⁷⁵ See *Qingdao Sea-Line Trading Co. v. United States*, 766 F.3d 1378, 1386 (Fed. Cir. 2014) (*Qingdao Sea-Line*); see also *Fuwei Films (Shandong) Co. v. United States*, 837 F. Supp. 2d 1347, 1350-51 (CIT 2012); and *First Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 1336 (January 11, 2010), and accompanying IDM at Comment 1.

the particular facts of each industry when undertaking its analysis with respect to valuing the FOPs.⁷⁶

a. Economic Comparability

As explained in the Surrogate Comment Request, Commerce considers Brazil, Bulgaria, Malaysia, Mexico, Russia, and Turkey to be at the same level of economic development as China. Therefore, we consider all six countries to have satisfied this prong of the surrogate country selection criteria.⁷⁷ Neither Thailand nor Romania were on Commerce’s list of countries at the same level of economic development as China and, therefore, they do not satisfy this prong of the surrogate country selection criteria.⁷⁸

b. Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires Commerce to value FOPs in a surrogate country that is a significant producer of comparable merchandise. However, neither the Act nor Commerce’s regulations define “significant” or “comparable.” Given the absence of any definition in the Act or regulations, Commerce looks to other sources such as the Policy Bulletin for guidance. Commerce’s practice is to evaluate whether production is significant based on characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics) and to determine whether merchandise is comparable on a case-by-case basis.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 Where there is no production information, Commerce has relied upon export data from potential surrogate countries. With respect to comparability of merchandise, the Policy Bulletin states that “in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.”⁸¹ Where there is no evidence of production of identical merchandise in a potential surrogate country, Commerce has determined whether merchandise is comparable to the subject merchandise on the basis of similarities in physical form and the extent of processing or on the basis of production factors (physical and non-physical) and factor intensities.⁸² Because these characteristics are specific to the merchandise in question, the standard for “significant producer” will likely vary from case to

⁷⁶ See, e.g., *Certain Steel Threaded Rod from the People’s Republic of China: Final Results of Third Antidumping Duty Administrative Review; 2011-2012*, 78 FR 66330 (November 5, 2013), and accompanying IDM at 7.

⁷⁷ See section 773(c)(4)(A) of the Act.

⁷⁸ We note that, on November 13, 2020, Zhonglian submitted a new surrogate country list as part of its revised SV data submission. However, we rejected the new list from the record because it was untimely NFI. See Commerce’s Letter, “Certain Steel Nails from the People’s Republic of China: Rejection of New Factual Information,” dated December 1, 2020; and Zhonglian’s Letter, “Certain Steel Nails from the People’s Republic of China: Response to Commerce’s Rejection of November 13th Submission,” dated December 3, 2020; see also *Tianjin Wanhua Co., Ltd. v. United States*, 253 F. Supp. 3d 1318 (CIT 2017).

⁷⁹ See, e.g., *Xanthan Gum from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2252 (January 10, 2013), and accompanying PDM at 7-8, unchanged in *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) (*Xanthan Gum*).

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

⁸¹ See Policy Bulletin at 3.

⁸² *Id.*

case.⁸³ Therefore, based on information placed on the record of this review, Commerce preliminarily determines that Mexico and Russia are significant producers of comparable merchandise.⁸⁴

c. Data Availability

If more than one potential surrogate country satisfies the statutory requirement for selection as a surrogate country, Commerce selects the primary surrogate country “with the best factors data.”⁸⁵ Section 773(c)(1) of the Act instructs Commerce to value the FOPs based upon the best available information from an ME country or a country that Commerce considers appropriate. When evaluating SV data, Commerce considers several factors including whether the SV data are publicly available, contemporaneous with the POR, representative of a broad-market average, tax and duty exclusive, and specific to the input.⁸⁶ There is no hierarchy among the criteria, and it is Commerce’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.⁸⁷ Accordingly, Commerce’s preference is to satisfy the breadth of the aforementioned selection factors,⁸⁸ and to value all FOPs in the primary surrogate country.⁸⁹

As an initial matter, we preliminarily find that we have complete SV data and financial ratios on the record for both Mexico and Russia that are publicly available, are contemporaneous with the POR, and generally include tax-exclusive broad market average prices.⁹⁰ However, only the SV data from Mexico are sourced from GTA, which is Commerce’s preferred source for SV data.⁹¹

Given the above facts, Commerce preliminarily selects Mexico as the surrogate country for this administrative review. Mexico is at a comparable level of economic development pursuant to 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly

⁸³ See Policy Bulletin at 1-2; see also *Hardwood and Decorative Plywood from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013), and accompanying IDM at Comment 7.

⁸⁴ See Petitioner SC Rebuttal Comments at 21; and Zhonglian SC Comments at 2.

⁸⁵ See Policy Bulletin at 2.

⁸⁶ See *Qingdao Sea-Line*, 766 F.3d at 1386; see also *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010-2011*, 78 FR 17350 (March 21, 2013), and accompanying IDM at Comment I(C).

⁸⁷ See Policy Bulletin.

⁸⁸ *Id.*

⁸⁹ See *Jiaying Bro. Fastener Co. v. US*, 822 F.3d 1289, 1294 (Fed. Cir. 2016); see also *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), and accompanying IDM at Comment 9.

⁹⁰ See Petitioner SV Comments; and Zhonglian SV Comments.

⁹¹ See, e.g., *Steel Propane Cylinders from the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination Measures*, 83 FR 66675 (December 27, 2018), and accompanying PDM at 10 (“{B}ecause neither the petitioners nor the respondents submitted data using Commerce’s preferred Global Trade Atlas (GTA) source in providing import data to the record for potential surrogates ... we have downloaded data for the identical HTS subcategories to corroborate the Malaysian data submitted and used the GTA data for the purposes of this preliminary determination”) unchanged in *Steel Propane Cylinders from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 84 FR 29161 (June 21, 2019).

available and reliable data for all the identified FOPs submitted by the respondent. An explanation of the SV data used in our preliminary analysis is provided below in the “Normal Value” section of this memorandum.

2. *Date of Sale*

Pursuant to 19 CFR 351.401(i), Commerce normally will use the invoice date as the date of sale unless Commerce is satisfied that a different date better reflects the date on which the material terms of the sale are established. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁹² Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms are established.⁹³

Zhonglian reported the shipment date as its U.S. date of sale because, in some instances, “salespersons in {Zhonglian} inadvertently used the wrong date or even no date on the commercial invoice.”⁹⁴ Because Zhonglian provided source documentation supporting its statement and Commerce found no evidence on the record contrary to Zhonglian’s claims, for these preliminary results, we used the shipment date as the date of sale, in accordance with our practice.

3. *Comparisons to Normal Value*

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Zhonglian’s sales of subject merchandise from China to the United States were made at less than NV, Commerce compared the export price (EP) to the NV as described in the “Export Price” and “Normal Value” sections of this memorandum.

a. *Determination of Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, Commerce examines whether to compare weighted-average NVs with the EP (or CEP) 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. Although section 777A(d)(1)(B) of the Act does not strictly govern our examination of this question in the context of administrative reviews,

⁹² See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

⁹³ See, e.g., *Certain Polyester Staple Fiber from the Republic of Korea: Preliminary Results of the 2007/2008 Antidumping Duty Administrative Review*, 74 FR 27281, 27283 (June 9, 2009), unchanged in *Certain Polyester Staple Fiber from the Republic of Korea: Final Results of the 2007-2008 Antidumping Duty Administrative Review*, 74 FR 65517 (December 10, 2009).

⁹⁴ See Zhonglian March 19, 2020 AQR at 13; and Zhonglian June 22, 2020 SCQR at 1-4.

Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in LTFV investigations.⁹⁵

Commerce 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.⁹⁶ Commerce finds that the differential pricing analysis used in numerous investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in these preliminary results was affirmed by the Court of Appeals for the Federal Circuit (CAFC) as in accordance with law in *Apex*.⁹⁷ That analysis examines whether there exists a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region, and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, 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 POR based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

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

⁹⁵ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying IDM at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1322 (CIT 2014), *aff’d*, 862 F.3d 1337 (Fed. Cir. 2017) (*Apex*).

⁹⁶ See, e.g., *Polyethylene Terephthalate Resin from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 19696 (May 4, 2018), unchanged in *Polyethylene Terephthalate Resin from Taiwan: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 48287 (September 24, 2018).

⁹⁷ See *Apex*, 37 F.3d at 1322.

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

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

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

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.⁹⁸

b. Results of Differential Pricing Analysis

Based on the results of the differential pricing analysis, Commerce preliminarily finds that 10.1 percent of the value of Zhonglian's U.S. sales pass the Cohen's *d* test,⁹⁹ and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, for these preliminary results, Commerce is applying the average-to-average method to calculate the weighted-average dumping margin for Zhonglian.

4. U.S. Price

a. Export Price

Pursuant to section 772(a) of the Act, EP is "the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c) of the Act. We calculated EP for all sales from Zhonglian to the United States because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted.¹⁰⁰

In accordance with section 772(c)(2)(A) of the Act, as appropriate, we deducted from the sales price (gross unit price) to unaffiliated purchasers expenses for foreign inland freight and foreign brokerage and handling.¹⁰¹ Because these expense were provided by an NME vendor, we valued them using SVs, as appropriate.¹⁰² Additionally, in accordance with section 772(c)(2)(B) of the Act, we deducted any irrecoverable value-added tax (VAT) from the starting price, as explained below.

b. Value-Added Tax

⁹⁸ As noted above, the CAFC has affirmed much of Commerce's differential pricing methodology. *See Apex*, 862 F.3d 1322. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

⁹⁹ *See* Memorandum, "Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China; 2018-2019: Preliminary Results Margin Calculation for Tianjin Zhonglian Metals Ware Co., Ltd.," dated concurrently with this memorandum (Zhonglian Analysis Memorandum).

¹⁰⁰ *See* Zhonglian March 19, 2020 AQR.

¹⁰¹ *See* Zhonglian Analysis Memorandum.

¹⁰² *See* Memorandum, "Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China; 2018-2019: Surrogate Values for the Preliminary Results," dated concurrently with this memorandum (Preliminary SV Memorandum) for details regarding the SVs for movement expenses.

Commerce's recent practice in NME cases is to adjust EP (or the CEP) for the amount of any unrefunded (herein irrecoverable) value-added tax (VAT) in certain NMEs, in accordance with section 772(c)(2)(B) of the Act.¹⁰³ Commerce has previously explained that, when an NME government imposes an export tax, duty, or other charges on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, Commerce will reduce the respondent's EP and CEP prices accordingly by the amount of the tax, duty or charge paid, but not rebated.¹⁰⁴ Where the irrecoverable VAT is a fixed percentage of EP or CEP, Commerce explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. EP or CEP downward by this same percentage.¹⁰⁵

VAT is an indirect, *ad valorem* consumption tax imposed on the purchase (sale) of goods. It is levied on the purchase (sales) price of the good, *i.e.*, it is paid by the buyer and collected by the seller. For example, if the purchase price is \$100 and the VAT rate is 15%, the buyer pays \$115 to the seller, \$100 for the good and \$15 in VAT. VAT is typically imposed at every stage of production. Thus, under a typical VAT system, firms: (1) pay VAT on their purchases of production inputs and raw materials (input VAT) as well as (2) collect VAT on sales of their output (output VAT).

Firms calculate input VAT and output VAT for tax purposes on a company-wide (not transaction-specific) basis, *i.e.*, in the case of input VAT, on the basis of *all input purchases* regardless of whether used in the production of goods for export or domestic consumption, and in the case of output VAT, on the basis of *all sales to all markets*, foreign and domestic. Thus, a firm might pay the equivalent of \$60 million in total input VAT across all input purchases and collect \$100 million in total output VAT across all sales. In this situation, however, the firm would remit to the government only \$40 million of the \$100 million in output VAT collected on its sales because of a \$60 million credit for input VAT paid that the firm can claim against output VAT.¹⁰⁶ As a result, the firm bears no "VAT burden (cost)": the firm through the credit is refunded or recovers *all* of the \$60 million in input VAT it paid, and the \$40 million remittance to the government is simply a transfer to the government of VAT paid by (collected from) the buyer with the firm acting only as an intermediary. Thus, the cost of output VAT falls on the buyer or the good, not on the firm.

This would describe the situation under Chinese law except that producers in China, in most cases, do not recover (*i.e.*, are not refunded) the total input VAT they paid. Instead, Chinese tax law requires a *reduction in or offset to* the input VAT that can be credited against output VAT. This formula for this reduction/offset is provided in Article 5 of the 2012 Chinese government tax regulation, *Notice of the Ministry of Finance and the State Administration of Taxation on*

¹⁰³ 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).

¹⁰⁴ *Id.*; see also *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014), and accompanying IDM at Comment 5.A.

¹⁰⁵ *Id.*

¹⁰⁶ The credit, if not exhausted in the current period, can be carried forward.

VAT and Consumption Tax Policies for Exported Goods and Labor Services (2012 VAT Notice).¹⁰⁷

$$\text{Reduction/Offset} = (\mathbf{P} - \mathbf{c}) \times (\mathbf{T}_1 - \mathbf{T}_2),$$

where,

P = (VAT-free) FOB value of export sales;

c = value of bonded (duty- and VAT-free) imports of inputs used in the production of goods for export;

T₁ = VAT rate; and

T₂ = refund rate specific to the export good.

Using the example above, if P = \$200 million, c = 0, T₁ = 17% and T₂ = 10%, then the reduction/offset = (\$200 million - \$0) x (17% - 10%) = \$200 million x 7% = \$14 million.

Chinese law then requires that the firm in this example calculate creditable input VAT by subtracting the \$14 million from total input VAT, as specified in Article 5.1(1) of the *2012 VAT Notice*.

$$\text{Creditable input VAT} = \text{Total input VAT} - \text{Reduction/Offset}$$

Using again the example above, the firm can credit only \$60 million – \$14 million = \$46 million of the \$60 million in input VAT against output VAT. Since the \$14 million is not creditable (legally recoverable), it is not refunded to the firm. Thus, the firm incurs a cost equal to \$14 million, which is calculated on the basis of FOB export value at the *ad valorem* rate of T₁ – T₂. This cost therefore functions as an “export tax, duty, or other charge” because the firm does not incur it *but for* exportation of the subject merchandise, and under Chinese law must be recorded as a cost of exported goods.¹⁰⁸ It is for this “export tax, duty, or other charge” that Commerce makes a downward adjustment to U.S. price under section 772(c) of the Act.¹⁰⁹

It is important to note that under Chinese law the reduction/offset described above is defined in terms of, and applies to, total (company-wide) input VAT across purchases of all inputs, whether used in the production of goods for export or domestic consumption. The reduction/offset does

¹⁰⁷ See Zhonglian June 22, 2020 SCQR at Appendix S2-9 (containing the *Notice of the Ministry of Finance and the State Administration of Taxation on VAT and Consumption Tax Policies for Exported Goods and Labor Services*, Article 5 (Ministry of Finance, State Administration of Taxation, {2012} No. 39, issued May 25, 2012) (*2012 VAT Notice*)).

¹⁰⁸ Article 5(3) of the *2012 VAT Notice* states: “Where the tax refund rate is lower than the applicable tax rate, the corresponding differential sum calculated shall be included into the cost of exported goods and services.”

¹⁰⁹ Because the \$14 million is the amount of input VAT that is not refunded to the firm, it is sometimes referred to as “irrecoverable input VAT.” However, that phrase is perhaps misleading because the \$14 million is not a fraction or percentage of the VAT the firm paid on purchases of inputs used in the production of exports. If that were the case, the value of production inputs, not FOB export value, would appear somewhere in the formula in Article 5 of the *2012 VAT Notice* as the tax basis for the calculation. The value of production inputs does not appear in the formula. Instead, as explained above, the \$14 million is simply a cost imposed on firms that is tied to export sales, as evidenced by the formula’s reliance on the FOB export value as the tax basis for the calculation. The \$14 million is a reduction in or offset to what is essentially a tax credit, and it is calculated based on and is proportional to the value of a company’s export sales. Thus, “irrecoverable input VAT” is in fact, despite its name, an export tax within the meaning of section 772(c) of the Act.

not distinguish the VAT treatment of export sales from the VAT treatment of domestic sales from an input VAT recovery standpoint for the simple reason that such treatment under Chinese law applies to the company as a whole, not specific markets or sales. At the same time, however, the reduction/offset is calculated on the basis of the FOB value of exported goods, so it can be thought of as a tax on the company (*i.e.*, a reduction in the input VAT credit) that the company would not incur but for the export sales it makes, a tax fully allocable to export sales because the firm under Chinese law must book it as cost of exported goods.

The VAT treatment under Chinese law of exports of goods described above concerns only export sales that are *not* subject to output VAT, the situation where the firm collects no VAT from the buyer, which applies to most exports from China. However, the *2012 VAT Notice* provides for a limited exception in which export sales of certain goods are, under Chinese law, deemed domestic sales for tax purposes and are thus subject to output VAT at the full rate.¹¹⁰ The formulas discussed above from Article 5 of the *2012 VAT Notice* do not apply to firms that export these goods, and there is therefore no reduction in or offset to their creditable input VAT. For these firms creditable input VAT = total input VAT, *i.e.*, these firms recover all of their input VAT. At the same time, export sales of these firms are subject to an explicit output VAT at the full rate, T_1 .¹¹¹ Commerce must therefore deduct this tax from U.S. price¹¹² under section 772(c) of the Act to ensure tax-neutral dumping margin calculations.¹¹³

Commerce requested that Zhonglian report net irrecoverable VAT for the subject merchandise sold to the United States during the POR and to identify which taxes are unrefunded upon export.¹¹⁴ Record information indicated that, according to the China VAT schedule, the standard VAT levy during the POR was 16 percent during one portion of the POR, and 13 percent during the final portion, while the rebate rates were 5, 9, and then 10 percent during the POR.¹¹⁵

Consistent with our standard methodology, for purposes of these preliminary results, we based the calculation of irrecoverable VAT on the difference between the standard levy (*i.e.*, 16 or 13 percent) and rebate rates, applied to an FOB price at the time of exportation.¹¹⁶ Thus, because the VAT rebate rates on exports changed during the POR, we used three different rebate rates (*i.e.*, 5, 9, or 10 percent). We deducted from the gross unit price an amount for irrecoverable VAT equal to eleven, seven, six, or three percent of the gross unit price, as applicable, consistent with section 772(c)(2)(B) of the Act.¹¹⁷

5. Normal Value

¹¹⁰ See *2012 VAT Notice*, Article 7. For these goods, the VAT refund rate on export is zero.

¹¹¹ *Id.* at Article 7.2(1).

¹¹² Commerce will divide the VAT-inclusive export price by $(1 + T)$, where T is the applicable VAT rate.

¹¹³ Pursuant to sections 772(c) and 773(c) of the Act, the calculation of NV based on FOPs in NME AD cases is calculated on a VAT-exclusive basis, so U.S. price must also be calculated on a VAT-exclusive basis to ensure tax neutrality.

¹¹⁴ See NME Questionnaire.

¹¹⁵ See Zhonglian June 22, 2020 SCQR at 11.

¹¹⁶ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013*, 80 FR 33241 (June 11, 2015), and accompanying IDM at Comment 5.

¹¹⁷ See Zhonglian Analysis Memorandum.

Section 773(c)(1) of the Act provides that Commerce shall determine NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(e) of the Act. Commerce will base NV, in an NME context, on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies.¹¹⁸ Therefore, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation.¹¹⁹ We used the FOPs reported by Zhonglian for materials, energy, labor, by-products, packing, and freight. In accordance with section 773(c) of the Act and 19 CFR 351.408(c)(1), we calculated NV by multiplying the reported per-unit FOP consumption rates by publicly available SVs.¹²⁰

a. Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by Zhonglian for the POR. To calculate NV, Commerce multiplied the reported per-unit factor consumption rates by publicly-available SVs. When selecting the SVs, Commerce considered, among other factors, the quality, specificity, and contemporaneity of the data.¹²¹ As appropriate, Commerce adjusted input prices by including freight costs to make them delivered prices. Specifically, Commerce added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory.¹²² A detailed description of SVs used for Zhonglian can be found in the Preliminary SV Memorandum.

(i) *Direct and Packing Materials and Natural Gas*

As discussed above, for the preliminary results, Commerce is using Mexican import data, as published by GTA, and other publicly-available sources from Mexico, to calculate SVs for Zhonglian's FOPs. The record indicates that the data represent broad-market averages that are product-specific, tax-exclusive, and generally contemporaneous with the POR.¹²³

¹¹⁸ 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).

¹¹⁹ See section 773(c)(3)(A)-(D) of the Act.

¹²⁰ See Zhonglian Analysis Memorandum.

¹²¹ See, e.g., *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying IDM at Comment 9.

¹²² See *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).

¹²³ See Preliminary SV Memorandum.

Commerce continues to apply its long-standing practice of disregarding SVs if it has reason to believe or suspect the source data may be dumped or subsidized.¹²⁴ In this regard, Commerce has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea, and Thailand because we have determined that these countries maintain broadly-available, non-industry-specific export subsidies.¹²⁵ 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 POR, Commerce finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies. Therefore, Commerce has not used prices from those countries in calculating the Mexican import-based SVs. Commerce also excluded from the calculation of the import-based per-unit SVs imports labeled as originating from an “unidentified” country, because Commerce could not be certain that these imports were not from either an NME country or a country with generally-available export subsidies.¹²⁶

We used Mexican import statistics from GTA to value raw materials, packing materials, and natural gas.¹²⁷

Commerce’s practice is to grant a respondent an offset to the reported FOPs for by-product generated during the production of the subject merchandise, if evidence is provided that such by-product has commercial value and is produced during the POR.¹²⁸ Zhonglian claimed by-product offsets and provided data regarding the production and sales quantity of scrap throughout the POR. Accordingly, we have included the by-product offset for scrap in the calculation of the NV for Zhonglian.

(ii) *Electricity/Water*

With respect to electricity, we calculated an average rate using publicly-available data from the International Energy Agency.¹²⁹

We valued water using Mexico’s National Commission for Water (CONAGUA) in its “Statistics

¹²⁴ See section 773(c)(5) of the Act.

¹²⁵ See, e.g., *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying IDM at 4-5; see also *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying IDM at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying IDM at 17, 19-20; and *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013), and accompanying IDM at IV.

¹²⁶ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008).

¹²⁷ See Preliminary SV Memorandum.

¹²⁸ See *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People’s Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews*, 70 FR 54897 (September 19, 2005), and accompanying IDM at “Scrap Offset.”

¹²⁹ See Preliminary SV Memorandum.

on Water 2017 Edition,” and inflated the rates to the POR using the International Monetary Fund’s monthly Consumer Price Index (CPI).¹³⁰

(iii) *Movement Services*

We valued truck freight, in addition to brokerage and handling, using average rates from the World Bank’s report, *Doing Business 2018: Mexico (Doing Business)*.¹³¹ This World Bank report gathers information concerning the distance and cost to transport a containerized shipment weighing 15 metric tons in Mexico.¹³² We calculated international freight using ocean shipping rates obtained from Descartes, an online provider of ME freight quotes.¹³³

(iv) *Labor*

In NME antidumping proceedings, Commerce prefers to value labor solely based on data from the surrogate country.¹³⁴ In *Labor Methodologies*, Commerce determined that the best methodology to value labor is to use industry-specific labor rates from the surrogate country. Additionally, we determined that the best data source for industry-specific labor rates is manufacturing labor rates from ILOSTAT, the labor database compiled by the International Labor Organization.¹³⁵ In this review, we find that the ILOSTAT data on the record from Mexico are the best available information for valuing labor because they are specific to manufacturing and represent the closest labor valuation to the industry in question from the surrogate country.¹³⁶

(v) *Financial Ratios*

Commerce’s criteria for choosing surrogate financial statements from which we derive the financial ratios are the availability of contemporaneous financial statements, comparability to the respondent’s experience, and public availability of information.¹³⁷ Moreover, for valuing factory overhead, selling, general, and administrative (SG&A) expenses, and profit, Commerce normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.¹³⁸ In addition, the CIT has held that, in the selection of

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

¹³⁵ See Preliminary SV Memorandum.

¹³⁶ *Id.*

¹³⁷ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People’s Republic of China*, 70 FR 24502 (May 10, 2005), and accompanying IDM at Comment 3.

¹³⁸ See, e.g., *Diamond Sawblades and Parts Thereof from the People’s Republic of China, Final Determination in the Antidumping Duty Investigation*, 71 FR 29303 (May 22, 2006), and accompanying IDM at Comment 2; see also section 773(c)(4) of the Act; and 19 CFR 351.408(c)(4).

surrogate producers, Commerce may consider how closely the surrogate producers approximate the NME producer's experience.¹³⁹

To value factory overhead, SG&A expenses, and profit, Commerce relied on the 2018 financial statements of Grupo Simec, SAB de CV (Simec) because it is a Mexican producer of comparable merchandise¹⁴⁰ (*i.e.*, steel products including fasteners of a type that are comparable to nails). Therefore, we preliminarily find that the financial data of Simec are appropriate to approximate the financial costs of the respondent's production of nails.¹⁴¹

6. Currency Conversion

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

VII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

12/14/2020

X



Signed by: JOSEPH LAROSKI

Joseph A. Laroski Jr.
Deputy Assistant Secretary
for Policy and Negotiations

¹³⁹ See *Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1253-54 (CIT 2002); see also *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005), and accompanying IDM at Comment 1.

¹⁴⁰ For more information on the surrogate financial ratio calculations, see the Preliminary SV Memorandum.

¹⁴¹ *Id.*

ATTACHMENT

Companies Not Granted a Separate Rate

Accurate Metal Machining Co., Ltd.
Air It On Inc.
Alsons Manufactuiring India Llp
Anhui Amigo Imp. & Exp. Co. Ltd.
Anhui Tea Imp. & Exp. Co. Ltd.
Artree (Xiamen) Group Ltd
Asiahan Industrial Trading Ltd.
Astrotech Steels Pvt. Ltd.
Baoding Jieboshun Trading Co., Ltd.
Beijing Camzone Industrial & Trading Co., Ltd.
Beijing Catic Industry Ltd.
Beijing Jinheung Co., Ltd.
Beijing Qin-Li Jeff Trading Co., Ltd.
Beijing Qin-Li Metal Industries Co., Ltd
Bodi Corporation
Bonuts Hardware Logistics
Cana (Rizhao) Hardware Co., Ltd.
Cangzhou Nandagang Guotai Hardware Products Co., Ltd.
Cangzhou Xinqiao International Trade Co., Ltd
Certified Products Taiwan Inc.
Changzhou Kya Trading Co., Ltd.
Chanse Mechatronics Scientech Development (Jiangsu) Inc.
Cheng Ch International Co., Ltd.
Chia Pao Metal Co., Ltd.
China Dinghao Co., Ltd.
China Linyi Global Trade Center Co., Ltd.
China Staple Enterprise (Tianjin) Co., Ltd.
Chinapack Ningbo Imp. & Exp. Co., Ltd.
Chite Enterprises Co., Ltd.
Chonyi International Co., Ltd.
Come Best (Thailand) Co., Ltd.
Continent Link Int'l Limited
Crelux International Co., Ltd.
Daejin Steel Co., Ltd.
De Fasteners Inc.
De Hui Screw Industry Co., Ltd.
Dezhou Xinjiayuan Hardware Products Co., Ltd.
Dingzhou Baota Metal Products Co., Ltd.
Dong E Fuqiang Metal Products Co., Ltd.

Dongguan Dongri Electrical Electric Equipment Co., Ltd.
Dongguan Further Wood Products Co., Ltd.
Eco-Friendly Floor Ltd.
Ejen Brothers Limited
Empac International Ltd.
Everglow Inc.
Faithful Engineering Products Co., Ltd.
Fastenal Asia Pacific Limited
Fastening Care
Fastgrow International Co., Inc.
Finepack Industrial Limited
Foshan Hosontool Development Hardware Co., Ltd.
Foxsemicon Integrated Technology
Fujian Win Win Import and Export Trading Co., Ltd.
GD.CP International Co., Ltd.
Gdcp Richmax International Ltd.
Geekay Wires Limited
Glori-Industry Hong Kong Inc.
Grace China International Co., Ltd.
Guangdong Meite Mechanical Co. Ltd.
Guangdong TC Meite Intelligent Tools Co., Ltd.
Guangzhou Aivy Nails Technology Co.
Guangzhou Noval Medical Co., Ltd.
Guangzhou Xinfeng International Freight Co., Ltd.
Hai Sheng Xin Group Co., Ltd.
Hangzhou G-wire Technology Co., Ltd.
Hangzhou Orient Industry Co., Ltd.
Happy Worth Limited
Hebei Cangzhou New Century Foreign Trade Co., Ltd.
Hebei Jinsidun Trade Co., Ltd.
Hebei Minghao Imp. & Exp. Co., Ltd.
Hengtuo Metal Products Co., Ltd.
Home Value Co., Ltd.
Hong Kong Mu Hong Electronic Business Limited
Hongkong Milley Limited
Hongkong Shengshi Metal Products Co., Ltd.
Hongyi (HK) Hardware Products Co., Ltd.
Huaiyang County Yinfeng Plastic Factory
Huanghua Haixin Hardware Products Co., Ltd.
Huanghua Yingjin Hardware Products
Inmax Industries Sdn. Bhd.
Inmax Sdn. Bhd.
Inno International

J&b Trading Company
Jade Shuttle Enterprise Co., Ltd.
Jau Yeou Industry Co., Ltd.
Jiang Men City Yu Xing Furniture Limited Company
Jiangmen Jianghai District Hengke Plastic Film Packing Factory
Jiangsu General Science Technology Co., Ltd.
Jiangsu Hexon Imp & Exp Co., Ltd.
Jiangsu Holly Corporation
Jiangsu Huaiyin Guex Tools
Jiangsu Inter-China Group Corp.
Jiangsu Soho Honry Imp. and Exp. Co., Ltd.
Jiangsu Vivaturf Co., Limited
Jiashan Lianchuang Plastic & Hardware
Jiaxing TSR Hardware Inc.
Jinhai Hardware Co., Ltd.
Jinheung Steel Corporation
Jinhua Ausen Crafts Co., Ltd
Jinsco International Corp.
Kaierda Display Furniture Limited
Ko's Nail Incorporation
Koram Inc.
Koram Steel Co., Ltd.
Korea Wire Co., Ltd.
Liang Chyuan Ind. Co., Lmt.
Liang Chyuan Industrial Co., Limited.
Liang's Industrial Corp.
Liaocheng Minghui Hardware Products
Linyi FlyingArrow Imp. & Exp. Co. Ltd.
Linyi Royal Trading Co., Ltd
M&M Industries Co., Ltd.
Maanshan Lilai International Trade Co., Ltd.
Max Co., Ltd.
Maxwealth Development Intl Ltd.
Mayer(Hk)limited
Milkyway Chemical Supply Chain Service Co., Ltd.
Ming Cheng Hardware Company Limited
Mingguang Abundant Hardware Products Co., Ltd.
Mingguang Ruifeng Hardware Products Co., Ltd.
Modern Factory For Metal Products
MPROVE Co., Limited
Nailtech Co., Ltd.
Nanjing Duraturf Co., Ltd.
Nanjing Nuochun Hardware Co., Ltd.

Nanjing Tianxingtong Electronic Technology Co., Ltd.
Nanjing Tianyu International Co., Ltd.
Nanjing Toua Hardware & Tools Co., Ltd.
Nanjing Zeejoe International Trade
Nantong Intlevel Trade Co., Ltd.
Natuzzi China Limited
Nielsen Bainbridge LLC
Ningbo Adv. Tools Co., Ltd.
Ningbo Angelstar Trading Co., Ltd.
Ningbo Bright Max Co., Ltd.
Ningbo Fine Hardware Production Co., Ltd.
Ningbo Freewill Imp. & Exp. Co., Ltd.
Ningbo Home-dollar Imp.& Exp. Corp.
Ningbo Langyi Metal Products Co., Ltd.
Ningbo Nd Import & Export Co., Ltd.
Ningbo Otic Import and Export Co.
Ningbo Weifeng Fastener Co., Ltd.
Ningbo Wellpack Packaging Co., Ltd,
Ningbo WePartner Imp. & Exp. Co., Ltd.
Ningbo Yinzhou Angelstar International Trading
Ningbo Zenith Passion Imp. & Exp. Co, Ltd.
Ninghai Rayguang Horsemanship Products Co., Ltd.
Niran Vietnam Company Limited
Overseas Distribution Services Inc.
Overseas International Steel Industry
Paslode Co., Ltd.
Paslode Fasteners Co., Ltd.
Patek Tool Co., Ltd.
Perfect Seller Co., Ltd.
Potentech (Guangdong) Limited
President Industrial Inc.
Primesource Building Products
Promising Way (Hong Kong) Ltd.
Pro-Team Coil Nail Enterprise Inc.
Qingdao Ant Hardware Manufacturing Co., Ltd.
Qingdao Concord Trading Co., Ltd.
Qingdao D&L Hardware Co., Ltd.
Qingdao Gold Dragon Co., Ltd.
Qingdao Hongyuan Nail Industry Co., Ltd.
Qingdao JCD Machinery Co., Ltd.
Qingdao Jisco Co., Ltd.
Qingdao Meijialucky Industry and Co.
Qingdao MST Industry and Commerce Co., Ltd.

Qingdao Powerful Machinery Co., Ltd.
Qingdao Sunrise Metal Products Co., Ltd.
Qingdao TianHeng Xiang metal Products Co., Ltd
Qingdao Tiger Hardware Co., Ltd.
Qingdao Top Metal Industrial Co., Ltd.
Qingdao Top Steel Industrial Co., Ltd.
Qingdao Uni-Trend International Ltd.
Qingdao YuanYuan Metal Products LLC
Quanzhou Quanxing Hardware Crafts C
Quick Advance Inc.
Quzhou Monsoon Hardware Co., Ltd.
Region Industries Co., Ltd.
Region System Sdn. Bhd.
Rise Time Industrial Ltd.
Ri-Time Group Inc.
Ruifeng Hardware Products Co., Ltd.
Shaanxi Newland Industrial Co.
Shandong Dinglong Imp. & Exp. Co., Ltd.
Shandong Liaocheng Minghua Metal Pvt. Ltd.
Shandong Oriental Cherry Hardware Group Co., Ltd.
Shanghai Cedargreen Imp. & Exp. Co., Ltd.
Shanghai Centro Mechanical & Electrical
Shanghai Haoray International Trade Co., Ltd.
Shanghai Jade Shuttle Hardware Tools Co., Ltd.
Shanghai March Import & Export Co., Ltd.
Shanghai Seti Enterprise Int'l Co., Ltd.
Shanghai Shenda Imp. & Exp. Co., Ltd
Shanghai Sutek Industries Co., Ltd.
Shanghai Television and Electronics Import and Export Co., Ltd.
Shanghai Yiren Machinery Co., Ltd.
Shanghai Yueda Fasteners Co., Ltd.
Shanghai Zoonlion Industrial Co., Limited
Shanghai Zoonlion Industrial Co., Ltd.
Shanxi Easyfix Trade Co., Ltd.
Shanxi Fastener & Hardware Products
Shanxi Xinjintai Hardware Co., Ltd.
Shaoxing Bohui Import and Export Co., Ltd
Shaoxing Chengye Metal Producing Co., Ltd.
Shenzhen Chuangyuan Jiayi Trading Co., Ltd
Shenzhen Fake Trading Co., Ltd.
Shenzhen Jingmai Trade Co., Limited
Shenzhen Xinjintai Hardware Co., Ltd.
Shenzhen Yuantaifan Frame Craft

Sourcing Metrics Ltd.
Sueyi International Ltd.
Sumec Machinery and Electric Co., Ltd.
Suzhou Xingya Nail Co., Ltd.
Taizhou Dajiang Ind. Co., Ltd.
Team Builder Enterprise Ltd.
Test-Rite International Co., Ltd.
Theps International
Tian Heng Xiang Metal Products Co., Ltd.
Tianjin Baisheng Metal Products Co., Ltd.
Tianjin Bluekin Industries Ltd.
Tianjin Coways Metal Products Co., Ltd.
Tianjin Dagang Jingang Nail Factory
Tianjin Evangel Imp. & Exp. Co., Ltd.
Tianjin Fulida Supply Co., Ltd.
Tianjin High Wing International
Tianjin Hongli Qiangsheng Imp. & Exp.
Tianjin Huixinshangmao Co., Ltd.
Tianjin Hweschun Fasteners Manufacturing Co., Ltd.
Tianjin Jin Xin Sheng Long Metal Products Co., Ltd.
Tianjin Jinghai Yicheng Metal Pvt
Tianjin Jinjin Pharmaceutical Factory
Tianjin Jinmao Imp. & Exp. Corp., Ltd.
Tianjin Jinyifeng Hardware Co., Ltd.
Tianjin Jinzhuang Hardware Factory
Tianjin Lianda Group Co., Ltd.
Tianjin Liweitian Metal Technology
Tianjin Tialai Import & Export Company Ltd.
Tianjin Tianhua Environmental Plastics Co., Ltd.
Tianjin Universal Machinery Imp. & Exp. Corp.
Tianjin Yong Sheng Towel Mill
Tianjin Yongye Furniture Co., Ltd.
Tianjin Zhengjun Trade Company Limited
Tianjin Zhonglian Times Technology
Tianjin Zhongsheng Garment Co., Ltd.
Topworks Ltd.
Total Glory Logistics Co., Ltd. (Qingdao)
Trinity Steel Private Limited
Tsugaru Enterprise Co., Ltd.
Ujl Industries Co., Ltd.
Unicorn Fasteners Co., Ltd.
Verko Incorporated
Walkbase Rubber Products Co., Ltd.

Walsoon Trading Co., Ltd.
Weifang Wenhe Pneumatic Tools Co., Ltd.
Wenzhou Yodsn Fluid Equipment Co., Ltd.
Win Fasteners Manufactory (Thailand) Co., Ltd.
Wire Products Manufacturing Co., Ltd.
Wuhu Diamond Metal Products Co., ltd
Wulian Zhanpeng Metals Co., Ltd.
Wuxi Holtrent International Co., Ltd.
Wuxi Yushea Furniture Co., Ltd.
Xiamen Hongju Printing Industry &trade Co., Ltd.
Xuzhou Cip International Group Co, Ltd.
Yiwu Competency Trading Co., Ltd.
Yiwu Kingland Import & Export Co.
Yiwu Taisheng Decoration Materials Limited
Yiwu Yipeng Import & Export Co., Ltd.
Yongchang Metal Product Co., Ltd.
Youngwoo Fasteners Co., Ltd.
Yuyao Dingfeng Engineering Co. Ltd.
Zhanghaiding Hardware Co., Ltd.
Zhangjiagang Lianfeng Metals Products Co., Ltd.
Zhangjiagang Longxiang Industries Co., Ltd.
Zhaoqing Harvest Nails Co., Ltd.
Zhejiang Best Nail Industry Co., Ltd.
Zhejiang Jihengkang (JHK) Door Ind. Co., Ltd.
Zhejiang Rongpeng Imp. & Exp. Co., Ltd
Zhejiang Saiteng New Building Materials Co., Ltd.
Zhejiang Yiwu Yongzhou Imp. & Exp. Co., Ltd.
Zhong Shan Daheng Metal Products Co., Ltd.
Zhong Shan Shen Neng Metal Products Co., Ltd.
Zhucheng Jinming Metal Products Co., Ltd.
Zhucheng Runfang Paper Co., Ltd.
Zhuhai Trillion Trading Co., Ltd
Zon Mon Co., Ltd.