



A-570-129
Investigation
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December 22, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that certain walk-behind lawn mowers (lawn mowers) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins of sales at LTFV are shown in the accompanying *Federal Register* notice.

II. BACKGROUND

On May 26, 2020, we received an antidumping duty (AD) petition covering imports of lawn mowers from China, which was filed in proper form on behalf of MTD Products, Inc. (the petitioner).¹ We published the initiation of this investigation on June 22, 2020.²

In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate rate status in non-market economy (NME) investigations.³ The process requires exporters to submit a separate rate application (SRA) to demonstrate an

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping Duties on Certain Lawn Mowers from the People's Republic of China and the Socialist Republic of Vietnam and Countervailing Duties on Certain Walk-Behind Lawn Mowers from the People's Republic of China," dated May 26, 2020 (the Petition).

² See *Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 37417 (June 22, 2020) (*Initiation Notice*).

³ *Id.*, 85 FR at 37421.



absence of both *de jure* and *de facto* government control over their exporter activities. *See* the “Separate Rate” section for more information.

In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of lawn mowers to be reported in response to Commerce’s AD questionnaire.⁴ We received comments and rebuttal comments from interested parties concerning the appropriate physical characteristics to be used for the purpose of reporting sales of the subject merchandise.⁵ We also received comments on the scope of the investigation that were untimely filed, and that we rejected from the record of this proceeding for that reason.⁶ Commerce also solicited comments regarding the overlap of the scope of the AD investigations and countervailing duty (CVD) investigation of lawn mowers from China and the AD investigation of lawn mowers from the Socialist Republic of Vietnam with the AD and CVD investigations of certain vertical shaft engines and parts thereof (vertical shaft engines) from China.⁷ We received comments from multiple interested parties. *See* the section “Scope Comments,” below for more information.

In the *Initiation Notice*, we stated that we would base respondent selection on responses to the quantity and value (Q&V) questionnaires that we intended to issue to the largest producers and exporters of merchandise under consideration identified in data obtained from Customs and Border Protection.⁸ We issued the Q&V questionnaire to eight such companies on July 10, 2020, but received no responses. Additionally, Commerce posted the Q&V questionnaire on its website and invited parties who did not receive a Q&V questionnaire to file a response to the Q&V questionnaire by the applicable deadline.⁹ We received responses from eight producers/exports of subject merchandise.

⁴ *See Initiation Notice*, 85 FR at 37418.

⁵ *See* Petitioner’s Letter, “Petitioners (sic) for the Imposition of Antidumping Duties on Imports of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People’s Republic of China and the Socialist Republic of Vietnam: Petitioner’s Comments on the Important Product Characteristics and Product Matching Hierarchy,” dated July 6, 2020; *see also* Ningbo Daye Garden Machinery Co., Ltd. (Ningbo Daye)’s Letter, “Certain Walk-Behind Lawn Mowers and Parts Thereof from the People’s Republic of China and the Socialist Republic of Vietnam, Case Nos. A-570-129 and A-552-830: Rebuttal Comments on Product Characteristics and Model Matching Hierarchy,” dated July 16, 2020.

⁶ *See* Ningbo Daye’s Letter, “Certain Walk-Behind Lawn Mowers and Parts Thereof from the People’s Republic of China and the Socialist Republic of Vietnam, Case Nos. A-570-129, A-552-830, and C-570-130: Scope Comments,” dated August 27, 2020; *see also* Petitioner’s Letter, “Antidumping Countervailing Investigation on Certain Walk-Behind Lawn Mowers from the People’s Republic of China and the Socialist Republic of Vietnam: Petitioner’s Request to Reject Ningbo Daye Garden Machinery Co. Ltd.’s Scope Comments and Request for Permission to Respond to Daye’s Comments,” dated August 28, 2020; Ningbo Daye’s Letter, “Certain Walk-Behind Lawn Mowers and Parts Thereof from the People’s Republic of China and the Socialist Republic of Vietnam, Case Nos. A-570-129, A-552-830, and C-570-130: Response to Petitioner’s Request to Reject Scope Comments,” dated September 1, 2020; and Commerce’s Letter, “Certain Walk-Behind Lawn Mowers and Parts Thereof from the People’s Republic of China and the Socialist Republic of Vietnam; Scope Comments,” dated September 22, 2020.

⁷ *See* Memorandum, “Request for Comments Regarding Scope Overlap,” dated November 6, 2020.

⁸ *See Initiation Notice*, 85 FR at 37420.

⁹ *See* Commerce’s Letter to Parties, dated June 22, 2020 (Q&V Questionnaire).

On July 16, 2020, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of lawn mowers from China.¹⁰

On August 12, 2020, Commerce determined to limit its examination of respondents in the investigation to a reasonable number of producers or exporters, consistent with section 777A(c)(2) of the Act and 19 CFR 351.204(c)(2), and selected Ningbo Daye as the sole mandatory respondent in this investigation.¹¹ We issued the standard AD questionnaire to Ningbo Daye on August 12, 2020.¹² Between September 10, 2020, and October 1, 2020, Ningbo Daye submitted responses to the standard questionnaire.¹³ Between September 23, 2020, and October 14, 2020, the petitioner submitted comments on Ningbo Daye's initial questionnaire responses.¹⁴ Between October 13, 2020, and November 13, 2020, Ningbo Daye submitted responses to supplemental questionnaires.¹⁵

On July 22, 2020, the petitioner timely requested that Commerce fully postpone the deadline for the preliminary determination.¹⁶ Accordingly, on August 5, 2020, Commerce fully postponed the preliminary determination by 50 days (*i.e.*, 190 days after the date on which the investigation was initiated) to December 22, 2020.¹⁷

On September 10, 2020, and September 22, 2020, Fujian Spring Machinery Co., Ltd. (Fujian Spring), and Power Distributors, LLC (Power Distributors), respectively, filed untimely requests

¹⁰ See *Walk-Behind Lawn Mowers from China and Vietnam*, Investigation Nos. 701-TA-648 and 731-TA-1521-1522, 85 FR 43257 (July 16, 2020).

¹¹ See Memorandum, "Less-Than-Fair-Value Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Respondent Selection," dated August 12, 2020.

¹² See Commerce's Letter to Ningbo Daye, dated August 12, 2020.

¹³ See Ningbo Daye's September 10, 2020 Section A Questionnaire Response (Ningbo Daye September 10, 2020 AQR); see also Ningbo Daye's September 28, 2020 Section C Questionnaire Response (Ningbo Daye September 28, 2020 CQR); and Ningbo Daye's October 1, 2020 Section D Questionnaire Response.

¹⁴ See Petitioner's Letters, "Countervailing (sic) Investigation on Certain Walk-Behind Lawn Mowers from the People's Republic of China: Petitioner's Comments on Ningbo Daye's Supplemental Section A Response Related to Affiliates," dated September 23, 2020; "Countervailing (sic) Investigation on Certain Walk-Behind Lawn Mowers from the People's Republic of China: Petitioner's Comments on Ningbo Daye's Section C Response," dated October 13, 2020; and "Countervailing (sic) Investigation on Certain Walk-Behind Lawn Mowers from the People's Republic of China: Petitioner's Comments on Ningbo Daye's Section D Response," dated October 14, 2020.

¹⁵ See Ningbo Daye's October 21, 2020 Supplemental Questionnaire Response; see also Ningbo Daye's October 22, 2020 Supplemental Questionnaire Response; Ningbo Daye's November 6, 2020 Supplemental Questionnaire Response; and Ningbo Daye's November 13, 2020 Supplemental Questionnaire Response.

¹⁶ See Petitioner's Letter, "Antidumping Investigations on Certain Walk-Behind Lawn Mowers from the People's Republic of China and the Socialist Republic of Vietnam, and Countervailing Duties from the People's Republic of China: Petitioner's Request to Postpone the Preliminary Determination," dated July 22, 2020.

¹⁷ See *Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 85 FR 48506 (August 11, 2020).

for voluntary respondent treatment.¹⁸ On September 22 and September 23, 2020, Commerce denied Fujian Spring's and Power Distributor's requests, respectively.¹⁹

On October 1, 2020, we placed on the record a list of potential surrogate countries and invited interested parties to comment on the selection of the primary surrogate country and provide surrogate value (SV) information.²⁰ Between October 23, 2020, and December 3, 2020, we received comments on the selection of the primary surrogate country and SV information from the petitioner²¹ and Ningbo Daye.²²

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

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is October 1, 2019 through March 31, 2020. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was May 2020.²³

¹⁸ See Fujian Spring's Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China, Case No. A-570-129 and C-570-130: Request for Voluntary Respondent Treatment," dated September 10, 2020; *see also* Power Distributor's Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China, Case No. A-570-129 and C-570 130: Request for Voluntary Respondent Treatment," dated September 22, 2020.

¹⁹ See Commerce's Letter, "Antidumping Duty Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Response to Fujian Spring Machinery Co., Ltd.'s Request for Voluntary Respondent Treatment," dated September 22, 2020; *see also* Commerce's Letter, "Antidumping Duty Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Response to Power Distributors, LLC's Request for Voluntary Respondent Treatment," dated September 23, 2020.

²⁰ See Commerce's Letter, "Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated October 1, 2020 (Surrogate Country and Value Comments Invitation Letter); *see also* Commerce's Letter, "Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Surrogate Country List Attachment," dated October 2, 2020 (Surrogate Country and Value Attachment).

²¹ See Petitioner's Letter, "Antidumping Investigations on Certain Walk-Behind Lawn Mowers from the People's Republic of China: Petitioner's Comments on the Department's Selection of the Primary Surrogate Country," dated October 23, 2020 (Petitioner SC Comments); *see also* Petitioner's Letter, "Antidumping Investigations on Certain Walk-Behind Lawn Mowers from the People's Republic of China: Petitioner's Rebuttal Comments Regarding the Department's Selection of the Primary Surrogate Country," dated October 30, 2020; Petitioner's Letter, "Antidumping Investigations on Certain Walk-Behind Lawn Mowers from the People's Republic of China: Petitioner's Surrogate Value Submission," dated November 2, 2020 (Petitioner SV Submission); and Petitioner's Letter, "Antidumping Investigations on Certain Walk-Behind Lawn Mowers from the People's Republic of China: Petitioner's Surrogate Value Rebuttal Submission," dated November 9, 2020 (Petitioner Rebuttal SV Submission).

²² See Ningbo Daye's Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China, Case No. A-570-129: Surrogate Country Comments," dated October 23, 2020 (Ningbo Daye SC Comments); *see also* Ningbo Daye's Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China, Case No. A-570-129: Surrogate Value Comments," dated November 2, 2020 (Ningbo Daye SV Submission); Ningbo Daye's Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China, Case No. A-570-129: Public Information to Value Factors of Production," dated November 23, 2020; and Ningbo Daye's Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China, Case No. A-570-129: Rebuttal Surrogate Value Comments," dated December 3, 2020.

²³ See 19 CFR 351.204(b)(1).

IV. SCOPE COMMENTS

In accordance with the *Preamble* to our regulations,²⁴ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.²⁵ We received no comments from interested parties on the scope of the investigation during this period.²⁶ However, on November 6, 2020, we solicited comments from interested parties regarding the overlap in the scopes of the AD and CVD investigations of lawn mowers and vertical shaft engines from China.²⁷ We received comments from the following parties: (1) the petitioner, (2) Briggs & Stratton, (3) the Toro Company and Toro Purchasing Company (collectively, Toro), (4) Chongqing Zongshen General Power Machine Co., Ltd. and Chongqing Dajiang Power Equipment Co., Ltd. (collectively, Zongshen Companies), and (5) Ducar Technology Co., Ltd. (Ducar) and Pulsar Products Inc. (Pulsar).²⁸ We received rebuttal comments from the petitioner, Briggs & Stratton, Ningbo Daye, and Toro.²⁹

As a result of our analysis of comments received, we have preliminarily revised the scope of the investigation.³⁰

²⁴ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

²⁵ See *Initiation Notice*, 85 FR at 37418.

²⁶ Commerce did, however, receive untimely scope comments from Ningbo Daye, which Commerce rejected. See Ningbo Daye's Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China and the Socialist Republic of Vietnam, Case Nos. A-570-129, A-552-830, and C-570-130: Request to Submit Scope Comments," dated September 23, 2020; see also Commerce's Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China and the Socialist Republic of Vietnam, Case Nos. A-570-129, A-552-830, and C-570-130: Request to Submit Scope Comments," dated October 21, 2020.

²⁷ See Memorandum, "Request for Comments Regarding Scope Overlap," dated November 6, 2020.

²⁸ See Petitioner's Letter, "MTD Products Overlapping Scope Comments," dated November 13, 2020; see also Briggs & Stratton's Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China; Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China and the Socialist Republic of Vietnam: Petitioner's Comments Regarding Scope Overlap," dated November 13, 2020; Toro's Letter, "Certain Vertical Shaft Engines between 99cc and up to 225cc from the People's Republic of China and Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China and Socialist Republic of Vietnam: Comments Regarding Scope Overlap," November 13, 2020; Zongshen Companies' Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from China; Certain Walk-Behind Lawn Mowers and Parts Thereof from China and Vietnam; AD/CVD Investigations; Zongshen Companies Comments on Scope Overlap," dated November 13, 2020; and Ducar and Pulsar's Letter, "Certain Walk-Behind Lawn Mowers from Vietnam and China; Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from China: Comments on Scope Overlap," dated November 13, 2020.

²⁹ See Petitioner's Letter, "MTD Products Inc. Rebuttal Comments Regarding Scope Overlap," dated November 20, 2020; see also Briggs & Stratton's Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China; Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China and the Socialist Republic of Vietnam: Petitioner's Rebuttal to Toro's Comments Regarding Scope Overlap," dated November 20, 2020; Ningbo Daye's Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China and the Socialist Republic of Vietnam, Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Rebuttal Comments Regarding Scope Overlap," dated November 20, 2020; and Toro's Letter, "Certain Vertical Shaft Engines between 99cc and up to 225cc from the People's Republic of China and Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China and Socialist Republic of Vietnam: Rebuttal Comments Regarding Scope Overlap," dated November 20, 2020.

³⁰ See Memorandum, "Antidumping and Countervailing Duty Investigations of Lawn Mowers from the People's

V. SCOPE OF THE INVESTIGATION

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

VI. PRODUCT CHARACTERISTICS

In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product characteristics.³¹ Commerce received timely filed comments from the petitioners³² and rebuttal comments from Ningbo Daye,³³ both of which we took into consideration in determining the physical characteristics outlined in the AD questionnaire.

VII. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy Country

Commerce considers China to be an NME country.³⁴ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Further, as part of this investigation, Commerce has received no request to reconsider its determination that China is an NME country. Therefore, we continue to treat China as an NME country for purposes of this preliminary determination.

B. Surrogate Country

When Commerce is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value (NV), in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate market economy (ME) country or countries that Commerce considers to be appropriate. Specifically, 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: (A) at a level of economic development comparable to that of the {NME} country; and (B) significant producers of comparable

Republic of China and the Socialist Republic of Vietnam: Preliminary Scope Decision Memorandum," dated concurrently with this memorandum.

³¹ *See Initiation Notice*, 85 FR 37418 -19.

³² *See* Petitioner's Letter, "Petitioners (sic) for the Imposition of Antidumping Duties on Import of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China and the Socialist Republic of Vietnam: Petitioner's Comments on the Important Product Characteristics and Product Matching Hierarchy," dated July 6, 2020.

³³ *See* Ningbo Daye's Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China and the Socialist Republic of Vietnam, Case Nos. A-570-129 and A-552-830: Rebuttal Comments on Product Characteristics and Model Matching Hierarchy," dated July 16, 2020.

³⁴ *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017), and accompanying Preliminary Decision Memorandum at "China's Status as a Non-Market Economy, unchanged in *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).

merchandise.”³⁵ As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME country, unless it is determined that none of the countries are viable options because they either: (a) 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.³⁶ Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.³⁷ To determine which countries are at the same level of economic development as the NME, Commerce generally relies on per capita gross national income (GNI) data from the World Bank’s *World Development Report*.³⁸ Further, Commerce normally values all FOPs in a single surrogate country.³⁹ If more than one country satisfies the two criteria noted above, Commerce narrows the field of potential surrogate countries to a single country (pursuant to 19 CFR 351.408(c)(2), Commerce will normally value FOPs in a single surrogate country) based on data availability and quality.

On October 1, 2020, we placed on the record a list of potential surrogate countries and invited interested parties to comment on the selection of the primary surrogate country and provide surrogate value (SV) information.⁴⁰ Between October 23, 2020, and December 3, 2020, we received comments on the selection of the primary surrogate country and SV information and rebuttals thereof from the petitioner⁴¹ and Ningbo Daye.⁴²

1. Economic Comparability

On October 1, 2020, consistent with our practice, and section 773(c)(4) of the Act, we identified Brazil, Malaysia, Mexico, Romania, Russia, and Turkey as countries at the same level of economic development as China based on the per capita GNI data from the World Bank’s *World Development Report*.⁴³ Therefore, we consider all six countries as having met this prong of the surrogate country selection criteria. The countries identified are not ranked and are considered equivalent in terms of economic comparability.

2. Significant Producer of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires Commerce, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor Commerce’s regulations provide further guidance on what may be considered comparable

³⁵ For a description of our practice, see Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on Commerce’s website at <http://enforcement.trade.gov/policy/bull04-1.html>.

³⁶ *Id.*

³⁷ See Surrogate Country and Value Comments Invitation Letter.

³⁸ See Policy Bulletin 04.1.

³⁹ See 19 CFR 351.408(c)(2).

⁴⁰ See Surrogate Country and Value Comments Invitation Letter; see also Surrogate Country and Value Attachment.

⁴¹ See Petitioner SC Comments; Petitioner Rebuttal SC Comments; Petitioner SV Submission; Petitioner Rebuttal SV Submission.

⁴² See Ningbo Daye SC Comments; see also Ningbo Daye SV Submission; and Ningbo Daye Rebuttal SV Submission.

⁴³ See Surrogate Country and Value Comments Invitation Letter and Surrogate Country and Value Attachment.

merchandise. Given the absence of any definition in the statute or regulations, Commerce looks to other sources such as the Policy Bulletin 04.1 for guidance on defining comparable merchandise. The Policy Bulletin 04.1 states that “in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.”⁴⁴ Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.⁴⁵ Further, when selecting a surrogate country, the statute requires Commerce to consider the comparability of the merchandise, not the comparability of the industry.⁴⁶ “In cases where the identical merchandise is not produced, Commerce must determine if other merchandise that is comparable is produced. How Commerce does this depends on the subject merchandise.”⁴⁷ In this regard, Commerce recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.⁴⁸

Further, the statute grants Commerce discretion to examine various data sources for determining the best available information.⁴⁹ Moreover, while the legislative history provides that the term “significant producer” includes any country that is a significant “net exporter,”⁵⁰ it does not preclude reliance on additional or alternative metrics. It is Commerce’s practice 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).⁵¹

In this investigation, because production data of comparable merchandise are not available, we analyzed exports of comparable merchandise from the six countries, as a proxy for production data. Ningbo Daye submitted UN Comtrade data for exports from Brazil, Mexico, Romania, and Turkey, made under the Harmonized Tariff Schedule (HTS) subheading 8433.11, an HTS subheading which includes subject merchandise, during the POI.⁵² It also submitted Global

⁴⁴ See Policy Bulletin 04.1 at 2.

⁴⁵ *Id.* at note 6 (“If considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.”)

⁴⁶ See *Sebacic Acid from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) (“{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.”)

⁴⁷ See Policy Bulletin 04.1 at 2.

⁴⁸ *Id.* at 3.

⁴⁹ See section 773(c) of the Act; see also *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

⁵⁰ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

⁵¹ See *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 Preliminary Decision Memorandum at 4-7, unchanged in *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013).

⁵² See Ningbo Daye SC Comments at Attachment 1.

Trade Atlas Data for exports from Malaysia under HTS subheading 8433.11.⁵³ The petitioner submitted UN Comtrade data for exports from Brazil, Mexico, Russia, and Turkey, under HTS 8433.11.⁵⁴ Based on this data, Brazil, Malaysia, Mexico, Romania, Russia, and Turkey reported export volumes of comparable merchandise in the POI. Therefore, we preliminarily find that Brazil, Malaysia, Mexico, Romania, Russia, and Turkey meet the “significant producer” requirement of section 773(c)(4) of the Act.

3. Data Availability

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, Commerce selects the primary surrogate country based on data availability and reliability.⁵⁵ When evaluating SV data, Commerce considers several criteria including whether the SV data are publicly available, contemporaneous with the period under consideration, broad-market averages, tax and duty-exclusive, and specific to the inputs being valued.⁵⁶ There is no hierarchy among these criteria.⁵⁷ Commerce’s preference is to satisfy the breadth of these aforementioned selection criteria.⁵⁸ Moreover, it is Commerce’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.⁵⁹ Commerce must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the “best” available SV for each input.⁶⁰

On November 2, 2020, the petitioner and Ningbo Daye submitted SVs with which to value the FOPs.⁶¹ The petitioner placed Brazilian SV data sourced from GTA on the record, as well as two Brazilian financial statements. Ningbo Daye placed Turkish SV data sourced from Trade Data Monitor (TDM) on the record, as well as including one Turkish financial statement.

As a result of these interested party submissions, the record contains usable data for valuing the respondent’s FOPs from two of the six countries on the list of potential surrogate countries. Those two countries are Brazil and Turkey. Complete SV data for the other countries on the list (*i.e.*, Malaysia, Mexico, Romania, and Russia), are not on the record, nor has any party argued in favor of using SV data from any of these countries to value FOPs. Therefore, we have not considered relying on these other countries as the primary surrogate country in this investigation.

With respect to the TDM data from Turkey submitted by Ningbo Daye, Commerce has previously declined to use TDM data as a source of surrogate values because it is a subscription-

⁵³ *Id.* at Attachment 2.

⁵⁴ See Petitioner SC Comments.

⁵⁵ See Policy Bulletin 04.1.

⁵⁶ *Id.*

⁵⁷ See, e.g., *Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) (*Mushrooms China Final*), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

⁵⁸ See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 2010-2011, 78 FR 17350 (March 21, 2013), and accompanying IDM at Comment I(C).

⁵⁹ See *Mushrooms China Final* IDM at Comment 1.

⁶⁰ *Id.*

⁶¹ See Petitioner SV Submission; see also Ningbo Daye SV Submission.

based service whose data cannot be corroborated.⁶² Conversely, Commerce regularly relies on the publicly available SV data obtained from GTA. We also find that the SVs from Turkey submitted by Ningbo Daye appear to be missing information relating to valuing certain inputs, whereas the SVs from Brazil were provided for all inputs.⁶³ Finally, we find that the Turkish financial statement that Ningbo Daye placed on the record is for a company most of whose production appears to consist of heavy agricultural equipment, whereas the Brazilian companies whose financial statements the petitioner placed on the record appear to consist of merchandise more similar to lawn mowers.⁶⁴

Given the above factors, we preliminarily select Brazil as the primary surrogate country for this investigation. Brazil is at the same level of economic development as China, is a significant producer of comparable merchandise, and generally has reliable and usable SV data. A detailed description of the SVs selected by Commerce is provided in the “Factor Valuation Methodology” section and the Preliminary SV Memorandum.⁶⁵

C. 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 weighted-average dumping margin.⁶⁶ In the *Initiation Notice*, Commerce notified parties of the application process by which exporters may obtain separate rate status in this investigation.⁶⁷ Commerce’s policy is to assign exporters of subject merchandise from an 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 export activities. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, Commerce analyzes each exporting entity in a NME country under the test established in *Sparklers*,⁶⁸ as amplified by *Silicon Carbide*.⁶⁹ According to this separate rate test, Commerce will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If, however, Commerce determines that a company is wholly foreign-owned, then a

⁶² See *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review: 2017-2018*, 85 FR 10411 (February 24, 2020), and accompanying Issues and Decision Memorandum at Comment 3; see also *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), and accompanying IDM at Comment 3B.

⁶³ See Petitioner Rebuttal SV Submission at 11-16.

⁶⁴ *Id.* at 5-7.

⁶⁵ See Memorandum, “Lawn Mowers from the People’s Republic of China: Surrogate Values for the Preliminary Determination of Sales at Less Than Fair Value,” dated concurrently with this memorandum (Preliminary SV Memorandum).

⁶⁶ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (September 24, 2008).

⁶⁷ See *Initiation Notice*, 85 FR at 37421.

⁶⁸ 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*).

⁶⁹ See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People’s Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

separate rate analysis is not necessary to determine whether that company is independent from government control.

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the *Diamond Sawblades* proceeding, and its determinations therein.⁷⁰ In particular, in litigation involving the *Diamond Sawblades* AD 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 exercised control over the respondent exporter.⁷¹ Following the CIT's reasoning, in recent proceedings, we have concluded that where a government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, this interest in and of itself means that the government exercises or has the potential to exercise control over the company's operations generally.⁷² This may include control over, for example, the selection of board members and management, key factors in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company. Accordingly, we have considered the level of government ownership, where necessary.

D. Separate Rate Recipients

In the *Initiation Notice*, we stated the deadline for companies to submit SRAs.⁷³ We received timely filed SRAs from mandatory respondent Ningbo Daye,⁷⁴ as well as the following

⁷⁰ 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 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 (*Diamond Sawblades*) at Comment 1.

⁷¹ See, e.g., *Advanced Technology I*, 885 F. Supp. 2d at 1349 (CIT 2012) ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *Id.* at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {state-owned assets supervision and administration commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor de jure 'separation' that Commerce concludes.") (footnotes omitted); *Id.*, at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); *Id.* at 1357 ("AT&M itself identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.") (footnotes omitted).

⁷² See *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying Preliminary Decision Memorandum at 5-9.

⁷³ See *Initiation Notice*.

⁷⁴ See Ningbo Daye's July 30, 2020 Separate Rate Application (Ningbo Daye SRA).

companies: (1) Chongqing Dajiang;⁷⁵ (2) MTD Suzhou;⁷⁶ (3) Sumec Hardware;⁷⁷ (4) Zhejiang Amerisun;⁷⁸ (5) Zhejiang Dobest;⁷⁹ (6) Zhejiang YAT Electrical Appliance Co., Ltd.,⁸⁰ and (7) Zhejiang Zhongjian Technology Co., Ltd.⁸¹

We issued a supplemental questionnaire to four of the separate-rate applicants,⁸² and each responded in a timely manner.⁸³ We also intend to issue additional supplemental questionnaires to certain of the separate-rate applicants, the responses to which we will consider in the final determination of this proceeding.

Our analysis of the information submitted by the separate-rate applicants is below.

1. Wholly Foreign-Owned Companies

MTD Suzhou and Zhejiang YAT reported that they are wholly foreign owned by ME companies located in ME countries.⁸⁴ No record evidence undermines this reporting. Therefore, as there is no Chinese ownership of these companies, and because Commerce has no evidence

⁷⁵ See Chongqing Dajiang Power Equipment Co., Ltd. (Chongqing Dajiang)'s July 29, 2020 Separate Rate Application (Chongqing Dajiang SRA).

⁷⁶ See MTD Machinery (Suzhou) Co., Ltd. (MTD Suzhou)'s July 22, 2020 Separate Rate Application (MTD Suzhou SRA).

⁷⁷ See Sumec Hardware & Tools Co., Ltd. (Sumec Hardware)'s July 31, 2020 Separate Rate Application (Sumec Hardware SRA).

⁷⁸ See Zhejiang Amerisun Technology Co., Ltd. (Zhejiang Amerisun)'s July 22, 2020 Separate Rate Application (Zhejiang Amerisun SRA).

⁷⁹ See Zhejiang Dobest Power Tools Co., Ltd. (Zhejiang Dobest)'s July 22, 2020 Separate Rate Application (Zhejiang Dobest SRA).

⁸⁰ Zhejiang YAT Electrical Appliance Co., Ltd. (Zhejiang YAT)'s July 22, 2020 Separate Rate Application (Zhejiang YAT SRA).

⁸¹ See Zhejiang Zhongjian Technology Co., Ltd. (Zhejiang Zhongjian)'s Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China, Case No A-570-129: Separate Rate Application, dated July 23, 2020.

⁸² See Commerce's Letter, "Antidumping Duty Investigation of Certain Walk-Behind Lawn Mowers from the People's Republic of China: SRA Supplemental Questionnaire," dated October 8, 2020; *see also* Commerce's Letter, "Antidumping Duty Investigation of Certain Walk-Behind Lawn Mowers from the People's Republic of China: SRA Supplemental Questionnaire," dated October 8, 2020; Commerce's Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Separate Rate and Section A Supplemental Questionnaire," dated October 13, 2020; and Commerce's Letter, "Antidumping Duty Investigation of Certain Walk-Behind Lawn Mowers from the People's Republic of China: Supplemental Questionnaire," dated November 25, 2020.

⁸³ See Chongqing Dajiang's Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from China; AD Investigation; Chongqing Dajiang SRA Supplemental Response," dated October 15, 2020 (Chongqing Dajiang October 15, 2020 SRA SQR); *see also* Ningbo Daye Letter, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China, Case No. A-570-129: Supplemental Section A and SRA Questionnaire Response," dated October 21, 2020 (Ningbo Daye October 21, 2020 Section A and SRA SQR); Sumec Hardware's Letter, "Sumec Hardware Separate Rate Application Supplemental Questionnaire Response: Antidumping Duty Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China (A-570-129)," dated October 29, 2020 (Sumec Hardware October 29, 2020 SRA SQR); and MTD Suzhou's Letter, "Antidumping Duty Investigation on Certain Walk-Behind Lawn Mowers from the People's Republic of China: MTD Suzhou Separate Rate Application Supplemental Response," dated December 2, 2020.

⁸⁴ See MTD Suzhou SRA and Zhejiang YAT SRA.

indicating that these companies are under the control of the Chinese government, further analyses of the *de jure* and *de facto* criteria are not necessary to determine whether MDT Suzhou and Zhejiang YAT are independent from government control of their export activities.⁸⁵ Therefore, we preliminarily determine that MTD Suzhou and Zhejiang YAT are eligible for a separate rate.

2. Wholly Chinese-Owned Companies

Six separate-rate applicants indicated that they are wholly Chinese-owned: Chongqing Dajiang; Ningbo Daye; Sumec Hardware; Zhejiang Amerisun; Zhejiang Dobest; and, Zhejiang Zhongjian. In accordance with our practice, we analyzed whether these companies demonstrated the absence of both *de jure* and *de facto* governmental control over export activities. Based on the analysis below, we preliminarily determine that these six companies are eligible for a separate rate.

a. 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) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.⁸⁶

The evidence placed on the record of this investigation with respect to the six wholly Chinese-owned companies listed above supports a preliminary finding of an absence of *de jure* government control for each of these companies based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.⁸⁷

b. Absence of *De Facto* Control

Typically, Commerce considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the prices are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate

⁸⁵ See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007); see also *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 Administrative Review*, 66 FR 27063 (May 16, 2001); Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China, 64 FR 71104, 71104-05 (December 20, 1999).

⁸⁶ See *Sparklers China Final*, 56 FR at 20589.

⁸⁷ See Chongqing Dajiang SRA; see also Chongqing Dajiang October 15, 2020 SRA SQR; Ningbo Daye SRA; Ningbo Daye October 21, 2020 Section A and SRA SQR; Sumec Hardware SRA; Sumec Hardware October 29, 2020 SRA SQR; Zhejiang Amerisun SRA; Zhejiang Dobest SRA; and Zhejiang Zhongjian SRA.

and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.⁸⁸ Commerce has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control that would preclude Commerce from assigning separate rates.

The evidence placed on the record of this investigation with respect to the six wholly Chinese-owned companies listed above supports a preliminary finding of an absence of *de facto* government control based on record statements and supporting documentation showing that the companies: (1) set their own prices independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses.⁸⁹

Therefore, the evidence placed on the record of this investigation with respect to the six wholly Chinese-owned companies listed above demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, we preliminarily grant separate rates to Chongqing Dajiang, Ningbo Daye, Sumec Hardware, Zhejiang Amerisun, Zhejiang Dobest, and Zhejiang Zhongjian.

E. Margin for the Separate Rate Companies

The statute and Commerce's regulations do not address the establishment of an estimated weighted-average dumping margin to be applied to individual companies not selected for individual examination when Commerce limits its examination in an investigation pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate rate respondents which we did not individually examine. Section 735(c)(5)(A) of the Act articulates a preference that we do not calculate an all-others rate using rates which are zero, *de minimis* or based entirely on facts available. Accordingly, Commerce's usual practice has been to average the estimated weighted-average dumping margins for the individually examined companies, excluding rates that are zero, *de minimis*, or based entirely on facts available.⁹⁰ Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the all-others rate, including "averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated."

⁸⁸ See *Silicon Carbide China Final*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

⁸⁹ See Chongqing Dajiang SRA; see also Chongqing Dajiang October 15, 2020 SRA SQR; Ningbo Daye SRA; Ningbo Daye October 21, 2020 Section A and SRA SQR; Sumec Hardware SRA; Sumec Hardware October 29, 2020 SRA SQR; Zhejiang Amerisun SRA; Zhejiang Dobest SRA; Zhejiang Zhongjian SRA.

⁹⁰ See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying IDM at Comment 16.

In this investigation, we calculated a rate for Ningbo Daye that is not zero, *de minimis*, or based entirely on facts available. Therefore, we have assigned this rate to the companies not selected for individual examination but that are eligible for a separate rate.

F. Combination Rates

Consistent with the *Initiation Notice*, we determined combination rates for the respondents that are eligible for a separate rate in this investigation.⁹¹ This practice is described in Policy Bulletin 05.1.

G. China-Wide Entity

The record indicates that there are Chinese exporters and/or producers of lawn mowers during the POI that did not respond to Commerce's requests for information. Specifically, the following eight companies did not respond to our Q&V questionnaire, nor did they submit SRAs:

(1) Briggs & Stratton Corp. (Briggs & Stratton), (2) Chongqing Dajiang Motorcycle Manufacturing Co., Ltd., (3) Wh-Ningbo Hongyue Intelligent Technology Co., (4) Wenling Jennfeng Industry, Inc., (5) Ningbo Hongrong Garment Factory, (6) Fujian Forestry Materials Co., Ltd., (7) Dajiang Power Equipment Co., Ltd., and (8) Ningbo Joys Imp. & Exp. Co., Ltd. These companies thereby failed to establish their eligibility for a separate rate. Because these eight companies have not demonstrated that they are eligible for separate rate status, Commerce considers them part of the China-wide entity. Furthermore, as explained below, because the China-wide entity has failed to cooperate to the best of its ability, we preliminarily determine to calculate the China-wide rate on the basis of adverse facts available (AFA).

H. Application of Facts Available and Adverse Inferences

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

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce is not required to determine, or

⁹¹ See *Initiation Notice*, 85 FR at 37421.

make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the AD investigation, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁹² The Act also makes clear that when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

1. Use of Facts Available

We preliminarily find that the China-wide entity, which includes certain China exporters and/or producers that did not respond to our requests for information, withheld requested information, failed to provide such information in a timely manner or in the form or manner requested, and significantly impeded the proceeding by not submitting the requested information. Therefore, we preliminarily determine that the use of facts available is warranted in determining the rate of the China-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.⁹³

2. Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, Commerce may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Commerce finds that the China-wide entity’s failure to provide the requested information constitutes circumstances under which it is appropriate to conclude that the China-wide entity failed to cooperate to the best of its ability to comply with Commerce’s request for information.⁹⁴ The China-wide entity did not file any document indicating difficulty providing the information or any request to allow the information to be submitted in an alternate form. Therefore, we preliminarily find that an adverse inference is warranted in selecting from among the facts

⁹² See section 751 of the Act.

⁹³ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

⁹⁴ See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that Commerce need not show intentional conduct existed on the part of the respondent, but merely that a “failure to cooperate to the best of a respondent's ability” existed (*i.e.*, information was not provided “under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.”)).

otherwise available with respect to the China-wide entity, in accordance with section 776(b) of the Act and 19 CFR 351.308(a).⁹⁵

3. Selection and Corroboration of the AFA Rate

As noted above, relying on an adverse inference in selecting from the facts available may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.⁹⁶

With respect to reliance on secondary information under section 776(c) of the Act, the SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information used has probative value.⁹⁷ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information upon which it is basing the AFA dumping margin, although Commerce is not required to estimate what the dumping margin of an uncooperative interested party would have been if the interested party failing to cooperate had cooperated or to demonstrate that the AFA dumping margin used for the uncooperative party reflects an “alleged commercial reality” of the party.⁹⁸

In selecting a rate based on AFA, Commerce’s practice is to select a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁹⁹ Consistent with sections 776(b)(2) and 776(d)(2) of the Act, in an investigation, Commerce’s practice with respect to the assignment of an AFA rate is to select the higher of: (1) the highest dumping margin alleged in the petition; or (2) the highest calculated dumping margin of any respondent in the investigation.¹⁰⁰ In this investigation, the highest dumping margin alleged in the Petition was 313.58 percent,¹⁰¹ which is higher than the highest calculated rate for the individually examined respondent.

In order to determine the probative value of the dumping margin of 313.58 percent alleged in the Petition, we examined the information on the record. When we compared the dumping margin of 313.58 percent alleged in the Petition concerning lawn mowers from China to the transaction-specific dumping margins we preliminarily determined for Ningbo Daye in this investigation, we found the rate of 313.58 percent to be significantly higher than Ningbo Daye’s highest calculated transaction-specific dumping margin, which was 84.26 percent. Because we were unable to corroborate the rate of 313.58 percent in the Petition concerning lawn mowers from China with transaction-specific margins from Ningbo Daye, we next applied a component approach and compared the NV and net U.S. price underlying this rate to the range of NVs and net U.S. prices that we preliminarily calculated for Ningbo Daye in this investigation. Again, we found that we were not able to corroborate the margin of 313.58 percent alleged in the Petition concerning lawn mowers from China using this component approach. Specifically, we find that the NV and net

⁹⁵ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

⁹⁶ See section 776(b) of the Act.

⁹⁷ See SAA at 870.; see also 19 CFR 351.308(d).

⁹⁸ See section 776(d)(3) of the Act.

⁹⁹ See SAA at 870.

¹⁰⁰ See, e.g., *Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016).

¹⁰¹ See *Initiation Notice*.

U.S. price underlying the margin of 313.58 percent alleged in the Petition concerning lawn mowers from China are not within the range of NVs and net U.S. prices calculated for Ningbo Daye.

Accordingly, with respect to the China-wide entity, we have used, as AFA, the highest transaction-specific margin of 84.26 percent that we preliminarily determined for Ningbo Daye. Applying the highest individual dumping margin of a cooperative respondent to a non-cooperative respondent as AFA is consistent with our approach in similar circumstances and has been sustained by the Court of Appeals for the Federal Circuit.¹⁰² Because this rate is not secondary information, but rather is based on information obtained in the course of this investigation, Commerce need not corroborate this rate, pursuant to section 776(c) of the Act.

I. Date of Sale

In identifying the date of sale of the subject merchandise, Commerce normally will use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business.¹⁰³ 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.¹⁰⁴ Furthermore, we have a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.¹⁰⁵

Ningbo Daye reported the commercial invoice date as the date of sale¹⁰⁶ as it indicated that "sales terms are subject to change from time to time until the commercial invoice is issued."¹⁰⁷ No record evidence contradicts Ningbo Daye's assertion. Therefore, in this preliminary determination we have used Ningbo Daye's commercial invoice date as the date of sale.

J. U.S. Price

1. Export Price Sales

In accordance with section 772(a) of the Act, we based the U.S. price of Ningbo Daye's reported sales of subject merchandise on export price (EP). We calculated EP based on the prices at

¹⁰² See *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018), and accompanying IDM at Comment 9; see also *Nan Ya Plastics Corp., Ltd. v. United States*, 810 F.3d 1333, 1345-46 (CAFC 2016).

¹⁰³ See 19 CFR 351.401(i).

¹⁰⁴ *Id.*; see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001) (*Allied Tube & Conduit Corp.*) ("As elaborated by Department practice, a date other than invoice date 'better reflects' the date when 'material terms of sale' are established if the party shows that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date.")

¹⁰⁵ See, e.g., *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 10670 (March 12, 2018), and accompanying Preliminary Decision Memorandum at 6-7, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 32629 (July 13, 2018).

¹⁰⁶ See Ningbo Daye September 28, 2020 CQR at 11.

¹⁰⁷ See Ningbo Daye September 10, 2020 AQR at A-18.

which subject merchandise was sold to unaffiliated purchasers in the United States. We made deductions, as appropriate, from the reported U.S. price for movement expenses, *e.g.*, foreign inland freight expenses, foreign brokerage and handling expenses.¹⁰⁸ We based movement expenses on SVs where the service was purchased from a NME company.¹⁰⁹

2. Value-Added Tax

In 2012, Commerce announced a change of methodology with respect to the calculation of EP and CEP to include an adjustment of any irrecoverable value-added tax (VAT) in certain NME countries in accordance with section 772(c)(2)(B) of the Act.¹¹⁰ Commerce explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, Commerce will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.¹¹¹ 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 EP or CEP downward by this same percentage.¹¹²

Commerce's methodology, as explained above and applied in this investigation, incorporates two basic steps: (1) determine the irrecoverable VAT on subject merchandise, and (2) reduce U.S. price by the amount determined in step one. Information placed on the record of this investigation indicates that according to the China VAT schedule, the standard VAT levy during the POI was 13 percent and the rebate rate for the subject merchandise was 13 percent.¹¹³ Because the VAT levy and VAT rebate rates on exports are the same, we made no adjustment to Ningbo Daye's U.S. sales for irrecoverable VAT.

K. Normal Value

Section 773(c)(1) of the Act provides that Commerce shall determine NV using the FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home market prices, third-country prices, or constructed value under section 773(a) of the Act. Commerce bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under Commerce's normal methodologies.¹¹⁴ Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), we calculated NV based on FOPs. Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1)

¹⁰⁸ See section 772(c)(2)(A) of the Act.

¹⁰⁹ See the Factor Valuation Methodology section.

¹¹⁰ 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).

¹¹¹ *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.

¹¹² *Id.*

¹¹³ See Ningbo Daye September 28, 2020 CQR at 32.

¹¹⁴ 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).

hours of labor required; (2) quantities of raw materials used; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.¹¹⁵

L. Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on Ningbo Daye's reported FOP data. To calculate NV, we multiplied the reported per-unit FOP consumption rates by publicly available SVs. When selecting SVs, we considered, among other factors, the quality, specificity, and contemporaneity of the SV data.¹¹⁶ As appropriate, we adjusted FOP costs by including freight costs to make them delivered values. Specifically, we 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.¹¹⁷ A detailed description of the SVs used can be found in the Preliminary SV Memorandum.¹¹⁸

1. Direct and Packing Materials

For this preliminary determination, we are using Brazilian import data, as published by the GTA, to calculate SVs for FOPs. In accordance with section 773(c)(1) of the Act, we used the best available information for valuing FOPs by selecting, to the extent practicable, SVs which are: (1) broad market averages; (2) product-specific; (3) tax-exclusive, non-export average values; and (4) contemporaneous with, or closest in time to, the POI.¹¹⁹

As noted above, the parties made several submissions regarding the appropriate surrogate valuation of the respondents' reported material FOPs. In instances where the parties disagree with respect to the particular HTS subheading under which a particular material input should be valued, we used an HTS subheading selection method based on the best match between the reported physical description and function of the input and the HTS subheading description.¹²⁰

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities) and pays in an ME currency, Commerce uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.¹²¹ Where Commerce finds ME purchases to be of significant quantities (*i.e.*, 85 percent or more), in accordance with our

¹¹⁵ See section 773(c)(3)(A)-(D) of the Act.

¹¹⁶ 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.

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

¹¹⁸ See Preliminary SV Memorandum.

¹¹⁹ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

¹²⁰ See Preliminary SV Memorandum for further discussion.

¹²¹ See, e.g., *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,¹²² Commerce uses the actual purchase prices to value the inputs.

Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 85 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, Commerce will weight-average the ME purchase price with an appropriate SV, according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption. When a firm has made ME input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, Commerce will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 85 percent threshold. In this investigation, Ningbo Daye reported that the engines it purchased and utilized in production of the subject merchandise were produced in an ME country, that they met the 85 percent threshold, and that it paid for them in an ME currency. Therefore, we valued Ningbo Daye's engine inputs using actual ME purchase prices.¹²³

The record shows that for the remaining inputs, Brazilian import data, obtained through GTA, are broad market averages, product-specific, tax-exclusive, and generally contemporaneous with the POI.¹²⁴

Pursuant to section 773(c)(5) of the Act and Commerce's long-standing practice, Commerce disregards SVs if it has a reason to believe or suspect the source data may comprise dumped or subsidized prices.¹²⁵ 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.¹²⁶ Based on the existence of the subsidy programs that were generally available to all exporters and producers in these countries at the time of the POI, 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, we have not used prices from these four countries in calculating the Brazilian import-based SVs.

¹²² See *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013) (*Antidumping Methodologies: Market Economy Inputs*).

¹²³ See Preliminary SV Memorandum.

¹²⁴ *Id.*

¹²⁵ See section 773(c)(5) of the Act (permitting Commerce to disregard price or cost values without further investigation if it has determined that certain subsidies existed with respect to those values); see also *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46795 (August 6, 2015).

¹²⁶ See, e.g., *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination; 2011-2012*, 78 FR 42492 (July 16, 2013), and accompanying IDM at 7-19; see also *Certain Lined Paper Products from Indonesia: Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 76 FR 73592 (November 29, 2011), and accompanying IDM at 1; *Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 46770 (August 11, 2014), and accompanying IDM at 4; and *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013), and accompanying IDM at IV.

Additionally, we disregarded data from NME countries when calculating Brazilian import-based per-unit SVs. We also excluded from the calculation of Brazilian import-based per-unit SVs imports labeled as originating from an “unidentified” country because we could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.¹²⁷

2. Energy

We preliminarily valued electricity based on data from the publication *Doing Business 2020: Brazil (Doing Business)* published by the World Bank. Because the data are not contemporaneous with the POI, we adjusted it for inflation.¹²⁸

3. Movement Expenses

As appropriate, we added freight costs to SVs. Specifically, we added surrogate inland freight costs to import values used as SVs. We calculated freight SVs using the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest port to the factory that produced the subject merchandise, where appropriate.¹²⁹

We valued brokerage and handling and inland truck freight expenses using data from *Doing Business*.¹³⁰ Because the *Doing Business* data is not contemporaneous with the POI, we adjusted it for inflation.

4. Labor

In *Labor Methodologies*,¹³¹ Commerce determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country. Commerce does not, however, necessarily exclude other sources for valuing labor.¹³² Rather, it follows the practice of selecting the best available information for valuing FOPs. Here, we found that the best available information for valuing labor was data from the International Labour Organization’s Yearbook of Labour Statistics (ILOSTAT). Because the data were reported on basis of wages per month, we converted to an hourly labor rate based on the premise that there are eight working hours per day and 24 working days per month.¹³³ We did not inflate or deflate the labor data because they are contemporaneous with the POI.¹³⁴

¹²⁷ See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People’s Republic of China*, 69 FR 75294, 75301 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People’s Republic of China*, 70 FR 24502 (May 10, 2005).

¹²⁸ See Preliminary SV Memorandum at Exhibit 1, “Surrogate Value” tab.

¹²⁹ See *Sigma*, 117 F.3d at 1407-08.

¹³⁰ See Preliminary SV Memorandum at Exhibit 1, “Surrogate Value” and “B&H” tabs.

¹³¹ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

¹³² See *Steel Wire Garment Hangers from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 65616 (November 5, 2014), and accompanying IDM at 11.

¹³³ See *Labor Methodologies*, 76 FR at 36094, footnote 11.

¹³⁴ See Preliminary SV Memorandum.

5. Financial Ratios

According to 19 CFR 351.408(c)(4), Commerce is directed to value overhead, selling, general and administrative (SG&A) expenses, and profit using non-proprietary information gathered from producers of merchandise that is identical or comparable to the merchandise under consideration in the surrogate country. Commerce's preference is to derive surrogate overhead expenses, SG&A expenses, and profit using financial statements covering a period that is contemporaneous with the POI, that show a profit, from companies with a production experience similar to the respondents' production experience, and that are not distorted or otherwise unreliable, such as financial statements that indicate the company received subsidies.¹³⁵

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we used the 2019 audited public financial statements of Stara S.A. Industria de Implementos Agrícolas and Schulz S.A., Brazilian, which are Brazilian producers of agricultural equipment.¹³⁶

M. Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether the respondent's sales of the subject merchandise from China to the United States were made at LTFV, Commerce compared the EP to the NV as described in the "Export Price" and "Normal Value" sections of this memorandum.

1. 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 price (CEPs)) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In AD investigations, Commerce examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

Commerce has 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.¹³⁷ Commerce finds that the differential

¹³⁵ See *Hand Trucks and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2010-2011, 78 FR 28801 (May 16, 2013), and accompanying IDM at Comment 2; see also *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 78 FR 5414 (January 25, 2013), and accompanying IDM at Comment 1.

¹³⁶ See Petitioner SV Submission at Exhibits 7 and 8.

¹³⁷ See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); see also *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

pricing analysis used in prior investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. 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 this preliminary determination examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of investigation based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that 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 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 this preliminary determination, including arguments for modifying the group definitions used in this investigation.¹³⁸

2. Results of the Differential Pricing Analysis

Based on the results of the differential pricing analysis, we preliminarily find that 0.00 percent of the value of Ningbo Daye's U.S. sales pass the Cohen's *d* test, which 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. Thus, for this preliminary determination, we are applying the average-to-average method for all U.S. sales to calculate Ningbo Daye's weighted-average dumping margin.

¹³⁸ The Court of Appeals for the Federal Circuit (CAFC) has affirmed much of Commerce's differential pricing methodology. *See, e.g., Apex Frozen Foods v. United States*, 862 F.3d 1322 (Fed. Cir. 2017). We ask that interested parties present arguments only on issues which have not already been decided by the CAFC.

VIII. CURRENCY CONVERSION

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

IX. ADJUSTMENT UNDER SECTION 777A(F) OF THE ACT

In applying section 777A(f)(1) of the Act, Commerce examines: (A) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise; (B) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period; and (C) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.¹³⁹ For a subsidy meeting these criteria, the statute requires Commerce to reduce the AD cash deposit rate by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.¹⁴⁰

To perform this analysis, we intend to issue to Ningbo Daye a double remedies questionnaire in which we will request it to submit information with respect to subsidies relevant to its eligibility for an adjustment to the calculated estimated weighted-average dumping margin. We further intend to place our analysis of Ningbo Daye's response on the record of this AD investigation, and allow parties to comment upon it, which we will address in post-preliminary analysis.

X. ADJUSTMENT TO CASH DEPOSIT RATE FOR EXPORT SUBSIDIES

In an LTFV investigation where there is a concurrent CVD investigation, it is Commerce's normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent's estimated weighted-average dumping margin to account for export subsidies found for each respective respondent in the concurrent countervailing duty investigation. Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S. price "shall be increased by the amount of any countervailing duty imposed on the subject merchandise ... to offset an export subsidy."¹⁴¹

Commerce determined in the preliminary determination of the companion CVD investigation that Ningbo Daye benefitted from certain subsidy programs contingent on exports totaling 10.59 percent.¹⁴² Therefore, we have adjusted Ningbo Daye's estimated weighted-average dumping

¹³⁹ See section 777A(f)(1)(A)-(C) of the Act.

¹⁴⁰ See section 777A(f)(1)-(2) of the Act.

¹⁴¹ See *Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 38076, 38077 (July 1, 2010), and accompanying IDM at Comment 1.

¹⁴² Specifically, we preliminarily determined that Ningbo Daye benefitted from the following programs: Policy Loans to the Walk-Behind Lawn Mower Industry, China EX-IM Bank Export Buyer's Credits, Income Tax Reduction for High or New Technology Enterprises, Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law, Import Tariff and VAT Exemptions on Imported Equipment in

margin by this amount. We have adjusted the preliminary margins assigned to the non-selected, separate rate companies using a rate of 10.56 percent because it is the average export subsidy rate calculated for the two mandatory respondents in the companion CVD investigation, the average of whose calculated CVD rates formed the rate to which the non-selected separate-rate companies were subject in that proceeding. The China-wide entity preliminarily received an estimated weighted-average dumping margin based on total AFA, which is the highest transaction-specific margin found for the sole mandatory respondent, Ningbo Daye. As an extension of the adverse inference found necessary pursuant to section 776(b) of the Act, Commerce has determined the cash deposit rate for the China-wide entity by adjusting its estimated weighted-average dumping margin by the lesser of the two export subsidy rates found for either of the two mandatory respondents in the companion CVD investigation. That rate is 10.54 percent, which is the export subsidy rate calculated for Zhejiang Amerisun.¹⁴³

XI. ITC NOTIFICATION

In accordance with section 733(f) of the Act, we will notify the ITC of our preliminary determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement or Compliance. In accordance with section 735(b)(2) of the Act, the ITC will make its final determination before the later of 120 days after the date of this preliminary determination or 45 days after Commerce makes its final affirmative determination.

Encouraged Industries, Provision of Electricity for LTAR, Provision of CRS for LTAR, 2018 Self-Reported General Grants, 2019 Self-Reported General Grants, 2019 Self-Reported Export Contingent Grants. *See Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 85 FR 68848 (October 30, 2020), and accompanying Preliminary Decision Memorandum.

¹⁴³ *Id.*

XII. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

Agree

Disagree

12/22/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance