November 7, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
Antidumping and Countervailing Duty Operations

SUBJECT: Certain Tool Chests and Cabinets from the Socialist Republic of Vietnam: Decision Memorandum for Preliminary Affirmative Determination of sales at Less-Than-Fair-Value

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that imports of certain tool chests and cabinets from the Socialist Republic of Vietnam (Vietnam) are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at less than fair value are shown in the “Preliminary Determination” section of the accompanying Federal Register notice.

II. BACKGROUND

On April 11, 2017, the Department received an antidumping duty (AD) petition covering imports of tool chests and cabinets from Vietnam, which was filed in proper form on behalf of Waterloo Industries Inc. (the petitioner). The Department initiated this investigation on May 1, 2017.

On May 2, 2017, the Department issued the quantity and value (Q&V) questionnaire to all the companies identified in the Petition. On June 2, 2017, in accordance with section

3 See the Department’s Letter, “Quantity and Value Questionnaire for the Antidumping Duty Investigation of Certain Tool Chests and Cabinets from the Socialist Republic of Vietnam,” dated May 2, 2017 (Q&V Questionnaire).
777A(c)(2)(B) of the Act, the Department selected Clearwater Metal VN Joint Stock Company (Clearwater Metal), Rabat Corporation (Rabat), and CSPS Co., Ltd. (CSPS) for individual examination.\(^4\)

In the *Initiation Notice*, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of tool chests and cabinets to be reported in response to the Department’s AD questionnaire.\(^5\) In response to comments and rebuttals filed by interested parties on the scope of the investigation, the Department issued the preliminary scope determination on September 8, 2017.\(^6\)

On June 2, 2017, 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 tool chests and cabinets from Vietnam.\(^7\)

On June 5, 2017, the Department issued the AD questionnaires individually to Clearwater Metal, Rabat, and CSPS.\(^8\) The Department received a timely unified response to the AD questionnaires from Clearwater Metal, Rabat, and CSPS (hereinafter, Clearwater Metal Single Entity).\(^9\) The Department then issued supplemental questionnaires to the Clearwater Metal Single Entity and it timely responded to the supplemental questionnaires.\(^10\) The petitioner timely submitted comments with respect to the responses submitted by the Clearwater Metal Single Entity.\(^11\)

On June 6, 2017, the Department 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 values (SVs) information.\(^12\) We received comments on the selection of the primary surrogate country from the petitioner and the Clearwater Metal Single Entity.\(^13\)


\(^5\) See *Initiation Notice*, 82 FR at 21523, 21524.


\(^7\) See *Tool Chests and Cabinets from China and Vietnam* (Preliminary), 82 FR 25628 (June 2, 2017).

\(^8\) See the AD questionnaires, dated June 5, 2017, issued to Clearwater, Rabat, and CSPS.

\(^9\) See the Clearwater Metal Single Entity’s section A response, dated June 26, 2017, and its sections C and D responses dated July 12, 2017, and July 20, 2017, respectively; see also the “Affiliation and Single Entity Treatment” section, below (where we discuss treating Clearwater Metal, Rabat, and CSPS, as a single entity and refer to them as Clearwater Metal Single Entity).


petitioner also submitted surrogate country rebuttal comments.\textsuperscript{14} We also received the SVs information from the petitioner and the Clearwater Metal Single Entity,\textsuperscript{15} as well as the surrogate values rebuttal comments from these parties.\textsuperscript{16}

On June 8, 2017, the Department received timely separate rate applications (SRAs) from three companies, Clearwater Metal, Rabat, and CPS.\textsuperscript{17}

On October 20, 2017, the petitioner submitted comments with respect to the Clearwater Metal Single Entity for consideration in the preliminary determination.\textsuperscript{18}

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

III. PERIOD OF INVESTIGATION

The POI is October 1, 2016, through March 31, 2017. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was April 2017.\textsuperscript{19}

IV. SCOPE COMMENTS

In accordance with the \textit{Preamble} to the Department’s regulations,\textsuperscript{20} we set aside a period of time until May 22, 2017, for parties to comment on product coverage (scope).\textsuperscript{21} Based on our analysis of the comments and rebuttals we received, we preliminarily modified the scope of this investigation.\textsuperscript{22} The Department intends to address any scope comments received\textsuperscript{23} and issue a

Clearwater’s Surrogate Country Comments,” dated July 14, 2017 (Clearwater SC Comments).
\textsuperscript{17} The SRAs filed by all three companies explained that Rabat and CPS exported the subject merchandise produced by Clearwater Metal. Accordingly, we treated these three SRAs as two SRAs.
\textsuperscript{19} See 19 CFR 351.204(b)(1).
\textsuperscript{20} See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997).
\textsuperscript{21} See \textit{Initiation Notice}, 82 FR at 21523.
\textsuperscript{22} See Preliminary Scope Decision Memorandum.
\textsuperscript{23} The scope case briefs were due 30 days after the publication of \textit{Certain Tool Chests and Cabinets from the
final scope decision along with the final determination in the concurrent countervailing duty investigation on tool chests and cabinets from the People’s Republic of China.

V. PRODUCT CHARACTERISTICS

In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product characteristics until May 16, 2017.24 The petitioner and other interested parties provided comments which we took into consideration in determining the physical characteristics outlined in the AD questionnaire.25

VI. SELECTION OF RESPONDENTS

Section 777A(c)(1) of the Act directs the Department to calculate an individual weighted-average dumping margin for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted-average dumping margin determinations because of the large number of exporters and producers involved in the investigation. Pursuant to section 777A(c)(2) of the Act, the Department may limit its examination to: (A) a sample of exporters, producers or types of products that the Department determines is statistically valid based on the information available to the Department at the time of selection; or (B) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that the Department determines can be reasonably examined. In selecting respondents in this AD proceeding, the Department found that, because of the large number of companies involved in the investigation and its limited resources, it was most appropriate to select respondents that account for the largest volume of the subject merchandise that can reasonably be examined, pursuant to section 777A(c)(2)(B) of the Act.

In the *Initiation Notice*, the Department stated its intent to base respondent selection on the responses to Q&V questionnaires.26 On May 2, 2017, the Department issued the Q&V questionnaire to the five companies identified in the Petition.27 In addition, the Department posted the Q&V questionnaire on its website and, in the *Initiation Notice*, invited parties that did not receive a Q&V questionnaire from the Department to file a response to the Q&V questionnaire by the applicable deadline if they wished to be included in the pool of companies from which the Department would select mandatory respondents.28 We received timely Q&V questionnaire responses from Clearwater Metal, Rabat, and CSPS; however, two companies that

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24 See *Initiation Notice*, 82 FR at 21524.
25 See the AD questionnaires, dated June 5, 2017, issued to Clearwater, Rabat, and CSPS.
26 See *Initiation Notice*, 82 FR at 21527.
27 See Q&V Questionnaire.
28 See *Initiation Notice*, 82 FR at 21527.
received the Q&V questionnaire, Bep Cong Nghiep Kinox Viet Nam (Kinox) and Woodsland Joint Stock Company (Woodsland) failed to respond to the Q&V questionnaire by the established deadline.\(^{29}\) On June 2, 2017, pursuant to section 777A(c)(2)(B) of the Act, the Department limited the number of respondents selected for individual examination to producers and exporters accounting for the largest volume of exports from Vietnam to the United States during the POI that could be reasonably examined. Because of the apparent relationship between the Q&V responses for Clearwater Metal, Rabat, and CSPS, and because no other party responded to the Department’s Q&V questionnaire, the Department selected these three companies as mandatory respondents in this investigation.\(^{30}\)

VII. AFFILIATION AND SINGLE ENTITY TREATMENT

Section 771(33) of the Act, in pertinent parts, identifies persons that shall be considered “affiliated” or “affiliated persons,” as: (1) members of a family, including brothers and sisters (whether by whole or half-blood), spouses, ancestors, and lineal descendants, (2) any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization; (3) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.\(^{31}\) Section 771(33) of the Act further stipulates that “a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person,” and the SAA\(^{32}\) notes that control may be found to exist within corporate groupings.\(^{33}\) In determining whether control over another person exists within the meaning of section 771(33) of the Act, the Department will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.\(^{34}\)

We next examine whether any of the affiliated companies should be considered a single entity for purposes of this investigation. To the extent that the Department’s practice does not conflict with section 773(c) of the Act, the Department has, in prior cases, treated certain NME exporters and/or producers as a single entity if the facts of the case supported such treatment.\(^{35}\) Generally, the Department will treat affiliated producers as a single entity if they have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Department concludes that there is a significant potential for the manipulation of price or production.\(^{36}\)

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29 See Respondent Selection Memorandum.
30 Id.
31 See sections 771(33)(A), (E)-(G) of the Act.
33 See SAA at 838 (stating that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings, (2) franchises or joint ventures, (3) debt financing, and (4) close supplier relationships in which either party becomes reliant upon the other).
34 See 19 CFR 351.102(b)(3).
36 See 19 CFR 351.401(f)(1).
In identifying a significant potential for manipulation, the Department may consider factors including the level of common ownership,\(^37\) “the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm,”\(^38\) and “whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.”\(^39\) The Department considers these criteria in light of the totality of the circumstances; no one factor is dispositive in determining whether to collapse the producers.\(^40\) Also, while 19 CFR 351.401(f) applies only to producers, the Department has found it to be instructive in determining whether non-producers should be collapsed or treated as a single entity and has used this producer regulatory criteria in other analyses.\(^41\)

As provided in more detail in the proprietary version of the Single Entity Memorandum, we preliminarily determine that Clearwater Metal, a Vietnamese producer, and the companies that export its subject tool chests and cabinets to the United States, Rabat and CSPS, are affiliated pursuant to section 771(33)(F) of the Act and that these companies should be treated as a single entity for antidumping purposes pursuant to 19 CFR 351.401(f).\(^42\) These companies are affiliated with each other pursuant to section 771(33)(F) of the Act because they are under the common control of a certain family through the ownership of each of these companies by various family members.\(^43\) We have also determined that there is a significant potential for the manipulation of price or production among these companies as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature of the operations among these companies.\(^44\) Thus, we have preliminarily treated these companies as a single entity, which we refer to as Clearwater Metal Single Entity.


\(^{38}\) See 19 CFR 351.401(f)(2)(ii).

\(^{39}\) See 19 CFR 351.401(f)(2)(iii).

\(^{40}\) See Koyo Seiko Co., Ltd. v. United States, 516 F. Supp. 2d 1323, 1346 (CIT 2007), citing Light Walled Rectangular Pipe and Tube from Turkey: Notice of Final Determination of Sales at Less Than Fair Value, 69 FR 53675 (September 2, 2004) and accompanying Issues and Decision Memorandum at Comment 10.


\(^{43}\) Id.

\(^{44}\) Id.
VIII. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy Country

The Department considers Vietnam to be an NME country. 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 Department. Therefore, we continue to treat Vietnam as an NME country for purposes of this preliminary determination.

B. Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value (NV), in most circumstances, on the NME producer’s factors of production (FOPs), valued in a surrogate market economy (ME) country or countries considered to be appropriate by the Department. Specifically, in accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (A) at a level of economic development comparable to that of the NME country; and (B) significant producers of comparable merchandise. As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME, unless it is determined that none of the countries are viable options because 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. 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. To determine which countries are at a comparable level of economic development, the Department generally relies solely on per capita gross national income (GNI) data from the World Bank’s World Development Report. Further, the Department normally values all FOPs in a single surrogate country.

On May 24, 2017, the Department identified Bangladesh, India, Indonesia, Nigeria, Pakistan, and the Philippines as countries that are at the same level of economic development as Vietnam based on per capita 2015 GNI data. On June 6, 2017, the Department issued a letter to interested parties soliciting comments on the list of countries that the Department determined to be at the same level of economic development as Vietnam, and the selection of the primary surrogate country, as well as providing deadlines for the consideration of any submitted SV

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47 Id.

48 See 19 CFR 351.408(c)(2).

49 See Surrogate Country and Value Comments Invitation Letter at Attachment I (containing Office of Policy Memorandum identifying these countries).
information for the preliminary determination. Both the petitioner and the respondent filed timely surrogate country comments on July 14, 2017.

1. Economic Comparability

Consistent with its practice, section 773(c)(4)(A) of the Act, and, as stated above, the Department identified Bangladesh, India, Indonesia, Nigeria, Pakistan, and the Philippines as countries at the same level of economic development as Vietnam based on the per capita GNI data from the World Bank’s World Development Report. 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 equal in terms of economic comparability.

2. Significant Producer of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department’s regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department 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.” Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country. Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry. “In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise.” In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

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

50 Id.
51 See Policy Bulletin 04.1 at 2.
52 The Policy Bulletin 04.1 also states that “if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.” Id. at note 6.
53 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.”).
54 See Policy Bulletin 04.1 at 2.
55 Id., at 3.
Further, the statute grants the Department discretion to examine various data sources for determining the best available information. Moreover, while the legislative history provides that the term “significant producer” includes any country that is a significant “net exporter,” it does not preclude reliance on additional or alternative metrics. It is the Department’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). In this case, 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. We obtained export data from the GTA for entries made under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 9403.20: “Other Metal Furniture” and 7326.90: “Other Articles of Iron or Steel, Other” (these HTSUS subheadings incorporate subject merchandise reportable under HTSUS categories 9403.20.0021, 9403.20.0026, 9403.20.0030, 7326.90.8688 and 7326.90.3500). The potential surrogate countries that reported export volumes of comparable merchandise in 2016 were India, Indonesia, the Philippines, and Pakistan. As such, we find that India, Indonesia, the Philippines, and Pakistan 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, the Department selects the primary surrogate country based on data availability and reliability. When evaluating SV data, the Department 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. There is no hierarchy among these criteria. The Department’s preference is to satisfy the breadth of these aforementioned selection criteria. Moreover, it is the Department’s practice to carefully consider the available evidence in light of the particular facts of each

56 See section 773(c) of the Act. See also Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1990).
58 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).
59 See Memorandum, “Certain Tool Chests and Cabinets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Determination of Less-Than-Fair-Value Investigation,” dated concurrently with this memorandum (Preliminary SV Memorandum) at Attachment I.
60 See Policy Bulletin.
62 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) and accompanying Issues and Decision Memorandum at Comment 1.
industry when undertaking its analysis of valuing the FOPs. The Department must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the “best” available SV for each input.

The petitioner and the Clearwater Metal Single Entity have placed data on the record from Indonesia and India, respectively. For the primary surrogate country, the petitioner recommends Indonesia and the Clearwater Metal Single Entity recommends India. As discussed in more fulsome detail in the Preliminary SV Memorandum, both Indonesia and India offer comparable sources and quality of data to value material and packing inputs, certain energy inputs, labor, and domestic brokerage and handling expenses. Specifically, both India and Indonesia provide usable data available from GTA at the six-digit HTS classification to value most material and packing inputs, and certain energy inputs. With respect to one of the main inputs, cold-rolled steel with a thickness of more than 1 millimeter, only India provides usable GTA data. Both India and Indonesia also provide usable data from Doing Business 2017: India and Doing Business 2017: Indonesia, respectively, to value labor inputs. Both India and Indonesia provide usable data from the respective countries’ Doing Business 2017 to value domestic brokerage and handling expenses. However, for electricity and inland freight expenses, Indonesia provides significantly more contemporaneous data than India. We further find that Indonesia provides the only appropriate source of information from which to derive surrogate financial ratios, in terms of product- and production-process comparability and financial data contemporaneity.

In evaluating the available data discussed above, the Department finds that Indonesia provides the best information overall and, therefore, will serve as the primary surrogate country for this investigation. Indonesia is at the same level of economic development as Vietnam, is a significant producer of comparable merchandise, and generally has reliable and usable SV data.

**C. Surrogate Value Comments**

The petitioner and the Clearwater Metal Single Entity filed SV comments and SV information with which to value the FOPs in this proceeding on July 31, 2017, and rebuttal comments on August 10, 2017. The petitioner and the Clearwater Metal Single Entity filed additional SV comments and SV information on October 10, 2017, and Clearwater Metal Single Entity filed rebuttal comments on October 20, 2017. For a detailed discussion of the SVs used in this LTFV proceeding, see the “Factor Valuation Methodology” section below and the Preliminary SV Memorandum.

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64 See, e.g., Mushrooms China and accompanying Issues and Decision Memorandum at Comment 1.
65 Id.
66 See Petitioner SV Comments, Clearwater SV Comments, Petitioner SV Rebuttal Comments, Clearwater SV Rebuttal Comments, Petitioner SV Comments II and Clearwater SV Comments II.
67 See Clearwater SV Comments at Exhibits SV-1 and SV-4, and Petitioner SV Comments at Attachments 1 and 3.
68 See Petitioner SV Comments and Clearwater SV Comments.
69 See Petitioner SV Rebuttal Comments and Clearwater SV Rebuttal Comments.
70 See Petitioner SV Comments II and Clearwater SV Comments II.
71 See Clearwater SV Rebuttal Comments II.
72 See Preliminary SV Memorandum.
D. Separate Rates

In proceedings involving NME countries, the Department maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.\(^{73}\) In the *Initiation Notice*, the Department notified parties of the application process by which exporters may obtain separate rate status in this investigation.\(^{74}\) The process requires exporters to submit a SRA\(^{75}\) and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities.

The Department’s policy is to assign all exporters of merchandise under consideration that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.\(^{76}\) The Department analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*\(^{77}\) and further developed in *Silicon Carbide*.\(^{78}\) According to this separate rate test, the Department will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If, however, the Department determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

As noted above, the Department received timely filed SRAs from Rabat and CSPS, companies that reported that they have exported subject merchandise produced by Clearwater Metal.\(^{79}\) The Department is preliminarily granting the collapsed entity, the Clearwater Metal Single Entity,\(^{80}\) of which Rabat and CSPS are part, a separate rate because Rabat and CSPS provided evidence that they are wholly foreign-owned companies and, thus, a separate-rate analysis is not necessary.\(^{81}\)

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\(^{73}\) *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).

\(^{74}\) *See* *Initiation Notice*, 82 FR at 21527, 21528.


\(^{76}\) *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*).

\(^{77}\) Id.

\(^{78}\) *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*).

\(^{79}\) *See* Rabat’s Separate Rate Application dated June 8, 2017 and CSPS’s Separate Rate Application dated June 8, 2017.

\(^{80}\) *See* the “Affiliation and Single Entity Treatment” section, above (where we discuss collapsing Clearwater Metal, Rabat, and CSPS, into a single entity to which we refer as the Clearwater Metal Single Entity).

\(^{81}\) *See* Rabat’s Separate Rate Application dated June 8, 2017 and CSPS’s Separate Rate Application dated June 8, 2017.
E. Combination Rates

Consistent with the *Initiation Notice* and practice, the Department has calculated a combination rate for the Clearwater Metal Single Entity, a respondent that is eligible for a separate rate in this investigation. This practice is described in Policy Bulletin 05.1.

F. The Vietnam-Wide Entity

The record indicates that there are Vietnamese producers and/or exporters of the merchandise under consideration during the POI which did not respond to the Department’s requests for information. Specifically, as noted in the “Selection of Respondents” section, above, the Department did not receive responses to its Q&V questionnaire from certain Vietnamese producers and/or exporters of the merchandise under consideration that were named in the Petition and received the Q&V questionnaires that the Department issued. Because non-responsive Vietnam companies have not demonstrated that they are eligible for separate rate status, the Department finds that they have not rebutted the presumption of government control and, therefore, considers them to be part of the Vietnam-wide entity. Furthermore, as explained below, we are preliminarily determining the Vietnam-wide rate based on adverse facts available (AFA).

G. Application of Facts Available and Adverse Inferences

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

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

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82 *See Initiation Notice*, 82 FR at 21528.
The Trade Preferences Extension Act of 2015 (TPEA), amended section 776(b) and (c) of the Act and added section 776(d) of the Act, which are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.

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

Section 776(c) of the Act provides that, when the Department 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. The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

1. Use of Facts Available

The Department preliminarily finds that the Vietnam-wide entity, which includes certain Vietnamese producers and/or exporters that did not respond to the Department’s requests for information, withheld information requested by the Department and significantly impeded this proceeding by not submitting the requested information. Specifically, two companies within the Vietnam-wide entity failed to respond to the Department’s request for Q&V information. Therefore, the Department preliminarily determines that the use of facts available is warranted in

85 See SAA at 870.
86 These companies are Kinox and Woodsland. These companies did not submit SRAs. Woodsland submitted scope comments in which it claimed to be a producer of non-subject merchandise, i.e., indoor and outdoor furniture made of wood. We preliminarily found that the wood tool chests described by the company would not be covered by the scope of this investigation. See Preliminary Scope Decision Memorandum. Accordingly, if there are any entries of subject merchandise for which Woodsland is the exporter, such entries will be subject to the Vietnam-wide entity rate.
determining the rate of the Vietnam-wide entity, pursuant to section 776(a)(1) and (a)(2)(A)-(C) of the Act.87

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, the Department may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The Department finds that the Vietnam-wide entity’s lack of participation, including the failure of certain parts of the Vietnam-wide entity to submit Q&V information, constitutes circumstances under which it is reasonable to conclude that the Vietnam-wide entity as a whole failed to cooperate to the best of its ability to comply with the Department’s request for information.88 With respect to the missing information, no documents were filed indicating any difficulty providing the information, nor was there a 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 otherwise available with respect to the Vietnam-wide entity in accordance with section 776(b) of the Act and 19 CFR 351.308(a).89

3. Selection of the AFA Rate

In applying an adverse inference, the Department may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.90 In selecting an AFA rate, the Department selects 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.91 In an investigation, the Department’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.92 In this investigation, because the preliminary margin calculated for Clearwater Metal Single Entity is higher than the petition rate of 21.85 percent,93 we preliminarily assigned the Vietnam-wide AFA rate of 230.31 percent. It is unnecessary to corroborate this rate because it was obtained in the course of this investigation and, therefore, is not secondary information.94


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

89 See id. at 1382-83.

90 See section 776(b) of the Act.

91 See SAA at 870.

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

93 See Initiation Notice, 82 FR at 21527.

94 See section 776(c) of the Act (“when the {Department} relies on secondary information rather than on
H. Date of Sale

The Clearwater Metal Single Entity reported the invoice date as the date of sale in its U.S. sales list. The Clearwater Metal Single Entity asserted that the invoice date best reflects the date of sale because the material terms of sale are set and final at that time. Although the Department normally uses the date of invoice, as recorded in the producer’s or exporter’s records kept in the ordinary course of business, as the date of sale, the Department’s regulations provide that the Department may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale (e.g., price and quantity).

We examined the information on the record and found that the material terms of U.S. sales were established on the date of the purchase order, and, further, did not change between the date of the purchase order and the date of commercial invoices. In addition, the Clearwater Metal Single Entity did not provide any information to support its assertion that the material terms of sale are finalized at the time of issuance of invoices. As the information on the record indicates that the material terms of sale (e.g., price and quantity) were not subject to change after the date of the purchase order, we preliminarily determine that this date better reflects the date on which the exporters established and formalized the material terms of sale. Therefore, for purposes of this preliminary determination, we have used the date of the purchase order as the date of sale for the Clearwater Metal Single Entity’s reported U.S. sales.

I. 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 Clearwater Metal Single Entity’s sales of the subject merchandise from Vietnam to the United States were made at less than fair value, the Department compared the export price to the normal value 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), the Department calculates weighted-average dumping margins by comparing weighted-average normal values to weighted-average export prices (or constructed export prices) \( (i.e., \text{the average-to-average method}) \) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average normal values with the export prices (or constructed export prices) of individual sales \( (i.e., \text{the average-to-transaction method}) \) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.\(^99\) The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the 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 export prices (or constructed export prices) 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 \( (i.e., \text{zip code}) \) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of investigation based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between export price (or constructed export price) and normal value for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s \( d \) test” is applied. The Cohen’s \( d \) coefficient is a generally recognized statistical measure of the extent of the difference between the mean \( (i.e., \text{weighted-average price}) \) of a test group and the mean \( (i.e., \text{weighted-average price}) \). \(^99\) See, e.g., Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair, 78 FR 33351 (June 4, 2013); Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 79 FR 54967 (September 15, 2014); Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value, 80 FR 61362 (October 13, 2015).
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, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen’s $d$ and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the de minimis threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the de minimis threshold.
Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this investigation.

2. Results of the Differential Pricing Analysis

For the Clearwater Metal Single Entity, based on the results of the differential pricing analysis, the Department preliminarily finds that 55.1 percent of the value of U.S. sales pass the Cohen’s $d$ test,\(^{100}\) and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen’s $d$ test and the average-to-average method to those sales which did not pass the Cohen’s $d$ test. Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for the Clearwater Metal Single Entity.

J. U.S. Price

For the price to the United States, we used export price (EP) or constructed export price (CEP) as defined in sections 772(a) and (b) of the Act, as appropriate. We calculated EP and CEP based on the packed F.O.B. or C.I.F. price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for certain price allowances and rebates.\(^{101}\) We also made deductions for any movement expenses, i.e., foreign inland freight, foreign brokerage and handling, and, where appropriate, U.S. movement expenses, in accordance with section 772(c)(2)(A) of the Act. The Department based movement expenses on SVs for services purchased from Vietnamese companies.\(^{102}\)

Consistent with section 772(d)(1) of the Act, we calculated CEP by deducting selling expenses associated with economic activities occurring in the United States which includes direct selling expenses. In accordance with sections 772(d)(1) of the Act, we also deducted those indirect selling expenses associated with economic activities occurring in the United States and the profit allocated to expenses deducted under section 772(d)(1) of the Act, in accordance with sections 772(d)(3) and 772(f) of the Act.

K. Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using the FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on FOPs because the presence of

\(^{100}\) See Memorandum, “Less-Than-Fair-Value Investigation of Certain Tool Chests and Cabinets: Preliminary Determination Analysis Memorandum for the Clearwater Metal Single Entity,” dated concurrently with this memorandum (Preliminary Analysis Memorandum) at 2.

\(^{101}\) See 19 CFR 351.401(c) and 351.102(b)(38).

\(^{102}\) See the Factor Valuation Methodology section below.
government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department’s normal methodologies. Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), the Department calculated NV based on FOPs. Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials used; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.

L. Factor Valuation Methodology

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

1. Direct and Packing Materials

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

As noted in the “Surrogate Value Comments” and “Data Availability” section above, the parties made several submissions regarding the appropriate surrogate valuation of the respondent’s reported materials and packing FOPs. In instances where the parties disagree with respect to the

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


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

107 See Preliminary SV Memorandum.

particular Harmonized Tariff System (HTS) subheading under which a particular material input should be valued, the Department 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.109

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier, and that are produced in an ME country, in meaningful quantities (i.e., not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.110 Where the Department finds ME purchases to be of significant quantities (i.e., 85 percent or more), in accordance with our statement of policy,111 the Department uses the actual purchase prices to value the inputs. Alternatively, when the volume of an NME firm’s purchases of an input from ME suppliers during the period is below 85 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the ME purchase price with an appropriate SV, according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption. When a firm has made ME input purchases that may have been dumped or subsidized, are not bona fide, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 85 percent threshold.112 The Clearwater Metal Single Entity provided evidence that it had ME purchases of certain inputs during the POI.113 Because The Clearwater Metal Single Entity sourced its ME inputs from an affiliated ME party, per our request, and consistent with our practice,114 the Clearwater Metal Single Entity demonstrated, to our satisfaction, that its ME purchases of certain inputs were made at arm’s-length prices.115 The Department used the Clearwater Metal Single Entity’s reported ME purchase data for those inputs, where appropriate, in the preliminary determination.116 The Department also added freight expenses to the Clearwater Metal Single Entity’s reported ME prices for those inputs, where appropriate.117

109 See Preliminary SV Memorandum.
110 See, e.g., Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27366 (May 19, 1997).
112 Id.
113 See the Clearwater Metal Single Entity’s October 2, 2017 supplemental questionnaire response at Exhibits 2SD-2, 2SD-5, and 2SD-6.
115 See the Clearwater Metal Single Entity’s October 2, 2017 supplemental questionnaire response at 15-17 and Exhibits 2SD-3, 2SD-4, and 2SD-21.
116 See Preliminary SV Memorandum.
117 See Preliminary Analysis Memorandum.
The record shows that for the remaining inputs, Indonesian import data obtained through GTA, are broad market averages, product-specific, tax-exclusive, and generally contemporaneous with the POI.\(^{118}\)

Pursuant to section 773(c)(5) of the Act and the Department’s long-standing practice, the Department is disregarding SVs if it has a reason to believe or suspect the source data may comprise subsidized prices.\(^{119}\) In this regard, the Department has previously found that it is appropriate to disregard such prices from India, South Korea, and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.\(^{120}\) 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, the Department finds that it is reasonable to infer that all exporters from India, South Korea, and Thailand may have benefitted from these subsidies. Therefore, the Department has not used prices from those countries in calculating the Indonesian import-based SVs.

Additionally, the Department disregarded data from NME countries when calculating Indonesian import-based per-unit SVs. The Department also excluded from the calculation of Indonesian import-based per-unit SVs imports labeled as originating from an “unidentified” country because the Department could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.\(^{121}\)

2. Energy

We valued electricity using prices published by the World Bank’s *Doing Business 2017: Indonesia* report, which contains pricing data for electricity rates for business customers in the Jakarta and Surabaya regions.\(^{122}\) These electricity rates are publicly available. Because the data in *Doing Business 2017: Indonesia* were current as of June 1, 2016,\(^{123}\) which is four months prior to the beginning of the POI, we adjusted the surrogate electricity value for inflation using the

\(^{118}\) See Preliminary SV Memorandum.

\(^{119}\) See section 773(c)(5) of the Act, as amended in section 505 of the TPEA to permit the Department to disregard price or cost values without further investigation if it has determined that certain subsidies existed with respect to those values. See also *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46795 (August 6, 2015).

\(^{120}\) See, e.g., *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination; 2011-2012*, 78 FR 42492 (July 16, 2013) and accompanying Issues and Decision Memorandum at 7-19. See also *Certain Lined Paper Products from Indonesia: Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 76 FR 73592 (November 29, 2011) and accompanying Issues and Decision Memorandum at 1; *Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 46770 (August 11, 2014) and accompanying Issues and Decision Memorandum at 4; *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) and accompanying Issues and Decision Memorandum at IV.


\(^{122}\) See Petitioner SV Comments at Attachment 4, Doing Business Indonesia at 64-65.

\(^{123}\) See Petitioner SV Comments at Attachment 4, Doing Business Indonesia at 4.
Producer Price Index.\textsuperscript{124} We valued the gases used in the welding and powder coating operations using Indonesian import data, as published by the GTA.\textsuperscript{125}

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.\textsuperscript{126}

We valued inland truck freight expenses using the data from \textit{Doing Business 2017: Indonesia}, and a calculation methodology based on a container weighing 15 metric tons and a distance from Jakarta to Indonesia’s most widely used seaport, Tanjung Priok port, of 21 kilometers (both of which were noted in the \textit{Doing Business 2017} study).\textsuperscript{127} Because the data in \textit{Doing Business 2017} were current as of June 1, 2016,\textsuperscript{128} which is four months prior to the beginning of the POI, we adjusted the surrogate truck freight value for inflation using the Producer Price Index.\textsuperscript{129}

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods from Indonesia. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Indonesia that is published in \textit{Doing Business 2017} by the World Bank. Because the data in \textit{Doing Business 2017} were current as of June 1, 2016,\textsuperscript{130} which is four months prior to the beginning of the POI, we adjusted the surrogate truck freight value for inflation using the Producer Price Index.\textsuperscript{131}

4. Labor

In \textit{Labor Methodologies},\textsuperscript{132} the Department determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country. Additionally, we determined that the best data source for industry-specific labor rate is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics.\textsuperscript{133} For this preliminary determination, we valued labor using 2016 manufacturing specific data published by the ILO Statistics.\textsuperscript{134} In \textit{Labor Methodologies}, the Department decided to use ILO Chapter 6A instead of ILO Chapter 5B data, on the rebuttable presumption that Chapter 6A data

\begin{footnotes}
\item[124] See Preliminary SV Memorandum.
\item[125] Id.
\item[126] See Sigma Corp. v. United States, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).
\item[127] See Petitioner SV Comments at Attachment 5, Doing Business Indonesia at 109-114 and Trading Across Borders Methodology at 2.
\item[128] See Petitioner SV Comments at Attachment 5, Doing Business Indonesia at 4.
\item[129] See Preliminary SV Memorandum.
\item[129] See Preliminary SV Memorandum.
\item[130] See Petitioner SV Comments at Attachment 5, Doing Business Indonesia at 4.
\item[131] See Preliminary SV Memorandum.
\item[133] Id., at 36093; see also Prelim Surrogate Value Memo.
\item[134] See Preliminary SV Memorandum.
\end{footnotes}
accounts for all direct and indirect labor costs. We did not, however, preclude all other sources from evaluation for use in valuing labor costs in NME AD proceedings. Rather, we continue to follow the Department’s practice of selecting the best available information to determine SVs for inputs such as labor. Therefore, we find that the 2016 manufacturing specific ILO Statistics data are the best available information because it is the most contemporaneous labor information on the record and it is specific to the manufacturing activity.

5. Financial Ratios

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

The record contains the audited public financial statements of PT Lion Metal Works Tbk (PT Lion), an Indonesian producer of merchandise comparable to the merchandise under consideration. PT Lion’s financial statements cover the fiscal year ending December 2016 and show a profit. As a result, because they are contemporaneous, we preliminarily valued factory overhead, SG&A and profit using PT Lion’s 2016 financial statements.

M. Use of Facts Available for Certain Factors of Production

The Department may use facts available pursuant to Section 776(a) of the Act when necessary information is missing from the record of the proceeding. During the POI, the Clearwater Metal Single Entity used a number of unaffiliated tollers for certain stages of the production process in the manufacture of subject merchandise. The Clearwater Metal Single Entity reported to the Department that it attempted to obtain its unaffiliated tollers’ data, but these companies refused

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136 See Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33354 (June 4, 2013), and accompanying Issues and Decision Memorandum at Comment 6-C; see also Drawn Stainless Steel Sinks from the People’s Republic of China: Investigation, Final Determination, 78 FR 13019 (February 26, 2013), and accompanying Issues and Decision Memorandum at Comment 3.
137 See Preliminary SV Memorandum.
139 See Petitioner SV Comments at Attachment 6.
140 See Preliminary SV Memorandum.
141 See the Clearwater Metal Single Entity’s October 2, 2017 supplemental questionnaire response at 19-20 and Exhibit 2SD-12.
to share their confidential information with the Clearwater Metal Single Entity.\textsuperscript{142} As a result, we lack necessary the FOP data and the application of “facts otherwise available” is warranted.

As discussed above, pursuant to section 776(b) of the Act, the Department may use facts otherwise available with an adverse inference when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. However, we do not find that the Clearwater Metal Single Entity failed to cooperate with respect to obtaining the requested FOPs from its unaffiliated tollers and, accordingly, we are not drawing an adverse inference. The Clearwater Metal Single Entity identified the tollers involved in each of the outsourced production stages, demonstrated the extent of their involvement, and documented its unsuccessful attempts to obtain the requested FOPs from tollers.\textsuperscript{143} Moreover, (i) aside from the punching stage of production, the FOPs of the non-reporting tollers account for a relatively small portion of the total FOPs during the POI,\textsuperscript{144} and (ii) there is usable FOP information on the record that can serve as a substitute for the missing FOP information. Therefore, consistent with our practice, we are applying neutral facts available.\textsuperscript{145} Specifically, we are using the Clearwater Metal Single Entity’s own FOPs as facts available for the missing toller information.

\textbf{N. Currency Conversion}

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

\begin{itemize}
  \item \textsuperscript{142} \textit{Id.} at 20.
  \item \textsuperscript{143} \textit{Id.}, at 20 and Exhibit 2SD-13.
  \item \textsuperscript{144} \textit{Id.}, at Exhibit 2SD-12.
\end{itemize}
IX. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☑ ☐

Agree    Disagree

11/7/2017

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance