April 3, 2018

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  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Tool Chests and Cabinets from the Socialist Republic of Vietnam: Issues and Decision Memorandum for the Final Affirmative Determination of Sales at Less Than Fair Value

I. SUMMARY

The Department of Commerce (Commerce) 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 (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is October 1, 2016, through March 31, 2017. As a result of our analysis of the comments submitted by interested parties, we made certain changes for the final determination. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

II. BACKGROUND

On November 16, 2017, Commerce published its Preliminary Determination in the LTFV investigation of certain tool chests and cabinets from Vietnam, and informed interested parties that we would subsequently issue a case brief schedule providing an opportunity to comment on the Preliminary Determination after verification. On November 30, 2017, the sole mandatory

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Commerce postponed the final determination of this investigation to March 31, 2018. However, Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. Accordingly, the revised deadline for the final determination in this investigation is April 3, 2018.

Based on our analysis of the comments received, for this final determination, we have revised the dumping margin for the Vietnam-wide entity.

III. SCOPE COMMENTS

We invited parties to comment on Commerce’s Preliminary Scope Decision Memorandum. Commerce reviewed the scope case and rebuttal briefs submitted by interested parties, considered the arguments therein, and made certain changes to the scope of the investigation. For further discussion, see Commerce’s Final Scope Decision Memorandum. For the revised scope of this investigation, see the Federal Register notice accompanying this memorandum.

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2 Commerce preliminarily determined that Clearwater Metal VN JSC (Clearwater Metal), Rabat Corporation (Rabat), and CSPS Co., Ltd. (CSPS), are a single entity (hereinafter, Clearwater Metal Single Entity). See Preliminary Determination, 82 FR at 53453 n.10 and Preliminary Decision Memorandum at “Affiliation and Single Entity Treatment” section; see also Memorandum, “Certain Tool Chests and Cabinets from the Socialist Republic of Vietnam: Collapsing and Single Entity Treatment,” dated November 14, 2017. Nothing has changed for this final determination, and therefore, we continue to treat these companies as a single entity.


6 See Preliminary Determination, 82 FR at 53454.

7 See Memorandum, “Deadlines Affected by the Shutdown of the Federal Government,” dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.


IV. CHANGES SINCE THE PRELIMINARY DETERMINATION

As discussed below, we have made certain changes from the *Preliminary Determination*.

Treatment of Clearwater Metal Single Entity

In proceedings involving non-market economy (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.\(^{10}\) In the *Initiation Notice*, Commerce notified parties of the application process by which exporters may obtain separate rate status in this investigation.\(^{11}\) The process requires exporters to submit a separate rate application (SRA)\(^ {12}\) and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities.

Commerce’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.\(^ {13}\) Commerce analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*\(^ {14}\) and further developed in *Silicon Carbide*.\(^ {15}\) 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 separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

As discussed in the *Preliminary Determination*, we received timely filed SRAs from Rabat and CSPS, companies that reported that they have exported subject merchandise produced by Clearwater Metal.\(^ {16}\) Commerce preliminarily granted the collapsed entity, Clearwater Metal Single Entity, 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, we preliminarily determined that a separate-rate analysis was not necessary.\(^ {17}\)

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\(^{10}\) 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).

\(^{11}\) See *Initiation Notice*, 82 FR at 21527, 21528.


\(^{13}\) 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*).

\(^{14}\) Id.

\(^{15}\) 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*).

\(^{16}\) See Rabat’s Separate Rate Application dated June 8, 2017 and CSPS’s Separate Rate Application dated June 8, 2017.

\(^{17}\) See Preliminary Decision Memorandum at “Separate Rate” section.
After the Preliminary Determination, as noted above, Clearwater Metal Single Entity withdrew from the scheduled verification of its questionnaire responses. Therefore, because Clearwater Metal Single Entity has prevented us from conducting verification of its questionnaire responses, including its claim that it is a wholly foreign-owned company, we find that Clearwater Metal Single Entity is part of the Vietnam-wide entity.

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.

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 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, and under the TPEA, Commerce 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 (AD) investigation, a previous administrative review, or other information placed on the record.

18 See Clearwater Metal Single Entity Verification Withdrawal Letter.
Section 776(c) of the Act provides that, 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. The TPEA also makes clear that when selecting an adverse facts available (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.

In the Preliminary Determination, we preliminarily found that that the Vietnam-wide entity, which includes certain Vietnamese producers and/or exporters that did not respond to Commerce’s requests for information, withheld information requested by Commerce, and significantly impeded this proceeding by not submitting the requested information. Specifically, two companies within the Vietnam-wide entity failed to respond to Commerce’s request for Q&V information. Therefore, Commerce preliminarily determined that the use of facts available was warranted in determining the rate of the Vietnam-wide entity, pursuant to section 776(a)(1) and (a)(2)(A)-(C) of the Act.

As discussed above, subsequent to the Preliminary Determination, Clearwater Metal Single Entity withdrew from the scheduled verification of its questionnaire responses. As a result, we are treating Clearwater Metal Single Entity as part of the Vietnam-wide entity. We continue to find that the use of facts available is warranted in determining the rate of the Vietnam-wide entity pursuant to section 776(a)(1) and (a)(2)(A)-(C) of the Act. Further, use of facts available is also warranted, pursuant to section 776(a)(2)(D) of the Act because information provided by Clearwater Metal Single Entity, that is part of the Vietnam-wide entity, is not verifiable.

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 continues to find 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, as well as Clearwater Metal Single entity’s withdrawal from verification, constitutes circumstances under which it is reasonable to conclude that the Vietnam-wide entity as a whole failed to cooperate to

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22 These companies are Bep Cong Nghiep Kinox Viet Nam (Kinox) and Woodsland Joint Stock Company (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. We made no changes to this finding for purposes of this final determination. See Final 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.
23 See Preliminary Decision Memorandum at “Application of Facts Available and Adverse Inferences” section.
24 See Clearwater Metal Single Entity Verification Withdrawal Letter.
the best of its ability to comply with Commerce’s request for information and verification. 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 continue to 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).

In relying on AFA, Commerce 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. In selecting an AFA rate, Commerce 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. 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. In this investigation, in the Preliminary Determination, we assigned the Vietnam-wide entity a total AFA rate based on the preliminary margin calculated for Clearwater Metal Single Entity, 230.01 percent, which was higher than the petition rate of 21.85 percent. As further discussed below, for purposes of the final determination we are now relying on 327.17 percent, the highest CONNUM-specific dumping margin we calculated for Clearwater Metal Single Entity in the Preliminary Determination, as the total AFA rate for the Vietnam-wide entity. It is unnecessary to corroborate this rate because it was obtained in the course of this investigation and, therefore, is not secondary information.

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25 See Certain Circular Welded Carbon Quality Steel Line Pipe from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 14514 (March 31, 2009), and the accompanying Issues and Decision Memorandum at Comment 12.
26 See section 776(b) of the Act.
27 See SAA at 870.
28 See, e.g., Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value, 81 FR 3101 (January 20, 2016).
31 See section 776(c) of the Act (“when {Commerce} relies on secondary information rather than on information obtained in the course of an investigation or review, {Commerce}, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal”) (Emphasis added). See also, e.g., Steel Concrete Reinforcing Bar from Taiwan: Final Determination of Sales at Less Than Fair Value, 82 FR 34925 (July 27, 2017), and accompanying Issues and Decision Memorandum at 5-6 and Comment 4.h.
V. DISCUSSION OF THE ISSUES

The Total AFA Rate for the Vietnam-Wide Entity and Selection of Surrogate Country and Surrogate Values

Petitioner’s Affirmative Arguments:

- By withdrawing its participation in the sales and the factors-of-production verifications, pursuant to section 776(a)(3)-(4) of the Act, Clearwater Metal Single Entity has significantly impeded the proceeding and its information cannot be verified.\(^{32}\) Thus, Commerce should apply adverse facts.

- Further, pursuant to section 776(b) of the Act, Clearwater Metal Single Entity has failed to act to the best of its ability by withdrawing from verification, which prevented Commerce from verifying any of the company’s sales or factors of production information.\(^{33}\) Thus, total AFA is warranted.

- Under section 776(b)(2)(D) of the Act, Commerce is permitted to use “any other information placed on the record” and should assign Clearwater Metal Single Entity as its total AFA rate the highest transaction- or CONNUM-specific margin calculated in the Preliminary Determination to ensure that it “does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.”\(^{34}\)

Clearwater Metal Single Entity’s Affirmative Arguments

- Commerce improperly selected Indonesia, instead of India, as the primary surrogate country, because Indonesia is not economically comparable, is not a significant producer of comparable merchandise, and does not offer the best surrogate value (SV) data (e.g., aberrationally high value for cold rolled steel).\(^{35}\) Further, Commerce used the wrong Harmonized Tariff Schedule (HTS) category for hot rolled steel.\(^{36}\)

- To value financial ratios, Jalaram Steel Furniture Private Limited’s (Jalaram) financial statement offers the best available information. Commerce’s usage of PT Lion Metal Works Tbk’s (PT Lion) financial statement contains numerous methodological and calculation errors.\(^{37}\)

- Commerce should not apply the highest calculated AD rate as AFA for the final determination because the AFA policy “is not a punitive measure but rather intended to

\(^{32}\) See Petitioner’s Case Brief at 2-3.

\(^{33}\) Id., citing, among others, Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 29167 (June 19, 2009) (Certain Tow Behind Lawn Groomers) and accompanying Issues and Decision Memorandum at 4-6, and Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 4913 (January 28, 2009) (Pressure Pipe from China) and accompanying Issues and Decision Memorandum at 7 (in both cases Commerce assigned rates to mandatory respondents based on total AFA for the refusal to be verified).


\(^{35}\) See Clearwater Metal Single Entity’s Case Brief at 3-11.

\(^{36}\) Id. at 13-14.

\(^{37}\) Id. at 14-18.
encourage future cooperation.”\textsuperscript{38} Commerce has recognized that it is not appropriate to use the dumping margin alleged in the petition automatically when it is significantly higher than the rates calculated for the mandatory respondents in an AD investigation.\textsuperscript{39} Here, Commerce should not use the highest calculated margin from the Preliminary Determination. Commerce should assign to Clearwater Metal Single Entity the AD rate alleged in the petition, or, alternatively, should Commerce seek to calculate a rate, the corrections for the surrogate value selection and financial ratio calculation must be made.

Petitioner’s Rebuttal Arguments:

- Commerce should reject Clearwater Metal Single Entity’s arguments concerning surrogate country selection and surrogate values because the company withdrew from verification. Here, because the margin calculated for Clearwater Metal Single Entity in the Preliminary Determination is higher than the petition rate, but not high enough to induce cooperation, Commerce should use the highest transaction- or CONNUM-specific margin calculated in the Preliminary Determination as the AFA rate for Clearwater Metal Single Entity.\textsuperscript{40}
- To the extent that the respondent’s methodological arguments relating to the calculation of normal value are considered, they should be rejected.
- Commerce’s preliminary selection of Indonesia as the primary surrogate country was appropriate, and Clearwater Metal Single Entity forfeited its opportunity to dispute Indonesia’s economic comparability to Vietnam. Commerce’s preliminary finding that Indonesia is a significant producer of comparable merchandise is supported by record evidence.
- Commerce selected appropriate surrogate values for cold-rolled and hot-rolled steel material inputs, and to calculate overhead expenses, selling and general and administrative (SGA) expenses, and profit.

Clearwater Metal Single Entity’s Rebuttal Comments

- Assigning a final AD rate based on total AFA and selecting the highest transaction or CONNUM specific margin would be unduly punitive, unsupported by evidence on the record, and contrary to law and Commerce’s practice because Clearwater Metal Single Entity had a consistent pattern of cooperation up until verification.\textsuperscript{41} Further, it would be based on incorrect margins because of a distorted surrogate country and surrogate values.

\textbf{Commerce’s Position:} As discussed above, we find for purposes of this final determination that Clearwater Metal Single Entity is part of the Vietnam-wide entity.

\textsuperscript{38} Id. at 18-19.

\textsuperscript{39} See Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 82 FR 16345 (April 4, 2017), and accompanying Issues and Decision memorandum at Comment 4 (CTL Plate Italy).

\textsuperscript{40} See Petitioner’s Rebuttal Brief., at 2, citing Petitioner’s Case Brief at 4-5 (citations omitted).

\textsuperscript{41} See Clearwater Metal Single Entity’s Rebuttal Brief at 1-5, citing Gallant Ocean (Thai.) Co. v. United States, 602 F.3d 1319 (CAFC 2010) and, among others, Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Final Affirmative Countervailing Duty Determination, 82 FR 58172 (December 11, 2017) and accompanying Issues and Decision memorandum at comment 11.
In addition, we continue to find that use of facts available with an adverse inference is appropriate in determining a rate for the Vietnam-wide entity, of which Clearwater Metal Single Entity is a part. Clearwater Metal Single Entity claims that, although it withdrew from verification, it has a pattern of cooperation in this investigation, and that it did not intentionally mislead or act in bad faith to impede the proceeding. However, Commerce need not find a party has intentionally mislead or acted in bad faith in relying on AFA. In addition, Clearwater Metal Single Entity’s “cooperation” up until the verification is of no consequence: by withdrawing from verification a week before the verifications were scheduled to begin, Clearwater Metal Single Entity prevented Commerce from verifying the information that it had submitted, and significantly impeded the investigation. Thus, as explained above, these constitute 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 Commerce’s request for information and verification.

Next, we agree with the petitioner that it is appropriate to rely on the highest CONNUM-specific dumping margin calculated for Clearwater Metal Single Entity in the Preliminary Determination as total AFA for the Vietnam-wide entity. As discussed above, Commerce’s practice is to select as AFA the higher of: (1) the highest dumping margin alleged in the petition; or (2) the highest calculated rate for any respondent in the proceeding in order “to effectuate the purpose of the facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner.” In this case, the dumping margin calculated in the Preliminary Determination for Clearwater Metal Single Entity, which was also the rate assigned to the Vietnam-wide entity as total AFA, is higher than the petition rate of 21.85 percent. However, we find that this calculated rate was insufficient to induce cooperation, given that Clearwater Metal Single Entity, now found to be part of the Vietnam-wide entity, withdrew from verification after the Preliminary Determination. In addition, although we find that Clearwater Metal Single Entity’s information is not reliable for purposes of establishing that it is entitled to a separate rate, to ensure that the Vietnam-wide entity does not benefit from its non-cooperation, we find it appropriate to rely on the highest CONNUM-specific dumping margin calculated for Clearwater Metal Single Entity in the Preliminary Determination, 327.17 percent. Commerce has, in prior cases, selected a margin under similar circumstances as a total AFA rate. This is consistent with our practice to effectuate the purpose of the adverse

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42 See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1383 (CAFC 2003) (“While intentional conduct, such as deliberate concealment or inaccurate reporting, surely evinces a failure to cooperate, the statute does not contain an intent element…. The statutory trigger for Commerce’s consideration of an adverse inference is simply a failure to cooperate to the best of respondent’s ability, regardless of motivation or intent.”)


44 See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan, 63 FR 8909, 8932 (February 23, 1998). See also Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value, 79 FR 31093 (May 30, 2014) and accompanying Issues and Decision Memorandum, at Comment 3; Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value, 81 FR 3101 (January 20, 2016).

45 See Initiation Notice, 82 FR at 21527.

46 See, e.g., Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value, 83 FR 8835 (March 1, 2018) and accompanying Issues and Decision Memorandum, at Comment 9; Polyethylene Terephthalate Film,
inference so that a non-cooperating respondent does not benefit from its refusal to participate by obtaining a more favorable result by failing to cooperate than if it had fully cooperated.\textsuperscript{47}

We disagree with Clearwater Metal Single Entity’s contention that we cannot use a transaction/CONNUM-specific margin from the \textit{Preliminary Determination} as AFA. There is no such limitation in the statute or the regulations with respect to the application of facts available when relying on primary information.\textsuperscript{48} Moreover, Commerce is not required to corroborate the selected margin because it is based on, and calculated from, information submitted by Clearwater Metal Single Entity in the course of this investigation, \textit{i.e.}, it is not secondary information.\textsuperscript{49} For this reason, Clearwater Metal Single Entity’s reliance on \textit{CTL Plate from Italy} is inapposite. In that case, Commerce found it could not rely on the petition margin because it was secondary information and could not be corroborated.\textsuperscript{50}

With regard to Clearwater Metal Single Entity’s margin calculation claims, we find that there is no basis for re-examining the surrogate values used in the \textit{Preliminary Determination}. Commerce selects surrogate values based on information on the record regarding the type of inputs used and examines the nature of the respondent’s operations (\textit{e.g.}, whether the respondent is an integrated or non-integrated producer) in selecting surrogate financial statements. In this case, Clearwater Metal Single Entity prevented Commerce from verifying any of the information needed to select appropriate surrogate values. There is no verified information on the record regarding the physical characteristics of the inputs used by Clearwater Metal Single Entity (\textit{e.g.}, type and thickness of steel), the production processes used by Clearwater Metal Single Entity, or even whether Clearwater Metal Single Entity reported all of the factors of production that it used in manufacturing subject merchandise (a factor which affects surrogate country selection given that Commerce will examine data availability in selecting a surrogate country). Thus, due to Clearwater Metal Single Entity’s refusal to allow verification of its submissions, Commerce is unable determine which surrogate values, including surrogate financial ratios, are more appropriate or which surrogate values are aberrational. Therefore, there is no basis for Commerce to change any of the surrogate values relied upon in the \textit{Preliminary Determination},

\textsuperscript{47}Pressure Pipe from China I&D Memo at 2. \textit{See also}, Polyethylene Retail Carrier Bags from Indonesia: \textit{Final Determination of Sales at Less Than Fair Value}, 75 FR 16431 (April 1, 2010), and the accompanying Issues and Decision Memorandum at Comment 6; Certain Circular Welded Carbon Quality Steel Line Pipe from the People’s Republic of China: \textit{Final Determination of Sales at Less Than Fair Value}, 74 FR 14514 (March 31, 2009), and the accompanying Issues and Decision Memorandum at Comment 12; Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China: \textit{Final Determination of Sales at Less Than Fair Value}, 74 FR 4913 (January 28, 2009) and accompanying Issues and Decision Memorandum at Comment 1.

\textsuperscript{48}See section 776(c) of the Act.

\textsuperscript{49}See section 776(c) of the Act and 19 CFR 351.308(c). \textit{See also} Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: \textit{Final Determination of Sales at Less Than Fair Value}, 74 FR 29167 (June 19, 2009), and the accompanying I&D Memo at Comment 2, and \textit{Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part}: Light-Walled Rectangular Pipe and Tube from the People’s Republic of China, 73 FR 35652 (June 24, 2008), and the accompanying I&D Memo at Comment 1.

\textsuperscript{50}\textit{See CTL Plate Italy} and accompanying Issues and Decision Memorandum at “Use of AFA” section.
or to revisit our choice of Indonesia as the appropriate surrogate country.

Even if there were a basis to re-examine the surrogate values used in the *Preliminary Determination*, our analysis of the record evidence does not support Clearwater Metal Single Entity’s various claims, as discussed below.

Clearwater Metal Single Entity has provided no compelling argument to warrant a reversal of our determination to select Indonesia over India as the primary surrogate country in the *Preliminary Determination*. Specifically, as explained in the *Preliminary Determination*, pursuant to section 773(c)(4)(A) of the Act, both Indonesia and India are considered at the same level of economic development as Vietnam, are not ranked, and are considered equal in terms of economic comparability.\(^{51}\) Commerce considers all countries on the surrogate country list to be at the same level of economic development as Vietnam and does not use gross national income (GNI) alone as the basis for selecting among these six countries. Thus, contrary to Clearwater Metal Single Entity’s claim, for purposes of surrogate country selection, India is not more comparable than Indonesia to Vietnam in terms of the economic development merely because India’s per-capita GNI is closer to that of Vietnam’s than Indonesia’s.

Clearwater Metal Single Entity relies on a statement from Policy Bulletin 04.1, which describes the unusual circumstance where we consider per capita GNI closest to the NME country at issue in ascertaining economic comparability of competing significant producer countries.\(^{52}\) This circumstance only applies, however, in cases in which “the significant producer of comparable merchandise” criterion is particularly important (e.g., subject merchandise is produced using unusual or unique inputs, scarcity of major non- or little-traded inputs, or presence of other unique aspects of the cost of production).\(^{53}\) In such cases, Commerce addresses economic comparability only after the “significant producer of comparable merchandise requirement” has been met, and uses the country closest to the NME country in terms of per capita GNI when the competing significant producer countries are at disparate levels of economic development, and the necessary factors data is available in these countries.\(^{54}\) In this investigation, Clearwater Metal Single Entity did not show that an aforementioned unusual circumstance is present here, or that India and Indonesia are at disparate levels of economic development, notwithstanding that Commerce considers both countries to be at the same level of economic development as Vietnam. Concerning the last point, the petitioner is accurate in observing that Clearwater Metal Single Entity did not avail itself of the opportunity in this investigation to dispute the economic comparability of any of the potential surrogate countries identified in the Office of Policy’s list, including Indonesia.\(^{55}\)


\(^{53}\) Id (containing citations to relevant administrative precedent).

\(^{54}\) Id.

\(^{55}\) See Petitioner’s Rebuttal Brief at 4.
In addition, we disagree with Clearwater Metal Single Entity that we have not explained our determination that Indonesia is a significant producer of comparable merchandise. In the *Preliminary Determination*, we explained that, among other countries, both India and Indonesia meet the “significant producer” requirement of section 773(c)(4)(B) of the Act, based on our examination of exports during the POI of comparable merchandise under the HTS subheadings covered by the scope of the investigation. Although Clearwater Metal Single Entity argues that, unlike India, Indonesia is not a “net exporter” of comparable merchandise, Commerce is not required to consider whether a country is a net exporter in order to make a determination that the production is significant.\(^56\)

While Commerce has used net exports as a means to determine whether a country is a significant producer in certain cases, it is only one of several criteria Commerce may use to determine whether a country is a significant producer.\(^57\) Finally, Clearwater Metal Single Entity does not argue why Indonesia’s negative net export volume during the POI of comparable merchandise under the HTS subheadings covered by the scope of the investigation, in itself, renders Indonesia unfit from meeting the “significant producer” requirements of section 773(c)(4)(B) of the Act.

Thus, as explained in our *Preliminary Determination*, due to our finding that both India and Indonesia are equal in terms of economic comparability and are both significant producers of comparable merchandise, our selection of Indonesia as the primary surrogate country in this investigation rests on the data availability and reliability of the surrogate value information provided on the record for India and Indonesia.\(^58\) Specifically, we weighed the record evidence and found that, while only India provides usable data to value one of the main inputs (cold-rolled steel with a thickness of more than 1 mm), Indonesia provides: 1) information that meets our SV selection criteria to value all remaining steel inputs; 2) significantly more contemporaneous data than India to value electricity and inland freight expenses; and 3) 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.\(^59\) Therefore, we continue to determine that the availability for Indonesia of more contemporaneous data for electricity and inland freight expenses, as well as contemporaneous financial statements of a producer of comparable merchandise, outweighs the availability of data for India concerning one of the two main inputs (cold-rolled steel with a thickness of less than 1 mm), particularly when the record shows that Clearwater Metal Single Entity consumed, overall, substantially more of the other of two main inputs (cold-rolled steel with a thickness of less than 1 mm).\(^60\)

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\(^{57}\) Id. (citing Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China, 69 FR 67313 (November 17, 2004), and accompanying Issues and Decision Memorandum at Comment 2); see also Preliminary Determination and accompanying Preliminary Decision Memorandum at 8-9 (citing Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

\(^{58}\) See Preliminary Determination and accompanying Preliminary Decision Memorandum at 9-10.

\(^{59}\) Id.

\(^{60}\) See Clearwater Metal Single Entity’s supplemental questionnaire response dated October 2, 2017, at Exhibit 2SD-14 and 2SD-15 (establishing the consumption quantity of cold-rolled steel with a thickness of less than 1 mm (i.e.,
Concerning Clearwater Metal Single Entity’s argument that the value for cold-rolled steel with a thickness of less than 1 mm is aberrational, as a preliminary matter, Clearwater Metal Single Entity does not cite any precedent where Commerce has found similar quantities as the basis for determining an AUV under examination not being representative of a broad-market average, or otherwise aberrational. Country-specific total shipment quantities for entries under HTS 7209.27 into Indonesia ranged from 3,500 kg to nearly 20,000 kg. Further, that certain countries’ total shipment quantities of products under HTS 7209.27 are less than the loading weight of a standard container is not an indication of non-commercial quantities, because there may be a number of tariff classifications for products comprising any single container. Similarly, that the Indonesia AUV for cold-rolled steel imports under HTS 7209.27 is higher than the Indonesian AUV for stainless steel imports under HTS 7219.24 is a meaningless indicator when pertinent factors affecting price, such as a product mix, order quantities, terms of sale, and timing of contracts, are not all properly considered. Further, the circumstances concerning the Indonesian AUV for imports under HTS 7209.27 do not resemble those for the Indonesian AUV for imports under HTS 7209.26 (cold rolled steel with a thickness of more than 1 mm), which we found in the Preliminary Determination not reflective of a broad-market average, due to imports of extremely low quantity (i.e., 43 kg) from a single country, Japan. Accordingly, we find no basis to discard the use of an Indonesian AUV for imports of cold-rolled steel with a thickness of less than 1 mm under HTS 7209.27 in favor of an Indian AUV for imports under the same HTS.

With respect to Clearwater Metal Single Entity’s financial ratios arguments, in the Preliminary Determination, we found 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. When selecting financial statements, Commerce considers data from market economy surrogate countries based on the “specificity, contemporaneity, and quality of the data.” Additionally, for purposes of selecting surrogate producers, Commerce examines how similar each production experience is to the NME producer’s production experience. Concerning Jalaram, an Indian company proffered by Clearwater Metal Single Entity, we found that the data in its financial statements are not contemporaneous with the POI, because they reflect a fiscal year ending March 31, 2016, which is six months prior to the beginning of the POI, and that Jalaram manufactures a wide range of cold-rolled steel at nearly three times the rate of consumption of cold-rolled steel with a thickness of more than 1 mm (i.e., CRS2).

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61 See the petitioner’s surrogate values submission, dated October 10, 2017, at Attachment 4.
63 See Preliminary Determination and accompanying Preliminary Decision Memorandum at 10, and SV Memo at 4-7 (for a detailed discussion)
64 See 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), and accompanying Issues and Decision Memorandum at Comment 1.
furniture products made from steel, hardwood, processed wood, and decorative glass. Record information does not provide how, or to what extent, these production processes are similar to that of the subject merchandise.

In contrast, the financial statements of an Indonesian company, PT Lion, are contemporaneous with the POI, because they reflect a fiscal year ending December 31, 2016, which overlaps the POI by three of the six months. Moreover, record evidence indicates that the products PT Lion manufactures that are similar to the merchandise under investigation (i.e., comprising the metal office equipment product segment), are substantially represented by the data in its financial statements and, most importantly, this company employs production processes in the fabrication of its steel products that are substantially similar to those of Clearwater Metal Single Entity in the manufacture of tool chests and cabinets. Clearwater Metal Single Entity offers no new or compelling argument in advocating the superiority, in terms of specificity, contemporaneity, and quality of the data, of non-contemporaneous financial statements of Jalaram, an Indian producer of furniture products, over the contemporaneous financial statements of PT Lion, an Indonesian producer of predominantly metal office equipment.

Similarly, we find no basis in Clearwater Metal Single Entity’s arguments that the overall financial ratios derived from the financial statements of PT Lion are unreasonably high or aberrational and, therefore, not representative of a typical experience of producers of comparable merchandise in a market economy country. Commerce’s finding in the Preliminary Determination makes clear that it is the production experience of PT Lion that Commerce found most comparable to that of Clearwater Metal Single Entity. Therefore, there is nothing to suggest that the allegedly high ratios derived using PT Lion’s financial statements are not reflective of the tool chests industry in a market economy country. Also, to the extent PT Lion’s production experience and/or machinery may differ from that of Clearwater Metal Single Entity, such arguments have no merit because Clearwater Metal Single Entity prevented Commerce from verifying its production methods and production experience.

We disagree with Clearwater Metal Single Entity that the use of PT Lion’s financial statements is inappropriate because Indonesia was previously found to have benefited from broadly available, non-industry specific export subsidies. There is no evidence that PT Lion received a countervailable benefit, or that there is reason to believe or suspect that its financial statements are distorted by countervailable subsidies - the company’s financial statements do not indicate that the company received subsidies found to be countervailable by Commerce.

Clearwater Metal Single Entity also alleges that the 2016 financial statements of PT Lion are distorted by significant transactions with related parties that allegedly were not conducted at non-market terms. There is no indication on the record that PT Lion’s 2016 financial statements are distorted at all. Further, Clearwater Metal Single Entity does not quantify or explain how the alleged distortions are material, or whether, and to what extent, the alleged distortions affect the specific income and expense items on which Commerce relied in calculating financial ratios in

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66 See SV Memo at 4.
67 Id.
68 Id., at 5.
69 Id., at 6.
the Preliminary Determination. On the basis of the above discussion, we find no reason to depart from using the financial statements of PT Lion to calculate financial ratios or, consequently, reconsider whether Indonesia is a significant producer of comparable merchandise, or, more generally, reconsider the selection of Indonesia as the primary surrogate country.

With regard to Clearwater Metal Single Entity’s methodological errors allegations in Commerce’s calculations of the financial ratios, first, Commerce did not offset foreign exchange losses and interest expenses with interest income in the calculation of PT Lion’s SGA expenses ratio, because doing so results in net financial income (i.e., gain on financing activities). By excluding all the aforementioned items from the calculation of the SGA ratio, Commerce effectively set financial expenses at zero, in accordance with our practice.70 Second, we disagree with Clearwater Metal Single Entity that we should exclude all of PT Lion’s selling expenses from the calculation of the SGA ratio because all selling expenses were already subtracted from the starting U.S. selling price used in our margin calculations for Clearwater Metal Single Entity. Commerce made deductions to the starting U.S. price only for rebates and discounts, price adjustments that are necessary to arrive at net U.S. price. The selling expenses that were included in the calculation of PT Lion’s SGA ratio encapsulate, however, the general expenses component of the normal-value calculation, as contemplated in section 773(c) of the Act and 19 CFR 351.408(c)(4). Further, contrary to Clearwater Metal Single Entity’s contention, the record shows that the selling expenses in question71 were not captured elsewhere in the margin calculations for Clearwater Metal Single Entity, i.e., deducted from the starting U.S. price. Concerning Clearwater Metal Single Entity’s third contention, we disagree that impairment losses should be excluded from the calculation of PT Lion’s SGA ratio and/or deducted from the before-tax profit value in the calculation of PT Lion’s profit ratio. Clearwater Metal Single Entity provides no justification or any precedent for reclassifying impairment losses as an adjustment to the before-tax profit value, rather than capturing this item as part of SGA expenses. Further, Note 6 to PT Lion’s 2016 consolidated financial statements indicates that the company provisions for impairment that covers losses from non-collection of trade receivables.72 There is no indication in PT Lion’s financial statements that the impairment losses are non-recurring, extraordinary in nature, or not related to the general operations of the company, circumstances that may normally warrant a consideration for an exclusion of an expense item from the calculation of the SGA expenses ratio.

Lastly, we disagree with Clearwater Metal Single Entity that Commerce did not provide an explanation for choosing HTS category 7208.54 instead of HTS category 7208.39 to value hot-rolled steel inputs with a thickness of less than 3 mm. Commerce explained in the Preliminary Determination that Clearwater Metal Single Entity reported the consumption of this input in a sheet form. Clearwater Metal Single Entity’s proposed classification of HTS 7208.39 captures

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71 Namely, these selling expenses are: “Survey and Installation,” “Sales Commission,” “Salaries and Employees Benefits,” “Repairs and Maintenance,” “Advertising and Exhibitions,” “Depreciation,” and “Others.” See SV Memo at Attachment II (Surrogate Values Microsoft Excel Spreadsheet) at tab “Fin. Ratios.”

72 See the petitioner’s surrogate values submission, dated July 31, 2017, at Attachment 6 (PT Lion’s 2016 financial statements), note 6.
products in coil, and HTS 7208.54 captures products not in coil.\textsuperscript{73} Because Clearwater Metal Single Entity consumes its hot-rolled steel input in a sheet form, we continue to find that the HTS classification for items of hot-rolled steel that have been cut to specific dimensions (HTS 7208.54) is more appropriate than an HTS classification for items in coil for valuing hot-rolled steel input in question.\textsuperscript{74} As such, we reject Clearwater Metal Single Entity’s claim for using HTS category 7208.39 to value hot-rolled steel inputs with a thickness of less than 3 mm.

Based on our discussion provided herein, we find no reason to change any of the surrogate values on which we relied in the \textit{Preliminary Determination}. Accordingly, we have assigned, based on AFA, the Vietnam-wide entity a rate of 327.17 percent, which is the highest CONNUM-specific dumping margin calculated in the \textit{Preliminary Determination} for Clearwater Metal Single Entity.

\textbf{VI. RECOMMENDATION}

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of this investigation in the \textit{Federal Register}.

\begin{itemize}
\item [\checkmark] \hfill \square
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\begin{tabular}{ll}

Agree & Disagree \\
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4/3/2018
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\textit{X}

\textit{Signed by: GARY TAVERMAN}

\begin{flushleft}
Gary Taverman  \\
Deputy Assistant Secretary \hfill for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the \hfill Assistant Secretary for Enforcement and Compliance
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\textsuperscript{73} See SV Memo at Attachment II, “Master” tab, for a description of the HTS classifications.  
\textsuperscript{74} See SV Memo at 3.