DATE: October 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 Director
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Laminated Woven Sacks from the Socialist Republic of Vietnam:
Decision Memorandum for Preliminary Determination of Sales at Less
Than Fair Value

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that imports of certain laminated
woven sacks (LWS) 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 March 7, 2018, Commerce received an antidumping duty (AD) Petition concerning imports of LWS
from Vietnam, filed in proper form on behalf of the Laminated Woven Sacks Fair Trade Coalition and
its individual members, Polytex Fibers Corporation and ProAmpac Holdings Inc. (collectively, the
petitioners).1 The Petition was accompanied by a countervailing duty (CVD) petition concerning

imports of LWS from Vietnam.\textsuperscript{2} Commerce published the notice of initiation of this investigation on April 3, 2018.\textsuperscript{3}

On March 28, 2018, Commerce issued quantity and value questionnaires (Q&V Questionnaires) to the known Vietnamese exporters and producers of LWS identified in the Petition.\textsuperscript{4} On May 2, 2018, in accordance with section 777A(c)(2) of the Act, Commerce selected Duong Vinh Hoa Packaging Company Limited (DVH Packaging) and Xinsheng Plastic Industry Co., Ltd. (Xinsheng Plastic) for individual examination.\textsuperscript{5}

In the\textit{ Initiation Notice}, Commerce notified interested parties of an opportunity to comment on the appropriate physical characteristics of LWS to be reported in response to Commerce’s AD Questionnaire.\textsuperscript{6} On April 16, 2018, the petitioners submitted comments to Commerce regarding the physical characteristics of LWS to be used for reporting purposes. After consideration of the petitioners’ suggestions on product characteristics, we incorporated certain product matching characteristics in the AD Questionnaire.\textsuperscript{7}

On April 27, 2018, 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 LWS from Vietnam.\textsuperscript{8}

On May 2, 2018, Commerce issued the AD Questionnaire to, and received timely questionnaire responses from, DVH Packaging\textsuperscript{9} and Xinsheng Plastic.\textsuperscript{10, 11} DVH Packaging also timely responded to Commerce’s supplemental questionnaires,\textsuperscript{12} while Xinsheng Plastic timely responded to certain supplemental questionnaires;\textsuperscript{13} however, it failed to respond to two of Commerce’s supplemental

\textsuperscript{2} Id.
\textsuperscript{5} Id.
\textsuperscript{6} See Initiation Notice.
\textsuperscript{7} See Commerce’s AD Questionnaire, dated May 2, 2018.
\textsuperscript{9} See DVH Packaging’s May 31, 2018 Section A Questionnaire Response (DVH Packaging’s May 31, 2018 AQR); DVH Packaging’s June 18, 2018 Section C Questionnaire Response (DVH Packaging’s June 18, 2018 CQR); and DVH Packaging’s June 25, 2018 Section D Questionnaire Response (DVH Packaging’s June 25, 2018 DQR).
\textsuperscript{10} See Commerce’s AD Questionnaire, dated May 2, 2018, which was issued to DVH Packaging and Xinsheng Plastic.
\textsuperscript{11} See Xinsheng Plastic’s May 31, 2018 Section A Questionnaire Response (Xinsheng Plastic’s May 31, 2018 AQR); Xinsheng Plastic’s June 18, 2018 Section C Questionnaire Response (Xinsheng Plastic’s June 18, 2018 CQR); and Xinsheng Plastic’s June 25, 2018 Section D Questionnaire Response (Xinsheng Plastic’s June 25, 2018 DQR).
\textsuperscript{12} See DVH Packaging’s June 21, 2018 Supplemental Questionnaire Response (DVH Packaging’s June 21, 2018 SQR); See DVH Packaging’s July 17, 2018 Supplemental Questionnaire Response (DVH Packaging’s July 17, 2018 SQR); See DVH Packaging’s July 27, 2018 Supplemental Questionnaire Response (DVH Packaging’s July 27, 2018 SQR); See DVH Packaging’s August 13, 2018 Supplemental Questionnaire Response (DVH Packaging’s August 13, 2018 SQR); See DVH Packaging’s August 22, 2018 Supplemental Questionnaire Response (DVH Packaging’s August 22, 2018 SQR); and DVH Packaging’s August 31, 2018 Supplemental Questionnaire Response (DVH Packaging’s August 31, 2018 SQR).
\textsuperscript{13} See Xinsheng Plastic’s June 18, 2018 Supplemental Questionnaire Response (Xinsheng Plastic’s June 18, 2018 SQR); Xinsheng Plastic’s July 5, 2018 Supplemental Questionnaire Response (Xinsheng Plastic’s July 5, 2018 SQR); Xinsheng
questionnaires, and subsequently notified Commerce that it “does not believe it can or will continue to participate in the {instant} investigation as a mandatory respondent.” The petitioners timely submitted comments with respect to DVH Packaging and Xinsheng Plastic’s questionnaire and supplemental questionnaire responses.\textsuperscript{15}

On April 3, 2018, TKMB Joint Stock Company (TKMB) requested that Commerce investigate it as a voluntary respondent.\textsuperscript{16} Between May 30, 2018, and June 25, 2018, TKMB submitted timely responses to Commerce’s AD Questionnaire.\textsuperscript{17} On August 22, 2018, Commerce rejected TKMB’s unsolicited response to a supplemental questionnaire that was issued to a mandatory respondent because it contained untimely filed new factual information.\textsuperscript{18}

On June 5, 2018, Commerce 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 to provide surrogate value (SV) information.\textsuperscript{19} Between June 12, 2018, and September 11, 2018, Commerce received comments on the selection of the primary surrogate country\textsuperscript{20} and on SVs\textsuperscript{21} from DVH Packaging, Xinsheng Plastic, and TKMB, and the petitioners.

\begin{footnotesize}
\begin{enumerate}
\item See TKMB’s May 30, 2018 Section A Questionnaire Response (TKMB’s May 30, 2018 AQR); TKMB’s June 18, 2018 Section C Questionnaire Response (TKMB’s June 18, 2018 CQR); and TKMB’s June 25, 2018 Section D Questionnaire Response (TKMB’s June 25, 2018 DQR).
\item See Commerce Letter re: “Antidumping Investigation of Laminated Woven Sacks from the Socialist Republic of Vietnam: Rejection and Removal of Submission from the Record,” dated August 22, 2018 (“First, pursuant to 19 CFR 351.302(d), Commerce may reject unsolicited submissions. Because (1) Commerce’s July 27, 2018 Section D Supplemental Questionnaire was issued to the mandatory respondent Duong Vinh Hoa Packaging Company Limited (and not TKMB); and (2) TKMB has not been accepted as a voluntary respondent, TKMB’s August 13, 2018 submission is unsolicited.”)
\end{enumerate}
\end{footnotesize}
On May 9, 2018 and May 10, 2018, Commerce received timely separate rate applications (SRAs) from the following seven companies: (1) DVH Packaging; (2) Xinsheng Plastic; (3) TKMB; (4) C.P. Packaging (Vietnam) Industry Co., Ltd. (CP Packaging); (5) Trung Dong Corporation (Trung Dong); (6) Tan Dai Hung Joint Stock Company (Tan Dai Hung); and (7) Kim Duc Co., Ltd. (Kim Duc).

Between May 24, 2018, and August 6, 2018, Commerce issued SRA supplemental questionnaires to, and received timely responses to those supplemental questionnaires from, the following companies: (1) Tan Dai Hung; (2) Kim Duc; (3) Trung Dong; TKMB; and (4) CP Packaging.22

On July 31, 2018, Commerce postponed the preliminary determination of this investigation until October 3, 2018.23

Between September 11, 2018 and September 17, 2018, the petitioners, DVH Packaging, and TKMB submitted comments for consideration in the preliminary determination.24

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

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is July 1, 2017, through December 31, 2017. This period corresponds to the two most recent fiscal quarters prior to the month in which the petition was filed, which was March 2018.25

22 See Tan Dai Hung’s June 1, 2018 Supplemental Questionnaire Response (Tan Dai Hung’s June 1, 2018 SQR); Kim Duc’s June 5, 2018 Supplemental Questionnaire Response (Kim Duc’s June 5, 2018 SQR); Trung Dong’s June 5, 2018 Supplemental Questionnaire Response (Trung Dong’s June 5, 2018 SQR); TKMB’s June 6, 2018 Supplemental Questionnaire Response (TKMB’s June 6, 2018 SQR); CP Packaging’s June 8, 2018 Supplemental Questionnaire Response (CP Packaging’s June 8, 2018 SQR); and CP Packaging’s August 17, 2018 Supplemental Questionnaire Response (CP Packaging’s August 17, 2018 SQR).


25 See 19 CFR 351.204(b)
IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce’s regulations,\(^26\) we set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.\(^{27,28}\) Certain interested parties commented on the scope of these investigations as it appeared in the *Initiation Notice* and *CVD Initiation Notice*. Based on our analysis of these comments, we made certain preliminary revisions to the scope, which are reflected in Appendix I of the accompanying Federal *Register* notice. For a summary of the scope comments and rebuttals, and our discussion and analysis of all comments timely received, see the Preliminary Scope Decision Memorandum.\(^29\)

V. PRODUCT CHARACTERISTICS

In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product characteristics until April 16, 2018.\(^30\) The petitioners provided comments, which we took into consideration in determining the physical characteristics outlined in the AD Questionnaire.\(^31\)

VI. SELECTION OF RESPONDENTS

Section 777A(c)(1) of the Act directs Commerce 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 Commerce 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 of subject merchandise during the POI. Pursuant to section 777A(c)(2) of the Act, Commerce may limit its examination to: (A) a sample of exporters, producers or types of products that Commerce determines is statistically valid based on the information available to Commerce at the time of selection; or (B) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that Commerce determines can be reasonably examined. In selecting respondents in this AD investigation, Commerce found that, because of the large number of exporters and producers of subject merchandise during the POI 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*, Commerce stated its intention to base respondent selection on the responses to Q&V Questionnaires.\(^32\) Therefore, we issued a Q&V Questionnaire on May 2, 2018, to the 27 companies identified in the Petition,\(^33\) we posted the Q&V Questionnaire on Commerce’s website and,

\(^{26}\) See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

\(^{27}\) See *Initiation Notice*, at 14257.


\(^{30}\) See *Initiation Notice*, 83 FR at 14258-59.

\(^{31}\) See Commerce’s AD Questionnaire, dated May 2, 2018, which was issued to DVH Packaging and Xinsheng Plastic.

\(^{32}\) See *Initiation Notice*, 83 FR at 14260.

\(^{33}\) See Q&V Questionnaire.
we invited parties in the *Initiation Notice* that did not receive a Q&V Questionnaire from Commerce 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 Commerce would select mandatory respondents. Commerce received timely Q&V Questionnaire responses from 10 of the 27 companies which received the Q&V Questionnaire. We rejected deficient Q&V Questionnaire responses of Tamatra Co., Ltd., and Vietnam Hoa Ha and provided these companies with the opportunity to remedy those deficiencies. However, these companies did not timely file revised Q&V Questionnaire responses correcting the filing deficiencies that we identified. Additionally, Commerce rejected untimely Q&V Questionnaire responses filed by FoTai Vietnam Enterprise Corp., and Vietnam Evergreen Co., Ltd.

On May 2, 2018, pursuant to section 777A(c)(2)(B) of the Act, Commerce limited the number of respondents selected for individual examination to the producers and exporters accounting for the largest volume of exports of LWS from Vietnam to the United States during the POI that could be reasonably examined. Specifically, Commerce selected DVH Packaging and Xinsheng Plastic as mandatory respondents for individually examination in this investigation.

**VII. DETERMINATION NOT TO SELECT TKMB AS A VOLUNTARY RESPONDENT**

When Commerce limits the number of exporters individually examined pursuant to section 777A(c)(2) of the Act, section 782(a)(1) of the Act directs Commerce to calculate individual weighted-average dumping margins for companies not initially selected for individual examination that voluntarily provide the information requested of the mandatory respondents if: 1) the information is submitted by the due date specified for exporters or producers initially selected for examination; and 2) the number of companies subject to the investigation or review is not so large that any additional individual examination of companies that have voluntarily provided information would be unduly burdensome and inhibit the timely completion of the investigation or review.

Under section 782(a)(2) of the Act, in determining whether it would be unduly burdensome to examine a voluntary respondent, Commerce may consider: 1) the complexity of the issues or information presented in the proceeding, including questionnaires and any responses thereto; 2) any prior experience of Commerce in the same or similar proceedings; 3) the total number of investigations or reviews being conducted by Commerce; and 4) such other factors relating to the timely completion of those investigations and reviews.

We previously notified parties that if any voluntary responses were submitted in accordance with the deadlines and other criteria set forth in section 782(a) of the Act and 19 CFR 351.204(d), we intended to evaluate the circumstances during the course of this investigation to determine whether individual examination of such companies would be unduly burdensome and inhibit the timely completion of the investigation. As noted above, on August 22, 2018, less than two months before the due date for issuing this preliminary determination, Xinsheng Plastic notified Commerce that it would no longer

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34 See *Initiation Notice*, 82 FR at 14260.
35 See Respondent Selection Memorandum. See also Memorandum, “FEDEX Delivery Status,” dated concurrently with this memorandum.
36 See Respondent Selection Memorandum.
37 Id.
38 Id.
39 Id.
participate as a mandatory respondent in this investigation. In light of TKMB’s request for voluntary respondent treatment, we have considered the criteria in section 782(a)(2) of the Act to determine whether it would be unduly burdensome to individually examine TKMB.

Pursuant to section 782(a) of the Act, we determine that examining TKMB as a voluntary respondent would be unduly burdensome and would inhibit the timely completion of this investigation. In coming to our determination, we considered the following factors: 1) the complexity of the issues or information presented in this investigation; 2) any prior experience of Commerce in the same or similar proceedings; 3) the total number of investigations or reviews being conducted by Commerce; and 4) such other factors relating to the timely completion of those investigations and reviews.40

We find that the information presented in this investigation is complex and an analysis of that information would be time-intensive. As a general matter, conducting an anti-dumping investigation requires an extensive analysis of the questionnaire response of each company examined, including analysis of the company’s corporate structure, selling practices, pricing data, financial records, and production operations and information.

Additionally, our prior experience with similar proceedings indicates that examining TKMB as a voluntary respondent would be unduly burdensome and would inhibit the timely completion of this investigation. Specifically, based on our experience in the LWS from China AD proceeding and the number of FOPs used to produce LWS, a significant expenditure of resources is required to select the proper surrogate values for each respondent.

Furthermore, the total number of proceedings being conducted by Commerce support our decision. In addition to this investigation, AD/CVD Operations Office IV, the office to which this investigation is assigned, is conducting numerous concurrent AD and CVD proceedings.41 The complexity of this investigation, as noted above, combined with overlapping statutory deadlines of other AD and CVD proceedings, as well as Office IV’s additional workload, place a significant constraint on the number of analysts that can be assigned to this case and, thus, limit the number of respondents Commerce can reasonably examine. Not only do these other cases present a significant workload, but the deadlines for a number of the cases coincide or overlap with anticipated deadlines in this proceeding. Moreover, because of the significant workload throughout Enforcement and Compliance, Office IV does not anticipate receiving any additional resources to devote to this investigation.

Other factors relating to section of a voluntary respondent and the timely completion of this investigation include that fact that: 1) because this is an investigation, verification of respondents is mandatory, 2) besides examining information submitted by the cooperative mandatory respondent, Office IV is also examining the SRAs of multiple companies, and 3) the timing of Xinsheng Plastic’s withdrawal as a mandatory respondent leaves insufficient time to analyze TKMB’s questionnaire.

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40 See section 782(a)(2) of the Act.
41 Examples include, but are not limited to: steel racks from China (AD and CVD), laminated woven sacks from Vietnam (CVD), sodium gluconate, gluconic acid, and derivative products from China (AD and CVD), steel nails from Korea (AD), steel nails from Oman (AD), crystalline silicon photovoltaic cells from China (AD), crystalline silicon photovoltaic products from China and Taiwan (AD), wind towers from Vietnam (AD), wind towers from China (AD), light-walled rectangular pipe and tube from Turkey (AD), wooden bedroom furniture from China (AD), pet resin from Canada (AD), pet resin from Oman (AD), and xanthan gum from China (AD). Moreover, Office IV is involved in Court of International Trade remands, as well as several scope rulings and sunset reviews.
response, issue supplemental questionnaires, and analyze responses to those supplemental questionnaires within the statutory deadlines applicable to this investigation. Accordingly, we find that individual examination of TKMB would be unduly burdensome and inhibit the timely completion of the investigation pursuant to section 776(a) of the Act.

VIII. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy Country

Commerce considers Vietnam to be a non-market economy (NME) country.\textsuperscript{42} 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 Commerce. Therefore, we have continued to treat Vietnam as an NME country for purposes of this preliminary determination.

B. Surrogate Country and Surrogate Value Comments

When Commerce investigates 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 Commerce. Specifically, in accordance with section 773(c)(4) of the Act, in valuing FOPs, Commerce shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (A) at a level of economic development comparable to that of the NME country; and (B) significant producers of comparable merchandise.\textsuperscript{43}

As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME country, unless it is determined that those countries: (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 based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but that are still at a level of economic development comparable to the NME country, are selected as a surrogate country 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, Commerce generally relies solely on per capita gross national income (GNI) data from the World Bank’s World Development Report.\textsuperscript{44} Commerce normally values all FOPs in a single surrogate country.\textsuperscript{45}

On June 5, 2018, Commerce 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


\textsuperscript{44} Id.

\textsuperscript{45} See 19 CFR 351.408(c)(2).
capita 2016 GNI data, and solicited comments from interested parties on this list of countries and the selection of SVs for the preliminary determination. Between June 12, 2018, and September 11, 2018, Commerce received comments on the selection of the primary surrogate country and on SVs from DVH Packaging, Xinsheng Plastic, TKMB, and the petitioners. For a detailed discussion of the SVs used in this preliminary determination, see the “Factor Valuation Methodology” section below and the Preliminary SV Memorandum.

1. Economic Comparability

Consistent with its practice, section 773(c)(4)(A) of the Act, and, as stated above, Commerce identified Bangladesh, India, Indonesia, Nigeria, Pakistan, and the Philippines as countries that are 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 have considered 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 Commerce, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor Commerce’s regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, Commerce looks to other sources, such as Policy Bulletin 04.1, for guidance on defining comparable merchandise. Policy Bulletin 04.1 states that:

\[
\text{In all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.} \quad \text{51}
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In cases where the identical merchandise is not produced, Commerce must determine if other merchandise that is comparable is produced. How Commerce does this depends on the subject merchandise.

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47 Id.


51 See Policy Bulletin 04.1 at 2.

52 Id.
In this regard, Commerce recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

For example, in some cases, e.g., steel and textiles, physical form and the extent of processing/finishing essentially distinguish different products. In such cases, consideration of major inputs often is not required, as it is normally sufficient for the team to identify comparable merchandise on the basis of physical differences in the merchandise and whether the product is one of low or high value-added. … 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.  

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 Commerce’s practice to evaluate whether production is significant based on characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics). In this case, because production data for comparable merchandise are not available, we analyzed exports of comparable merchandise from the six potential surrogate countries identified above, as a proxy for production data. Annual UN Comtrade data place on the record of the instant investigation by DVH Packaging, Xinsheng Plastic, and TKMB indicate that Bangladesh, India, Indonesia, Nigeria, Pakistan, and the Philippines all exported identical or comparable merchandise during 2017. As such, Bangladesh, India, Indonesia, Nigeria, Pakistan, and the Philippines meet the “significant producer” requirement of section 773(c)(4) of the Act.

3. Data Availability

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, Commerce selects the primary surrogate country based on data availability and reliability. When evaluating SV data, Commerce considers several criteria, including whether the SV data are publicly available, contemporaneous with the period under consideration, broad-market averages, tax and duty exclusive, and specific to the inputs being valued. There is no hierarchy among

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53 Id. at 3.
55 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).
57 See Policy Bulletin.
these criteria.\textsuperscript{59} Commerce’s preference is to satisfy the breadth of these aforementioned selection criteria.\textsuperscript{60} Moreover, it is Commerce’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.\textsuperscript{61} Commerce must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the “best” available SV for each input.\textsuperscript{62} Additionally, pursuant to 19 CFR 451.408(c)(2), Commerce has a preference of valuing all FOPs in a single country

While all parties have placed SV data on the record from India, the record lacks complete SV information from any other potential surrogate country. Further, the Indian data are complete, publicly-available, contemporaneous with the POI, product-specific, generally tax-exclusive, and representative of broad market averages for each input used by the respondent to produce the subject merchandise during the POI. In addition, publicly-available Indian surrogate financial statements are on the record from companies which produce merchandise identical to the merchandise under investigation.

Based on the foregoing, Commerce preliminarily determines, pursuant to section 773(c)(4) of the Act, that it is appropriate to select India as the primary surrogate country because it is: (1) at the same level of economic development as Vietnam; (2) a significant producer of merchandise comparable to the subject merchandise based on available information; and (3) provides the best useable data and information with which to value FOPs, such as direct materials, labor, energy, and financial ratios.

C. Separate Rates

In proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.\textsuperscript{63} In the \textit{Initiation Notice}, Commerce notified parties of the application process by which exporters may obtain separate rate status in this investigation.\textsuperscript{64} The process requires exporters to submit an SRA and to demonstrate an absence of both \textit{de jure} and \textit{de facto} government control over their export activities.\textsuperscript{65}

Commerce’s policy is to assign all exporters of subject merchandise that are in an NME country a single dumping margin unless an exporter can demonstrate that it is sufficiently independent from the NME government so as to be entitled to a separate rate.\textsuperscript{66} Commerce analyzes whether each entity exporting

\textsuperscript{59} See, e.g., \textit{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) (\textit{Mushrooms China}) and accompanying Issues and Decision Memorandum at Comment 1.

\textsuperscript{60} See, e.g., \textit{Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review}, 76 FR 51940, 51943 (August 19, 2011) and accompanying Issues and Decision Memorandum at Comment 2.

\textsuperscript{61} See, e.g., \textit{Mushrooms China} and accompanying Issues and Decision Memorandum at Comment 1.

\textsuperscript{62} Id.

\textsuperscript{63} See, e.g., \textit{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).

\textsuperscript{64} See \textit{Initiation Notice}, 83 FR at 14261.


\textsuperscript{66} See \textit{Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China}, 56 FR 20588,
subject merchandise is sufficiently independent from the NME government under a test established in Sparklers, and further developed in Silicon Carbide. According to this separate rate test, Commerce will assign a separate rate to an exporter in an NME proceeding if the exporter can demonstrate the absence of both de jure and de facto government control over its export activities. If, however, Commerce determines that an exporter is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether that exporter is independent from government control and eligible for a separate rate.

As noted above, Commerce received timely filed SRAs from the following companies: (1) DVH Packaging; (2) Xinsheng Plastic; (3) TKMB; (4) CP Packaging; (5) Trung Dong; (6) Tan Dai Hung; and (7) Kim Duc. As explained in the Preliminary Scope Determination Memorandum, we preliminarily determine that merchandise exported by Kim Duc falls outside the scope of this investigation. Given that the record indicates that Kim Duc did not export subject merchandise to the United States during the POI, we preliminarily determine that Kim Duc is not eligible for a separate rate. Additionally, as discussed below, we find that Xinsheng Plastic has not demonstrated its eligibility for a separate rate.

Commerce preliminarily determines that five exporters are eligible to receive a separate rate.

1. Wholly-Foreign Owned

CP Packaging is wholly-foreign owned by a company located outside of Vietnam and there is no evidence indicating that the company is under the control of the Vietnamese government. Accordingly, Commerce is preliminarily granting separate rate status to CP Packaging.

2. Absence of De Jure Control

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

Evidence provided by the following companies supports a preliminary finding of an absence of de jure government control:

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20589 (May 6, 1991) (Sparklers).
67 Id.
68 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).
69 See CP Packaging’s May 9, 2018 SRA, CP Packaging’s June 8, 2018 SQR, and CP Packaging’s August 17, 2018 SQR.
71 See Sparklers, 56 FR at 20589.
1. DVH Packaging\textsuperscript{72}
2. TKMB\textsuperscript{73}
3. Trung Dong\textsuperscript{74}
4. Tan Dai Hung d.b.a. Tan Dai Hung Joint Stock Co. and Tan Dai Hung Plastic Joint Stock Company\textsuperscript{75}

3. Absence of \textit{De Facto} Control

Typically, Commerce considers four factors in evaluating whether a respondent is subject to \textit{de facto} government control of its export functions: (1) whether the export prices (EPs) or constructed export prices (CEPs) are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.\textsuperscript{76} Commerce has determined that an analysis of \textit{de facto} control is critical in determining whether a respondent is, in fact, subject to a degree of government control which would preclude Commerce from assigning it a separate rate.

The separate rate information provided by the four companies listed above supports a preliminary finding of an absence of \textit{de facto} government control, based on record statements and supporting documentation showing that the companies: (1) set their own EPs or CEPs independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding the disposition of profits or financing of losses.

As noted above, the evidence placed on the record of this investigation by the companies listed above demonstrates an absence of \textit{de jure} and \textit{de facto} government control under the criteria identified in \textit{Sparklers} and \textit{Silicon Carbide}. Accordingly, Commerce preliminarily grants separate rates to these companies.

4. Treatment of Xinsheng Plastic

However, we have not granted Xinsheng Plastic separate-rate status. In the \textit{Initiation Notice}, Commerce explained that exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be considered for separate-rate status only if they timely respond to all parts of Commerce’s AD questionnaire as mandatory respondents.\textsuperscript{77} We preliminarily find that by failing to

\textsuperscript{72} See DVH Packaging’s May 31, 2018 AQR.
\textsuperscript{73} See TKMB's May 9, 2018 SRA, and TKMB’s June 5, 2018 SQR.
\textsuperscript{74} See Trung Dong’s May 10, 2018 SRA, and Trung Dong’s June 5, 2018 SQR.
\textsuperscript{75} See Tan Dai Hung’s May 10, 2018 SRA (Tan Dai Hung’s Certificate of Enterprise Registration, at Exhibit 2 lists Tan Dai Hung Plastic Joint Stock Company as the foreign name of the company and Tan Dai Hung Joint Stock Co, as the abbreviated name of the company), and Tan Dai Hung’s June 1, 2018 SQR.
\textsuperscript{76} See Silicon Carbide, 59 FR at 22586-87.
\textsuperscript{77} See Initiation Notice, 83 FR 14259.
respond to two supplemental questionnaires, mandatory respondent Xinsheng Plastic failed to timely respond to all parts of Commerce’s AD questionnaire. Additionally, Xinsheng Plastic informed Commerce that it would not continue to participate in this investigation as a mandatory respondent and thus we cannot rely on the separate-rate information submitted by Xinsheng Plastic because the information cannot be verified. For the foregoing reasons, we preliminarily determine that Xinsheng Plastic has not established that it is eligible for separate-rate status and that it is part of the Vietnam-wide entity.

D. Dumping Margin for the Separate Rate Companies Not Individually Examined

The statute and Commerce’s regulations do not directly address the establishment of a rate to be applied to companies not selected for individual examination where Commerce limits its examination pursuant to section 777A(c)(2) of the Act. Commerce’s practice in cases involving limited selection based on exporters or producers accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance. Section 735(c)(5)(A) of the Act provides that Commerce will base the all-others rate in an investigation on the weighted average of the rates calculated for the individually examined respondents, excluding any rates that are zero, de minimis, or based entirely on facts available.78 Where the rates for the individually examined companies are all zero, de minimis, or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use “any reasonable method” for assigning the rate to all other respondents.

For this preliminary determination, we calculated a weighted-average dumping margin for DVH Packaging that is not zero, de minimis, or based on facts available. Therefore, in accordance with section 735(c)(5)(A) if the Act and its prior practice, we preliminarily assigned DVH Packing’s calculated rate (i.e., 161.16 percent) as the separate rate for non-examined separate rate exporters.

E. The Vietnam-Wide Entity

The record indicates that, aside from Xinsheng Plastic discussed above, there are numerous Vietnamese producers and/or exporters of the merchandise under consideration during the POI which did not respond to Commerce’s requests for information. Specifically, as noted in the “Selection of Respondents” section, above, Commerce 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 that received the Q&V Questionnaires that Commerce issued. By not responding to Commerce’s request for information, these Vietnamese companies are not eligible for separate rate status and are therefore part of the Vietnam-wide entity.

F. Application of Facts Available and Adverse Inferences

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party: (A) withholds information that has been requested by Commerce, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections

782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the statute, or (D) provides such information but the information cannot be verified, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

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

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

When using facts otherwise available, 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 SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value, although, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding. To corroborate secondary information, Commerce shall, to the extent practicable, examine the reliability and relevance of the information to be used, although 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.

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79 See section 776(b)(1)(B) of the Act.
80 See also 19 CFR 351.308(c).
82 Id.; see also 19 CFR 351.308(d).
83 See section 776(c)(2) of the Act.
84 See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).
1. Application of Facts Available

Vietnam-Wide Entity

Commerce preliminarily finds 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, several companies within the Vietnam-wide entity failed to respond to Commerce’s request for Q&V information. Additionally, Xinsheng Plastic, which, as noted above, is part of the Vietnam-wide entity did not respond to two supplemental questionnaires and subsequently withdrew from participation in the investigation. As a result, Commerce preliminarily finds that necessary information is not available on the record, the Vietnam-wide entity withheld information requested by Commerce, failed to provide information by the specified deadlines, significantly impeded the proceeding, and information that was provided cannot be verified. Moreover, based on the foregoing, section 782(e) of the Act does not require Commerce to consider the information reported by Xinsheng Plastic. Therefore, Commerce preliminarily determines 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)-(D) of the Act.

2. Application of Facts Available with an Adverse Inference

Vietnam-Wide Entity

Section 776(b) of the Act provides that in selecting from among the facts otherwise available, Commerce may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Commerce finds that the Vietnam-wide entity’s lack of participation, including the failure of certain parts of the Vietnam-wide entity to submit Q&V information and to submit responses to supplemental questionnaires, constitutes circumstances under which it is reasonable to conclude that the Vietnam-wide entity failed to cooperate to the best of its ability to comply with Commerce’s request for information. With respect to the missing information, no party indicated 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).

85 See also Memorandum, “FEDEX Delivery Status,” dated concurrently with this memorandum.
87 See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that Commerce need not show intentional conduct existed on the part of the respondent, but merely that a “failure to cooperate to the best of a respondent’s ability” existed (i.e., information was not provided “under circumstances in which it is reasonable to conclude that less than full cooperation has been shown”)).
88 Id. at 1382-83.
Prior to its withdrawal from participation in the instant investigation, Xinsheng Plastic reported that its Cambodian affiliate, Xinsheng Cambodia Plastic Pack (Cambodia) Co. Ltd. (Xinsheng Cambodia), performed tolling services for Xinsheng Plastic’s sales of LWS in its FOP database. Although Commerce requested that Xinsheng Plastic provide detailed information regarding the production processes performed pursuant to tolling arrangements, Xinsheng Plastic failed to respond to Commerce’s request for this information, and ceased participating. Commerce requests information regarding production processes performed by tollers because this information is relevant, inter alia, to Commerce’s substantial transformation analysis. As Commerce explained in Stainless Steel Plate in Coils from Belgium, “for purposes of determining the country of origin, the locus of the production or manufacturing where substantial transformation is performed is dispositive.” Accordingly, Commerce is unable to determine whether the production processes performed by Xinsheng Plastic’s affiliate in Cambodia are sufficient to conclude that tolled merchandise acquired Cambodian origin. Therefore, as an extension of the determination to apply AFA to the Vietnam-wide entity, which includes Xinsheng Plastic, Commerce is treating merchandise exported by Xinsheng Plastic that is designated as being of Cambodian origin, if any, as merchandise manufactured by Xinsheng Plastic in Vietnam. Commerce will instruct U.S. Customs and Border Protection to suspend entries of such merchandise and require a cash deposit based on the AD rate determined for the Vietnam-wide entity.

3. Selection and Corroboration of the AFA Rate

In applying an adverse inference, 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. To determine the appropriate rate for the Vietnam-wide entity based on AFA, we first examined whether the highest Petition dumping margin was less than or equal to the highest calculated dumping margin in this investigation, and determined that the highest Petition dumping margin, 292.61 percent, was the higher of the two. Thus, for the preliminary determination, we have assigned to the Vietnam-wide entity a dumping margin of 292.61 percent. Because the AFA rate that Commerce used is from the Petition, it is secondary information subject to the requirement to corroborate the information, to the extent

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89 See Xinsheng Plastic’s June 25, 2018 DQR
91 See Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review, 69 FR 74495 (December 14, 2004)(Stainless Steel Plate in Coils from Belgium) and accompanying IDM at Comment 4.
92 See section 776(b) of the Act.
93 See SAA at 870.
94 See, e.g., Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value, 81 FR 3101 (January 20, 2016).
practicable. The petitioners’ methodology for calculating the export price (EP) and NV in the petition is discussed in the *Initiation Notice* and the Initiation Checklist.\(^96\)

Commerce determined that the petition margin of 292.61 percent is reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis.\(^97\) To corroborate, to the extent practicable, the 292.61 percent petition rate for purposes of this preliminary determination, Commerce first revisited its pre-initiation analysis of the reliability of the information in the Petition. During our pre-initiation analysis, Commerce examined: (1) the information used as the basis for EP and NV in the petition; (2) the calculations used to derive the alleged margin; and (3) information from various independent sources provided either in the petition or in supplements to the Petition.\(^98\)

Based on our examination of the information, as discussed in detail in the Initiation Checklist, Commerce consider the petitioners’ EP and NV calculations to be reliable.\(^99\) In addition, Commerce obtained no other information that would make it question the validity of the sources of information or the validity of information supporting the U.S. price or NV calculations provided in the petition. Because Commerce confirmed the accuracy and validity of the information underlying the derivation of the margin in the petition by examining source documents, as well as publicly available information, Commerce preliminarily determines that this petition rate is reliable for the purposes of an AFA rate in this investigation.

In making a determination as to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. The petition rate is relevant because it is based on a price quote for the merchandise under consideration and surrogate values that are contemporaneous with the POI. In addition, no information has been placed on the record that discredits this information. As such, we find the petition rate of 292.61 percent relevant.

Accordingly, Commerce has corroborated the AFA rate of 292.61 percent to the extent practicable within the meaning of section 776(c) of the Act.

G. Date of Sale

Commerce will normally, in accordance with 19 CFR 351.401(i), “use the date of invoice, as recorded in the exporter or producer’s records kept in the normal course of business” as the date of sale unless evidence indicates that there is another date which better reflects the date on which the material terms of sales are established. DVH Packaging reported the sales invoice date as the date of sale.\(^100\) Because there is no information on the record indicating that a different date better reflects the date on which the material terms of sales are established, Commerce has preliminarily determined to use the sales invoice date as the date of sale.

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\(^96\) See *Initiation Notice,* See also *Antidumping Duty Investigation Initiation Checklist: Laminated Woven Sacks from the Socialist Republic of Vietnam, dated March 27, 2018 (Initiation Checklist).*  
\(^97\) *Id.*  
\(^98\) *Id.*  
\(^99\) *Id.*  
\(^100\) See DVH Packaging’s June 18, 2018 CQR at C15-C-16. *See also* DVH Packaging and TKMB September 11, 2018 Pre-Preliminary Comments at 4-5.
H. 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 DVH Packaging’s sales of subject merchandise to the United States were made at less than fair value, Commerce compared the EP to NV as described in the “Export Price” and “Normal Value” sections of this memorandum.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (i.e., the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NV to the EPs (or CEPs) of individual sales (i.e., the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In recent investigations, Commerce applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.¹⁰¹ Commerce 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. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of 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., zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of investigation based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that Commerce uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

¹⁰¹ 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).
In the first stage of the differential pricing analysis used here, the “Cohen’s $d$ test” is applied. The Cohen’s $d$ coefficient is a generally recognized statistical measure of the extent of the difference between the mean (i.e., weighted-average price) of a test group and the mean (i.e., weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s $d$ coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s $d$ coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s $d$ test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s $d$ test, if the calculated Cohen’s $d$ coefficient is equal to or exceeds the large (i.e., 0.8) threshold.

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

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

2. Results of the Differential Pricing Analysis

For DVH Packaging, based on the results of the differential pricing analysis, Commerce preliminarily finds that 26.1 percent of the value of U.S. sales pass the Cohen’s $d$ test, which does not confirm the existence of a pattern of prices that differs significantly among purchasers, regions or time periods. Thus, for this preliminary determination, we are applying the average-to-average method to all U.S. sales to calculate the weighted-average dumping margin for DVH Packaging.

I. Export Price

We calculated EPs, as defined in sections 772(a) of the Act, based on the packed free-on-board (FOB) prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions for movement expenses, i.e., foreign inland freight, and foreign brokerage and handling in accordance with section 772(c)(2)(A) of the Act. We based movement expenses on SVs for movement services purchased from Vietnamese companies.

J. Normal Value

Section 773(c)(1) of the Act provides that Commerce shall determine NV using an 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. Commerce bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under Commerce’s normal methodologies. Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), Commerce calculated NV based on FOPs. Under section 773(c)(3) of the Act, FOPs include, but are not limited to the following: (1) hours of labor required; (2) quantities of raw materials used; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.

K. Factor Valuation Methodology

To calculate NV, we multiplied DVH Packaging’s reported per-unit FOP consumption rates by publicly available SVs. When selecting SVs, we considered, among other factors, the quality, specificity, and

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103 See the Factor Valuation Methodology section below.


105 See section 773(c)(3)(A)-(D) of the Act.
contemporaneity of the SV data. As appropriate, we adjusted the costs that we calculated for FOPs by including freight costs to make them delivered prices. Specifically, we added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent’s factory or the distance from the nearest seaport to the respondent’s factory. A detailed description of the SVs used in our calculations can be found in the Preliminary SV Memorandum.

1. Direct and Packing Materials

We based SVs for materials on Indian import data, as published by the GTA, and other publicly available sources from India. In accordance with section 773(c)(1) of the Act, we selected, 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. Specifically, we selected import values under particular Harmonized Tariff System (HTS) subheadings as surrogates based on the best match between the reported physical description and function of the input and the HTS subheading description. We preliminarily denied DVH Packaging’s requested by-product offset.

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs in meaningful quantities (i.e., not insignificant quantities) from an ME supplier that are produced in an ME country and pays for them in an ME currency, Commerce uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization. Specifically, where Commerce finds ME purchases to be of significant quantities (i.e., 85 percent or more of the total volume of the input), in accordance with our statement of policy, Commerce uses the actual purchase prices to value the inputs. Alternatively, when the volume of an NME firm’s purchases of an input from ME suppliers during the period is below 85 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, Commerce will weight-average the ME purchase price with an appropriate SV, according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption. When a firm has made ME input purchases that may have been dumped or subsidized, are not bona fide, or are otherwise not acceptable for use in a dumping calculation, Commerce will exclude them from the numerator of the significant quantities ratio to ensure a fair determination of whether valid ME purchases meet the 85 percent threshold.

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107 See Sigma Corp. v. United States, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).
108 See Preliminary SV Memorandum.
110 See Preliminary SV Memorandum.
111 See Preliminary Analysis Memorandum.
112 See, e.g., Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27366 (May 19, 1997).
114 Id.
DVH Packaging provided evidence that it had ME purchases of certain inputs during the POI. Because DVH Packaging sourced its ME inputs from an affiliated ME party, per our request, and consistent with our practice, DVH Packaging was required to demonstrate, and sufficiently demonstrated, that its ME purchases of certain inputs were made at arm’s-length prices. Thus, we used DVH Packaging’s reported ME purchase prices for certain inputs in determining the cost of those inputs. We added freight expenses to DVH Packaging’s reported ME prices for those inputs, where appropriate.

Pursuant to section 773(c)(5) of the Act and Commerce’s long-standing practice, Commerce disregards SVs if it has a reason to believe or suspect they are based on subsidized prices. In this regard, Commerce has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea, and Thailand because Commerce has determined that these countries maintain broadly available, non-industry specific export subsidies. Based on the existence of the subsidy programs that were generally available to all exporters and producers in these countries at the time of the POI, Commerce finds that it is reasonable to infer that all exporters from Indonesia, South Korea, and Thailand may have benefitted from these subsidies. Therefore, we have not used prices from those countries in calculating the Indian import-based SVs.

We disregarded data from NME countries when calculating Indian import-based per-unit SVs. We also excluded from the calculation of Indian import-based per-unit SVs imports labeled as originating from an “unidentified” country because we could not be certain that these imports were not from either an

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115 See DVH Packaging’s August 13, 2018 Section D Supplemental Questionnaire Response at Exhibit D-19a; see also DVH Packaging’s August 31, 2018 Second Supplemental Section D Questionnaire Response at Exhibit SV-9, the Clearwater Metal Single Entity’s October 2, 2017 supplemental questionnaire response at Exhibits 2SD-2, 2SD-5, and 2SD-6.


117 See DVH Packaging’s DVH Packaging’s August 13, 2018 Section D Supplemental Questionnaire Response at 28-31 and Exhibits D-19a and 19b.

118 See Preliminary SV Memorandum.

119 See Preliminary Analysis Memorandum.

120 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).

NME country or a country with generally available export subsidies.\textsuperscript{122}

1. Energy

We valued electricity using prices in the \textit{Tariff & Duty of Electricity Supply in India} publication, published by India’s Central Electricity Authority (CEA). This publication contains electricity rates for small, medium, and large industries in the states and union territories of India.\textsuperscript{123} These electricity rates are publicly available. Because the data in \textit{the Tariff & Duty of Electricity Supply in India} were current as of March 2014,\textsuperscript{124} which is three years prior to the beginning of the POI, we adjusted the surrogate electricity value for inflation using the Wholesale Price Index.\textsuperscript{125}

2. 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 calculated inland truck freight expenses using data from \textit{Doing Business 2018: India}, a container weight of 15 metric tons, and the average inland freight distance from manufacturing plants to the closest deep water port for Vietnamese LWS producers.\textsuperscript{127} Because the data in \textit{Doing Business 2018} were current as of June 1, 2017,\textsuperscript{128} which is one month prior to the beginning of the POI, we adjusted the surrogate truck freight rate for inflation using the Wholesale Price Index.\textsuperscript{129}

We valued brokerage and handling expenses using a price list for exporting a standardized cargo of goods from India, as reported in \textit{Doing Business 2018: India}. The price list was based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India. Because the data in \textit{Doing Business: India 2018} were current as of June 1, 2017,\textsuperscript{130} which is one month prior to the beginning of the POI, we adjusted the surrogate brokerage and handling expenses for inflation using the Wholesale Price Index.\textsuperscript{131}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{123} See Petition, Volume II (March 7, 2018) at Exhibit II-11 and Petitioner SV Comments at 8.
\item \textsuperscript{124} See Petition, Volume II (March 7, 2018) at Exhibit II-11.
\item \textsuperscript{125} See Preliminary SV Memorandum.
\item \textsuperscript{126} See \textit{Sigma Corp. v. United States}, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).
\item \textsuperscript{127} See Petition, Volume II (March 7, 2018) at Exhibit II-6A-B.
\item \textsuperscript{128} See Petition, Volume II (March 7, 2018) at Exhibit II-5B. \textit{See also}, the petitioners’ SV Comments at Attachment 5, \textit{Doing Business: India} at 102.
\item \textsuperscript{129} See Preliminary SV Memorandum.
\item \textsuperscript{130} See Petitioner SV Comments at Attachment 5, \textit{Doing Business India} at 4.
\item \textsuperscript{131} See Preliminary SV Memorandum.
\end{enumerate}
\end{footnotesize}
3. Labor

In *Labor Methodologies*, Commerce determined that the best methodology with which to value labor is to use industry-specific labor rates from the primary surrogate country. Additionally, Commerce determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics. ILO Yearbook of Labor Statistics labor data are not on the record of this investigation. Therefore, we valued labor using 2014 printing-specific manufacturing data published by The Conference Board. We found that The Conference Board data are the best available information on the record for valuing labor because they provide a broader-market average and are more specific to the industry than other information on the record. We adjusted the labor rate for inflation using the Consumer Price Index.

4. Financial Ratios

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

The record contains the audited public financial statements of Stanpacks (India) Limited (Stanpacks), an Indian producer of merchandise identical to the merchandise under consideration. Stanpacks’ financial statements cover the fiscal year ending 2017 and are, therefore, contemporaneous with the POI. Furthermore Stanpacks’ financial statements show a profit, and there is no indication that the statements reflect subsidies that Commerce has previously found to be countervailable. The record also contains the financial statements of three other producers of merchandise identical to the merchandise under consideration, however, we preliminarily have not used these financial statements in our calculations because they either are not contemporaneous with the POI, do not show a profit, or indicate that the company received subsidies. Therefore, we preliminarily based factory overhead costs, SG&A expenses, and profit on Stanpacks’ 2017 financial statements.

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133 Id., at 36093; see also Preliminary SV Memorandum.
134 See Preliminary SV Memorandum and Supplement to the Petition, Volume II (March 14, 2018) at Exhibit II-S8.
135 See Preliminary SV Memorandum.
137 See Petitioner SV Comments at Attachment 6.
138 See Preliminary SV Memorandum.
139 Id.
IX. CURRENCY CONVERSION

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

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

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

Specifically, in applying section 777A(f) of the Act, Commerce examined whether DVH Packaging demonstrated: (1) a subsidies-to-cost link, e.g., subsidy impact on cost of manufacture (COM); and (2) a cost-to-price link, e.g., respondent’s prices changed as a result of changes in the COM. Based on the information submitted to Commerce, DVH Packaging, the only participating individually examined company in this proceeding, Commerce finds that DVH Packaging’s response to our request for supplemental information does not demonstrate a subsidies-to-cost, and a cost-to-price link. Therefore, we did not grant a domestic pass-through adjustment to DVH Packaging.

To determine whether to grant a domestic pass-through adjustment for non-selected separate rate respondents, Commerce relies on the experience of the mandatory respondents examined. Since DVH Packaging did not establish eligibility for a domestic pass-through adjustment, we did not make a domestic pass-through adjustment pursuant to section 777A(f) of the Act for the non-selected separate rate respondents. For the NME-wide entity, whose rate is based on AFA rate, we normally adjust the AFA AD cash deposit rate by the lowest estimated domestic subsidy pass-through rate determined for any party. In this case, the lowest and only rate is zero, therefore, no adjustment was made.

XI. ADJUSTMENT FOR COUNTERVAILABLE EXPORT SUBSIDIES

In an AD investigation with a companion CVD investigation, Commerce adjusts the AD cash deposit rate for each respondent by the export subsidies found for each respective respondent in the CVD investigation. Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S.
price “shall be increased by the amount of any countervailing duty imposed on the subject merchandise… to offset an export subsidy.”\(^{145}\)

Because Commerce determined in the preliminary determination of the companion CVD investigation that DVH Packaging benefitted from export subsidy programs,\(^{146}\) we are adjusting the AD cash deposit rate for DVH Packaging by its export subsidy rate.\(^{147}\) Additionally, we adjusted the AD cash deposit rate of the non-selected separate rate respondents by the all-others export subsidy rate calculated in the preliminary determination of the companion CVD investigation.\(^{148}\) Finally, as an extension of the application of AFA for the Vietnam-wide entity, pursuant to section 776(b) of the Act, we adjusted the Vietnam-wide entity’s AD cash deposit rate by the lowest export subsidy rate determined for any party in the companion CVD investigation.\(^{149}\)

XII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☐ Agree ☐ Disagree

10/3/2018

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

\(^{145}\) See Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review, 75 FR 38076, 38077 (July 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

\(^{146}\) See Laminated Woven Sacks from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination, 83 FR 39983 (August 13, 2018) (LWS CVD Preliminary Determination), and accompanying Preliminary Decision Memorandum at 12-17 (finding that the Preferential Lending to Exporters Program and the Import Duty Exemption on Imports of Raw Materials Program are contingent on export performance, and, therefore, specific pursuant to 7771(5A)(A) and (B) of the Act).

\(^{147}\) See DVH Packaging Analysis Memorandum.

\(^{148}\) See LWS CVD Preliminary Determination. See also Memorandum, “Calculation of Export Subsidy Adjustment,” dated concurrently with this memorandum.

\(^{149}\) See LWS CVD Preliminary Determination. See also Memorandum, “Calculation of Export Subsidy Adjustment,” dated concurrently with this memorandum.