MEMORANDUM

April 4, 2019

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:  Issues and Decision Memorandum for the Final Affirmative  
Determination in the Less-Than-Fair-Value Investigation of  
Laminated Woven Sacks from the Socialist Republic of Vietnam

I. SUMMARY

The Department of Commerce (Commerce) finds that 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 (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2017, through December 31, 2017.

After analyzing the comments submitted by interested parties, we have made certain changes to the Preliminary Determination.

We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

II. BACKGROUND

On October 11, 2018, Commerce published in the Federal Register the Preliminary Determination and invited interested parties to comment. On October 23, 2018, Commerce postponed the final determination of this investigation until February 25, 2019. Commerce

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1 See Laminated Woven Sacks from the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value, 83 FR 51436 (October 11, 2018) (Preliminary Determination) and accompanying Preliminary Decision Memorandum (PDM).
2 Id.
exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.\(^4\) If the new deadline falls on a non-business day, in accordance with Commerce’s practice, the deadline will become the next business day. Accordingly, the revised deadline for the final determination is now April 4, 2019.

On November 13, 2018, Halsted Corporation (Halsted) submitted its scope brief, and on November 19, 2018, the petitioners\(^5\) submitted its rebuttal scope brief.\(^6\) Commerce subsequently rejected Halsted’s scope brief because it contained untimely filed new factual information.\(^7\) Between October 22, and October 26, 2018, Commerce conducted verification of Duong Vinh Hoa Packaging Company Limited’s (DVH Packaging’s) questionnaire response.\(^8\) On December 8, 2018, DVH Packaging filed its case brief.\(^9\) On December 17, 2018, the petitioners filed their rebuttal brief.\(^10\) On February 13, 2019, Commerce held an open hearing.\(^11\) Based on our review of the Preliminary Determination, the results of the verification of DVH Packaging, and our analysis of the comments received, we made certain changes to our Preliminary Determination.

### III. Changes from the Preliminary Determination

1. We revised the calculation of DVH Packaging’s financial expenses and profit.\(^12\)
2. We made changes to the margin calculations for DVH Packaging based on minor corrections found at verification.\(^13\)

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\(^4\) See memorandum to the Record from 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, “Deadlines Affected by the Partial Shutdown of the Federal Government,” dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

\(^5\) The petitioners in this investigation are the Laminated Woven Sacks Fair Trade Coalition and its individual members, Polytex Fibers Corporation and ProAmpac Holdings Inc.


\(^7\) See Commerce’s Letter, “Antidumping and Countervailing Duty Investigations of Laminated Woven Sacks from the Socialist Republic of Vietnam: Rejection of Untimely Filed Factual Information,” dated December 12, 2018. See also Halsted’s Letter, “Laminated Woven Sacks from Vietnam: Withdrawal of Comments on Scope of Investigations,” dated December 17, 2018. (requesting the withdrawal of Halsted’s scope brief from the record). See also Commerce’s Letter, “Antidumping and Countervailing Duty Investigations of Laminated Woven Sacks from the Socialist Republic of Vietnam: Request for Withdrawal of Scope Comments,” dated February 8, 2019 (Commerce’s response to Halsted’s December 17, 2018 request to withdraw its scope brief, explaining that Halsted’s scope brief had been rejected and removed from the record and, therefore, because Halsted did not file a redacted version of its scope brief within the deadline allotted by Commerce, it would not be considered in these investigations).


\(^12\) See Issue 2, below.

\(^13\) See Verification Report at 2-3 and Exhibit VE-1.
IV. Discussion of Issues

Comment 1: Surrogate Value for Colored Ink

Background:
Commerce preliminarily calculated respondents’ reported factor of production for colored ink using Indian import data for the Harmonized Tariff System (HTS) category for “Othr Prntng Ink & Printrs C (Ink)” (HTS No. 32151990), as published by the Global Trade Atlas (GTA).14

DVH Packaging’s Case Brief:
- The surrogate value for colored ink, HTS 3215.19.90, includes Swiss import values, which are aberrationally high. Commerce’s longstanding practice, endorsed by the Courts, has been to exclude aberrational data in valuing surrogate values derived from import statistics. Based on the facts of this investigation, Commerce should exclude imports of ink from Switzerland from the average import value used in the surrogate value for ink.
- The average values of the imported materials do not always represent accurate values for a raw input, depending on the scope of products included within a particular HTS category. DVH Packaging cites to Hebei Metals & Minerals Imp. & Exp. Corp v. United States, wherein the Court concluded that a Swedish steel pallet import value appeared aberrational because it varied from the average to a uniquely extreme degree, at 1,134% greater than the average of import values from all other countries.15 DVH Packaging also cites to Guangdong Chemicals Imp. & Exp. V. United States, wherein the Court upheld Commerce’s exclusion of U.S. import into India based on U.S. values being 10 times higher than imports from other countries.16
- The discrepancy between the Swiss prices of ink and the actual prices paid by DVH Packaging for ink support the conclusion that the Swiss product is a different product than that used by DVH Packaging, and, therefore, is not representative of a market economy price for DVH Packaging’s ink inputs.
- Despite making up 5.78% of colored ink imports by quantity, Swiss ink unit prices are 3,378% of the AUVs of ink from the seven countries supplying the largest volumes of ink. The weighted AUV of all colored ink imports including Switzerland is 261.45% of the weighted AUV when the Swiss imports are excluded. In comparison, there is less variability in the range of prices used to calculate the surrogate value for other factors of production such as polypropylene (PP) resin and biaxially-oriented polypropylene (BOPP) film. The exclusion of Swiss values in the surrogate value calculations for PP resin and BOPP film do not produce a significant impact on the weighted AUVs for PP resin and BOPP film.17
- The discrepancy between the Swiss prices and the actual prices paid by DVH Packaging support the conclusion that the Swiss product is a different product than that used by

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14 See Memorandum, “Antidumping Duty Investigation of Laminated Woven Sacks from the Socialist Republic of Vietnam, Preliminary Results Surrogate Value Memorandum,” dated October 3, 2018 at 7-8 (Preliminary Surrogate Value Memorandum) at Exhibit 1: Surrogate Value Summary Worksheet and GTA Data. This information was treated as business proprietary information (BPI) for purposes of the preliminary determination. However, DVH Packaging has publicly referred to this information in its case brief.
DVH Packaging, and, therefore, is not representative of a market economy price for DVH Packaging’s ink inputs. The greatest price of ink purchased by DVH Packaging can, at most, increase its average price of ink by less than 21%. In comparison, the Swiss price is 1,196% of the average price of ink that DVH Packaging paid.

- The ink surrogate value is also based on a “basket” HTS category, from which is inherently more likely to have aberrational prices that define a product specific category.
- Based on the facts of this investigation, Commerce should exclude imports of ink from Switzerland from the average import value used in the surrogate value for ink.

**Petitioners’ Rebuttal Brief:**

- The cases to which DVH Packaging cites are all over a decade old and do not represent current practice, which has changed in the past five years. Commerce has explicitly stated that its current practice has changed from excluding imports from specific trading partners: in *Multilayered Wood Flooring from China*, Commerce stated that prior cases “where Commerce examined whether the AUV of imports from a particular country under an HTS category was aberrational, does not reflect Commerce’s current practice.”

- Commerce’s current practice is to evaluate whether the surrogate value in the aggregate is aberrational, rather than evaluating the aberrational nature of imports from a particular country used in surrogate value calculations. In this investigation, therefore, the relevant issue is whether the overall SV for colored ink is aberrational, and not whether a subset of import data comprising that SV (e.g., entries from Switzerland) might be “aberrational.”

- DVH Packaging failed to present benchmark evidence showing that the surrogate value is aberrational. DVH Packaging has provided neither historical import values into India under HTS category 3215.19.90, nor import data during the POI for the other potential surrogate countries, which similarly could have served as a benchmark for the Indian data, which would have allowed Commerce to determine whether POI values are aberrational by comparison.

- DVH Packaging is engaging in the type of “cherry-picking” that Commerce’s existing practice was intended to discourage: DVH Packaging is objecting to the highest-priced Swiss imports while ignoring the lowest-priced Australian, South African, and Turkish imports, which are significantly below the AUV for the entire category.

- Though DVH Packaging provided its own prices paid for purchases of ink, these prices are not valid benchmarks: They represent non-market economy (NME) prices, which are considered unreliable and are not used in dumping calculations. Under no circumstances would DVH Packaging’s ink prices form an appropriate benchmark against which to measure the reasonableness of surrogate values.

- Although prices for Swiss imports of colored ink are higher than the calculated weighted AUV, there were multiple entries of similarly-priced imports from Switzerland, France, Austria, and Greece. The Indian Global Trade Atlas (GTA) dataset not only features a relatively smooth continuum of values over a broad range of prices but also includes low priced imports of colored ink that are substantially below the calculated weighted AUV.

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19 Commerce identified Bangladesh, India, Indonesia, Nigeria, Pakistan, and the Philippines as countries that are at the same level of economic development as Vietnam. See Preliminary Determination at 8-9.
Thus, the Swiss values are not outliers, and no line items should be excluded as “aberrational.”

- The lack of significant impact on the AUV calculations for PP resin and BOPP film upon the exclusion of Swiss values does not imply that Swiss import prices for colored ink are aberrational. While there is greater price variability in the range of values for colored ink, and while the Swiss values exist on the higher end of the range of prices, the broad range of import prices for colored ink may be a function of the different types of imported inks rather than an indication that high or low prices are “aberrational.”

**Commerce’s Position:** As discussed below, we have considered DVH Packaging’s assertion that the Swiss import values within the Indian GTA data on the record are aberrational and should be excluded from the calculation of the colored ink surrogate value (SV). We disagree with DVH Packaging, and find that the Swiss import values are not aberrational, and, therefore, should not be excluded from the calculation of the colored ink SV for purposes of the final determination.

In antidumping duty proceedings involving merchandise from non-market economy (NME) countries, section 773(c)(1) of the Act provides that Commerce will determine normal value by valuing the “factors of production utilized in producing the merchandise” plus “an amount for general expenses and profit plus the cost of containers, coverings, and other expenses.” Section 773(c)(1) of the Act also provides that Commerce will value factors of production (FOPs) “based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.” Commerce’s preference when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the review period, and tax and duty exclusive.\(^\text{20}\) Commerce undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry. While there is no hierarchy for applying the SV selection criteria, Commerce must weigh 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.\(^\text{21}\) Additionally, Commerce has a preference to value all FOPs in a single surrogate country pursuant to 19 CFR 351.408(c)(2).

In this proceeding, we selected India as the primary surrogate country because, among other reasons, the SV data on the record for India provides the best useable data and information with which to value FOPs, such as direct materials, labor, energy, and financial ratios.\(^\text{22}\) We based SVs for colored ink on Indian import data, as published by the GTA, 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 the particular HTS subheadings as surrogates based on the best match between the

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\(^{21}\) See, e.g., *Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) (*Mushrooms China*) and accompanying Issues and Decision Memorandum at Comment 1.

\(^{22}\) See PDM at 11.
reported physical description and function of the input and the HTS subheading description. For colored ink, we relied on the HTS category for “Othr Prtg Ink & Printrs C (Ink)” (HTS No. 32151990).  

No party contests our use of this data in our SV calculation for colored ink. However, DVH Packaging contends that the Swiss import values into India under HTS 3215.19.90 are aberrationally high, and should be excluded from the SV calculation for colored ink, for several reasons. We disagree.

As an initial matter, Commerce’s practice for testing the reliability of AUVs alleged to be aberrational is to determine whether the AUV, in the aggregate, is aberrational. Under such practice, Commerce does not compare values of imports into the selected surrogate country entered under the HTS category by evaluating and removing specific line items. As stated in Multilayered Wood Flooring:

the relevant test is to determine whether the AUV in the aggregate is aberrational. Otherwise, parties would advocate the manipulation of data by removing one or more line items they find objectionable, with the result that we would not be using the average prices for that category, but some subset thereof.

Therefore, in analyzing whether a given value is aberrational, Commerce “typically compares the prices for an input from all countries found to be at a level of economic development comparable to the NME whose products are under review from the POR and prior years.” On this record, the only potential SV for colored ink is the Indian GTA data. As stated above, we find that these data satisfy our preference for SVs that 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. Neither petitioners, DVH Packaging, nor any other interested party placed data on the record which included AUVs of colored ink from another potential surrogate country or historical AUVs to use for benchmark purposes. In past cases, interested parties have submitted alternative SV data, including benchmark data, for Commerce to use in its analysis of whether certain data are aberrational. However, in the instant investigation, no interested party has submitted any information to the record demonstrating that the Indian AUV in the aggregate is aberrational. Therefore, the record does not contain any evidence demonstrating that the Indian AUV in the aggregate is aberrational.

23 See Preliminary Surrogate Value Memorandum at Exhibit 1: Surrogate Value Summary Worksheet and GTA Data.
24 See Multilayered Wood Flooring at Comment 11 D; see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015, 82 FR 29033 (June 27, 2017) at Comment 12; Certain Uncoated Paper from the People's Republic of China: Final Determination of Sales at Less Than Fair Value 81 FR 3112 (January 20, 2016) at Comment 2.
25 See Multilayered Wood Flooring at Comment 11 D.
26 Id.
27 Id.
28 See QVD Food Co. v. United States, 658 F.3d 1318, 1324 (Fed. Cir. 2011) (citations omitted) (explaining that “the burden of creating an adequate record lies with {interested parties} and not with Commerce”); see also Shandong Huarong Gen. Corp. v. United States, 159 F. Supp. 2d 714, 719 (CIT 2001) (holding that if plaintiff does not provide sufficient data for Commerce to use, Commerce has much latitude in choosing the best available information).
Commerce has previously explained that examining the high and low average import values from particular countries among numerous data points to determine if any of these data points should be excluded from our calculations would “invite endless and distortive cherry picking of data.” Thus, if Commerce were to exclude alleged aberrational values of imports from particular countries from its AUV calculations, it would start down a slippery slope that would likely result in a contravention of Commerce’s judicially-affirmed preference to base SVs on broad data that reflect the surrogate country’s market as a whole. Commerce prefers to base SVs on broad market data that reflect the surrogate country’s market because more data points provide more accurate data. Our practice of only examining whether import data for the entire country is aberrational prevents what could be a never-ending process of removing relatively high and low individual data points. Furthermore, examining the high and low average import values from particular countries to determine if any of the data should be excluded from AUV calculations would be administratively burdensome.

Here, there are 85 direct material inputs for which we need to evaluate SV data. Of those direct material inputs, we have relied on AUV Indian import data from GTA for the majority of those inputs. In total, the Indian import data on the record consists of hundreds (and potentially thousands) of data points spread across numerous HTS categories. Sifting through the data to examine all potential instances of high or low aberrational AUVs would be time consuming, and any adjustments made to remove high or low values from AUV calculations would result in SVs that are less representative of market conditions in the surrogate country, and thus, no longer reflective of the average market price in the surrogate country.

The GTA data for colored ink alone constitutes over 130 data points, including data from nearly 30 countries, ranging from AUVs of 110 INR per kg to 38,000 INR per kg, and quantities of 2 kg per shipment to 52,158 kg per shipment. Although the values of colored ink imports from Switzerland are the highest AUV of any country, they are not out of line with the range of values of colored ink imports from other countries within the Indian GTA import data. Additionally, the quantities of the Swiss imports are among the largest import quantities for any country, and the highest Swiss AUV is only 16.5 times larger than the overall AUV. In contrast, the lowest AUV of any country, representing shipments from Turkey, is 20 times smaller than the overall AUV. Thus, while it is true that Swiss colored ink prices make up only 5.78% of imports by

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29 See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 35245 (June 5, 2015) and accompanying Issues and Decision Memorandum (PET Film IDM 2010-2011) at Issue 2.
30 See Jiaxing Brother Fastener Co., Ltd. v. United States, 822 F.3d 1289 (Fed. Cir. 2016); see also, e.g., Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination, 79 FR 54963 (September 15, 2014), (Concrete Bar from Turkey), and accompanying Issues and Decision Memorandum, at Comment 1.
31 See Concrete Bar from Turkey at Comment 1.
32 See DVH Packaging’s September 4, 2018 Second Supplemental Section D Questionnaire Response (public version) at Exhibit SV-9.
33 See Preliminary Surrogate Value Memorandum at 2-5 and Exhibit 1: Surrogate Value Summary Worksheet and GTA Data.
34 Id.
35 See Memorandum, “Final Determination Surrogate Value Memorandum,” dated concurrently with this memorandum at Exhibit 1b (Final Surrogate Value Memorandum).
36 Id. Were we to take an average of all the Swiss AUVs (26,648.05 INR/kg), this number would be about 11 times larger than the overall AUV. Id.
quantity and are greater than the overall AUV of colored ink, these values fall within the range of values for the other countries from the GTA data and are therefore not aberrational.

Additionally, DVH Packaging’s prices for its ink purchases do not serve as valid benchmarks in comparison with the Swiss ink prices. We agree with petitioners that DVH Packaging’s ink prices, which represent NME prices, do not form an appropriate benchmark against which to measure the reasonableness of SVs. Moreover, by its very nature, the import data published by GTA represents broad-market averages, and is product-specific as it includes various types of ink that are covered by the HTS category at issue. In this regard, DVH Packaging is correct in pointing out that the HTS category used for colored ink is a “basket” category representing “Othr Prntng Ink & Printrs C (Ink)” (HTS No. 32151990), and, therefore, may cover different types of inks with corresponding different high and low values that may be different from the precise type of ink used by DVH Packaging. However, the record contains no further information such that we can draw any accurate comparison with respect to the type of ink used by DVH Packaging as compared to the type of ink covered by the Swiss AUV (which is at the high end of the range) or the Turkish AUV (which is at the low end of the range). Nor can we draw any accurate conclusions that the Swiss AUV represents a “different product” than that purchased by DVH Packaging. Thus, to find that the Swiss AUV is not representative of the ink used by DVH Packaging would be purely speculative.

Lastly, we disagree with DVH Packaging that the variation in the HTS category for ink as compared to other HTS categories on the record for different FOPs indicates that the Swiss AUVs at issue are aberrational. Additionally, we find that DVH Packaging’s calculations which remove the highest Swiss AUVs, while including the lowest AUVs, is skewed and is not a fair demonstration of the range of values which make up the overall AUV.

For the reasons elaborated above, Commerce has determined that the SV for colored ink in the preliminary determination does not include aberrational data. Therefore, for the final determination, we have not removed any data from our calculation.

Comment 2: Financial Statements Used to Value Overhead; Selling, General and Administrative Expenses; and Profit

Background: Commerce preliminarily based factory overhead expenses; selling, general and administrative (SG&A) expenses; and profit on the fiscal year (FY) 2017-2018 financial statements of Stanpacks (India) Limited (Stanpacks), an Indian producer of merchandise identical to the merchandise under investigation.37 Commerce preliminarily decided not to use the statements of Indian producers of identical merchandise, Gopala Polyplast Ltd. (Gopala) (FY 2016-2017), Flexituff International Limited (Flexituff) (FY 2017-2018), and Kanpur Plastipack Ltd. (Kanpur Plastipack) (FY 2017-2018), which were submitted by interested parties because the statements either: (1) are non-contemporaneous (Gopala); (2) show no profit (Flexituff); or indicate that the companies received subsidies that Commerce has found to be countervailable.

(both Flexituff and Kanpur Plastipack). The record of the instant investigation also contains the FY 2016-2017 statements of Kandoi Fabrics Private Limited (Kandoi Fabrics) and Kanpur Packagers Private Limited (Kanpur Packagers), which were used to derive the petition margin.

**DVH Packaging’s Case Brief:**
- Do not continue to rely on the contemporaneous Stanpacks’ financial statement because it results in the distortion of normal value caused by the double counting of every reported direct material input other than PP granules/resin.
- The contemporaneous Stanpacks, Flexituff, and Kanpur Plastipack statements are unusable because they either; (1) show no profit, (2) indicate the receipt of subsidies Commerce has found to be countervailable, and/or (3) do not provide adequate information to generate accurate financial ratios.
- The CIT precedent and Commerce practice support the selection of the non-contemporaneous Gopala financial statement, which provides the best available information for valuing DVH Packaging’s financial expenses and profit.
- The Gopala statement precedes the POI by only three months and the use of the statement would eliminate the double counting that results from the use of the Stanpacks’ statement. Thus, the Gopala statement remains as the only acceptable financial statement on the record for use in calculating financial ratios.

**Petitioners’ Rebuttal Brief:**
- Continue using the Stanpacks financial statement in the normal value calculation. No record evidence supports the claim that using the statement to calculate financial expenses and profit results in the double counting of direct materials.
- Contrary to DVH Packaging’s claim, Commerce practice does not establish a surrogate value selection hierarchy that favors the selection of the Gopala statement. Rather, Commerce selects the best available information on a case-by-case basis.
- The Gopala financial statement is unusable because it is both non-contemporaneous and indicates that Gopala received countervailable subsidies.
- If Commerce determines that the Stanpacks’ statement is unusable, Commerce should rely on the Kanpur Plastipack and Flexituff statements. Other than the presence of subsidies in these statements, there are no other issues with the Kanpur Plastipack and Flexituff statements, and there is no basis to resort to the non-contemporaneous Gopala financial statement.

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38 See Preliminary Surrogate Value Memorandum at 8.
40 See DVH Packaging’s Case Brief at 10-11.
41 Id. at 14-24.
43 Id. at 13, 24.
• Alternatively, if Commerce determines that the contemporaneous statements of Stanpacks, Kanpur Plastipack, and Flexituff statements are all unusable, it should use the non-contemporaneous statements of Kandoi Fabrics and Kanpur Packagers used in the Petition. Unlike the non-contemporaneous Gopala statement, the Kandoi Fabrics and Kanpur Packagers statements show no evidence of countervailable subsidies.

**Commerce’s Position:** As discussed below, Commerce has examined each of the financial statements on the record in light of its surrogate value selection criteria and comments by interested parties and has determined that the financial statements of Kandoi Fabrics and Kanpur Packagers represent the best most appropriate surrogate value source for DVH packaging’s overhead, financial expenses, and profit. Accordingly, Commerce has revised its preliminary margin calculation and has valued factory overhead, SG&A and profit using the financial statements of Kandoi Fabrics and Kanpur Packagers.

Pursuant to section 773(c) of the Act, Commerce values the FOPs using the “best available information” from a market economy country. In accordance with 19 CFR 351.408(c)(4), Commerce will normally value overhead expenses, 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, and that are not distorted or otherwise unreliable, such as financial statements that indicate the company received subsidies.

Additionally, for purposes of selecting surrogate producers, Commerce examines how similar a proposed surrogate producer’s production experience is to the NME producer’s production experience. However, Commerce is not required to “duplicate the exact production experience of an NME producer, nor must it undertake ‘an item-by-item analysis in calculating factory overhead.’” Further, Courts have recognized Commerce’s discretion when choosing appropriate companies’ financial statements to calculate surrogate financial ratios. As noted above, the record contains the FY 2017-2018 financial statements of Stanpacks, Kanpur Plastipack, and Flexituff, and the FY 2016-2017 financial statements of Gopala, Kandoi

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44 See Petitioners’ Rebuttal Brief at 20 (citing Petition, at Volume II. Exhibit II-12; and AD Supplement at Exhibit II-S9.
45 See Preliminary Surrogate Value Memorandum at 7-8 (citing Hand Trucks and Certain Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 28801 (May 16, 2013) and accompanying Issues and Decision Memorandum (IDM) at Comment 2; Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review, 78 FR 5414 (January 25, 2013) and accompanying IDM at Comment 1.
47 See Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999); see also Magnesium Corp. of Am. v. United States, 166 F.3d 1364, 1372 (Fed. Cir. 1999).
48 See, e.g., FMC Corp. v. United States, 27 CIT 240, 251 (CIT 2003) (holding that Commerce can exercise discretion in choosing between reasonable alternatives), aff’d FMC Corp. v. United States, 87 F. App’x 753 (Fed. Cir. 2004).
50 Id. at Attachment 4.
51 Id. at Attachment 7.
52 See Letter submitted on behalf of Xinsheng Plastic Industry Co., Ltd. DVH Packaging and TKMB Joint Stock
Fabrics, and Kanpur Packagers.\textsuperscript{53} Commerce’s finding regarding the suitability of each of these financial statements for use as a source of surrogate value information is discussed below.

**Gopala**

Commerce disagrees with DVH Packaging’s claim that the FY 2016-2017 financial statement of Gopala is the “only viable option” on the record for deriving financial ratios.\textsuperscript{54} Contrary to DVH Packaging’s assertion that the Gopala FY 2016-2017 financial statement is free of countervailable subsidies, an examination of this statement indicates that Gopala received subsidies under India’s Advance License program,\textsuperscript{55} which is a subsidy program that Commerce has found to be countervailable.\textsuperscript{56} Where Commerce has reason to believe that a company received subsidies, based on information in the company’s financial statements, Commerce may find that the financial ratios derived from that company’s financial statements are less representative of the financial experience of the company or the relevant industry compared to ratios derived from financial statements that do not contain evidence of subsidies.\textsuperscript{57} Furthermore, the Gopala financial statement is not contemporaneous with the instant POI. With respect to DVH Packaging’s argument that the Gopala statement should not be rejected because it is not contemporaneous, Commerce agrees with DVH Packaging that contemporaneity is only one of the factors it considers when selecting surrogate values and that Commerce’s surrogate selection criteria does not necessarily preclude the use of surrogate financial statement for a period that precedes the POI.\textsuperscript{58} However, because the Gopala statement both (1) contains evidence of countervailable subsidies and (2) is not contemporaneous with the POI, Commerce finds that the Gopala statement is not the best surrogate producer information on the record when compared to other financial statements on the record of the instant investigation.

**Stanpacks**

Based on its reconsideration of record evidence, including alternative financial statements contained in the Petition, Commerce determines that the Stanpacks statement, which we used to derive DVH Packaging’s overhead expenses, SG&A expenses, and profit in the *Preliminary Determination*,\textsuperscript{59} is not the best information on the record for valuing DVH Packaging’s financial expenses and profit. The Stanpacks statement indicates that its raw material cost comprises PP granules, which is the main material consumed in production of LWS.\textsuperscript{60} LWS, however, cannot...
be produced without the addition of other inputs, and the Stanpacks statement lacks the detail that would allow Commerce to accurately determine where these raw material costs are recorded in the statement.\(^61\) Therefore, it is not possible to adjust the Stanpacks statement to account for the consumption of raw materials other than PP granules. While Commerce is not required to match the production experience of surrogate financial companies to the exact experience of respondents when selecting surrogate values used to derive financial expenses, Commerce finds that the record contains financial statements that better reflect the production experience and cost structure of DVH Packaging than the Stanpacks financial statement. Therefore, Commerce determines that it will no longer rely on the Stanpacks statement to derive DVH Packaging’s financial expenses and profit for the final determination.

**Kanpur Plastipack and Flexituff**

As noted in the preliminary stage of the instant investigation, the statements of Kanpur Plastipack and Flexituff indicate that these companies received subsidies found by Commerce to be countervailable.\(^62\) No interested party disputes Commerce’s preliminary finding that the statements of Kanpur Plastipack and Flexituff show evidence that these companies received countervailable subsidies. However, Commerce finds that reliance on financial statements with evidence of countervailable subsidies is not the best information available because, as noted above in the discussion of the Gopala statement, Commerce finds that statements that reflect the receipt of countervailable subsidies are less representative of financial experience of the respondent, DVH Packaging, or the LWS industry in general. Moreover, as explained below, the record of the instant investigation contains two useable statements that are not distorted by subsidies. Commerce notes that DVH Packaging raises other arguments in its case brief about the suitability of the Kanpur Plastipack and Flexituff financial statements, however, because Commerce finds that the evidence of subsidies in these statements renders them less representative of the financial experience of DVH Packaging and the LWS industry in general, Commerce has not addressed DVH Packaging’s other arguments about these statements.\(^63\) Further, Commerce finds that the Kanpur Plastipack and Flexituff financial statements are not the best surrogate producer information on the record when compared to other financial statements on the record of the instant investigation.

**Kandoi Fabrics and Kanpur Packagers**

As stated above, Commerce determines that the statements of Kandoi Fabrics and Kanpur Packagers constitute the best information on the record of this proceeding to value DVH Packaging’s factory overhead, SG&A expenses, and profit. Like the other financial statements on the record, the statements of Kandoi Fabrics and Kanpur Packagers reflect the financial data of Indian producers of LWS. However, unlike the statements of Gopala, Kanpur Plastipack and Flexituff, Commerce finds no evidence (and no interested party to this proceeding alleges) that Kandoi Fabrics and Kanpur Packagers received subsidies that Commerce has found to be

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\(^{61}\) See, e.g., DVH Packaging’s June 26, 2018 Section D Questionnaire Response (public version) at Exhibit D-1a.

\(^{62}\) See Preliminary Surrogate Value Memorandum at 8 (The Kanpur {Plastipack} financial statement indicates that it received subsidies that Commerce has found to be countervailable (i.e., the Focus Market, Product Scheme). The Flexituff International Limited statement does not show a profit and the notes to the financial statement indicates that it received subsidies that Commerce has found to be countervailable (i.e., Advance License for Imports as per the Export Policy; Duty Drawback, Focus Market Scheme, and Merchandise Exports from India Scheme)).

\(^{63}\) See DVH Packaging’s Case Brief at 14-18.
countervailable. Furthermore, because there is no evidence that the financial statements of Kandoi Fabrics and Kanpur Packagers rely solely on the cost of PP granules to derive the cost of manufacture reflected in the statements, Commerce finds that these statements can be used to derive financial ratios that better reflect DVH Packaging’s production process and cost structure, as compared to the contemporaneous Stanpacks financial statement, which was used in the Preliminary Determination.  

The period covered by the FY 2016-2017 statements of Kandoi Fabrics and Kanpur Packagers ends three months before the beginning of the instant POI, and are, therefore, non-contemporaneous. However, because the Kandoi Fabrics and Kanpur Packagers financial statements are not distorted by subsidies and yield financial expense and profit ratios that better reflect DVH Packaging’s production experience than the financial statement used in the Preliminary Determination, Commerce finds that the Kandoi Fabrics and Kanpur Packagers statements are the best surrogate value sources on the record of this investigation when weighed against the other above-referenced financial statements. Furthermore, as DVH Packaging correctly notes, in HEDP from China, Commerce explained its reason for preferring non-contemporaneous financial statements to statements that are distorted by subsidies.

Because the evidence regarding the existence of subsidization in this case relates to subsidies programs that the Department has previously found countervailable, the Department accords more weight to the existence of subsidies than the difference in contemporaneity of the otherwise acceptable financial statement. See Freshwater Crawfish Tail Meat from the People’s Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007), and accompanying Issues and Decision Memorandum at Comment 1 (Crawfish from the PRC Decision Memo). While the contemporaneity of data is one factor to be considered by the Department, see Union Camp Corp. v. United States, 941 F. Supp. 108, 116 (Ct. Int'l Trade 1996) (Union Camp), the court has found that “contemporaneity is not a compelling factor where the alternative data is only a year-and-a-half distant from the POI.” See Hebei Metals & Minerals Import & Export Corporation and Hebei Wuxin Metals & Minerals Trading Co., Ltd. v. United States, 366 F. Supp. 2d 1264, 1275 (Ct. Int'l Trade 2005) (Hebei v. United States). In addition, the courts have previously found contemporaneity to be insufficient to explain why a particular surrogate value is the best available information for establishing the actual costs incurred by a producer. See Yantai Oriental Juice Co. v. United States, 26 C.I.T. 605, 617 (Ct. Int'l Trade, June 18, 2002) (Yantai Oriental Juice); see also Hebei v. United States, 366 F. Supp. 2d at 1275. Furthermore, where the Department has reason to believe or suspect that a company producing comparable merchandise may be subsidized, it considers the financial ratios derived from that company's financial statements to be less representative of the financial experience of the relevant industry than the ratios derived from financial statements that do not contain evidence of subsidization. See Crawfish from the PRC Decision Memo at Comment 1. Consequently, the Department does not rely on financial statements where there is evidence that the

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64 See Petition, at Volume II. Exhibit II-12; and AD Supplement at Exhibit II-S9.
65 See DVH Packaging’s Case Brief at 11-12 (citing 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 10545 (March 11, 2009) and accompanying IDM at Comment 1).
company received countervailable subsidies and there are other sufficiently reliable and representative data on the record for purposes of calculating the surrogate financial ratios. See, e.g., Certain Frozen Warmwater Shrimp From the People’s Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 2; see also Crawfish from the PRC Decision Memo at Comment 1.

Accordingly, for the final determination, Commerce has used the statements of Kandoi Fabrics and Kanpur Packagers to derive DVH Packaging’s factory overhead, SG&A expenses, and profit.\(^{66}\)

V. 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 the investigation and the final estimated weighted-average dumping margins in the Federal Register.

\[\begin{array}{ll}
\checkmark & \square \\
\text{Agree} & \text{Disagree} \\
\hline \\
& 4/4/2019 \\
\end{array}\]

\[\times\]

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

\[^{66}\text{See Final Surrogate Value Memorandum, dated concurrently with this memorandum; see also Memorandum, “Final Results Analysis Memorandum,” dated concurrently with this memorandum.}\]