UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

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Investigation
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October 27, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from People's Republic of China

I. SUMMARY

The Department of Commerce ("Department") preliminarily determines that 1-Hydroxyethylidene-1, 1-Diphosphonic Acid ("HEDP") from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated weighted-average dumping margins are shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

II. BACKGROUND

On March 31, 2016, the Department received an antidumping duty ("AD") petition covering imports of HEDP from the PRC, which was filed in proper form by Compass Chemical International LLC ("Compass Chemical" or "Petitioner").[1] The Department initiated this investigation on April 28, 2016.[2]

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in non-market economy ("NME") LTFV

[1] *See* "Petitions for the Imposition of Antidumping and Countervailing Duties Against 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from People's Republic of China" (March 31, 2016) ("Petition").
[2] *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 81 FR 25377 (April 28, 2016) ("*Initiation Notice*").

investigations.[3] The process requires exporters to submit a separate rate application ("SRA")[4] and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities. In the *Initiation Notice*, we stated that SRAs would be due 30 days after publication of the notice, which fell on April 28, 2016.[5] Between May 26, 2016 and June 3, 2016, the Department received timely-filed SRAs from Jianghai Environmental Protection Co., Ltd. ("Jianghai"), Henan Qingshuiyuan Technology Co., Ltd. ("Qingshuiyuan"), and Nantong Uniphos Chemicals Co., Ltd. ("Uniphos").[6] Concurrently, the Department selected Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory ("Wujin Water")[7] and Shandong Taihe Chemicals Co., Ltd. ("Taihe") as mandatory respondents and issued the NME AD questionnaire to the mandatory respondents.[8] Both the WW Group and Taihe submitted timely and complete Section A responses.[9]

Additionally, in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the appropriate physical characteristics of HEDP to be reported in response to the Department's AD questionnaire.[10] On May 10, 2016, Changzhou and Enviro Tech Chemical Services, Inc. ("Enviro Tech") submitted comments to exclude Enviro Tech's high purity HEDP from the scope of this investigation.[11] On May 20, 2016, Petitioner filed rebuttal comments regarding the physical characteristics of the merchandise under consideration.[12] On June 15, 2016, the Department issued the product characteristics to be used in the investigation.[13]

On May 16, 2016, the U.S. International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with material injured by reason of imports of HEDP from the PRC.[14]

On September 6, 2016, and pursuant to section 733(c)(1)(B) of the Act and 19 CFR 351.205(f)(1), the Department published in the *Federal Register* a postponement of the preliminary determination by 50 days until no later than October 27, 2016.[15]

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[3] *Id.*
[4] *See Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries*, April 5, 2005 ("*Policy Bulletin 05.1*"), available at *http://enforcement.trade.gov/policy/bull05-1.pdf*.
[5] *See Initiation Notice*.
[6] See Letter from Jinghai (May 26, 2016); Letter from Qingshuiyuan (May 27, 2016); *and* from Uniphos (June 3, 2016).
[7] For this preliminary determination, the Department is collapsing Wujin Water and Nantong Uniphos Chemicals Co., Ltd. ("Uniphos") (collectively the "WW Group"). *See* "Collapsing and Affiliation" section below for additional details.
[8] *See* Memorandum to Christian Marsh, "Antidumping Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from People's Republic of China: Selection of Mandatory Respondents" (May 25, 2016) ("Selection of Mandatory Respondents"); *and* the Department's Non-Market Economy Antidumping Duty Questionnaire issued to Wujin Water and Taihe (June 3, 2016) ("Initial Questionnaires").
[9] *See* the WW Group's Section A Response (July 5, 2016); and Taihe's Section A Response (July 5, 2016).
[10] *Id.*
[11] *See* Letter from Changzhou and Enviro Tech (May 10, 2016).
[12] *See* Letter from Petitioner (May 20, 2016).
[13] *See* the Department's Letter to All Interested Parties (June 15, 2016).
[14] *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from People's Republic of China*, 81 FR 31958 (May 20, 2016).
[15] *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 81 FR 61185 (September 6, 2016).

The Department 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, 2015, through December 31, 2015. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition, which was January 2016.[16]

IV. SCOPE COMMENTS

In accordance with the *Preamble* to the Department's regulations, in our *Initiation Notice* we set aside a period of time for parties to raise issues regarding product coverage, and stated that parties must submit comments by May 10, 2016.[17] On May 10, 2016, Petitioner submitted comments on the scope of this investigation and stated that scope language of this investigation, as detailed in the *Initiation Notice*, is an appropriate and accurate description of the imported merchandise subject to this investigation and should be adopted without modification.[18]

As noted above, on May 10, 2016, Changzhou and Enviro Tech submitted scope comments,[19] and on May 20, 2016, Petitioner submitted rebuttal scope comments. Changzhou and Enviro Tech argued that the Department should exclude Enviro Tech's high purity HEDP from the scope of this investigation because high purity HEDP is not produced by the domestic industry.[20] On May 20, 2016, Petitioner submitted rebuttal scope comments in response to Changzhou and Enviro Tech Chemical Services Co., Ltd.

Based on our analysis of these comments, we preliminarily find no reason to amend or modify the scope of this investigation.[21]

V. SELECTION OF RESPONDENTS

Section 777A(c)(l) of the Act directs the Department to calculate an individual weighted-average dumping margin for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted-average dumping margin determinations because of the large number of exporters and producers involved in the investigation.

We stated in the *Initiation Notice* that in the event respondent selection became necessary, we intended to base our selection of mandatory respondents on responses to quantity and value

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[16] *See* 19 CFR 351.204(b)(1).
[17] *See Initiation Notice*.
[18] *See* Letter from Petitioner (May 20, 2016).
[19] *See* Letter from Changzhou Yao's Tongde Chemical Co., Ltd. and Enviro Tech Chemical Services Inc. (May 10, 2016).
[20] *Id*. at 1.
[21] *See* 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations, dated concurrently with this memorandum.

("Q&V") questionnaires to be sent to each potential respondent named in the Petition.[22] On April 26, 2016, the Department issued Q&V questionnaires to the 13 companies that Petitioner identified as potential producers/exporters of HEDP from the PRC.[23] In addition, the Department posted the Q&V questionnaire on its website and, in the *Initiation Notice*, invited parties that did not receive a Q&V questionnaire from the Department to file a response to the Q&V questionnaire by the applicable deadline. Thirteen of the Q&V questionnaires were successfully delivered to the addressees. (For further information, please refer to the "PRC-wide Entity" section, below.) On May 10, 2016, the Department received timely filed Q&V questionnaire responses from six exporters/producers: Changzhou, Qingshuiyuan, Jianghai, Taihe, Wujin Water, and Uniphos.[24] On May 25, 2016, based on the responses to the Q&V questionnaires, we selected Taihe and The WW Group for individual examination as mandatory respondents because they are the two producers/exporters of subject merchandise accounting for the largest volume of exports during the POI that can be reasonably examined.[25]

On June 3, 2016, the Department issued its AD NME questionnaires to Taihe and the WW Group.[26] Between July and August 2016, Taihe and the WW Group submitted timely, properly filed questionnaire responses. Additionally, between July and October 2016, the Department issued supplemental questionnaires to Taihe and the WW Group.[27] During the same time frame, Petitioner submitted comments regarding Taihe and the WW Group's respective questionnaire responses.[28]

VI. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation includes all grades of aqueous acidic (non-neutralized) concentrations of 1-hydroxyethylidene-1, 1-diphosphonic acid (HEDP), also referred to as hydroxyethylidenendiphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The Chemical Abstract Service ("CAS") registry number for HEDP is 2809-21-4.

The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 2931.90.9043. It may also enter under HTSUS subheadings 2811.19.6090 and 2931.90.9041. While HTSUS subheadings and the CAS registry number are provided for convenience and customs purposes only, the written description of the scope of this investigation is dispositive.

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22 *See Initiation Notice*.
23 *See* Petition at Exhibit I-3; *see also* Letter to Interested Parties "Antidumping Duty Investigation 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from People's Republic of China: Quantity and Value Questionnaire," (April 26, 2016), and Memorandum to The File, "Antidumping Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from People's Republic of China: Quantity and Value Questionnaire Delivery Confirmation," (May 19, 2016) ("Q&V Delivery Confirmation Memo").
24 *See* Changzhou's Q&V submission (May 10, 2010); Qingshuiyuan's Q&V submission (May 10, 2010); Jianghai's Q&V submission (May 10, 2010); Wujin Water's Q&V submission (May 10, 2010); Uniphos's Q&V submission (May 10, 2010); and Taihe's Q&V submission (May 10, 2010).
25 *See* Selection of Mandatory Respondents (May 25, 2016).
26 *See* the Initial Questionnaires.
27 *See*, *e.g.*, the Department's Letter to Taihe (July 21, 2016); the Department's Letter to Wujin Water (July 22, 2016).
28 *See*, *e.g.*, Petitioner's Letter to the Secretary of Commerce (August 5, 2016).

VII. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Pursuant to section 735(a)(2) of the Act, on October 19 and 20, 2016, the WW Group and Taihe, respectively, requested that the Department postpone the final determination and extend provisional measures from four months to six months.[29] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because: (1) our preliminary determination is affirmative; (2) the requesting exporters, Taihe and the WW Group, account for a significant proportion of exports of the subject merchandise; and, (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

VIII. DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country

The Department considers the PRC to be an NME country.[30] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination.

Surrogate Country and Surrogate Value Comments

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value ("NV"), in most circumstances, on the NME producer's factors of production ("FOPs"), valued in a surrogate market economy ("ME") country or countries considered to be appropriate by the Department. Specifically, in accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, "to the extent possible, the prices or costs of {FOPs} in one or more ME countries that are — (A) at a level of economic development comparable to that of the {NME} country; and (B) significant producers of comparable merchandise."[31] As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable options because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available surrogate value ("SV") data, or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at

[29] *See* Letter from the WW Group (October 19, 2016; Letter from Taihe (October 20, 2016).
[30] *See, e.g., Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results*, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012).
[31] *See Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process* (March 1, 2004) ("*Policy Bulletin 04.1*") available on the Department's website at http://enforcement.trade.gov/policy/bull04-1 html.

a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.[32] To determine which countries are at the same level of economic development, the Department generally relies on per capita gross national income ("GNI") data from the World Bank's World Development Report.[33] Further, the Department normally values all FOPs in a single surrogate country.[34]

On March 18, 2016, the Department identified Bulgaria, Ecuador, Mexico, Romania, South Africa, and Thailand as countries that are at the same level of economic development as the PRC based on per capita 2014 GNI data.[35] On March 18, 2016, the Department issued a letter to interested parties soliciting comments on the list of potential surrogate countries and the selection of the primary surrogate country, as well as providing deadlines for submitting SV information for consideration in the preliminary determination.[36]

On July 7, 2016, the WW Group submitted timely comments on economic comparability.[37] On August 11, 2016, Petitioner, Qingshuiyuan, the WW Group, and Taihe submitted surrogate country comments.[38] On August 18, 2016, Petitioner submitted rebuttal surrogate country comments, and submitted surrogate value comments.[39] On August 18, 2016, Respondents submitted surrogate value information.[40] On August 25, 2016, Petitioner and Respondents submitted rebuttal surrogate value comments.[41] On September 27, 2016, Petitioner submitted surrogate value information.[42]

Both Taihe and the WW Group recommended South Africa and Thailand as the primary surrogate countries and submitted data to value FOPs from South Africa.[43] In their comments, Taihe and the WW Group argue that Thailand or South Africa is the best country to select as the primary surrogate country because it is at the same level of economic development as the PRC, a net exporter of comparable merchandise, and a significant producer of phosphonates. However, to date, no party has provided complete surrogate value data for Thailand. Furthermore, Taihe and the WW Group did not submit contemporaneous data during the POI for a direct material, phosphorous trichloride ("PCl_3").[44]

Petitioner recommended Mexico as the primary surrogate country and submitted data to value all FOPs from Mexico.[45] In its comments, Petitioner argues that Mexico is the best country to select

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[32] *See* Letter to All Interested Parties "Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," (June 28, 2016) ("Surrogate Country Comment Letter").
[33] *Id*.
[34] *See* 19 CFR 351.408(c)(2).
[35] *See* Surrogate Country Comment Letter at Attachment 1.
[36] *Id*.
[37] *See* Letter from the WW Group (July 7, 2016).
[38] *See* Letter from Petitioner (August 11, 2016); Letter from the WW Group (August 11, 2016); Letter from Qingshuiyuan (August 11, 2016); and Letter from Taihe (August 11, 2016).
[39] *See* Letter from Petitioner (August 18, 2016) ("Petitioner's SV Submission").
[40] *See* Letter from the WW Group and Qingshuiyuan (August 18, 2016); Letter from Taihe (August 18, 2016).
[41] *See* Letter from Petitioner (August 25, 2016); and Letter from Respondents (August 25, 2016).
[42] *See* Letter from Petitioner (September 27, 2016).
[43] *See* Taihe's and the WW Group's SV Comments (August 18, 2016).
[44] *Id*.
[45] *See* Petitioner's September 27, 2016 SV Comments at 2.

as the primary surrogate country because it is at the same level of economic development as the PRC, it is a significant producer of comparable merchandise, and has the best available SV data.[46]

1. Economic Comparability

For this investigation, as noted above, the Department determines that Bulgaria, Ecuador, Mexico, Romania, South Africa, and Thailand, are countries at the same level of economic development as the PRC, based on per capita gross national economic income.[47]

2. Significant Producer of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."[48] Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.[49] Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.[50] "In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise."[51] In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

> In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.[52]

Further, the statute grants the Department discretion to examine various data sources for

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[46] *Id*.
[47] *See* Surrogate Country Comment Memo at Attachment 1. Although the WW Group argued in its initial surrogate country comments that India and Turkey were economically comparable to the PRC, it did not provide information that these countries were significant producers of comparable merchandise, and did not submit SVs for these countries.
[48] *See Policy Bulletin 04.1* at 2.
[49] *Policy Bulletin 04.1* also states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." *Id.* at note 6.
[50] *See Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) ("{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.").
[51] *See Policy Bulletin 04.1* at 2.
[52] *Id* at 3.

determining the best available information.[53] 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.[54] The *Policy Bulletin* provides that the "extent to which a country is a *significant* producer should not be judged against the NME country's production level" or those countries on the surrogate country list, but rather "a judgment should be made consistent with the characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics)."[55]

Following our practice, the Department considered whether all of the potential surrogate countries have significant exports of comparable merchandise, as defined by the HTS subheadings listed in the scope of the investigation.[56] We obtained export data using the Global Trade Atlas ("GTA") for HTS 2931.90. The countries reported the following total export volumes for the POI: (1) Bulgaria (15,000 kilograms); 2) Ecuador (10 kilograms); (3) Mexico (155,339 kilograms); 4) Romania (1,000 kilograms); 5) South Africa (321,175 kilograms); and 6) Thailand (9,520,903 kilograms).[57] As such, we find all countries on the surrogate country list to be significant producers of comparable merchandise.[58]

3. Data Availability

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, the Department selects the primary surrogate country based on data availability and reliability.[59] When evaluating SV data, the Department considers several factors, including whether the SVs are publicly available, contemporaneous with the POI, representative of a broad-market average, tax and duty-exclusive, and specific to the inputs being valued.[60] There is no hierarchy among these criteria.[61] The Department's preference is to satisfy the breadth of the aforementioned selection criteria.[62] Moreover, it is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when

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

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

[55] *See Policy Bulletin 04.1* (emphasis in original).

[56] *See 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) ("*Uncoated Paper*") and accompanying Issues and Decision Memorandum at Comment 1.

[57] *See* Preliminary SV Memorandum at Exhibit 13; *see Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 78784 (December 31, 2014) and accompanying Issues and Decision Memorandum at Comment 1A ("*Aluminum Extrusions from the PRC Final Results*").

[58] *See Policy Bulletin 04.1*.

[59] *Id.*

[60] *Id.*

[61] *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) and accompanying Issues and Decision Memorandum at Comment 1.

[62] *See, e.g., 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.

undertaking its analysis of valuing the FOPs.[63] The Department must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the "best" available SV for each input.[64]

No party placed SV information on the record for Bulgaria, Ecuador, or Romania. Moreover, no party argued that these countries be selected as the surrogate country. As a result, we have not considered these countries for surrogate country selection purposes.

Mexico
The Department determines that Mexico is at the same level of economic development as the PRC, is a significant producer of comparable merchandise, and has the most reliable data and financial statements. Petitioner submitted two contemporaneous sets of financial statements. The Department generally prefers to average multiple useable financial statements where available, and Mexico has two useable financial statements that are contemporaneous with the POI.[65] Moreover, Mexican data for the main input to the subject merchandise, PCl_3, are more contemporaneous with the POI than are Thai or South African data.[66]

Thailand
Both Taihe and the WW Group proposed Thailand as the primary surrogate country because it is at the same level of economic comparability and a significant producer of comparable merchandise. However, no party provided financial statements for Thailand, and no party submitted SV data for the main input, PCl_3, which is contemporaneous with the POI. As such, the Department is not considering Thailand as the primary surrogate country.

South Africa
Taihe and the WW Group proposed South Africa as the primary surrogate country in this investigation because South Africa is at the same level of economic comparability, is a significant producer of comparable merchandise, and has reliable data. However, neither respondent submitted SV data for PCl_3 that is contemporaneous with the POI. Moreover, the Department prefers to evaluate two or more financial statements that are contemporaneous with the POI.[67] The WW Group submitted two South African financial statements, one of which is contemporaneous with the POI, and one that precedes the POI.[68] Because there is another potential primary surrogate country on the record with two or more financial statements that are

[63] *See 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) ("*Sixth Mushrooms AR*") and accompanying Issues and Decision Memorandum at Comment 1; *see also Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002) and accompanying Issues and Decision Memorandum at Comment 2.
[64] *See*, *e.g.*, *Sixth Mushrooms AR* at Comment 1.
[65] *See Final Results of Redetermination Pursuant to Catfish Farmers of America et al. v. United States, Consol. Court No. 12-000087, slip Op.14-146* (December 18, 2014) at 11; *see also* Petitioner's Surrogate Value Submission (August 18, 2016) at Exhibit 16-17.
[66] *See* Petitioner's Surrogate Value Submission (August 18, 2016) at Exhibit 6.
[67] *See Final Results of Redetermination Pursuant to Catfish Farmers of America et al. v. United States*, Consol. Court No. 12-000087, slip Op.14-146 (December 18, 2014) at 11.
[68] *See* the WW Group's Surrogate Values Comments (August 18, 2016) at Exhibits SV-4 and SV-5.

contemporaneous with the POI, and which has a contemporaneous SV for the primary input PCl_3, the Department is not considering South Africa as the primary surrogate country.

Conclusion
In light of the record evidence, the Department finds Mexico to be at a level of economic development comparable to the PRC based on GNI, to be a significant producer of comparable merchandise, and to provide a reliable source for SVs. Accordingly, the Department preliminarily selects Mexico as the primary surrogate country for this investigation. A detailed explanation of the SVs appears in the "Normal Value" section of this notice.

Separate Rates

In proceedings involving NME countries, the Department maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.[69] The Department's policy is to assign all exporters of merchandise under consideration that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[70] The Department analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*[71] and further developed in *Silicon Carbide*.[72] According to this separate rate test, the Department will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If, however, the Department determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

On June 3, 2016, Jianghai, Qingshuiyuan and Uniphos applied for separate rate status. However, Uniphos is an affiliate of Wujin Water, and thus, part of the WW Group. Taihe and the WW Group applied for separate rate status when each submitted Section A responses to the NME investigation questionnaire. There are no other separate rate respondents subject to this investigation. The Department preliminarily determines that only Jianghai, Taihe, Qingshuiyuan, and the WW Group are eligible to receive a separate rate, as explained below.

Jianghai provided evidence it is a wholly-foreign owned company. Because Jianghai is wholly foreign-owned, and we have no evidence indicating that this company is under the control of the PRC government, an analysis of the *de jure* and *de facto* criteria is not necessary to determine whether it is independent from government control.[73] Accordingly, we preliminarily grant a separate rate to Jianghai.

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[69] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (September 24, 2008).
[70] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588, 20589 (May 6, 1991) ("*Sparklers*").
[71] *Id.*
[72] *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*").
[73] *See Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China* 72 FR at 52355 (September 13, 2007).

1. Absence of De Jure *Control*

The Department 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.[74]

The evidence provided by Qingshuiyuan, Taihe, and the WW Group supports a preliminary finding of an absence of *de jure* government control for each of these companies based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of the companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.[75]

2. Absence of De Facto *Control*

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices ("EP") 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.[76] The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The evidence provided by Qingshuiyuan, Taihe, and the WW Group supports a preliminary finding of an absence of *de facto* government control based on record statements and supporting documentation showing that the companies: (1) set their own EPs independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses.[77]

Therefore, the evidence placed on the record of this investigation by Qingshuiyuan, Taihe, and the WW Group demonstrates an absence of *de jure* and *de facto* government control under the

[74] *See Sparklers*, 56 FR at 20589.
[75] *See*, *e.g.*, Taihe's Section A Response at 2-20 and Exhibits 1 through 11; the WW Group's Section A Response at 2-17 and Exhibits A1 through A10.
[76] *See Silicon Carbide*, 59 FR at 22586-87; *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).
[77] *See*, *e.g.*,Taihe's Section A Response at 2-20 and Exhibits 1 through 11; the WW Group's Section A Response at 2-17, and Exhibits A1 through A-10.

criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, the Department preliminarily grants separate rates to Qingshuiyuan, Taihe and the WW Group.[78]

3. Margin for the Non-Selected Separate Rate Companies

Normally, the Department's practice is to assign to separate rate entities that were not individually examined a rate equal to the average of the rates calculated for the individually examined respondent(s), excluding any rates that are zero, *de minimis*, or based entirely on adverse facts available ("AFA"), as we would for an "all others" rate under section 735(c)(5)(A) of the Act.[79] For this preliminary determination, we have calculated weighted-average dumping margins which are above the *de minimis* threshold and which are not based on total facts available for both mandatory respondents. Because there are only two relevant weighted-average dumping margins for this preliminary determination, using a weighted-average of these two rates risks disclosure of business proprietary information data. Therefore, the Department has assigned a weighted-average margin using the publicly ranged values submitted by mandatory respondents to the separate rate companies for this preliminary determination.[80]

<u>Combination Rates</u>

In the *Initiation Notice*, we stated we would calculate combination rates for respondents that are eligible for a separate rate in this investigation.[81] This practice is described in Policy Bulletin 05.1.[82]

<u>Collapsing and Affiliation</u>

We have considered the evidence on the record and preliminarily determine that affiliation exists with respect to Wujin Water and Uniphos during the POI.

Section 771(33) of the Act provides that the following persons shall be considered to be "affiliated" or "affiliated persons":

> (A) Members of a family, including brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants;
> (B) Any officer or director of an organization and such organization;
> (C) Partners;
> (D) Employer and employee;
> (E) Any person directly or indirectly owning, controlling, or holding with power to vote,

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[78] *See* "Preliminary Determination" section below.
[79] *See, e.g.*, *Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006) unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).
[80] *See* Memo to the File from Omar Qureshi, International Trade Analyst, Office V "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from People's Republic of China: Calculation of the Preliminary Margin for Separate Rate Companies," dated concurrently with this memorandum.
[81] *See Initiation Notice*.
[82] *See Policy Bulletin 05.1*.

> 5 percent or more of the outstanding voting stock or shares of any organization and such organization;
> (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; or,
> (G) Any person who controls any other person and such other person.

The Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreement Act states the following:

> The traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm 'operationally in a position to exercise restraint or direction' over another in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchise or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.[83]

19 CFR 351.102(b)(3) defines affiliated persons and affiliated parties as having the same meaning as in section 771(33) of the Act. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Department considers the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The regulation directs the Department not to find that control exists on the basis of these factors unless the relationship has "the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product." The regulation also directs the Department to consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

19 CFR 351.401(f), which outlines the criteria for treating affiliated producers as a single entity for purposes of AD proceedings, states the following:

> (1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
> (2) Significant potential for manipulation, in identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:
> (i) The level of common ownership;
> (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
> (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or

[83] *See* SAA, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994) at 838.

significant transactions between the affiliated producers.[84]

Based on the evidence on the record that Wujin Water owns more than five percent of shares in Uniphos, the Department preliminarily finds affiliation between Wujin Water a producer/exporter of subject merchandise and Uniphos, a producer of subject merchandise, pursuant to section 771(33)(E) of the Act. Further, based on the evidence presented in Wujin Water's questionnaire responses, we preliminarily find that Wujin Water and Uniphos should be treated as a single entity for the purposes of this investigation, pursuant to 19 CFR 351.401(f). We find that Wujin Water and Uniphos, because they are both subject merchandise producers, have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities, within the meaning of 19 CFR 351.401(f)(1). Further, given the level of ownership and intertwining of operations, there exists a significant potential for manipulation of price or production, within the meaning of 19 CFR 351.401(f)(2).[85] Specifically, Wujin Water stated that it coordinates pricing with Uniphos including the subject merchandise exported during the POI.[86] It also shares three board members, in addition to sharing managers and staff.[87] As such, we have collapsed Wujin Water and Uniphos into the WW Group.

The PRC-wide Entity

The record indicates there are PRC exporters and/or producers of the merchandise under consideration during the POI that did not respond to the Department's requests for information. Specifically, the Department did not receive timely responses to its Q&V questionnaire or separate rate applications from numerous PRC exporters and/or producers of merchandise under consideration that were named in the Petition and to whom the Department issued Q&V questionnaires.[88] Because non-responsive PRC companies have not demonstrated that they are eligible for separate rate status, the Department considers them to be part of the PRC-wide entity.[89] Furthermore, as explained below, we preliminarily determine to base the PRC-wide rate on AFA.

Application of Facts Available and Adverse Inferences

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

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[84] *See* 19 CFR 351.401(f).
[85] For a detailed discussion of this issue, *see* the WW Group's Affiliation and Collapsing Memo, dated concurrently with this memorandum.
[86] *See* the WW Group's October 13, 2016 submission at 1-2.
[87] *Id.* at 2-4.
[88] *See* Q&V Delivery Confirmation Memo.
[89] *See Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 75966 (December 7, 2015) and accompanying Issues and Decision Memorandum at Comment 1.

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

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 ("TPEA"), which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.[90] The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.[91]

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[92] Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.[93]

Under section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.[94]

1. Use of Facts Available

The Department preliminarily finds that the PRC-wide entity, which includes numerous PRC exporters and/or producers that did not respond to the Department's requests for information, did not respond to the Department's requests for information, failed to provide necessary information, withheld information requested by the Department, failed to provide information in

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[90] *See* Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) ("TPEA"). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) ("*Applicability Notice*").

[91] *Id.* at 46794-95. The 2015 amendments may be found at https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.

[92] *See* section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

[93] *See* also 19 CFR 351.308(c).

[94] *See* section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

a timely manner, and significantly impeded this proceeding by not submitting the requested information. Moreover, because the PRC-wide entity failed to provide any information, section 782(d) of the Act is inapplicable. Accordingly, the Department preliminarily determines that use of facts available is warranted in determining the rate of the PRC-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.[95]

2. Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that the Department, in selecting from among the facts otherwise available, may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The Department finds that the PRC-wide entity's failure to provide the requested information, including the failure of certain parts of the PRC-wide entity to submit Q&V information, constitutes circumstances under which it is reasonable to conclude that the PRC-wide entity did not cooperate to the best of its ability.[96] The PRC-wide entity neither filed documents indicating that it was having difficulty providing the information, nor did it request to submit the information in an alternate form. Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available with respect to the PRC-wide entity in accordance with section 776(b) of the Act and 19 CFR 351.308(a).[97]

3. Selection and Corroboration of the AFA Rate

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the Petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, 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.[98] The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value,[99] although under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.[100] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used, although under the TPEA, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or

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

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

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

[98] *See* the Statement of Administrative Action, H.R. Rep. No. 103-316, Vol. 1 (1994) ("SAA") at 870.

[99] *See* SAA at 870; *see also* 19 CFR 351.308(d).

[100] *See* section 776(c)(2) of the Act; TPEA, section 502(2).

to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.[101] Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.[102]

For the preliminary determination, we assigned to the PRC-wide entity a dumping margin of 179.97 percent, which is the weighted-average dumping margin for the WW Group for the preliminary determination, minus the 0.28 percent export subsidy offset for the PRC-wide entity.[103] It is unnecessary to corroborate this rate because it was obtained in the course of this investigation and, therefore, is not secondary information.[104] The transactions underlying this dumping margin are neither unusual in terms of transaction quantities nor otherwise atypical.[105]

<u>Date of Sale</u>

19 CFR 351.401(i) states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.[106] The Court of International Trade ("CIT") has stated that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that a different date better reflects the date on which the exporter or producer establishes the material terms of sale."[107] The date of sale is generally the date on which the parties establish the material terms of the sale,[108] which normally includes the

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[101] *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).

[102] *See* section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

[103] *See, e.g., Silica Bricks and Shapes from the People's Republic of China: Preliminary Determination of Antidumping Duty Investigation and Postponement of Final Determination*, 78 FR 37203 (June 20, 2013) and accompanying Preliminary Decision Memorandum at Comment 3.

[104] *See* section 776(c) of the Act; *see also* SAA at 870 (providing examples of secondary information); *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 75 (January 4, 2016) and accompanying Preliminary Decision Memorandum at Section VI.E (Application of Facts Available and Adverse Inferences) unchanged in *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35316 (June 2, 2016).

[105] *See Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

[106] *See* 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) ("*Allied Tube*") (quoting 19 CFR 351.401(i)).

[107] *See Allied Tube*, 132 F. Supp. 2d at 1090 (brackets and citation omitted).

[108] *See* 19 CFR 351.401(i).

price, quantity, delivery terms and payment terms.[109] In addition, the Department has a long-standing practice of finding that, where the shipment date precedes the invoice data, the shipment date better reflects the data on which the material terms of sale are established.[110]

For its U.S. sales, Taihe reported the date of the commercial invoice as its date of sale because the material terms of sale (*i.e.*, quantity and price) are established on the date of the commercial invoice.[111] Taihe stated that it selected the commercial invoice date as the date of sale because after the issue of the commercial invoice, there is no change in the sales quantity and value.[112] Accordingly, the Department used the date of the commercial invoice as Taihe's date of sale for its U.S. sales.[113]

The WW Group reported the commercial invoice date to the first unaffiliated customer as the date of sale for its U.S. sales and demonstrated that the substantive terms of sale were established on the invoice date.[114] In light of 19 CFR 351.401(i), the Department preliminarily used the invoice date as the date of sale for all of the WW Group's sales of merchandise under consideration made during the POI.

Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Respondents' sales of the subject merchandise from the PRC to the United States were made at less than NV, the Department compared the export price ("EP") and constructed export price ("CEP") to the NV as described in the "Export Price," "Constructed Export Price," and "Normal Value" sections of this memorandum.

1. Export Price

In accordance with section 772(a) of the Act, the Department defined the U.S. price of merchandise under consideration based on EP for some sales reported by Taihe and the WW Group. The Department calculated EP based on the prices at which merchandise under consideration was sold to unaffiliated purchasers in the United States.

The Department made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, U.S. inland insurance, and other U.S. transportation expenses. For ME purchases of movement expenses, it is the Department's practice to require a respondent to establish a link between payments to the ME carrier through the ME service provider's PRC agent because this link is necessary to demonstrate that the price paid to the PRC freight-forwarder was set by the ME service provider,

[109] *See USEC Inc. v. United States*, 31 CIT 1049, 1055 (CIT 2007).
[110] *See, e.g., Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final* Determination, 81 FR 36881 (June 8, 2016) and accompanying Preliminary Decision Memorandum at Section VII.
[111] *See* Taihe's Section A Response at 21.
[112] *Id.*
[113] *See Union Steel Mfg. Co. v. United States*, 968 F. Supp. 2d 1297, 1323-5 (CIT 2014).
[114] *See* the WW Group's Section A Response at 28-29.

rather than by the PRC freight forwarder or some other NME middleman between the PRC freight-forwarder and the ME movement provider.[115] Additionally, we made adjustments, where applicable, to the reported gross unit prices for billing adjustment, to arrive at the price at which the subject merchandise is first sold in the United States to an unaffiliated customer in accordance with section 772(d) of the Act.

2. Constructed Export Price

Pursuant to section 772(b) of the Act, the CEP is "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter," as adjusted under sections 772(c) and (d) of the Act. In accordance with section 772(b) of the Act, we used CEP for some of the Taihe's and WW Group's sales because the sales were made on their behalf by their U.S. sales affiliate in the United States to unaffiliated purchasers in the U.S.

For these sales, we calculated CEP based on delivered prices to unaffiliated purchasers in the United States. We made adjustments, where applicable, to the reported gross unit prices for billing adjustment, to arrive at the price at which the subject merchandise is first sold in the United States to an unaffiliated customer in accordance with section 772(d) of the Act. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2) of the Act. These included, where applicable, foreign inland freight from plant to the port of exportation, foreign brokerage and handling, ocean freight, U.S. inland freight from port of importation to the warehouse, U.S. freight from warehouse to customer, U.S. warehousing, U.S. customs duties, and U.S. brokerage and handling. For the expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense, otherwise the Department the expense with a SV. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price, *see* the Taihe's and WW Group's preliminary analysis memoranda.[116]

In accordance with section 772(d)(1) of the Act, the Department deducted, where applicable, commissions, credit expenses, interest revenue, warranty expenses, advertising expenses, repackaging costs, inventory carrying costs, and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. In accordance with section 772(d) of the Act, we calculated credit expenses and inventory carrying costs based on its short-term interest rate. In addition, we deducted CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act.[117]

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[115] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012).
[116] *See* Taihe's Preliminary Analysis Memorandum. and the WW Group's Preliminary Analysis Memorandum.
[117] For a detailed description of all adjustments, *see* Taihe's Preliminary Analysis Memorandum and the WW Group's Preliminary Analysis Memorandum.

3. Value-Added Tax ("VAT")

In 2012, the Department announced a change of methodology with respect to the calculation of EP and CEP to include an adjustment of any irrecoverable VAT in certain NME countries in accordance with section 772(c)(2)(B) of the Act.[118] The Department explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.[119] Where the irrecoverable VAT is a fixed percentage of EP or CEP, the Department explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. EP or CEP downward by this same percentage.[120]

The Department's methodology, as explained above and applied in this investigation, incorporates two basic steps: (1) determine the irrecoverable VAT on subject merchandise, and (2) reduce U.S. price by the amount determined in step one. Information placed on the record of this investigation by Taihe and the WW Group indicates that according to the PRC VAT schedule, the standard VAT levy is 17 percent. The WW Group reported the rebate rate for the merchandise under consideration is nine percent.[121] Consistent with the Department's standard methodology, for purposes of this preliminary determination, we removed from U.S. price the amount calculated based on the difference between those standard rates (*i.e.*, eight percent) applied to the export sales value, consistent with the definition of irrecoverable VAT under PRC tax law and regulation.

<u>Normal Value</u>

Section 773(c)(1) of the Act provides that the Department shall determine NV using the FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.[122] Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), the Department calculated NV based on FOPs. Under section 773(c)(3) of the Act, FOPs include, but are not

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[118] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012).
[119] *Id.; see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) and accompanying Issues and Decision Memorandum at Comment 5.A.
[120] *Id*.
[121] *See* the WW Group's Section C Response (July 29, 2016) at 35; Taihe's Section C Response (July 27, 2016) at 36.
[122] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19703 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079 (September 8, 2006).

limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.[123]

Factor Valuation Methodology

In accordance with section 773(c) of the Act, the Department calculated NV based on FOP data reported by Taihe and the WW Group. To calculate NV, the Department multiplied the reported per-unit factor-consumption rates by publicly available SVs. When selecting the SVs, the Department considered, among other factors, the quality, specificity, and contemporaneity of the data.[124] As appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. Specifically, the Department added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory.[125] A detailed description of SVs used for the respondent can be found in the Preliminary SV Memorandum.[126]

For the preliminary determination, the Department is using Mexican import data, as published by GTA, and other publicly available sources from Mexico to calculate SVs for respondents' FOPs. In accordance with section 773(c)(1) of the Act, the Department applied the best available information for valuing FOPs by selecting, to the extent practicable, SVs which are (1) tax-exclusive, non-export average values, (2) contemporaneous with, or closest in time to, the POI, (3) product-specific, and (4) broad market averages.[127] The record shows that Mexican import data obtained through GTA, as well as data from other Mexican sources, are broad market averages, product-specific, tax-exclusive, and generally contemporaneous with the POI.[128] In those instances where the Department could not obtain information contemporaneous with the POI with which to value the FOPs, the Department adjusted the SVs using, where appropriate, Mexico's producer price index ("PPI"), as published in the International Monetary Fund's ("IMF") *International Financial Statistics*.[129]

The Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be dumped or subsidized.[130] In this regard, the

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[123] *See* section 773(c)(3)(A)-(D) of the Act.

[124] *See, e.g., Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comment 9.

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

[126] *See* Memorandum to The File, "Antidumping Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China – Surrogate Values for the Preliminary Determination," dated concurrently with this memo ("Preliminary SV Memorandum").

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

[128] *See* Preliminary SV Memorandum.

[129] *Id*. at 2.

[130] *See* Section 505 of the Trade Preferences Extension Act of 2015, Pub. Law 114-27 (June 29, 2015) (amending Section 773(c)(5) of the Act to permit 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

Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea, and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.[131] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POI, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies. Therefore, the Department has not used prices from those countries in calculating the Mexican import-based SVs.

Additionally, the Department disregarded data from NME countries when calculating Mexican import-based per-unit SVs.[132] The Department also excluded from the calculation of Mexican import-based per-unit SV imports labeled as originating from an "unidentified" country because the Department could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.[133]

Pursuant to 19 CFR 351.408(c)(1), where a factor is produced in one or more ME countries, purchased from one or more ME suppliers and paid for in an ME currency, the Department normally will use the prices paid to the ME suppliers if substantially all (*i.e.*, 85 percent or more) of the total volume of the factor is purchased from the ME suppliers. In those instances where less than substantially all of the total volume of the factor is produced in one or more ME countries and purchased from one or more ME suppliers, the Department will weight-average the actual prices paid for the ME portion and the SV for the NME portion by their respective quantities.[134]

The Department used Mexican import statistics from GTA to value raw materials, by-products, packing materials, and certain energy inputs, except as listed below.

In NME AD proceedings, the Department prefers to value labor solely based on data from the primary surrogate country.[135] In *Labor Methodologies*, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary

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Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793, 46795 (August 6, 2015).

[131] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at 4-5; *Certain Lined Paper Products from Indonesia: Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 76 FR 73592 (November 29, 2011) and accompanying Issues and Decision Memorandum at 1; *Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 46770 (August 11, 2014) and accompanying Issues and Decision Memorandum at 4; and *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) and accompanying Issues and Decision Memorandum at IV.

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

[133] *Id*.

[134] *See Use of Market Economy Input Prices in Nonmarket Economy Proceedings; Final Rule*, 78 FR 46799 (August 2, 2013).

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

surrogate country. Additionally, the Department made a determination to use Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization ("ILO") Yearbook of Labor Statistics as its primary source for industry-specific labor rates which reflects all costs related to labor (*i.e.*, wages, benefits, housing, training, etc.).

It is the Department's preference to value labor using ILO Chapter 6A data under the rebuttable presumption that ILO Chapter 6A data better accounts for all direct and indirect labor costs.[136] The Department did not, however, preclude all other sources from consideration for evaluating labor costs in NME antidumping proceedings.[137] Rather, we continue to follow our practice of selecting the best available information to determine SVs for inputs such as labor.[138] For this preliminary determination, there is no ILO Chapter 6A data on the record from Mexico. As a consequence, the Department preliminarily finds that the best available information for valuing labor is Mexican ILOSTAT data from 2008, covering the manufacturing industry, because it is specific to the industry being examined, a broad-market average, and is the most contemporaneous information on the record for Mexico.[139, 140]

We used the electricity rate published by the Mexican electricity producer, IEA: 2015 Key World Energy Statistics.[141]

As noted above, the Department prefers to value all inputs from the primary surrogate country, here, Mexico. However, there is no SV data from Mexico for steam, as no party placed any steam SV information on the record or an appropriate HTS number for the steam input. Thus, to obtain a SV for steam consumption, the Department used a Mexican HTS number for natural gas, as applied in other AD proceedings, because natural gas and steam have the same British Thermal Unit.[142] Using the Mexican GTA data for the HTS number for natural gas, consistent with *Steel Wheels* and *Chlorinated Isos*, we then converted the natural gas value to a steam SV using a conversion factor of 14.52 percent.[143]

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[136] *Id*. at 36093.
[137] *Id*.
[138] *See Drawn Stainless Steel Sinks from the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013) and accompanying Issues and Decision Memorandum at Comment 3.
[139] *See* Preliminary SV Memorandum.
[140] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 38673 (June 14, 2016) and accompanying Issues and Decision Memorandum at Comment 16.
[141] *Id*.
[142] *See, e.g.*, *Certain Steel Wheels from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67703 at 67714 (November 2, 2011), unchanged in *Certain Steel Wheels from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012) ("*Steel Wheels*"); *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013) ("*Carbon AR5*") and accompanying Issues and Decision Memorandum at Comment 9; *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 4386 (January 22, 2013) ("*Chlorinated Isos*") and accompanying Issues and Decision Memorandum at Comment 11.
[143] *See, e.g.*, *Steel Wheels*.

We valued truck freight expenses using data from the World Bank's *Doing Business 2016 Economy Profile: Mexico* ("*Doing Business South Mexico 2016*"). The calculation methodology is based on domestic transport cost in USD divided by distance to border and divided by a load weighing 15,000 kilograms.[144]

Additionally, we valued brokerage and handling expenses from *Doing Business Mexico 2016* using a price list of predefined procedures for trading a shipment of goods in Mexico. The reported prices were contemporaneous with the POI. While we note that Petitioner supplied brokerage and handling expenses for Thailand, we already have contemporaneous data from Mexico.

We valued ocean freight using data obtained from the Descartes Carrier Rate Retrieval Database (Descartes), accessed through *http://descartes.com*, which publishes international ocean freight rates offered by numerous carriers.[145] These rates are publicly available and cover a wide range of shipping rates, which are reported on a daily basis. We did not inflate or deflate the ocean freight because these data are contemporaneous with the POI.

For marine insurance, we used RJG Consultants marine insurance rates.[146] Additionally, because both Taihe and the WW Group incurred marine insurance expenses that also included domestic inland insurance expenses, pursuant to our practice in *Uncoated Paper from the PRC*, we valued domestic inland insurance separately.[147] However, because there is no SV on the record for Mexico or any other potential surrogate country that is comparable to the PRC for domestic inland insurance, we are using marine insurance data for Mexico from RJG Consultants rates as a proxy for domestic inland insurance.[148] We did not inflate or deflate the rates for marine insurance, U.S. inland insurance, and domestic inland insurance because the rates are contemporaneous with the POI.

The Department's criteria for choosing surrogate financial statements from which we derive the financial ratios are the availability of contemporaneous financial statements, comparability to the respondent's experience, and publicly available information.[149] Moreover, for valuing factory overhead, selling, general, and administrative ("SG&A") expenses and profit, the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.[150] In addition, the CIT has held that in the selection of surrogate producers, the Department may consider how closely the surrogate

[144] *See* Preliminary SV Memorandum.
[145] *Id*.
[146] *Id*.
[147] *See Uncoated Paper* at Comment 16.
[148] *Id*.
[149] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum at Comment 3.
[150] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China, Final Determination in the Antidumping Duty Investigation*, 71 FR 29303 (May 22, 2006) and accompanying Issues and Decision Memorandum at Comment 2; *see also* section 773(c)(4) of the Act; 19 CFR 351.408(c)(4).

producers approximate the NME producer's experience.[151] To value factory overhead, SG&A expenses, and profit, the Department used the 2015 financial statements from CYDSA, S.A.B. de C.V. and Subsidiaries and Grupo Pochteca, S.A.B. de C.V. which are producers of comparable merchandise.[152]

For by-products, Taihe and the WW Group reported that they produced and sold hydrochloric acid ("HCl").

In determining whether a reported joint product is more appropriately classified as a co-product or by-product, we consider the following five factors: 1) how the company records and allocates cost in the ordinary course of business, in accordance with its home country GAAP; 2) the relative sales value of the product compared to that of all other joint products produced during the same time period; 3) whether the product is an unavoidable consequence of producing another product; 4) whether management intentionally controls production of the product; and 5) whether the product requires significant further processing after the split-off point.[153] Record evidence indicates that Taihe treats its acetyl chloride as a co-product.

Taihe initially claimed that acetyl chloride was a by-product of its HEDP production.[154] In a subsequent response, however, Taihe revised its position, stating that it considered acetyl chloride a co-product.[155] Taihe stated we should consider its acetyl chloride production a co-product because: it records the cost of production of acetyl chloride in its accounting system under main operating cost; the per-unit usage rate of each input used to produce acetyl chloride is recorded into its accounting system; the inputs used to produce HEDP results in an output ratio of 20% acetyl chloride to 80% HEDP and therefore it allocated the cost between HEDP and acetyl chloride in its accounting system based on this rate; and that the acetyl chloride produced is collected, stored, and sold.[156]

Additionally, Petitioner agrees that acetyl chloride should be considered a co-product because: acetyl chloride is not an unavoidable consequence of HEDP production; the way Taihe treats acetyl chloride in its financial statement; its net realizable value is significant when compared to the value of the HEDP produced; and the previous findings by the Department have deemed acetyl chloride a co-product.[157]

<u>Determination of the Comparison Method</u>

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the

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[151] *See Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1253-54 (CIT 2002); *see also Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005) and accompanying Issues and Decision Memorandum at Comment 1.
[152] For more information on the surrogate financial ratios calculations, *see* the Prelim SV Memo; Petitioner's SV Comments at Exhibit F(2).
[153] *See Final Results of Antidumping Finding Administrative Review: Elemental Sulphur from Canada*, 61 FR 8239, 8241-42 (March 4, 1996) ("*Elemental Sulphur from Canada*").
[154] *See* Taihe Section D Response (July 27, 2016) at 14.
[155] *See* Taihe Supplemental Section D Response (October 2, 2016) at 2-9.
[156] *Id.*
[157] *See* Petitioner's Submission (September 27, 2016) at 15-20.

average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, the Department examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(l)(B) of the Act. In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(l)(B) of the Act.[158] The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. 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 differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. For the WW Group and Taihe, respectively, purchasers are based on the reported customer codes.[159] 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 the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the

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[158] *See, e.g.*, *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 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); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

[159] *See, e.g.*, Taihe's Section C Response (July 27, 2016) at 9.

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 accounts for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

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

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination including arguments for modifying the group definitions used in this investigation.

For Taihe, based on the results of the differential pricing analysis, the Department preliminarily finds that 39.4 percent of the value of U.S. sales pass the Cohen's d test,[160] and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. However, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those sales that passed the Cohen's d test and the average-to-average method to the remaining sales. Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Taihe.

For WW Group, based on the results of the differential pricing analysis, the Department preliminarily finds that 13.6 percent of the value of U.S. sales pass the Cohen's *d* test,[161] and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, the Department preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for WW Group.

IX. CURRENCY CONVERSION

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. EXPORT SUBSIDY ADJUSTMENT

Section 772(c)(1)(C) of the Act 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."[162] The Department determined in the preliminary results of the companion countervailing duty ("CVD") investigation that Taihe benefited from an export subsidy, and that the WW Group did not benefit from an export subsidy. Because Taihe benefited from an export subsidy, we find that an export subsidy adjustment of 0.28 percent to the cash deposit rate is warranted. Because the WW Group, and the companies comprising the group, did not benefit from an export subsidy, the Department finds no offset to the WW Group's margin is necessary. With respect to the separate-rate companies, we find that an export subsidy adjustment of 0.14 percent[163] to the cash deposit rate is warranted because this is the export subsidy rate included in the

[160] *See* Taihe's Preliminary Analysis Memorandum.
[161] *See* the Memorandum to the File from Kenneth Hawkins, "Analysis for the Preliminary Results of the Administrative Review of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from People's Republic of China" dated October 27, 2016 (WW Group Preliminary Analysis Memorandum) at Attachment 2.
[162] *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.
[163] We calculated this by averaging the export subsidies received by Taihe in the companion CVD investigation, 0.28 percent, with those received by Wujin Water (part of the WW Group), 0.00 percent. *See Countervailing Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 62084, 62085 (September 8, 2016) ("*HEDP CVD Prelim*").

countervailing duty rate (*i.e.*, the "all others" rate) to which the separate-rate companies are subject in the companion countervailing duty proceeding. For the PRC-wide entity, which received an adverse facts available rate, as an extension of the adverse inference found necessary pursuant to section 776(b) of the Act, the Department has adjusted the PRC-wide entity's AD cash deposit rate by the lowest export subsidy rate determined for any party in the companion CVD proceeding.[164] That rate is 0.00 percent.[165]

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

In applying section 777A(f) of the Act, the Department examines (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 the Department 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.[166] For a subsidy meeting these criteria, the statute requires the Department to reduce the antidumping duty by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.[167]

Since the Department has relatively recently started conducting analyses under section 777A(f) of the Act, the Department is continuing to refine its practice in applying this section of the law. The Department examined whether the respondent 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.[168]

Both mandatory respondents, Taihe and the WW Group, submitted double remedy questionnaire responses.[169] A finding that there is an overlap in remedies, and any resulting adjustment, is

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[164] *See, e.g., Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Affirmative Determination of Critical Circumstances; In Part and Postponement of Final Determination*, 80 FR 4250 (January 27, 2015) and accompanying Issues and Decision Memorandum at 35.
[165] *See HEDP CVD Prelim*.
[166] *See* section 777A(f)(1)(A)-(C) of the Act.
[167] *See* section 777A(f)(1)-(2) of the Act.
[168] *See, e.g., Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 36876 (June 8, 2016) and accompanying Preliminary Decision Memorandum at 36; *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 75 (January 4, 2016) and accompanying Preliminary Decision Memorandum at 25-26.
[169] *See* the Department's Double Remedies Questionnaire issued to Taihe (September 15, 2016) at question 9; *see also* the Department's Double Remedies Questionnaire issued to the WW Group (September 21, 2016); Taihe's Double Remedies Questionnaire Response (September 26 , 2016); and the WW Group's Double Remedies Questionnaire Response (September 29, 2016).

based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute.[170]

Taihe and WW Group did not establish eligibility for this adjustment because they failed to establish a subsidies to cost link and a cost to price link.[171] To determine whether to grant a domestic pass-through adjustment for non-selected separate rate respondents, the Department relies on the experience of the mandatory respondents examined in this investigation. For the preliminary determination, because Taihe and the WW Group did not establish eligibility for this adjustment, the Department did not make an adjustment pursuant to section 777A(f) of the Act for countervailable domestic subsidies for Taihe, the WW Group or the non-selected separate rate respondents.[172]

XII. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.[173] Case briefs may be submitted to Enforcement and Compliance's AD and CVD Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the final verification report is issued in this proceeding. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[174]

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[175] This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.[176] Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time, and location to be determined. Parties will be notified of the date, time, and location of any hearing.

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[170] See *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2014*, 80 FR 26227 (May 7, 2015) and accompanying Preliminary Decision Memorandum.

[171] *See* Taihe's Double Remedies Questionnaire Response (September 26, 2016) and WW Group's Double Remedies Questionnaire Response (September 29, 2016).

[172] *See, e.g.*, *Aluminum Extrusions from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 32347 (June 8, 2015) and accompanying Preliminary Decision Memorandum at 34, unchanged in *Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 75060, 75063 (December 1, 2015).

[173] *See* 19 CFR 351.224(b).

[174] *See* 19 CFR 351.309.

[175] *See* 19 CFR 351.309(c)(2) and (d)(2).

[176] *See* 19 CFR 351.310(c).

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.[177] Electronically-filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time on the due dates established above.[178]

XIII. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted in response to the Department's questionnaires.

XIV. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

✓

Agree Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

27 October 2016
Date

[177] *See* 19 CFR 351.303(b)(2)(i).
[178] *See* 19 CFR 351.303(b)(1).