A-570-079
Investigation
Public Document
E&C/V: JB

August 24, 2018

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

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Cast Iron Soil Pipe from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that cast iron soil pipe (soil pipe) from the People's Republic of China (China) 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 January 26, 2018, Commerce received an antidumping duty (AD) petition covering imports of soil pipe from China, filed in proper form on behalf of the Cast Iron Soil Pipe Institute (the petitioner).[1] Commerce initiated this investigation on February 15, 2018.[2] In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate rate status in non-market economy (NME) LTFV investigations. The

[1] *See* Cast Iron Soil Pipe Institute Letter, "Petition for the Imposition of Antidumping Duties: Cast Iron Soil Pipe from the People's Republic of China," dated January 26, 2018 (the Petition).
[2] *See Cast Iron Soil Pipe from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 83 FR 8053 (February 23, 2018) (*Initiation Notice*).

process requires exporters to submit a separate rate application (SRA) and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities.[3]

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 (Q&V) questionnaires to be sent to each potential respondent named in the Petition.[4] On March 14, 2018, Commerce issued Q&V questionnaires to the 39 companies that the petitioner identified as potential producers/exporters of soil pipe from China.[5] In addition, Commerce posted the Q&V questionnaire on its website and, in the *Initiation Notice*, invited parties who did not receive a Q&V questionnaire to file a response to the Q&V questionnaire by the applicable deadline.[6] We received responses from a total of 14 producers/exporters of subject merchandise.[7]

Additionally, in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of soil pipe to be reported in response to Commerce's AD questionnaire.[8] HengTong Casting (HengTong), an importer of cast iron soil pipe from China, submitted comments on the scope of the investigation in response to Commerce's solicitation in the *Initiation Notice*.[9] For further discussion, *see* the "Scope Comments" section, below.

On March 19, 2018, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of cast iron soil pipe from China.[10]

On April 23, 2018, based on responses to the Q&V questionnaires, we selected HengTong and Sibo International Limited (Sibo) for individual examination as mandatory respondents.[11] On May 2, 2018, we issued our initial antidumping duty questionnaire to HengTong and Sibo.[12]

On May 24, 2018, HengTong submitted a timely responses to section A of Commerce's AD questionnaire, *i.e.*, the section relating to general information.[13] In June 2018, HengTong submitted timely responses to sections C and D of Commerce's AD questionnaire, *i.e.*, the

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[3] *Id*., 83 FR at 8056; *see also*, *Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries*, dated April 5, 2005, available at http://enforcement.trade.gov/policy/bull05-1.pdf.
[4] In the *Initiation Notice*, we also stated that the presumption of NME status for China has not been revoked by Commerce and, therefore, remains in effect for purposes of the initiation of this investigation. *See Initiation Notice*, 83 FR at 8055.
[5] *See* Commerce Letter, "Quantity and Value Questionnaire for the Antidumping Duty Investigation of Cast Iron Soil Pipe from People's Republic of China," dated March 14, 2018; *see also*, Petition at Volume I, Exhibit I-6.
[6] *See Initiation Notice*, 83 FR at 8056.
[7] *See* Commerce Memorandum, "Antidumping Duty Investigation of Cast Iron Soil Pipe from the People's Republic of China: Respondent Selection," dated April 23, 2018 (Respondent Selection Memorandum).
[8] *See Initiation Notice*, 83 FR at 8053-8054.
[9] *See* HengTong Letter, "Scope Comments," dated March 16, 2018.
[10] *See Investigation Nos. 701–TA–597 and 731–TA–1407 (Preliminary): Cast Iron Soil Pipe from China*, 83 FR 12025 (March 19, 2018).
[11] *See* Respondent Selection Memo at 5.
[12] *See* Commerce Letter, "HengTong Casting Co., Ltd. Antidumping Duty Questionnaire," dated May 2, 2018 (HengTong AD Questionnaire); *see also* Commerce Letter, "Sibo International Limited Antidumping Duty Questionnaire," dated May 2, 2018 (Sibo AD Questionnaire).
[13] *See* HengTong's May 24, 2018, Section A Questionnaire Response (AQR).

sections relating to U.S. sales, and factors of production (FOP)/normal value (NV), respectively.[14] On July 12, 2018, and July 18, 2018, we issued supplemental questionnaires to the HengTong.[15] We received timely responses to these supplemental questionnaires from HengTong.[16] Sibo, however, did not respond to Commerce's initial questionnaire.

On June 22, 2018, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), Commerce published in the *Federal Register* a postponement of the preliminary determination by 50 days until no later than August 24, 2018.[17] Commerce is conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is July 1, 2017, through December 31, 2017. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition, which was January 2018.[18]

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

HengTong requested that Commerce postpone the final determination and extend provisional measures from four months to six months.[19] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) our preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*, and extending the provisional measures from a four-month period to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

V. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,[20] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.[21] HengTong submitted comments that epoxy coated soil pipe should be excluded from the scope of this investigation, and the concurrent countervailing duty (CVD) investigation.[22] The petitioner

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[14] *See* HengTong's June 15, 2018, Section C Questionnaire Response (CQR), and June 25, 2018, Section D Questionnaire Response (DQR).
[15] *See* Commerce Letter, "Supplemental Sections A & C Questionnaire," dated July 12, 2018; *see also* Commerce Letter, "Supplemental Section D Questionnaire," dated July 18, 2018.
[16] *See* HengTong's July 26, 2018, Sections A & C Questionnaire response (ACSQR); *see also* HengTong's July 30, 2018, Questionnaire Response (DSQR).
[17] *See Cast Iron Soil Pipe from People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 83 FR 29098 (June 222, 2018).
[18] *See* 19 CFR 351.204(b)(1).
[19] *See* HengTong Letter, "Postponement of Final Determination and Extension of Provisional Measures Request," dated August 2, 2018.
[20] *See Antidumping Duties: Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble).*
[21] *See Initiation Notice*, 83 FR at 8054.
[22] *See* HengTong Letter, "Scope Exclusion Comments," dated March 16, 2018.

submitted rebuttal comments opposing HengTong's exclusion request.[23] We considered and addressed the comments submitted by HengTong and the petitioner in the Preliminary Scope Memorandum.[24] In sum, we have not granted HengTong's request or altered the language of the scope in this investigation. Interested parties are invited to comment on the Preliminary Scope Memorandum within five days of the publication of this preliminary determination in the *Federal Register*. Comments must be placed on the record of this and the concurrent CVD investigation of soil pipe from China by the specified deadline.

VI. SCOPE OF THE INVESTIGATION

For a full description of the scope of this investigation, *see* this memorandum's accompanying *Federal Register* notice at Appendix I.

VII. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy Country

Commerce considers China to be an NME country.[25] 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 China as an NME country for purposes of this preliminary determination.

B. Surrogate Country and Surrogate Value Comments

When Commerce is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate market economy (ME) country, or countries, considered to be appropriate by Commerce. Specifically, in accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce shall utilize, "to the extent possible, the prices or costs of {FOPs} in one or more ME countries that are — (A) at a level of economic development comparable to that of the {NME} country; and (B) significant producers of comparable merchandise."[26] As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME country unless it is determined that 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.[27] Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the

[23] *See* the petitioner Letter, "Opposition to HengTong's Scope Exclusion Request," dated March 19, 2018, (the petitioner's Rebuttal Comments).
[24] *See* Commerce Memorandum, "Cast Iron Soil Pipe from People's Republic of China: Preliminary Scope Comment Decision Memorandum," dated concurrently with this memorandum (Preliminary Scope Memorandum).
[25] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017) and accompanying Preliminary Decision Memorandum (PDM) at "China's Status as a Non-Market Economy."
[26] *See Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process*, dated March 1, 2004 (*Policy Bulletin 04.1*) available on Commerce's website at http://enforcement.trade.gov/policy/bull04-1.html.
[27] *Id*.

NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.[28] To determine which countries are at the same level of economic development, Commerce generally relies on per capita gross national income (GNI) data from the World Bank's World Development Report.[29] Further, Commerce normally values all FOPs in a single surrogate country.[30]

On July 11, 2018, Commerce identified Romania, Mexico, Brazil, Bulgaria, Thailand, and South Africa, as countries that are at the same level of economic development as China based on per capita 2016 GNI data.[31] That same day, we solicited comments on the list of potential surrogate countries and the selection of the primary surrogate country, and provided deadlines for submission of SV information for consideration in the preliminary determination.[32]

On July 20, 2018, the petitioner and HengTong submitted timely comments on surrogate country selection, each suggesting that the agency select South Africa as the surrogate country.[33] On July 20, 2018, Commerce received factual information to value FOPs for South Africa from the petitioner and HengTong.[34] On August 6, the petitioner, submitted rebuttal comments.[35]

1. Economic Comparability

For this investigation, as noted above, Commerce identified Romania, Mexico, Brazil, Bulgaria, Thailand, and South Africa as countries at the same level of economic development as China, based on per capita GNI.[36]

2. Significant Producer of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires Commerce, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor Commerce's regulations, however, provide guidance on what may be considered comparable merchandise. To determine if the above-referenced countries are significant producers of comparable merchandise, Commerce's practice is to examine which countries on the surrogate country list exported merchandise comparable to the merchandise under consideration. Information on the record indicates that South Africa was a net exporter during the POI of such

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[28] *See* Commerce Letter, "Request for Surrogate Country and Surrogate Value Comments and Information," dated July 11, 2018 (Surrogate Country List to Parties).
[29] *Id.*
[30] *See* 19 CFR 351.408(c)(2).
[31] *See* Surrogate Country List to Parties at the Attachment.
[32] *Id*.
[33] *See* the petitioner's Letter, "Surrogate Country Comments and Surrogate Values for the Preliminary Determination," dated July 20, 2018 (the petitioner's SCSV Letter); *see also* HengTong Letter, "Surrogate Country Comments and Surrogate Values for the Preliminary Determination," dated July 20, 2018 (HengTong's SCSV Letter).
[34] *Id.*; *see also* HengTong Letter, "Additional Surrogate Values for the Preliminary Determination," dated July 25, 2018.
[35] *See* the petitioner's Letter, "Rebuttal Surrogate Value Information," dated August 8, 2018.
[36] For further discussion, *see* Commerce Memorandum, "Less-Than-Fair-Value Investigation of Cast Iron Soil Pipe from the People's Republic of China: Surrogate Values for the Preliminary Determination," dated concurrently with this document (Preliminary SV Memorandum).

comparable merchandise.[37] No interested party submitted information regarding Romania, Mexico, Brazil, Bulgaria, or Thailand. Accordingly, we preliminarily find that South Africa meets the significant producer of comparable merchandise prong of the surrogate country selection criteria.

3. *Data Availability*

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, Commerce selects the primary surrogate country based on data availability and reliability.[38] When evaluating SV data, Commerce 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.[39] There is no hierarchy among these criteria.[40] Commerce's preference is to satisfy the breadth of the aforementioned selection criteria.[41] Moreover, it is Commerce's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.[42] Commerce must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the "best" available SV for each input.[43] Additionally, pursuant to 19 CFR 351.408(c)(2), Commerce has a preference of valuing all FOPs in a single surrogate country.

As indicated above, interested parties placed SV data from South Africa for the inputs (materials, labor, energy, and financial ratios) required to construct NV on the record of this proceeding.[44] We preliminarily find that the data from South Africa that was submitted by HengTong and the petitioner are tax- and duty-exclusive, represent a broad market average, and contemporaneous and useable.

Regarding the surrogate financial ratios, we preliminary determine that the 2017 financial statements of South African producer Tata Africa Steel Processors Proprietary Limited (Tata Africa), which were placed on the record by the petitioner, serve as the most reliable financial statements on the record, as it is contemporaneous to the POI.[45] Furthermore, Tata Africa is a South African steel processor, and its financial statements were recently used in a similar proceeding on soil pipe fittings.[46]

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[37] *See*, *e.g.*, the petitioner's SCSV Letter and HengTong's SCSV Letter.
[38] *See Policy Bulletin 04.1*.
[39] *Id.*
[40] *See*, *e.g.*, *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) (*Mushrooms from China*) and accompanying Issues and Decision Memorandum (IDM) at Comment 1.
[41] *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 IDM at Comment 2.
[42] *See Mushrooms from China* 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 IDM at Comment 2.
[43] *See*, *e.g.*, *Mushrooms from China* at Comment 1.
[44] *See* the petitioner's SCSV Letter and HengTong's SCSV Letter.
[45] *See* the petitioner's SCSV Letter.
[46] *See Cast Iron Soil Pipe Fittings From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination and Extension of Provisional Measures*, 83 FR 7145 (February 20, 2018) and

Accordingly, Commerce preliminarily determines, pursuant to section 773(c)(4) of the Act, that it is appropriate to use South Africa as the primary surrogate country because it is: (1) at the same level of economic development as China; (2) a significant producer of merchandise comparable to the subject merchandise such that can be determined from the information available; and (3) provides the best useable data and information with which to value FOPs, such as direct materials, labor, energy, and financial ratios. Therefore, Commerce has calculated NV using South African SV data to value the HengTong's FOPs.

C. <u>Separate Rates</u>

In proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.[47] Commerce's policy is to assign all exporters of subject merchandise 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.[48] Commerce analyzes whether each entity exporting the subject merchandise is sufficiently independent under a test established in *Sparklers*[49] and further developed in *Silicon Carbide*.[50] According to this separate rate test, Commerce will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If, however, Commerce determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of *Diamond Sawblades* and its determinations therein.[51] In particular, in litigation involving the *Diamond Sawblades* proceeding, the Court of International Trade (CIT) found Commerce's existing separate rates analysis deficient in the circumstances of that case, in which a

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Accompanying PDM at 8-9; unchanged in *Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 83 FR 33205 (July 17, 2018).

[47] *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).

[48] *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*).

[49] *Id.*

[50] *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*).

[51] *See* Final Results of Redetermination pursuant to *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), available at <u>http://enforcement.trade.gov/remands/12-147.pdf</u>, *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014). *See also Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013) and accompanying PDM at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) and accompanying IDM at Comment 1 (*Diamond Sawblades*).

government-owned and controlled entity had significant ownership in the respondent exporter.[52] Following the Court's reasoning, in recent proceedings, we have concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally.[53] This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profit distribution of the company.

On March 28, 2018, we received SRAs from 14 entities, inclusive of the mandatory respondents HengTong and Sibo.[54] However, we preliminarily determine that Sibo is not eligible for consideration for separate-rate status because the company never responded to any parts of Commerce's AD questionnaire.[55] As stated in the *Initiation Notice*, "{e}xporters and producers who submit a separate-rate application and are selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents."[56] As such, Commerce preliminarily determines that Sibo is not eligible to receive a separate rate because it has not demonstrated an absence of *de jure* and *de facto* government control over its export activities.

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[52] *See*, *e.g.*, *Advanced Technology I*, 885 F. Supp. 2d at 1349 ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *Id.* at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {state-owned assets supervision and administration commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor *de jure* 'separation' that Commerce concludes.") (footnotes omitted); *Id.* at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); *Id.* at 1357 ("AT&M itself identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.") (footnotes omitted).

[53] *See*, *e.g.*, *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014) and accompanying PDM at 5 – 9.

[54] *See* Dalian Lino F.T.Z. Co., Ltd. Letter, "Separate Rate Application," dated March 28, 2018 (Dalian Lino SRA); Dalian Metal I/E Co., Ltd. Letter, "Separate Rate Application," dated March 28, 2018 (Dalian Metal SRA); Dinggin Hardware (Dalian) Co., Ltd. Letter, "Separate Rate Application," dated March 28, 2018 (Dingging Hardware SRA); Hebei Metals & Engineering Products Trading Co., Ltd. Letter, "Separate Rate Application," dated March 28, 2018 (Hebei Metal SRA); HengTong Letter, "Separate Rate Application," dated March 28, 2018 (HengTong SRA); Kingway Pipe Co., Ltd. Letter, "Separate Rate Application," dated March 28, 2018 (Kingway Pipe SRA); Qinshui Shunshida Casting Co., Ltd. Letter, "Separate Rate Application," dated March 28, 2018 (Qinshui Shunshida SRA); Shanxi Chen Xin Da Castings & Forgings Co., Ltd. Letter, "Separate Rate Application," dated March 28, 2018 (Shanxi Chen SRA); Shanxi Xuanshi Industrial Group Co., Ltd. Letter, "Separate Rate Application," dated March 28, 2018 (Shanxi Xuanshi SRA); Shanxi Zhongrui Tianyue Trading Co., Ltd. Letter, "Separate Rate Application," dated March 28, 2018 (Shanxi Tianyue SRA); Sibo International Limited Letter, "Separate Rate Application," dated March 28, 2018 (Sibo SRA); Terrifour (Dalian) Trading Co., Ltd. Letter, "Separate Rate Application," dated March 28, 2018 (Terrifour SRA); Wuan City Feixiang Metal Product Co., Ltd. Letter, "Separate Rate Application," dated March 28, 2018 (Feixiang SRA); and, Zezhou Golden Autumn Foundry Co., Ltd. Letter, "Separate Rate Application," dated March 28, 2018 (Golden Autumn SRA).

[55] *See* Sibo AD questionnaire.

[56] *See Initiation Notice*, 83 FR at 8056.

1. Separate Rate Recipients

Commerce preliminary determines that thirteen exporters are eligible to receive a separate rate, as explained below.

a. Absence of *De Jure* Control

Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.[57]

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

1) Dalian Lino F.T.Z. Co., Ltd.[58]
2) Dalian Metal I/E Co., Ltd. [59]
3) Dinggin Hardware (Dalian) Co., Ltd. [60]
4) Hebei Metals & Engineering Products Trading Co., Ltd. [61]
5) HengTong[62]
6) Kingway Pipe Co., Ltd. [63]
7) Qinshui Shunshida Casting Co., Ltd. [64]
8) Shanxi Chen Xin Da Castings & Forgings Co., Ltd. [65]
9) Shanxi Xuanshi Industrial Group Co., Ltd. [66]
10) Shanxi Zhongrui Tianyue Trading Co., Ltd. [67]
11) Terrifour (Dalian) Trading Co., Ltd. [68]
12) Wuan City Feixiang Metal Product Co., Ltd.[69]
13) Zezhou Golden Autumn Foundry Co., Ltd.[70]

b. Absence of *De Facto* Control

Typically, Commerce considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (EPs) or constructed export prices (CEPs) are set by, or are subject to the approval of, a government

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[57] *See Sparklers*, 56 FR at 20589.
[58] See Dalian Lino SRA at III.
[59] See Dalian Metal SRA at III.
[60] See Dingging Hardware SRA at III.
[61] See Hebei Metals SRA at III.
[62] See AQR at 3-20.
[63] See Kingway Pipe SRA at III.
[64] See Qinshui Shunshida SRA at III.
[65] See Shanxi Chen SRA at III.
[66] See Shanxi Xuanshi SRA at III.
[67] See Shanxi Tianyue SRA at III.
[68] See Terrifour SRA at III.
[69] See Feixiang Metal SRA at III.
[70] See Golden Autumn SRA at III.

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.[71] Commerce has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control which would preclude Commerce from assigning separate rates.

The separate rate information provided by the 13 companies listed above also support 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 or CEPs independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses.

Therefore, the evidence placed on the record of this investigation by these companies demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, Commerce preliminarily grants separate rates to these companies.

c. Margin for the Separate Rate Companies

The Act and Commerce's regulations do not address the establishment of a separate rate to be applied to companies not selected for individual examination when Commerce limits its examination pursuant to section 777A(c)(2) of the Act. Normally, Commerce's practice is to assign to separate rate entities that were not individually examined a rate equal to the weighted average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis*, or based entirely on facts available, using as guidance section 735(c)(5)(A) of the Act.[72] However, pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely under section 776 of the Act, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.[73]

As stated above, Commerce's practice is to assign to separate rate entities that were not individually examined a rate equal to the weighted average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis*, or based entirely on facts available. In this proceeding, Commerce calculated an above-*de minimis* rate

[71] *See Silicon Carbide*, 59 FR at 22586-87.
[72] *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).
[73] *See* the Statement of Administrative Action, H.R. Rep. No. 103-316, Vol. 1 (1994) (SAA) at 870-873. *See also* section 735(c)(5)(B) of the Act.

that is not based entirely on facts available for the only responding mandatory respondent under individual examination, *i.e.*, HengTong. Thus, consistent with our practice, we are assigning the sole mandatory respondent's rate as the rate for non-individually examined companies that have preliminarily qualified for a separate rate.[74] This long-standing practice is also Court-affirmed.[75]

D. China-Wide Entity

The record indicates that certain Chinese exporters and/or producers of the merchandise under consideration during the POI did not respond to Commerce's requests for information. Specifically, Commerce did not receive responses to its Q&V questionnaire from several exporters and/or producers of subject merchandise that were named in the Petition and to whom Q&V questionnaires were successfully delivered. In addition, Sibo did not respond to Commerce's initial questionnaire. Because these companies did not respond to our requests for information, they have not demonstrated that they are eligible for a separate rate. Commerce, therefore, considers them to be part of the China-wide entity.

Furthermore, as explained below, we are preliminarily determining the China-wide rate on the basis of adverse facts available (AFA).

E. Application of Facts Available and Adverse Inferences

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

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[74] *See*, *e.g.*, *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314, 42316 (June 29, 2016) ("Under section 735(c)(5)(A) of the Act, the rate for all other companies that have not been individually examined is normally an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely on the basis of facts available. In this final determination, {Commerce} has calculated a rate for TTI that is not zero, *de minimis*, or based entirely on facts available. Therefore, {Commerce} has assigned to the companies that have not been individually examined, but have demonstrated their eligibility for a separate rate, a margin of 101.82 percent, which is the rate for TTI."); *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, 35317 (June 2, 2016) ("In this final determination, we calculated a weighted-average dumping margin for Yieh Phui (the only cooperating mandatory respondent) which is not zero, *de minimis*, or based entirely on facts available. Accordingly, we determine to use Yieh Phui's weighted-average dumping margin as the margin for the separate rate companies."); *Narrow Woven Ribbons with Woven Selvedge from Taiwan; Preliminary Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 60627, 60627 (October 7, 2015) unchanged in Narrow Woven Ribbons with Woven Selvedge from Taiwan; Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 22578 (April 18, 2016).

[75] *See*, *e.g.*, *Changzhou Wujin Fine Chemical Factory Co., Ltd., v. United States*, 942 F. Supp. 2d 1333, 1339 (CIT 2013); *Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (CIT 2008) (affirming Commerce's decision to assign a 4.22 percent dumping margin to the separate rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively).

otherwise available in reaching the applicable determination.

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

The TPEA 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.[76] The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.[77]

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) 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.[78]

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce 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.[79] The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value,[80] although under the TPEA, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.[81] To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.[82]

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[76] *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, Commerce 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*).

[77] *Id*., 80 FR at 46794-95. The 2015 amendments may be found at https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.

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

[79] *See* SAA at 870.

[80] *Id*.; *see also* 19 CFR 351.308(d).

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

[82] *See*, *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller*

Under section 776(d) of the Act, Commerce 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. The TPEA also makes clear that when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.

1. *Application of Facts Available*

As noted above, certain producers/exporters, including mandatory respondent Sibo, refused to respond to Commerce's requests for information. Thus, these companies failed to provide necessary information, withheld information requested by Commerce, and significantly impeded this proceeding by not submitting the requested information. Accordingly, Commerce preliminarily determines that the use of facts available is warranted in determining the rate of the China-wide entity, pursuant to sections 776(a)(1), (a)(2)(A)-(C) of the Act.[83]

2. *Application of Facts Available with an Adverse Inference*

Section 776(b) of the Act provides that Commerce, 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. Commerce finds that the China-wide entity's failure to respond to Commerce's questionnaires constitutes circumstances under which it is reasonable to conclude that the China-wide entity has failed to cooperate by not acting to the best of its ability to comply with Commerce's request for information.[84]

Moreover, the China-wide entity failed to file 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 China-wide entity in accordance with section 776(b) of the Act and 19 CFR 351.308(a).[85]

3. *Selection and Corroboration of the AFA Rate*

To determine the appropriate rate for the China-wide entity based on AFA, Commerce examined whether the highest petition margin was less than or equal to the highest calculated

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).

[83] *See*, *e.g.*, *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).

[84] *Id*.

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

margin for any respondent, and determined that the highest calculated margin of 302.61 percent was the higher of the two. Therefore, for purposes of this preliminary determination, we assigned the China-wide entity, as AFA, a dumping margin of 302.61 percent. Because this rate was a calculated rate, based on a mandatory respondent's data in this segment of the proceeding, it does not constitute secondary information and, therefore, there is no need to corroborate it.

F. Date of Sale

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the subject merchandise 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.[86] The 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' {Commerce} that a different date better reflects the date on which the exporter or producer establishes the material terms of sale."[87] The date of sale is generally the date on which the parties establish the material terms of the sale,[88] which normally includes the price, quantity, delivery terms and payment terms.[89] In addition, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.[90]

Although HengTong reported shipment date as the date of sale for its U.S. sales, it did not demonstrate that the material terms of sale were established on the shipment date, as it is Commerce's practice to use shipment date only where it precedes invoice date.[91] Consistent with 19 CFR 351.401(i) and Commerce's long-standing practice to rely on the invoice date unless it is preceded by the shipment date, we used invoice date as the date of sale for U.S. sales for purposes of this preliminary determination, unless preceded by shipment date.[92]

G. Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether the HengTong's sales of the subject merchandise from China to the United States were made at LTFV, Commerce compared the EP to the NV as described in the "Export Price" and "Normal Value" sections of this memorandum.

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[86] *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)).
[87] *See Allied Tube*, 132 F. Supp. 2d at 1090 (brackets and citation omitted).
[88] *See* 19 CFR 351.401(i).
[89] *See USEC Inc. v. United States*, 31 CIT 1049, 1055 (CIT 2007).
[90] *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 PDM at Section VII, unchanged in *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 81 FR 75030 (October 28, 2016).
[91] *See* CQR at 11.
[92] *See*, *e.g.*, *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 IDM at Comment 11; and *Lightweight Thermal Paper from Germany: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 34719 (June 18, 2014) and accompanying IDM Comment 2.

1. *Determination of Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average normal values to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, Commerce 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)(1)(B) of the Act.

In recent investigations, Commerce applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.[93] Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes (CUSCODU). Regions are defined using the reported destination code (*i.e.*, zip code (DESTU)) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of investigation based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that Commerce uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

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,

[93] *See*, *e.g.*, *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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

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

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

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

2. Results of the Differential Pricing Analysis

For HengTong, based on the results of the differential pricing analysis, Commerce preliminarily finds that 74.4 percent of the value of U.S. sales pass the Cohen's *d* test,[94] and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce 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 all U.S. sales. Therefore, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for HengTong.

H. Export Price

In accordance with section 772(a) of the Act, Commerce defined the U.S. price of subject merchandise based on EP for all sales reported by HengTong. Commerce calculated EP based on the prices at which subject merchandise was sold to unaffiliated purchasers in the United States.

We based EP on the packed prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, domestic brokerage and handling, international freight, and marine insurance, using SVs, as applicable.[95]

I. Value-Added Tax (VAT)

In 2012, Commerce 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.[96] Commerce 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, Commerce will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.[97] Where the irrecoverable VAT is a fixed percentage of EP or CEP, Commerce 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.[98]

Commerce'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

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[94] *See* Commerce Memorandum, "Preliminary Determination Margin Calculation for HengTong Casting Co., Ltd.," dated concurrently with this memorandum.
[95] *Id*.
[96] *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) (*VAT Methodological Change*).
[97] *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 IDM at Comment 5.A.
[98] *Id*.

investigation by HengTong indicates that, according to the China VAT schedule, the standard VAT levy is 17 percent and the rebate rate for the subject merchandise is 9 percent.[99]

Irrecoverable VAT is: (1) the free-on-board value of the exported good, applied to the difference between; (2) the standard VAT levy rate; and (3) the VAT rebate rate applicable to exported goods. The first variable, export value, is unique to each respondent and sale, while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in Chinese law and regulations.[100]

Irrecoverable VAT, as defined in Chinese law, is a net VAT burden that arises solely from, and is specific to, exports. It is VAT paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost.[101] We have consistently stated that irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exportation of the subject merchandise to the United States.[102] The Act does not define the terms "export tax, duty, or other charge imposed" on the exportation of subject merchandise. We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as a result of export sales. It is set forth in Chinese law and, therefore, can be "imposed" by the exporting country on exportation of subject merchandise. Further, an adjustment for irrecoverable VAT achieves what is called for under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a tax-neutral net price received by the seller. This deduction is consistent with our long-standing policy, which is consistent with the intent of the Act, that dumping margin calculations be tax-neutral.[103]

Accordingly, consistent with Commerce's standard methodology and based on record information, for purposes of this preliminary determination, we removed from gross U.S. price the amount calculated based on the difference between the above-specified standard rates (*i.e.*, eight percent) applied to the U.S. export sales value, consistent with the definition of irrecoverable VAT under Chinese tax law and regulation.

J. Normal Value

Section 773(c)(1) of the Act provides that Commerce 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. Commerce bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production

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[99] *See* CQR at 34-35.
[100] *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 14876 (March 23, 2017) (*HEDP*) and accompanying IDM at Comment 17; *see also Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China*, 79 FR 25572 (May 5, 2014) (*Steel Rail Tie Wire*) and accompanying IDM at Comment 1, n.35. *See also,* HengTong CQR at "Chinese VAT Law."
[101] *See HEDP* at Comment 17; *see also Steel Rail Tie Wire* at Comment 1, n.36.
[102] *See*, *e.g.*, *HEDP* at Comment 17; *Frontseating Service Valves from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71385 (December 2, 2014) and accompanying IDM at Comment 5.
[103] *See VAT Methodological Change*, 77 FR at 36483, and *Notice of Final Rule, Antidumping Duties, Countervailing Duties*, 62 FR 27296 (May 19, 1997) (citing the SAA).

costs invalid under Commerce's normal methodologies.[104] Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), Commerce calculated NV based on FOPs. Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.[105]

K. Factor Valuation Methodology

In accordance with section 773(c) of the Act, Commerce calculated NV based on FOP data reported by HengTong. To calculate NV, Commerce multiplied the reported per-unit factor-consumption rates by publicly available SVs. When selecting the SVs, Commerce considered, among other factors, the quality, specificity, and contemporaneity of the data.[106] As appropriate, Commerce adjusted input prices by including freight costs to make them delivered prices. Specifically, Commerce 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.[107] A detailed description of SVs used for HengTong can be found in the Preliminary SV Memorandum.[108]

As discussed above, for the preliminary determination, Commerce is using South African import data, as published by Global Trade Atlas (GTA), and other publicly available sources from South Africa to calculate SVs for the HengTong's FOPs. In accordance with section 773(c)(1) of the Act, Commerce 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.[109] The record indicates that South African import data obtained through GTA, as well as data from other South African sources, are broad-market averages, product-specific, tax-exclusive, and generally contemporaneous with the POI.[110]

Commerce 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.[111] In this regard, Commerce

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[104] *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).
[105] *See* section 773(c)(3)(A)-(D) of the Act.
[106] *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 IDM at Comment 9.
[107] *See Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).
[108] *See* Preliminary SV Memorandum.
[109] *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) (*Vietnam Shrimp*), 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).
[110] *See* Preliminary SV Memorandum.
[111] *See* Section 505 of the TPEA (amending Section 773(c)(5) of the Act to permit Commerce to disregard price or cost values without further investigation if it has determined that certain subsidies existed with respect to those values); *see also Applicability Notice*, 80 FR 46793, 46795.

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.[112] 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, Commerce finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Therefore, Commerce has not used prices from those countries in calculating the South African import-based SVs. Commerce also excluded, from the calculation of the import-based per-unit SVs, imports labeled as originating from an "unidentified" country, because Commerce could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.[113]

We used South African import statistics from GTA to value raw materials, packing materials, and certain energy inputs.[114] With respect to electricity, we calculated an average rate using publicly-available data from Eskom, the largest public utility provider in South Africa.[115] For water usage, we valued this expense using data obtained from the Government of South Africa's National Statistical Office (NSO). For marine insurance, we valued this expense using data from RJG Consultants (a market-economy freight forwarder), respectively.[116] We valued truck freight, in addition to brokerage and handling, using average rates from the World Bank's report, *Doing Business 2017: South Africa* (*Doing Business*).[117] This World Bank report gathers information concerning the distance and cost to transport a containerized shipment weighing 15 metric tons from the peri-urban area of South Africa's largest business city to the country's major port.[118] We calculated international freight using ocean shipping rates obtained from Freightos (Tradeos, Ltd.), an online provider of market-economy freight quotes.[119]

In NME antidumping proceedings, Commerce prefers to value labor solely based on data from the surrogate country.[120] In *Labor Methodologies*, Commerce determined that the best methodology to value labor is to use industry-specific labor rates from the surrogate country. Additionally, we determined that the best data source for industry-specific labor rate is manufacturing labor rates from ILOSTAT, the labor database compiled by the International Labor Organization.[121] In this investigation, we find that the ILOSTAT data on the record from South Africa are the best available information for valuing labor because they are specific to

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[112] *See*, *e.g.*, *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination; 2011-2012*, 78 FR 42492 (July 16, 2013) and accompanying IDM at 7-19; *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 IDM 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 IDM at 4; and *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) and accompanying IDM at IV.
[113] *See*, *e.g.*, *Vietnam Shrimp*, 69 FR at 42682-42683.
[114] *See* Preliminary SV Memorandum.
[115] *Id*.
[116] *Id*.
[117] *Id*.
[118] *Id*.
[119] *Id*.
[120] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).
[121] *See* Preliminary SV Memorandum.

manufacturing and represent the closest labor valuation to the industry in question from the surrogate country.[122]

Commerce'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 public availability of information.[123] Moreover, for valuing factory overhead, selling, general, and administrative (SG&A) expenses and profit, Commerce normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.[124] In addition, the CIT has held that in the selection of surrogate producers, Commerce may consider how closely the surrogate producers approximate the NME producer's experience.[125]

To value factory overhead, SG&A expenses, and profit, Commerce relied on the 2017 financial statements of Tata Africa because it is a South African producer of comparable merchandise.[126] While Tata Africa produces comparable rather than identical merchandise, Tata Africa is a South African steel processor and producer of aluminum wire rods. Therefore, we preliminarily find that the financial data of this steel processor is appropriate to approximate the financial costs of the HengTong's production of soil pipe.[127]

Commerce's practice is to grant the respondent an offset to the reported FOPs for by-products generated during the production of the subject merchandise if evidence is provided that such by-product has commercial value.[128] HengTong claimed that it reintroduces foundry scraps into the smelting process, but that it is unable to account for these scraps in its accounting or production records.[129] As such, we have not made any adjustment for by-product offsets.

VIII. 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.

IX. ADJUSTMENT UNDER SECTION 777A(f) of the Act

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[122] *Id*.

[123] *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 IDM at Comment 3.

[124] *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 IDM at Comment 2; *see also* section 773(c)(4) of the Act; 19 CFR 351.408(c)(4).

[125] *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 IDM at Comment 1.

[126] For more information on the surrogate financial ratios calculations, *see* the Preliminary SV Memorandum.

[127] *Id*.

[128] *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews*, 70 FR 54897 (September 19, 2005) and accompanying IDM at "Scrap Offset."

[129] *See* DQR at 13.

In applying section 777A(f) of the Act, Commerce 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 Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise. For a subsidy meeting these criteria, the statute requires Commerce to reduce the AD cash deposit rate by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.

Since Commerce started conducting analyses under section 777A(f) of the Act, Commerce has continued to refine its practice in applying this section of the law. Commerce examined whether the respondent demonstrated: (1) a subsidies-to-cost link, *e.g.*, subsidy impact on cost of manufacturing (COM); and (2) a cost-to-price link, *e.g.*, respondent's prices changed due to changes in the COM.[130] A finding that there is an overlap in remedies, and any resulting adjustment, is 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.[131]

HengTong identified four programs that potentially impact COM: Provision of Electricity for less than adequate remuneration (LTAR), Provision of Metallurgical Coke for LTAR, Provision of Pig Iron for LTAR, Provision of Ferrous Scrap for LTAR.[132]

Pursuant to section 777A(f)(2) of the Act, in investigations, we normally examine the preliminary report issued by the ITC[133] to determine whether prices of the subject merchandise increased or decreased during the POI. In this case, however, pricing data for subject imports from China are not available for the entire POI. The available data are incomplete and, therefore, inconclusive with respect to price trends.[134]

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[130] *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.

[131] *See Drawn Stainless Steel Sinks from the People's Republic of China: Antidumping Duty Investigation*, 77 FR 60673 (October 4, 2012), and accompanying Preliminary Decision Memorandum at section "Adjustment Under Section 777A(f) of the Act"; *Drawn Stainless Steel Sinks from the People's Republic of China: Investigation, Final Determination*, 78 FR 78 FR 13019 (February 26, 2013) and accompanying Issues and Decision Memorandum at Comment 1 ("*Sinks from the PRC Final Determination*"); *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 Preliminary Decision Memorandum at section "Adjustment Under Section 777A(f) of the Act" unchanged in *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part,* 80 FR 34893 (June 18, 2015), and accompanying Issues and Decision Memorandum.

[132] *See* HengTong Letter re: Domestic subsidies Response, dated August 20, 2018 at 5-8.

[133] *See Investigation Nos. 701–TA–597 and 731–TA–1407 (Preliminary): Cast Iron Soil Pipe from China*, 83 FR 12025 (March 19, 2018)

[134] *Id*.

Furthermore, we find that HengTong did not provide sufficient evidence that the above referenced subsidies had an impact on its COM, nor did it demonstrate a decrease in prices due to changes in its COM.[135] Accordingly, we preliminarily determine that HengTong's questionnaire response did not indicate a subsidies-to-cost linkage and a cost-to-price linkage. Therefore, Commerce finds that there is no basis to make an adjustment for HengTong, pursuant to section 777(A)(f) of the Act.

X. ADJUSTMENT FOR COUNTERVAILABLE EXPORT SUBSIDIES

In an AD investigation where there is a concurrent CVD investigation, Commerce calculates the cash deposit rates by adjusting each respondent's weighted-average dumping margin to account for the respondent's export subsidies found in the concurrent CVD investigation. Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S. price "shall be increased by the amount of any countervailing duty imposed on the subject merchandise … to offset an export subsidy."[136]

Commerce determined in the preliminary determination of the concurrent CVD investigation that HengTong did not benefit from any export subsidy.[137] As such, we have not made any adjustments to the cash deposit rates for export subsidies. For the China-wide entity, which is preliminarily receiving a margin based on AFA, as an extension of the adverse inference found necessary pursuant to section 776(b) of the Act, we will adjust the China-wide entity's AD cash deposit rate by the lowest export subsidy rate determined for any party in the concurrent CVD proceeding. In this case, the lowest rate is zero, so no adjustment is necessary.

XI. VERIFICATION

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

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[135] *See* HengTong Letter re: Domestic subsidies Response, dated August 20, 2018 at 5-8.
[136] *See Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 38076, 38077 (July 1, 2010) and accompanying IDM at Comment 1.
[137] *See Soil Pipe CVD Prelim* and accompanying PDM.

XII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☒	☐
____________	___________
Agree	Disagree

8/24/2018

X 

Signed by: GARY TAVERMAN

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