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MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China; 2016-2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from the People's Republic of China (China). The review covers Henan Qingshuiyuan Technology Co., Ltd. (Qingshuiyuan). The period of review (POR) is November 4, 2016 through April 30, 2018. We preliminarily find that sales of the subject merchandise were made at prices below normal value. The estimated weight-average dumping margins are shown in the "Preliminary Results of Review" section of the accompanying *Federal Register* notice.

II. BACKGROUND

On May 29, 2018, Qingshuiyuan requested an administrative review of the antidumping duty order on HEDP from China for itself.[1] On July 12, 2018, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the administrative review of the antidumping duty order on HEDP from China.[2]

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[1] *See* Qingshuiyuan's Letter, "Request for Review," dated May 29, 2018.
[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 32270 (July 12, 2018) (*Initiation*).

We issued the standard antidumping duty questionnaire to Qingshuiyuan on August 21, 2018.[3] Between September 18, 2018, and May 28, 2019, Qingshuiyuan submitted timely responses to Commerce's original and supplemental sections A, C, and D questionnaires.[4]

On December 17, 2018, Commerce exercised its discretion to extend the deadline for preliminary results.[5] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[6] The revised deadline for the preliminary results decision is now July 10, 2019.

III. SCOPE OF THE ORDER

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.

IV. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy Country Status

Commerce considers China to be a non-market economy (NME) country.[7] In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the Act), any determination that a country is an NME country shall remain in effect until revoked by the administering authority.

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[3] *See* Commerce's Letter, "Antidumping Duty Non-Market Economy Questionnaire," dated August 21, 2018.
[4] *See* Qingshuiyuan's September 18, 2018, Section A Questionnaire Response (Qingshuiyuan's SAQR); *see also* Qingshuiyuan's October 4, 2018, Section C & D Questionnaire Response (SCDQR); Qingshuiyuan's October 19, 2018, Supplemental Section A Questionnaire Response (QR); Qingshuiyuan's February 20, 2019 Supplemental Section C QR; Qingshuiyuan's March 13, 2019 Supplemental Section D QR; Qingshuiyuan's May 13, 2019 Second Supplemental Section C QR; and Qingshuiyuan's May 28, 2019 Second Supplemental Section D QR.
[5] *See* Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated December 17, 2018.
[6] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.
[7] *See Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018), and accompanying Issues and Decision Memorandum (IDM) at Comment 1; *see also Certain Steel Nails from the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review*; 2010-2011, 78 FR 16651, 16652 (March 18, 2013), and accompanying IDM at Comment 1.

None of the parties to this proceeding have contested such treatment. Therefore, we continue to treat China as an NME country for purposes of these preliminary results.

B. Separate Rates

In proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single dumping margin.[8] In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate-rate status in NME proceedings.[9] It is Commerce's policy to assign all exporters of the subject merchandise from an NME country a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.

Qingshuiyuan timely submitted a separate rate certification.[10] Commerce also received a complete response to the Section A portion of the questionnaire from Qingshuiyuan which contained additional information pertaining to eligibility for separate rate status for Qingshuiyuan.[11]

Qingshuiyuan reported that it is either wholly or partially owned by a domestic entity/entities located in China.[12] In accordance with our practice, we analyzed whether these companies demonstrated an absence of *de jure* and *de facto* governmental control over their export activities.

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) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.[13] The evidence provided by Qingshuiyuan supports a preliminary finding of the absence of *de jure* government control of export activities based on the following: (1) there is an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of the companies.[14]

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[8] *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); *see also Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).
[9] *See Initiation*, 83 FR at 32271-72.
[10] *See* Qingshuiyuan's August 15, 2018, Separate Rate Certification (Qingshuiyuan's SRC).
[11] *See* Qingshuiyuan's SAQR.
[12] *See* Qingshuiyuan's SRC at 4.
[13] *See Sparklers*, 56 FR at 20589.
[14] *See* Qingshuiyuan's SRC.

Absence of De Facto Control

Typically, Commerce considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (EPs) 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 disposition of profits or financing of losses.[15] As stated in previous cases, there is evidence that certain enactments of the Chinese central government have not been implemented uniformly among different sectors and/or jurisdictions in China.[16] Therefore, Commerce 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 Commerce from assigning separate rates.[17]

The evidence provided by Qingshuiyuan supports a preliminary finding of the absence of *de facto* government control based on the following: (1) the company set its own export prices independent of the government and without the approval of a government authority; (2) the company had authority to negotiate and sign contracts and other agreements; (3) the company had autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on the company's use of export revenue.[18]

Therefore, we preliminarily find that the evidence placed on the record of this review demonstrates an absence of *de facto* government control with respect to Qingshuiyuan's exports of the merchandise under review.

Based on the absence of both *de jure* and *de facto* government control with respect to the companies' exports of the merchandise under review, we preliminarily find that Qingshuiyuan has established that it qualifies for a separate rate under the criteria established by *Sparklers*, *Silicon Carbide*, and *Diamond Sawblades*.

China-Wide Entity

Because no party requested a review of the China-wide entity and Commerce no longer considers the China-wide entity as an exporter conditionally subject to administrative reviews,

[15] *See Silicon Carbide*, 59 FR at 22587; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995).
[16] *See, e.g.*, *Silicon Carbide*, 59 at FR 22587.
[17] *Id*.
[18] *See* Qingshuiyuan's SRC; *see also* Qingshuiyuan's SAQR at 2-14.

Commerce is not conducting a review of the China-wide entity.[19] Thus, the rate for the China-wide entity (*i.e.*, 167.58 percent) is not subject to change under this review.[20]

C. Surrogate Country and Surrogate Value Data

On August 21, 2018, Commerce sent interested parties a letter inviting comments on the non-exhaustive list of countries Commerce determined are at the same level of economic development as China, surrogate country selection, and surrogate value (SV) data, and specified the deadlines for these respective submissions.[21] On November 2, 2018, we received timely comments on surrogate country selection from Compass Chemical International LLC (the petitioner) and Qingshuiyuan.[22] On November 21, 2018, we received timely SV information from the petitioner and Qingshuiyuan.[23] On December 3, 2018, we received timely submitted rebuttal comments from the petitioner and Qingshuiyuan.[24]

D. Surrogate Country

When Commerce is investigating or reviewing imports from an NME country, section 773(c)(1) of the Act directs us to base normal value (NV), in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate 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.[25] As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME unless we determine 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 SV data, or (c) are not suitable for use based on other reasons.[26] Surrogate countries that are not at the same level of economic development as the

[19] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65969-70 (November 4, 2013).
[20] *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 82 FR 22807 (May 18, 2017).
[21] *See* Commerce Letter, "Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated August 21, 2018 (Surrogate Country and Values Letter). The countries identified in the Attachment to the Surrogate Country and Values Letter are Brazil, Kazakhstan, Malaysia, Mexico, Romania, and Russia (Surrogate Country List).
[22] *See* Petitioner's Letter, "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China," dated November 2, 2018 (Petitioner's SC Comments); *see also* Qingshuiyuan's Letter, "Comments on Surrogate Country Selection," dated November 2, 2018 (Qingshuiyuan's SC Comments).
[23] *See* Petitioner's Letter, "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China," dated November 21, 2018 (Petitioner's SV Submission); *see also* Qingshuiyuan's Letter, "Surrogate Value Information and the Preliminary Determination," dated November 21, 2018 (Qingshuiyuan's SV Submission).
[24] *See* Petitioner's Letter, "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China," dated December 3, 2018; *see also* Qingshuiyuan's Letter, "Rebuttal Comments," dated December 3, 2018.
[25] For a description of our practice, *see* Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (*Policy Bulletin*).
[26] *Id.*

NME country, but still at 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. 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.[27] It is our practice to value inputs using data from the primary surrogate country in accordance with 19 CFR 351.408(c)(2) and resort to data from a secondary surrogate country only if data from the primary surrogate country are unavailable or unreliable.[28] The sources of the SVs we used in this review are discussed under the "Normal Value" section below. The petitioner submitted Mexico and Romania SV information and Qingshuiyuan submitted Brazil SV information for consideration.[29]

1. Economic Comparability

Commerce determined that Brazil, Kazakhstan, Malaysia, Mexico, Romania, and Russia are at the same level of economic development as China, based on *per capita* GNI .[30] Therefore, we consider all six countries as having met this criterion of surrogate country selection.

In the Surrogate Country and Values Letter, we requested comments on the list of potential surrogate countries as a starting point for surrogate country selection, pursuant to section 773(c)(4) of the Act and requested that parties submit for consideration other countries that are at a level of economic development comparable to China.[31] Qingshuiyuan expressed reservations about the potential SV data from Mexico, but deemed it premature to rule it out until SV data were placed on the record.[32] Therefore, unless we find that all the countries determined to be equally economically comparable are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data, or are unsuitable for use for other reasons, we will rely on data from one of the surrogate countries Commerce deemed to be economically comparable to China (*i.e.*, Brazil, Kazakhstan, Malaysia, Mexico, Romania, and Russia).

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. Although the legislative history states that "the term 'significant producer' includes any country that is a significant net exporter and, if appropriate, Commerce may use a significant, net exporting country in valuing factors,"[33] that does not preclude reliance on additional or alternative

[27] *Id.*
[28] *See, e.g., Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014,* 80 FR 61172 (October 9, 2015), and accompanying IDM at Comments 2 and 5.
[29] *See* Petitioner's SC Comments; *see also* Qingshuiyuan's SC Comments.
[30] *See* Surrogate Country and Values Letter at Attachment.
[31] *Id.*
[32] *See* Qingshuiyuan's SC Comments.
[33] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Conf. Rep. No. 576,100 Cong, 2d Sess. (1988), reprinted in Cong. Rec. H2032 (Daily Ed. April 20, 1988).

metrics.[34] Moreover, neither the statute nor Commerce's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, Commerce looks to other sources, such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that "the terms 'comparable level of economic development,' 'comparable merchandise,' and 'significant producer' are not defined in the statute."[35] The *Policy Bulletin* further states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."[36] Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.[37] Further, when selecting a surrogate country, the statute requires Commerce to consider the comparability of the merchandise, not the comparability of the industry.[38]

Following our practice, Commerce analyzed exports of comparable merchandise, as defined by the HTS subheadings listed in the order, from the economically comparable countries during the POR as a proxy for production data.[39] We obtained export data using the Global Trade Atlas (GTA) for HTS 2931.90: "Organo-Inorganic Compounds, {not elsewhere specified or included} NESOI."[40] Commerce found that, of the six countries provided in the Surrogate Country and Values Letter, all countries were exporters of comparable merchandise. Therefore, because each of the six countries on the Surrogate Country and Values Letter satisfy the "economic comparability" and "significant producer" criteria of the surrogate country analysis, Commerce also will consider data availability and reliability in selecting a surrogate country.[41]

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.[42] When evaluating SV data, Commerce considers several factors including whether the SV data are publicly available, contemporaneous with the POR, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.[43] There is

[34] *See Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262, 1274 n.5 (CIT 2006).
[35] For a description of our practice *see Policy Bulletin*, at Background.
[36] *Id.*
[37] In addition, the *Policy Bulletin* at note 6, 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."
[38] *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.").
[39] *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), and accompanying IDM at Comment 1.
[40] *See* Memorandum, "Surrogate Values for the Preliminary Results," dated concurrently with this memorandum (Preliminary SV Memorandum).
[41] *See Policy Bulletin* at Data Considerations.
[42] *Id.*
[43] *See Policy Bulletin; see also Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), and accompanying IDM at Comment 2.

no hierarchy among these criteria; it is Commerce's practice to consider carefully the available evidence in light of the particular facts of each industry when undertaking its analysis.[44]

Based on our analysis of the SV data submissions, Commerce determines that Mexico is at the same level of economic development as China, is a significant producer of comparable merchandise, and has the most reliable data and financial statements. The petitioner proposed Mexico as the primary surrogate country and in the alternative, if Commerce determined that Mexico would not be a suitable primary surrogate country, it proposed Romania.[45] Qingshuiyuan proposed Brazil as the surrogate country.[46] No party placed SV information on the record for Kazakhstan, Malaysia, or Russia. 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.

With respect to the financial statements, the petitioner submitted three sets of financial statements from Mexico from: (1) CYDSA, S.A.B. de C.V. (CYDSA); (2) Mexichem, S.A.B. de C.V. (Mexichem); and (3) Alpek S.A.B. de C.V. (Alpek).[47] All three of these financial statements were publicly available. The petitioner also submitted a worksheet for calculating the financial ratios of Oltchim S.A. from Romania.[48] However, the actual financial statements were not placed on the record and, therefore, the absence of any financial statements detracted from the suitability of Romania as the primary surrogate. Qingshuiyuan submitted a calculation worksheet for the financial ratios from the Brazilian company Ultrapar Participacoes S.A. (Ultra).[49] However, a copy of Ultra's financial statements was not included in the submission and, therefore, the absence of any financial statements detracted from the suitability of Brazil as the primary surrogate country. Qingshuiyuan also appears to have submitted financial statements from the Brazilian company Tupy S.A.,[50] a producer of cast-iron engine blocks and cylinder heads, which does not produce merchandise comparable to the subject merchandise.

Of the remaining financial statements on the record, Commerce finds that CYDSA, Mexichem, and Alpek's financial statements are contemporaneous with the POR. Both CYDSA and Mexichem's financial statements are for fiscal year ending (FYE) December 31, 2017.[51] Alpek's financial statements are for FYE December 31, 2016, which accounts for far fewer months of the POR than those of CYDSA and Mexichem.[52] Neither CYDSA, Mexichem, nor Alpek produced merchandise identical to the subject merchandise. According to CYDSA's financial statements, CYDSA produces chemical products and plastics.[53] Mexichem's financial statements indicate that it produces pipe systems, plastic pipes, PVC resin, chemicals, fluorspar, and

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44 *See Ad Hoc Shrimp Trade Action Comm. v. United States*, 618 F.3d 1316, 1322 (Fed. Cir. 2010).
45 *See* Petitioner's SC Comments.
46 *See* Qingshuiyuan's SC Comments.
47 *See* Petitioner's SV Submission at Exhibits 12-14.
48 *Id*. at Exhibit 21.
49 *See* Qingshuiyuan's SV Submission at Exhibit 9.
50 *Id*. at Exhibit IV-A.
51 *See* Petitioner's SV Submission at Exhibits 12-13.
52 *Id.* at Exhibit 14.
53 *Id.* at Exhibit 13.

petrochemicals.[54] However, Mexichem is a multinational corporation and its primary business operations are focused more on pipe systems and PVC resin products than chemicals.[55] Alpek manufactures polyester fiber and polyethylene terephthalate (PET).[56] Because we find that both CYDSA and Alpek have similar production processes that mostly involve inputs from chemicals and cost structures that are similar to Qingshuiyuan, Commerce has decided to value financial ratios based on a simple average of these two companies.

With regard to the other FOPs, Commerce identified that Mexico was the only country with contemporaneous SV data for water. The petitioner submitted industrial water data from CONAGUA (Comisión Nacional del Agua) for 2017 and 2018.[57] The petitioner did not submit data for Romania, and only provided a water SV calculation.[58] Additionally, this calculation appears to be based on data from 2011.[59] Qingshuiyuan submitted an article published by BNamericas from 2013, which detailed the cost of water in various South American countries (including Brazil).[60]

Given the foregoing, Commerce preliminarily selects Mexico as the primary surrogate country in this review. Commerce finds Mexico to be at a level of economic development comparable to China based on GNI, to be a significant producer of comparable merchandise, and to provide a reliable source for SVs. For details on the selected SVs, *see* the "Normal Value" section of this memorandum and the Preliminary SV Memorandum.[61]

E. Date of Sale

Section 351.401(i) of Commerce's regulations states that, normally, we will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation further provides that we may use a date other than the date of the invoice if satisfied that a different date better reflects the date on which the material terms of sale are established.

Qingshuiyuan reported the date of the invoice issued to its unaffiliated U.S. customer as the date of sale.[62] Commerce found no evidence contrary to Qingshuiyuan's claim that the invoice date reflected the date on which the material terms of sale were established. Thus, because record evidence does not demonstrate that the material terms of sale were established on another date, Commerce used the invoice date as the date of sale for these preliminarily results, in accordance with 19 CFR 351.401(i).[63]

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[54] *Id*. at Exhibit 12.
[55] *Id*.
[56] *Id*. at Exhibit 14.
[57] *Id*. at Exhibit 11.
[58] *Id.* at Exhibit 17.
[59] *Id*.
[60] *See* Qingshuiyuan's SV Submission at Exhibit 5.
[61] *See* Preliminary SV Memorandum.
[62] *See* Qingshuiyuan's SAQR at 16-18.
[63] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying IDM at Comment 10.

F. Fair Value Comparisons

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

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average normal values 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. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.[64]
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.[65] 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 administrative review. 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 these preliminary results 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 purchaser, region and time period 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.

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[64] *See Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012) and the accompanying IDM at Comment 1; *see also Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).
[65] *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); *see also Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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 POR 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, 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 these preliminary results, including arguments for modifying the group definitions used in this proceeding.

2. *Results of the Differential Pricing Analysis*

For Qingshuiyuan, based on the results of the differential pricing analysis, Commerce preliminarily finds that 83.8 percent of the value of U.S. sales pass the Cohen's *d* test,[66] and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. However, we find that there is not a meaningful difference in the weighted-average dumping margins calculated using the average-to-average comparison method and the average-to-transaction comparison method when both methods are applied to all sales. Accordingly, Commerce has preliminarily determined to use the standard method in making comparisons of U.S. prices to NV for Qingshuiyuan.

G. <u>U.S. Price</u>

For these preliminary results, Commerce will use the CEP and EP, as appropriate, for sales made by Qingshuiyuan or its affiliated entity to its first unaffiliated U.S. customers of subject merchandise during the POR.

1. *Export Price*

Pursuant to section 772(a) of the Act, EP is "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c) of the Act. Commerce considers the U.S. prices of certain sales by Qingshuiyuan to be EPs, in accordance with section 772(a) of the Act, because they were the prices at which the subject merchandise was first sold before the date of importation by the exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States. We calculated the net price for these sales by making deductions, as appropriate, from the reported gross U.S. price for domestic and international movement expenses (*i.e.*, domestic and foreign inland freight, domestic and foreign brokerage and handling, marine insurance, international

[66] *See* Memorandum, "Preliminary Results Analysis Memorandum," dated concurrently with this memorandum (Preliminary Analysis Memorandum).

freight and U.S. duties) in accordance with section 772(c)(2)(A) of the Act. Where movement expenses were provided by Chinese service providers or paid for in an NME currency, we valued these services using SVs.[67]

2. Constructed Export Price

Pursuant to section 772(b) of the Act, 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}." Commerce considered some of Qingshuiyuan's sales in the United States to be CEP sales. In accordance with our practice, we calculated CEP based on prices to unaffiliated purchasers in the United States. In accordance with sections 772(c)(2)(A) and 772(d)(1) and of the Act, Commerce made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, and U.S. movement expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by NME service providers or paid for in an NME currency, Commerce valued these services using SVs.[68] For those expenses that were provided by a market economy (ME) provider and paid for in an ME currency, Commerce used the reported expense. In accordance with section 772(d)(1) of the Act, Commerce also deducted those selling expenses associated with economic activities occurring in the United States. Commerce deducted, where appropriate, commissions, inventory carrying costs, interest revenue, credit expenses, warranty expenses, and indirect selling expenses. 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 Preliminary Analysis Memorandum.

3. Value-Added Tax

Commerce's practice in NME cases is to adjust EP or CEP for the amount of any irrecoverable value-added tax (VAT), in accordance with section 772(c)(2)(B) of the Act.[69] 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.[70] 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.[71] Thus, Commerce's methodology essentially amounts to performing two basic steps: (1) determining the amount (or rate) of the irrecoverable VAT on subject merchandise; and (2) reducing U.S. price by the amount (or rate) determined in step one.

[67] *See* Preliminary SV Memorandum.
[68] *Id.*
[69] *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) (*Methodological Change*).
[70] *Id.*
[71] *Id.*

In the initial questionnaire, Commerce instructed Qingshuiyuan to report net un-refunded VAT for the subject merchandise. The Chinese VAT schedule placed on the record of this review by Qingshuiyuan demonstrates that the VAT rate is 17 percent, and the refund rate for subject merchandise is nine percent, under applicable Chinese regulations.[72] Thus, Commerce has determined that the irrecoverable VAT on subject merchandise is the difference of these rates, *i.e.*, eight percent, and we have adjusted the U.S. prices for the un-refunded VAT, in order to calculate EP and CEP, as appropriate, net of VAT for Qingshuiyuan.[73] This is consistent with Commerce's policy and the intent of the statute, that dumping comparisons be tax-neutral.[74]

H. Normal Value

Section 773(c)(1) of the Act provides that Commerce shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Commerce bases NV in an NME context on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under Commerce's normal methodologies. Therefore, we calculated NV based on FOPs reported by Qingshuiyuan for the POR, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). 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.[75] We used the FOPs reported by Qingshuiyuan for materials, energy, labor, by-products, packing and freight.[76] In accordance with section 773(c) of the Act and 19 CFR 351.408(c)(1), we calculated the cost of FOPs by multiplying the reported per-unit FOP consumption rates by publicly available SVs.[77] We summed the FOP and freight costs to derive NV.

1. Factor Valuations

As noted above, when selecting from among the available information for valuing FOPs, Commerce's practice is to select, to the extent practicable, SVs which are publicly available,

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[72] *See* Qingshuiyuan's SCDQR.
[73] *See* Preliminary Analysis Memorandum.
[74] *See Methodological Change*.
[75] *See* section 773(c)(3)(A)-(D) of the Act.
[76] On June 12, 2019, the petitioner submitted comments arguing that Qingshuiyuan has underreported its FOPs based on the petitioners understanding of the chemical formula it believes Qingshuiyuan employs in its production process. However, Qingshuiyuan provided the documentation requested of it by Commerce to support its consumption rates and a cost reconciliation supporting those consumption values, which the petitioner has not argued is deficient. Qingshuiyuan also submitted comments refuting the petitioner's claims. Thus, this continues to be a developing issue. Accordingly, Commerce has decided to preliminarily accept Qingshuiyuan's reported FOPs and will continue to consider further comments from interested parties, and examine this matter at verification, should one be conducted, for the final results of this review. *See* Petitioner's Letter, "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China," dated June 12, 2019; *see also* Qingshuiyuan's Letter, "Response to Petitioner's Comments," dated June 24, 2019.
[77] *See* Preliminary SV Memorandum.

broad market averages, contemporaneous with the POR or closest in time to the POR, product-specific, and tax-exclusive.[78] In those instances where we could not value FOPs using publicly available information that is contemporaneous with the POR, we inflated/deflated the SVs using indices. As appropriate, we adjusted input prices by including freight, insurance, and brokerage and handling costs to make them delivered prices.[79] An overview of the SVs used to calculate weighted-average dumping margins for the mandatory respondents is below. A detailed description of all SVs used to calculate the weighted-average dumping margins is in the Preliminary SV Memorandum.

a. Direct and Packing Materials

GTA import prices for the primary surrogate country, Mexico, are generally contemporaneous with the POR, publicly available, product-specific, tax-exclusive, and representative of a broad market average.[80] Thus, we based SVs for Qingshuiyuan's direct and packing materials on Mexican import values.[81] However, Commerce valued water using data provided from CONAGUA.[82] Additionally, no interested party submitted SVs for five minor packing material inputs. For the preliminary results, these minor packing material inputs were not included in the preliminary margin calculation. Commerce plans to issue a supplemental questionnaire after the preliminary results and allow interested parties to submit SVs for these inputs for the final results.

Pursuant to section 773(c)(5) of the Act and the legislative history of the Omnibus Trade and Competitiveness Act of 1988, Commerce continues to apply its long-standing practice of disregarding certain prices as SVs if it has reason to believe or suspect that those prices may have been dumped or subsidized.[83] In this regard, Commerce previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea, and Thailand because we determined that these countries maintain broadly available, non-industry specific, export subsidies.[84] Based on the existence of these subsidy programs that were generally available to all

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[78] *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).
[79] *See* Import Administration Policy Bulletin 10.2: Inclusion of International Freight Costs When Import Prices Constitute Normal Value (November 1, 2010) at 1-2; *see also e.g.*, *Certain Quartz Surface Products from the People's Republic of China: Preliminary Determination of Sales at Less Than Sales Value and Postponement of Final Determination*, 83 FR 58540 (November 20, 2018), and accompanying PDM at 31, unchanged in *Certain Quartz Surface Products From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23767 (May 23, 2019), and accompanying IDM at Comment 10.
[80] *See* Preliminary SV Memorandum.
[81] *Id*.
[82] *Id*.
[83] *See* Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.
[84] *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 IDM at 4-5; *see also Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692

exporters and producers in these countries at the time of the POR, 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 these countries in calculating the Mexican import-based SVs. Commerce similarly disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, since Commerce could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.[85] Commerce adjusted the SVs, as appropriate, for exchange rates and taxes, and converted all applicable items to measurement on a per metric ton basis. In addition, Commerce adjusted input prices by including movement costs to render them delivered prices. Specifically, in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) in *Sigma Corp.*,[86] Commerce added to the Mexican import SVs a surrogate freight value using the shorter of the reported distance between: (1) the domestic supplier and the factory; or (2) the nearest seaport and the factory.[87]

b. Energy

Commerce valued electricity using prices published by the International Energy Agency "Key World Energy Statistics 2018" report, which contains pricing data for electricity rates for industry.[88] For Qingshuiyuan's steam/propane and coal consumption, Commerce based SVs on Mexican import values from GTA.[89]

c. Labor

In *Labor Methodologies*,[90] Commerce determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Commerce does not, however, preclude other sources for valuing labor.[91] Rather, we continue to follow our practice of selecting the best available information. Here, we valued labor using labor data from ILOSTAT's "Mean nominal monthly earnings of employees by sex and economic activity – manufacturing."[92]

(August 8, 2005), and accompanying IDM at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying IDM at 17, 19-20; *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013), and accompanying IDM at IV.

[85] *See, e.g.*, *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552, 24559 (May 5, 2008), unchanged in *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 (September 24, 2008); *see also* Preliminary SV Memorandum.

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

[87] *See* Preliminary SV Memorandum.

[88] *Id.; see also* Petitioner's SV Submission at Exhibit 10.

[89] *See* Preliminary SV Memorandum.

[90] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092-36094 (June 21, 2011) (*Labor Methodologies*).

[91] *See Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 65616 (November 5, 2014), and accompanying IDM at 11.

[92] *See* Petitioner's SV Submission at Exhibit 9.

d. Movement Services

We used various sources to value movement services. We valued inland truck freight and brokerage and handling expenses using a price list for charges related to importing/exporting a standardized cargo of goods in and out of Mexico, as published in the World Bank's Doing Business 2018: Mexico.[93] We valued international ocean freight using Descartes' ocean freight rates.[94] We valued marine insurance using RJG Consultants' marine insurance coverage rates.[95] We calculated inland freight SVs for China using the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest port to the factory that produced the subject merchandise, where appropriate. This adjustment is in accordance with the Federal Circuit's decision in *Sigma Corp*.[96]

e. Financial Ratios

Pursuant to 19 CFR 351.408(c)(4), Commerce values selling, general and administrative (SG&A) expenses, factory overhead expenses, and profit using publicly available information gathered from producers of comparable merchandise in the surrogate country. To value factory overhead, SG&A expenses, and profit for these preliminary results, we relied on a simple average of the 2017 audited financial statements of CYDSA and Alpek.[97]

I. Currency Conversion

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

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[93] *Id.* at Exhibit 5.
[94] *Id.* at Exhibit 7.
[95] *Id.* at Exhibit 8.
[96] *See Sigma Corp.*
[97] *See* Preliminary SV Memorandum.; *see also* Petitioner's SV Submission at Exhibits 13 and 21.

V. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒	☐
Agree	Disagree

7/8/2019

X 

Signed by: JEFFREY KESSLER