A-570-093
Investigation
Public Document
AD/CVD I: TES/AP

October 17, 2019

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

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

SUBJECT: Refillable Stainless Steel Kegs from the People's Republic of China: Issues and Decision Memorandum for the Final Affirmative Determination of Sales at Less Than Fair Value

---

I. SUMMARY

The Department of Commerce (Commerce) determines that imports of refillable stainless steel kegs (kegs) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). Commerce also determines that critical circumstances exist with respect to imports from the China-wide entity. The period of investigation (POI) is January 1, 2018 through June 30, 2018.

As a result of our analysis, we made changes in the margin calculations for the final determination. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues for which we have received comments from the interested parties:

a. Ningbo Master International Trade Co., Ltd.

Comment 1: Labor Surrogate Value
Comment 2: Surrogate Financial Ratio Calculations
Comment 3: Value-Added-Tax (VAT) Adjustment
Comment 4: Minor Corrections
Comment 5: Alleged Pre-POI Sale
Comment 6: Proprietary Adjustment
Comment 7: Spear Surrogate Value
Comment 8: Neck Surrogate Value

b. Separate Rate Eligibility

Comment 9: Ningbo Haishu Direct Import and Export Trade Co., Ltd.
Comment 10: Guangzhou Jingye Machinery Company, Ltd.
Comment 11: Guangzhou Ulix Industrial & Trading Company, Ltd.

II. BACKGROUND

On June 4, 2019, Commerce published its *Preliminary Determination* in the LTFV investigation of kegs from China.[1] Commerce conducted the verification of U.S. sales and factors of production (FOPs) reported by Ningbo Master International Trade Co., Ltd. (Ningbo Master) in July 2019.[2] Commerce announced its intention to verify the responses of Ningbo Haishu Direct Import and Export Trade Co., Ltd. (Haishu), but Haishu withdrew from participating in this investigation.[3] We received case[4] and rebuttal[5] briefs from various parties to this antidumping duty (AD) investigation.

Based on our verification findings, our analysis of the comments received, and consideration of the data on the record, for this final determination we have revised the dumping margins for the two individually investigated respondents, the non-selected separate rate respondents, and the China-wide entity.

We received requests for a hearing in this investigation.[6] However, the parties subsequently withdrew their hearing requests.[7]

[1] *See Refillable Stainless Steel Kegs 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*, 84 FR 25745 (June 4, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).
[2] *See* Memorandum, "Verification of the Questionnaire Responses of Ningbo Master International Trade Co., Ltd. in the Antidumping Investigation of Refillable Stainless Steel Kegs from the People's Republic of China," dated July 25, 2019 (Verification Report).
[3] *See* Haishu's Letter, "Haishu Withdrawal from Verification in the Antidumping Duty Investigation on Refillable Stainless Steel Kegs from the People's Republic of China (A-570-093)," dated June 13, 2019 (Haishu Withdrawal Letter).
[4] *See* the case briefs filed by The American Keg Company LLC (the petitioner), and Ningbo Master dated August 5, 2019 (Petitioner Case Brief) (Ningbo Master Case Brief).
[5] *See* the rebuttal briefs filed by the petitioner, Ningbo Master, Guangzhou Jingye Machinery Co., Ltd. (Jingye), and Guangzhou Ulix Industrial & Trading Co., Ltd. (Ulix) dated August 12, 2019 (Petitioner Rebuttal Brief) (Ningbo Master Rebuttal Brief) (Jingye Rebuttal Brief) (Ulix Rebuttal Brief).
[6] *See* Ningbo Master's Letter, "Refillable Stainless Steel Kegs from China- Hearing Request," dated July 2, 2019; s*ee also* Petitioner's Letter, "Refillable Stainless Steel Kegs from the People's Republic of China: Request for Hearing," dated July 3, 2019.
[7] *See* Petitioner's Letter, "Refillable Stainless Steel Kegs from the People's Republic of China: Withdrawal of Hearing Request," dated August 27, 2019; *see also* Ningbo Master's Letter, "Refillable Stainless Steel Kegs from China- Withdrawal of Hearing Request," dated August 27, 2019.

III. SCOPE COMMENTS

We invited parties to comment on Commerce's Preliminary Scope Decision Memorandum.[8] No parties commented. As such, we have adopted the preliminary scope decision and made no modifications to the scope language for this final determination.

IV. SURROGATE COUNTRY

In the *Preliminary Determination*, we treated China as a non-market economy (NME) country and calculated normal value in accordance with section 773(c)(1) of the Act. We selected Malaysia as the primary surrogate country, pursuant to section 773(c)(4) of the Act, because it is at the same level of economic development as China, because it is a significant producer of merchandise comparable to subject merchandise, and because of the availability and quality of Malaysian data for valuing FOPs.[9] No parties commented on Commerce's selection of the primary surrogate country in this investigation. For this final determination, we continue to treat China as an NME country and have continued to use Malaysia as the primary surrogate country.

V. SEPARATE RATES

In proceedings involving NME countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single AD deposit rate.[10] It is Commerce's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent to be entitled to a separate rate.[11]

In the *Preliminary Determination*, we found that, in addition to the individually investigated respondent, Jingye, Ulix, and Haishu, demonstrated their eligibility for separate rate status by providing information indicating that they operated free of *de jure* and *de facto* government control.[12] Based on the information on the record of this investigation, we continue to find that Jingye and Ulix are eligible for separate rates.

Haishu, however, withdrew its participation in this investigation and refused to participate in verification.[13] Sections 776(a)(1) and (2)(D) of the Act provide that, if necessary information is missing from the record, or if an interested party … provides such information but the

---

[8] *See* Memorandum, "Refillable Stainless Steel Kegs from the People's Republic of China, Germany, and Mexico: Scope Comments Decision Memorandum for the Preliminary Determinations," dated March 29, 2019 (Preliminary Scope Decision Memorandum).

[9] *See Preliminary Determination* PDM at 7-11.

[10] *See*, *e.g.*, *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), and *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).

[11] *See Certain Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 15365 (April 10, 2018), and accompanying Issues and Decision Memorandum (IDM) at 3.

[12] *See Preliminary Determination* PDM at 12-15.

[13] *See* Haishu Withdrawal Letter.

information cannot be verified, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. In addition, 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.

Because we were not able to verify Haishu's separate-rate application (SRA), we determine that Haishu has failed to demonstrate that it is entitled to a separate rate.

Neither the statute nor Commerce's regulations address how we are to determine the dumping margin for separate rate companies not selected for individual examination. Our practice in this regard has been to assign to separate-rate companies that were not individually examined a dumping margin equal to the average of the margins calculated for the individually examined respondents, excluding margins that are zero, *de minimis*, or based entirely on facts available.[14] If all dumping margins for the individually examined respondents are zero, *de minimis*, or based entirely on facts available, then we will use any reasonable method, including averaging the dumping margins for the individually examined respondents.[15] In the *Preliminary Determination*, we calculated a margin that was not zero, *de minimis*, or based entirely on facts available for Ningbo Master; however, for this final determination, we have calculated a margin that is zero for Ningbo Master. Consistent with the decision of the Court of Appeals for the Federal Circuit (CAFC) in *Changzhou Hawd Flooring CAFC*, we are assigning as the separate rate for the eligible non-selected respondents the rate we calculated for Ningbo Master, *i.e.*, zero percent.[16] Moreover, consistent with the decision of the Court of International Trade (CIT) in *Changzhou Hawd Flooring CIT*, we will not exclude the eligible non-selected respondents from the AD order in the event an order is instituted.[17]

VI. CHINA-WIDE RATE

For the final determination, we continue to base the China-wide rate on adverse facts available (AFA). In the *Preliminary Determination*, Commerce used as the China-wide dumping margin the rate of 208.16 percent, which was the highest model-specific dumping margin calculated in the *Preliminary Determination* for Ningbo Master.[18] As a result of changes we have made to Ningbo Master's margin calculation to reflect verification corrections and as a result of comments received (*see* discussion of comments below), the highest model-specific dumping margin for Ningbo Master is now 77.13 percent.[19] Thus, on the basis of AFA, for this final determination, the China-wide rate is 77.13 percent. Commerce is not required to corroborate

---

[14] *See*, *e.g.*, *Truck and Bus Tires from the People's Republic of China: Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*, 82 FR 8599 (January 27, 2017), and accompanying IDM at 7.
[15] *Id*.
[16] *See Changzhou Hawd Flooring Co. v. United States*, 848 F. 3d 1006 (*Changzhou Hawd Flooring CAFC)*
[17] *See Changzhou Hawd Flooring Co. v. United States*, 324 F. Supp. 3d 1317 (*Changzhou Hawd Flooring CIT*).
[18] *See Preliminary Determination* PDM at 16-17.
[19] *See* Memorandum, "Refillable Stainless Steel Kegs from the People's Republic of China: Final Analysis Memorandum for Ningbo Master International Trade Co., Ltd.," dated concurrently with this memorandum (Final Analysis Memorandum), at Antidumping Duty Margin Output.

this rate because it was obtained in the course of this investigation and, therefore, is not secondary information.[20]

VII. AFFIRMATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

Section 735(a)(3) of the Act provides that Commerce will determine that critical circumstances exist in an LTFV investigation if: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. Further, 19 CFR 351.206 provides that imports must increase by at least 15 percent during the "relatively short period" to be considered "massive," and defines a "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.[21] The regulation also provides, however, that if Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from that earlier time.[22]

In the *Preliminary Determination*, we noted that no parties made any claims regarding completed AD proceedings for kegs from China, and we are not aware of the existence of any active AD orders on certain kegs in other countries. As a result, Commerce did not find that there is a history of injurious dumping of refillable stainless steel kegs from China pursuant to section 733(e)(1)(A)(i) of the Act.[23]

To determine whether importers knew or should have known that exporters were selling at LTFV, Commerce typically considers the magnitude of dumping margins, including margins alleged in the petition.[24] Commerce has found margins of 15 to 25 percent (depending on whether sales are export price sales or constructed export price sales) to be sufficient for this purpose. The AFA rate of 77.13 percent applied to the China-wide entity is above that threshold, and thus, we conclude that importers knew or should have known that exporters were selling kegs from China at LTFV.

To determine whether importers knew or should have known that there was likely to be material injury, we typically consider the preliminary injury determination of the International Trade

---

[20] *See* section 776(c) of the Act ("when {Commerce} relies on *secondary information rather than on information obtained in the course of an investigation* or review, {Commerce}, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal (emphasis added)."). *See also, e.g.*, *Steel Concrete Reinforcing Bar from Taiwan: Final Determination of Sales at Less Than Fair Value*, 82 FR 34925 (July 27, 2017), and accompanying IDM at 5-6 and Comment 4.

[21] *See* 19 CFR 351.206(i).

[22] *Id*.

[23] *See Preliminary Determination* PDM at 32.

[24] *See, e.g.*, *Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504 (November 5, 2015).

Commission (ITC).[25] If the ITC finds a reasonable indication of material injury (rather than the threat of injury) to the relevant U.S. industry, we normally find that the ITC's determination provided importers with sufficient knowledge of injury.[26] Following the ITC's finding of material injury, we conclude that importers knew or should have known that there was likely to be material injury as a result of sales sold at LTFV.[27]

For this final determination, we continue to find that imports of subject merchandise for the China-wide entity were "massive" over a "relatively short period," as AFA, based on the China-wide entity's failure to cooperate by not acting to the best of its ability to comply with requests for information.[28]

In light of the dumping margins and the massive surge in imports, we find that critical circumstances exist for imports of kegs from the China-wide entity pursuant to sections 733(e)(1)(A) and (B) of the Act and 19 CFR 351.206.[29]

VIII. CHANGES SINCE THE PRELIMINARY DETERMINATION

We calculated U.S. price and normal value using the same methodology stated in the *Preliminary Determination*, except we used the U.S. sales and FOP databases that Ningbo Master submitted after the verification.[30]

IX. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES AND DOUBLE REMEDIES

In AD investigations where there is a concurrent countervailing duty (CVD) investigation, it is Commerce's normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent's weighted-average dumping margin to account for export subsidies found for each respective respondent 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."[31] In the concurrent CVD investigation, for the final determination, we are finding that export subsidies are included in the final subsidy rate for the mandatory respondent Ningbo Master.[32]

---

[25] *See, e.g., Certain Steel Wheels from the People's Republic of China: Final Determination of Sales at Less-Than-Fair-Value,* 84 FR 11746 (March 28, 2019), and accompanying IDM at 5-6.
[26] *Id*.
[27] *See Refillable Stainless Steel Kegs from China, Germany, and Mexico,* Inv. Nos. 70l-TA-610 and 73l-TA-1425-1427 (Preliminary), USITC Publication 4844, November 2018 at 1; *see also Refillable Stainless Steel Kegs From China, Germany, and Mexico*, 83 FR 56102 (November 9, 2018).
[28] *See Preliminary Determination* PDM at 34.
[29] *See* Memorandum, "Less-Than- Value Investigation of Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Critical Circumstances Massive Imports Analysis," dated concurrently with this memorandum.
[30] *See* Ningbo Master's Letter, "Refillable Stainless Steel Kegs from China – Response to Request for Revised Databases," dated July 16, 2019.
[31] *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.
[32] *See* unpublished *Federal Register* notice, "Refillable Stainless Steel Kegs from the People's Republic of China: Final Affirmative Countervailing Duty Determination, and Final Affirmative Determination of Critical Circumstances," signed October 17, 2019, and accompanying IDM.

As such, we find that it is appropriate to make an offset to the cash deposit rate in this LTFV investigation pursuant to section 772(c)(1)(C) of the Act for the China-wide entity.[33] Accordingly, we will apply an export subsidy offset to the estimated weighted-average LTFV margin assigned to the China-wide entity.[34]

In the *Preliminary Determination,* we made a domestic pass-through adjustment for stainless steel coils to account for the fact that Commerce made a preliminary affirmative determination of the Chinese government's provision for less than adequate remuneration (LTAR) in the concurrent CVD investigation of kegs from China using the preliminary subsidy rate for that program.[35] Because the subsidy rate for that program changed for the final determination of the concurrent CVD investigation of kegs from China,[36] we have updated our calculation of the domestic pass-through adjustment for stainless steel coils using the final subsidy rate.[37]

X. DISCUSSION OF THE ISSUES

A. Ningbo Master International Trade Co., Ltd.

Comment 1: Labor Surrogate Value

The Petitioner's Arguments:

- Commerce should not use the Malaysian labor data to value the labor factor of production. There is evidence that there are labor abuses and the use of forced labor in the Malaysian manufacturing sector that render the labor data distorted and unreliable.
- Commerce should rely on Brazilian data to value the labor FOP because the Malaysian labor data are unreliable in a significant part of Malaysia's manufacturing sector, which distorts the country's overall manufacturing wage rate.
- Despite Commerce's preference to use data from the primary surrogate country, Commerce's policy is that it will not use surrogate country data that is aberrational.[38]

---

[33] *See, e.g., Less-Than-Fair-Value Investigation of Rubber Bands from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 83 FR 45213 (September 6, 2018), and accompanying PDM at 11, unchanged in *Rubber Bands from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 58547 (November 20, 2018).

[34] As an offset for export subsidies for the China-wide entity, we will apply the total export subsidy amount applied to Ningbo Master in the CVD final determination (*i.e.*, 0.27 percent). *See 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 14 n.7. This is the same export subsidy offset applied to the separate rate companies for this final determination.

[35] *See Preliminary Determination* PDM at 28-31.

[36] *See* unpublished *Federal Register* notice, "Refillable Stainless Steel Kegs from the People's Republic of China: Final Affirmative Countervailing Duty Determination, and Final Affirmative Determination of Critical Circumstances," signed October 17, 2019, and accompanying IDM.

[37] *See* Memorandum, "Refillable Stainless Steel Kegs from the People's Republic of China: Final Double Remedy" dated concurrently with this memorandum.

[38] *See* Petitioner Case Brief at 19 (citing *Antidumping Duties; Countervailing Duties*, 62 FR 27296 (May 19, 1997) ("We agree that 'aberrational' surrogate input values should be disregarded."); *Globe Metallurgical, Inc. v. United States*, 28 CIT 1608, 1622 (CIT 2004) (citing *Notice of Final Results of Antidumping Duty Administrative Review of Silicomanganese from the People's Republic of China*, 65 FR 31514 (May 18, 2000); and *Mittal Steel Galati S.A. v.*

- The CIT has found that widespread labor abuses in an industry under consideration for a surrogate value may render the data from that industry aberrational and unreliable.[39] Commerce has stated that the existence of widespread labor abuses "may affect a determination as to whether potential surrogate value data constitute the best information available," particularly if "there is no affirmative evidence of systemic labor abuses…in other potential surrogate countries on the record."[40]
- The CIT has also addressed arguments that sociopolitical factors are inapposite to the selection of surrogate values, stating that Commerce is not being asked to "make socio-political determinations," but rather "asked to follow its own practice…to not use aberrational data."[41]
- The widespread use of forced labor in Malaysia's electrical and electronics sector renders the "overall manufacturing" wage data aberrational and unreliable.[42]
- The size of the electrical and electronics subsector means that the wage rates of the electrical and electronics subsector have a substantial impact on the average wage of Malaysia's overall manufacturing sector, thereby rendering that sector's labor data distorted, aberrational, and unreliable.
- Brazilian labor data constitute the best information available because there is no evidence of systemic labor abuses in Brazil's manufacturing industries; as such, the data are reliable and not aberrational.
- Commerce should find that the Brazilian data are superior to the Mexican Labor data because, unlike the available Brazilian data, the Mexican data do not appear to encompass both direct and indirect labor costs.

Ningbo Master's Rebuttal Arguments:

- The evidence submitted by the petitioner relate to Malaysian labor issues in the electronics industry only; there is nothing to suggest that it has influenced the overall manufacturing labor statistics to any noticeable degree. Further, the provided Brazilian labor rate appears aberrantly high.
- Nothing on the record supports a finding that the Malaysian labor rate is aberrantly or unreliably low due to labor issues. The case referenced by the petitioner, *Tri Union Frozen Prods. v. United States*, contained information not comparable to this instant case.
- The Malaysian rate best fulfills Commerce's preference for contemporaneous surrogate values because it is precisely contemporaneous with the POI. Additionally, Commerce has a strong preference to rely on all surrogate values from the same primary surrogate country; the petitioner has conceded that Malaysia provided better usable information and should be the primary surrogate country for this investigation.
- Commerce should continue to rely on the Malaysian labor rate. If Commerce considers an alternative, the Mexican labor rate provided by Ningbo Master should be used because it is

United States, 31 1121 (CIT 2007)).

[39] *See* Petitioner Case Brief at 19 (citing *Tri Union Frozen Prods. vs. United States*, 227 F. Supp. 3d. 1387 (CIT 2017).

[40] *Id.* at 21 (citing *Final Results of Redetermination Pursuant to Court Remand, Tri Union Frozen Prods. Inc. et. al., vs. United States,* Consol. Court No. 14-00249, Slip. Op. 17-71 (CIT June 13, 2017)," A-552-802, at 9 (July 26, 2017) (*Tri Union Frozen Prod. Remand Redetermination*) (emphasis original)).

[41] *Id.* at 20 (citing *Ad Hoc Shrimp Trade Action Comm.*, 219 F. Supp. 3d at 1299 (CIT 2017)).

[42] *Id.* at 22 (citing the Petitioner's Pre-Prelim Comments dated May 10, 2019 at section IV.A.2).

the best available information and is not less contemporaneous and specific than the Brazilian labor rate provided by the petitioner.

Commerce's Position: We disagree with the petitioner. We find that there is insufficient evidence on the record to find that the Malaysia labor rate is aberrational or unreliable such that we should reject it in favor of other labor rate information on the record.

Section 773(c)(1) of the Act states that "the valuation of the factors of production shall be based on the best available information regarding the values of such factors …." Commerce considers several factors when choosing the most appropriate surrogate values (SVs), including the quality, specificity, and contemporaneity of the data. As there is no hierarchy for applying these principles, Commerce must weigh available information with respect to each input value and make a product-specific and case-specific decision regarding the "best" SV for each input.[43] Therefore, when selecting SVs, we consider, among other factors, the quality, specificity, and contemporaneity of the SV data.[44] In addition, we prefer to value all FOPs based on data from the primary surrogate country.[45] In this investigation, we have three labor SVs on the record: from Malaysia,[46] from Brazil,[47] and from Mexico.[48] The Mexico SV is specific to "Manufacture of thick gauge metal tanks;"[49] the Malaysia and Brazil SVs are for "manufacturing."[50] The Malaysia SV is contemporaneous to the POI;[51] the Brazil and Mexico SVs are both from 2016, two years prior to the POI.[52]

With respect to the quality of the data, the Malaysia SV is from the primary surrogate country, while neither the Brazil SV nor the Mexico SV are from the primary surrogate country.[53] In addition, the source of the Mexico SV is INEGI.[54] We have previously found that "INEGI publishes different datasets that report the cost of labor, not the wage rate, and the difference between the two data sets demonstrates that the average U.S. dollar per hour labor cost in the

---

[43] *See Nation Ford Chem. Co. v. United States*, 166 F. 3d 1373 (Fed. Cir. 1999) at 1377 (the CIT affirmed that the statute does not define "best available information" and that Commerce is given "wide discretion in the valuation of factors of production in the application of those guidelines").
[44] *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.
[45] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011).
[46] *See* Ningbo Master's Letter, "Refillable Stainless Steel Kegs from China – Preliminary Surrogate Value Submission," dated February 19, 2019 (NM SV Comments 1), at Exhibit SV-4.
[47] *See* Petitioner's Letter, "Petitions for the Imposition of Antidumping Duties on Imports of Refillable Stainless Steel Kegs from Germany, Mexico, and the People's Republic of China and Countervailing Duties on Imports of Refillable Stainless Steel Kegs from the People's Republic of China," dated September 20, 2018 (the Petition), at Volume II, Exhibit PRC-AD-11.
[48] *See* Ningbo Master's Letter, "Refillable Stainless Steel Kegs from China - Final Surrogate Value Submission," dated April 29, 2019 (NM SV Comments 2), at Exhibit SV2-6.
[49] *Id*.
[50] *See* NM SV Comments 1 at Exhibit SV-4; and the Petition at Volume II, Exhibit PRC-AD-11.
[51] *See* NM SV Comments 1 at Exhibit SV-4.
[52] *See* the Petition at Volume II, Exhibit PRC-AD-11; and NM SV Comments 2 at Exhibit SV2-6.
[53] *See Preliminary Determination* PDM at 11.
[54] *See* NM SV Comments 2 at Exhibit SV2-6.

Mexican chemical industry is US$7.70/hour, whereas the INEGI wage rate submitted by the respondents is only US$4.10/hour ... In this regard, we agree with the petitioners that this provides reasonable evidence that the data submitted by respondents do not represent full labor costs as both sources of data are published by the INEGI."[55] In this investigation, it is not clear from the record which of the INEGI data sets Ningbo Master placed on the record; Ningbo Master submitted only a worksheet and, although the worksheet references a website, we do not have on the record of this investigation the contents of that website or any underlying database.[56] Because we cannot ascertain whether the Mexico SV represents full labor costs, we determine that it would be inappropriate to rely on the Mexico SV to value Ningbo Master's labor FOPs in this investigation.

Accordingly, we must select from the Malaysia SV or the Brazil SV the data that represent the best available information for valuing Ningbo Master's labor FOPs in this investigation. As discussed above, the Malaysia SV can be distinguished from the Brazil SV in that it is both from the primary surrogate country and is fully contemporaneous with the POI. Thus, the only reason we might select the Brazil SV over the Malaysia SV is if record evidence demonstrates that the Malaysia SV is aberrational, distorted, or unreliable.

The petitioner alleges that the Malaysia SV is aberrational and is distorted by the presence of forced labor.[57] Specifically, the petitioner alleges that forced labor is used in Malaysia's electrical and electronics (E&E) sector, which it claims accounts for a significant portion of Malaysia's manufacturing sector.[58]

Where evidence establishes widespread forced labor, child labor, or systematic labor abuses, we expect to take full account of such evidence in determining whether the SV is the best information available. We have examined the evidence on the record in this case and we find the record is not clear regarding the extent to which forced labor is a factor in Malaysia's manufacturing sector. For example, the petitioner cites a report produced in 2014 by Verité, a global non-governmental organization, to claim that forced labor occurred in significant numbers in Malaysia's E&E industry.[59] While the Verité Report states that its study "suggests that forced labor is present in the Malaysian electronics industry and can be characterized as widespread," the Verité Report indicates that it is based on a sample of 501 workers in Malaysia's E&E industry, and that 28 percent of the workers in its study were found to be in situations of forced labor and an additional 46 percent of the workers in its study were deemed to be "on the threshold" of forced labor.[60] We cannot conclude that data developed from the sample are applicable across the E&E sector in a manner that indicates that a similar proportion of workers in Malaysia's E&E industry as a whole were in situations of forced labor as were identified in

[55] *See Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 5243 (February 6, 2018), and accompanying IDM at 17.
[56] *See* NM SV Comments 2 at Exhibit SV2-6.
[57] *See* Petitioner Case Brief at 22-26.
[58] *Id*.
[59] *See* Petitioner's Letter, "Refillable Stainless Steel Kegs from the People's Republic of China: Rebuttal and Other Surrogate Value Information," dated March 1, 2019 (SV Rebuttal) at Exhibit 3 (Verité Report).
[60] *Id*.

the study. Neither would it be appropriate to conclude that the findings of this report apply more broadly across the manufacturing sector.

The other evidence on the record, which the petitioner cites in its case brief, similarly does not address or demonstrate how pervasive forced labor may be in Malaysia's E&E industry. For example, the petitioner cites a 2018 report from the U.S. Department of Labor which indicates that forced labor is used in Malaysia's E&E industry.[61] However, neither this report nor any other information on the record provide any indication of the extent to which forced labor occurs in Malaysia's E&E industry.[62]

In addition, the petitioner contends that Malaysia's E&E industry accounts for a significant part of Malaysia's manufacturing sector. To support its argument, the petitioner relies on yet other information sources to claim that Malaysia's E&E industry accounts for almost a third of the workers in Malaysia's overall manufacturing sector in 2016, and for substantial proportions of exports and manufacturing value added.[63] It is not clear why we would consider the proportion of exports or manufacturing value added in evaluating whether a labor SV is aberrational or distorted. With respect to the number of workers, the figures the petitioner cites in its case brief come from two different sources which are not necessarily comparable.[64]

That said, even if we were to assume that the number of workers employed in Malaysia's E&E sector as a percentage of the total workers in Malaysia's overall manufacturing sector is correct, and that the proportion of workers affected by forced labor conditions, based on the Verité Report, is representative (an assumption not supported, as noted above, by the Verité Report itself), it would indicate that less than one-tenth of the workers in Malaysia's overall manufacturing sector is implicated by forced labor. Given this circumstance, we find that the record does not demonstrate that the forced labor in Malaysia's E&E industry implicates the Malaysia SV to the extent that we must reject it because it is aberrational or distortive, such that it cannot be considered the best information available given the other information on the record.

Although the petitioner relied on our remand redetermination in an administrative review of certain frozen warmwater shrimp from the Socialist Republic of Vietnam,[65] that case is distinguishable in that the record in that review contained information, specific to the shrimp industry itself, that documented forced labor conditions permeating the entire supply chain of the Bangladesh shrimp industry. In addition, the record of that review contained evidence, from multiple sources, identifying pervasive labor abuses throughout each stage of the Bangladesh shrimp industry.[66] This information rendered the labor SV, which was based precisely on the Bangladesh shrimp industry, aberrational and unreliable.[67] Thus, in contrast to this investigation,

[61] *See* SV Rebuttal at Exhibit 1.
[62] *Id*.
[63] *See* Petitioner's Case Brief at 25-26.
[64] *See* NM SV Comments 1 at Exhibit SV-4; and SV Rebuttal at Exhibit 8.
[65] *See Final Results of Redetermination Pursuant to Court Remand, Tri Union Frozen Products, Inc. et. al., v. United States*, Consol. Court No. 14-00249, Slip Op. 17-71 (CIT June 13, 2017), at 6.
[66] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2012– 2013*, 79 FR 57047 (September 24, 2014), and accompanying IDM at 44.
[67] *See Tri Union Frozen Prods. v. United States*, 227 F. Supp. 3d 1387 (CIT 2017).

in which the Malaysian labor rate data available on the record are for the "manufacturing sector" writ large, the labor SV in that review was implicated in its entirety by abusive labor practices.

Accordingly, for this final determination, we have continued to use the Malaysia SV to value Ningbo Master's labor FOPs because it is from the primary surrogate country, is contemporaneous with the POI, and the record does not indicate that the Brazil SV is the best information available when compared to the Malaysia SV due to the presence of forced labor in one subsector of Malaysia's manufacturing sector.

Comment 2: Surrogate Financial Ratio Calculations

The Petitioner's Arguments:

- Commerce should revise its surrogate financial ratio calculations based on the financial statement of HS Heng Seng Metal Sdn Bhd (Heng Seng).
- Commerce should deduct Heng Seng's reported expenses for "directors' emoluments" and "directors' benefits-in-kind" and reclassify those expenses as selling, general, and administrative expenses (SG&A) because it is unlikely that the company's directors are involved in the production of Heng Seng's merchandise.
- Commerce's practice in calculating the SG&A ratio is to include expenses and revenues relating to general operations of the company versus expenses/revenues for subject merchandise because they relate to the general operations of the company as a whole and not to specific products and processes."
- Directors' "emoluments" and "benefits-in-kind" are exactly the types of expenses that relate to a company's general operations and not to its production.

Ningbo Master did not rebut this argument.

Commerce's Position: While we agree that "directors' emoluments" and "directors' benefits-in-kind" are properly classified as SG&A, we disagree that an adjustment is necessary to the SG&A ratio we calculated using Heng Seng's 2018 financial statement. The income statement indicates four categories of expenses that are deducted from revenue and other income to obtain the profit before tax: cost of sales, administrative expenses, other operating expenses, and finance costs.[68] Note 20 of Heng Seng's financial statement indicates a number of expenses that are recognized before determining the profit before tax; two of these expenses are "directors' emoluments" and "directors' benefits-in-kind."[69] However, note 20 does not indicate whether these expenses – or any of the other expenses described therein – are to be found in cost of sales, administrative expenses, other operating expenses, and finance costs. For the reasons petitioner cited in its argument, we would expect that, were we able to examine Heng Seng's 2018 trial balance, we would find that "directors' emoluments" and "directors' benefits-in-kind" would be among the pool of expenses constituting administrative expenses that we used in calculating the SG&A ratio; certainly, there is no information on the record indicating these expenses were included in Heng Seng's cost of sales. Absent such evidence, we find it reasonable to assume they are recorded in Heng Seng's administrative expenses and that no adjustment is necessary.

[68] *See* Ningbo Master's Letter, "Refillable Stainless Steel Kegs from China - Final Surrogate Value Submission," dated April 29, 2019, at Exhibit SV2-4, page 12.
[69] *Id*. at Exhibit SV2-4, page 33.

Accordingly, for this final determination, we continue to use the surrogate financial ratios we used in the *Preliminary Determination*.

Comment 3: VAT Adjustment

The Petitioner's Arguments:

- Commerce should revise Ningbo Master's VAT adjustment because its claimed VAT refund was based on an improper tariff classification and it distorts the VAT adjustment.
- The facts of this investigation warrant further review. The record makes clear that Ningbo Master declares its exports under an inapplicable Harmonized Tariff Schedule (HTS) subheading because doing so allows it to enjoy a significant VAT windfall from the Chinese government. This windfall, in turn, results in a far more favorable export price adjustment in Ningbo Master's dumping calculation.
- The facts establish that Ningbo Master: (1) claimed a VAT rebate larger than that to which it was entitled using a proper customs classification; and (2) is now using that artificially large rebate to minimize the downward adjustment to its export prices.
- Relying on Ningbo Master's reported VAT rebates in this investigation does not result in a true "tax-neutral" dumping comparison as envisioned by the statute and Commerce's policy,[70] and instead authorizes companies to use illicit practices to distort the costs that are borne by their U.S. customers.[71]
- Instead, Commerce should rely on facts otherwise available to calculate Ningbo Master's VAT adjustment using the weighted-average irrecoverable VAT rates that normally apply to keg exports, *i.e.*, HTS 7310.10.00, 7310.29.10, and 7310.29.90.

Ningbo Master's Rebuttal Arguments:

- Commerce should not revise Ningbo Master's VAT adjustment and instead continue to rely on the amounts reported, as they are based on the actual VAT refund rates.
- The petitioner makes the same argument that Commerce already considered in the *Preliminary Determination*,[72] and the petitioner's arguments are unsupported by the record. Further, they request that Commerce override the Chinese government's classification and VAT refund rate, a practice contrary to Commerce's normal position.
- Commerce examined the VAT refunds at verification and found that Ningbo Master exported its kegs under HTS number 8438.90.00, which is used in China and accepted by the Chinese authority, and that Ningbo Master did obtain its actual VAT refund based on that specific HTS.
- The Chinese government does not consider Ningbo Master's kegs to be mere steel containers (potentially classified under HTS 7310.10 or 7310.29); instead, because the kegs are sold

[70] *See* Petitioner Case Brief at 32 (citing *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 36483 (June 19, 2012) (*Methodological Change*)).

[71] *Id.* at 33 (citing *Certain Steel Racks and Parts Thereof from the People's Republic of China: Final Affirmative Determination of Less Than Fair Valu*e, 84 FR 35595 (July 24, 2019), and accompanying IDM at 25 (explaining that irrecoverable VAT "must be borne by the exporter's customer, *i.e.*, implicitly embedded in the export price charged to the exporter's customer")).

[72] *See* Ningbo Master Rebuttal Brief at 1 (citing *Preliminary Determination* PDM at 23).

with the spears installed, they are considered other machinery for preparation or manufacture of food or drink, and the kegs could not otherwise be filled without both parts. Therefore, the Chinese government determined that HTS 8438.90 is the most appropriate to classify Ningbo Master's kegs.

- It is Commerce's practice to adjust export prices based on actual costs/expenses realized by the respondent in the normal course of business operation, which is the China HTS classification.[73] Commerce verified the actual VAT percentage paid by Ningbo Master on this record and must rely upon it, consistent with its practice and the intent of the statute.
- The petitioner's argument to rely on facts otherwise available for the VAT rebate amount is not applicable as there is no information missing from the record.

Commerce's Position: Because the parties do not express an issue with Commerce's VAT methodology, we are addressing here the parties' comments with respect to the applicable VAT rates. We continue to adjust Ningbo Master's U.S. price for irrecoverable VAT using the same methodology relied upon in the *Preliminary Determination* because we verified that the VAT rates and refund rate reported were the actual rates incurred by Ningbo Master during the POI.[74]

Commerce requested that Ningbo Master report its net un-refunded VAT for the subject merchandise. Ningbo Master reported that it used HTS 8438.90.00 for exports during the POI and that the official VAT rate for exports of subject merchandise was 17 percent from January 1, 2013 to April 30, 2018, and 16 percent from May 1, 2018 to October 31, 2018. The VAT refund rate was 15 percent during the POI, under the applicable Chinese regulations.[75]

Because we confirmed that Ningbo Master's VAT payable and refund rate were for merchandise under HTS 8438.90.00 during the POI, we disagree with the petitioner that other irrecoverable VAT rates should be used for the adjustment.[76] The record demonstrates that Ningbo Master actually incurred an effective VAT rate of two percent on exports of domestically produced kegs before the change in the VAT rate, and an effective VAT rate of one percent after the change in the VAT rate. Consistent with our standard methodology and *Preliminary Determination*, we calculate irrecoverable VAT on the difference between those standard rates, applied to a free-on-board price at the time of exportation.[77] Contrary to the petitioner's arguments, this is consistent with Commerce's policy and the intent of the statute, that dumping comparisons be conducted on the basis of tax-neutral prices.[78]

---

[73] *Id.* at 3 (citing *Methodological Change*, 77 FR at 36481).
[74] *See Preliminary Determination* PDM at 22-23.
[75] *See* Ningbo Master sections C and D response dated February 5, 2019, at C-38, 39; *see also* Ningbo Master's Letter, "Refillable Stainless Steel Kegs from China- Third Supplemental Questionnaire Response," April 30, 2019, at 1-2.
[76] *See* Verification Report at 15 and VE-21.
[77] *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013*, 80 FR 33241 (June 11, 2015), and accompanying IDM at Comment 5.
[78] *See Methodological Change* (citing *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27369 (May 19, 1997); and Statement of Administrative Action Accompanying H.R. 5110, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994), at 827; *see also Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Results of Antidumping Administrative Review*; *2011-2012*, 78 FR 78333 (December 26, 2013), and accompanying PDM, unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's*

Comment 4: Minor Corrections

The Petitioner's Arguments:

- Commerce should reject Ningbo Master's corrections for input consumption presented at verification, and instead, continue to rely on the original consumption figures used in the *Preliminary Determination*.
- The impact of these "corrections" on Ningbo Master's margin is material because incorporating the changes would result in a *de minimis* dumping margin.
- Because of the magnitude of changes presented at verification in the company's reported consumption of drawing oil, cleaning agent, and oil removal agent, they cannot be characterized as "minor" and should be rejected on those grounds alone.[79]
- Commerce has explicitly characterized such a movement across the *de minimis* threshold as "meaningful."[80] Therefore, Commerce must consider this significant impact when considering whether to accept these purportedly "minor," non-"material" corrections for use in the final determination.
- There is no evidence that Commerce reconciled these "corrected" consumption figures to Ningbo Master's accounting system as it did for other material inputs.[81] Accordingly, there is no reason to consider the "corrections" proposed by Ningbo Master to be verified.

Ningbo Master's Rebuttal Arguments:

- Commerce has accepted these minor corrections and should calculate the most accurate dumping margins, which include these minor corrections.
- The petitioner's characterization of these inputs does not change the fact that these are minor inputs with minor consumption corrections. These corrections have only a minor impact on the dumping margin itself and given that Ningbo Master's preliminary dumping margin is 2.01 percent, multiple changes could move the margin to *de minimis*.
- *Welded Non-Alloy Steel Pipe from Korea* is not comparable to this case; the discussion in that case was with respect to what was considered "meaningful" in the context of the differential pricing methodology used in the margin calculation.
- Commerce's practice is not to evaluate minor corrections based on magnitude or impact on the final margin calculation.
    - Commerce defines a minor correction as minor mistakes in arithmetic, clerical error, inaccurate duplication or the like, and minor classification errors.[82]
    - Commerce's practice is to evaluate each minor correction based on the relevant facts and circumstances of the particular proceeding, and to examine the nature of the underlying

---

Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 37715 (July 2, 2014), and accompanying IDM at Issue 9.

[79] *See* Petitioner Case Brief at 42 (citing Verification Report at 19-20).

[80] *Id.* at 41; *see also* Ningbo Master Rebuttal Brief at 5 (citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 26401 (June 6, 2019) (*Welded Non-Alloy Steel Pipe from Korea*)).

[81] *See* Petitioner Case Brief at 42 (citing Verification report at 19-20).

[82] *See* Ningbo Master Rebuttal Brief at 6 (citing *Fine Denier Polyester Staple Fiber from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 26401 (June 6, 2019), and accompanying IDM at Comment 4).

errors and the effect of the errors on the validity of the submission;[83] this approach has been upheld by the CIT.[84]

- Commerce examined these minor input consumption corrections at verification and properly found they were minor errors that were verifiable and did not affect the validity of the submission, and accepted the corrections.

Commerce's Position: We accepted the information that Ningbo Master presented at verification as minor corrections. These inputs and their consumption quantities were corrected at verification and they were subject to verification. At verification, we chose other inputs to examine and we found no discrepancies.[85] The CIT and the CAFC (collectively, the Courts) have found that it is feasible and appropriate for respondents to disclose at verification the discovery and the correction of similar errors.[86] Moreover, the Courts have held that the effect of correcting an error does not transform a minor correction into substantial new factual information.[87] Accordingly, for this final determination, we have used the U.S. sales and FOP databases that incorporate the corrections submitted by Ningbo Master at the start of verification and that were submitted by Ningbo Master after the completion of verification.

Comment 5: Alleged Pre-POI Sale

Ningbo Master's Arguments:

- Commerce should remove observation number 1 from Ningbo Master's U.S. sales database for the purposes of its final margin calculation.
- As verified by Commerce, this observation represents a replacement order due to a customer's quality claim from a sale prior to the POI.
- The customer did not make a payment for this replacement order.
- Regarding this transaction, Commerce took as a verification exhibit the e-mail communication negotiating the replacement keg order.
- Accordingly, this shipment does not represent a POI sale, but is from prior to the POI and should be excluded from Commerce's final calculations.

The Petitioner's Rebuttal Arguments:

- Commerce should not remove observation number 1 from its final margin calculation.
- The evidence on the record of this investigation, taken as a whole, indicates that observation number 1 was a POI sale rather than a quality claim from a sale prior to the POI.

[83] *Id.* at 6 (citing *Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 39940 (July 11, 2008), and accompanying IDM at Comment 6).
[84] *Id.* at 6 (citing *Coalition for the Preservation of Am. Brake Drum & Rotor Aftermarket Mfrs. vs. United States*, 44 F. Supp. 2d 229, CIT).
[85] *See* Memorandum, "Verification of the Questionnaire Responses of Ningbo Master International Trade Co., Ltd. in the Antidumping Investigation of Refillable Stainless Steel Kegs from the People's Republic of China," dated July 25, 2019, at 18-21.
[86] *See, e.g.*, *Goodluck India Limited v. United States*, Court No. 18-00162, Slip Op. 19-110 (CIT 2019) (*Goodluck India*) at 23; and *NTN Bearing Corp. v. United States*, 74 F. 3d 1204, 1208–09 (Fed. Cir. 1995) (*NTN Bearing*).
[87] *See, e.g.*, *Goodluck India*; and *NTN Bearing*.

Commerce's Position: The evidence on the record of this investigation is not sufficient to demonstrate that observation number 1 represents a replacement of merchandise sold prior to the POI.[88] Specifically, the email correspondence that was provided during verification and that Ningbo Master argues represents the negotiation of the replacement order does not conclusively support a determination that the observation is for a sale prior to the POI. The commercial invoice in observation number 1 traced to Ningbo Master's 2018 Income Statement.[89] Consistent with 19 CFR 351.401(i) and the *Preliminary Determination*,[90] we have determined to use the commercial invoice date as the date of sale for determining the sales for which to calculate a dumping margin. As such, we continue to include observation number 1 in our margin calculation for this final determination.

Comment 6: Proprietary Adjustment

Ningbo Master's Arguments:

- Commerce should change how it calculated a particular adjustment to U.S. price. Because this argument relies heavily on the discussion of business proprietary information, *see* the Final Analysis Memorandum for a summary of Ningbo Master's argument.[91]

The Petitioner's Rebuttal Arguments:

- Commerce should not change how it calculated this adjustment. Because this argument relies heavily on the discussion of business proprietary information, *see* the Final Analysis Memorandum for a summary of the petitioner's argument.

Commerce's Position: We have not changed our calculation of this particular adjustment. Because our position relies heavily on the discussion of business proprietary information, *see* the Final Analysis Memorandum for a full discussion of this issue.

Comment 7: Spear Surrogate Value

Ningbo Master's Arguments:

- Commerce should value spear inputs using HTS number 7326.90.9990.
- The HTS number Commerce used for the *Preliminary Determination*, 8481.30, is not the correct classification for spears because this HTS number covers check valves.
  - Spears are fundamentally not valves; a spear is a long and narrow metal draw tube through which pressure can enter the keg and drive the beer to the tap, and it has to be connected to a dispenser or refill equipment to release or refill beer.
  - A check valve closes to prevent backward flow of liquid; spears do not prevent backward flow.
- The explanatory notes to heading 8481 of the HTS of the United States (HTSUS) indicate that this chapter covers devices and parts that regulate pressure or flow velocity.

[88] *See* Verification Report at Exhibit 10.
[89] *Id.*
[90] *See Preliminary Determination* PDM at 19.
[91] *See* Final Analysis Memorandum.

- A spear does not regulate pressure or flow, but is an independent part that can be attached to a device that regulates pressure or flow.

- The proper classification for spears is HTS number 7326.90.9990.
  - U.S. Customs and Border Protection (CBP) has made a ruling concerning five different types of stainless steel spears for beer kegs and classified each under HTSUS 7326.90.9090.[92]
  - The explanatory notes to heading 7326 of the HTSUS indicates that this chapter covers all iron or steel articles obtained by forging or punching, by cutting or stamping or by other processes such as folding, assembling, welding, turning, milling or perforating other than articles included in other chapters.
- In the alternative, if Commerce does not agree that 7326 is the proper classification, it should use HTS number 8481.90.39, which is more specific than the HTS number Commerce used for the *Preliminary Determination*.
  - HTS number 8481.90.39 covers taps, cocks, valves and similar appliances for pipe parts: valves bodies or stems of inner tube or tubeless; other than of copper or copper alloys.
  - This is a broader category of pipe parts or stems, which is more similar to the spear than a complete valve.[93]
  - Ningbo Master actually imported spears from market-economy sources under HTS number 8481.90.90 during the POI.

The Petitioner's Arguments:

- Commerce should continue to use HTS number 8481.30 for spears.
- The Petition explains the definition of D system extractors, also known as spears, as containing "two concentric, spring-loaded valves," whereby gas pressure "can be applied through the outer valve to force the beer up the downtube and through the inner valve to the dispense point."[94]
  - Thus, spears are check valves because liquid can go in only one direction at a time.
- Ningbo Master's request that Commerce utilize values from the HTS number 7326.90.9990 is particularly unwarranted given the record of this proceeding.
  - Ningbo Master stated that it imported spears under HTS number 8481.90.90.
  - Ningbo Master has proposed an incredibly unspecific "Other, Other, Other, Other, Other" catchall HTS category that does not accurately reflect Ningbo Master's spear input.[95]
  - Ningbo Master does not attempt to explain the link between HTS number 7326.90.9990 and the spears it purchased and utilized.
  - Ningbo Master does not reconcile the CBP classification ruling it cited with the fact that it imports spears into China using the 8481 HTS heading.
- Ningbo Master's alternative suggestion that Commerce use HTS number 8481.90.30 is inappropriate because it includes valve parts rather than complete assemblies.
  - The CBP ruling cited by Ningbo Master indicated that, when a valve is imported as a complete assembly, the appropriate HTS classification is 8481.30, and if a valve assembly is imported as discreet pieces, it is categorized under 8481.90.

[92] *See* NY Classification 892695 (December 13, 1993).
[93] *See* NY Classification J87398 (August 8, 2003).
[94] *See* the Petition, at Volume I, page 14.
[95] *See* Ningbo Master Case Brief at 12 and footnote 46.

- The evidence on the record demonstrates that Ningbo Master's spears are sold as complete valve assemblies rather than discrete parts.
- Thus, the appropriate HTS subheading to value Ningbo Master's spear input is 8481.30.

Commerce's Position: With respect to HTS number 7326.90.9990, Ningbo Master's argument rests largely on its assertion that a spear is "fundamentally not a valve."[96] However, the Petition describes spears of the type used in subject merchandise to "have a replaceable bi-directional valve unit which is inserted into the neck of a keg and extends to the bottom of the keg body to allow for the liquid to be extracted"; that a spear "contains two concentric, spring-loaded valves," that gas pressure "can be applied through the outer valve to force the beer up the downtube and through the inner valve to the dispense point," and may "also be referred to as a 'closure' or 'valve.'"[97] As the petitioner notes, HTS number 7326.90.9990 is not specific to any particular product and is essentially defined by what it does not include (*e.g.*, not ships' rudders or spouts and cups for latex collection).[98] By contrast, the description of HTS number 8481.30 is "Check Valves."[99] Based on these descriptions, we conclude that the description of HTS number 8481.30 is closer to the description of spears in the Petition than is the description of HTS number 7326.90.9990. Accordingly, we continue to find that HTS number 8481.30 is a more appropriate HTS number to use to value necks than HTS number 7326.90.9990. With respect to the CBP ruling cited by Ningbo Master, we find that the CBP ruling is not dispositive with respect to the spears Ningbo Master used in the production of subject merchandise. Because our analysis with respect to the CBP ruling is proprietary, *see* the Final Analysis Memorandum for a more detailed discussion of this issue.

We also disagree with Ningbo Master's suggestion that, in the alternative, we use HTS number 8481.90.39 to value spears. While it is true that Ningbo Master reported its market-economy purchases of spears under HTS number 8481.90.90, there is other data on the record which conflicts with what Ningbo Master reported. Because our identification of this other data is proprietary, *see* the Final Analysis Memorandum for a more detailed discussion of this issue. Accordingly, because, based on the record, we are unable to accurately determine the proper HTS category, as facts available pursuant to section 776(a)(1) of the Act, we continue to use HTS number 8481.30 rather than 8481.90.39 to value spears for this final determination because the former HTS number describes complete assemblies, whereas the latter HTS number describes parts.

Comment 8: Neck Surrogate Value

Ningbo Master's Argument:
- Commerce should value neck inputs using HTS number 7326.90.9990.

[96] *See* Ningbo Master Case Brief at 3.
[97] *See* the Petition at Volume I, page 14.
[98] *See* Petitioner Case Brief at 12 and footnote 46.
[99] *See* Memorandum, "Refillable Stainless Steel Kegs from the People's Republic of China: Surrogate Values for the Preliminary Affirmative Determination of Sales at Less Than Fair Value," dated May 28, 2019 (Preliminary SV Memo), at Exhibit 2, "Products_Extract" tab.

- The HTS number Commerce used for the *Preliminary Determination*, 7307.29, is not the correct classification for necks because this HTS number covers stainless steel tube or pipe fittings.
  - The explanatory notes to heading 7307 indicate that such products are mainly used for connecting the bores of two tubes together, or for connecting a tube to some other apparatus, or for closing the tube aperture.
  - Ningbo Master's keg neck does not meet this definition, as it is not a kind of tube or pipe fitting, and are not installed or connected to pipes.
- The proper classification for necks is HTS number 7326.90.9990.
  - This HTS number covers other articles of iron or steel that are not otherwise specified or included in the other HTS numbers under HTS 7326.90.

The Petitioner's Rebuttal Argument:
- Commerce should continue to use HTS number 7307.29 for necks.
- Ningbo Master's proposed category is an unspecific basket category.
  - This category, as defined, is on its own terms not specific to any product of iron and steel.
  - Ningbo Master is claiming that a subheading that encompasses products other than bunsen burners, horseshoes, and riding boots spurs is more specific and that there is not a subheading that covers necks.
  - The only support provided for this claim is Ningbo Master's assertion that a neck cannot be considered a kind of tube or pipe fitting.
- The Petition defines necks as short, tubular stainless steel fittings that are welded to the dispense point at the top of the keg body and houses the extractor.
- Given that Commerce's choices on the record of this proceeding are whether to rely on a HTS subheading for Stainless Steel Tube or Pipe Fittings to value a "short, tubular, stainless steel fitting" or to rely on a HTS subheading that encompasses a broad range of carbon and alloy steel products, it is appropriate to use HTS number 7307.29 to value necks.

Commerce's Position: The Petition defines a neck as a "short, tubular stainless steel fitting that is welded to the dispense point at the top of the keg body and houses the extractor."[100] The description of HTS number 7303.29 is "Stainless Steel Tube Or Pipe Fittings Nesoi."[101] As the petitioner notes, HTS number 7326.90.9990 is not specific to any particular product and is essentially defined by what it does not include (*e.g.*, not ships' rudders or spouts and cups for latex collection).[102] We conclude that the description of HTS number 7303.29 is closer to the description of necks in the Petition than is the description of HTS number 7326.90.9990. Accordingly, we continue to find that HTS number 7303.29 is a more appropriate HTS number to use to value necks than HTS number 7326.90.9990.

[100] *See* the Petition, Volume I, page 15.
[101] *See* Preliminary SV Memo at Exhibit 2, "Products_Extract" tab.
[102] *See* Petitioner Case Brief at 12 and footnote 46.

B. Separate Rate Eligibility

Comment 9: Ningbo Haishu Direct Import and Export Trade Co., Ltd.

The Petitioner's Arguments:
- Commerce should deny Haishu's request for a separate rate because Haishu refused verification of its application of a separate rate.
- Commerce should determine that critical circumstances exist with respect to Haishu as part of the China-wide entity.

Haishu did not rebut these arguments.

Commerce's Position: As described in the "Separate Rates" section, above, Haishu refused verification of its separate-rate application. Accordingly, we determine that Haishu is not eligible for a separate rate and is, therefore, part of the China-wide entity. Moreover, because we found critical circumstances with respect to the China-wide entity on the basis of AFA,[103] we determine that critical circumstances exist with respect to Haishu as part of the China-wide entity.

Comment 10: Guangzhou Jingye Machinery Company, Ltd.

The Petitioner's Arguments:
- Jingye failed to demonstrate its eligibility for a separate rate and should be required to make cash deposits at the rate established for the China-wide entity. Because of the proprietary nature of the petitioner's argument, *see* the Separate Rate Analysis Memorandum for a complete summary of the petitioner's arguments. [104]
- Jingye cannot affirmatively demonstrate lack of *de jure* government control because another company was involved in its export activities.
- Although Jingye asserts otherwise, evidence suggests that it is the successor of Guangzhou Heshun Machinery Hardware Company, Ltd. (GZ Heshun Keg). Jingye failed to provide information concerning GZ Heshun Keg that would rebut the presumption of *de facto* government control over its exports. Moreover, the petitioner provided evidence that Jingye as the successor is now the primary supplier of kegs to a company whose owner maintains supposed ties to the state-owned China Railway construction company.
- The information about Jingye as a whole is unclear, inconsistent or false. Jingye has portrayed itself as a small company when supporting evidence suggests otherwise.[105]

Jingye's Rebuttal Argument:
- Jingye argues that Commerce properly granted Jingye a separate rate in the *Preliminary Determination*, and should continue to do so for the Final Determination.
- It is a normal business practice in China to hire an agent to handle the export-related auxiliary work such as the customs declaration.

[103] *See Preliminary Determination* PDM at 34.
[104] *See* Memorandum, "Refillable Stainless Steel Kegs from the People's Republic of China: Separate Rate Analysis Memorandum," dated concurrently with this memorandum (Separate Rate Analysis Memo).
[105] *Id.* at 11.

- The sales documents in Exhibit 4 support Jingye's identity as the exporter. The bank receipt displays that the payee's address is Jingye's address.
- There is no record evidence to suggest that Jingye was involved with the government or somehow is the legal successor of GZ Heshun Keg such that Jingye was required to provide full documentation regarding GZ Heshun Keg's ownership.
- Contrary to the petitioner's assertions, Jingye provided complete information to support its eligibility for a separate rate, and the size of the company is not relevant to Commerce's evaluation of government control.

Commerce's Position: We continue to find that the evidence on the record of this investigation supports a finding of the absence of *de facto* and *de jure* government control for Jingye based on record statements and supporting documentation. Specifically, the record demonstrates that Jingye is the exporter of subject merchandise for which it independently negotiated the sales transaction, issued the commercial invoice and packing list to the U.S. customer, and is the exporter listed on the bill of lading.[106] We agree with Jingye that the use of a trade agent to perform export-related auxiliary work does not demonstrate that Jingye is not the *de jure* or *de facto* exporter of subject merchandise. Nor does it detract from a finding that Jingye is eligible for a separate rate.

With respect to GZ Heshun Keg, the record demonstrates that this company is a separate legal entity from Jingye. GZ Heshun Keg applied for a registration cancellation in August 2015 and ceased operations before the POI.[107] Because Jingye is the exporter and separate rate applicant during the POI, we determined it unnecessary to examine GZ Heshun Keg and its management for evidence of government control. Finally, because company size is not a criterion for evaluating *de fact*o or *de jure* government control, we find that the petitioner's argument is not relevant to our determination of government control. Accordingly, we continue to find Jingye has demonstrated its eligibility for a separate rate.

Comment 11: Guangzhou Ulix Industrial & Trading Company, Ltd.

The Petitioner's Arguments:
- Commerce should find that Ulix failed to demonstrate the absence of *de facto* government control and should instead conclude that Ulix is a part of the China-wide entity, and not entitled to a separate rate. Because of the proprietary nature of the petitioner's argument, *see* the Separate Rate Analysis Memorandum for a complete summary of the petitioner's arguments.
- Ulix failed to provide information regarding how it sets prices for sales of subject merchandise to an unaffiliated U.S. customer and, as a result, it fails to affirmatively demonstrate the absence of *de facto* government control over its export activities.

[106] *See* Jingye SRA, dated November 21, 2018, at 8-9, Exhibits 4 and 8.
[107] *See* Jingye SRA supplemental questionnaire response, dated December 18, 2018, at 3 and at "Attachment."

Ulix's Rebuttal Arguments:

- Ulix has provided documentation to support that it is not affiliated with its U.S. customer. The petitioner's comments are conjecture and do not prove a relationship between the companies.
- Commerce should continue to find based on substantial evidence on this record that Ulix is eligible for a separate rate.

Commerce's Position: We continue to find that the evidence placed on the record of this investigation supports a finding of the absence of *de facto* government control of Ulix based on record statements and supporting documents. Specifically, we find that the record establishes that Ulix conducted an independent price negotiation with its unaffiliated U.S. customer.[108] Accordingly, we continue to grant a separate rate to applicant Ulix. Because of the proprietary nature of the reasoning behind our position, *see* the Separate Rate Analysis Memorandum for a full discussion of this issue.

XI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final determination of this investigation and the final dumping margins for all the investigated companies in the *Federal Register*.

☒	☐
Agree	Disagree

X _____

_____
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[108] *See* Ulix SRA, dated November 21, 2018, at Exhibit 4; *see also* Ulix SRA supplemental response, dated February 21, 2019, at 5-7, and Exhibit Supp-2-2; *see also* Ulix SRA supplemental response, dated March 14, 2019, at 2, Exhibit Supp-3-1; and Ulix SRA rebuttal comments, dated March 28, 2019.