A-570-122
Investigation
POI: 07/01/2019-12/31/2019
**Public Document**
E&C/OI: Team

September 2, 2020

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

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

**SUBJECT:** Certain Corrosion Inhibitors from the People's Republic of China: Decision Memorandum for Preliminary Affirmative Determination of Sales at Less Than Fair Value

## I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that certain corrosion inhibitors (corrosion inhibitors) 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 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins of sales at LTFV are shown in the accompanying *Federal Register* notice.

## II. BACKGROUND

On February 5, 2020, we received an antidumping duty (AD) petition covering imports of corrosion inhibitors from China,[1] which was filed in proper form on behalf of Wincom Inc. (the petitioner). We initiated this investigation on February 25, 2020.[2] In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate rate status in non-market economy (NME) LTFV investigations.[3] Exporters are required to submit a separate rate application (SRA) to demonstrate an absence of both *de jure* and *de facto* government control over their exporter activities. *See* the "Separate Rate" section for more information.

[1] *See* Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Certain Corrosion Inhibitors from China," dated February 5, 2020 (the Petition).
[2] *See Certain Corrosion Inhibitors from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 85 FR at 12506 (March 3, 2020) (*Initiation Notice*).
[3] *Id.*, 85 FR at 12509.

In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of corrosion inhibitors to be reported in response to Commerce's AD questionnaire.[4] We received comments and rebuttal comments from interested parties concerning the appropriate physical characteristics to be used for the purpose of reporting sales of the subject merchandise.[5] We received no comments on the scope of the investigation.

In the *Initiation* Notice, we stated that we would base respondent selection on responses to the quantity and value (Q&V) questionnaires sent to each potential respondent named in the Petition.[6] On February 26, 2020, we issued Q&V questionnaires to the nine companies identified in the Petition.[7] In addition, Commerce posted the Q&V questionnaire on its website and invited parties who did not receive a Q&V questionnaire to file a response to the Q&V questionnaire by the applicable deadline. We received responses from six producers/exports of subject merchandise, which includes the two mandatory respondents.

On March 23, 2020, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of corrosion inhibitors from China.[8]

During the respondent selection process, Jiangyin Delian Chemical Co., Ltd. (Delian) provided information demonstrating that it sourced all of its exported product from other manufacturers.[9] The other manufacturers included Nantong Botao Chemical Co., Ltd. (Botao) and Nantong Kanghua Chemical Co., Ltd. (Kanghua).[10] Botao and Kanghua reported that they supplied the subject merchandise to Delian knowing that it was destined for exportation to the United States.[11] Botao requested that Commerce attribute all subject volumes that Delian sourced from

[4] *See Initiation Notice*, 85 FR at 12507.
[5] *See* Petitioner's Letter, "Corrosion Inhibitors From The People's Republic of China – Comments On Product Characteristics," dated March 16, 2020; *see also* Anhui Trust Chem Co., Ltd.'s (Anhui Trust) Letter, "Corrosion Inhibitors from the People's Republic of China, Case No. A-570-122: Comments on Product Characteristics and Modeling Hierarchy," dated March 16, 2020; Petitioner's Letter, "Corrosion Inhibitors From The People's Republic of China – Rebuttal Comments On Product Characteristics," dated March 26, 2020; and Botao's Letter, "Corrosion Inhibitors from the People's Republic of China: Rebuttal Comments on Product Characteristics," dated March 26, 2020.
[6] *See Initiation Notice*, 85 FR at 12509.
[7] *See* Commerce's Letter, "Quantity and Value Questionnaire for the Antidumping Duty Investigation of Corrosion Inhibitors from the People's Republic of China," dated February 26, 2020 (Q&V Questionnaire).
[8] *See* Corrosion Inhibitors from China: Investigation Nos. 701-TA-638 and 731-TA-1473 (March 23, 2020) (Preliminary ITC Determination).
[9] *See* Delian's Letter, "Corrosion Inhibitors from China; A-570-122; Rebuttal Factual Information and Comment on Respondent Selection," dated March 17, 2020 (Delian Q&V Comments); *see also* Memorandum, "Less-Than-Fair-Value Investigation of Certain Corrosion Inhibitors from the People's Republic of China: Respondent Selection," dated April 9, 2020 (Respondent Selection Memorandum).
[10] *See* Delian Q&V Comments.
[11] *See* Nantong Botao's and Gold Chemical Limited's (Gold Chemical) Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Quantity & Value Response," dated March 11, 2020; *see also* Kanghua's Letter, "Corrosion Inhibitors from China; A-570-122; Supplemental Questionnaire Response and Supporting Information," dated March 27, 2020.

Botao and Kanghua to Botao and Kanghua.[12] However, Delian argued that Commerce should attribute the sales to the company that directly exported the product, *i.e.* Delian, and attribute all subject volumes that Delian sourced from Botao and Kanghua to Delian.[13]

On April 9, 2020, based on the Q&V questionnaires, we selected the two exporters accounting for the largest volume of corrosion inhibitors from China during the period of investigation (POI), *i.e.*, Delian and Botao, for individual examination.[14] In the respondent selection memorandum, Commerce stated that a producer's knowledge of the ultimate destination is an issue restricted in its application in NME cases because the knowledge test applies only to exporters that have dealings with entities outside of the NME country.[15] Therefore, Commerce informed all parties that the subject merchandise that Delian sourced from Botao and Kanghua and exported to the United States would be attributed to Delian.[16]

Between May 11, 2020, and June 19, 2020, we received questionnaire responses from Delian[17] and Botao.[18] On June 11, 2020, the petitioner submitted comments with respect to the initial responses submitted by Delian and Botao.[19] On June 18, 2020, Botao filed rebuttal comments.[20] Between June 6, 2020 and August 14, 2020 Delian and Botao submitted responses to supplemental questionnaires.[21] On June 3, 2020, the petitioner timely requested that Commerce

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[12] *See* Botao's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Quantity & Value Questionnaire Response," dated March 23, 2020.
[13] *See* Delian Q&V Comments.
[14] *See* Respondent Selection Memorandum.
[15] *See* Respondent Selection Memorandum; *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), accompanying Issues and Decision Memorandum (IDM) at Comment 2.
[16] *See* Respondent Selection Memorandum.
[17] *See* Delian's Letters, "Corrosion Inhibitors from China; A-570-122; Response to Section A of the Department's Initial Questionnaire," dated May 11, 2020 (Delian AQR), "Corrosion Inhibitors from China; A-570-122; Response to Sections C and D of the Department's Initial Questionnaire," dated May 28, 2020 (Delian CDQR), and "Corrosion Inhibitors from China; A-570-122; Response to Double Remedy Questionnaire," dated June 19, 2020 (Delian DRQR).
[18] *See* Botao's Letters, "Certain Corrosion Inhibitors from the People's Republic of China: Section A Response," dated May 11, 2020 (Botao AQR), "Certain Corrosion Inhibitors from the People's Republic of China: Section C Response," dated May 28, 2020 (Botao CDQR), and "*Certain Corrosion Inhibitors from the People's Republic of China*: Botao Double Remedy Questionnaire Response," dated June 19, 2020 (Botao DRQR).
[19] *See* Petitioner's Letter, "Investigation of Corrosion Inhibitors From the People's Republic of China: Petitioner's Comments on Delian's Sections A-D Questionnaire Responses," dated June 11, 2020; *see also* Petitioner's Letter, "Investigation of Corrosion Inhibitors From the People's Republic of China: Petitioner's Comments on Nantong Botao's Sections A-D Questionnaire Responses," dated June 11, 2020.
[20] *See* Botao's Letter, "Corrosion Inhibitors from the People's Republic of China: Rebuttal Comments to Petitioner's Comments on Botao's Section C Questionnaire Response," dated June 18, 2020.
[21] *See* Delian's Letters, "Corrosion Inhibitors from China; A-570-122; Section A Supplemental Questionnaire; Response of Jiangyin Delian Chemical Co., Ltd.," dated June 10, 2020, "Corrosion Inhibitors from China; A-570-122; Response to Supplemental Questionnaire," dated July 20, 2020, "Corrosion Inhibitors from China; A-570-122; FOP Data of Third-Party Nantong Botao Chemical Co., Ltd; Response of Jiangyin Delian Chemical Co., Ltd.," dated July 27, 2020 (Delian SDDRSQR), and "Corrosion Inhibitors from China; A-570-122; Response of Jiangyin Delian Chemical Co., Ltd. to the Department of Commerce's August 5, 2020 Supplemental Questionnaire," dated August 12, 2020 (Delian SACDSQR); see also Botao's Letters, "Certain Corrosion Inhibitors from the People's Republic of China: Supplemental Section A Response," dated June 10, 2020, "Certain Corrosion Inhibitors from the People's Republic of China: Botao Supplemental Questionnaire Response," dated July 27, 2020 (Botao

fully extend the deadline for the preliminary determination.[22] Accordingly, on June 10, 2020, Commerce fully postponed the preliminary determination by 50 days (*i.e.*, 190 days after the date on which the investigation was initiated) to September 2, 2020.[23]

On May 1, 2020, we placed on the record a list of potential surrogate countries and invited interested parties to comment on the selection of the primary surrogate country and provide surrogate values (SV) information.[24] Between May 13, 2020, and August 13, 2020, we received comments on the selection of the primary surrogate country and SV information and rebuttals thereof from Delian,[25] Botao[26] and the petitioner.[27] Between August 6, 2020 and August 18, 2020, the petitioner[28] and Botao[29] submitted pre-preliminary comments regarding surrogate values and surrogate country selection.

Commerce is conducting this investigation in accordance with section 731 of the Act.

## III. PERIOD OF INVESTIGATION

The POI is July 1, 2019 through December 31, 2019. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was February 2020.[30]

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SACDDRSQR), and "Certain Corrosion Inhibitors from the People's Republic of China: Botao Supplemental Questionnaire Response," dated August 14, 2020.

[22] *See* Petitioner's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Petitioner's Request for Postponement of the Preliminary Determination," dated June 3, 2020.

[23] *See Certain Corrosion Inhibitors from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 85 FR 36376 (June 16, 2020).

[24] *See* Commerce's Letter, "Less-Than-Fair-Value Investigation of Certain Corrosion Inhibitors from the People's Republic of China (A-570-122): Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated May 1, 2020 (Surrogate Country and Value Comments Invitation Letter).

[25] *See* Delian's Letters, "Corrosion Inhibitors from China; A-570-122; Comments on Economic Comparability," dated May 8, 2020; and "Corrosion Inhibitors from China; A-570-122; Comments on Selection of Surrogate Country," dated June 5, 2020 (Delian SC Comments).

[26] *See* Botao's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Surrogate Country Comments," dated June 5, 2020 (Botao SC Comments); "Certain Corrosion Inhibitors from the People's Republic of China: Preliminary Surrogate Value Submission," dated June 26, 2020 (Botao SV Comments); and "Certain Corrosion Inhibitors from the People's Republic of China: Final Rebuttal Surrogate Value Submission," dated August 13, 2020.

[27] *See* Petitioner's Letters, "Certain Corrosion Inhibitors from the People's Republic of China: Petitioner's Rebuttal Comments on the Surrogate Country List," dated May 13, 2020; "Certain Corrosion Inhibitors from the People's Republic of China: Petitioner's Rebuttal Comments on Surrogate Country Selection," dated June 12, 2020 (Petitioner SC Rebuttal Comments); "Investigation of Corrosion Inhibitors From the People's Republic of China: Petitioner's Preliminary Surrogate Values Submission" dated June 26, 2020 (Petitioner SV Comments); "Investigation of Corrosion Inhibitors From the People's Republic of China: Petitioner's Rebuttal Surrogate Values Submission," dated July 6, 2020 (Petitioner SV Rebuttal Comments).

[28] *See* Petitioner's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Petitioner's Pre-Prelim Comments," dated August 6, 2020 (Petitioner PP Comments).

[29] *See* Botao's Letter, "*Certain Corrosion Inhibitors from the People's Republic of China*: Rebuttal Preliminary Comments," dated August 18, 2020 (Botao RP Comments).

[30] *See* 19 CFR 351.204(b)(1).

## IV. SCOPE COMMENTS

In accordance with the *Preamble* to our regulations,[31] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.[32] We received no comments from interested parties on the scope of the investigation during this period. Thus, Commerce has not modified the scope language as it appeared in the *Initiation Notice*. *See* the accompanying *Federal Register* notice at Appendix I.

## V. DISCUSSION OF THE METHODOLOGY

### A. Non-Market Economy Country

Commerce considers China to be an NME country.[33] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of this preliminary determination.

### B. Surrogate Country

When Commerce is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value (NV), in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate market economy (ME) country or countries considered to be appropriate by 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."[34] As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME, unless it is determined that none of the countries are viable options because they either: (a) 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. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the 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 as the NME, Commerce generally relies on per capita gross national income (GNI) data from the World Bank's *World Development Report*.[35] Further, Commerce

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[31] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).
[32] *See Initiation Notic*e, 85 FR at 12507.
[33] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017), and accompanying Preliminary Decision Memorandum at "China's Status as a Non-Market Economy."
[34] For a description of our practice, *see* Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on Commerce's website at http://enforcement.trade.gov/policy/bull04-1.html.
[35] *Id*.

normally values all FOPs in a single surrogate country.[36] If more than one country satisfies the two criteria noted above, Commerce narrows the field of potential surrogate countries to a single country (pursuant to 19 CFR 351.408(c)(2), Commerce will normally value FOPs in a single surrogate country) based on data availability and quality.

1. Economic Comparability

On May 1, 2020, consistent with our practice, and section 773(c)(4) of the Act, and as stated above, we identified Brazil, Bulgaria, Malaysia, Mexico, Russia, and Turkey as countries at the same level of economic development as China based on the per capita GNI data from the World Bank's *World Development Report*.[37] Therefore, we consider all six countries as having met this prong of the surrogate country selection criteria. The countries identified are not ranked and are considered equivalent in terms of economic comparability.

2. Significant Producer of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires Commerce, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor Commerce's regulations 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 04.1 for guidance on defining comparable merchandise. The Policy Bulletin 04.1 states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."[38] Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.[39] Further, when selecting a surrogate country, the statute requires Commerce to consider the comparability of the merchandise, not the comparability of the industry.[40] "In cases where the identical merchandise is not produced, Commerce must determine if other merchandise that is comparable is produced. How Commerce does this depends on the subject merchandise."[41] In this regard, Commerce recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

> In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.[42]

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[36] *See* 19 CFR 351.408(c)(2).
[37] *See* Surrogate Country and Value Comments Invitation Letter.
[38] *See* Policy Bulletin 04.1 at 2.
[39] *Id.* at note ("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.")
[40] *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.")
[41] *See* Policy Bulletin 04.1 at 2.
[42] *Id.* at 3.

Further, the statute grants Commerce discretion to examine various data sources for determining the best available information.[43] Moreover, while the legislative history provides that the term "significant producer" includes any country that is a significant "net exporter,"[44] it does not preclude reliance on additional or alternative metrics. It is Commerce's practice to evaluate whether production is significant based on characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics).[45] In this investigation, because production data of comparable merchandise are not available, we analyzed exports of comparable merchandise from the six countries, as a proxy for production data.[46] Botao placed UN Comtrade data for entries made under the Harmonized Tariff Schedule (HTS) subheading 2933.99, a more general HTS subheading which includes subject merchandise, during the POI.[47] Based on this data, Bulgaria, Malaysia, Mexico, Russia, and Turkey reported export volumes of comparable merchandise in the POI. Therefore, we preliminarily find that Bulgaria, Malaysia, Mexico, Russia, and Turkey meet the "significant producer" requirement of section 773(c)(4) of the Act.[48]

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.[49] When evaluating SV data, Commerce considers several criteria including whether the SV data are publicly available, contemporaneous with the period under consideration, broad-market averages, tax and duty-exclusive, and specific to the inputs being valued.[50] There is no hierarchy among these criteria.[51] Commerce's preference is to satisfy the breadth of these aforementioned selection criteria.[52] Moreover, it is Commerce's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.[53] Commerce must weigh the available information

[43] *See* section 773(c) of the Act; *see also Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).
[44] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).
[45] *See Xanthan Gum from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2252 (January 10, 2013), and accompanying Preliminary Decision Memorandum at 4-7, unchanged in *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013).
[46] *See* Botao SC Comments at Attachment 1.
[47] *Id.*
[48] *Id.*
[49] *See* Policy Bulletin 04.1.
[50] *Id.*
[51] *See, e.g., Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) (*Mushrooms China*), and accompanying IDM at Comment 1.
[52] *See, e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 2010-2011, 78 FR 17350 (March 21, 2013), and accompanying IDM at Comment I(C).
[53] *See Mushrooms China* IDM at Comment 1.

with respect to each input value and make a product-specific and case-specific decision as to what constitutes the "best" available SV for each input.[54]

The petitioner placed Malaysian SV data sourced from GTA on the record (including two Malaysian financial statements (FS)), while Botao and Delian placed Mexican SV data on the record (including three Mexican financial statements).[55] Botao sourced its SV data from Trade Data Monitor (TDM) and Delian sourced its SV data from the Secretaria de Economia, Sistema de Informacion (SIAVI). Also, while all three Mexican FSs are contemporaneous with the POI, only one of the Malaysian FSs is contemporaneous with the POI.

Whereas the Malaysian FSs belong to Petronas Chemicals Group Berhad (Petronas) and Accot Technologies Sdn. Bhd. (Accot), the Mexican FSs pertain to Orbia Advance Corporation, S.A.B de C.V. (Orbia), formerly Mexichem, S.A.B. de C.V., Grupo Pochteca, S. A. B. de C. V. y Subsidiarias (Pochteca), and Alpek S.A.B. de C.V. (Alpek).[56] While Obria, Pochteca, and Alpek are all for conglomerate companies that produce comparable and non-comparable merchandise, Petronas and Accot produce only comparable merchandise (chemical products). We have complete SV information on the record for both Malaysia and Mexico, the petitioner, in general, provided more specific HTS numbers for Malaysia than Botao and Delian did for Mexico.

Given the above factors, we preliminarily select Malaysia as the primary surrogate country for this investigation. Malaysia is at the same level of economic development as China, is a significant producer of comparable merchandise, and generally has reliable and usable SV data. A detailed description of the SVs selected by Commerce is provided in the "Factor Valuation Methodology" section and the Preliminary SV Memorandum.[57]

C. Surrogate Country and Surrogate Value Comments

On May 8, 2020, Delian requested that Commerce expand the list of surrogate countries to include all countries from Thailand to Poland in order to account for the economic fluctuations during the POI.[58] On May 13, 2020, the petitioner argued that Commerce should not comply with Delian's request because its arguments lack merit and there is no basis to ignore the current

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[54] *Id.*
[55] *See* Petitioner's Letters, "Investigation of Corrosion Inhibitors from the People's Republic of China: Petitioner's Second Preliminary Surrogate Values Submission," dated August 3, 2020 (Petitioner Second SV Comments); "Investigation of Corrosion Inhibitors From the People's Republic of China: Petitioner's Rebuttal Surrogate Value Factual Information Submission," dated August 6, 2020 (Petitioner Rebuttal SV Information); and Petitioner SV Comments; *see also* Botao's Letters, "Certain Corrosion Inhibitors from the People's Republic of China: Final Surrogate Value Submission," dated August 3, 2020 (Botao Final SV Comments); and Botao SV Comments; and Delian's Letter, "Corrosion Inhibitors from China; A-570-122; Final SV," dated August 3, 2020 (Delian Final SV Comments).
[56] *See* Petitioner SV Comments at Attachment 11; *see also* Petitioner Second SV Comments at Attachment 1; Botao SV Comments at Exhibits SV-10 through SV-12; and Delian Final SV Comments at Exhibit SV-7(a)(iii)(2).
[57] *See* Memorandum, "Corrosion Inhibitors from the People's Republic of China: Surrogate Values for the Preliminary Affirmative Determination of Sales at Less Than Fair Value", dated concurrently with this memorandum (Preliminary SV Memorandum).
[58] *See* Delian's Letter, "Corrosion Inhibitors from China; A-570-122; Comments on Economic Comparability," dated May 8, 2020.

list of economically comparable countries in favor of a list constructed by Delian.[59] Although Commerce has a practice of using surrogate countries from the list, parties are not limited to the countries listed in the memo and may propose other potential surrogate countries, Delian failed to place SV data on the record for any country that was not on the surrogate country list.[60]

Each year, Commerce relies on the most recent data available to it from the World Bank and has done so again here to produce the surrogate country list available for this proceeding. Although we recognize that the GNI data does not overlap with the POI in this case, absent other issues, it is the most reliable source of data to determine the countries that are at a comparable level of economic development as China. We also disagree with Delian's request that Commerce conduct additional analyses to determine economic comparability. This issue has been addressed by the U.S. Court of International Trade (CIT) in *Dongguan Sunrise Furniture Co. Ltd. v. United States* (2012)[61] where Commerce's decision to rely solely on the GNI data from the World Bank was found to be reasonable.

In addition, on June 5, 2020, Delian and Botao filed comments in which they suggest countries that are suitable to value FOPs.[62] On June 12, 2020, the petitioner submitted rebuttal comments on the list of countries that Delian deems suitable for FOP valuation.[63] Botao and Delian recommended Mexico[64] and the petitioner recommended Malaysia[65] as the primary surrogate country in this investigation. One June 22, 2020, the petitioner and Botao filed surrogate factor valuation comments and SV information with which to value the FOPs in this proceeding.[66] On July 6, 2020, the petitioner filed rebuttal surrogate factor valuation comments.[67] The petitioner, Botao, and Delian timely filed additional surrogate factor valuation comments and SV information on August 3, 2020, pursuant to 19 CFR 351.301(c)(3)(i).[68] On August 6, 2020, the petitioner timely submitted additional SV rebuttal comments.[69] For a detailed discussion of the SVs used in this AD investigation, *see* the "Factor Valuation Methodology" section and the Preliminary SV Memorandum.

D. <u>Separate Rates</u>

In proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.[70] In the *Initiation Notice*, Commerce notified parties of the application process by which exporters may obtain separate rate status in

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[59] *See* Petitioner's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Petitioner's Rebuttal Comments on the Surrogate Country List," dated May 13, 2020.
[60] *See* Surrogate Country and Value Comments Invitation Letter.
[61] *See Dongguan Sunrise Furniture Co. Ltd. v. United States*, 865 F. Supp. 2d 1216 (CIT 2012).
[62] *See* Delian SC Comments; *see also* Botao SC Comments.
[63] *See* Petitioner SC Rebuttal Comments.
[64] *See* Botao SV Comments.
[65] *See* Petitioner SV Comments.
[66] *See* Petitioner SV Comments; *see also* Botao SV comments.
[67] *See* Petitioner SV Rebuttal Comments.
[68] *See* Petitioner Second SV Comments; *see also* Botao Final SV Comments; and Delian Final SV Comments.
[69] *See* Petitioner Rebuttal SV Information; *see also* Memorandum to the File, dated August 13, 2020.
[70] *See, e.g.*, *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (September 24, 2008).

this investigation.[71] This process requires exporters to submit a SRA[72] and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities. In the *Initiation Notice*, Commerce required that "companies from China submit a response to both the Q&V questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status."[73]

Commerce's policy is to assign all exporters of merchandise under consideration that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[74] Commerce analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*[75] and further developed in *Silicon Carbide.*[76] According to this separate rate test, Commerce will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If, however, Commerce determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the *Diamond Sawblades from China* AD proceeding, and its determinations therein.[77] In particular, in litigation involving the *Diamond Sawblades from China* proceeding, the CIT found Commerce's existing separate rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity exercised control over the respondent exporter.[78]

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[71] *See Initiation Notice*, 85 FR at 12509.
[72] *See* Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005) (Policy Bulletin 05.1), available at http://enforcement.trade.gov/policv/bull05-1.pdf.
[73] *See Initiation Notice*, 85 FR at 12509.
[74] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*).
[75] *Id.*
[76] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).
[77] *See Final Results of Redetermination pursuant to Advanced Technology & Materials Co., Ltd., et al. v. United States,* 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), and available at http://enforcement.trade.gov/remands/12-147.pdf, *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014) (*Advanced Technology II*); *see also Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013), and accompanying Preliminary Decision Memorandum at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying IDM at Comment 1.
[78] *See, e.g.*, *Advanced Technology I*, 885 F. Supp. 2d at 1349 (CIT 2012) ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *Id*. at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {state-owned assets supervision and administration commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor de jure 'separation' that Commerce concludes.") (footnotes omitted); *Id.*, at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including

Following the CIT's reasoning, in recent proceedings, we have concluded that where a government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, this interest in and of itself means that the government exercises or has the potential to exercise control over the company's operations generally.[79] This may include control over, for example, the selection of board members and management, key factors in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with our normal separate rate practice, any ability to control, or possess an interest in controlling, the operations of the company including the selection of board members, management, and the profit distribution of the company by a government entity is subject to Commerce's rebuttable presumption that all companies within the NME country are subject to government control.

In the *Initiation Notice*, we stated that SRAs would be due 30 days after publication of the notice, *i.e.*, April 2, 2020. Delian and Botao submitted information pertaining to their eligibility for a separate rate in their responses to section A of the AD questionnaire.[80] Furthermore, we received timely filed SRAs from the following applicants:

Anhui Trust Chem Co., Ltd. (Anhui Trust)[81]
Gold Chemical Limited (Gold Chemical)[82]
Nantong Kanghua Chemical Co., Ltd (Kanghua)[83]
Nanjing Trust Chem Co., Ltd. (Nanjing Trust)[84]

We are preliminarily granting the following wholly Chinese-owned companies a separate rate, as explained below, after analyzing whether these respondents demonstrated the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of *De Jure* Control

Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments

terms, financing, and inputs into finished product for export."); *Id.* at 1357 ("AT&M itself identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.") (footnotes omitted).

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

[80] *See* Delian AQR: *see also* Botao AQR.

[81] *See* Anhui Trust's Letter, "Corrosion Inhibitors from the People's Republic of China, Case No. A-570- 122: Separate Rate Application," dated April 16, 2020 (Anhui Trust SRA).

[82] *See* Gold Chemical's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: SRA," dated April 16, 2020 (Gold Chemical SRA).

[83] *See* Kanghua's Letter, "Corrosion Inhibitors from China; A-570-122; Separate Rate Application," dated April 23, 2020 (Kanghua SRA).

[84] *See* Nanjing Trust's Letter, "Corrosion Inhibitors from the People's Republic of China, Case No. A-570- 122: Separate Rate Application," dated April 16, 2020 (Nanjing Trust SRA).

decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.[85]

The evidence placed on the record of this investigation with respect to the four wholly Chinese-owned companies listed above supports a preliminary finding of an absence of *de jure* government control for each of these companies based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies. [86]

2. Absence of *De Facto* Control

Typically, Commerce considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the prices are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.[87] 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.

The evidence placed on the record of this investigation with respect to the four wholly Chinese-owned companies listed above supports a preliminary finding of an absence of *de facto* government control based on record statements and supporting documentation showing that the companies: (1) set their own prices independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses. [88]

Therefore, the evidence placed on the record of this investigation with respect to the four wholly Chinese-owned companies listed above demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, we preliminarily grant separate rates to Anhui Trust, Gold Chemical, Kanghua, and Nanjing Trust identified above.

[85] *See Sparklers*, 56 FR at 20589.
[86] *See* Anhui Trust SRA; *see also* Gold Chemical SRA; Kanghua SRA; Nanjing Trust SRA; Delian AQR; and Botao AQR.
[87] *See Silicon Carbide*, 59 FR at 22586-87; *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, 22545 (May 8, 1995).
[88] *See* Anhui Trust SRA; *see also* Gold Chemical SRA; Kanghua SRA; Nanjing Trust SRA; Delian AQR; and Botao AQR.

3. Companies Not Receiving a Separate Rate

In the *Initiation Notice*, Commerce explained that it:

> requires that companies from China submit a response to both the Q&V questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration. [89]

Commerce finds that the non-responsive companies[90] to which we issued a Q&V questionnaire failed to submit the requested information and, further, did not provide documentation indicating that these companies were having difficulty providing the information, nor did they request to submit the information in an alternate form. Therefore, we are preliminarily not granting these companies a separate rate.

E. Dumping Margin for the Separate Rate Companies

The statute and Commerce's regulations do not address the establishment of an estimated weighted-average dumping margin to be applied to individual companies not selected for individual examination when Commerce limits its examination in an investigation pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate rate respondents which we did not individually examine. Section 735(c)(5)(A) of the Act articulates a preference that we do not calculate an all-others rate using rates which are zero, *de minimis* or based entirely on facts available. Accordingly, Commerce's usual practice has been to average the estimated weighted-average dumping margins for the individually examined companies, excluding rates that are zero, *de minimis*, or based entirely on facts available.[91] Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the all-others rate, including "averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated."

In this investigation, we calculated rates for Botao and Delian that are not zero, *de minimis*, or based entirely on facts available. Therefore, the rates of Botao and Delian are applicable to companies not selected for individual examination but eligible for a separate rate. However, because there are only two relevant weighted-average dumping margins for this preliminary determination, using a weighted average of these two rates risks disclosure of business proprietary information data. Accordingly, for the preliminary determination of this investigation, we are assigning to the non-selected separate rate respondents an estimated

[89] *See Initiation Notice*, 85 FR at 12509.
[90] These companies include CAC Shanghai Chemical Co., Ltd. (Shanghai Chemical); Jiangsu Yangnong Chemical Group Co., Ltd. (Yangnong); Jiangyin Gold Fuda Chemical Co. Ltd (Gold Fuda); Jiangsu Trust Chem Co., Ltd. (Jiangsu Trust); and Xinji Xi Chen Re Neng Co., Ltd. (Re Neng).
[91] *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying IDM at Comment 16.

weighted-average dumping margin based on the average of the two individually examined respondents' rates weighted by their publicly available, ranged U.S. sales values.[92]

F. Combination Rates

Consistent with the *Initiation Notice*, we calculated combination rates for the respondents that are eligible for a separate rate in this investigation.[93] This practice is described in Policy Bulletin 05.1.

G. China-Wide Entity

As discussed above, Shanghai Chemical, Yangnong, Gold Fuda, Jiangsu Trust and Re Neng, did not respond to our Q&V questionnaire, and they did not submit SRAs. These companies thereby failed to establish their eligibility for a separate rate. Because Shanghai Chemical, Yangnong, Gold Fuda, Re Neng, and Jiangsu Trust have not demonstrated that they are eligible for separate rate status, Commerce considers them part of the China-wide entity. Because non-responsive China companies have not demonstrated that they are eligible for separate rate status, we find that they have not rebutted the presumption of government control and, therefore, consider them to be part of the China-wide entity. Furthermore, as explained below, we are determining the preliminary China-wide rate based on adverse facts available (AFA).

H. Application of Facts Available and Adverse Inferences

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

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

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

[92] *See* Memorandum, "Certain Corrosion Inhibitors from the People's Republic of China: Preliminary Separate Rate for Non-Selected Respondents," dated concurrently with this memorandum.
[93] *See Initiation Notice*, 85 FR 12506.

request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the AD investigation, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[94] The Act also makes clear that when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.

1. Use of Facts Available

We preliminarily find that the China-wide entity, which includes certain China exporters and/or producers that did not respond to our requests for information, withheld information requested and significantly impeded this proceeding by not submitting the requested information. Specifically, five companies within the China-wide entity failed to respond to our request for Q&V information and failed to submit a SRA.[95] Thus, necessary information is not on the record and the China-wide entity, which encompasses the parties that failed to respond to the request for Q&V information, has withheld requested information, failed to provide such information in a timely manner or in the form or manner requested, and significantly impeded the proceeding. Therefore, we preliminarily determine that the use of facts available is warranted in determining the rate of the China-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.[96]

2. Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that in selecting from among the facts otherwise available, Commerce may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Commerce finds that the China-wide entity's failure to submit Q&V and SRA information constitutes circumstances under which it is appropriate to conclude that the China-wide entity failed to cooperate to the best of its ability to comply with Commerce's request for information.[97]

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[94] *See* section 751 of the Act.
[95] *See* Memorandum, "Quantity & Value Questionnaires: Delivery Confirmation," dated March 18, 2020.
[96] *See, e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).
[97] *See Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that Commerce need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best

With respect to the missing information, the China-wide entity did not file any document indicating difficulty providing the information or any request to allow the information to be submitted in an alternate form. Therefore, we preliminarily find that an adverse inference is warranted in selecting from among the facts otherwise available with respect to the China-wide entity, in accordance with section 776(b) of the Act and 19 CFR 351.308(a).[98]

3. Selection and Corroboration of the AFA Rate

In applying an adverse inference, Commerce may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.[99] In selecting an AFA rate, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[100] In an investigation, Commerce's practice with respect to the assignment of an AFA rate is to select the higher of: (1) the highest dumping margin alleged in the petition; or (2) the highest calculated dumping margin of any respondent in the investigation.[101]

In attempting to corroborate that rate, we compared the highest petition rate of 420.32 percent to the individually-investigated respondents' highest transaction-specific dumping margins (*see* Section J.2 below) and found the petition rate to be significantly higher than Botao's or Delian's highest calculated transaction-specific dumping margins. However, based on the information on the record, we are unable to corroborate the highest petition rate.[102] Therefore, we are assigning to the China-wide entity a dumping margin of 260.92 percent, which is the highest transaction-specific dumping margin for Botao. Because we are relying on information obtained in the course of this investigation as the AFA rate, not on secondary information, it is not necessary to corroborate this rate.[103]

I. <u>Date of Sale</u>

In identifying the date of sale of the subject merchandise, Commerce normally will use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business.[104] Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes

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of a respondent's ability" existed (*i.e.*, information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown."))
[98] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).
[99] *See* section 776(b) of the Act.
[100] *See* SAA at 870.
[101] *See, e.g.*, *Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016).
[102] *See* Commerce's Letter, "Antidumping Duty Investigation Initiation Checklist: Certain Corrosion Inhibitors from the People's Republic of China," dated February 25, 2020 at 9.
[103] *See 1,1,1,2-Tetrafluroethane from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 62597 (October 20, 2014), and accompanying IDM at 3; *see also section 776(c) of the Act* and *19 CFR 351.308(c) and (d)*; and *Certain Carbon and Alloy Steel Cut-To-Length Plate from Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 79427 (November 14, 2016).
[104] *See* 19 CFR 351.401(i).

the material terms of sale.[105] Furthermore, we have a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.[106]

Botao reported the commercial invoice date as the date of sale.[107] Botao explained that "{t}he sales terms, such as quantity and value, are not changed after the invoice date, so the invoice date best satisfies the Department's date of sale criteria."[108] Likewise, Delian reported the commercial invoice date as the date of sale.[109] Delian explained that "the commercial invoice date is the date of sale, as upon its issuance, the export sale quantity and value do not change anymore."[110] However, both Botao and Delian have some sales with shipment dates that precede the invoice dates. Consistent with 19 CFR 351.401(i), we preliminarily determine to use the earlier of the sales invoice date or the date of shipment as the date of sale for Botao and Delian.

J. Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether the respondents' sales of the subject merchandise from China to the United States were made at LTFV, Commerce compared the export price (EP) to the NV as described in the "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 AD investigations, Commerce examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

Commerce has 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

[105] *Id.*; *see also Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001) (*Allied Tube & Conduit Corp.*) ("As elaborated by Department practice, a date other than invoice date 'better reflects' the date when 'material terms of sale' are established if the party shows that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date.")
[106] *See, e.g.*, *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 10670 (March 12, 2018), and accompanying Preliminary Decision Memorandum at 6-7, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 32629 (July 13, 2018).
[107] *See* Botao CDQR at 10.
[108] *See* Botao AQR at 23.
[109] *See* Delian CDQR at 10.
[110] *See* Delian AQR at 27.

351.414(c)(1) and section 777A(d)(1)(B) of the Act.[111] Commerce finds that the differential pricing analysis used in prior investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

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

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[111] *See, e.g.*, *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *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); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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

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

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

2. Results of the Differential Pricing Analysis

For Botao, based on the results of the differential pricing analysis, we preliminarily find that 95.3 percent of the value of U.S. sales pass the Cohen's *d* test and confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, we are applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Botao.

For Delian, based on the results of the differential pricing analysis, we preliminarily find that 91.4 percent of the value of U.S. sales pass the Cohen's *d* test and confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, we are applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Delian.

## K. U.S. Price

### 1. Export Price Sales

For Botao's reported sales, in accordance with section 772(a) of the Act, we based the U.S. price of subject merchandise on EP. Botao disregarded Commerce's instructions and also reported the sales of the subject merchandise that it made to Delian in its U.S. sales dataset.[112] Consequently, Commerce has deleted from Botao's U.S. sales dataset all the sales that it made to Delian in order to calculate the accurate dumping margin for Botao.

We calculated EP based on the prices at which subject merchandise was sold to unaffiliated purchasers in the United States. We made deductions, as appropriate, from the reported U.S. price for movement expenses for Botao, *e.g.*, foreign inland freight expenses, foreign brokerage and handling expenses, international freight, marine insurance.[113] We based movement expenses on SVs where the service was purchased from a Chinese company.[114] Additionally, we made a billing adjustment to the U.S. price.

For Delian's reported sales, in accordance with section 772(a) of the Act, we based the U.S. price of subject merchandise on EP. We calculated EP based on the prices at which subject merchandise was sold to unaffiliated purchasers in the United States. We made deductions, as appropriate, from the reported U.S. price for movement expenses for Delian, *e.g.*, foreign inland freight expenses and foreign brokerage.[115] We based movement expenses on SVs where the service was purchased from a Chinese company.[116] Additionally, we made a billing adjustment to the U.S. price.

### 2. Value-Added Tax

In 2012, Commerce announced a change of methodology with respect to the calculation of EP and CEP to include an adjustment of any irrecoverable value-added tax (VAT) in certain NME

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[112] *See* Botao SACDDRSQR.
[113] *See* section 772(c)(2)(A) of the Act.
[114] *See* the Factor Valuation Methodology section.
[115] *See* section 772(c)(2)(A) of the Act.
[116] *See* the Factor Valuation Methodology section.

countries in accordance with section 772(c)(2)(B) of the Act.[117] Commerce explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, Commerce will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.[118] 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 EP or CEP downward by this same percentage.[119]

Commerce's methodology, as explained above and applied in this investigation, incorporates two basic steps: (1) determine the irrecoverable VAT on subject merchandise, and (2) reduce U.S. price by the amount determined in step one. Information placed on the record of this investigation indicates that according to the China VAT schedule, the standard VAT levy during the period July 1, 2019 through December 31, 2019, was 13 percent and the rebate rate for the subject merchandise is thirteen percent.[120] Because the VAT levy and VAT rebate rates on exports are the same, we made no adjustment to Delian's and Botao's U.S. sales for irrecoverable VAT.

L. Normal Value

Section 773(c)(1) of the Act provides that Commerce shall determine NV using the FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home market prices, third-country prices, or constructed value under section 773(a) of the Act. Commerce bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under Commerce's normal methodologies.[121] Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), we calculated NV based on FOPs. Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials used; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.[122]

M. Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by Delian and Botao. To calculate NV, we multiplied the reported per-unit FOP consumption rates by publicly available SVs. When selecting SVs, we considered, among other factors, the quality,

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[117] *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).
[118] *Id.*; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014), and accompanying IDM at Comment 5.A.
[119] *Id.*
[120] *See* Delian CDQR at 39 and Exhibit C-8; *see also* Botao CDQR at 31 and Exhibit C-5.
[121] *See, e.g.*, *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19703 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079 (September 8, 2006).
[122] *See* section 773(c)(3)(A)-(D) of the Act.

specificity, and contemporaneity of the SV data.[123] As appropriate, we adjusted FOP costs by including freight costs to make them delivered values. Specifically, we added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory.[124] A detailed description of the SVs used can be found in the Preliminary SV Memorandum.[125]

1. Direct and Packing Materials

For this preliminary determination, we are using Malaysian import data, as published by the GTA, to calculate SVs for FOPs. In accordance with section 773(c)(1) of the Act, we used the best available information for valuing FOPs by selecting, to the extent practicable, SVs which are: (1) broad market averages; (2) product-specific; (3) tax-exclusive, non-export average values; and (4) contemporaneous with, or closest in time to, the POI.[126]

As noted above, the parties made several submissions regarding the appropriate surrogate valuation of the respondents' reported material FOPs. In instances where the parties disagree with respect to the particular HTS subheading under which a particular material input should be valued, we used an HTS subheading selection method based on the best match between the reported physical description and function of the input and the HTS subheading description.[127]

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities) and pays in an ME currency, Commerce uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.[128] Where Commerce finds ME purchases to be of significant quantities (*i.e.*, 85 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,[129] Commerce uses the actual purchase prices to value the inputs.

Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 85 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, Commerce will weight-average the ME purchase price with an appropriate SV, according to their respective shares of the total volume of purchases, unless case-specific facts provide

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[123] *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.
[124] *See Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).
[125] *See* Preliminary SV Memorandum.
[126] *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).
[127] *See* Preliminary SV Memorandum for further discussion.
[128] *See, e.g.*, *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).
[129] *See Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013) (*Antidumping Methodologies: Market Economy Inputs*).

adequate grounds to rebut the presumption. When a firm has made ME input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, Commerce will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 85 percent threshold. Neither Delian nor Botao had valid ME purchases that met the 85 percent threshold. While Botao provided information regarding some ME purchases,[130] we cannot ascertain the origin of the products and are therefore disregarding them for the purposes of this preliminary determination.

The record shows that for the remaining inputs, Malaysian import data obtained through GTA, are broad market averages, product-specific, tax-exclusive, and generally contemporaneous with the POI.[131]

Pursuant to section 773(c)(5) of the Act and Commerce's long-standing practice, Commerce disregards SVs if it has a reason to believe or suspect the source data may comprise dumped or subsidized prices.[132] In this regard, Commerce has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea, and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.[133] Based on the existence of the subsidy programs that were generally available to all exporters and producers in these countries at the time of the POI, Commerce finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies. Therefore, we have not used prices from these four countries in calculating the Malaysian import-based SVs.

Additionally, we disregarded data from NME countries when calculating Malaysian import-based per-unit SVs. We also excluded from the calculation of Malaysian import-based per-unit SVs imports labeled as originating from an "unidentified" country because we could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.[134]

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[130] *See* Botao SACDDRSQR at Exhibit D-5.
[131] *See* Preliminary SV Memorandum.
[132] *See* section 773(c)(5) of the Act (permitting Commerce to disregard price or cost values without further investigation if it has determined that certain subsidies existed with respect to those values); *see also Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46795 (August 6, 2015).
[133] *See, e.g.*, *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination; 2011-2012*, 78 FR 42492 (July 16, 2013), and accompanying IDM at 7-19; *see also Certain Lined Paper Products from Indonesia: Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 76 FR 73592 (November 29, 2011), and accompanying I&D Memo at 1; *Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 46770 (August 11, 2014), and accompanying IDM at 4; and *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013), and accompanying IDM at IV.
[134] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China*, 69 FR 75294, 75301 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005).

2. Energy

We preliminarily valued electricity based on the POI data from the Malaysian Investment Development Authority (MIDA).[135] Because the electricity data are from 2017[136] we adjusted the data for inflation. We preliminarily valued natural gas using data from Gas Malaysia. We preliminarily valued water based on data from MIDA, using rates that would be applicable to the respondent based on its reported usage.[137] We preliminarily valued steam by calculating 14.52 percent of the SV of natural gas (obtained as described above), consistent with prior practice.[138]

3. Movement Expenses

As appropriate, we added freight costs to SVs. Specifically, we added surrogate inland freight costs to import values used as SVs. We calculated freight SVs 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.[139]

We valued brokerage and handling and inland truck freight expenses using the data from the World Bank Group's *Doing Business 2020 – Malaysia* (*Doing Business*) and the average of the distances between the factory and the port.[140] The value for truck freight in *Doing Business* is publicly available and the data in *Doing Business* is current as of 2019.[141] Because the *Doing Business* data are contemporaneous with the POI, we did not adjust the data for inflation.

To value marine insurance, we used the insurance rate indicated for international shipments of chemicals and hazardous materials from RJG Consultants.[142] Because the data is an *ad valorem* rate, we have not attempted to inflate the data.

4. Labor

We calculated an hourly labor rate using industry-specific data from Mexico. We used Mexican data, rather than Malaysian data, to value labor because the Malaysian SV that the petitioner placed on the record for labor is a country-wide rate, rather than a rate for the manufacturing

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[135] *See* Preliminary SV Memorandum at Exhibit 1, "Surrogate Value" tab.
[136] *Id*.
[137] *Id*.
[138] *See Certain Steel Wheels from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67703, 67714 (November 2, 2011), unchanged in *Certain Steel Wheels from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012).
[139] *See Sigma Corp.*, 117 F.3d at 1407-08.
[140] *See* Preliminary SV Memorandum at Exhibit 1, "Surrogate Value" and "B&H" tabs.
[141] *Id*.
[142] *See* Petitioner SV Comments at Exhibit 4.

sector.[143] Hence, we relied on POI industry-specific labor data from Mexico that Delian sourced from Trading Economics.[144]

5. Financial Ratios

According to 19 CFR 351.408(c)(4), Commerce is directed to value overhead, selling, general and administrative (SG&A) expenses, and profit using non-proprietary information gathered from producers of merchandise that is identical or comparable to the merchandise under consideration in the surrogate country. Commerce's preference is to derive surrogate overhead expenses, SG&A expenses, and profit using financial statements covering a period that is contemporaneous with the POI, that show a profit, from companies with a production experience similar to the respondents' production experience, and that are not distorted or otherwise unreliable, such as financial statements that indicate the company received subsidies.[145]

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we used the 2019 audited public financial statements of Petronas. We preliminarily determine that Petronas is a Malaysian producer of comparable merchandise.[146]

N. Currency Conversion

Where appropriate, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

## VI. ADJUSTMENT UNDER SECTION 777A(F) OF THE ACT

In applying section 777A(f)(1) of the Act, Commerce examines: (A) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise; (B) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period; and (C) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.[147] For a subsidy meeting these criteria, the statute requires Commerce to reduce the AD cash deposit rate by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.[148]

In conducting this analysis, Commerce has not concluded that concurrent application of NME

[143] *See* the Petition at Exhibit II-9C.
[144] *See* Delian Final SV Comments.
[145] *See Hand Trucks and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2010-2011, 78 FR 28801 (May 16, 2013), and accompanying IDM at Comment 2; *see also Certain Kitchen Appliance Shelving and Racks from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 78 FR 5414 (January 25, 2013), and accompanying IDM at Comment 1.
[146] *See* Petitioner SV Comments at Attachment 11.
[147] *See* section 777A(f)(1)(A)-(C) of the Act.
[148] *See* section 777A(f)(1)-(2) of the Act.

ADs and countervailing duties (CVDs) necessarily and automatically results in overlapping remedies. Rather, a finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute.

In order to examine the effects of concurrent countervailable subsidies in calculating dumping margins for respondents in this investigation, Commerce requested Botao and Delian submit information with respect to subsidies relevant to their eligibility for an adjustment to the calculated estimated weighted-average dumping margins.[149]

Botao and Delian submitted a double remedy questionnaire response.[150] Both respondents reported that they benefitted from the following programs, preliminarily found to be countervailable in the companion CVD investigation,[151] and that have an impact on its cost of manufacture (COM): Provision of Electricity for Less Than Adequate Remuneration (LTAR); Provision of Ortho Toluene Diamine (oTDA) for LTAR; and Provision of Sodium Nitrite for LTAR.[152]

In accordance with section 777A(f)(1)(A) of the Act, Commerce examined whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise. Because Commerce found the provision of electricity, oTDA, and sodium nitrite to be countervailable with respect to the class or kind of merchandise in the companion CVD investigation,[153] Commerce preliminarily finds that the requirement of section 777A(f)(1)(A) of the Act has been met.

As discussed above, section 777A(f)(1)(B) of the Act requires consideration of whether the countervailable subsidy programs noted above have been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period. In *Passenger Vehicle and Light Truck Tires from China*, we examined the preliminary report issued by the ITC in order to conduct an analysis under section 777A(f)(1)(B) and found prices of imports of the class or kind of merchandise decreased during the relevant period.[154] In *Steel Racks from China*, we also examined U.S. import data in the preliminary report issued by the

[149] *See* Double Remedy Questionnaires.
[150] *See* Botao DRQR; *see also* Delian DRQR.
[151] *See Certain Corrosion Inhibitors from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 85 FR 41960 (July 13, 2020), and accompanying Preliminary Decision Memorandum at 39-48 (*Corrosion Inhibitors CVD Prelim*).
[152] *See* Botao DRQR at 2-3; *see also* Delian DRQR at 5.
[153] *See Corrosion Inhibitors CVD Prelim*.
[154] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Affirmative Determination of Critical Circumstances; In Part and Postponement of Final Determination*, 80 FR 4250 (January 27, 2015), and accompanying Preliminary Decision Memorandum at 33, unchanged in *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893 (June 18, 2015), and accompanying IDM; *see also Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893 (June 18, 2015), and accompanying IDM.

ITC and did not find a decrease in import prices during the relevant period.[155] Thus, for this preliminary determination, we examined the preliminary report issued by the ITC to determine whether section 777A(f)(1)(B) of the Act has been satisfied.[156]

To make this determination, we examined the imported subject merchandise price trends contained in the preliminary report issued by the ITC, in which the ITC concluded that: In general, U.S. prices decreased…during 2017-19."[157] The ITC preliminary report also shows that U.S. imports from China had an average unit value of $2.40/lb. in 2017, $2.35/lb. in 2018, and $1.75/lb. in 2019.[158] Based on this information, Commerce preliminarily finds that import prices of the class or kind of merchandise at issue during that relevant period decreased. Accordingly, we preliminarily find that the requirement under section 777A(f)(1)(B) of the Act has been met because we have found a reduction in the average import price during the relevant period.

Additionally, in accordance with section 777A(f)(1)(C) of the Act, Commerce examined whether Botao and Delian demonstrated: (1) a subsidies-to-cost link, *i.e.*, a subsidy effect on the cost of manufacturing (COM) of the merchandise; and (2) a cost-to price link, *i.e.*, respondent's prices were dependent on changes in the COM. With respect to the subsidies-to-cost link, in their double-remedies questionnaire responses, Botao and Delian reported that they consumed electricity, oTDA, and sodium nitrite in the production of subject merchandise.[159]

Botao and Delian provided information indicating that the subsidy programs affected their COM. Specifically, Botao and Delian state that they identify and monitor the cost fluctuations of these raw materials.[160] Thus, Commerce preliminarily concludes that Botao and Delian established a subsidies-to-cost link because subsidies for the provision of electricity, oTDA, and sodium nitrite for LTAR impact their costs for producing subject merchandise.

For the cost-to-price link, Commerce examined whether Botao and Delian demonstrated that changes in costs affected prices or are taken into consideration when setting prices. Botao and Delian stated that they adjust the sales price of the subject merchandise when the raw material costs change substantially.[161]

Furthermore, Botao reported that changes in the costs of inputs affects pricing, in that a cost increase brings pressure to raise prices, while a cost decrease results in the flexibility to lower

[155] *See Certain Steel Racks and Parts Thereof from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 35595 (July 24, 2019), and accompanying IDM at Comment 5.

[156] *See, e.g.*, *Forged Steel Fittings from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 83 FR 22948 (May 17, 2018), and accompanying Preliminary Decision Memorandum at "IX. Adjustment Under Section 777A(f) of the Act," unchanged in Forged Steel Fittings from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 83 FR 50339 (October 5, 2018).

[157] *See Preliminary ITC Determination* at page V-10.

[158] *Id*. at page IV-4, Table IV-2.

[159] *See* Botao DRQR; *see also* Delian DRQR.

[160] *See* Botao DRQR at 2; *see also* Delian DRQR at 6.

[161] *Id*.

prices.[162] Additionally, Botao reported that changes in the costs for oTDA, sodium nitrite, and electricity are one of the primary factors that it considers in its pricing decisions.[163] Moreover, Botao reported that its management considered or adopted changes to budgeted prices in response to changes in costs for the aforementioned items, together with several other factors, to set sales prices.[164] Finally, Botao provided private quotations with their customers showing how prices can change due to fluctuations in the cost of inputs.[165]

Likewise, Delian provided evidence to demonstrate the relationship between its suppliers' purchase price of inputs (oTDA and sodium nitrite) and electricity, and the sale price of subject merchandise.[166] Additionally, Delian reported that changes in the costs for oTDA, sodium nitrite, and electricity are the primary factors that its suppliers consider in their pricing decisions which then reflects in Delian's prices of exports of subject merchandise.[167] While Delian's supplier, Nantong Kanghua, does not keep price lists, the sales director does communicate price revisions to their salespeople through phone conversations.[168] In addition, Botao and Delian reported that their procurement departments report significant cost changes to management and the sales department, which will discuss and determine whether the revenue can cover the current costs.[169]

Based on the above, we find that Botao and Delian provided adequate information to establish a link between subsidies (*i.e.*, the provision of electricity, oTDA, and sodium nitrite for LTAR), costs, and prices. Because Botao's and Delian's double remedy responses indicate that factors other than the cost of the inputs for LTAR impact prices to customers (*e.g.*, prevailing market price for the merchandise), we have preliminarily applied a documented ratio of cost-price changes for the relevant manufacturing sector as a whole, which is based on data provided by Bloomberg, as the estimate of the extent of subsidy pass-through.[170] Therefore, we are adjusting Botao's and Delian's U.S. prices for a pass-through adjustment for domestic subsidies in the calculation of the cash deposit rates for Botao and Delian. Because both Botao and Delian are mandatory respondents in the companion CVD investigation, we have used their own calculated subsidy rates for the provision of electricity, oTDA, and sodium nitrite for LTAR, multiplied by the pass-through rate obtained from Bloomberg, in order to obtain the amount of subsidy passed through and deducted from the calculated estimated weighted-average dumping margin for each mandatory respondent.

For the non-selected separate rate respondents, we used the subsidy rates applied to the all-other companies in the companion CVD investigation, multiplied by the pass-through rate obtained

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[162] *See* Botao SACDDRSQR at 25 – 27.
[163] *See* Botao DRQR at 7 – 8.
[164] *Id*. at Exhibit DR-5.
[165] *See* Botao SACDDRSQR at Exhibit SD-18.
[166] *See* Delian DRQR at Exhibit DR-5.
[167] *Id*. at 2.
[168] *See* Delian SDDRSQR at 11.
[169] *See* Botao DRQR at 2; *see also* Delian DRQR at 6.
[170] *See* Memorandum, "Certain Corrosion Inhibitors from the People's Republic of China: Double Remedies Calculation," dated concurrently with this memorandum.

from Bloomberg, in order to obtain the amount of subsidy passed through and deducted from the calculated dumping margin, which is consistent with section 777A(f)(2) of the Act.[171]

For the China-wide entity, we preliminarily determined its estimated weighted-average dumping margin based on total AFA, which is the highest individual dumping margin calculated for Botao. Accordingly, the offset for domestic subsidies is based on the lesser of domestic subsidies included in Botao's estimated weighted-average dumping margin (*i.e.*, Botao's relevant domestic subsidies) or the domestic subsidies for all-other companies (*i.e.*, the amount of relevant domestic subsidies collected from the China-wide entity).[172]

## VII. ADJUSTMENT TO CASH DEPOSIT RATE FOR EXPORT SUBSIDIES

In an LTFV investigation where there is a concurrent CVD investigation, it is Commerce's normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent's estimated weighted-average dumping margin to account for export subsidies found for each respective respondent in the concurrent countervailing duty 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."[173]

Commerce determined in the preliminary determination of the companion CVD investigation that Botao and Delian benefitted from certain subsidy programs contingent on exports totaling 10.54 percent.[174] With respect to the non-selected, separate rate companies, we find that an export subsidy offset of 10.54 percent is warranted because this is the export subsidy rate included in the CVD rate for all-other companies, to which the non-selected, separate rate companies are subject in the companion CVD proceeding. The China-wide entity preliminarily received an estimated weighted-average dumping margin based on total AFA, which is the highest individual dumping margin calculated for Botao. As an extension of the adverse inference found necessary pursuant to section 776(b) of the Act, Commerce has determined the cash deposit rate for the China-wide entity's by adjusting its estimated weighted-average dumping margin by an export subsidy offset based on the lesser of export subsidies included in Botao's estimated weighted-average dumping margin (*i.e.*, Botao's export subsidies) or the export subsidies for all-other companies (*i.e.*, the amount of export subsidies collected from the China-wide entity).

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[171] *See Aluminum Extrusions from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 32347 (June 8, 2015), and accompanying Preliminary Decision Memorandum at 34, unchanged in *Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 75060, 75063 (December 1, 2015).
[172] *See Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 75 (January 4, 2016), and accompanying Preliminary Decision Memorandum at 25-26, unchanged in *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35316, 35318 (June 2, 2016).
[173] *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.
[174] *See Corrosion Inhibitors CVD Prelim*, and accompanying Preliminary Decision Memorandum.

## VIII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☒ ☐

____________ ____________
Agree Disagree

9/2/2020

X

Signed by: JEFFREY KESSLER

________________________
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance