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September 11, 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 Glass Containers from the People's Republic of China: Issues and Decision Memorandum for the Final Affirmative Determination of Sales at Less-Than-Fair-Value

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I. SUMMARY

The Department of Commerce (Commerce) finds that certain glass containers (glass containers) from the People's Republic of China (China) are, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is January 1, 2019 through June 30, 2019.

After analyzing interested parties' comments, we made changes to the margin calculations for Qixia Changyu Glass Co., Ltd. (Qixia Changyu) and Guangdong Huaxing Glass Co., Ltd. (Huaxing), the mandatory respondents in this investigation. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues for which we received comments from the interested parties:

Comment 1: Selection of Primary Surrogate Country
Comment 2: Whether to Adjust Mexican Import Values Used as Surrogates to CIF Values
Comment 3: Commerce Should Correct Qixia Changyu's Brokerage and Handling Calculation
Comment 4: Adjustment of the Flint Cullet Surrogate Value
Comment 5: Treatment of Molds as a Factor of Production (FOP)
Comment 6: The Appropriate Surrogate Value for Calcium Carbonate
Comment 7: Incorrect Application of Moving Expenses to Huaxing's Ex-Works Sales
Comment 8: Double Counted Brokerage and Handling Expenses
Comment 9: Decision Not to Grant a Double-Remedy Offset
Comment 10: Decision Not to Grant Separate Rate Status for Certain Applicants

Comment 11: Missing Producer in a Combination Rate

II. BACKGROUND

On September 25, 2019, Commerce received antidumping duty (AD) and countervailing duty (CVD) petitions covering imports of glass containers from China, filed on behalf of the American Glass Packaging Coalition (the petitioner).[1] On October 15, 2019, Commerce initiated an AD investigation of glass containers from China.[2] On April 29, 2020, Commerce published the *Preliminary Determination* of sales at less than fair value (LTFV) with respect to glass containers from China.[3] On June 1, 2020, Commerce published the *Amended Preliminary Determination* of sales at LTFV for glass containers from China.[4] On June 3, 2020, the petitioner, Huaxing, Qixia Changyu, Fengyang Huazhong Glass Co., Ltd., Wuxi Huangzhong Glass Co., Ltd., and Shandong Sanhui Glass Co., Ltd. (HB SR Applicants), and Zibo Zhaohai Light Industrial Products Co., Ltd. (Zibo Zhaohai) submitted case briefs.[5] On June 12, 2020, the petitioner, Huaxing, and Qixia Changyu submitted rebuttal briefs.[6]

III. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is certain glass containers with a nominal capacity of 0.059 liters (2.0 fluid ounces) up to and including 4.0 liters (135.256 fluid ounces) and an opening or mouth with a nominal outer diameter of 14 millimeters up to and including 120 millimeters. The scope includes glass jars, bottles, flasks and similar containers; with or without their closures; whether clear or colored; and with or without design or functional enhancements (including, but not limited to, handles, embossing, labeling, or etching).

Excluded from the scope of the investigation are: (1) glass containers made of borosilicate glass, meeting United States Pharmacopeia requirements for Type 1 pharmaceutical containers; (2) glass containers without "mold seams," "joint marks," or "parting lines;" and (3) glass containers without a "finish" (i.e., the section of a container at the opening including the lip and ring or

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[1] *See* Petitioner's letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Certain Glass Containers from the People's Republic of China," dated September 25, 2019.
[2] *See Certain Glass Containers from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 84 FR 56174 (October 21, 2019).
[3] *See Certain Glass Containers from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures* 85 FR 23759 (April 29, 2020) (*Preliminary Determination*).
[4] *See Certain Glass Containers From the People's Republic of China: Amended Preliminary Affirmative Determination of Sales at Less Than Fair Value* 85 FR 33117 (June 1, 2020) (*Amended Preliminary Determination*).
[5] *See* Petitioner's Case Brief, "Glass Containers from the People's Republic of China: Case Brief," dated June 3, 2020 (Petitioner's Case Brief); *see also* Qixia Changyu's Case Brief, "Certain Glass Containers from the People's Republic of China: Case Brief," dated June 3, 2020 (Qixia Changyu's Case Brief); Huaxing's Case Brief, "Glass Containers from the People's Republic of China: Case Brief," dated June 3, 2020 (Huaxing's Case Brief); HB Separate Rate Respondents' Caser Brief, "Glass Containers from the People's Republic of China: Case Brief," dated June 3, 2020; and Zibo Zhaohai's Case Brief, "Glass Containers from the People's Republic of China: Case Brief," dated June 3, 2020.
[6] *See* Petitioner's Rebuttal Brief, "Glass Containers from the People's Republic of China: Rebuttal Brief," dated June 12, 2020; *see also* Huaxing's Rebuttal Brief, "Glass Containers from the People's Republic of China: Rebuttal Brief," dated June 12, 2020 (Huaxing's Rebuttal Brief); and Qixia Changyu's Rebuttal Brief, "Glass Containers from the People's Republic of China: Rebuttal Case Brief," dated June 12, 2020 (Qixia Changyu's Rebuttal Brief).

collar, threaded or otherwise compatible with a type of closure to seal the container's contents, including but not limited to a lid, cap, or cork).

Glass containers subject to the investigation are specified within the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7010.90.5005, 7010.90.5009, 7010.90.5015, 7010.90.5019, 7010.90.5025, 7010.90.5029, 7010.90.5035, 7010.90.5039, 7010.90.5045, 7010.90.5049, and 7010.90.5055. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

IV. DISCUSSION OF THE ISSUES

Comment 1: Selection of Primary Surrogate Country

A) Surrogate Values (SVs)

Qixia Changyu's Comments

- Commerce should select Turkey, rather than Mexico, as the primary surrogate country because Turkey has superior SVs and financial statements.
- The SV data from Turkey (GTA data) are more specific to inputs than SV data (GTA data) from Mexico because GTA data for Turkey are at the ten-digit HTS level but only at the eight-digit level for Mexico.
- At a minimum, the HTS category descriptions for GTA data for both Turkey and Mexico are not different for any significant inputs; thus, these data are equally specific.
- GTA acknowledged that its data for Mexico are unreliable and at best it could only estimate Mexican import data.[7] It is unreasonable to require respondents to determine the extent of any distortion in the Mexico GTA data. Commerce should have investigated this matter since the statute clearly permits Commerce to obtain information on its own initiative. Commerce's failure to gather such information is an abuse of discretion.
- Commerce's preliminary determination suggests that it required evidence of how much the Mexico GTA values are distorted, which implies that there is a threshold below which it can use distorted data. This is contrary to the requirement that Commerce calculate dumping margins as accurately as possible; any level of distortion in the data and resulting SVs calls into question the accuracy of all of the data, means that the resulting dumping margins will not be as accurate as possible, and clearly means the GTA data for Turkey are superior; there are no such accuracy questions with respect to GTA data from Turkey.
- Additionally, Commerce must consider the Turkish GTA data inherently more specific and superior than Mexico GTA data because it does not require an adjustment from a FOB value to a CIF value, as does the Mexico GTA data (according to the petitioner). Commerce has previously considered this fact when weighing the quality of data between

[7] *See* Qixia Changyu's Letter, "Certain Glass Containers from the People's Republic of China: Surrogate Country and Surrogate Value Comments," dated February 19, 2020 (Qixia Changyu's Surrogate Country and Value Comments), at Exhibit 1.

countries.[8] Any adjustments to the Mexico GTA data for movement charges would not reflect the actual costs of importing inputs in Mexico because: 1) available ocean freight SVs are based on the cost of shipping between the United State and China; 2) the marine insurance SV is from 2010 and is based on costs to ship to or from the United States; and 3) surrogate brokerage and handling costs are based on imports of motor vehicle parts into Mexico from the United States. None of these sources are related to imports into Mexican of glass container inputs.

Petitioner's Comments

- Commerce has selected a surrogate country whose imports were at the 8-digit HTS level over one whose imports were at the 10-digit HTS level based on other available information.[9]
- Qixia Changyu's claim that Mexico GTA data are unreliable is based on a single, one-page email from GTA which does not indicate when in 2019 the purported suppression occurred, does not indicate the extent of the supposed suppression, and does not specify which commodities were affected. Qixia Changyu has not specified in what way the Mexico GTA data are unreliable.
- While Qixia Changyu claims it is unreasonable for Commerce to require it to determine what, if any, Mexican data are distorted, Commerce's longstanding practice is that the "burden of proof to substantiate the legitimacy of a claimed adjustment falls on the respondent party making that claim."[10]
- As Qixia Changyu is requesting Commerce to adjust its preliminary determination and select Turkey as the surrogate country, the burden of proof that the Mexico GTA import data are unreliable falls on Qixia Changyu. Qixia Changyu has failed to meet its burden of proof.
- Commerce should reject Qixia Changyu's argument that Turkey is a superior surrogate country compared to Mexico because the Mexico GTA FOB import values must be adjusted to CIF values. Commerce has routinely rejected this argument in multiple cases given that failure to make such adjustments to FOB data would be inconsistent with its longstanding policy and substantially limit the sources of potential surrogate countries.
- The need to adjust FOB data does not disqualify that data from use. Rather Commerce's Policy Bulletin 10.2[11] explicitly allows adjustments of data to include international freight charges to import statistics when they are not included.
- If Commerce does not select Mexico as the primary surrogate country, it should select Malaysia as the primary surrogate country.

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[8] *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) (*Steel Racks*), and accompanying Issues and Decision Memorandum (IDM); *see also Jacobi Carbons AB and Jacobi Carbons, Inc. v. United States*, CIT 16-00185, Slip Op. 20-55, 11 (Ct. Int'l Trade 2020); and *Jacobi Carbons AB and Jacobi Carbons, Inc. v. United States*, CIT 15-00286, Slip Op. 19-159 (Ct. Int'l Trade 2019).
[9] *See*, e.g., *Multilayered Wood Flooring from the People 's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 46899 (July 19, 2016), and accompanying IDM.
[10] *See Silicon Metal from Brazil: Final Results of Antidumping Duty Administrative Review*, 64 FR 6305 (February 9, 1999) (*Silicon Metal from Brazil*); *see also Timken Co. v. United States*, 673 F Supp. 495,513 (Ct. Int'l Trade 1987) (*Timken*).
[11] *See* Policy Bulletin Number 10.2, "Inclusion of International Freight Costs When Imported Prices Constitute Normal Value," (Nov. 1, 2010) (Policy Bulletin 10.2), http://enforcement.trade.gov/policy/PB-10.2.pdf.

- Malaysia has an expanding glass container industry with several major glass producers. Selecting Malaysia would ensure that Commerce has the proper surrogate value for all of the inputs and will calculate the most accurate dumping margin.
- Malaysia's data quality is superior to that of Turkey, and similar to that of Mexico. The record contains Malaysia GTA import data to value all inputs reported by both respondents (there are no calcium carbonate import values for Turkey on the record), and the Malaysia data are more specific to the inputs consumed by the respondents in the production of glass containers than Turkish data. Importantly, Malaysia HTS subheadings for sand, cullet, calcium carbonate, and soda ash imports are equally or more specific than the Turkish HTS subheadings for those inputs.
- There are several financial reports on the record for profitable Malaysian glass producers that could be used as to calculate financial ratios.

B) Financial Statements

Qixia Changyu's Comments

- Turkey has superior financial statements (from Anadolu Cam Sanayii A.S. (ACS) or Denizli Cam Sanayii Ce Ticaret A.S. (DCS)) for calculating financial ratios compared to Mexico (Vitro, S.A.B. de C.V. (Vitro) (the financial statement used in the preliminary determination)). ACS is a producer of identical merchandise and its financial ratios are based on the business segment for that merchandise.
- Cost of sales is itemized in the Turkish financial statements into components which correlate with those components used by Commerce in its financial ratio calculations, whereas Vitro's financial statements are not. Commerce has repeatedly rejected such statements because they were not sufficiently detailed.[12]
- Vitro's glass containers segment was not profitable in 2018. Commerce has a practice of not relying on unprofitable financial statements. Relying on Vitro's financial statements for ratios results in a profit ratio that is calculated partly based on non-identical products that are produced in countries outside of Mexico that are not at the same level of economic development as China (see details below).
- Commerce noted that ACS has significant production outside of Turkey, but Vitro's financial statements include costs of production of subsidiaries in Colombia, the United

[12] *See Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Final Determination of No Shipments; 2016-2017*, 84 FR 17134 (April 24, 2019), and accompanying IDM at Comment 2 (rejecting financial statements for use in calculating surrogate financial ratios because they did not contain a breakout of energy or labor as a production expense); *see also Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2014-2015*, 82 FR 18115 (April 17, 2017), and accompanying IDM at Comment 2 (relying on financial statements that broke out energy costs rather than those that did not where both were available); *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 23272 (April 20, 2016), and accompanying IDM at Comment 8; *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 at Comment 9; *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 16838 (April 13, 2009), and accompanying IDM at Comment I; and *Polyethylene Terephthalate Film. Sheet, and Strip from the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review*,76 FR 9753 (February 22, 2011), and accompanying IDM at Issue 1.

States, Canada, and Poland and may also contain the costs of other subsidiaries in other countries. The primary subsidiaries of ACS that are located outside of Turkey are in Russia, a country that is at the same level of economic development as China.
- While Commerce rejected DCS' financial statements because they cover a period further outside the POI and do not include an auditor's report, DCS is a Turkish producer of identical merchandise and its financial ratios reflect the cost of producing identical merchandise in Turkey. Thus, Commerce has multiple usable financial statements for companies in Turkey.

Huaxing's Comments
- If Commerce calculates financial ratios using ACS or DCS' financial statements, it should use Huaxing's overhead costs in its calculations not those of ACS or DCS.
- ACS' manufacturing overhead expense is larger than its direct materials and direct labor expenses combined. This is unreasonable.

Petitioner's Comments
- Commerce should not calculate financial ratios using the Turkish financial statements from ACS.
- ACS received government grants. Commerce does not rely on financial statements where there is evidence that the company received countervailable grants and there are other usable financial statements on the record.[13] There is no indication Vitro received subsidies.
- ACS' financial statements are consolidated statements including the results of significant producers outside of Turkey. Qixia Changyu attempted to estimate operating results specific to Turkey; however, as Commerce noted, the estimations are based on speculation.
- While cost of sales is itemized at the consolidated level of ACS' financial statements, it is not itemized for ACS' Turkey operations. Qixia Changyu made unsupported assumptions in identifying elements of costs of sales for ACS' Turkey operations which introduce inaccuracies into the financial ratio calculations that are not found in Vitro's financial ratios.
- Huaxing's proposal to incorporate its own financial information into ACS's financial ratio calculations is against Commerce's practice of basing SVs on public information from market economies.[14] Implementing Huaxing's proposal defeats the goal of using a surrogate country to calculate SVs.
- If Commerce selects Turkey as the primary surrogate country, it should rely on the financial ratios the petitioner calculated from ACS' financial statements because they accurately reflect overhead expenses, SG&A expenses, and profit.

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[13] *See 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).
[14] *See* 19 CFR 351.408(c)(4).

Commerce's Position:

We continue to find that Mexico is the most appropriate primary surrogate country in this investigation based on data quality. When Commerce is investigating imports from a non-market economy (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."[15] As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME country unless it is determined that none of the potential surrogate countries are viable options because they either: (1) are not significant producers of comparable merchandise, (2) do not provide sufficient reliable sources of publicly-available SV data, or (3) are not suitable for use based on other reasons. Countries that are not at the same level of economic development as the NME country, but that are still at a level of economic development comparable to the NME country, are selected as the surrogate country only if data considerations outweigh the difference in levels of economic development.[16] To determine which countries are at a similar level of economic development as the NME country, Commerce generally relies solely upon per capita gross national income (GNI) data from the World Bank's *World Development Report*.[17] In addition, 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.

Regarding financial statements, Vitro's (a Mexican company) financial statements are a better source for calculating financial ratios than the financial statements of the Turkish companies DCS and ACS. Commerce's practice is to not calculate financial ratios from financial statements without an auditor's opinion if other useable financial statements are on the record.[18] DCS' financial statements lack an auditor's opinion. Moreover, DCS' financial statements cover 2015, a period not contemporaneous with the POI and cover a period further away from the POI than the other financial statements on the record.[19]

ACS' consolidated financial statements reflect significant production outside of Turkey.[20] Commerce has declined to calculate financial ratios from companies with significant operations

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[15] *See* Commerce 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.
[16] *Id.*
[17] *See* Commerce's Letter, "Antidumping Duty Investigation of Glass Containers from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated January 29, 2020.
[18] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese from Kazakhstan*, 67 FR 1555 (April 2, 2002), and accompanying IDM at Comment 3.
[19] *See* Qixia Changyu's Surrogate Country and Value Comments at Exhibit 16.
[20] *Id.* at Exhibit 14.

outside of the surrogate country if other useable financial statements are on the record.[21] Moreover, ACS's cost of sales is itemized at the consolidated level, not at the level of the Turkish operations. Qixia Changyu claims that ACS' financial statements are superior to Vitro's financial statements because ACS' itemized cost of sales information results in more accurate financial ratios. However, Qixia Changyu only estimated the elements of cost of sales for the Turkish operations that it used in its ratio calculations based on speculation.[22] Thus, those ratios are not necessarily more accurate than Vitro's ratios, which are based on the company's actual operating data, and they may not even reflect factual ratios of ACS' operations in Turkey.

Qixia Changyu argues against using Vitro's financial statements to calculate financial ratios because Vitro's glass containers division was unprofitable and Vitro had operations outside of Mexico. Neither point persuades us to select ACS' financial statements over Vitro's statements.

Commerce typically calculates profit at the company level,[23] not at the division level, and Vitro was profitable.[24] Moreover, there are considerable differences between Vitro and ACS when it comes to each company's operations outside of the surrogate country. ACS' revenue and cost of sales from operations outside of Turkey represents approximately 45.34 percent and 44.64 percent of its consolidated revenue and cost of sales, respectively.[25] Furthermore, of ACS' total production capacity of 2.5 million tons/year, 1.3 million tons/year is from overseas (outside of Turkey) production facilities.[26] Hence, a substantial portion of ACS' operations are conducted outside of Turkey. In contrast, the record shows that Vitro has 14,912 employees worldwide, of which 71.8 percent (10,703) are located in Mexico.[27] While Vitro does have overseas (outside of Mexico) facilities, record evidence indicates that the bulk of Vitro's operations are located in Mexico.

We disagree with Qixia Changyu that Turkey is a better surrogate country than Mexico because overall Mexico's SVs are more specific to the inputs being valued. First, the Mexico GTA data are more specific (at the eight-digit HTS level) than the six-digit HTS level of the Turkey UN Comtrade Export Data provided to value Huaxing's FOPs. Second, the Mexico GTA data are no less specific, for the primary inputs, than the Turkey GTA data provided to value Qixia Changyu's FOPs. While GTA data for Turkey are at the ten-digit HTS level for some inputs, but only at the eight-digit level for Mexico, the import data for the primary inputs are no less specific

[21] *See Sodium Hexametaphosphate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 59375 (September 27, 2012), and accompanying IDM at Comment 1; *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 35616 (July 27, 2018), and accompanying IDM at Comment 10.
[22] *See* Qixia Changyu's Surrogate Country and Value Comments at Exhibit 13.
[23] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 77323 (December 14, 2015), and accompanying IDM at Comment 4.
[24] *See* Petitioner's Letter, "Certain Glass Containers from the People's Republic of China: Comments on Surrogate Values," dated February 12, 2020 (Petitioner's Surrogate Value Comments), at Exhibit 15.
[25] *See* Qixia Changyu's Surrogate Country and Value Comments at Exhibit 14 at Note 5. (Revenue from Russia, Ukraine, and Georgia equaled 1,4694,944 Turkish Lira of 3,230,556 Turkish Lira total revenue; and cost of sales from Russia, Ukraine, and Georgia equaled 1,006,513 Turkish Lira of 2,254,878 Turkish Lira total cost of sales.).
[26] *Id.* at Exhibit 14 at ACS summary.
[27] *See* Petitioner's Surrogate Value Comments at Exhibit 15A, GRI Index.

in Mexico GTA data than Turkey GTA data.[28] Qixia Changyu concedes this point when noting that, at a minimum, the HTS category descriptions for GTA data for both Turkey and Mexico are not different for any significant inputs; thus these data are equally specific.[29] We find the fact that Mexico GTA data are more specific than Turkey UN Comtrade Export Data, and the better quality of the Mexico financial statements, outweighs any HTS descriptions for Turkey for non-major inputs that may be more detailed than corresponding HTS descriptions for Mexico.

Although Mexico GTA data are reported on an FOB basis and must be adjusted to a CIF basis, this does not disqualify the Mexico data from being used as SVs. If that were the case, it would improperly restrict available sources of SVs.[30] Commerce has made such adjustments when necessary in numerous cases in the past.[31]

Furthermore, we agree with the petitioner that only using Mexican GTA data to value inputs will allow Commerce to use a single more specific data source to value FOPs as the Turkey SVs come from a combination of GTA and less specific UN Comtrade Data. In addition, there is no Turkey value for calcium carbonite on the record.

Qixia Changyu argues that the Mexico GTA data are unreliable based on an email from GTA stating "{y}ou are correct that Mexico has implemented suppression to some of the commodities starting 2019 via INEGI data release{sic}."[32] We find that this vague statement, alone, is not sufficient evidence to reject Mexico GTA data as an unreliable source of SVs for the POI. It is not clear to Commerce what "implemented suppression to some of the commodities"[33] means based on the record of this investigation. The evidence on the record consists of one page of e-mail correspondence, which is marked page one out of two (the second page was not provided), and indicates the email is in response to prior communication; however, Qixia Changyu failed to provide all of the communication, including the question asked of the GTA provider, related to this email, or any explanation of the context for the email.[34] The record lacks further evidence including details of when this "suppression" began or what commodities were affected. We note that "the burden of creating an adequate record lies with {interested parties} and not with

[28] *See* Petitioner's Letter, "Certain Glass Containers from the People's Republic of China: Final Surrogate Value Comments and Submission of New Factual Information," dated March 23, 2020 (Petitioner's Final Surrogate Value Submission); *see also* Huaxing's Letter, "Certain Glass Containers from the People's Republic of China: Surrogate Country and Preliminary SV Submission," dated February 12, 2020; and Qixia Changyu's Surrogate Country and Value Comments.
[29] *See* Qixia Changyu's Case Brief at 3.
[30] *See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 10411 (February 24, 2020), and accompanying IDM at comment 4.
[31] *See, e.g.*, *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2018*, 84 FR 67925 (December 12, 2019) (*Hydroxyethylidene*), and accompanying IDM at Comment 2; *see Steel Racks* IDM at 13; *Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part,* 83 FR 33205 (July 17, 2018), and accompanying IDM at comments 2 and 3; and *Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part*, 75 FR 50992 (August 18, 2010) (*Wooden Bedroom Furniture*), and accompanying IDM.
[32] *See* Qixia Changyu's Letter, "Certain Glass Containers from the People's Republic of China: Surrogate Country and Surrogate Value Rebuttal Comments," dated February 19, 2020 at Exhibit 1.
[33] *Id*.
[34] *Id.* at Exhibit 1.

Commerce."[35] Moreover, the burden to support a claim that SV data are distorted, unreliable, or aberrational is on the party making the claim.[36] We find that, based on the vague nature of the GTA email, coupled with the fact that it appears to be incomplete, and without further information, Qixia Changyu failed to meet its burden to demonstrate that the Mexico GTA data is unusable.

We disagree with the petitioner's claim that ACS received countervailable grants from the Turkish government. While there is evidence that ACS received grants from the Turkish government, there is no indication that these grants relate to any program which Commerce has countervailed.[37] As such, we have not rejected ACS' financial statements because of the grants. However, we continue not to rely on ACS' financial statements for the reasons stated above.

Lastly, there are no financial statements on the record for a Malaysia company, only a financial report for Malaya Glass Products SDN. This report is not an audited financial statement, but is a summary of financial information assembled by a third party, EMIS, in order to provide general corporate information and to serve as a reference guide.[38] As there are no financial statements from Malaysian companies on the record, we have not selected Malaysia as the surrogate country because its selection is outweighed by having complete SV data from Mexico.

Pursuant to section 773(c)(4) of the Act, Commerce must examine certain criteria for the valuation of factors of production. Mexico is at the same level of economic development as China; it is a significant producer of merchandise comparable to the subject merchandise, and, based on the foregoing, Mexico SV data are the best available data for valuing FOPs. Therefore, we continue to select Mexico as the primary surrogate country.

Comment 2: Whether to Adjust Mexican Import Values Used as Surrogates to CIF Values

Petitioner's Comments

- Policy Bulletin 10.2 and Commerce's practice requires it to adjust the Mexico free on board (FOB) values that were used as SVs to cost, insurance, and freight (CIF) values.
- Commerce noted in Policy Bulletin 10.2 that "when the import statistics of the surrogate country do not include such costs, {Commerce} has added surrogate values for international freight and foreign brokerage handling charges to the calculation of normal value."
- This Policy Bulletin is binding on Commerce because Commerce noted it "will" add international freight expenses to import values when a surrogate country's import statistics do not include them. The Court of Appeals for the Federal Circuit (CAFC) clarified that "{a}n agency statement, not issued as a formal regulation, binds the agency only if the agency intended the statement to be binding"[39] which is the case here.

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[35] *See QVD Food Co., Ltd. v. United States*, 658 F. 3d 1318, 1324 (Fed. Cir. 2011) (citation omitted).
[36] *See Silicon Metal from Brazil*; *see also Timken*.
[37] *See Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 76 FR 64318 (October 18, 2011), and accompanying IDM at Comment 1.
[38] *See* Petitioner's Final Surrogate Value Submission at Exhibit, Exhibit 22.
[39] *See, e.g.*, *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see also Wagner v. United States*, 368 F. 3d 1358, 1361 (Fed. Cir. 2004).

- Adjusting these FOB values to CIF values is consistent with Commerce's longstanding practice. Commerce has stated that it "must make adjustments to value {the import values} on a CIF basis, consistent with {its} practice."[40] Commerce has taken this same approach in a number of cases,[41] and has been upheld by the CIT.[42] Also, Commerce previously rejected respondent arguments that Commerce should not add movement expenses to import values.[43]
- Huaxing misinterpreted the cases on which it relied to support its claim that Commerce has not consistently added international freight expenses to Mexico import values used as SVs. Commerce did not affirmatively address this issue in these cases.[44] However, this fact does not mean that the imports were reported on an FOB basis and that no adjustment is necessary.
- *Diamond Sawblades* involves a preliminary decision; this issue should be resolved in the final decision consistent with Commerce's practice.
- It is unclear why this issue was not addressed in *Chlorinated Isocyanurates 2016-2017*. However, in the more recent final results of the 2017-2018 antidumping duty administrative review of Chlorinated Isocyanurates from the People's Republic of China, Commerce stated that its practice "is to adjust the import value in situations where the primary surrogate country's import statistics do not include international freight costs. For the final determination, we will adjust the Mexican FOB import values to a CIF basis…{adding} amounts for international freight and marine insurance."[45]
- With respect to calculating the CIF adjustment, while Huaxing questioned the appropriateness of the petitioner's SV sources, the marine insurance and brokerage and handling surrogate sources have been relied upon by Commerce in previous cases.[46] The burden is on Huaxing to show that these sources are inadequate.
- In *Jiangsu Zhongji v. United States,* the CIT stated that although the plaintiff claimed the ocean freight SVs are inaccurate, it failed to show they are distortive.[47] Huaxing has not shown that the petitioner's SVs are distortive and therefore it has not met its burden.

Qixia Changyu's Comments

- If the Mexico import values that Commerce used as SVs require adjusting, this argues in favor of selecting Turkey as the primary surrogate country.

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[40] *See* Petitioner's Case Brief at 5 (quoting *Ceramic Tile from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Partial Affirmative Critical Circumstances Determination*, 85 FR 19425 (April 7, 2020) and accompanying IDM at 71).
[41] *See Cast Iron Soil Pipe Fittings* IDM at Comments 2 and 3; *see also Wooden Bedroom Furniture* IDM.
[42] *See* Petitioner's Case Brief at 7 (citing *Jiangsu Zhongji Lamination Materials Co., (HK) v. United States*, 396 F. Supp. 3d 1334, 1343 (Ct. Int'l Trade 2019) (*Jiangsu Zhongji*)).
[43] *See Hydroxyethylidene* IDM at Comment 2.
[44] *See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 5053 (February 20, 2019) (*Chlorinated Isocyanurates 2016-2017*), and accompanying IDM; *see also Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 85 FR 2705 (January 16, 2020) (*Diamond Sawblades*), and accompanying IDM.
[45] *See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 10411 (February 24, 2020), and accompanying IDM at Comment 4.
[46] *See, e.g.*, *Hydroxyethylidene* IDM at Comment 2.
[47] *See* Petitioner's Case Brief at 9-10 (citing *Jiangsu Zhongji*, 396 F. Supp. at 1353).

- If Mexico is used as the primary surrogate country, Commerce should not adjust Mexico import values using the proposed surrogates for movement expenses because they are unreasonable and distortive. According to the petitioner, they would more than triple Qixia Changyu's dumping margin from 7.6 percent to 23.65 percent. It is illogical that movement expenses could account for such a large portion of the dumping margin.[48]
- The surrogate movement expenses that the petitioner proposes using to convert Mexico FOB import values to CIF values include ocean freight expenses for shipping between Yantai, China and Long Beach, U.S.A., marine insurance expenses from 2010 for shipments to, or from, the United States, and brokerage and handling expenses for motor vehicle parts shipped from the United States to Mexico across the Nuevo Laredo border. None of these surrogates relate to imports into Mexico of inputs used in producing glass containers.
- It would be more accurate for Commerce to not make any adjustment than to make the adjustments proposed by the petitioner.

Huaxing's Comments

- The record does not support making the proposed adjustment.
- Although Mexico import values are generally FOB values, the values used to calculate almost every SV were for imports into Mexico from the United States; therefore, it is unreasonable and unnecessary to add ocean freight, marine insurance, and ocean brokerage and handling expenses to those values.
- Most of the Mexico POI imports used to value direct materials came from the United States (100 percent of glass cullet, soda ash, and limestone were from the United States), the majority of POI imports of energy inputs came from the United States (100 percent for petroleum coke, ethylene tar, and bio-mass fuel and 99 percent for diesel), and almost all POI imports of packing materials came from the United States or from other countries neighboring Mexico (96.4 percent of packing pallets came from the United States and 2.61 percent came from Guatemala; other minor packing materials follow a similar pattern).
- Given these facts, it is unreasonable to add movement expenses for ocean shipments to the import values used as SVs.[49] It is more accurate not to make any adjustment.[50] If Commerce makes an adjustment to import values, it should only adjust import values for

[48] *See Goldlink Indus. Co. v. United States,* 30 CIT 616, 629 (2006) ("{s}ince the presumption is that NME data is distorted, Commerce must find a reasonable surrogate value. Logically then, Commerce cannot use a surrogate value if it is also distorted, otherwise defeating the purpose of using a surrogate value rather than the actual export value.")

[49] *See Atlantic Sugar, Ltd. v. United States,* 744 F. 2d 1556, 1562 (Fed. Cir. 1984) ("substantial evidence" must be measured by a review of the record as a whole, "including whatever fairly detracts from the substantiality of the evidence.")

[50] *See Shandong Huarong Mach. Co. v. United States*, 31 CIT 1815, 1829 (November 2007) ("While Congress has left it within Commerce's discretion to develop methodologies to enforce the antidumping statute, any given methodology must always seek to effectuate the statutory purpose – calculating accurate dumping margin.") quoting *Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States*, F. Supp. 2d 1354, 1358 (1999), aff'd, 268 F. 3d 1376 (Fed. Cir. 2001); *see also Allied-Signal Aerospace Co., v. United States*, 996 F. 2d 1185, 1191 (Fed. Cir. 1993) (stating that the purpose behind the antidumping statute "is to facilitate the determination of dumping margins as accurately as possible.").

inputs where the majority of the imports were not from the United States or countries neighboring Mexico.

- The information available for adjusting import values to CIF values is inaccurate and distortive. The ocean freight rates are for shipping from Yantai, China to Long Beach, U.S.A.; this rate is not comparable to the rate for shipping into Mexico. The marine insurance rate is over nine years old, it is from a summary table from a previous case, there is no supporting documentation for the rate on the record, there is no indication of the source of the rate, and the summary table indicates only that the rate is for the "Far East."[51] This marine insurance rate is not specific to 2019 marine insurance costs incurred in Mexico or in another economically comparable country. The brokerage and handling surrogate cost from *Doing Business Mexico* is not specific to shipping inputs used for producing glass containers (the cost is for imports of motor vehicle parts) nor is it specific to the routes for the imports used to calculate SVs.
- Contrary to the petitioner's claim, the burden is not on Huaxing to demonstrate that these SVs would result in an inaccurate and distortive CIF adjustment; rather, the burden is on the party supplying the SV information to provide an adequate record for such an adjustment.[52]
- While the petitioner is correct that Commerce did not specifically address the issue of adjusting FOB values to CIF values in *Chlorinated Isocyanurates 2016-2017* or *Diamond Sawblades*, these cases are examples of where Commerce relied on FOB import values.
- Commerce did not find that it should have adjusted the FOB values to CIF values or that it made an error in failing to do so, when it responded to the petitioner's ministerial error allegation regarding the failure to adjust FOB values to CIF values.

Commerce's Position:

We agree with the petitioner that, consistent with our practice, we should add movement costs to Mexican GTA import values because they are on a FOB foreign port basis.[53] Commerce specifically stated in Policy Bulletin 10.2 that "in situations where the surrogate country import statistics do not include international freight costs,{Commerce} will add international freight and foreign brokerage and handling charges to the import value." Normally, international freight costs include not only the ocean freight portion of transporting the merchandise from one location to another but also the other expenses associated with moving the goods, such as marine insurance.[54] Policy Bulletin 10.2 further states that:

> {w}hen relying on surrogate country import statistics to value inputs, {Commerce} normally obtains import prices that include the international freight costs on shipping the product to the port of the importing country... However,

[51] *See* Huaxing's Rebuttal Brief at 6.
[52] *See QVD Food Co. v. United States*, 658 F. 3d 1318, 1324 (Fed. Cir. 2011) (holding that "the burden of creating an adequate record lies with {interested parties} and not with Commerce.").
[53] *See Certain Quartz Surface Products from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstance*, 84 FR 23767 (May 23, 2019), and accompanying IDM at Comment 9.
[54] *See* Policy Bulletin 10.2.

> when the import statistics of the surrogate country do not include such costs, {Commerce} has added surrogate values for international freight and brokerage and handling charges to the calculation of normal value."[55]

Not adding movement costs to the Mexico GTA data understates the SVs that we calculated from that data.

Respondents contend that adding ocean freight and marine insurance expenses to the Mexico GTA data that were used to calculate SVs is inappropriate and distortive because most of the relevant imports into Mexico came by land from the United States.[56] Moreover, Huaxing questions the accuracy and relevancy of the ocean freight and marine insurance rates on the record because they are for shipping from China to the United States and are outdated and unsubstantiated, respectively.

Although the respondents allege that most of the relevant imports into Mexico came by land from the United States, there is no evidence on the record to indicate that the relevant imports into Mexico from the United States came by land rather than air or sea. GTA does not detail what method of transportation was used, the route taken, or the distance transported. Moreover, some of the relevant imports into Mexico came from countries not bordering Mexico and thus land transportation would not have been used. Additionally, we are not basing ocean freight expenses for imports into Mexico on rates for shipping from China to the United States, but on ITC Dataweb data.[57] We find ITC Dataweb data are the best available information on the record to adjust the Mexico FOB surrogate values to CIF values. The ocean freight costs from the ITC Dataweb are for imports of the primary inputs generally used in the manufacturing of glass containers.

Regarding marine insurance, there is only a single marine insurance value on the record. If any interested parties disagreed with the marine insurance rate on the record, other alternative sources should have been provided. It is not Commerce's burden to place information on the record with which to value FOPs; it is interested parties' responsibility to place SV data on the record that they want Commerce to consider.[58]

FOB typically refers to the price of merchandise at some location (such as at the border) in the exporting country while CIF refers to the landed value of the merchandise at the first port of arrival in the importing country. Although Qixia Changyu contends that it is illogical to make the adjustment because it would raise the dumping margin, to not make any adjustment, as Qixia Changyu suggests, understates the costs of FOPs by omitting costs associated with movement expenses. Therefore, using the best available information on the record we are adding ocean freight, marine insurance, and brokerage and handling expenses to the FOB Mexico import values to convert them to CIF values.

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[55] *Id.*.
[56] *See* Huaxing's Rebuttal Brief at 3.
[57] *See* Petitioner's Surrogate Value Comments at Exhibit 11.
[58] *See QVD Food*, 658 F. 3d at 1324 (citation omitted).

Comment 3: Commerce Should Correct Qixia Changyu's Brokerage and Handling Calculation

Qixia Changyu's Comments

- Commerce incorrectly deducted brokerage and handling expenses from all of Qixia Changyu U.S. sales prices, rather than only deducting these expenses from the prices of sales for which Qixia Changyu reported brokerage and handling expense.[59]
- Commerce should correct this error.

No other party commented on this issue.

Commerce's Position:

We agree with Qixia Changyu. We inadvertently deducted brokerage and handling expenses from all of Qixia Changyu U.S. sales prices, rather than only deducting these expenses from the prices of sales for which Qixia Changyu reported brokerage and handling expense. We have corrected this error in the final determination.[60]

Comment 4: Adjustment of the Flint Cullet Surrogate Value

Petitioner's Comments

- Huaxing consumed three types of flint (*i.e.*, clear) glass cullet (cullet is recycled glass used in producing glass containers): white, super white, and normal white[61] and it purchased sorted cullet.[62]
- Glass producers pay significant premiums for flint glass cullet compared to green, amber, tri-color cullet, etc.;[63] however, the SV source used to value cullet (import data from Mexico) does not separately identify imports of flint cullet. Therefore, the SV does not capture the premium associated with flint glass cullet.
- Commerce should increase the cullet SV by 12.8 percent to account for the higher price of flint cullet over brown (amber) cullet.[64] In past cases, Commerce added quality and testing premiums to steel plates to account for the differences between the type of plate purchased by the respondent and the SV.[65]

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[59] *See* Qixia Changyu's Case Brief at 11.
[60] *See* Memorandum, "Final Analysis Memorandum for Qixia Changyu", dated concurrently with this memorandum (Qixia Changyu Final Analysis Memorandum).
[61] *See* Huaxing's Surrogate Country and Preliminary Surrogate Value Comments, dated February 12, 2020 at Exhibit SV-2.
[62] *See* Huaxing's Letter, "Glass Containers from China – Guangdong Huaxing's Supplemental Section D Questionnaire Response," dated March 2, 2020 (Huaxing's SDQR), at Exhibit SD-15; *see also* Qixia Changyu's Letter, "Certain Glass Containers from the People's Republic of China: Sections A, C, and D Supplemental Questionnaire Response," dated February 25, 2020 (Qixia Changyu SACDQR), at 2.
[63] *See* Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Certain Glass Containers from the People's Republic of China," dated September 25, 2019 (Petition) at Exhibit II-22, pages 12-13.
[64] *See* Petitioner's Surrogate Value Comments, dated February 12, 2020 (Petitioner's SV Comments), at Exhibit 2A.
[65] *See Utility Scale Wind Towers From the Socialist Republic Vietnam: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 55333 (September 15, 2015) (*Wind Towers from Vietnam*), and accompanying IDM at Comment 2.

Huaxing's Comments

- Commerce should not adjust the cullet SV. The cullet SV is not color specific; thus, it should be assumed it is for mixed color glass cullet. Huaxing does not purchase cullet by color,[66] but purchases unsorted glass and washes and sorts the glass. Therefore, the SV covering mixed glass cullet corresponds to Huaxing's experience.
- The petitioner proposes adjusting the cullet SV based on information from a British recycling company. This has no bearing on Huaxing's experience.
- If the SV is increased for flint cullet, it should be decreased when valuing respondents' colored glass cullet.

Qixia Changyu's Comments

- Commerce should not add a premium to the cullet SV. Details regarding the imported cullet used to calculate the SV are not available. Adding a premium could double-count values.
- The type of glass cullet purchased by Qixia Changyu is not identified on the record and there is no information regarding any cost differences between cullet based on Qixia Changyu's experience.
- If a premium is added to the SV, the SV should also be reduced to account for lower priced colored cullet.
- The petitioner's premium is based on a British recycling company,[67] but the UK is not an economically comparable surrogate country and thus costs in the UK do not reflect costs in China, Mexico or Turkey.
- In *Wind Towers from Vietnam,* the case cited by the petitioner, the premium added to the base price, and the base price, were from the same source, Steel Guru India. Hence, the adjustment did not double-count values. Also, the premium was from the primary surrogate country, India.

Commerce's Position:

We disagree with the petitioner. Section 773(c)(1) of the Act states that "the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by {Commerce}." It is Commerce's stated practice to choose a surrogate value that represents country-wide price averages specific to the input in question, which are contemporaneous with the period under consideration, net of taxes and import duties, and based on publicly available, non-aberrational, data from a single surrogate ME country.[68] In general, it is not Commerce's practice to adjust SVs other than to convert currencies or units of measure, or to adjust for inflation/deflation.[69] Second, although the petitioner claims that the SV does not capture the premium associated with flint glass cullet, the import value that we used as the SV for cullet is

[66] *See* Huaxing's SDQR at 10 and Exhibit SD-15.
[67] *See* Petitioner's SV Comments at Exhibit 2A.
[68] *See* Policy Bulletin 04.1
[69] *See, e.g., Lightweight Thermal Paper from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 57329 (October 2, 2008), and accompanying IDM at Comment 9.

for "Glass Shards and Other Glass Debris and Residues,"[70] without any mention of the color of the cullet (recycled glass). This is a basket category that covers cullet of any color, including any imports of flint glass cullet. Hence, we find that any premium paid for flint glass cullet would be reflected in the import price of such glass under this HTS category. Third, nothing on the record indicates that Huaxing purchases cullet by color. Rather, Huaxing indicates that it purchases unsorted glass cullet, which matches the Mexico HTS category "Glass Shards and Other Glass Debris and Residues."[71]

Moreover, the premium adjustment suggested by the petitioner is sourced from a British recycling company and thus it is irrelevant for our analysis. Pursuant to section 773(c)(4) of the Act, Commerce must examine a surrogate value country whose economic development is comparable to the NME country at issue. The United Kingdom is not an economically comparable country to China.

While the petitioner argues that Commerce added a premium to a SV in *Wind Towers from Vietnam*, Commerce did not. The SV source, Steel Guru, provided steel plate values adjusted for extras and Commerce used those SVs in its calculations. Therefore, we do not agree that the case cited by the petitioner sets a precedent for a flint cullet SV adjustment.

Finally, while the petitioner is concerned that the SV for cullet understates the value of the allegedly higher priced flint (clear) cullet (since the SV is an average import price for all cullet which could include clear cullet and supposed lower price colors of cullet), the respondents point out that if that is true, the average import price, which may reflect some imports of flint (clear) cullet, could overstate the value of the lower priced cullet of various colors. Thus, the respondents argue that if a premium is added to the cullet SV when it is applied to flint cullet, a reduction should be made to the cullet SV when it is applied to cullet of various colors.[72] While we acknowledge respondent's counter argument for a downward adjustment, we have not reduced the color cullet SV for the same reason we have not increased the flint cullet SV.

There are no Mexico SVs on the record specific to flint cullet or certain colors of cullet. Attempts to adjust the AUV used as a SV to make it more precise may simply introduce inaccuracies and distortions into the value, may not make it any more accurate, and, as noted above, is not consistent with Commerce's practice of not adjusting SVs. The AUV is an average of import values for all types of cullet and we have applied it to a corresponding input – all types of cullet consumed by the respondents. This is the best information on the record for valuing cullet and we have continued to use this value, unadjusted, for cullet in the final determination.

Comment 5: Treatment of Molds as a Factor of Production (FOP)

Petitioner's Comments

- Commerce should treat new custom molds purchased during the POI as an FOP, rather than part of overhead expenses and amortize their costs over the POI.

[70] *See* Preliminary SV Memorandum at Exhibit I.A and Huaxing's SDQR at 2.
[71] *See* Huaxing's SDQR at 10 and Exhibit SD-15.
[72] *See* Qixia Changyu's Rebuttal Brief at 4; *see also* Huaxing's Rebuttal Brief at 9.

- A mold is directly related to the shape and customization of the glass containers,[73] it is only used for one particular glass container, and it lasts for a certain production quantity before being replaced.[74] Thus, molds are not general overhead expenses incurred for all production but a specific FOP for particular containers.

Huaxing's Comments

- The surrogate financial statements used to calculate the overhead ratio follow International Accounting Standards; thus, it is reasonable to conclude that the cost of molds are in manufacturing overhead and are reflected in the overhead ratio used to calculate normal value.
- Molds are used over long periods of time; hence, their costs should not be attributed (amortized over) only to the POI, as suggested by the petitioner, but their costs should be amortized over many years.
- Use of amortization suggests non-current, long-term assets, rather than expensed items.

Qixia Changyu's Comments

- Commerce should continue treating molds are part of overhead costs.
- Molds are not consumed with each glass container but are reused. Commerce considers direct materials as FOPs but if an item is not incorporated into the finished good then it is treated as overhead.[75]

Commerce's Position:

We disagree with the petitioner. It is Commerce's practice to treat raw materials as FOPs, and manufacturing overhead is captured by the surrogate financial ratio for overhead.[76] First, if we were to amortize the cost of new molds, it would not be appropriate to do so over only six months (the POI). The petitioner stated that "{f}or new glass container shapes … the cost of a custom mold is often amortized over the life of the glass container run … ."[77] Also, record evidence suggests that molds are more durable and have longer lives than the petitioner suggests.[78] The petitioner reported that "bottles are typically designed using cast iron molds."[79]

[73] *See* Petition at Volume I, 8-10; *see also* Petitioner's Letter, "Certain Glass Containers from the People's Republic of China: Petitioner's Comments on Model Match and Physical Characteristics," dated November 7, 2019 at Exhibit 12.

[74] *See* Petitioner's Letter, "Certain Glass Containers from the People's Republic of China: Comments on Qixia Changyu's Sections A, C, D Supplemental Questionnaire Response," dated March 11, 2020 at Exhibit 2.

[75] *See, e.g.*, *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006), and accompanying IDM.

[76] *See, e.g.*, *Laminated Woven Sacks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 35646, dated June 24, 2008, and accompanying IDM at Comment 1.

[77] *See* Petitioner's Letter, "Certain Glass Containers From the People's Republic of China: Petitioner's Comments on Model Match and Physical Characteristics," dated November 7, 2019 at 5.

[78] *See* Qixia Changyu's Letter, "Certain Glass Containers from the People's Republic of China: Section C and D Questionnaire Response," dated January 9, 2020(Qixia Changyu's DQR), at 16; *see also* Qixia Changyu's Letter, "Certain Glass Containers from the People's Republic of China: Sections A, C, and D Supplemental Questionnaire Response," dated February 25, 2020 (Qixia Changyu's SDQR), at 15-16.

[79] *See* Petition at Volume II at 23.

Based on the record, molds appear to be more akin to equipment or components of equipment. A video describing Ardagh Group North America's (Ardagh) production process notes that "{m}olds are precision-engineered components with many finely machined parts."[80] Unlike supplies or other consumables used in production, molds appear to be maintained for some period of time. Representatives of Ardagh explained that "… the mold is maintained at Ardagh's facility …."[81] Moreover, Qixia Changyu reported that molds last at least six months.[82] Thus, there is no basis for amortizing the value of any new custom molds purchased by the respondents over only the six-month POI.

Second, regardless of the correct period over which to recognize the cost of new molds, record evidence indicates that if we were to recognize the cost of new molds as a FOP, we may be double counting expenses. A representative of Ardagh explained that "the mold is maintained at our facility … for the exclusive use of the customer. So they will pay for the exclusive use and the exclusive manufacturing of that specific shape. But we physically maintain it and depreciate the asset on our books."[83] We have already included the depreciation expense of a glass container producer in our surrogate factory overhead ratio.[84] Amortizing the cost of new molds over the POI may double count this expense. Therefore, we have not included an amortized portion of the cost of new molds as a separate FOP in normal value.

Comment 6: The Appropriate Surrogate Value for Calcium Carbonate

Huaxing's Comments

- Commerce should value Huaxing's calcium carbonate input using HTS 2521.00 "Limestone flux; limestone and other calcareous stone, of a kind used for the manufacture of lime or cement,"[85] rather than HTS 2836.50 "Calcium Carbonate." Calcium carbonate is a mineral found primarily in rocks; limestone is primarily made of calcium carbonate. In the glass industry calcium carbonate is ground limestone.[86]
- Huaxing's suppliers of calcium carbonate are "mining" and "stone materials" companies, thus indicating they supply limestone.[87]
- Imports under HTS 2836.50 are pure calcium carbonate produced for pharmaceutical use; thus, this source is an inappropriate SV for valuing the limestone calcium carbonate used by Huaxing to produce glass containers.[88]

No other party commented on this issue.

[80] *See* Glass Containers From China Investigation Nos. 701–TA–630 and 731-TA-1462 (Preliminary) Publication 4996, November 2019, at II-7.
[81] *Id.* at II-19.
[82] *See* Qixia Changyu's SDQR at 16.
[83] *See* Petitioner's Letter, "Certain Glass Containers From the People's Republic of China: Petitioner's Comments on Model Match and Physical Characteristics" dated November 7, 2019, at Exhibit 12.
[84] *See* Preliminary SV Memorandum at Exhibits I.A and I.B.
[85] *Id.* at 2.
[86] Huaxing's SDQR at Exhibit SD-7.
[87] *See* Huaxing's Letter, "Glass Containers from China – Guangdong Huaxing's Section D Questionnaire Response," dated January 8, 2020 (Huaxing's DQR), at Exhibit D-16.
[88] *See* Huaxing's Letter, "Certain Glass Containers from the Peoples Republic of China: Rebuttal Final SV Submission & Rebuttal Pre-Preliminary Comments," dated April 2, 2020 (Huaxing Rebuttal SV), at Exhibit SV2R-3.

Commerce's Position:

We disagree with Huaxing that HTS category 2521.00 "Limestone Flux; Limestone And Other Calcareous Stone, Of A Kind Used For The Manufacture Of Lime Or Cement (Or For Soil Improvement)" is a more appropriate SV for its calcium carbonate input. Huaxing identified its input as calcium carbonate and described the input as "CaO≥53.5; CaO + MgO≥54.5; Fe2O3≤0.04; Calcite is a calcium carbonate mineral that provides calcium to glass."[89] Huaxing argues that calcium carbonate is a mineral found in rocks, namely limestone, which is primarily made of calcium carbonate. Thus, according to Huaxing, its calcium carbonate input should be classified as limestone.[90]

However, and most importantly, Huaxing identified the input as calcium carbonate.[91] Huaxing did not explain why it identified its input as calcium carbonate and not limestone. Exhibit SV2R-3 of Huaxing's Rebuttal SV submission contains information on calcium carbonate, including sources of calcium carbonate. However, it is unclear how this information indicates the form of calcium carbonate used by Huaxing.[92]

Huaxing further argues that its suppliers of calcium carbonate are named as "mining" and "stone materials" companies (thus supporting its claim that it used limestone).[93] However, a word in a name of a supplier of calcium carbonate is not evidence that HTS category 2836.50 "Calcium Carbonate" is an inappropriate SV for Huaxing's calcium carbonate input.

Furthermore, there is no evidence on the record to substantiate Huaxing's claim that HTS category 2836.50 "Calcium Carbonate" covers calcium carbonate produced for pharmaceutical use.[94] Nothing on the record indicates why HTS category 2836.50 "Calcium Carbonate" cannot be the raw material added at the mixing stage to glass cullet.[95] Therefore, we have not revised Huaxing's calcium carbonate SV.

Comment 7: Incorrect Application of Movement Expenses to Huaxing's Ex-Works Sales

Huaxing's Comments

- Huaxing reported that it incurred foreign inland freight and brokerage charges on certain U.S. sales that are Ex Works sales; however, it did not incur such expenses.[96] Commerce adjusted the U.S. price of these sales for these expenses.
- In Ex Works sales the transfer of title and all obligations happen at the factory gate. Thus, Commerce should not deduct foreign brokerage and handling and inland freight expenses from the U.S price of Huaxing's Ex Works sales.

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[89] *See* Huaxing's DQR at Exhibit D-2.
[90] *See* Huaxing Rebuttal SV at Exhibit SV2R-3.
[91] *See* Huaxing's DQR at Exhibits D-2, D-16, and D-24b; *see also* Huaxing's SDQR at Exhibit SD-7.
[92] *See* Huaxing Rebuttal SV at Exhibit SV2R-3.
[93] *See* Huaxing's DQR at Exhibit D-16.
[94] *See* Huaxing's Case Brief, at 2.
[95] *See* Huaxing's DQR at Exhibit D-24.
[96] *Id.*

Petitioner's Comments

- In its questionnaire, Commerce instructs a respondent to report "yes" in the DBROKU field if it incurred foreign brokerage and handling expenses and to report "no" if it did not. Huaxing reported "no" for certain sales but "yes" for other sales.[97] Therefore, Huaxing was deliberate in reporting which sales incurred foreign brokerage and handling expenses. If Huaxing did not incur this expense on its Ex Works sales, it should have responded correctly for those sales.
- Huaxing should not be allowed to benefit from its inconsistent reporting at this late stage of the investigation.
- Huaxing had multiple opportunities to correct this inconsistency but did not do so. This inconsistent reporting also calls into question the accuracy of the reported Ex Works sales term.
- Commerce should not correct any supposed inconsistencies in Huaxing's reporting but should continue to deduct these expenses for sales reported as Ex Works sales.

Commerce's Position:

Although there is conflicting information on the record regarding this matter, we find that the weight of the evidence indicates that Huaxing did make Ex Works sales during the POI. In its section C questionnaire response, Huaxing reported that it incurred brokerage and handling expenses for most of its U.S. sales.[98] Yet, Huaxing reported Ex Works sales terms for certain U.S. sales.[99] Ex Works terms means the buyer is responsible for transportation costs. Hence, Huaxing would not have incurred brokerage and handling expenses or domestic inland freight expenses on sales with Ex-Works delivery terms. If we were to agree with the petitioner and deduct movement expenses for the reported Ex-Works sales, we would not be treating any of Huaxing's U.S. sales as Ex-Works sales. However, Huaxing reported throughout the investigation in multiple places on the record that it made Ex Works U.S. sales.[100] Given that Huaxing consistently reported throughout this investigation that it made some Ex Works sales, we conclude that the Ex Works sales term reported for the sales at issue is accurate and that Huaxing mistakenly reported that it incurred brokerage and handling and domestic inland freight expenses for these sales. Therefore, we have not deducted brokerage and handling and domestic inland freight expenses from the price of U.S. sales with an Ex Works sales term in calculating Huaxing's dumping margin.[101]

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[97] *See* Huaxing's Letter, "Glass Containers from China – Guangdong Huaxing's Section C Questionnaire Response," dated January 3, 2020 (Huaxing's CQR), at 15.
[98] *See* Huaxing's SSACQR at Exhibit 2SAC-3.
[99] *Id*.
[100] *See* Huaxing's SCQR at Exhibit 2SC-1; *see also* Huaxing's SSACQR at Exhibit 2SAC-3; and Huaxing's CQR at Exhibit C-1.
[101] *See* Memorandum, "Final Analysis Memorandum for Huaxing," dated concurrently with this memorandum (Huaxing Final Analysis Memorandum), at 2 and Attachment I.

Comment 8: Double Counted Brokerage and Handling Expenses

Huaxing's Comments:

- For two sales observations Commerce deducted both the market-economy brokerage and handling expenses (DMEBROKU), reported by Huaxing and a brokerage and handling expense based on surrogate values.[102] Commerce should correct this double counting.

No other party commented on this issue.

Commerce's Position:

We agree with Huaxing that for two sales, we inadvertently deducted brokerage and handling expenses twice.[103] For the final determination, we only deducted brokerage and handling expenses reported in the DMEBROKU field for these two sales once.[104]

Comment 9: Decision Not to Grant a Double-Remedy Offset

Huaxing's Comments:

- Commerce should increase Huaxing's U.S. prices by a domestic subsidy pass-through for the LTAR programs for electricity, soda ash, calcium carbonate, and silica sand from which Commerce found Huaxing benefited.
- Record evidence demonstrates a subsidies-to-cost-link and a cost-to-price link, and thus the need for a domestic subsidy offset.

No other party commented on this issue.

Commerce's Position:

On June 26, 2020, the ITC found that an industry in the United States is not materially injured or threatened with material injury by reason of imports of glass containers from China that have been found by Commerce to be subsidized by the government of China.[105] Therefore, there is no countervailing duty order on glass containers from China and no duties to offset subsidies are currently being imposed on U.S. imports of glass containers from China. Hence, a domestic subsidy pass-through offset is not required, and we have not made such an adjustment in the final determination.

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[102] *See* Huaxing's SSACQR at Exhibit 2SAC-3.
[103] *See* Memorandum, "Preliminary Analysis Memorandum for Huaxing," dated April 22, 2020, at 3 and Attachment I.
[104] *See* Huaxing Final Analysis Memorandum at 2 and Attachment I.
[105] *See Investigation No. 701–TA–630 (Final): Glass Containers From China*, 85 FR 39932 (July 2, 2020).

Comment 10: Decision Not to Grant Separate Rate Status to Certain Applicants

HB SRA's Comments:

- Commerce should grant separate rate (SR) status to Fengyang Huazhong Glass Co., Ltd, Wuxi Huangzhong Glass Co., Ltd., and Shandong Sanhui Glass Co., Ltd. (HB SR Applicants).
- Commerce denied SR status to the HB SR applicants because they did not respond to the quantity and value (Q&V) questionnaire; however, in its *Initiation Notice*, Commerce did not clearly require companies to file Q&V questionnaire responses in order to qualify for a SR. The HB SR applicants interpreted the language in the *Initiation Notice* as indicating that filing Q&V questionnaire responses was optional.
- There is no correlation between the Q&V questionnaire response and the SR determination. Therefore, there is no basis to deny the HB SR Applicants a SR.
- Correlation would have existed only if these companies were candidates for being selected as mandatory respondents; however, they were not in contention for selection as mandatory respondents (Q&V questionnaires were not issued to the HB SR Applicants) and they did not impede the investigation by not submitting Q&V questionnaire responses. Moreover, Commerce may request that the HB SR Applicants submit their responses to the Q&V questionnaire so that they are on the record prior to the final determination.
- The HB SR Applicants filed their SR applications 153 days before the preliminary determination. Therefore, Commerce had sufficient time to evaluate their eligibility for a SR. However, without finding any deficiency in those SR applications, Commerce resorted to total adverse facts available without providing an opportunity to remedy any deficiency in the SR applications if there were deficiencies.
- An Executive Order issued by the White House on May 19, 2020, instructs agencies to "combat the economic consequences of COVID-19" and provides that agencies should assist small businesses by "rescinding, modifying, waiving, or providing exemptions from regulations or other requirements that may inhibit economic recovery, consistent with applicable law."[106]
- The denial of a SR to the HB SR Applicants not only impacts those companies but disproportionately affects small to medium sized U.S. users of glass containers that depend on purchasing specialized products from China in low volumes in order to have bottles that distinguish their brands from larger volume brands.
- Based on the foregoing, Commerce should grant a SR to the HB SR Applicants.

No other party commented on this issue.

Commerce's Position:

Commerce was clear in its *Initiation Notice*, which reads, in pertinent part, that:

[106] *See* Executive Order on Regulatory Relief to Support Economic Recovery, dated May 19, 2020, at Section 1. Policy.

> Commerce 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.[107]

Commerce also noted in the *Initiation Notice* that "{p}roducers/exporters of glass containers from China that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Enforcement & Compliance's website."[108] The "may" in this sentence refers to Commerce's provision allowing parties to which Commerce did not issue a Q&V questionnaire to respond to that questionnaire. It does not waive the requirement to file a response to the Q&V questionnaire in order to be considered for separate rate status.

Even if the HB SR Applicants misinterpreted the *Initiation Notice*, the separate rate application that they submitted contains the following instruction:

> In addition to submitting a complete application, if your firm is participating in an investigation, your firm must also respond to Commerce's quantity and value ("Q&V") questionnaire as discussed in the initiation notice to receive consideration for a separate rate, if requested {footnote omitted}. Responses to the Q&V questionnaire from all participating respondents are necessary to ensure that Commerce has the requisite information to appropriately select mandatory respondents.

Thus, Commerce clearly informed parties of the requirement to file a Q&V questionnaire response in order to qualify for a SR.

We disagree with the HB SR Applicants' claim that their Q&V questionnaire response is irrelevant since they are not potential mandatory respondents. The Q&V questionnaire requirement is necessary to identify the entire pool of companies under examination which then allows Commerce to appropriately select mandatory respondents in a fair and transparent manner and provides the requisite information for interested parties to comment on the process. Indeed, Commerce does not know whether the HB SR Applicants would have been potential mandatory respondents because they did not file Q&V questionnaire responses in the first place. Companies that were not in this pool because they failed to file a Q&V questionnaire response should not be allowed circumvent the process and self-determine their status in the investigation.

Furthermore, it would not be appropriate to allow the HB SR Applicants to file an untimely Q&V questionnaire response. First, filing a Q&V questionnaire response at this point in the proceeding does not change the fact that the requisite information was not on the record when Commerce selected mandatory respondents. Second, if Commerce were to routinely allow parties to file Q&V questionnaire responses after the due date for such responses, it would

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[107] *See Certain Glass Containers From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 84 FR 56178 (October 21, 2019) (*Initiation Notice*).
[108] *See Initiation Notice*. The Q&V questionnaire was available to all parties since October 18, 2019.

continually be revisiting the respondent selection process which would delay the start of the investigatory process, which must be completed within statutory deadlines. Moreover, if Commerce were to subjectively accept untimely Q&V questionnaire responses, it would provide the respondents filing late responses with additional time to prepare their responses that other companies were not provided and an opportunity to examine other Q&V questionnaire responses prior to submitting their own response. In order to avoid providing late-filing companies with such advantages, Commerce strictly enforces the Q&V questionnaire response deadline and explicitly notifies respondents in its initiation notice that it will not consider SRAs made by parties that fail to timely respond to the Q&V questionnaire. The interests of fairness are best served by uniformly enforcing the deadline for filing a response to the Q&V questionnaire among all participating companies. Furthermore, the Court of Appeals for the Federal Circuit found that it is fully within Commerce's discretion to "set and enforce deadlines" and this court "cannot set aside application of a proper administrative procedure because it believes that properly excluded evidence would yield a more accurate result if the evidence were considered."[109]

Lastly, we disagree with the HB SR Applicants' argument that the Executive Order applies in this instance. The applicants did not think it was relevant for them to file Q&V responses, separate and apart from any COVID-19-related constraint, and so failed to do so. Therefore, they are ineligible for a separate rate. Further, he HB SR Applicants' inability to correctly adhere to Commerce's instructions is not an economic consequence of Covid-19. Further, the efforts made to rescind, modify, waive or provide exemptions cannot be handed out on a piecemeal basis, but must be a measured and consistent application as decided by Commerce. The Executive Order's efforts to support small businesses does not apply in this case.

Comment 11: Missing Producer in a Combination Rate

Zibo Zhaohai's Comments:

- Commerce did not identify Zibo Zhaohai Light Industrial Products Co., Ltd. (Zibo Zhaohai) as one of the producers in the producer/exporter combination rates for this company even though record evidence indicates that Zibo Zhaohai is a producer of glass containers.[110]
- Commerce should add one more combination rate for Zibo Zhaohai that includes Zibo Zhaohai as the producer.

No other party commented on this issue.

Commerce's Position:

In the *Preliminary Determination,* we granted Zibo Zhaohai a SR when it exports subject merchandise to the United States produced by three other companies,[111] which it listed as its

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[109] *See Dongtai Peak Honey Industry Co., Ltd. v. United States*, 777 F. 3d 1343, 1352 (Fed. Cir. 2015) (citing *PSC VSMPO-Avisma Corp. v. United States*, 688 F. 3d 751, 760-761 (Fed. Cir. 2012)).
[110] *Id.* at Exhibits 4, 5, 9, and 11.
[111] *See Preliminary Determination*, 85 FR at 23762.

producers during the POI in its separate rate application.[112] Zibo Zhaohai did not list itself as a POI producer. However, after examining the record, we agree that record evidence shows that Zibo Zhaohai also produced glass containers during the POI.[113] Therefore, for the final determination, Commerce also granted Zibo Zhaohai a SR when it exports subject merchandise to the United States that it produced.

V. RECOMMENDATION

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

☒	☐
Agree	Disagree

9/11/2020

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[112] *See* Zibo Zhaohai's SRA at 5-6.
[113] *Id.* at Exhibit 4 (Customs form 7501 indicates that Zibo Zhaohai is the manufacturer).