



A-570-601

Administrative Review

POR: 06/01/2019 – 05/31/2020

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June 30, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Results of the 2019-
2020 Antidumping Duty Administrative Review of Tapered Roller
Bearings and Parts Thereof, Finished and Unfinished, from the
People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the People's Republic of China (China). The period of review (POR) is June 1, 2019, through May 31, 2020. We preliminarily find that sales of the subject merchandise have been made at prices below normal value (NV) for the mandatory respondent in this review, Shanghai Tainai Bearing Co., Ltd. (Tainai), as well for Hebei Xintai Bearing Forging Co., Ltd. (Hebei Xintai) and Xinchang Newsun Xintianlong Precision Bearing Manufacturing Co., Ltd. (XTL), two companies not selected for individual examination and which are eligible for a separate rate.

As discussed below, Commerce preliminarily determines that BRTEC Wheel Hub Bearing Co., Ltd. (BRTEC) and Zhejiang Jingli Bearing Technology Co., Ltd. (Jingli) did not make any *bona fide* sales during the POR. As such, Commerce is preliminarily rescinding the administrative review with respect to BRTEC and Jingli.

Lastly, C&U Group Shanghai Bearing Co., Ltd. (C&U Group) did not submit a separate rate application (SRA) and, accordingly, is part of the China-wide entity.

II. BACKGROUND

On June 15, 1987, Commerce published in the *Federal Register* the AD order on TRBs from China.¹ On June 2, 2020, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the *Order* for the period of June 1, 2019, through May 31, 2020.² In June 2020, Commerce received timely requests from interested parties, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213(b)(1), (2), and (3), to conduct an administrative review of the *Order*.

In August 2020, Commerce published a notice of initiation of administrative review with respect to 10 companies.³ In the *Initiation Notice*, Commerce indicated that, in the event that we limited the number of respondents selected for individual examination in accordance with section 777A(c)(2) of the Act, we would select mandatory respondents for individual examination based upon U.S. Customs and Border Protection entry data.⁴

In August and September 2020, all interested parties requesting administrative reviews for CPZ, GGB, SGBC, and Ningbo Xinglun timely withdrew their requests for review.⁵ Accordingly, Commerce rescinded the review for these four companies.⁶

In September 2020, we received SRAs from BRTEC, Hebei Xintai, Jingli, and XTL,⁷ as well as a separate rate certification (SRC) from Tainai.⁸

In September 2020, after considering the large number of potential respondents involved in this administrative review and the resources available to Commerce, we determined that it was not practicable to examine all exporters of subject merchandise for which an administrative review

¹ See *Antidumping Duty Order; Tapered Roller Bearings and Parts Thereof, finished or Unfinished, from the People's Republic of China*, 52 FR 22667 (June 15, 1987), as amended, *Tapered Roller Bearings from the People's Republic of China; Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order in Accordance With Decision Upon Remand*, 55 FR 6669 (February 26, 1990) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 85 FR 33628 (June 2, 2020).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 47731 (August 6, 2020) (*Initiation Notice*); see also *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 54983, 54990 (September 3, 2020), correcting the *Initiation Notice*. The 10 companies listed in the *Initiation Notice* are: (1) BRTEC; (2) C&U Group; (3) Changshan Peer Bearing Co., Ltd. (CPZ); (4) GGB Bearing Technology (Suzhou) Co., Ltd. (GGB); (5) Hebei Xintai; (6) Jingli; (7) Ningbo Xinglun Bearings Import & Export Co., Ltd. (Ningbo Xinglun); (8) Shanghai General Bearing Co., Ltd. (SGBC); (9) Tainai; and (10) XTL.

⁴ See *Initiation Notice*, 85 FR at 47732.

⁵ See CPZ/SKF's Letter, "Withdrawal of Request for Administrative Review," dated September 4, 2020; GGB's Letter, "Withdrawal of Request for the Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings from the People's Republic of China, A-570-601 (POR: 6/1/19-5/31/20)," dated August 18, 2020; Ningbo Xinglun's Letter, "Withdrawal of Request for Administrative Review," dated September 9, 2020; and SGBC's Letter, "Withdrawal of Request for Administrative Review," dated September 4, 2020.

⁶ See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Rescission, in Part, of Antidumping Duty Administrative Review; 2019-2020*, 85 FR 76526 (November 30, 2020).

⁷ See BRTEC's Letter, "Separate Rate Application," dated September 4, 2020 (BRTEC SRA); Hebei Xintai's Letter, "Separate Rate Application," dated September 8, 2020 (Hebei Xintai SRA); Jingli's Letter, "Separate Rate Application," dated September 3, 2020 (Jingli SRA); and XTL's Letter, "Separate Rate Application," dated September 8, 2020 (XTL SRA).

⁸ See Tainai's Letter, "Separate Rate Certifications," dated September 4, 2020 (Tainai SRC).

was initiated.⁹ As a result, pursuant to section 777A(c)(2)(B) of the Act, we determined that we could only reasonably individually examine Tainai, the exporter accounting for the largest volume of entries of TRBs from China during the POR. Accordingly, we issued Tainai the non-market economy (NME) AD questionnaire.

In October and November 2020, respectively, we received a response to section A of the questionnaire (*i.e.*, the section regarding general information)¹⁰ and a response to sections C and D of the questionnaire (*i.e.*, the sections regarding U.S. sales and factors of production, respectively) from Tainai.¹¹

In November 2020, we received comments from Tainai on the list of countries deemed economically comparable to China during the POR, as well as timely rebuttal comments on economic comparability from The Timken Company (the petitioner).¹² In December 2020, we received comments on the selection of the appropriate surrogate country to be used in this review from Tainai and the petitioner.¹³ Also in December 2020, we received timely comments on the selection of surrogate values (SVs) from the petitioner and Tainai, as well as timely rebuttal comments on SVs from the petitioner.¹⁴

In January 2021, we extended the time period to issue the preliminary results in the instant review by 120 days, to June 30, 2021.¹⁵

In February, March, and June 2021, we issued supplemental questionnaires to the separate rate applicants, as well as to the importers associated with BRTEC and Jingli's reported sales. We received timely responses from each of the separate rate applicants to these supplemental questionnaires in March and June 2021.¹⁶ In April 2021, we issued a supplemental questionnaire

⁹ See Memorandum, "Selection of Respondents for Individual Examination," dated September 21, 2020.

¹⁰ See Tainai's Letter, "Response to Section A of {Commerce's} Initial Questionnaire," dated October 20, 2020 (Tainai AQR).

¹¹ See Tainai's Letters, "Response to Section C of {Commerce's} Initial Questionnaire," dated November 16, 2020 (Tainai CQR); and "Response to Section D of {Commerce's} Initial Questionnaire," dated November 16, 2020 (Tainai DQR).

¹² See Tainai's Letter, "Comments on Economic Comparability," dated November 20, 2020 (Tainai List Comments); and Petitioner's Letter, "Petitioner's Economic Comparability Rebuttal Comments," dated November 27, 2020 (Petitioner List Rebuttal).

¹³ See Tainai's Letter, "Comments on Surrogate Country," dated December 1, 2020 (Tainai Surrogate Country Comments); and Petitioner's Letter, "Petitioner's Surrogate Country Comments," dated December 1, 2020 (Petitioner Surrogate Country Comments).

¹⁴ See Petitioner's Letter, "Petitioner's Surrogate Value Comments," dated December 11, 2020 (Petitioner First SVs); Tainai's Letter, "Initial Submission of Surrogate Values," dated December 11, 2020 (Tainai First SVs); and Petitioner's Letter, "Petitioner's Surrogate Value Rebuttal Comments," dated December 18, 2020 (Petitioner First Rebuttal SVs).

¹⁵ See Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated January 29, 2021.

¹⁶ See Hebei Xintai's Letter, "Submission of Supplemental Questionnaire Response," dated March 9, 2021 (Hebei Xintai SQR); XTL's Letter, "Submission of Supplemental Questionnaire Response," dated March 11, 2021 (XTL SQR); BRTEC's Letter, "Supplemental Questionnaire Response," dated March 23, 2021; Jingli's Letter, "Supplemental Questionnaire Response," dated March 23, 2021; Hebei Xintai's Letter, "Submission of Supplemental Questionnaire Response," dated June 17, 2021; XTL's Letter, "Submission of Supplemental Questionnaire Response," dated June 17, 2021; and BRTEC's Letter, "Second Supplemental Questionnaire Response," dated June 21, 2021.

to Tainai. We received timely responses from Tainai to this supplemental questionnaire in May 2021.¹⁷

In June 2021, we received additional SV comments from Tainai.¹⁸ Also in June 2021, we received comments from the petitioner related to the preliminary results.¹⁹

III. SCOPE OF THE *ORDER*

Imports covered by the *Order* are shipments of TRBs and parts thereof, finished and unfinished, from China; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.70.6060, 8708.99.2300, 8708.99.4850, 8708.99.6890, 8708.99.8115, and 8708.99.8180. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive.

IV. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy Country Status

Commerce considers China to be an NME.²⁰ In accordance with section 771(18)(C)(i) of the Act, a determination that a country is an NME shall remain in effect until revoked by the administering authority. Further, no party submitted a request to reconsider China's NME status as part of this administrative review. Therefore, we continue to treat China as an NME for purposes of these preliminary results of review.

B. Surrogate Country

When Commerce is investigating imports from an NME, section 773(c)(1) of the Act directs Commerce to base 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

¹⁷ See Tainai's Letters, "Response to Supplemental Section A, C, and D Supplemental Questionnaire," dated May 17, 2021 (Tainai SQR) and, "Response to Questions 37 and 47 to {Commerce's} Section A, C, and D Supplemental Questionnaire," dated May 21, 2021.

¹⁸ See Tainai's Letter, "Final Submission of Surrogate Values," dated June 1, 2021 (Tainai Final SVs).

¹⁹ See Petitioner's Letter, "Petitioner's Pre-Preliminary Determination Comments," dated June 14, 2021.

²⁰ 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) (citing Memorandum, "China's Status as a Non-Market Economy," dated October 26, 2017 (China NME Status Memo)), unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018).

of the NME country; and (B) significant producers of comparable merchandise.”²¹ 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: (a) they either are not significant producers of comparable merchandise; (b) do not provide sufficient reliable sources of publicly available SV data; or (c) are not suitable for use based on other reasons. 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 a similar level of economic development, Commerce generally relies solely on per capita gross national income (GNI) data from the World Bank’s World Development Report.²² 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.

On November 13, 2020, Commerce issued a letter to interested parties soliciting comments on the list of countries that Commerce determined, based on per capita GNI, to be at the same level of economic development as China and the selection of the primary surrogate country, and we provided deadlines for the consideration of any submitted SV information for the preliminary determination.²³ We received timely comments on the surrogate country list and surrogate country selection from the petitioner and Tainai.²⁴

Tainai argues that Commerce should reevaluate and expand the list of countries deemed economically comparable to China in the Surrogate Country Memo because of the COVID-19 crisis, which impacted the economic comparability of certain countries.²⁵ The petitioner disagrees with Tainai and argues that Commerce’s Surrogate Country Memo is consistent with its practice and that the Surrogate Country Memo does not preclude consideration of a country outside the list as being comparable, if data considerations make this necessary and data are submitted.²⁶ The petitioner and Tainai agree with Commerce’s Surrogate Country Memo that Brazil, Malaysia, Mexico, Romania, Russia, and Turkey are economically comparable to China and exported significant quantities of comparable merchandise during the POR.²⁷

²¹ 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>.

²² *Id.*

²³ See Commerce’s Letter, “Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information,” dated November 13, 2020 (Surrogate Country Letter) (containing Memorandum, “List of Surrogate Countries for Antidumping Investigations and Reviews from the People’s Republic of China (‘China’),” dated August 25, 2020 (Surrogate Country Memo)).

²⁴ See Tainai List Comments; Petitioner List Rebuttal; Tainai Surrogate Country Comments; and Petitioner Surrogate Country Comments.

²⁵ See Tainai List Comments at 2.

²⁶ See Petitioner List Rebuttal at 2-3.

²⁷ See Petitioner Surrogate Country Comments at 3-4; *see also* Tainai Surrogate Country Comments at 2 and Exhibit SC-1. We note that Tainai excluded Malaysia from its list of surrogate countries that were significant exporters of subject merchandise during the POR.

Economic Comparability

Section 773(c)(4) of the Act states that Commerce “shall utilize, to the extent possible, the prices or costs of {FOP}s in one or more market economy countries that are . . . at a level of economic development comparable to that of the {NME} country.” However, the applicable statute does not expressly define the phrase “level of economic development comparable” or what methodology Commerce must use in evaluating the criterion. Commerce’s regulations at 19 CFR 351.408(b) state that, in determining whether a country is at a level of economic development comparable to the NME country, Commerce will place primary emphasis on per capita gross domestic product (GDP) as the measure of economic comparability.²⁸ The U.S. Court of International Trade (CIT) has found the use of per capita GNI to be a “consistent, transparent, and objective metric to identify and compare a country’s level of economic development” and “a reasonable interpretation of the statute.”²⁹

Unless it is determined that none of the countries identified above are viable options because: (a) they either are not significant producers of comparable merchandise; (b) do not provide sufficient reliable sources of publicly available SV data; or (c) are not suitable for use based on other reasons, we will rely on data from one of these countries.

Consistent with its practice and section 773(c)(4)(A) of the Act,³⁰ as noted above, Commerce identified Brazil, Malaysia, Mexico, Romania, Russia, and Turkey as countries at the same level of economic development as China based on the most current annual issue of *World Development Report* (The World Bank).³¹ Commerce does not consider any of the countries on the surrogate country list to be more comparable to China than any other country on the surrogate country list.³²

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. Among the factors we consider in determining whether a country is a significant producer of comparable merchandise is whether the country is an exporter of comparable merchandise. In order to determine whether the above-referenced countries are significant producers of comparable merchandise, Commerce’s practice is to examine which countries on the surrogate country list exported merchandise comparable to the subject merchandise.

²⁸ Commerce uses per capita GNI as a proxy for per capita GDP. GNI is GDP plus net receipt of primary income (compensation of employees and property income) from nonresident sources. See Policy Bulletin 04.1.

²⁹ See *Jiaying Brother Fastener Co. v. United States*, 961 F. Supp. 2d 1323, 1329 (CIT 2014).

³⁰ See Surrogate Country Memo.

³¹ *Id.*

³² See Policy Bulletin 04.1 (“The surrogate countries on the list are not ranked and should be considered equivalent in terms of economic comparability.”).

Information on the record indicates that all of the countries identified as economically comparable to China were significant exporters of comparable merchandise during the POR.³³ Each country is a significant exporter of comparable merchandise covered by the harmonized tariff schedule (HTS) subheadings identified in the scope of the *Order*.³⁴ Accordingly, we preliminarily find that Brazil, Malaysia, Mexico, Romania, Russia, and Turkey meet the significant producer of comparable merchandise criterion of the surrogate country selection criteria as provided in section 773(c)(4)(B) of the Act.

Data Availability

If more than one potential surrogate country satisfies the statutory requirements for selection as the primary surrogate country, Commerce selects the primary surrogate country based on SV data availability and reliability.³⁵ When evaluating SV data, Commerce considers several factors, including whether the SVs are publicly available, contemporaneous with the POI, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.³⁶ There is no hierarchy among these criteria.³⁷ Commerce's preference is to satisfy the breadth of these aforementioned selection criteria.³⁸ Moreover, it is Commerce's practice to carefully consider the available evidence in light of the particular facts regarding the industry under consideration when undertaking its analysis of valuing the FOPs.³⁹ Commerce must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the "best" available SV for each input.⁴⁰ Additionally, pursuant to 19 CFR 351.408(c)(2), Commerce has a preference for valuing all FOPs in a single surrogate country.

Parties have placed complete SV data for Romania on the record.⁴¹ Complete SV data for the other countries on the list (*i.e.*, Brazil, Malaysia, Mexico, Russia, and Turkey) are not on the record, nor has any party argued in favor of using SV data from any of these countries to value FOPs. Therefore, we have not further considered relying on these other countries as the primary surrogate country in this administrative review.

³³ See Petitioner Surrogate Country Comments at 4 and Exhibit 1; and Tainai Surrogate Country Comments at Exhibit SC-1. We note that Tainai provided export data for HTS subheading 8482.20 for Argentina, Bulgaria, and Costa Rica, while excluding Malaysia.

³⁴ See, e.g., Petitioner Surrogate Country Comments at 3-4 and Exhibit 1. The petitioner provided export data from the United Nations Comtrade Database for each country on the surrogate country list for HTS subheading 8482 because the petitioner argues that it is the only HTS subheading that encompasses only subject and comparable merchandise while other HTS subheadings in the order may contain non-subject merchandise. See Tainai Surrogate Country Comments at 2 and Exhibit SC-1. Tainai provided United Nations Comtrade data for HTS subheading 8482.20.

³⁵ See Policy Bulletin 04.1.

³⁶ *Id.*

³⁷ See, e.g., *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) (*Mushrooms from China*), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

³⁸ 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).

³⁹ See Policy Bulletin 04.1.

⁴⁰ See *Mushrooms from China* IDM at Comment 1.

⁴¹ See Petitioner First SVs; Tainai First SVs; and Petitioner First Rebuttal SVs.

With respect to Commerce's selection of a surrogate country, no interested party argued for the selection of a specific country as the most appropriate surrogate country from which to derive SVs for China.⁴² However, both the petitioner and Tainai supplied SV data from Romania.⁴³

Therefore, for the reasons outlined above, Commerce preliminarily determines, pursuant to section 773(c)(4) of the Act, that it is appropriate to use Romania as the primary surrogate country because: (1) Romania is at the same level of economic development as China; (2) Romania is a significant producer of merchandise identical or comparable to the subject merchandise; and (3) the Romanian SV data on the record are the best available information for valuing FOPs. Therefore, Commerce used Romanian data, where appropriate, to value the respondents' FOPs. For a detailed discussion of the SVs used in this administrative review, see the "Factor Valuation Methodology" section of this memorandum and the Surrogate Value Memorandum.⁴⁴

C. Separate Rates

In an NME proceeding, there is a rebuttable presumption that all companies are subject to government control and, thus, should be assessed a single AD rate.⁴⁵ In the *Initiation Notice*, Commerce notified parties of the application process by which exporters may obtain separate rate status in an NME proceeding.⁴⁶ It is Commerce's policy to assign all exporters of the subject merchandise from an NME country a single rate unless an individual exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, Commerce analyzes each exporting entity in an NME country that requests separate rate status under the test established in *Sparklers*,⁴⁷ as amplified by *Silicon Carbide*.⁴⁸ Further, if Commerce determines that a company is wholly foreign-owned, then consideration of the *de jure* and *de facto* criteria is not necessary to determine whether it is independent from government control.⁴⁹

To demonstrate separate rate status eligibility, Commerce requires entities subject to review who were assigned a separate rate in the previous segment of this proceeding to submit a separate-rate

⁴² See Tainai Surrogate Country Comments; and Petitioner Surrogate Country Comments.

⁴³ See Petitioner First SVs; Tainai First SVs; and Petitioner First Rebuttal SVs.

⁴⁴ See Memorandum, "Surrogate Value Memorandum for the Preliminary Results," dated concurrently with this memorandum (Surrogate Value Memorandum).

⁴⁵ See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); and *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

⁴⁶ See *Initiation Notice*, 85 FR at 47732.

⁴⁷ See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).

⁴⁸ 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*).

⁴⁹ See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

certification stating that they continue to meet the criteria for obtaining a separate rate.⁵⁰ For entities that were not assigned a separate rate in the previous segment of this proceeding, Commerce requires an SRA to demonstrate separate rate status eligibility.⁵¹ In addition to submitting an SRA or SRC, as appropriate, companies subject to individual examination also must respond to all parts of Commerce's questionnaire to be eligible for separate rate status.⁵²

Under the separate rates test, Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.⁵³

Further, Commerce typically considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export 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.⁵⁴

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the *Diamond Sawblades* AD proceeding and Commerce's determinations therein.⁵⁵ In particular, we note that in litigation involving the *Diamond Sawblades* proceeding, the CIT found Commerce's existing separate rates analysis deficient in the circumstances of that proceeding, in which a government-controlled entity had significant ownership in the respondent exporter.⁵⁶

⁵⁰ See *Initiation Notice*, 85 FR at 47732.

⁵¹ *Id.*

⁵² *Id.*

⁵³ See *Sparklers*, 56 FR at 20589.

⁵⁴ See *Silicon Carbide*, 59 FR at 22586-89; *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) (*Furfuryl Alcohol*).

⁵⁵ See Final Results of Redetermination Pursuant to Remand Order for *Diamond Sawblades and Parts Thereof from the People's Republic of China* (May 6, 2013) in *Advanced Technology & Materials Co. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology*), affirmed in *Advanced Technology & Materials Co. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013). This remand redetermination is available on the Enforcement and Compliance website at <http://enforcement.trade.gov/remands/12-147.pdf>; 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 (PDM) at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying IDM at Comment 1 (collectively, *Diamond Sawblades*).

⁵⁶ See, e.g., *Advanced Technology*, 885 F. Supp. 2d at 1349 ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *id.* at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {state-owned assets supervision and administration commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor *de jure* 'separation' that Commerce concludes.") (footnotes omitted); *id.* at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations, ' including terms, financing, and inputs into finished product for export."); and *id.* at 1357 ("AT&M *itself* identifies its 'controlling shareholder' as

We have concluded that, where a government entity holds a majority ownership share, either directly or indirectly, in an exporter, the majority ownership holding in and of itself means that the government exercises or has the potential to exercise control over the company's operations generally, which may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect that a majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company. Accordingly, we have considered the level of government ownership, where necessary.

Under Commerce's current policy regarding conditional review of the China-wide entity, the China-wide entity will not be under review unless a party specifically requests and Commerce initiates, or Commerce self-initiates, a review of the entity.⁵⁷ Because no party requested a review of the China-wide entity in this review and Commerce did not otherwise initiate a review of the China-wide entity, the entity is not under review and its rate of 92.84 percent is not subject to change.⁵⁸

1. Separate Rate Recipients

In this review, BRTEC, Hebei Xintai, Jingli, and XTL each submitted a SRA requesting separate rate status, and Tainai submitted a SRC to support its continued eligibility for a separate rate. In accordance with our practice, Commerce analyzed whether Hebei Xintai, Tainai, and XTL demonstrated the absence of *de jure* and *de facto* governmental control over their respective export activities. In the instant review, we preliminarily find no evidence of Chinese Government ownership of Hebei Xintai, Tainai, or XTL, and we further preliminarily find that these companies otherwise are entitled to a separate rate in this review. Moreover, as discussed below, we preliminarily have rescinded this review for BRTEC and Jingli, and therefore have not considered whether BRTEC and Jingli are eligible for a separate rate as a result of this review. BRTEC and Jingli will retain their separate rate status, which each was entitled to at the outset of this review.

The C&U Group did not submit an SRA. Accordingly, we find that the company is not eligible for a separate rate as it has failed to rebut the presumption of government control and will, therefore, find that it constitutes part of the China-wide entity.

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).

⁵⁷ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65970 (November 4, 2013) (*Conditional Review of NME Entity Notice*).

⁵⁸ See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review* 74 FR 3987, 3988-89 (January 22, 2009) (*TRBs from China 2009*).

a. Wholly Foreign-Owned Companies

No producer or exporter submitted information indicating that it was wholly foreign-owned by a company located in an ME country during the POR.

b. Wholly China-Owned Companies and Joint Ventures

BRTEC, Hebei Xintai, Jingli, Tainai, and XTL each stated that they are Chinese limited liability companies.⁵⁹ Therefore, we further analyzed the separate rate eligibility of these companies as detailed below.

c. Absence of *De Jure* Control

Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.⁶⁰

The evidence provided by Hebei Xintai, Tainai, and XTL 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 exporters' business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of the companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.⁶¹

d. Absence of *De Facto* Control

Typically, Commerce considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (EPs) 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.⁶² 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 provided by Hebei Xintai, Tainai, and XTL 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 EPs independent of the

⁵⁹ See BRTEC SRA at 8; Hebei Xintai SRA at 14; Jingli SRA at 6; Tainai SRC at Exhibit 2; and XTL SRA at 18.

⁶⁰ See *Sparklers*, 56 FR at 20589.

⁶¹ See Hebei Xintai SRA at 13-18 and Hebei Xintai SQR at 3-4; Tainai SRC at 6; and XTL SRA at 18-22 and XTL SQR at 2 and Appendices C, D, E1, and E2.

⁶² See *Silicon Carbide*, 59 FR at 22586-87; and *Furfuryl Alcohol*, 60 FR at 22545.

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.⁶³

Therefore, the evidence placed on the record of this administrative review by Hebei Xintai, Tainai, and XTL demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*.⁶⁴ Accordingly, we are preliminarily granting separate rates to Hebei Xintai, Tainai, and XTL.

2. Companies Not Receiving a Separate Rate

The C&U Group did not submit a SRA to demonstrate that it is eligible for a separate rate. Accordingly, Commerce preliminarily determines this company to be properly considered part of the China-wide entity.

D. Bona Fide Sales Analysis

Commerce has a well-established practice of conducting *bona fide* sales analysis in administrative reviews.⁶⁵ In determining whether a respondent's sales are *bona fide* transactions, we examine a number of factors, all of which speak to the commercial realities surrounding the sale of subject merchandise. All such determinations are made on a case-by-case basis after considering the totality of circumstances surrounding the transactions, because the *bona fides* issues are company-specific and may vary with the facts surrounding each sale.⁶⁶

In evaluating whether a sale is commercially reasonable or typical of normal business practices and, therefore, *bona fide*, Commerce considers: (I) the price of the sale; (II) whether the sale was

⁶³ See Hebei Xintai SRA at 18-25; Hebei Xintai SQR at 2-6; Tainai SRC; Tainai AQR at 1-13; XTL SRA at 22-29; and XTL SQR at 2-3.

⁶⁴ See *Sparklers*, 56 FR at 20589; and *Silicon Carbide*, 59 FR at 22586-89; see also, e.g., Hebei Xintai SRA at 13-25; Hebei Xintai SQR at 2-6; Tainai SRC; XTL SRA at 17-29; and XTL SQR at 2-3.

⁶⁵ See, e.g., *Certain Carbon and Alloy Steel Cut-To-Length Plate from the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 6865 (January 25, 2021); *Honey from the People's Republic of China: Final Results and Rescission of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 45187 (July 27, 2020); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results and Partial Rescission of Review; 2017-2018*, 85 FR 9459 (February 19, 2020); *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Preliminary Results of the 2008-2009 Administrative Review of the Antidumping Duty Order*, 75 FR 41148 (July 15, 2010) (evaluating the *bona fides* of the single POR sale from a voluntary respondent), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 3086 (January 19, 2011); *Administrative Review of Honey from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review, In Part*, 75 FR 24880 (May 6, 2010); and *Windmill Int'l Pte. v. United States*, 193 F. Supp. 2d 1303, 1313-14 (CIT 2002).

⁶⁶ See *Tianjin Tiancheng Pharmaceutical Co. v. United States*, 366 F. Supp. 2d 1246, 1260 (CIT 2005) (TTPC) (quoting *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003), and accompanying IDM at Comment 2).

made in commercial quantities; (III) the timing of the sale; (IV) the expenses arising from the transaction; (V) whether the goods were resold at a profit; (VI) whether the transaction was made on an arm's-length basis; and (VII) any other factor that Commerce considers to be relevant to whether the sale at issue is likely to be typical of those the exporter or producer will make after the completion of the review.⁶⁷ Accordingly, Commerce considers a number of factors in its *bona fides* analysis, “all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise.”⁶⁸ Finally, where Commerce finds that a sale is not *bona fide*, Commerce will exclude the sale from its dumping margin calculations.⁶⁹ Where an administrative review is based upon a single sale, exclusion of that sale as non-*bona fide* necessarily will result in Commerce’s rescinding the review.⁷⁰ Commerce has previously found that the totality of the circumstances test is applicable within the context of an administrative review,⁷¹ and this application has been upheld by the CIT.⁷²

Based on the totality of the circumstances surrounding the sales reported by BRTEC and Jingli in this administrative review, we preliminarily determine that the sales are not *bona fide*. In particular, Commerce preliminarily finds a number of relevant factors—including, but not limited to, the sales quantity and value, timing of the sales, the identity of the U.S. customers, how each customer purchased and resold the TRBs in question, and the number of sales that each exporter made during the POR—call into question whether these sales are typical and representative of potential future sales by each of these exporters. Because our analysis involves the discussion of business proprietary information, we have included a full discussion of our preliminary analysis in separate memoranda.⁷³

⁶⁷ See *TTPC*, 366 F. Supp. 2d at 1249-1250. Although section 751(a)(2)(B)(iv) of the Act, by its express terms, only applies to new shipper reviews, the factors listed in that provision overlap with the factors we examine in administrative reviews as well.

⁶⁸ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (citing *Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002), and accompanying IDM at New Shipper Review of Clipper Manufacturing Ltd.).

⁶⁹ See *TTPC*, 366 F. Supp. 2d at 1249.

⁷⁰ *Id.*; see also, e.g., *Glycine from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review, in Part; 2015–2016*, 82 FR 47474 (October 12, 2017).

⁷¹ See *Glycine from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Intent to Rescind, in Part; 2013-2014*, 80 FR 18814 (April 8, 2015), and accompanying PDM at 1, and 3-5; and *Glycine from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 62027 (October 15, 2015), and accompanying IDM at Comment 5; see also *Certain Pasta from Turkey: Preliminary Results of Antidumping Duty Administrative Review*, 82 FR 36737 (August 7, 2017), and accompanying PDM at 1-3; and *Certain Pasta from Turkey: Final Results and Rescission of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 6516 (February 14, 2018), and accompanying IDM at Comment 1.

⁷² See, e.g., *Evonik Rexim (Nanning) Pharm. Co. v. United States*, 253 F. Supp. 3d 1364, 1370-1371 (CIT 2017) (sustaining Commerce’s application of the totality of the circumstances test and partial rescission of an administrative review).

⁷³ See Memoranda, “Analysis of the *Bona Fides* of BRTEC Wheel Hub Bearing Co., Ltd.’s Sale”; and “Analysis of the *Bona Fides* of Zhejiang Jingli Bearing Technology Co. Ltd.’s Sales,” dated concurrently with this memorandum.

Because we preliminarily find that the POR sale by each of these two exporters are not *bona fide*, Commerce is preliminarily rescinding this administrative review with respect to BRTEC and Jingli.⁷⁴

E. Weighted-Average Dumping Margin for the Separate Rate Companies

The Act and Commerce's regulations do not address the establishment of a weighted-average dumping margin to be applied to respondents not selected for individual examination when Commerce limits its examination in an administrative review 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 that we did not individually examine. Section 735(c)(5)(A) of the Act articulates a preference that we are not to calculate an all-others rate using rates that are zero, *de minimis*, or based entirely on facts available.⁷⁵ Accordingly, Commerce's practice has been to average the weighted-average dumping margins for the individually-examined respondents, excluding rates that are zero, *de minimis*, or based entirely on facts available, in calculating the separate rate.⁷⁶ The statute further provides that, where all rates are zero, *de minimis*, or based entirely on facts available, Commerce may use "any reasonable method" for determining the weighted-average dumping margin for non-examined companies.⁷⁷

For these preliminary results, we calculated a weighted-average dumping margin that is not zero, *de minimis*, or based entirely on facts available for Tainai. Therefore, consistent with Commerce's practice,⁷⁸ we determine that the weighted-average dumping margin for Hebei Xintai and XTL, the separate rate companies not individually examined, should be the weighted-average dumping margin calculated for the mandatory respondent, Tainai.

F. The China-Wide Entity

Commerce's change in policy regarding conditional review of the China-wide entity applies to this administrative review.⁷⁹ Under this policy, the China-wide entity will not be under review unless a party specifically requests and Commerce initiates, or Commerce self-initiates, a review

⁷⁴ See, e.g., *Certain Preserved Mushrooms from the People's Republic of China: Preliminary Rescission of 2015 Antidumping Duty New Shipper Review*, 81 FR 52403 (August 8, 2016), unchanged in *Certain Preserved Mushrooms from the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review*; 2015, 82 FR 1317 (January 5, 2017).

⁷⁵ See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).

⁷⁶ 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.

⁷⁷ See section 735(c)(5)(B) of the Act.

⁷⁸ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2011-2012 Antidumping Duty Administrative Review and New Shipper Reviews*, 79 FR 4328 (January 27, 2014).

⁷⁹ See *Conditional Review of NME Entity Notice*.

of the China-wide entity. Because no party requested a review of the China-wide entity for this POR, the China-wide entity is not under review, and the China-wide entity's rate is not subject to change. Therefore, if our determination is unchanged in the final results, entries from C&U Group will be liquidated at the rate previously established for the China-wide entity (*i.e.*, 92.84 percent).⁸⁰

G. Application of Facts Available

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information in the form and manner requested upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In a supplemental questionnaire, we requested that Tainai provide its suppliers' direct input bills of materials (BOMs) for production of subject merchandise, which was the first time we requested that Tainai provide this information. Tainai responded in its May 17, 2021 supplemental response that it could not obtain the BOMs to substantiate its reported FOPs for certain direct inputs from its affiliated and unaffiliated FOP suppliers because its affiliated suppliers do not maintain production slips and it "{had} no way of knowing {the direct input bills of materials} for the unaffiliated suppliers."⁸¹ For these preliminary results, we will continue to rely on the allocation method Tainai provided from its affiliated suppliers regarding chrome steel (*i.e.*, CHROMEST), rollers (*i.e.*, ROLLERER), and turned cups and cones (*i.e.*, TURNPCO). However, we will request additional information concerning these FOPs in a subsequent supplemental questionnaire.

In addition, we have identified a number of deficiencies in Tainai's reporting in its May 17, 2021 supplemental response regarding these FOPs. Because we intend to allow Tainai an opportunity to remedy or explain these deficiencies, we are relying on the facts available pursuant to section 776(a)(1) of the Act for purposes of these preliminary results. Specifically, for certain product

⁸⁰ See *TRBs from China 2009*, 74 FR at 3989.

⁸¹ See Tainai SQR at 27.

control numbers (CONNUM)⁸² in the FOP data, Tainai inconsistently reported FOP data for ROLLERER where the product description indicated that rollers should be included. Because necessary information regarding the FOPs for these sales is missing from the record, in accordance with section 776(a)(1) of the Act, we have assigned, as facts available, an average of the FOP data reported in ROLLERER for each CONNUM where Tainai reported either CHROMEST or ROLLERER to the CONNUMs described as containing rollers but had no FOP reported in either CHROMEST or ROLLERER.⁸³ Further, Tainai also inconsistently reported FOPs in CONNUMs described as containing CHROMEST, TURNPCO, or both, and did not adequately explain the differences between the two FOPs after providing the same SV for both but with differing descriptions.⁸⁴ Thus, pursuant to section 776(a)(1) of the Act, we assigned an SV to TURNPCO that more accurately matches the description Tainai provided.⁸⁵ Commerce intends to request that Tainai remedy these deficiencies in a subsequent supplemental questionnaire.

H. Date of Sale

Section 351.401(i) of Commerce's regulations states that, normally, we will use the date of the invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that we may use a date other than the date of the invoice if Commerce is satisfied that a different date better reflects the date on which the material terms of sale are established.⁸⁶ Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.⁸⁷

Tainai reported that the date of shipment was the same as the invoice date for sales to its unaffiliated U.S. customers.⁸⁸ Therefore, we used the invoice date as the date of sale for Tainai, in accordance with our regulation and practice.

⁸² The product control number (CONNUM) is the concatenation of the codes reported for the physical characteristics of the in-scope merchandise.

⁸³ See Preliminary Calculation Memorandum.

⁸⁴ *Id.*; Tainai First SVs at Exhibit SV-8; and Tainai Final SVs at Exhibit FSV-1. Tainai reports that the FOPs for CHROMEST and TURNPCO should be valued with HTS 7228.30.69 which is described in GTA as "bars and rods or alloy steel other than stainless steel, only hot-rolled, hot-drawn or hot-extruded, of circular cross-section, of a diameter of < 80 mm (other than of high-speed steel, silico-manganese steel, tool steel and articles of subheading 7228.30; bars and rods or alloy steel other than stainless steel, only hot-rolled, hot-drawn or hot-extruded, of circular cross-section, of a diameter of < 80 mm (other than of high-speed steel, silico-manganese steel, tool steel and articles of subheading 7228.30.)"

⁸⁵ See Tainai SQR at Exhibit SD-4. Tainai describes TURNPCO as "GCr15 bearing steel" and "high carbon chromium bearing steel, has been by turning." Therefore, we have used HTS 8482.99.00 as an SV for TURNPCO, which is "parts of ball or roller bearings (excluding balls, needles and rollers), not elsewhere specified.

⁸⁶ See 19 CFR 351.401(i); and *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

⁸⁷ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012) (*Ball Bearings 2012*), and accompanying IDM at Comment 1; and *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

⁸⁸ See Tainai CQR at 11-13; and Tainai SQR at 8-9.

I. Normal Value Comparisons

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether sales of the subject merchandise made by Tainai to the United States were at prices below NV, we compared Tainai's constructed export price (CEP) to NV, as described below.

J. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates a weighted-average dumping margin by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method), unless Commerce determines that another method is appropriate in a particular situation. In a less-than-fair-value investigation, 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. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of an administrative review, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in an administrative review is, in fact, analogous to the issue in a less-than-fair-value investigation.⁸⁹

In recent investigations, Commerce applied a "differential pricing" analysis for determining whether application of the average-to-average method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁹⁰ Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether application of the standard comparison method is appropriate in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region, and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported 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 review based upon the reported date

⁸⁹ See *Ball Bearings 2012 IDM* at Comment 1.

⁹⁰ 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) (*Xanthan Gum from China*); *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).

of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product CONNUM and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

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

Next, the “ratio test” assesses the extent of the significance of the 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 method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison

method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: (1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold; or (2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.⁹¹

For Tainai, based on the results of the differential pricing analysis, Commerce preliminarily finds that 68.70 percent of the value of U.S. sales pass the Cohen's *d* test and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the average-to-transaction method to all reported U.S. sales to calculate the weighted-average dumping margin for Tainai.

K. Constructed Export Price

1. Irrecoverable Value-Added Tax (VAT)

Commerce's practice is to adjust EP or CEP for the amount of irrecoverable VAT, in accordance with section 772(c)(2)(B) of the Act.⁹² Commerce explained that, when a 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.⁹³ Where the irrecoverable VAT is a fixed percentage of CEP or EP, Commerce explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. CEP or EP downward by this same percentage.⁹⁴

Commerce's methodology, as explained above and applied in this review, involves two basic steps: (1) determining the irrecoverable VAT tax on subject merchandise; and (2) reducing U.S. price by the amount (or rate) determined in step one. Information that Tainai placed on the record of this review indicates that, according to the Chinese VAT schedule, the standard VAT

⁹¹ The U.S. Court of Appeals for the Federal Circuit (CAFC) has affirmed much of Commerce's differential pricing methodology. See, e.g., *Dillinger France S.A. v. United States*, 981 F.3d 1318 (Fed. Cir. 2020); *Apex Frozen Foods v. United States*, 862 F.3d 1322 (Fed. Cir. 2017). We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

⁹² See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012) (*Methodological Change*).

⁹³ *Id.*; and *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.

⁹⁴ See *Methodological Change*, 77 FR 36481.

refund rate for TRBs is 13 percent, and the VAT paid rate is 13 percent, leading to no irrecoverable VAT.⁹⁵ For the purposes of these preliminary results, we have not made an adjustment with regard to irrecoverable VAT as defined under Chinese tax law and regulation.

2. Tainai

We used CEP to determine the price for Tainai's U.S. sales, in accordance with section 772(b) of the Act, because the subject merchandise was first sold in the United States by a U.S. seller affiliated with the producer and EP was not otherwise warranted as the basis for U.S. price.⁹⁶

We calculated CEP based on packed prices to unaffiliated purchasers in the United States. We made adjustments, where appropriate, from the starting price for rebates. We also made deductions from the starting price for movement expenses, in accordance with section 772(c)(2)(A) of the Act. These movement expenses included domestic inland freight, ocean freight, marine insurance, U.S. brokerage and handling, U.S. other transportation expenses, U.S. customs duty, U.S. warehousing expenses, U.S. inland freight from the warehouse to the unaffiliated customer, where applicable, and other U.S. transportation expenses and fees.

In accordance with section 772(d)(1) of the Act, we calculated CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (imputed credit, repacking expenses, and warranty expenses) and indirect selling expenses (inventory carrying costs and other indirect selling expenses). Finally, we deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act.

L. Normal Value

Section 773(c)(1) of the Act provides that Commerce shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. Commerce bases NV on the 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. Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. Commerce used FOPs reported by Tainai for materials, labor, energy, and packing.

M. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by Tainai for the POR. For the portion of Tainai's inputs where Tainai was unable to provide supporting documentation for its suppliers' FOPs because Tainai could not obtain the information or its suppliers do not keep bills of materials,⁹⁷ we have continued to rely on

⁹⁵ See Tainai CQR at 39 and Exhibit C-15; and Tainai SQR at 24-26 and Exhibits SC-14-16.

⁹⁶ See Tainai CQR at 10.

⁹⁷ See Tainai SQR at 27.

Tainai's allocation methodology for its direct input materials FOPs in these preliminary results, as stated above.

Commerce's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.⁹⁸ We used Romanian import data and other publicly-available Romanian data sources in order to calculate SVs for Tainai's FOPs. To calculate NV, we multiplied the reported per-unit FOP quantities by publicly-available SVs.

For the preliminary results, in accordance with Commerce's practice, we used Romanian import data provided through Global Trade Atlas (GTA), a service provided by IHS Markit Inc., and other publicly-available Romanian sources to calculate SVs for certain FOPs reported by Tainai (*i.e.*, direct materials, packing materials, energy, and certain movement expenses). The GTA reports import statistics, such as from Romania, in the original reporting currency, and, thus, these data correspond to the original currency value reported by Romania. The record shows that data in the Romanian import statistics, as well as those from several other Romanian sources, are contemporaneous with the POR, product-specific, and tax-exclusive.⁹⁹ In those instances where we could not obtain publicly-available information contemporaneous with the POR with which to value FOPs, we adjusted the SVs using the Romanian Purchase Price Index (PPI), as published in the International Monetary Fund's (IMF's) International Financial Statistics.¹⁰⁰

As appropriate, we adjusted input prices by including freight costs to render them delivered prices. Specifically, where we relied on an import value, we added to Romanian import average unit values reported on a Cost, Insurance, and Freight basis a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the CAFC in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). Additionally, where necessary, we adjusted SVs for inflation, exchange rates, and taxes. Moreover, we converted all applicable FOPs to a unit basis aligned with Tainai's reported FOPs.

Commerce continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the merchandise may have been dumped or subsidized.¹⁰¹ In this regard, Commerce has previously found that it is appropriate to disregard such prices from India, Indonesia, Thailand, and the Republic of Korea (Korea) because we have determined that these countries maintain broadly-available, non-industry specific export subsidies.¹⁰² Based on the

⁹⁸ See, e.g., *Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), and accompanying IDM at Comment 2.

⁹⁹ See Surrogate Value Memo.

¹⁰⁰ See, e.g., *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 9600 (March 5, 2009), unchanged in *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656 (July 24, 2009).

¹⁰¹ See section 773(c)(5) of the Act.

¹⁰² See, e.g., *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination; 2011-2012*, 78 FR 42492 (July 16, 2013), and accompanying IDM at 7-19; *Certain Lined Paper Products from Indonesia: Final Results of the Expedited Sunset Review of the*

existence of these subsidy programs that were generally available to all exporters in these countries at the time of the POR, Commerce finds that it is reasonable to infer that all exporters from India, Indonesia, Thailand, and Korea may have benefitted from these subsidies. Therefore, Commerce has not used prices from those countries in calculating Romanian import-based SVs. Additionally, consistent with our practice, we disregarded prices from NME countries and excluded from the SVs imports labeled as originating from an “unspecified” country because Commerce could not be certain that they were not from either an NME country or a country with general export subsidies.¹⁰³ Therefore, we have not used import data from these countries in calculating the Romanian import-based SVs.

Tainai reported that it purchased all its raw material and packing inputs from NME suppliers during the POR.¹⁰⁴ Therefore, we used Romanian import statistics from GTA to value raw materials and packing materials. Further, Tainai reported that scrap was recovered as a by-product of the production of subject merchandise, and that it, and its suppliers, made sales of scrap during the POR.¹⁰⁵ However, because Tainai was unable to provide either the quantity of scrap actually generated during the POR pursuant to its own production process, or that of its suppliers,¹⁰⁶ we are, consistent with our practice,¹⁰⁷ preliminarily not granting a by-product offset for Tainai’s reported scrap.

For all other FOPs, *see* the Surrogate Value Memorandum.

N. Currency Conversion

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

Countervailing Duty Order, 76 FR 73592 (November 29, 2011), and accompanying IDM at 1; *Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*; 2012, 79 FR 46770 (August 11, 2014), and accompanying IDM at 4; and *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013), and accompanying IDM at IV.

¹⁰³ *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, 75300 (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).

¹⁰⁴ *See* Tainai DQR at 10.

¹⁰⁵ *Id.* at 9, 26-30, and Exhibit D-6; and Tainai SQR at 28-29 and Exhibits 6(a)-6(b).

¹⁰⁶ *Id.* Tainai stated that it and its affiliates sell “scraps to the market and record the sales quantity of scraps, but {they do} not record the generated quantity in its normal course of business.” Further, “Tainai and its affiliates did not make warehouse management for scraps. The income of scraps was booked into ‘nonbusiness income’ account rather than ‘main business income.’ The scraps were piled up on the corners of the workshops and were weighed when sold.”).

¹⁰⁷ *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Results of the New Shipper Review*; 2012-2013, 80 FR 4244 (January 27, 2015), and accompanying IDM at Comment 3 (denying claims for a by-product offset where the companies did not provide data of their, or their subcontractors’ by-product production during the POR).

V. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒

☐

Agree

Disagree

6/30/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance