



A-570-079

Administrative Review

POR: 08/31/2018 – 04/30/2020

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July 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
Antidumping Duty Administrative Review: Cast Iron Soil Pipe from
the People's Republic of China; 2018-2020

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on cast iron soil pipe (soil pipe) from the People's Republic of China (China) for the period of review (POR) August 31, 2018, through April 30, 2020. We initiated this administrative review with respect to one company, mandatory respondent Yuncheng Jiangxian Economic Development Zone HengTong Casting Co., Ltd (HengTong). We preliminarily determine that HengTong made sales of subject merchandise at prices below normal value (NV).

II. BACKGROUND

On May 3, 2019, Commerce published the AD *Order* on soil pipe from China.¹ On May 1, 2020, we published a notice of opportunity to request an administrative review of the *Order*.² On May 29, 2020, we received a request from HengTong to conduct an administrative review of

¹ See *Cast Iron Soil Pipe from the People's Republic of China: Antidumping Duty Order*, 84 FR 19035 (May 3, 2019) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 25394 (May 1, 2020).



itself.³ On July 10, 2020, we published the *Initiation Notice* in the *Federal Register*.⁴ On July 21, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.⁵

On July 31, 2020, Commerce issued HengTong the standard non-market economy (NME) questionnaire.⁶ On August 10, 2020, we received a separate rate certification (SRC) from HengTong.⁷ HengTong filed responses to the Initial Questionnaire in September 2020.⁸ In February 2021, we issued a supplemental questionnaire to HengTong, and HengTong timely responded.⁹

On March 22, 2021, Commerce extended the deadline for the preliminary results to July 30, 2021.¹⁰ From April through June 2021, we received comments from HengTong and the petitioner¹¹ regarding the selection of the appropriate surrogate country and surrogate value (SV) data.¹²

³ See HengTong's Letter, "Cast Iron Soil Pipe from China; A-570-079; Request for Administrative Review," dated May 29, 2020.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 41540 (July 10, 2020) (*Initiation Notice*).

⁵ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

⁶ See Commerce's Letter, "Antidumping Duty Questionnaire," dated July 31, 2020 (Initial Questionnaire).

⁷ See HengTong's Letter, "Cast Iron Soil Pipe from the PRC; A-570-079; Separate Rate Certification," dated August 10, 2020 (HengTong SRC).

⁸ See HengTong's Letters, "Cast Iron Soil Pipe from the People's Republic of China A-570-079 (Review 8/31/18 – 4/30/20). Response to Section A questionnaire," dated September 2, 2020; "Cast Iron Soil Pipe from the People's Republic of China A-570-079 (Review 8/31/18 – 4/30/20). Response to Section C questionnaire," dated September 7, 2020; "Cast Iron Soil Pipe from the People's Republic of China A-570-079 (Review 8/31/18 – 4/30/20). Response to Section D questionnaire," dated September 7, 2020; "Cast Iron Soil Pipe from the People's Republic of China A-570-079 (Review 8/31/18 – 4/30/20). Revised Response to Section A of questionnaire," dated September 9, 2020; "Cast Iron Soil Pipe from the People's Republic of China A-570-079 (Review 8/31/18 – 4/30/20). Revised Response to Section C and D of questionnaire," dated September 16, 2020 (HengTong September 16, 2020 Revised CDQR); and "Cast Iron Soil Pipe from the People's Republic of China A-570-079 (Review 8/31/18 – 4/30/20). Revised Response to Section C and D of questionnaire," dated September 24, 2020.

⁹ See Commerce's Letter, "Cast Iron Soil Pipe from the People's Republic of China: Supplemental Questionnaire for HengTong," dated February 3, 2021 (1st Supplemental Questionnaire); see also HengTong's Letter, "Cast Iron Soil Pipe from the People's Republic of China A-570-079 (Review 8/31/18 4/30/20). Response to Supplemental Questionnaire for HengTong," dated February 12, 2021 (HengTong February 12, 2021 SQR).

¹⁰ See Memorandum, "Cast Iron Soil Pipe from the People's Republic of China: Extension of Deadline for Preliminary Results of the 2018-2020 Antidumping Duty Administrative Review," dated March 22, 2021.

¹¹ The petitioner is the Cast Iron Soil Pipe Institute.

¹² See Commerce's Letter, "Antidumping Duty Administrative Review on Cast Iron Soil Pipe from the People's Republic of China; 2018-20: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated April 6, 2021 (Surrogate Comments Request); HengTong's Letter, "Cast Iron Soil Pipe from the People's Republic of China A-570-079 (Review 8/31/18 – 4/30/20). Comments on Surrogate Country," dated April 20, 2021 (HengTong SC Comments); Petitioner's Letter, "Cast Iron Soil Pipe from the People's Republic of China: Comments on Surrogate Country Selection," dated April 20, 2021 (Petitioner SC Comments); HengTong's Letter, "Cast Iron Soil Pipe from the People's Republic of China A-570-079 (Review 8/31/18 – 4/30/20). Comments and Information on Surrogate Values," dated April 27, 2021 (HengTong SV Comments); Petitioner's Letter, "Cast Iron Soil Pipe from the People's Republic of China: Surrogate Value Submission," dated April 27, 2021 (Petitioner SV Comments); HengTong's Letter, "Cast Iron Soil Pipe from the People's Republic of China A-570-079 (Review 8/31/18 – 4/30/20). Rebuttal Comments on Surrogate Values," dated May 4, 2021; Petitioner's Letter, "Cast Iron Soil Pipe from the People's Republic of China: Rebuttal Factual

In July 2021, we issued an additional supplemental questionnaire to HengTong. HengTong timely responded in the same month.¹³

On July 15, 2021, the petitioner submitted comments for consideration in the preliminary results of this review.¹⁴ On July 19, 2021, the petitioner submitted rebuttal factual information relating to HengTong's July 2021 supplemental response; as part of this submission, the petitioner claimed that HengTong was transshipping subject merchandise through a third country.¹⁵ In light of the timing of these submissions, we are unable to consider the petitioner's comments fully for the preliminary results; however, for the reason discussed in Section V, will make a referral to U.S. Customs and Border Protection (CBP), if appropriate, regarding the proper declaration of U.S. entries. Additionally, we intend to further evaluate the petitioner's allegation of transshipments after these preliminary results.

Finally, we intend to solicit additional source documentation from HengTong after the preliminary results, and we will consider this information in our final results

III. SCOPE OF THE ORDER

The merchandise covered by this *Order* is cast iron soil pipe, whether finished or unfinished, regardless of industry or proprietary specifications, and regardless of wall thickness, length, diameter, surface finish, end finish, or stenciling. The scope of this *Order* includes, but is not limited to, both hubless and hub and spigot cast iron soil pipe. Cast iron soil pipe is nonmalleable iron pipe of various designs and sizes. Cast iron soil pipe is generally distinguished from other types of nonmalleable cast iron pipe by the manner in which it is connected to cast iron soil pipe fittings.

Cast iron soil pipe is classified into two major types, hubless and hub and spigot. Hubless cast iron soil pipe is manufactured without a hub, generally in compliance with Cast Iron Soil Pipe Institute (CISPI) specification 301 and/or American Society for Testing and Materials (ASTM) specification A888, including any revisions to those specifications. Hub and spigot pipe has one or more hubs into which the spigot (plain end) of a fitting is inserted. All pipe meeting the physical description set forth above is covered by the scope of this *Order*, whether or not produced according to a particular standard.

The subject imports are currently classified in subheading 7303.00.0030 of the Harmonized Tariff Schedule of the United States (HTSUS): Cast iron soil pipe. The HTSUS subheading and

Information for Surrogate Values," dated May 5, 2021; and Petitioner's Letter, "Cast Iron Soil Pipe from the People's Republic of China: Additional Surrogate Value Submission," dated June 30, 2021 (Petitioner Additional SV Comments).

¹³ See Commerce's Letter, "Cast Iron Soil Pipe from the People's Republic of China: Supplemental Questionnaire for HengTong," dated July 2, 2021; and HengTong's Letter, "Cast Iron Soil Pipe from the People's Republic of China A-570-079 (Review 8/31/18 4/30/20). Response to 2nd Supplemental Questionnaire for HengTong," dated July 13, 2021.

¹⁴ See Petitioner's Letter, "Cast Iron Soil Pipe from the People's Republic of China: Pre-Preliminary Determination Comments," dated July 15, 2021.

¹⁵ See Petitioner's Letter, "Cast Iron Soil Pipe from the People's Republic of China: Rebuttal Factual Information, Hengtong 2nd Supplemental Questionnaire Response," dated July 19, 2021.

specifications are provided for convenience and customs purposes only; the written description of the scope of this *Order* is dispositive.

IV. DISCUSSION OF THE METHODOLOGY

A. NME Country Status

Commerce considers China to be an NME country.¹⁶ In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the Act), any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of these preliminary results.

B. Separate Rate Determination

In proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single AD margin.¹⁷ In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate-rate status in NME proceedings.¹⁸ It is Commerce's policy to assign all exporters of the merchandise from the NME country proceeding a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.¹⁹ 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 proceeding under the test established in *Sparklers*,²⁰ as amplified by *Silicon Carbide*,²¹ and further refined by *Diamond Sawblades*.²² However, if Commerce determines that a company is

¹⁶ See *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

¹⁷ See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 24892, 24899 (May 6, 2010), unchanged in *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010).

¹⁸ See *Initiation Notice*, 85 FR 41542.

¹⁹ See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, dated April 15, 2005, available at <http://ia.ita.doc.gov/policy/bull05-1.pdf>.

²⁰ 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*).

²¹ 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*).

²² See Final Results of Redetermination pursuant to *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012), and available at <http://enforcement.trade.gov/remands/12-147.pdf>, *aff'd* *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd* *Advanced Technology & Materials Co., Ltd., et al. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014); 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,

wholly foreign-owned, then an analysis of the *de jure* and *de facto* criteria is not necessary to determine whether it is independent from government control.²³

In order to demonstrate separate rate status eligibility, Commerce normally requires entities for whom a review was requested and who were assigned a separate rate in a previous segment of a proceeding, to submit an SRC stating that they continue to meet the criteria for obtaining a separate rate.²⁴ For entities that were not assigned a separate rate in a previous segment of a proceeding, to demonstrate eligibility, Commerce requires a separate rate application (SRA).²⁵ Companies that submit an SRA or SRC which are subsequently selected as mandatory respondents must respond to all parts of Commerce's questionnaire in order to be eligible for separate rate status.²⁶

As noted above, Commerce initiated a review for one company, HengTong, which filed a timely SRC.²⁷ Commerce also received a response to the remaining portions of the Initial Questionnaire from HengTong.²⁸

1. Absence of *De Jure* Control

Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control over export activities of companies.²⁹

The evidence provided by HengTong supports a preliminary finding of the absence of *de jure* government control based on the following: (1) there is an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control over export activities of the companies; and (3) there are other formal measures by the government decentralizing control over export activities of the companies.³⁰

2014), and accompanying IDM at Comment 1 (*Diamond Sawblades Final Results*) (collectively, *Diamond Sawblades*).

²³ 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 4327 (January 27, 2014); and *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

²⁴ See *Initiation Notice*, 85 FR 41542.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See HengTong SRC.

²⁸ See HengTong February 12, 2021 SQR.

²⁹ See *Sparklers*, 56 FR at 20589.

³⁰ See HengTong SRC at 8-9; see also HengTong February 12, 2021 SQR at 1-5.

2. Absence of *De Facto* Control

Typically, Commerce considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.³¹ As stated in previous cases, there is evidence that certain enactments of the Chinese central government have not been implemented uniformly among different sectors and/or jurisdictions in China.³² Therefore, Commerce has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude Commerce from assigning separate rates.³³

The evidence provided by HengTong supports a preliminary finding of the absence of *de facto* government control based on the following: (1) the company set its own export prices independent of the government and without the approval of a government authority; (2) the company has authority to negotiate and sign contracts and other agreements; (3) the company has autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on the company's use of export revenue.³⁴ Therefore, Commerce preliminarily finds that the evidence placed on the record of this review demonstrates an absence of *de jure* and *de facto* government control with respect to the export functions of HengTong.³⁵ Thus, Commerce preliminarily finds that HengTong has established that it qualifies for a separate rate under the criteria established by *Diamond Sawblades*, *Silicon Carbide* and *Sparklers*.

3. China-Wide Entity

Because no party requested a review of the China-wide entity and Commerce no longer considers the China-wide entity as an exporter conditionally subject to administrative reviews, Commerce is not conducting a review of the China-wide entity.³⁶ Thus, the rate for the China-wide entity (*i.e.*, 235.93 percent) is not subject to change pursuant to this review.³⁷

³¹ See, e.g., *Silicon Carbide*, 59 FR at 22586-87; and *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).

³² See, e.g., *Silicon Carbide*, 59 FR at 22586-87.

³³ *Id.*

³⁴ See HengTong SRC at 9-10; see also HengTong February 12, 2021 SQR at 1-5.

³⁵ See HengTong SRC at 8-10; see also HengTong February 12, 2021 SQR at 1-5.

³⁶ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65969-70 (November 4, 2013).

³⁷ See *Order*, 84 FR at 19036.

C. Surrogate Country and SV Data

1. Surrogate Country Selection

When Commerce investigates imports from an NME country, section 773(c)(1) of the Act directs it 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. 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: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.³⁸

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 countries are viable options because either: (a) they 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.³⁹ 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.⁴⁰ To determine which countries are at the same level of economic development, Commerce generally relies on gross national income (GNI) data from the World Bank's World Development Report.⁴¹ Further, Commerce will normally value all FOPs from a single surrogate country.⁴²

On August 25, 2020, Commerce identified Brazil, Malaysia, Mexico, Romania, the Russian Federation (Russia), and Turkey, pursuant to section 773(c)(4) of the Act, as countries that are at the same level of economic development as China based on per capita 2019 GNI data available in the World Development Report.⁴³

On April 20, 2021, HengTong submitted comments in which it suggested that Commerce rely on Malaysia or Russia as the surrogate country in this review.⁴⁴ Also on April 20, 2021, the petitioner submitted comments recommending Malaysia as the surrogate country in this review.⁴⁵ On April 27, 2021, HengTong and the petitioner submitted Malaysian data with which to value HengTong's FOPs.⁴⁶ On May 4, 2021, and May 5, 2021, HengTong and the petitioner, respectively, submitted SV rebuttal comments.⁴⁷ On June 30, 2021, the petitioner submitted additional SV comments.⁴⁸ Our surrogate country analysis follows below.

³⁸ See Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin).

³⁹ *Id.*

⁴⁰ See Surrogate Comments Request.

⁴¹ *Id.*

⁴² See 19 CFR 351.408(c)(2).

⁴³ See Surrogate Comments Request at Attachment.

⁴⁴ See HengTong SC Comments.

⁴⁵ See Petitioner SC Comments.

⁴⁶ See HengTong SV Comments; *see also* Petitioner SV Comments.

⁴⁷ See HengTong SV Rebuttal Comments; *see also* Petitioner SV Rebuttal Comments.

⁴⁸ See Petitioner Additional SV Comments.

When selecting among several potential surrogate countries, Commerce's practice, in accordance with section 773(c)(1) of the Act, is to select a country that provides SV data which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and are free of taxes and duties.⁴⁹ There is no hierarchy among these criteria. It is Commerce's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis with respect to valuing the FOPs.⁵⁰

a) Economic Comparability

As explained in the Surrogate Comments Request, Commerce considers Brazil, Malaysia, Mexico, Romania, Russia, and Turkey to be at the same level of economic development as China.⁵¹ Therefore, we consider all six countries to have satisfied this prong of the surrogate country selection criteria.⁵²

b) Significant Producer of Identical or Comparable Merchandise

Section 773(c)(4)(B) of the Act requires Commerce to value FOPs in a surrogate country that is a significant producer of comparable merchandise; however, neither the Act nor Commerce's regulations define "significant" or "comparable." Given the absence of any definition in the Act or regulations, Commerce looks to other sources such as the Policy Bulletin for guidance. Commerce's practice is to evaluate whether production is significant based on characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics) and to determine whether merchandise is comparable on a case-by-case basis.⁵³ Moreover, while the legislative history provides that the term "significant producer" includes any country that is a significant "net exporter," it does not preclude reliance on additional or alternative metrics.⁵⁴ Where there is no production information, Commerce has relied upon export data from potential surrogate countries. With respect to comparability of merchandise, the Policy Bulletin states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."⁵⁵ Where there is no evidence of production of identical merchandise in a potential surrogate country, Commerce has determined whether merchandise is comparable to the subject merchandise on the basis of similarities in physical form and the extent of processing or on the basis of production factors (physical and

⁴⁹ See *Qingdao Sea-Line Trading Co. v. United States*, 766 F.3d 1378, 1386 (Fed. Cir. 2014) (*Qingdao Sea Line*); see also *Fuwei Films (Shandong) Co. v. United States*, 837 F. Supp. 2d 1347, 1350-51 (CIT 2012); and *First Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 1336 (January 11, 2010), and accompanying IDM at Comment 1.

⁵⁰ See, e.g., *Certain Steel Threaded Rod from the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review; 2011-2012*, 78 FR 66330 (November 5, 2013), and accompanying IDM at 7.

⁵¹ See Surrogate Comments Request.

⁵² See section 773(c)(4)(A) of the Act.

⁵³ See, e.g., *Xanthan Gum from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2252 (January 10, 2013), and accompanying PDM at 7-8, unchanged in *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) (*Xanthan Gum*).

⁵⁴ See *Conference Report to the 1988 Omnibus Trade & Competitiveness Act*, H.R. Rep. No. 100-576 (1988) at 590.

⁵⁵ See Policy Bulletin at 3.

non-physical) and factor intensities.⁵⁶ Because these characteristics are specific to the merchandise in question, the standard for “significant producer” will likely vary from case to case.⁵⁷ Based on the information placed on the record of this administrative review, Commerce determines that Brazil, Malaysia, Mexico, Romania, Russia, and Turkey are all significant producers of comparable merchandise.⁵⁸

c) Data Availability

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, Commerce selects the primary surrogate country “with the best factors data.”⁵⁹ Section 773(c)(1) of the Act instructs Commerce to value the FOPs based upon the best available information from an ME country, or countries, that Commerce considers appropriate. When evaluating SV data, Commerce considers several factors including whether the SV data are publicly available, contemporaneous with the POR, representative of a broad-market average, tax- and duty-exclusive, and specific to the input.⁶⁰ There is no hierarchy among these criteria, and it is Commerce’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.⁶¹ Commerce’s preference is to satisfy the breadth of these aforementioned selection factors,⁶² and to value all FOPs in the primary surrogate country.⁶³

HengTong and the petitioner only placed Malaysian SV data on the record. Accordingly, Malaysia is the only potential surrogate country for which the record contains data for valuing all of the respondent’s FOPs.⁶⁴ Further, we find that the Malaysian data and financial statements on the record are of an acceptable quality for use as SVs.⁶⁵ The Malaysian data generally are publicly available, contemporaneous with the POR, representative of broad-market averages, tax- and duty-exclusive, and specific to the inputs being valued. Thus, Commerce finds that the Malaysian SV data satisfy the criteria for selecting SVs.

Given the above facts, Commerce preliminarily selects Malaysia as the surrogate country for this administrative review. Malaysia is at a comparable level of economic development pursuant to

⁵⁶ *Id.*

⁵⁷ See Policy Bulletin at 1-2; see also *Hardwood and Decorative Plywood from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013), and accompanying IDM at Comment 7.

⁵⁸ See Petitioner SC Comments; see also HengTong SC Comments.

⁵⁹ See Policy Bulletin at 2.

⁶⁰ See *Qinqdao Sea Line*, 766 F.3d at 1386; see also *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).

⁶¹ See Policy Bulletin.

⁶² *Id.*

⁶³ See *Jiaxing Bro. Fastener Co. v. US*, 822 F.3d 1289, at 1294 (Fed. Cir. 2016); see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012), and accompanying IDM at Comment 9.

⁶⁴ See Memorandum, “Antidumping Duty Administrative Review of Cast Iron Soil Pipe from the People’s Republic of China; 2018-2019: Surrogate Values for the Preliminary Results,” dated concurrently with this memorandum (Preliminary SV Memorandum).

⁶⁵ *Id.*

773(c)(4) of the Act; is a significant producer of comparable merchandise, and has publicly available and reliable data for all the identified FOPs submitted by the respondent. An explanation of the SV data used in our preliminary analysis is provided below in the “Normal Value” section of this memorandum.

D. Date of Sale

Pursuant to 19 CFR 351.401(i), Commerce normally will use the invoice date as the date of sale unless Commerce is satisfied that a different date better reflects the date on which the material terms of the sale are established. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁶⁶ 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.⁶⁷

HengTong reported the date of shipment as the date of sale for all U.S. sales because the material terms of sale (*i.e.*, price and quantity) are finalized on this date.⁶⁸ There were no instances where invoice date predated the shipment date; therefore, reliance on shipment date as the date of sale is consistent with our practice of using the earlier of invoice date or shipment date.⁶⁹

E. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether HengTong’s sales of the subject merchandise to the United States were made at less than NV, Commerce compared the export price (EP) to the NV as described in the “Export Price” and “Normal Value” sections of this memorandum.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export price CEPs) (the average-to-average method) unless Commerce determines that another method is appropriate in a particular situation. In less-than-fair-value (LTFV) investigations, Commerce examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce’s examination of this question in the context of

⁶⁶ See 19 CFR 351.401(i); *see also* *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

⁶⁷ See, *e.g.*, *Certain Polyester Staple Fiber from the Republic of Korea: Preliminary Results of the 2007/2008 Antidumping Duty Administrative Review*, 74 FR 27281, 27283 (June 9, 2009), unchanged in *Certain Polyester Staple Fiber from the Republic of Korea: Final Results of the 2007-2008 Antidumping Duty Administrative Review*, 74 FR 65517 (December 10, 2009).

⁶⁸ See HengTong September 16, 2020 Revised CDQR at 11.

⁶⁹ See 19 CFR 351.401(i).

administrative reviews, the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is analogous to the issue in LTFV investigations.⁷⁰

In numerous investigations and reviews, Commerce applied a “differential pricing” analysis for determining whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.⁷¹ Commerce finds that the differential pricing analysis is instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.

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

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable

⁷⁰ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying IDM at Comment 1; see also *JBF RAK LLC v. United States*, 790 F. 3d 1358, 1363–65 (Fed. Cir. 2015) (“{t}he fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties”) (citations omitted).

⁷¹ See, *e.g.*, *Polyethylene Terephthalate Resin from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 19696 (May 4, 2018), unchanged in *Polyethylene Terephthalate Resin from Taiwan: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 48287 (September 24, 2018); *Large Diameter Welded Pipe from Canada: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 43649 (August 27, 2018), unchanged in *Large Diameter Welded Pipe from Canada: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6378 (February 27, 2019); and *Cast Iron Soil Pipe from the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 44567 (August 31, 2018), unchanged in *Cast Iron Soil Pipe from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6767 (February 28, 2019).

merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium, or large (0.2, 0.5, and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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

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

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.⁷²

2. Results of the Differential Pricing Analysis

For HengTong, based on the results of the differential pricing analysis, Commerce preliminarily finds that 0.00 percent of the value of U.S. sales pass the Cohen's *d* test,⁷³ and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, Commerce preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for HengTong.⁷⁴

F. U.S. Price

1. Export Price

Pursuant to section 772(a) of the Act, EP is "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c) of the Act. We calculated EP for HengTong's reported sales to the United States because the first sale to an unaffiliated party was made before the date of importation and the use of CEP methodology was not otherwise warranted.⁷⁵

In accordance with section 772(c)(2)(A) of the Act, where appropriate, we deducted from the starting price (gross unit price) to unaffiliated purchasers expenses for foreign inland freight and foreign brokerage and handling.⁷⁶ Because these expenses were provided by an NME vendor, we valued them using SVs, as appropriate.⁷⁷ Additionally, in accordance with section 772(c)(2)(B) of the Act, we deducted any irrecoverable value-added tax (VAT) from the starting price, as explained below.

⁷² The Court of Appeals for the Federal Circuit (CAFC) has affirmed much of Commerce's differential pricing methodology. *See, e.g., 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.

⁷³ *See* Memorandum, "Antidumping Duty Administrative Review of Cast Iron Soil Pipe from the People's Republic of China; 2018-2019: Preliminary Results Margin Calculation for Yuncheng Jiangxian Economic Development Zone HengTong Casting Co., Ltd.," dated concurrently with this memorandum (HengTong Preliminary Calculation Memorandum).

⁷⁴ *Id.*

⁷⁵ *See* HengTong September 16, 2020 Revised CDQR at 10.

⁷⁶ *See* HengTong Preliminary Calculation Memorandum.

⁷⁷ *See* Preliminary SV Memorandum.

2. Value-Added Tax

Commerce's recent practice in NME cases is to adjust EP (or the CEP) for the amount of any unrefunded (herein irrecoverable) VAT in certain NMEs, in accordance with section 772(c)(2)(B) of the Act.⁷⁸ Commerce has previously explained that, when an NME government imposes an export tax, duty, or other charges 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.⁷⁹ Where the irrecoverable VAT is a fixed percentage of EP or CEP, Commerce explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. EP or CEP downward by this same percentage.⁸⁰

VAT is an indirect, *ad valorem* consumption tax imposed on the purchase (sale) of goods. It is levied on the purchase (sale) price of the good, *i.e.*, it is paid by the buyer and collected by the seller. For example, if the purchase price is \$100 and the VAT rate is 15 percent, the buyer pays \$115 to the seller, \$100 for the good and \$15 in VAT. VAT is typically imposed at every stage of production. Thus, under a typical VAT system, firms: (1) pay VAT on their purchases of production inputs and raw materials (input VAT) as well as (2) collect VAT on sales of their output (output VAT).

Firms calculate input VAT and output VAT for tax purposes on a company-wide (not transaction-specific) basis, *i.e.*, in the case of input VAT, on the basis of *all input purchases* regardless of whether used in the production of goods for export or domestic consumption, and in the case of output VAT, on the basis of *all sales to all markets*, foreign and domestic. Thus, a firm might pay the equivalent of \$60 million in total input VAT across all input purchases and collect \$100 million in total output VAT across all sales. In this situation, however, the firm would remit to the government only \$40 million of the \$100 million in output VAT collected on its sales because of a \$60 million credit for input VAT paid that the firm can claim against output VAT.⁸¹ As a result, the firm bears no "VAT burden (cost)": the firm through the credit is refunded or recovers *all* of the \$60 million in input VAT it paid, and the \$40 million remittance to the government is simply a transfer to the government of VAT paid by (collected from) the buyer with the firm acting only as an intermediary. Thus, the cost of output VAT falls on the buyer of the good, not on the firm.

This would describe the situation under Chinese law except that producers in China, in most cases, do not recover (*i.e.*, are not refunded) the total input VAT they paid. Instead, Chinese tax law requires a *reduction in or offset to* the input VAT that can be credited against output VAT. This formula for this reduction/offset is provided in Article 5 of the 2012 Chinese government tax regulation, *Circular on Value-Added Tax and Consumption Tax Policies on Exported Goods and Services* (2012 VAT Notice).⁸²

⁷⁸ 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).

⁷⁹ *Id.*; see also *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2011-2012, 79 FR 4875 (January 30, 2014), and accompanying IDM at Comment 5.A.

⁸⁰ *Id.*

⁸¹ The credit, if not exhausted in the current period, can be carried forward.

⁸² See Memorandum, "2012 China VAT Circular," dated concurrently with this memorandum.

$$\text{Reduction/Offset} = (P - c) \times (T_1 - T_2),$$

where,

P = (VAT-free) free-on-board (FOB) value of export sales;

c = value of bonded (duty- and VAT-free) imports of inputs used in the production of goods for export;

T₁ = VAT rate; and,

T₂ = refund rate specific to the export good.

Using the example above, if P = \$200 million, c = 0, T₁ = 17% and T₂ = 10%, then the reduction/offset = (\$200 million - \$0) x (17% - 10%) = \$200 million x 7% = \$14 million.

Chinese law then requires that the firm in this example calculate creditable input VAT by subtracting the \$14 million from total input VAT, as specified in Article 5.1(1) of the *2012 VAT Notice*:

$$\text{Creditable input VAT} = \text{Total input VAT} - \text{Reduction/Offset}$$

Using again the example above, the firm can credit only \$60 million – \$14 million = \$46 million of the \$60 million in input VAT against output VAT. Since the \$14 million is not creditable (legally recoverable), it is not refunded to the firm. Thus, the firm incurs a cost equal to \$14 million, which is calculated on the basis of FOB export value at the *ad valorem* rate of T₁ – T₂. This cost therefore functions as an “export tax, duty, or other charge” because the firm does not incur it *but for* exportation of the subject merchandise, and under Chinese law must be recorded as a cost of exported goods.⁸³ It is for this “export tax, duty, or other charge” that Commerce makes a downward adjustment to U.S. price under section 772(c) of the Act.⁸⁴

It is important to note that under Chinese law, the reduction/offset described above is defined in terms of, and applies to, total (company-wide) input VAT across purchases of all inputs, whether used in the production of goods for export or domestic consumption. The reduction/offset does not distinguish the VAT treatment of export sales from the VAT treatment of domestic sales from an input VAT recovery standpoint for the simple reason that such treatment under Chinese law applies to the company as a whole, not specific markets or sales. At the same time, however, the reduction/offset is calculated on the basis of the FOB value of exported goods, so it can be thought of as a tax on the company (*i.e.*, a reduction in the input VAT credit) that the company

⁸³ Article 5(3) of the *2012 VAT Notice* states: “If the tax refund rate is lower than the applicable tax rate, the tax for the difference calculated accordingly shall be included in the cost of exported goods and labor services.”

⁸⁴ Because the \$14 million is the amount of input VAT that is not refunded to the firm, it is sometimes referred to as “irrecoverable input VAT.” However, that phrase is perhaps misleading because the \$14 million is not a fraction or percentage of the VAT the firm paid on purchases of inputs used in the production of exports. If that were the case, the value of production inputs, not FOB export value, would appear somewhere in the formula in Article 5 of the *2012 VAT Notice* as the tax basis for the calculation. The value of production inputs does not appear in the formula. Instead, as explained above, the \$14 million is simply a cost imposed on firms that is tied to export sales, as evidenced by the formula’s reliance on the FOB export value as the tax basis for the calculation. The \$14 million is a reduction in or offset to what is essentially a tax credit, and it is calculated based on and is proportional to the value of a company’s export sales. Thus, “irrecoverable input VAT” is in fact, despite its name, an export tax within the meaning of section 772(c) of the Act.

would not incur but for the export sales it makes, a tax fully allocable to export sales because the firm under Chinese law must book it as a cost of exported goods.

The VAT treatment under Chinese law of exports of goods described above concerns only export sales that are *not* subject to output VAT, the situation where the firm collects no VAT from the buyer, which applies to most exports from China. However, the *2012 VAT Notice* provides for a limited exception in which export sales of certain goods are, under Chinese law, deemed domestic sales for tax purposes and are thus subject to output VAT at the full rate.⁸⁵ The formulas discussed above from Article 5 of the *2012 VAT Notice* do not apply to firms that export these goods, and there is therefore no reduction in or offset to their creditable input VAT. For these firms creditable input VAT = total input VAT, *i.e.*, these firms recover all of their input VAT. At the same time, export sales of these firms are subject to an explicit output VAT at the full rate, T_1 .⁸⁶ Commerce must therefore deduct this tax from U.S. price⁸⁷ under section 772(c) of the Act to ensure tax-neutral dumping margin calculations.⁸⁸

As such, in the Initial Questionnaire, Commerce instructed the mandatory respondents to report VAT on the subject merchandise sold to the United States during the POR and to identify which taxes are unrefunded upon export. Record information indicates that according to the China VAT schedule, the standard VAT levy during the POR was 16 percent during the POR, while the rebate rate was, depending on the date of export, nine or 13 percent during the POR.⁸⁹

Consistent with our standard methodology, for purposes of these preliminary results, we based the calculation of irrecoverable VAT on the difference between the standard levy and rebate rates, applied to an FOB price at the time of exportation.⁹⁰ We deducted from the gross unit price an amount for irrecoverable VAT equal to eight percent of the gross unit price, as applicable, consistent with section 772(c)(2)(B) of the Act.⁹¹

G. Normal Value

Section 773(c)(1) of the Act provides that Commerce shall determine the NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) 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 will base NV, in an NME context, on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal

⁸⁵ See *2012 VAT Notice*, Article 7. For these goods, the VAT refund rate on export is zero.

⁸⁶ See *2012 VAT Notice*, Article 7.2(1).

⁸⁷ Commerce will divide the VAT-inclusive export price by $(1 + T)$, where T is the applicable VAT rate.

⁸⁸ Pursuant to sections 772(c) and 773(c) of the Act, the calculation of NV based on FOPs in NME antidumping cases is calculated on a VAT-exclusive basis, so U.S. price must also be calculated on a VAT-exclusive basis to ensure tax neutrality.

⁸⁹ See HengTong July 13, 2021 SQR at 3-4.

⁹⁰ See, *e.g.*, *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013*, 80 FR 33241 (June 11, 2015), and accompanying IDM at Comment 5.

⁹¹ See HengTong Preliminary Calculation Memorandum.

methodologies.⁹² Therefore, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation.⁹³ We used the FOPs reported by HengTong for materials, energy, labor, packing and freight. In accordance with section 773(c) of the Act and 19 CFR 351.408(c)(1), we calculated NV by multiplying the reported per-unit FOP consumption rates by publicly available SVs.⁹⁴

1. Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NVs based on the FOPs reported by HengTong for the POR. For a detailed discussion of the SVs used in this review, *see* the Preliminary SV Memorandum.

As noted above, when selecting from among the available information for valuing FOPs, Commerce's practice is to select, to the extent practicable, SVs which are publicly available, broad-market averages, contemporaneous with the POR or closest in time to the POR, product-specific, and tax- and duty-exclusive.⁹⁵ In all instances, we valued FOPs using publicly available information that was contemporaneous with the POR; therefore, we did not adjust the SVs using inflation indices. In addition, as discussed in more detail below, where appropriate, we adjusted input prices by including freight costs to render the prices delivered prices. An overview of the SVs used to calculate the weighted-average dumping margins for HengTong is provided below.

a) Direct and Packing Materials

The record indicates that import statistics from the primary surrogate country, Malaysia, which are available through the *Global Trade Atlas*, are generally contemporaneous with the POR, publicly available, product-specific, tax- and duty-exclusive, and representative of a broad-market average.⁹⁶ Thus, we based SVs for HengTong's direct materials and packing materials on these import values, except where noted below.⁹⁷

⁹² See, e.g., *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19703 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079 (September 8, 2006).

⁹³ See sections 773(c)(3)(A)-(D) of the Act.

⁹⁴ See HengTong Preliminary Calculation Memorandum.

⁹⁵ 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; *see also Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

⁹⁶ See Preliminary SV Memorandum.

⁹⁷ *Id.*

Pursuant to section 773(c)(5) of the Act and Commerce's long-standing practice, Commerce disregards SVs if it has a reason to believe or suspect the source data may be comprised of subsidized prices. In this regard, Commerce has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea, and Thailand because we have determined that these countries maintain broadly available, non-industry-specific export subsidies.⁹⁸ Based on the existence of the subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, we find that it is reasonable to infer that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies. Therefore, we have not used prices from those countries in calculating the Malaysian import-based SVs.

Additionally, consistent with our practice, Commerce disregarded data from NME countries when calculating Malaysian import-based per-unit SVs.⁹⁹ Commerce also excluded from the calculation of Malaysian import-based per-unit SVs imports labeled as originating from an "unidentified" country because Commerce could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.¹⁰⁰

We added to the Malaysian import SVs surrogate freight costs calculated using the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest port to the factory that produced the subject merchandise, where appropriate. This adjustment is in accordance with the CAFC's decision in *Sigma Corp.*¹⁰¹ We valued truck freight expenses using average truck rates from the World Bank's report, *Doing Business 2020: Malaysia (Doing Business)*.¹⁰² This World Bank report gathers information concerning the distance and cost to transport a containerized shipment weighing 15 metric tons from the peri-urban area of the economy's largest business city to the country's major port.

b) Labor/Energy

In NME AD proceedings, Commerce prefers to value labor solely based on data from the primary surrogate country.¹⁰³ In *Labor Methodologies*, Commerce determined that the best

⁹⁸ 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 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.

⁹⁹ See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China*, 69 FR 75294, 75301 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005) (*Chlorinated Isos*).

¹⁰⁰ *Id.* Additional countries excluded are: Belarus; China; Georgia; Moldova; Turkmenistan; and Vietnam.

¹⁰¹ See *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997) (*Sigma Corp.*).

¹⁰² See Preliminary SV Memorandum.

¹⁰³ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, Commerce determined that Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor (*i.e.*, wages, benefits, housing, training, etc.) is the preferred source where another source is not more appropriate.¹⁰⁴

However, for these preliminary results, Commerce valued the labor input using data from the Central Bank of Malaysia for the POR.¹⁰⁵ Although the Central Bank of Malaysia data are not from the ILO, we find that this fact does not preclude us from using this source for valuing labor. In *Labor Methodologies*, we decided to change to the use of ILO Chapter 6A from the use of ILO Chapter 5B data, on the rebuttable presumption that Chapter 6A data better account for all direct and indirect labor costs.¹⁰⁶ We did not, however, preclude all other sources for evaluating labor costs in NME AD proceedings. Consistent with section 773(c)(1) of the Act, we continue to follow our practice of selecting the “best available information” to determine SVs for inputs, such as labor.¹⁰⁷ In this case, we find that the Central Bank of Malaysia data for the POR are the best available information for valuing labor because the data are contemporaneous with the POR, industry-specific, and reflect all costs related to labor, including wages, benefits, housing, and training. Finally, for water and electricity, we valued these FOPs using POR values in Malaysia obtained from the Malaysian Investment Development Agency.¹⁰⁸

We asked HengTong to explain why it chose to allocate its labor and electricity FOPs using a different denominator than certain other FOPs.¹⁰⁹ HengTong did not provide an explanation and simply pointed to an exhibit which reflected a denominator that was unchanged from a prior submission.¹¹⁰ Because HengTong withheld the information requested by Commerce, Commerce is applying facts available within the meaning of section 776(a)(2)(A) of the Act. Furthermore, because HengTong had the requested information regarding its allocation methodology in its possession, but failed to provide it, HengTong failed to cooperate to the best of its ability in this review. Thus, Commerce is applying an adverse inference, pursuant to 776(b) of the Act. Accordingly, as an adverse inference, we are allocating certain of HengTong’s FOPs using the smaller of the two denominators.¹¹¹

¹⁰⁴ *Id.*

¹⁰⁵ See Petitioner SV Comments at Exhibit 8; *see also* Preliminary SV Memorandum.

¹⁰⁶ See *Labor Methodologies*, 76 FR at 36092.

¹⁰⁷ See, e.g., *Xanthan Gum* IDM at Comment 6-C; *see also* *Drawn Stainless Steel Sinks from the People’s Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013), and accompanying IDM at Comment 3.

¹⁰⁸ See Preliminary SV Memorandum.

¹⁰⁹ See 1st Supplemental Questionnaire at question 18 (“Please explain why the allocation values used for materials are different from those used to allocate labor and electricity. If HengTong is unable to provide a reasonable explanation for using different values in its allocations, please provide a revised Exhibit D-2 that allocates raw material, labor, and energy using the same value.”)

¹¹⁰ See HengTong February 12, 2021 SQR at 10 and Exhibit SQ16.

¹¹¹ See Memorandum, “Cast Iron Soil Pipe from the People’s Republic of China: Analysis of HengTong for the Preliminary Results,” dated concurrently with this memorandum.

c) Financial Ratios

Commerce's criteria for choosing surrogate financial statements from which we derive the financial ratios are the availability of contemporaneous financial statements, their comparability to the respondent's experience, and whether they are publicly available.¹¹² Moreover, to value factory overhead, selling, general, and administrative expenses and profit, Commerce normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.¹¹³ In addition, the Court of International Trade has held that in the selection of surrogate producers, Commerce may consider how closely the surrogate producers approximate the NME producer's experience.¹¹⁴

With respect to financial statements, the record contains one set of financial statements for a Malaysian producer of comparable merchandise, Auto Cast Sdn. Bhd (Auto Cast), for the fiscal year ending December 31, 2019. As noted above, Commerce's preference is to value all FOPs in a single surrogate country pursuant to 19 CFR 351.408(c)(2). Accordingly, because we have useable financial statements from the primary surrogate country Malaysia, *i.e.*, those of Auto Cast, we have preliminarily used the financial ratios derived from these financial statements to calculate the surrogate financial ratios.¹¹⁵

H. 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 rate, as certified by the Federal Reserve Bank, in effect on the date of the U.S. sale.

V. ASSESSMENT FOR HENG TONG'S U.S. SALES AND ENTRIES OF SUBJECT MERCHANDISE

Record evidence indicates that certain entries of subject merchandise exported by HengTong were not properly declared as type 03 entries, *i.e.*, subject to antidumping duties. Commerce intends to instruct CBP to ensure that the appropriate amount of antidumping duties is collected. The details of this issue are discussed in further detail in the HengTong Preliminary Calculation Memorandum. In addition, Commerce intends to refer this matter to CBP for enforcement action.

¹¹² See, e.g., *Chlorinated Isos* IDM at Comment 3.

¹¹³ See *Diamond Sawblades Final Results* IDM at Comment 2; see also section 773(c)(4) of the Act; and 19 CFR 351.408(c)(4).

¹¹⁴ See *Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1253-54 (CIT 2002); see also *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005), and accompanying IDM at Comment 1.

¹¹⁵ See Preliminary SV Memorandum.

VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒

Agree

☐

Disagree

X



Signed by: CHRISTIAN MARSH
Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance