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Administrative Review
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MEMORANDUM TO: James Maeder
Deputy Assistant Secretary
for Antidumping Duty and Countervailing Duty Operations

FROM: Abdelali Elouaradia
Director, Office IV
Antidumping and Countervailing Duty Operations

SUBJECT: Light-Walled Rectangular Pipe and Tube from the People's
Republic of China: Decision Memorandum for the Preliminary
Results of the 2019-2020 Antidumping Duty Administrative
Review

I. SUMMARY

In response to requests from interested parties, the Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on light-walled rectangular pipe and tube (LWRPT) from the People's Republic of China (China), covering the period of review (POR) August 1, 2019, through July 31, 2020. The administrative review covers one mandatory respondent, Hangzhou Ailong Metal Products Co., Ltd. (Ailong). Commerce preliminarily determines that sales of subject merchandise were made at prices below normal value (NV).

II. BACKGROUND

Commerce published the antidumping duty order on LWRPT from China on August 5, 2008.¹ On August 4, 2020, Commerce notified interested parties of the opportunity to request an administrative review of orders, findings, or suspended investigations with anniversaries in August 2020, including the *Order*.² On August 20, 2020, Ailong requested that Commerce

¹ See *Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value*, 73 FR 45403 (August 5, 2008) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 85 FR 47167 (August 4, 2020).

conduct an administrative review of itself.³ On October 6, 2020, Commerce published a notice initiating an AD administrative review of the *Order* covering Ailong for the POR.⁴

III. EXTENSION OF THE PRELIMINARY RESULTS

On April 15, 2021, Commerce extended the deadline for the preliminary results of this review by a total of 120 days, to August 31, 2021.⁵

IV. SCOPE OF THE ORDER

The merchandise subject to this *Order* is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm. The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to this *Order* is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and CBP's customs purposes, our written description of the scope of the *Order* is dispositive.

V. DISCUSSION OF METHODOLOGY

We are conducting this administrative review of the *Order* in accordance with section 751(a) of the Act, and 19 CFR 351.213.

A. Non-Market Economy Country

Commerce considers China to be a non-market economy (NME) country.⁶ 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 the administering authority. Therefore, we continue to treat China as an NME country for purposes of these results of review.

³ See Ailong's Letter, "Light-Walled Rectangular Pipe and Tube from the People's Republic of China – Request for Administrative Review," dated August 20, 2020.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 63081 (October 6, 2020).

⁵ See Memorandum, "Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated April 15, 2021.

⁶ See *Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017), and accompanying Preliminary Decision Memorandum (PDM) at *China's Status as a Non-Market Economy*.

B. Separate Rates

Commerce maintains a rebuttable presumption that all companies within an NME are subject to government control and, thus, should be assessed a single weighted-average dumping margin.⁷ In the *Initiation Notice*, Commerce notified parties of the application process by which exporters or exporter/producers may obtain separate rate status in NME proceedings.⁸ It is Commerce's policy to assign all exporters of the merchandise subject to review in NME countries 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. 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 under the test established in *Sparklers*,⁹ as amplified by *Silicon Carbide*.¹⁰ However, if Commerce determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether it is independent from government control.¹¹

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China antidumping duty proceeding, and its determinations therein.¹² In particular, in litigation involving the diamond sawblades from China proceeding, the U.S. Court of International Trade (CIT) found Commerce's existing separate rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity had significant ownership in the respondent exporter.¹³ Following the CIT's reasoning, in recent

⁷ 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); *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).

⁸ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 45596 (September 10, 2018) (*Initiation Notice*).

⁹ 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*).

¹⁰ 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*).

¹¹ See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007) (*Wax Candles*).

¹² See *Final Results of Redetermination pursuant to Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), and available at <http://enforcement.trade.gov/remands/12-147.pdf>, *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014) (*Advanced Technology II*); see also *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013), and accompanying 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 Issues and Decision Memorandum (IDM) at Comment 1.

¹³ See, e.g., *Advanced Technology I*, 885 F. Supp. 2d at 1349 (CIT 2012) ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *Id.* at 1351 ("Further substantial evidence of record does not support the inference that SASAC's [state-owned assets supervision and administration commission] 'management' of its 'state-owned assets' is restricted to the kind of passive-investor *de jure* 'separation' that Commerce concludes.") (footnotes omitted); *Id.* at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy

proceedings, we have concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent 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.¹⁴ This 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 any 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 profit distribution of the company.

In order to demonstrate separate rate eligibility, Commerce normally requires entities, for which a review was requested, and that were assigned a separate rate in a previous segment of the proceeding, to submit a separate-rate certification stating that they continue to meet the criteria for obtaining a separate rate.¹⁵ In order for entities that were not assigned a separate rate in the previous segment of the proceeding to demonstrate eligibility for a separate rate, Commerce requires a separate rate application from the entity.¹⁶

Ailong timely submitted a separate rate application.¹⁷ We have conducted a separate rate analysis of Ailong below.

C. Separate Rate Analysis

a) *Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies*

Ailong reported that it is a wholly Chinese-owned company.¹⁸ In accordance with our practice, we analyzed whether Ailong demonstrated an absence of *de jure* and *de facto* governmental control over its export activities.

b) *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

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

¹⁴ See *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying PDM at 5-9.

¹⁵ See *Initiation Notice*, 83 FR 45596.

¹⁶ *Id.*

¹⁷ See Ailong's Section A Questionnaire Response (Ailong's AQR), dated November 19, 2020.

¹⁸ *Id.*

decentralizing control of companies.¹⁹ Evidence on the record supports a preliminary finding of the absence of *de jure* government control of export activities 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 of the company; and (3) there are formal measures by the government decentralizing control of the company.²⁰

c) *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 (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 disposition of profits or financing of losses.²¹ 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.²² 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.²³

The evidence provided by Ailong supports a preliminary finding of the absence of *de facto* government control based on the following: (1) the company sets its own export price independent of the government and without the approval of a government authority; (2) the company has the 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.²⁴

Therefore, we preliminarily find that the evidence placed on the record of this review demonstrates an absence of *de facto* government control with respect to Ailong's exports of the merchandise under review.

Based on the absence of both *de jure* and *de facto* government control with respect to Ailong's exports of the merchandise under review, we preliminarily find that Ailong has established that it qualifies for a separate rate under the criteria established by *Sparklers* and *Silicon Carbide*.

D. Surrogate Country

When Commerce investigates imports from an NME country, section 773(c)(1) of the Act directs

¹⁹ See *Sparklers*, 56 FR at 20589.

²⁰ See Ailong's AQR.

²¹ See *Silicon Carbide*, 59 FR at 22587; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995)

²² See, e.g., *Silicon Carbide*, 59 at FR 22587.

²³ *Id.*

²⁴ See Ailong's AQR.

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 value, to the extent possible, FOPs using prices from 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.²⁵ Further, pursuant to 19 CFR 351.408(c)(2), Commerce will normally value FOPs using prices from a single country.

Where Commerce determines that more than one country is at a level of economic development comparable to that of the NME country and a significant producer of comparable merchandise, it then examines the availability and quality of the SV data on the record from each potential surrogate country in order to select a single primary surrogate country.

On January 25, 2021, Commerce issued a memorandum (Policy Memorandum) wherein it listed six countries at the same level of economic development as China based on 2019 per capita gross national income (GNI) figures available in the World Development Report provided by the World Bank. The countries identified in that memorandum, pursuant to section 773(c)(4) of the Act, are Brazil, Malaysia, Mexico, Romania, Russia, and Turkey.²⁶ We provided interested parties with an opportunity to comment on this list.²⁷ Nucor Tubular Products, Inc. (Nucor) commented on economic comparability and argued that Malaysia and Brazil are significant producers of merchandise comparable to light-walled rectangular pipe and tube.²⁸ Ailong commented on economic comparability and argued that Romania and Russia are significant producers of merchandise comparable to light-walled rectangular pipe and tube.²⁹ Additionally, Ailong suggested that Bulgaria is economically comparable and a significant producer of comparable merchandise.³⁰ Our surrogate country analysis is below.

1. Same Level of Economic Development

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 surrogate countries 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 that are 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.³¹

As stated above, we determined that Brazil, Malaysia, Mexico, Romania, Russia, and Turkey are

²⁵ For a discussion of our practice, *see* also Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (*Policy Bulletin*), available at <http://enforcement.trade.gov/policy/bull04-1.html>.

²⁶ *Id.*

²⁷ *See* Policy Memorandum.

²⁸ *See* Nucor Economic Comparability.

²⁹ *See* Ailong Economic Comparability.

³⁰ *Id.*

³¹ *See* Policy Memorandum.

at the same level of economic development as China in terms of per capita GNI.³² Accordingly, unless we find that none these countries are significant producers of comparable merchandise, provide a reliable source of publicly available surrogate data, or are suitable for use as a surrogate country for other reasons, we will rely on data from one of these countries to value FOPs.

2. Significant Producers 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 statute nor Commerce's regulations defines "significant" or "comparable." Given the absence of any definition in the statute or regulations, Commerce looks to other sources, such as the Policy Bulletin, for guidance on defining comparable merchandise. 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.³³ While the legislative history indicates that the term "significant producer" includes any country that is a significant "net exporter,"³⁴ it does not preclude reliance on additional or alternative metrics to identify a "significant producer." Where there is no production information, Commerce has relied upon export data from potential surrogate countries to determine whether the country is a "significant producer" of comparable merchandise. With respect to comparability of merchandise, in the Policy Bulletin Commerce stated that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."³⁵ 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 non-physical) as well as factor intensities.³⁶ Since these characteristics are specific to the merchandise in question, the standard for "comparable merchandise" will vary from case to case.³⁷

A comparison of the quantities of comparable merchandise produced in each of the potential surrogate countries in relation to world production of comparable merchandise was not possible because the record does not contain production quantities of comparable merchandise from each of the potential surrogate countries. Therefore, we examined export data from the potential surrogate countries, which is one of the alternative metrics that we consider in determining

³² *Id.* at Exhibit 1.

³³ 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 4-7, 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) (*Investigation Final Determination*).

³⁴ See *Conference Report to the 1988 Omnibus Trade & Competitiveness Act*, H.R. Rep. No. 100-576 (1988) at 590.

³⁵ See *Policy Bulletin* at 1-2.

³⁶ *Id.*

³⁷ See *Policy Bulletin* at 1-2; see also, e.g., *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.

whether a country is a significant producer of comparable merchandise.³⁸ Consistent with our practice, we first searched Global Trade Atlas (GTA) for data on exports of identical merchandise (light-walled rectangular pipe and tube) from the potential surrogate countries. We found no such data. This is consistent with interested parties' prior explanations that light-walled rectangular pipe and tube is only produced in a limited number of countries (*i.e.*, Turkey, the United States, and China).³⁹

Next, we searched GTA for data on exports from the potential surrogate countries under the HTS categories that cover merchandise that Commerce previously found to be comparable to LWRPT.⁴⁰ Based on the export data on the record of this review, we preliminarily find that the six countries identified as being economically comparable to China are significant producers of comparable merchandise. Because there is more than one potential surrogate country at a level of economic development comparable to that of China that is a significant producer of comparable merchandise, we examined the availability and quality of the SV data on the record from each potential surrogate country to select a single primary surrogate country.

3. Data Availability

Commerce considers several factors when evaluating SV data, including whether SV data are publicly available, contemporaneous with the period under consideration, representative of a broad-market average, tax and duty-exclusive, and specific to the input being valued.⁴¹ There is no hierarchy among these criteria;⁴² however, Commerce's preference is to satisfy the breadth of the aforementioned selection factors,⁴³ and to value all FOPs in one surrogate country.⁴⁴

If more than one potential surrogate country satisfies the statutory requirement for selection as a surrogate country, Commerce selects the primary surrogate country "with the best factors data."⁴⁵ Section 773(c)(1) of the Act instructs Commerce to value the FOPs based upon the best available information from an ME country or a country 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,

³⁸ See *Xanthan Gum from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments*; 2017-2018, 84 FR 26813 (June 10, 2019), and accompanying PDM, unchanged in *Xanthan Gum from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments*; 2017-2018, 84 FR 64831 (November 25, 2019), and accompanying IDM.

³⁹ See, e.g., Investigation Preliminary Determination PDM at 5.

⁴⁰ See *Investigation Final Determination* IDM at Comment 1.

⁴¹ 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).

⁴² See *Policy Bulletin*.

⁴³ *Id.*

⁴⁴ See, e.g., *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.

⁴⁵ See *Policy Bulletin* at 2.

tax and duty exclusive, and specific to the input.⁴⁶ There is no hierarchy among the 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.⁴⁷ Accordingly, Commerce's preference is to satisfy the breadth of the aforementioned selection factors,⁴⁸ and to value all FOPs in the primary surrogate country.⁴⁹

The record contains usable SV data from only three of the six countries on the list of potential surrogate countries, namely, Romania, Russia, and Malaysia.⁵⁰ Complete SV data from the other countries on the list (*i.e.*, Brazil, Mexico, and Turkey), are not on the record, nor has any party argued to use SV data from any of these countries to value FOPs. Therefore, we preliminarily exclude Brazil, Mexico, and Turkey as surrogate countries.

Parties have placed on the record import data from Romania, Russia, and Malaysia, that provide prices with which to value nearly all of the inputs used by Ailong in producing subject merchandise. An examination of the import data submitted by parties indicates that the data are equal in terms of being publicly available, contemporaneous with the period under consideration, broad-market averages, from an appropriate surrogate country, and tax and duty-exclusive. However, only the SV data from Malaysia are sourced from GTA, which is Commerce's preferred source for SV data.⁵¹ See the Preliminary Surrogate Value Memorandum.⁵² Additionally, surrogate values and financial statements sourced from Malaysia more closely match the Ailong's FOPs and production. Specifically, the Malaysian surrogate value used to value Ailong's square tube, the main input to produce subject merchandise, is more specific than the surrogate value sourced from Russia.⁵³ Additionally, we find that the financial statements provided for Malaysia are more appropriate in this case because the company featured in the Romanian financial statements, TMK Artrom S.A. does not produce welded pipe or tube; they produce seamless pipe.

⁴⁶ See *Qingdao 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).

⁴⁷ See *Policy Bulletin*.

⁴⁸ *Id.*

⁴⁹ See *Jiaxing Bro. Fastener Co. v. US*, 822 F.3d 1289, 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.

⁵⁰ See Nucor's SV Submission and Ailong's SV Submission.

⁵¹ See, e.g., *Steel Propane Cylinders from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination Measures*, 83 FR 66675 (December 27, 2018), and accompanying PDM at 10 (“{B}ecause neither the petitioners nor the respondents submitted data using Commerce's preferred Global Trade Atlas (GTA) source in providing import data to the record for potential surrogates ... we have downloaded data for the identical HTS subcategories to corroborate the Malaysian data submitted and used the GTA data for the purposes of this preliminary determination”) unchanged in *Steel Propane Cylinders from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 84 FR 29161 (June 21, 2019).

⁵² See Memorandum, “Administrative Review of the Antidumping Duty Order on Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Preliminary Surrogate Value Memorandum,” dated concurrently with this memorandum (Preliminary Surrogate Value Memorandum).

⁵³ See Preliminary Surrogate Value Memorandum.

Given the foregoing, we preliminarily select Malaysia as the primary surrogate country. Malaysia is at the same level of economic development as China; it is a significant producer of comparable merchandise; and the record contains publicly available and reliable data from Malaysia for all of the reported FOPs, except water. For details on the selected SVs, see the “Normal Value” section of this memorandum and the Preliminary Surrogate Value Memorandum.

E. Date of Sale

Pursuant to 19 CFR 351.401(i), Commerce starts with a presumption that invoice date is the date of sale unless record evidence indicates that the material terms of sale, such as price and quantity, are established on another date. Ailong reported either the earlier of the shipment date or the invoice date as the date of sale, claiming that for its U.S. sales of subject merchandise during the POR, sales vouchers were created on the shipment date; however, in cases where the sales vouchers were not created concurrently with shipment, the invoice date is used as the date of sale.⁵⁴ In the absence of record evidence to the contrary, and in accordance with 19 CFR 351.401(i), and Commerce’s long-standing practice in determining the date of sale,⁵⁵ Commerce preliminarily finds that the earlier of the shipment date or invoice date is the most appropriate date to use as the date of sale.

F. Comparisons to Normal Value

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

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (the average-to-average method) unless Commerce determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NVs to the prices of individual export transactions (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

⁵⁴ See Ailong’s Letter, “Administrative Review of the Antidumping Duty Order on Light-Walled Rectangular Pipe and Tube from the People’s Republic of China: Response to Section C&D Supplemental Questionnaire,” dated April 27, 2021.

⁵⁵ See, e.g., *Certain Polyester Staple Fiber from the People’s Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review, and Intent To Revoke Order in Part*, 76 FR 40329 (July 8, 2011), unchanged in *Certain Polyester Staple Fiber from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, and Revocation of an Order in Part*, 76 FR 69702 (November 9, 2011); see also *Steel Wire Garment Hangers from the People’s Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the First Antidumping Duty Administrative Review*, 75 FR 68758 (November 9, 2010), unchanged in *First Administrative Review of Steel Wire Garment Hangers from the People’s Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 27994, 27996 (May 13, 2011).

examination of this question in the context of administrative reviews, Commerce finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.⁵⁶

In numerous investigations and reviews, Commerce applied a “differential pricing” analysis to determine whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁵⁷ Commerce finds that the differential pricing analysis is instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.⁵⁸

The differential pricing analysis used in these preliminary results requires a finding of a pattern of prices for comparable merchandise that differs significantly among purchasers, regions, or time periods. 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 differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer names. Regions are defined using the reported destination code (*i.e.*, city name, 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 being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the 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* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data 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.

⁵⁶ 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.

⁵⁷ See *Hardwood and Decorative Plywood from the People’s Republic of China: Antidumping Duty Investigation*, 78 FR 25946 (May 3, 2013), unchanged in *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); see also *Certain Steel Threaded Rod from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 21101 (April 9, 2013), unchanged in *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); see also *Certain Lined Paper Products from the People’s Republic of China: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 34640 (June 10, 2013) unchanged in *Certain Lined Paper Products from the People’s Republic of China: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 65274 (October 31, 2013).

⁵⁸ See, *e.g.*, *Certain Activated Carbon from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 26748 (May 8, 2013), unchanged in *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 70533 (November 26, 2013), and accompanying IDM at Comment 4.

Then, the Cohen's *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region, or in a time period differ significantly from the net 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 means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales in the test group were found to have passed 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 in 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 in 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, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative 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 margin 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 margin moves across the *de minimis* threshold.

Interested parties may present arguments regarding the above-described differential pricing approach used in these preliminary results of review, including arguments for modifying the group definitions used in this proceeding.⁵⁹

⁵⁹ The Court of Appeals for the Federal Circuit (CAFC) has affirmed much of Commerce's differential pricing

2. Results of the Differential Pricing Analysis

We found that a total of 10.3 percent of Ailong's EP sales pass the Cohen's *d* test. This does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods.⁶⁰ Additionally, there is not a meaningful difference in the weighted-average dumping margins calculated using the average-to-average comparison method and the average-to-transaction comparison method. Accordingly, we have preliminarily used the average-to-average method in comparing Ailong's U.S. prices to NV.

G. U.S. Price

1. Export Price

In accordance with 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. Because Ailong reported sales prices which meet the above EP definition, we treated such sales as EP sales. We calculated the net price for these sales by making deductions, as appropriate, from the reported gross U.S. price for domestic and international movement expenses (*i.e.*, domestic inland freight and domestic brokerage and handling) in accordance with section 772(c)(2) of the Act.⁶¹ Where movement expenses were provided by Chinese service providers or paid for in an NME currency, we valued these services using SVs.⁶²

2. Value-Added Tax

Commerce's practice in NME cases is to subtract the amount of any un-refunded (irrecoverable) value-added tax (VAT) from EP or CEP, in accordance with section 772(c)(2)(B) of the Act.⁶³ Commerce has explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, Commerce will reduce the respondent's EP and CEP prices by the amount of the tax, duty or charge paid, but not rebated.⁶⁴ Where the irrecoverable VAT is a fixed percentage of CEP or EP, Commerce uses a tax-neutral dumping comparison by reducing the CEP or EP by this percentage.⁶⁵ Thus, Commerce's methodology essentially amounts to

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.

⁶⁰ See Memorandum, "Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Preliminary Results Margin Calculation for Ailong," dated concurrently with this memorandum.

⁶¹ See section 772(c)(2)(A) of the Act.

⁶² See *Preliminary Surrogate Value Memoranda* for details regarding the surrogate values for movement expenses.

⁶³ 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, 36483-84 (June 19, 2012).

⁶⁴ *Id.*

⁶⁵ *Id.*

performing two basic steps: (1) determining the amount (or rate) of the irrecoverable VAT on subject merchandise; and (2) reducing U.S. price by the amount (or rate) determined in step one.

Commerce requested that the mandatory respondents report net un-refunded VAT for the subject merchandise. The Chinese VAT schedule placed on the record of this review by Ailong demonstrates that the VAT rate is 13 percent or less and the rebate rate for export sales of subject merchandise is 13 percent.⁶⁶ Based on this evidence, there is no irrecoverable VAT on subject merchandise. Therefore, we did not adjust Ailong's U.S. prices for VAT.

H. 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 country 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 in an NME context on FOPs because the presence of government controls on various aspects of NME countries renders price comparisons and the calculation of production costs invalid under Commerce's normal methodologies.⁶⁷ Therefore, we calculated NV based on FOPs reported by Ailong for the POR, 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.⁶⁸ We used quantities/distances (as appropriate) reported by Ailong for materials, energy, labor, by-products, packing, and freight in our NV calculations. In accordance with section 773(c) of the Act and 19 CFR 351.408(c)(1), we calculated the cost of FOPs by multiplying each of the reported per-unit FOP consumption quantities by the relevant publicly available SV.⁶⁹ We summed the surrogate input cost and surrogate freight cost for transporting the input to Ailong to derive the total cost of each input used by Ailong to produce light-walled rectangular pipe and tube.

1. Factor Valuations

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 period under consideration or closest in time to that period, product-specific, and tax-exclusive.⁷⁰ In those instances where we could not

⁶⁶ *Id.*

⁶⁷ 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).

⁶⁸ See section 773(c)(3)(A)-(D) of the Act.

⁶⁹ See Preliminary Surrogate Value Memorandum.

⁷⁰ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

value FOPs using publicly available information that is contemporaneous with the POR, we inflated/deflated the SVs using indices. As noted above, we adjusted input prices by including freight costs to make them delivered prices. An overview of the SVs that we used to calculate the weighted-average dumping margin is below. A detailed description of all of the SVs that we used to calculate the weighted-average dumping margin is in the Preliminary Surrogate Value Memorandum.

2. Direct and Packing Materials

GTA import prices from the primary surrogate country, Malaysia, are publicly available, product-specific, tax-exclusive, representative of a broad market average price, and generally contemporaneous with the POR.⁷¹ Thus, we based SVs for direct and packing materials on Malaysian import values.⁷²

3. Energy

Commerce placed a surrogate value for water from Malaysia on the record.⁷³ The surrogate value for water is from the 2019-20 administrative review of *Xanthan Gum from the People's Republic of China*,⁷⁴ and the source is Suruhanjaya Perkhidmatan Air Negara (National Water Services Commission) (SPAN).⁷⁵

4. Labor

In Labor Methodologies,⁷⁶ Commerce determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country. Commerce does not, however, necessarily exclude other sources for valuing labor.⁷⁷ Rather, it follows the practice of selecting the best available information for valuing FOPs. Here, we valued labor using the 2020 mean monthly earnings of manufacturing employees in Malaysia from the Department of Statistics Malaysia (DOSM) and Doing Business in Malaysia 2020. Because DOSM labor rates are reported on a monthly basis, we converted the rates to hourly rates under the premise that there are 8 working hours per day and 6 working days per week.

⁷¹ See Preliminary Surrogate Value Memorandum.

⁷² *Id.*

⁷³ On August 19, 2021 date, Commerce placed a Malaysian surrogate value for water on the record from the 2019-2020 administrative review of xanthan gum from the People's Republic of China. See Memorandum "Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Placement of Surrogate Value on the Record," dated August 19, 2021. Parties were given an opportunity to rebut the water surrogate value placed on the record. No party commented.

⁷⁴ See *Xanthan Gum from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, Partial Rescission of the Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments*; 2019-2020, 86 FR 42781 (August 5, 2021), and accompanying PDM.

⁷⁵ *Id.*

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

⁷⁷ See *Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*; 2012-2013, 79 FR 65616 (November 5, 2014), and accompanying IDM at 11.

5. Movement Services

We valued inland truck freight and brokerage and handling expenses using a price list for charges related to importing/exporting a standardized cargo of goods in and out of Malaysia, as published in the Doing Business in Malaysia 2020.⁷⁸

6. Financial Ratios

Record information for valuing financial ratios include 2020 financial statements for the following Malaysian companies: (1) Choo Bee Metal Industries Berhad (Choo Bee), a producer of welded rectangular steel pipe;⁷⁹ and (2) Prestar Resources Berhad, (Prestar), a manufacturer of carbon steel pipes.⁸⁰ We preliminarily find Choo Bee's financial statements to be the best available information for calculating surrogate financial ratios because they are from a company that produces more comparable merchandise (*i.e.*, welded rectangular steel pipe) among its products. Based on this evidence, and Commerce practice of valuing overhead and SG&A expenses, and profit using publicly available information gathered from producers of comparable merchandise in the surrogate country, we have preliminarily valued factory overhead, SG&A expenses, and profit using the 2020 audited financial statements of Choo Bee, a Malaysian producer of welded rectangular steel pipe, a product comparable to subject merchandise.⁸¹

I. 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. sale, as certified by the Federal Reserve Bank.

⁷⁸ See Nucor's SV Submission.

⁷⁹ See Nucor's Letter, "Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Comments in Advance of the Department's Preliminary Results," dated August 6, 2021.

⁸⁰ *Id.*

⁸¹ See Preliminary Surrogate Value Memorandum.

VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results of review.

☒

☐

Agree

Disagree

8/31/2021

X

James Maeder

Signed by: JAMES MAEDER

James Maeder

Deputy Assistant Secretary

for Antidumping Duty and Countervailing Duty Operations