



A-570-139
Investigation
POI: 07/01/2020-12/31/2020
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E&C/OI: Team

September 24, 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 Determination of Sales
in the Less Than Fair Value Investigation of Certain Mobile
Access Equipment and Subassemblies Thereof from the People's
Republic of China

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that certain mobile access equipment and subassemblies thereof (mobile access equipment) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins of sales at LTFV are shown in the accompanying *Federal Register* notice.

II. BACKGROUND

On February 26, 2021, we received an antidumping duty (AD) petition covering imports of mobile access equipment from China,¹ which was filed in proper form on behalf of the Coalition of American Manufacturers of Mobile Access Equipment, whose members are JLG Industries Inc. and Terex Corporation (the petitioner). We initiated this investigation on March 18, 2021.² In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate rate status in non-market economy (NME) LTFV

¹ See Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Petitions for the Imposition of Antidumping and Countervailing Duties," dated February 5, 2020 (the Petition).

² See *Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 86 FR at 15922 (March 25, 2021) (*Initiation Notice*).



investigations.³ The process requires exporters and producers to submit a separate rate application (SRA) that demonstrates an absence of both *de jure* and *de facto* government control over their export activities. In the *Initiation Notice*, Commerce stated that SRAs would be due 30 days after publication of the notice, specifically, April 26, 2021.⁴ Commerce received timely SRAs from nine applicants, including both mandatory respondents, as discussed in the “Separate Rates” section, below.

In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of mobile access equipment to be reported in response to Commerce’s AD questionnaire.⁵ We received comments from interested parties concerning the appropriate physical characteristics to be used for the purpose of reporting sales of the subject merchandise.⁶ We also received comments from interested parties concerning the scope of the investigation.⁷

In the *Initiation Notice*, we stated that we would base respondent selection on responses to the quantity and value (Q&V) questionnaires sent to each potential respondent named in the Petition.⁸ On March 22, 2021, we issued Q&V questionnaires to the 20 companies identified in the Petition.⁹ In addition, Commerce posted the Q&V questionnaire on its website and invited parties who did not receive a Q&V questionnaire to file a response to the Q&V questionnaire by the applicable deadline.

On April 16, 2021, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of mobile access equipment from China.¹⁰

On April 23, 2021, based on responses to Q&V questionnaires, Commerce selected the two exporters or producers with the largest unit volume of entries of mobile access equipment from China during the period of investigation (POI), Zhejiang Dingli Machinery Co., Ltd. (Dingli) and

³ *Id.* at 15926.

⁴ *Id.*

⁵ *Id.* at 15923-15924.

⁶ See Petitioner’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Petitioner’s Comments on Model Match and Physical Characteristics,” dated April 7, 2021; see also Lingong Group Jinan Heavy Machinery Co., Ltd.’s (LGMG) Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Comments on Physical Characteristics,” dated April 7, 2021; Petitioner’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Petitioner’s Response Comments on Model Match and Physical Characteristics,” dated April 19, 2021; LGMG’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from China; AD Investigation; Rebuttal Comments on Physical Characteristics,” dated April 19, 2021; and Zhejiang Dingli Machinery Co., Ltd.’s (Dingli) Letter, “Dingli Physical Characteristics Response Comments in the Antidumping Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People Republic of China: (A-570-139),” dated April 19, 2021.

⁷ See Scope Comments section of this memorandum.

⁸ See *Initiation Notice*, 86 FR at 15926.

⁹ See Commerce’s Letter, “Quantity and Value Questionnaire for the Antidumping Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China,” dated March 22, 2021 (Q&V Questionnaire).

¹⁰ See Certain Mobile Access Equipment and Subassemblies Thereof from China Determinations: Investigation Nos. 701–TA–665 and 731–TA–1557 (April 12, 2021) (Preliminary ITC Determination).

Lingong Group Jinan Heavy Machinery Co., Ltd. (LGMG), for individual examination.¹¹ On April 26, 2021, Commerce issued the AD questionnaire to Dingli and LGMG.¹² On April 27, 2021, after analyzing the comments from the interested parties regarding physical characteristics of the merchandise, Commerce determined the physical characteristics to use in the investigation.¹³

Between May 26, 2021 and August 13, 2021, we received questionnaire responses from Dingli¹⁴ and LGMG.¹⁵ On June 9, 2021 and July 20, 2021, the petitioner submitted comments with respect to the initial responses submitted by Dingli.¹⁶ On June 10, 2021 and July 6, 2021, the petitioner submitted comments with respect to the initial responses submitted by LGMG.¹⁷ Between July 13, 2021 and August 13, 2021, Dingli and LGMG submitted responses to supplemental questionnaires.¹⁸ On June 24, 2021, the petitioner timely requested that Commerce

¹¹ See Memorandum, “Less-Than-Fair-Value Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Respondent Selection,” dated April 23, 2021.

¹² See Commerce’s Letters, “Request for Information, Antidumping Duty Investigation, Zhejiang Dingli Machinery Co., Ltd, The People’s Republic of China Certain Mobile Access Equipment and Subassemblies Thereof,” dated April 26, 2021; and “Request for Information, Antidumping Duty Investigation, Lingong Group Jinan Heavy Machinery Co., Ltd., the People’s Republic of China Certain Mobile Access Equipment and Subassemblies Thereof,” dated April 26, 2021.

¹³ See Commerce’s Letter, “Antidumping Duty Investigations of Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China - Product Characteristics,” dated April 27, 2021.

¹⁴ See Dingli’s Letters, “Dingli Response to Section A Questionnaire in the Antidumping Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People Republic of China: (A-570-139),” dated May 26, 2021 (Dingli AQR), “Dingli Response to Sections C&E Questionnaires in the Antidumping Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People Republic of China: (A-570-139),” dated June 21, 2021; “Dingli Response to Section D Questionnaire in the Antidumping Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People Republic of China (A-570-139),” dated June 24, 2021 (Dingli DQR); and “Dingli’s Response to Double Remedy Questionnaire in the Antidumping Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People Republic of China (A-570-139),” dated August 13, 2021 (Dingli DRQR).

¹⁵ See LGMG’s Letters, “Certain Mobile Access Equipment and Subassemblies Thereof from China; AD Investigation; LGMG Section A Response,” dated May 26, 2021 (LGMG AQR); “Certain Mobile Access Equipment and Subassemblies Thereof from China; AD Investigation; LGMG Section C Response,” dated June 21, 2021 (LGMG CDQR), “Certain Mobile Access Equipment and Subassemblies Thereof from China; AD Investigation; LGMG Section D Response,” dated June 23, 2021 (LGMG DQR); and “Certain Mobile Access Equipment and Subassemblies Thereof from China; AD Investigation; LGMG Double Remedy Questionnaire Response,” dated August 11, 2021 (LGMG DRQR).

¹⁶ See Petitioner’s Letters, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Comments on LGMG’s Section A Initial Questionnaire Response, dated June 9, 2021; and “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Comments on Dingli’s Sections C-E Initial Questionnaire Responses,” dated July 20, 2021.

¹⁷ See Petitioner’s Letters, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Comments on LGMG’s Section A Initial Questionnaire Response,” dated June 10, 2021; and “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Comments on LGMG’s Sections C&D Initial Questionnaire Responses,” dated July 6, 2021.

¹⁸ See Dingli’s Letter, “Dingli Response to Supplemental Questionnaire: Part I (Sections A/C/E) in the Antidumping Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: (A-570-139),” dated August 13, 2021 (Dingli SQR); *see also* Dingli’s Letter, “Dingli Response to Supplemental Questionnaire: Part II (Section D) in the Antidumping Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: (A-570-139),” dated August 16, 2021 (Dingli SDQR); *see also* LGMG’s Letters, “Certain Mobile Access Equipment and Subassemblies Thereof from

fully extend the deadline for the preliminary determination.¹⁹ Accordingly, on July 1, 2021, Commerce fully postponed the preliminary determination by 50 days (*i.e.*, 190 days after the date on which the investigation was initiated) to September 24, 2021.²⁰

On June 15, 2021, we placed on the record a list of potential surrogate countries and invited interested parties to comment on the selection of the primary surrogate country and provide surrogate value (SV) information.²¹ On June 24, 2021, we received comments on the selection of the primary surrogate country from Dingli,²² LGMG,²³ and the petitioner.²⁴ On July 26, 2021, we received comments on the selection of SVs from Dingli²⁵ and the petitioner.²⁶ On August 2, 2021, we received rebuttal comments on the selection of SVs from the petitioner.²⁷ On August 25, 2021, we received additional comments on the selection of SVs from Dingli,²⁸ LGMG,²⁹ and

China; AD Investigation; LGMG Supplemental Section A Response,” dated July 13, 2021 (LGMG SQR1); “Certain Mobile Access Equipment and Subassemblies Thereof from China; AD Investigation; LGMG 2nd Supplemental Response,” dated August 6, 2021 (LGMG SQR2); and “Certain Mobile Access Equipment and Subassemblies Thereof from China; AD Investigation; LGMG 3rd Supplemental Questionnaire Response,” dated September 8, 2021 (LGMG SQR3).

¹⁹ See Petitioner’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Request for Postponement of the Preliminary Determination,” dated June 24, 2021.

²⁰ See *Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 86 FR 35059 (July 1, 2021).

²¹ See Commerce’s Letter, “Less-Than-Fair-Value Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information,” dated June 15, 2021 (Surrogate Country and Value Comments Invitation Letter).

²² See Dingli’s Letter, “Dingli’s Comments on the List of Economically Comparable Countries and Surrogate Country in the Antidumping Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People Republic of China: (A-570-139),” dated June 24, 2021 (Dingli SC Comments).

²³ See LGMG’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China; LGMG Comments on of Surrogate Country,” dated June 24, 2021 (LGMG SC Comments).

²⁴ See Petitioner’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Comments on Surrogate Country Selection,” dated June 24, 2021 (Petitioner SC Comments).

²⁵ See Dingli’s Letter, “Dingli’s First Surrogate Value Comments in the Antidumping Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People Republic of China: (A-570-139),” dated July 26, 2021 (Dingli SV Comments).

²⁶ See Petitioner’s Letters, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Submission of Surrogate Values,” July 26, 2021; and “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Submission of Surrogate Values (Ocean Freight),” dated July 26, 2021 (Petitioner SV Comments).

²⁷ See Petitioner’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Submission of Information to Rebut, Clarify or Correct Surrogate Value Information,” August 2, 2021.

²⁸ See Dingli’s Letter, “Dingli’s Final Surrogate Value Comments in the Antidumping Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People Republic of China: (A-570-139),” dated August 25, 2021.

²⁹ See LGMG’s Letter, “Certain Mobile Access Equipment and Subassemblies Thereof from China; AD Investigation; LGMG Surrogate Value Submission,” August 25, 2021.

the petitioner.³⁰ On September 7, 2021, we received final rebuttal SVs from Dingli³¹ and the petitioner.³² Between September 2, 2021 and September 8, 2021, the petitioner³³ and Dingli³⁴ submitted pre-preliminary comments regarding surrogate value selection.

On September 8 and 13, 2021, respectively, Dingli and LGMG requested that, in the event of an affirmative preliminary determination in this investigation, Commerce postpone its final determination in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2) from a four-month to a six-month period.³⁵

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

III. PERIOD OF INVESTIGATION

The POI is July 1, 2020, through December 31, 2020. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was February 2021.³⁶

IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,³⁷ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.³⁸ We received comments concerning the scope of the concurrent AD and countervailing duty investigations of mobile access equipment from the following interested parties: Snorkel International, LLC., Xtreme Manufacturing, LLC., and Ahern Rentals, Inc. (collectively, Ahern Companies); Skyjack

³⁰ See Petitioner's Letters, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Final Submission of Surrogate Values," dated August 25, 2021; and "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Final Submission of Surrogate Values (Confidential Data)," dated July 26, 2021 (Petitioner Second SV Comments).

³¹ See Dingli's Letter, "Dingli's Final Surrogate Value Rebuttal Comments in the Antidumping Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People Republic of China: (A-570-139)," dated September 7, 2021 (Dingli Final Rebuttal SV Comments).

³² See Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Submission of Information to Rebut, Clarify or Correct Surrogate Value Information," dated September 7, 2021.

³³ See Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Pre-Preliminary Comments," dated September 8, 2021.

³⁴ See Dingli's Letters, "Dingli's Pre-Preliminary Comments in the Antidumping Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People Republic of China: (A-570-139)," dated September 2, 2021; and "Dingli's Second Pre-Preliminary Comments in the Antidumping Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People Republic of China: (A-570-139)," dated September 8, 2021.

³⁵ See Dingli's Letter, "Dingli Request to Postpone Final Determination in the Antidumping Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People Republic of China: (A-570-139)," dated September 8, 2021; *see also* LGMG's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from China; AD Investigation; Request for Postponement of Final Determination and Extension of Provisional Measures Period," dated September 13, 2021.

³⁶ See 19 CFR 351.204(b)(1).

³⁷ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

³⁸ See *Initiation Notice*, 86 FR at 15923.

Inc. and Skyjack Equipment Inc. (collectively, Skyjack); and Dingli.³⁹ In addition, the petitioner submitted rebuttal scope comments.⁴⁰ We addressed the scope comments in the Preliminary Scope Memorandum.⁴¹ Commerce made no changes to the scope language for this preliminary determination. *See* the accompanying *Federal Register* notice at Appendix I.

V. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy Country

Commerce considers China to be an NME country.⁴² In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of this preliminary determination.

B. Surrogate Country

When Commerce is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value (NV), in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate market economy (ME) country or countries considered to be appropriate by Commerce. Specifically, in accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce shall utilize, "to the extent possible, the prices or costs of {FOPs} in one or more ME countries that are: (A) at a level of economic development comparable to that of the {NME} country; and (B) significant producers of comparable merchandise."⁴³

As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME, unless it is determined that none of the countries are viable options because they either: (a) are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the

³⁹ *See* Ahern Companies' Letter, "Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Comments on the Scope of the Investigation," dated April 7, 2021; *see also* Skyjack's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Submission of Scope Comments by Skyjack Inc.," dated April 9, 2021; and Dingli's Letter, "Dingli Scope Comments in the Antidumping and Countervailing Duty Investigations of Certain Mobile Access Equipment and Subassemblies Thereof from the People Republic of China: (A-570-139; C-570-140)," dated April 9, 2021.

⁴⁰ *See* Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Rebuttal Scope Comments," dated April 19, 2021.

⁴¹ *See* Memorandum, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination," dated July 26, 2021 (Preliminary Scope Memorandum).

⁴² *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017), and accompanying Preliminary Decision Memorandum at "China's Status as a Non-Market Economy."

⁴³ For a description of our practice, *see* Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on Commerce's website at <http://enforcement.trade.gov/policy/bull04-1.html>.

NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development. To determine which countries are at the same level of economic development as the NME, Commerce generally relies on per capita gross national income (GNI) data from the World Bank's *World Development Report*.⁴⁴ Further, Commerce normally values all FOPs in a single surrogate country.⁴⁵ If more than one country satisfies the two criteria noted above, Commerce narrows the field of potential surrogate countries to a single country (pursuant to 19 CFR 351.408(c)(2), Commerce will normally value FOPs in a single surrogate country) based on data availability and quality.

1. Economic Comparability

On June 15, 2021, consistent with our practice, and section 773(c)(4) of the Act, and as stated above, we identified Brazil, Malaysia, Mexico, Romania, Russia, and Turkey as countries at the same level of economic development as China based on the per capita GNI data from the World Bank's *World Development Report*.⁴⁶ Therefore, we consider all six countries as having met this prong of the surrogate country selection criteria. The countries identified are not ranked and are considered equivalent in terms of economic comparability.

2. Significant Producer of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires Commerce, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor Commerce's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, Commerce looks to other sources such as the Policy Bulletin 04.1 for guidance on defining comparable merchandise. The Policy Bulletin 04.1 states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."⁴⁷ Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.⁴⁸ Further, when selecting a surrogate country, the statute requires Commerce to consider the comparability of the merchandise, not the comparability of the industry.⁴⁹ "In cases where the identical merchandise is not produced, Commerce must determine if other merchandise that is comparable is produced. How Commerce does this depends on the subject merchandise."⁵⁰ In this regard, Commerce recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

⁴⁴ *Id.*

⁴⁵ See 19 CFR 351.408(c)(2).

⁴⁶ See Surrogate Country and Value Comments Invitation Letter.

⁴⁷ See Policy Bulletin 04.1 at 2.

⁴⁸ *Id.* at note ("If considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.")

⁴⁹ See *Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) ("To impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.")

⁵⁰ See Policy Bulletin 04.1 at 2.

In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.⁵¹

Further, the statute grants Commerce discretion to examine various data sources for determining the best available information.⁵² Moreover, while the legislative history provides that the term “significant producer” includes any country that is a significant “net exporter,”⁵³ it does not preclude reliance on additional or alternative metrics. It is Commerce’s practice to evaluate whether production is significant based on characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics).⁵⁴

In this investigation, because production data of comparable merchandise are not available, we analyzed exports of comparable merchandise from the six countries as a proxy for production data.⁵⁵ The petitioner placed data for entries made under the Harmonized Schedule (HS) subheadings 842710 and 842720, which include subject merchandise, during the POI.⁵⁶ Dingli placed data for entries made under HS subheadings 842720, 842790, 843120, and 842710 which include subject merchandise, during the POI.⁵⁷ LGMG placed data for entries made under HS subheadings 842710, 842720, and 842790 which include subject merchandise, during the POI.⁵⁸ Based on this data, Brazil, Malaysia, Mexico, Romania, Russia, and Turkey reported export volumes of comparable merchandise in the POI. Therefore, we preliminarily find that Brazil, Malaysia, Mexico, Romania, Russia, and Turkey meet the “significant producer” requirement of section 773(c)(4) of the Act.⁵⁹

3. Data Availability

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, Commerce selects the primary surrogate country based on data availability and reliability.⁶⁰ When evaluating SV data, Commerce considers several criteria including whether the SV data are publicly available, contemporaneous with the POI, representative of broad-market averages, tax and duty-exclusive, and specific to the inputs being valued.⁶¹ There

⁵¹ *Id.* at 3.

⁵² See section 773(c) of the Act; see also *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

⁵³ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

⁵⁴ See *Xanthan Gum from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2252 (January 10, 2013), and accompanying Preliminary Decision Memorandum at 4-7, unchanged in *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013).

⁵⁵ See Petitioner SC Comments at Exhibit 1.

⁵⁶ *Id.*

⁵⁷ See Dingli SC Comments at 5-6.

⁵⁸ See LGMG SC Comments at Exhibit 1.

⁵⁹ *Id.*

⁶⁰ See Policy Bulletin 04.1.

⁶¹ *Id.*

is no hierarchy among these criteria.⁶² Commerce's preference is to satisfy the breadth of these aforementioned selection criteria.⁶³ Moreover, it is Commerce's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.⁶⁴ Commerce must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the "best" available SV for each input.⁶⁵

The petitioner and Dingli placed Brazilian SV data on the record (including the same Brazilian financial statements (FS)) from one company.⁶⁶ The petitioner sourced its SV data from Global Trade Atlas (GTA), and Dingli sourced its SV data from Trade Data Monitor (TDM). No SV data from any other country identified above was placed on the record by any other party.

The Brazilian FS belong to Stara Agricola S.A. (Stara).⁶⁷ Stara is a Brazilian producer of commercial and agricultural equipment including front loaders, agricultural self-propelled spreaders and sprayers and seeders, which is merchandise comparable to mobile access equipment. We have complete SV information on the record for Brazil.

Given the above factors, we preliminarily select Brazil as the primary surrogate country for this investigation. Brazil is at the same level of economic development as China, is a significant producer of comparable merchandise, and generally has reliable and usable SV data that is available on the record of this investigation. A detailed description of the SVs selected by Commerce is provided in the "Factor Valuation Methodology" section and in the Preliminary SV Memorandum.⁶⁸

C. Separate Rates

In proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.⁶⁹ In the *Initiation Notice*, Commerce notified parties of the application process by which exporters may obtain separate rate status in

⁶² See, e.g., *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) (*Mushrooms China*), and accompanying IDM at Comment 1.

⁶³ 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).

⁶⁴ See *Mushrooms China* IDM at Comment 1.

⁶⁵ *Id.*

⁶⁶ See Petitioner SV Comments; see also Dingli SV Comments.

⁶⁷ See Petitioner SV Comments at Exhibit 11; see also Dingli SV Comments at Exhibit 8.

⁶⁸ See Memorandum, "Less-Than-Fair-Value Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Surrogate Values for the Preliminary Determination", dated concurrently with this memorandum (Preliminary SV Memorandum).

⁶⁹ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (September 24, 2008).

this investigation.⁷⁰ This process requires exporters to submit a SRA⁷¹ and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities. In the *Initiation Notice*, Commerce required that “companies from China submit a response to both the Q&V questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status.”⁷²

Commerce’s policy is to assign all exporters of merchandise under consideration that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.⁷³ Commerce analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*⁷⁴ and further developed in *Silicon Carbide*.⁷⁵ According to this separate rate test, Commerce will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If, however, Commerce determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the *Diamond Sawblades from China* AD proceeding, and its determinations therein.⁷⁶ In particular, in litigation involving the *Diamond Sawblades from China* proceeding, the CIT found Commerce’s existing separate rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity exercised control over the respondent exporter.⁷⁷

⁷⁰ See *Initiation Notice*, 86 FR at 15926.

⁷¹ See Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries (April 5, 2005) (Policy Bulletin 05.1), available at <http://enforcement.trade.gov/policy/bull05-1.pdf>.

⁷² See *Initiation Notice*, 86 FR at 15926.

⁷³ See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*).

⁷⁴ *Id.*

⁷⁵ 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*).

⁷⁶ See *Final Results of Redetermination pursuant to Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), and available at <http://enforcement.trade.gov/remands/12-147.pdf>, *aff’d* *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff’d* *Advanced Technology & Materials Co., Ltd., et al. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014) (*Advanced Technology II*); see also *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013), and accompanying Preliminary Decision Memorandum at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying IDM at Comment 1.

⁷⁷ See, e.g., *Advanced Technology I*, 885 F. Supp. 2d at 1349 (CIT 2012) (“The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it.”); *Id.* at 1351 (“Further substantial evidence of record does not support the inference that SASAC’s {state-owned assets supervision and administration commission} ‘management’ of its ‘state-owned assets’ is restricted to the kind of passive-investor *de jure* ‘separation’ that Commerce concludes.”) (footnotes omitted); *Id.*, at 1355 (“The point here is that ‘governmental control’ in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a ‘degree’ of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to ‘day-to-day decisions of export operations,’ including

Following the CIT's reasoning, in recent proceedings, we have concluded that where a government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, this interest in and of itself means that the government exercises or has the potential to exercise control over the company's operations generally.⁷⁸ This may include control over, for example, the selection of board members and management, key factors in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with 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 profitability of the company. Accordingly, we have considered the level of government ownership, where necessary.

In the *Initiation Notice*, we stated that SRAs were due 30 days after publication of the notice, *i.e.*, April 26, 2021. Dingli and LGMG submitted information pertaining to their eligibility for a separate rate in their responses to section A of the AD questionnaire.⁷⁹

In the Petition, the petitioner erroneously listed a company named "Lingong Group Jinan Heavy Machinery (Mobile Elevating Work Platforms)" as an attempt to encompass the entire mobile access equipment business of LGMG.⁸⁰ In a supplemental response to Commerce, LGMG expressly confirmed that its April 5, 2021 Q&V response covers the entirety of LGMG's mobile access equipment business and reflects the universe of LGMG's sales of merchandise covered by the scope of this investigation.⁸¹ No party commented on LGMG's April 5, 2021, explanation of its business. Therefore, although we issued a Q&V questionnaire to Lingong Group Jinan Heavy Machinery (Mobile Elevating Work Platforms) we are not treating it as a company to which we would assign a rate.

Furthermore, we received timely filed SRAs from the following applicants:

Hunan Sinoboom Intelligent Equipment Co., Ltd. (Hunan Sinoboom)⁸²
Mantall Heavy Industry Co., Ltd. (Mantall)⁸³

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).

⁷⁸ See *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, in Part, 79 FR 53169 (September 8, 2014), and accompanying Preliminary Decision Memorandum at 5-9.

⁷⁹ See Dingli AQR: *see also* LGMG AQR.

⁸⁰ See Petition at Exhibit I-10.

⁸¹ See LGMG's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from China; AD Investigation; 4th Supplemental Questionnaire Response," dated September 14, 2021.

⁸² See Hunan Sinoboom's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China; Hunan Sinoboom Intelligent Equipment Co., Ltd.'s Separate Rate Application," dated May 7, 2021 (Hunan Sinoboom SRA).

⁸³ See Mantall's Letter, "Mantall Separate Rate Application in the Antidumping Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the Peoples Republic of China: (A-570-139)," dated May 3, 2021 (Mantall SRA).

Noblelift Intelligent Equipment Co., Ltd. (Noblelift)⁸⁴
Oshkosh JLG (Tianjin) Equipment Technology Co., Ltd. (Oshkosh)⁸⁵
Sany Marine Heavy Industry Co., Ltd. (Sany Marine)⁸⁶
Terex (Changzhou) Machinery Co. Ltd. (Terex)⁸⁷
Xuzhou Construction Machinery Group Imp. & Exp. Co., Ltd. (XCMG)⁸⁸

Oshkosh, Sany Marine, and Terex reported that they are wholly owned by ME companies located in ME countries.⁸⁹ Therefore, a separate rate analysis is not necessary to determine whether their export activities are independent from government control.⁹⁰ Accordingly, Commerce is preliminarily granting separate rate status to Oshkosh, Sany Marine, and Terex. In addition, we are preliminarily granting the following companies a separate rate, as explained below because each company demonstrated the absence of both *de jure* and *de facto* governmental control over their export activities: Hunan Sinoboom, Mantall, Noblelift, and XCMG.

1. Absence of *De Jure* Control

Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.⁹¹

The evidence placed on the record of this investigation (*e.g.*, business licenses, export certificates, and relevant forms and legislative documentation) with respect to the companies listed above supports a preliminary finding of an absence of *de jure* government control for each of these companies based on the following: (1) an absence of restrictive stipulations associated

⁸⁴ See Noblelift's Letter, "Antidumping Duty Investigation on Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Separate Rate Application of Noblelift Intelligent Equipment Co., Ltd.," dated April 26, 2021 (Noblelift SRA).

⁸⁵ See Oshkosh's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Separate Rate Application," dated April 30, 2021 (Oshkosh SRA).

⁸⁶ See Sany Marine's Letter, "Sany Marine Separate Rate Application in the Antidumping Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People Republic of China: (A-570-139)," dated May 3, 2021 (Sany Marine SRA).

⁸⁷ See Terex's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Separate Rate Application," dated April 26, 2021 (Terex SRA).

⁸⁸ See XCMG's Letter, "Antidumping Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People Republic of China: Separate Rate Application," dated April 26, 2021 (XCMG SRA).

⁸⁹ See Oshkosh SRA; *see also* Sany Marine SRA; and Terex SRA.

⁹⁰ 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); *Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001), unchanged in *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001); and *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104 (December 20, 1999).

⁹¹ See *Sparklers*, 56 FR at 20589.

with the individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of the Chinese companies.⁹²

2. Absence of *De Facto* Control

Typically, Commerce considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the prices are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.⁹³ Commerce has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude Commerce from assigning separate rates.

The evidence placed on the record of this investigation with respect to the four wholly Chinese-owned companies listed above supports a preliminary finding of an absence of *de facto* government control based on record statements and supporting documentation showing that the companies: (1) set their own prices independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses.⁹⁴

The evidence placed on the record of this investigation with respect to the companies listed above demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, we preliminarily grant separate rates to the four wholly owned Chinese companies: Hunan Sinoboom, Mantall, Noblelift, and XCMG. Based on the analysis above, Commerce has granted a separate rate to the seven companies listed above that timely filed an SRA.

3. Companies Not Receiving a Separate Rate

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

requires that companies from China submit a response to both the Q&V questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.⁹⁵

⁹² See Hunan Sinoboom SRA; see also Mantall SRA; Noblelift SRA; XCMG SRA; Dingli AQR; and LGMG AQR.

⁹³ See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

⁹⁴ See Hunan Sinoboom SRA; see also Mantall SRA; Noblelift SRA; XCMG SRA; Dingli AQR; and LGMG AQR.

⁹⁵ See *Initiation Notice*, 86 FR at 15926.

Commerce finds that the following non-responsive companies to which we issued a Q&V questionnaire failed to submit the requested information:

Jinan Zhongtang Mechanical Equipment (Jinan Mechanical)
Jinan Zhongtian International Trading (Jinan Trading);
Liugong Machinery Co. (Liugong Machinery);
Qingdao YTE Special Products (Qingdao YTE);
Shandong Huifeng Auto Fittings (Shandong Auto);
Shandong Lede Machinery (Shandong Lede);
Yantai Empire Industry and Trade (Yantai Empire); and
Zhongshan Shiliwang Machinery Co., LTD (Zhongshan Machinery).

Shandong Lede filed letters objecting to its inclusion in the Petitions and requesting its subsequent removal from the AD and companion countervailing duty (CVD) preliminary determinations, respectively.⁹⁶ However, Shandong Lede and the other non-responsive companies did not respond to the Q&V questionnaire issued to them, did not provide documentation indicating they were having difficulty providing the information, nor did they request to submit the information in an alternate form. Therefore, we are preliminarily not granting these eight companies a separate rate.

Commerce finds that the following companies did not submit a separate rate application:

Zoomlion Heavy Industry Science and Technology Co., Ltd. (Zoomlion Heavy); and
Zoomlion International Trading (H.K.) Co., Limited (Zoomlion H.K.).

Both Zoomlion Heavy and Zoomlion H.K. filed timely Q&V questionnaire responses.⁹⁷ However, neither Zoomlion Heavy nor Zoomlion H.K. filed a separate rate application after Commerce granted both companies an extension of time to respond.⁹⁸ Therefore, we are preliminarily not granting these two companies a separate rate.

D. Dumping Margin for the Separate Rate Companies

The statute and Commerce's regulations do not address the establishment of an estimated weighted-average dumping margin to be applied to individual companies not selected for

⁹⁶ See Shandong Lede's Letters, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China (Case Nos. A-570-139, C-570-140): Objection to Mistakenly Including SHANDONG LEDE in the List of Known Exporting Producers," dated March 16, 2021; and "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China (Case Nos. C-570-140 A-570-139) Preliminary affirmative Countervailing Duty Determination: Request for Removal of Shandong Lede from the Subsidy Rate Determination," dated July 30, 2021.

⁹⁷ See Zoomlion Heavy's Letter, "Antidumping Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Quantity and Value Submission," dated April 5, 2021; *see also* Zoomlion H.K.'s Letter, "Antidumping Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Quantity and Value Submission," dated April 5, 2021.

⁹⁸ See Commerce's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China, Request for Extension of Time to Submit Zoomlion Heavy Industry Science and Technology Co., Ltd and Zoomlion International Trading (H.K.) Co., Limited's Separate Rate Application," dated April 23, 2021.

individual examination when Commerce limits its examination in an investigation pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate rate respondents which we did not individually examine. Section 735(c)(5)(A) of the Act articulates a preference that we do not calculate an all-others rate using rates which are zero, *de minimis* or based entirely on facts available. Accordingly, Commerce's usual practice has been to average the estimated weighted-average dumping margins for the individually examined companies, excluding rates that are zero, *de minimis*, or based entirely on facts available.⁹⁹ Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the all-others rate, including "averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated."

In this investigation, we calculated rates for Dingli and LGMG that are not zero, *de minimis*, or based entirely on facts available. Therefore, the rates of Dingli and LGMG are applicable to companies not selected for individual examination but eligible for a separate rate. However, because there are only two relevant weighted-average dumping margins for this preliminary determination, using a weighted average of these two rates risks disclosure of business proprietary information data. Accordingly, for the preliminary determination of this investigation, we are assigning to the non-selected separate rate respondents an estimated weighted-average dumping margin based on the average of the two individually examined respondents' rates weighted by their publicly available, ranged U.S. sales values.¹⁰⁰

E. Combination Rates

Consistent with the *Initiation Notice*, we calculated combination rates for the respondents that are eligible for a separate rate in this investigation.¹⁰¹ This practice is described in Policy Bulletin 05.1.

F. China-Wide Entity

As discussed above, Jinan Mechanical, Jinan Trading, Liugong Machinery, Shandong Auto, Shandong Lede, Qingdao YTE, Yantai Empire, and Zhongshan Machinery did not respond to the Q&V questionnaire we issued and Zoomlion Heavy and Zoomlion H.K. did not submit SRAs. These companies thereby failed to establish their eligibility for a separate rate. Because Jinan Mechanical, Jinan Trading, Liugong Machinery, Shandong Auto, Shandong Lede, Qingdao YTE, Yantai Empire, Zhongshan Machinery, Zoomlion Heavy, and Zoomlion H.K. have not demonstrated that they are eligible for separate rate status, Commerce considers them part of the China-wide entity. Because non-responsive China companies have not demonstrated that they are eligible for separate rate status, we find that they have not rebutted the presumption of

⁹⁹ See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying IDM at Comment 16.

¹⁰⁰ See Memorandum, "Certain Mobile Access Equipment and Subassemblies Thereof: Preliminary Separate Rate for Non-Selected Respondents," dated concurrently with this memorandum.

¹⁰¹ See *Initiation Notice*, 86 FR at 15926.

government control and, therefore, consider them to be part of the China-wide entity. Furthermore, as explained below, we are preliminarily determining the China-wide rate based on adverse facts available (AFA). As such, we preliminarily assigned the China-wide entity a dumping margin of 275.06 percent.¹⁰²

G. Application of Facts Available and Adverse Inferences

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

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

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the AD investigation, a previous administrative review, or other information placed on the record.

1. Use of Facts Available

We preliminarily find that the China-wide entity, which includes certain China exporters and/or producers that did not respond to our requests for information, withheld information requested and significantly impeded this proceeding by not submitting the requested information. Specifically, the above-mentioned companies within the China-wide entity failed to respond to our request for Q&V information and failed to submit a SRA.¹⁰³ Thus, necessary information is not on the record and the China-wide entity, which encompasses the parties that failed to respond to the request for Q&V information, has withheld requested information, failed to provide such information in a timely manner or in the form or manner requested, and significantly impeded the proceeding. Therefore, we preliminarily determine that the use of facts available is

¹⁰² See “Selection of the AFA Rate” section, below.

¹⁰³ See Memorandum, “Antidumping Duty Investigation of Mobile Access Equipment from the People’s Republic of China: Quantity and Value Questionnaires – Delivery Confirmation,” dated April 8, 2021.

warranted in determining the rate of the China-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.¹⁰⁴

2. Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that in selecting from among the facts otherwise available, Commerce may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Commerce finds that the China-wide entity's failure to submit Q&V and SRA information constitutes circumstances under which it is appropriate to conclude that the China-wide entity failed to cooperate to the best of its ability to comply with Commerce's request for information.¹⁰⁵

With respect to the missing information, the China-wide entity did not file any document indicating difficulty providing the information or any request to allow the information to be submitted in an alternate form. Therefore, we preliminarily find that an adverse inference is warranted in selecting from among the facts otherwise available with respect to the China-wide entity, in accordance with section 776(b) of the Act and 19 CFR 351.308(a).¹⁰⁶

3. Selection and Corroboration of the AFA Rate

In applying an adverse inference, Commerce may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.¹⁰⁷ In selecting an AFA rate, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.¹⁰⁸ In an investigation, Commerce's practice with respect to the assignment of an AFA rate is to select the higher of: (1) the highest dumping margin alleged in the petition; or (2) the highest calculated dumping margin of any respondent in the investigation.¹⁰⁹

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information

¹⁰⁴ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

¹⁰⁵ See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that Commerce need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (i.e., information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.")).

¹⁰⁶ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

¹⁰⁷ See section 776(b) of the Act.

¹⁰⁸ See SAA at 870.

¹⁰⁹ See, e.g., *Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016).

derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹¹⁰ The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.¹¹¹

To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used, although Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.¹¹² Under section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins.

In this investigation, because the preliminary margin calculated for the mandatory respondent LGMG, 275.06 percent, is higher than the petition rate of 81.77 percent,¹¹³ we preliminarily assigned the China-wide entity as AFA the rate of 275.06 percent in accordance with our practice. It is unnecessary to corroborate this rate because it was obtained in the course of this investigation and, therefore, is not secondary information.¹¹⁴

H. Date of Sale

In identifying the date of sale of the subject merchandise, Commerce normally will use the date of invoice, as recorded in the exporter’s or producer’s records kept in the ordinary course of business.¹¹⁵ 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.¹¹⁶ Furthermore, we have a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.¹¹⁷

¹¹⁰ See section 751 of the Act.

¹¹¹ *Id.*; see also 19 CFR 351.308(d).

¹¹² See section 776(d)(3) of the Act.

¹¹³ See *Initiation Notice*.

¹¹⁴ See section 776(c) of the Act (“when the {Department} relies on *secondary information rather than on information obtained in the course of an investigation* or review, the {Department}, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal (emphasis added).”) (Emphasis added.); see also, e.g., *Steel Concrete Reinforcing Bar from Taiwan: Final Determination of Sales at Less Than Fair Value*, 82 FR 34925 (July 27, 2017), and accompanying IDM at 5-6 and Comment 4.

¹¹⁵ See 19 CFR 351.401(i).

¹¹⁶ *Id.*; see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001) (*Allied Tube & Conduit Corp.*) (“As elaborated by Department practice, a date other than invoice date ‘better reflects’ the date when ‘material terms of sale’ are established if the party shows that the ‘material terms of sale’ undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date.”)

¹¹⁷ See, e.g., *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 10670 (March 12, 2018), and accompanying Preliminary Decision Memorandum at 6-7, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 32629 (July 13, 2018).

Dingli reported the commercial invoice date as the date of sale.¹¹⁸ Dingli explained that with respect to its export price (EP) sales “{t}he date of sale is invoice date because this is the first date that price and/or quantity are fixed with certainty.”¹¹⁹ With regard to its constructed export price (CEP) sale, Dingli explained that, “{i}nvoice date is CMEC’s date of sale. When CMEC issues an invoice for a sale, the sale is recorded as revenue into its financial accounting system.”¹²⁰ However, Dingli reported some sales with shipment dates that precede the invoice dates. Consistent with 19 CFR 351.401(i), we preliminarily determine to use the earlier of the sales invoice date or the date of shipment as the date of sale for Dingli.

LGMG reported the commercial invoice date as the date of sale.¹²¹ LGMG explained that “the invoice date best satisfies Commerce’s date of sale criteria, since before the invoice date, there may be adjustments to the sales quantity, sales value or delivery terms, etc. Only on the invoice date are all the sales terms confirmed and finalized.”¹²² However, LGMG reported some sales with shipment dates that precede the invoice dates. Consistent with 19 CFR 351.401(i), we preliminarily determine to use the earlier of the sales invoice date or the date of shipment as the date of sale for LGMG.

I. Comparisons to Fair Value

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

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In AD investigations, Commerce examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In numerous investigations and reviews, Commerce applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.¹²³

¹¹⁸ See Dingli AQR at 21 and 22; see also Dingli SQR at 3 and 4.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ See LGMG CDQR at 12-13.

¹²² See LGMG AQR at 25.

¹²³ See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and

Commerce finds that the differential pricing analysis is instructive for purposes of examining whether to apply an alternative comparison method in this investigation.

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

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

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

Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value, 80 FR 61362 (October 13, 2015).

sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

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

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

2. Results of the Differential Pricing Analysis

For Dingli, based on the results of the differential pricing analysis, we preliminarily find that 84.9 percent of the value of U.S. sales pass the Cohen's *d* test and confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, we are applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Dingli.

For LGMG, based on the results of the differential pricing analysis, we preliminarily find that 95.2 percent of the value of U.S. sales pass the Cohen's *d* test and confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, we are

applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for LGMG.

J. U.S. Price

1. Constructed Export Price and Export Price Sales

Section 772(a) of the Act defines EP as the price at which the merchandise under consideration is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the merchandise under consideration outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

Dingli

In accordance with section 772(a) of the Act, we calculated EP for certain of Dingli's U.S. sales where the merchandise under consideration was first sold to an unaffiliated purchaser in the United States prior to importation and the CEP methodology was not otherwise warranted based on the facts of the record. In accordance with section 772(b) of the Act, for the remainder of Dingli's U.S. sales, we used the CEP methodology because the merchandise under consideration was sold in the United States by U.S. sellers affiliated with Dingli, and the EP methodology as defined by section 772(a) of the Act, was not otherwise warranted for these sales.

We calculated EP based on the prices at which merchandise under consideration was sold to unaffiliated purchasers in the United States. We made deductions, as appropriate, from the reported U.S. price for movement expenses for Dingli, *e.g.*, foreign inland freight expenses, foreign brokerage and handling expenses¹²⁴ We based movement expenses on SVs where the service was purchased from a Chinese company.¹²⁵

We calculated CEP based on the price to the first unaffiliated purchaser in the United States. We made deductions from the starting price for any movement expenses (*e.g.*, foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, section 301 duties, U.S. duties, and U.S. inland freight), in accordance with section 772(c)(2)(A) of the Act.¹²⁶ Where applicable, we capped freight revenue by U.S. inland freight in accordance with our normal practice. In addition, we made an adjustment to price for the cost of any further manufacturing or assembly for sales used in the calculation, in accordance with section 772(d)(2) of the Act.¹²⁷

¹²⁴ See section 772(c)(2)(A) of the Act.

¹²⁵ See the Factor Valuation Methodology section.

¹²⁶ See Memorandum, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Preliminary Analysis Memorandum for Zhejiang Dingli Machinery Co., Ltd.," dated concurrently with this memorandum.

¹²⁷ *Id.*

LGMG

In accordance with section 772(b) of the Act, for LGMG's U.S. sales, we used the CEP methodology because the merchandise under consideration was sold in the United States by U.S. sellers affiliated with LGMG. We calculated CEP based on the price to the first unaffiliated purchaser in the United States. We made deductions from the starting price for any movement expenses (*e.g.* foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, section 301 duties, and U.S. duties), in accordance with section 772(c)(2)(A) of the Act.¹²⁸

2. Value-Added Tax

In 2012, Commerce announced a change of methodology with respect to the calculation of EP and CEP to include an adjustment of any irrecoverable value-added tax (VAT) in certain NME countries in accordance with section 772(c)(2)(B) of the Act.¹²⁹ Commerce explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, Commerce will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.¹³⁰ Where the irrecoverable VAT is a fixed percentage of EP or CEP, Commerce explained that the final step in arriving at a tax-neutral dumping comparison is to reduce the EP or CEP downward by this same percentage.¹³¹

Commerce's methodology, as explained above and applied in this investigation, incorporates two basic steps: (1) determine the irrecoverable VAT on subject merchandise, and (2) reduce U.S. price by the amount determined in step one. Information placed on the record of this investigation indicates that according to the China VAT schedule, the standard VAT levy during the period July 1, 2020 through December 31, 2020, was 13 percent and the rebate rate for the subject merchandise is also 13 percent.¹³² Because the VAT levy and VAT rebate rates on exports are the same, we made no adjustment to Dingli's and LGMG's U.S. sales for irrecoverable VAT.

K. Normal Value

Section 773(c)(1) of the Act provides that Commerce shall determine NV using the FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home market prices, third-country prices, or constructed value under section 773(a) of the Act. Commerce bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production

¹²⁸ See Memorandum, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Preliminary Analysis Memorandum for Lingong Group Jinan Heavy Machinery Co., Ltd.," dated concurrently with this memorandum.

¹²⁹ 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).

¹³⁰ *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.

¹³¹ *Id.*

¹³² See Dingli CDQR at 38-39 and Exhibits C-5C-D; see also LGMG CDQR at 37 and Exhibit C-9.

costs invalid under Commerce's normal methodologies.¹³³ Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), we calculated NV based on FOPs. Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials used; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.¹³⁴

L. Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by Dingli and LGMG. To calculate NV, we multiplied the reported per-unit FOP consumption rates by publicly available SVs. When selecting SVs, we considered, among other factors, the quality, specificity, and contemporaneity of the SV data.¹³⁵ As appropriate, we adjusted FOP costs by including freight costs to make them delivered values. Specifically, we added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory.¹³⁶ A detailed description of the SVs used can be found in the Preliminary SV Memorandum.¹³⁷

1. Direct Materials and Packing Materials

For this preliminary determination, we are using Brazilian import data, as published by the GTA, to calculate SVs for FOPs. We selected GTA data because several identical inputs contained broader market averages than those reported in the TDM data. In accordance with section 773(c)(1) of the Act, we used the best available information for valuing FOPs by selecting, to the extent practicable, SVs which are: (1) broad market averages; (2) product-specific; (3) tax-exclusive, non-export average values; and (4) contemporaneous with, or closest in time to, the POI.¹³⁸

As noted above, the parties filed several submissions regarding the appropriate surrogate valuation of the respondents' reported material FOPs. In instances where the parties disagree with respect to the particular HS subheading under which a particular material input should be

¹³³ 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).

¹³⁴ See section 773(c)(3)(A)-(D) of the Act.

¹³⁵ See, e.g., *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying IDM at Comment 9.

¹³⁶ See *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).

¹³⁷ See Preliminary SV Memorandum.

¹³⁸ 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).

valued, we used an HS subheading selection method based on the best match between the reported physical description and function of the input and the HS subheading description.¹³⁹

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities, that are produced in an ME and pays in an ME currency, Commerce uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.¹⁴⁰ Where Commerce finds ME purchases to be of significant quantities (*i.e.*, 85 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,¹⁴¹ Commerce uses the actual purchase prices to value the inputs.

Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 85 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, Commerce will weight-average the ME purchase price with an appropriate SV, according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption. When a company has made ME input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, Commerce will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 85 percent threshold. Dingli did not make ME input purchases during the POI.¹⁴² Although LGMG reported that it purchased certain inputs from ME countries/suppliers, it did not make such purchases in a ME currency.¹⁴³

Pursuant to section 773(c)(5) of the Act and Commerce's long-standing practice, Commerce disregards SVs if it has a reason to believe or suspect the source data may comprise dumped or subsidized prices.¹⁴⁴ 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.¹⁴⁵ Based on the existence of the subsidy programs that were generally available to all exporters and producers in these countries at the time of the POI, Commerce finds that it is

¹³⁹ See Preliminary SV Memorandum for further discussion.

¹⁴⁰ See, e.g., *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

¹⁴¹ See *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013) (*Antidumping Methodologies: Market Economy Inputs*).

¹⁴² See Dingli DQR at 6.

¹⁴³ See LGMG DQR at 7.

¹⁴⁴ See section 773(c)(5) of the Act (permitting Commerce to disregard price or cost values without further investigation if it has determined that certain subsidies existed with respect to those values); see also *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46795 (August 6, 2015).

¹⁴⁵ 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 I&D Memo at 1; *Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*; 2012, 79 FR 46770 (August 11, 2014), and accompanying IDM at 4; and *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013), and accompanying IDM at IV.

reasonable to infer that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies. Therefore, we have not used prices from these four countries in calculating the Brazilian import-based SVs.

Additionally, we disregarded data from NME countries when calculating Brazilian import-based per-unit SVs.¹⁴⁶ We also excluded from the calculation of Brazilian import-based per-unit SVs imports labeled as originating from an “unidentified” country because we could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.¹⁴⁷

2. Energy

We preliminarily valued electricity at the utility cost of 0.47695 Real per kwh based on the POI data from the Anuario Estadístico de Energia Eléctrica 2021. Because the electricity data are from 2020, which is within the POI, we did not adjust it for inflation.¹⁴⁸ We preliminarily valued natural gas using Gas Brazil data for HS subheading 271121, the classification for gaseous natural gas.¹⁴⁹ We did not adjust this average unit value (AUV) for inflation because it is contemporaneous with the POI. We preliminarily valued water based on data from RHA Engenharia e Consultorio SS Ltda – 2019 Industry Water Rate, using rates that would be applicable to the respondents based on its reported usage.¹⁵⁰ We preliminarily valued steam by calculating 14.52 percent of the SV of natural gas (obtained as described above), consistent with prior practice.¹⁵¹

3. Movement Expenses

As appropriate, we preliminarily added freight costs to SVs. Specifically, we added surrogate inland freight costs to import values used as SVs. We calculated freight SVs using the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest port to the factory that produced the subject merchandise, where appropriate.¹⁵²

¹⁴⁶ 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).

¹⁴⁷ 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).

¹⁴⁸ See Preliminary SV Memorandum at Exhibit 1, “Surrogate Value” tab.

¹⁴⁹ *Id.* at “Natural Gas” tab.

¹⁵⁰ *Id.*

¹⁵¹ See *Certain Steel Wheels from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67703, 67714 (November 2, 2011), unchanged in *Certain Steel Wheels from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012).

¹⁵² See *Sigma Corp.*, 117 F.3d at 1407-08.

We valued brokerage and handling and inland truck freight expenses using the data from the World Bank Group's *Doing Business in Brazil 2020 (Doing Business)* and the average of the distances between the factory and the port.¹⁵³ The value for truck freight in *Doing Business* is publicly available and the data in *Doing Business* is current as of 2020.¹⁵⁴ Because the *Doing Business* data are contemporaneous with the POI, we did not adjust the data for inflation.

To value marine insurance, we used cargo insurance online rates indicated for international shipments of new and used machinery.¹⁵⁵ Because the data are contemporaneous with the POI, we did not adjust the data for inflation.

4. Labor

We preliminarily valued labor on a calculated hourly labor rate using industry-specific data from Brazil because it provides an hourly rate for manufacturing. We selected this rate because it was specific to manufacturing, as opposed to the rate provided by Dingli which was for general labor prices in Brazil. Hence, we preliminarily relied on industry-specific labor data from International Labour Organization - ILOSTAT for the POI.¹⁵⁶

5. Financial Ratios

According to 19 CFR 351.408(c)(4), Commerce is directed to value overhead, selling, general and administrative (SG&A) expenses, and profit using non-proprietary information gathered from producers of merchandise that is identical or comparable to the merchandise under consideration in the surrogate country. Commerce's preference is to derive surrogate overhead expenses, SG&A expenses, and profit using financial statements covering a period that is contemporaneous with the POI, that show a profit, from companies with a production experience similar to the respondents' production experience, and that are not distorted or otherwise unreliable, such as financial statements that indicate the company received subsidies.¹⁵⁷ To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we preliminarily used information provided in the 2020 audited public financial statements of Stara, a Brazilian producer of comparable merchandise.¹⁵⁸

¹⁵³ See Preliminary SV Memorandum at Exhibit 1, "Surrogate Value" and "B&H" tabs.

¹⁵⁴ *Id.*

¹⁵⁵ See Dingli's Letter, "Dingli's First Surrogate Value Comments in the Antidumping Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China; (A-570-139)," dated July 26, 2021 at Exhibit 1.

¹⁵⁶ See Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Submission of Surrogate Value," dated July 26, 2021, at Exhibit I-A.

¹⁵⁷ See *Hand Trucks and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2010-2011, 78 FR 28801 (May 16, 2013), and accompanying IDM at Comment 2; see also *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 78 FR 5414 (January 25, 2013), and accompanying IDM at Comment 1.

¹⁵⁸ See Preliminary SV Memorandum at IX; see also Dingli SV Comments at Exhibit 8.

M. Currency Conversion

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

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

In applying section 777A(f)(1) of the Act, Commerce examines: (A) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise; (B) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period; and (C) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.¹⁵⁹ For a subsidy meeting these criteria, the statute requires Commerce to reduce the AD cash deposit rate by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.¹⁶⁰

In conducting this analysis, Commerce has not concluded that concurrent application of NME ADs and countervailing duties (CVDs) necessarily and automatically results in overlapping remedies. Rather, a finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute.

For purposes of our analysis under sections 777A(f)(1)(A) and (f)(1)(C) of the Act, Commerce requested firm-specific information from the mandatory respondents.¹⁶¹ The information sought included information regarding whether countervailable subsidies were received during the relevant period, information on costs, and information regarding the respondents' pricing policies and practices. Additionally, the respondents were required to provide documentary support for the information provided. Dingli and LGMG submitted responses to Commerce's firm-specific double remedies questionnaire.¹⁶² Commerce examined whether Dingli and LGMG demonstrated: (1) a subsidies-to-cost link, *e.g.*, subsidy impact on cost of manufacture (COM); and (2) a cost-to-price link, *e.g.*, respondent's prices changed as a result of changes in the COM.¹⁶³

As a result of our analysis, Commerce is preliminarily not making any adjustments to the calculation of the cash deposit rate for antidumping duties for Dingli, LGMG, and companies that are not being individually examined but preliminarily are being granted separate-rate status in this investigation, pursuant to section 777A(f) of the Act, in the manner described below.

¹⁵⁹ See section 777A(f)(1)(A)-(C) of the Act.

¹⁶⁰ See section 777A(f)(1)-(2) of the Act.

¹⁶¹ See Double Remedy Questionnaire.

¹⁶² See Dingli DRQR; *see also* LGMG DRQR.

¹⁶³ *Id.*

While countervailable subsidies have been provided with respect to mobile access equipment, we have not found a general decrease in the U.S. average import price during the relevant period. Section 777A(f)(1)(B) of the Act requires consideration of whether the countervailable subsidy programs noted above have been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period. To make this determination, we normally examine the preliminary report issued by the ITC.¹⁶⁴ In *Passenger Vehicle and Light Truck Tires from China* and *Corrosion Inhibitors from China*, we examined the preliminary report issued by the ITC in order to conduct an analysis under section 777A(f)(1)(B) and found prices of imports of the class or kind of merchandise decreased during the relevant period.¹⁶⁵ In *Steel Racks from China*, we also examined U.S. import data in the preliminary report issued by the ITC and did not find a decrease in import prices during the relevant period.¹⁶⁶ Thus, for this preliminary determination, we examined the preliminary report issued by the ITC to determine whether section 777A(f)(1)(B) of the Act has been satisfied.¹⁶⁷

To make this determination, we examined the imported subject merchandise price trends contained in the preliminary report issued by the ITC, in which the ITC concluded that: “The data show that prices of subject imports from China increased for most pricing products during the {January 2018 - December 2020} POI,”¹⁶⁸ and “unit values of imports from China increased...during 2018-20.”¹⁶⁹ In particular, the ITC preliminary report shows an upward movement in prices during the POI. Based on this information, Commerce preliminarily finds that import prices of the class or kind of merchandise at issue during that relevant period

¹⁶⁴ See, e.g., *Forged Steel Fittings from the People’s Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 83 FR 22948 (May 17, 2018), and accompanying Preliminary Decision Memorandum at “IX. Adjustment Under Section 777A(f) of the Act,” unchanged in *Forged Steel Fittings from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 50339 (October 5, 2018).

¹⁶⁵ See *Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Affirmative Determination of Critical Circumstances; In Part and Postponement of Final Determination*, 80 FR 4250 (January 27, 2015), and accompanying Preliminary Decision Memorandum at 33, unchanged in *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893 (June 18, 2015), and accompanying IDM; see also *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893 (June 18, 2015), and accompanying IDM; and *Certain Corrosion Inhibitors from the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 55825 (September 10, 2020), and accompanying Preliminary Decision Memorandum at “VI. Adjustment Under Section 777A(f) of the Act,” unchanged in *Certain Corrosion Inhibitors from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 7532 (January 29, 2021).

¹⁶⁶ See *Certain Steel Racks and Parts Thereof from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 35595 (July 24, 2019), and accompanying IDM at Comment 5.

¹⁶⁷ See, e.g., *Forged Steel Fittings from the People’s Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 83 FR 22948 (May 17, 2018), and accompanying Preliminary Decision Memorandum at “IX. Adjustment Under Section 777A(f) of the Act,” unchanged in *Forged Steel Fittings from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 50339 (October 5, 2018).

¹⁶⁸ See *Preliminary ITC Determination* at 32.

¹⁶⁹ *Id.* at IV-4.

increased. Based on these data, we do not find a general decrease in the U.S. average import price during the relevant period. Thus, we preliminarily find that the requirement under section 777A(f)(1)(B) of the Act has not been met and did not make an adjustment under section 777A(f) of the Act for Dingli or LGMG.

VII. ADJUSTMENT TO CASH DEPOSIT RATE FOR EXPORT SUBSIDIES

In an LTFV investigation where there is a concurrent CVD investigation, it is Commerce's normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent's estimated weighted-average dumping margin to account for export subsidies found for each respective respondent in the concurrent countervailing duty investigation. Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S. price "shall be increased by the amount of any countervailing duty imposed on the subject merchandise... to offset an export subsidy."¹⁷⁰

Commerce determined in the preliminary determination of the companion CVD investigation that Dingli and LGMG benefitted from certain subsidy programs contingent on exports totaling 10.71 percent and 0.20 percent, respectively.¹⁷¹ We deducted from Dingli's dumping margin the CVD attributable to Dingli's export subsidies. We deducted from the LGMG's dumping margin the CVD attributable to the LGMG's export subsidies. We calculated the weighted-average of the export subsidy rates for purposes of adjusting the cash deposit rate for the non-selected separate rate respondents, using the publicly ranged sales values reported by Dingli and LGMG.¹⁷² For the China-wide entity, which preliminarily received an estimated weighted-average dumping margin based on total AFA, as an extension of the adverse inference found necessary pursuant to section 776(b) of the Act, Commerce deducted the lowest export subsidy rate calculated for an individually investigated respondent in the concurrent CVD investigation.¹⁷³ Accordingly, the adjusted cash deposit rates are 7.07 percent for Dingli, 274.86 percent for LGMG, 47.42 percent for non-selected separate rate respondents, and 274.86 percent for the China-wide entity.¹⁷⁴

¹⁷⁰ See "Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review," 75 FR 38076, 38077 (July 1, 2010), and accompanying IDM at Comment 1.

¹⁷¹ See *Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 86 FR 41013 (July 30, 2021), and accompanying Preliminary Decision Memorandum.

¹⁷² See Memorandum, "Certain Mobile Access Equipment and Subassemblies Thereof: Preliminary Separate Rate for Non-Selected Respondents," dated concurrently with this memorandum (Separate Rate Memorandum); see also *Certain Tool Chests and Cabinets from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 82 FR 53456 (November 16, 2017) and accompanying Preliminary Decision Memorandum.

¹⁷³ See, e.g., *Certain Polyethylene Terephthalate Resin from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 80 FR 62024 (October 15, 2015), and accompanying Preliminary Decision Memorandum at 34, unchanged in *Certain Polyethylene Terephthalate Resin from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 81 FR 13331 (March 14, 2016).

¹⁷⁴ See Separate Rate Memorandum.

VIII. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

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Agree

Disagree

9/24/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance