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June 13, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Determination of the
Antidumping Duty Investigation of Silica Bricks and Shapes from
the People's Republic of China

SUMMARY

The Department of Commerce ("Department") preliminarily determines that silica bricks and shapes from the People's Republic of China ("PRC") 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 margins of sales at LTFV are shown in the "Preliminary Determination" section of the accompanying Federal Register notice.

BACKGROUND

On November 15, 2012, the Department received an antidumping duty ("AD") petition concerning imports of silica bricks and shapes from the PRC filed in proper form by Utah Refractories Corporation, Inc. ("Petitioner").¹ The Department initiated an AD investigation of silica bricks and shapes from the PRC on December 5, 2012.² On December 31, 2012, the U.S. International Trade Commission preliminarily determined that there is a reasonable indication that an industry in the United States was materially injured by reason of imports from the PRC of silica bricks and shapes.³

In the Initiation Notice, the Department stated that in order to obtain separate-rate status in this investigation, exporters must submit a separate-rate status application no later than 60 days after publication of the Initiation Notice. No party other than Tianjin New Century Refractories Co.,

¹ See Petition for the Imposition of Antidumping Duties: Silica Bricks and Shapes from the People's Republic of China, dated November 15, 2012 ("Petition").

² See Silica Bricks and Shapes from the People's Republic of China: Initiation of Antidumping Duty Investigation, 77 FR 73982 (December 12, 2012) ("Initiation Notice").

³ See Silica Bricks and Shapes from China, 78 FR 3449 (January 16, 2013).



Ltd. (“New Century”), which responded to the Department’s separate rate questions in the antidumping duty questionnaire, filed a separate-rate status application.

After obtaining sales quantity and value (“Q&V”) information for purposes of respondent selection, the Department selected Shandong Daqiao Co., Ltd. (“Shandong Daqiao”) and New Century as mandatory respondents. For further information, see the “Respondent Selection” section below. On January 15, 2013, the Department issued the AD questionnaire to Shandong Daqiao and New Century. Shandong Daqiao did not respond to the Department’s AD questionnaire. In February 2013, New Century submitted timely responses to the Department’s AD questionnaire. Petitioner submitted comments regarding those responses in January and February 2013. The Department issued supplemental questionnaires to New Century from February to May 2013.

On March 27, 2013, Petitioner made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) for a 50-day postponement of the preliminary determination.⁴ On April 9, 2013, the Department published a postponement fully extending to June 13, 2013 the due date of the preliminary determination.⁵

After considering scope comments from Petitioner and other interested parties and responses to supplemental questionnaires issued by the Department, on May 14, 2013 the Department modified the scope of the investigation. For further information, see the “Scope Comments” section below.

On June 4, 2013, New Century requested, pursuant to section 735(a)(2)(a) of the Act and 19 CFR 351.210(b)(2)(ii), that the Department postpone the final determination to 135 days after publication of the preliminary determination.⁶ Additionally, New Century requested, pursuant to 19 CFR 351.210(e)(2) and section 733(d) of the Act, that the Department extend the application of the provisional measures from a four-month period to a six-month period.

PERIOD OF INVESTIGATION

The period of investigation (“POI”) is April 1, 2012, through September 30, 2012. This period corresponds to the two most recent fiscal quarters prior to the month in which the Petition was filed, November 2012.⁷

⁴ See Letter from Petitioner to the Honorable Rebecca Blank, Secretary of Commerce, regarding “Petition for the Imposition of Antidumping Duties: Silica Bricks and Shapes from the People’s Republic of China,” dated March 27, 2013.

⁵ See Silica Bricks and Shapes From the People’s Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation, 78 FR 21106 (April 9, 2013).

⁶ See Letter from New Century Group to Dr. Rebecca Blank, Acting Secretary of Commerce regarding, “Silica Bricks and Shapes from the People’s Republic of China: Request for Postponement of Final” dated June 4, 2013.

⁷ See 19 CFR 351.204(b)(1).

SCOPE COMMENTS⁸

In the Initiation Notice, the Department notified parties that they had an opportunity to comment on the scope of the investigation, as well as comment on the appropriate physical characteristics of silica bricks and shapes to be reported in response to the Department's AD questionnaire.⁹ On December 21, 2012, Petitioner filed a revised scope with the Department in which it included the word "refractory" before the phrase "bricks and shapes" and the word "crystalline" before the word "silica" in the phrase "containing at least 90 percent silica." In addition, Petitioner proposed excluding non-crystalline silica bricks and shapes from the scope of the investigation.¹⁰

Subsequently, on December 26, 2012, we received comments on the scope from three importers: ANH Refractories Company ("ANH"); Vesuvius USA Corporation ("Vesuvius") and Fedmet Resources Corporation ("Fedmet").¹¹ The importers supported Petitioner's suggested exclusion from the scope of non-crystalline silica (fused silica) bricks and shapes. Vesuvius and Fedmet also requested that the Department specifically exclude from the scope certain products made from fused silica.¹² In addition, Fedmet requested that the Department specifically exclude from the scope bricks and shapes made of silicon carbide. On January 17, 2013, Petitioner, ANH, and Fedmet submitted additional scope comments¹³ in which all three proposed the same new scope language to implement the suggested changes.

In February, March, and April, 2013 Petitioner, ANH, and Fedmet responded to supplemental questionnaires regarding the scope that were issued by the Department. After examining the scope comments and responses to the supplemental questionnaires, we preliminarily modified the scope of the investigation. Specifically, we added the word "refractory" before the phrase "bricks and shapes"; added a definition of the word "refractory"; added Harmonized Tariff Schedule of the United States number 6909.19.5095; stated that in order to be covered by the investigation at least 50 percent of the silica content of the brick or shape must be crystalline silica; and specifically stated that the scope of the investigation does not cover refractory bricks

⁸ A full description of the scope is provided in the accompanying Federal Register notice.

⁹ See Initiation Notice, 77 FR at 73983.

¹⁰ See Letter from Petitioner to the Honorable Rebecca Blank, Secretary of Commerce, regarding, "Petition for the Imposition of Antidumping Duties: Silica Bricks and Shapes from the People's Republic of China," dated December 21, 2012 at Attachment.

¹¹ See Letter from ANH to the Honorable Rebecca Blank, Acting Secretary of Commerce, regarding "Silica Bricks and Shapes from the People's Republic of China: Comments on Scope," dated December 26, 2012; letter from Fedmet to the Secretary of Commerce, regarding "Silica Bricks and Shapes from the People's Republic of China: Comments on the Scope of the Investigation," dated December 26, 2012 ("Fedmet's Scope Comments"); and letter from Vesuvius to the Secretary of Commerce, regarding "Silica Bricks and Shapes from the People's Republic of China: Comments on the Scope of the Investigation," dated December 26, 2012 ("Vesuvius's Scope Comments").

¹² Specifically, in Fedmet's Scope Comments and Vesuvius's Scope Comments, these companies requested that the Department exclude from the scope ladle shrouds/nozzles and rollers composed predominantly of non-crystalline silica. Subsequently, in their scope rebuttal comments, these companies did not identify these products among the excluded products in their suggested scope language.

¹³ See Letter from Petitioner to the Honorable Rebecca Blank, Secretary of Commerce, regarding "Petition for the Imposition of Antidumping Duties: Silica Bricks and Shapes from the People's Republic of China-Scope Comments," dated January 17, 2013; Letter from ANH to the Honorable Rebecca Blank, Secretary of Commerce, regarding "Silica Bricks and Shapes from the People's Republic of China: Rebuttal Comments on Scope," dated January 17, 2013; and Letter from Fedmet to the Secretary of Commerce, regarding "Silica Bricks and Shapes from the People's Republic of China: Comments on Scope of Investigation," dated January 17, 2013.

and shapes, regardless of size, that are made, in part, from non-crystalline silica (commonly referred to as fused silica) where the silica content is less than 50 percent, by weight, crystalline silica. For further information, see the Department's scope memorandum.¹⁴

RESPONDENT SELECTION

In the Initiation Notice, the Department stated that it intended to issue Q&V questionnaires to exporters/producers named in the Petition and select respondents based on Q&V questionnaire responses.¹⁵ On December 6, 2012, the Department requested Q&V information from nine companies that Petitioner identified as potential exporters of silica bricks and shapes from the PRC.¹⁶ The Department received timely responses to its Q&V questionnaire from two companies, Shandong Daqiao and New Century. On January 15, 2013, the Department issued the AD questionnaire to Shandong Daqiao and New Century as mandatory respondents.

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country

The Department considers the PRC to be a non-market economy ("NME") country.¹⁷ 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 the administering authority. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value, 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 the Department. Specifically, in accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of

¹⁴ For a detailed discussion of the scope modifications, see Memorandum from Howard Smith, Program Manager, AC/CVD Operations, Office 4 and Rebecca Pandolph, International Trade Analyst, AC/CVD Operations, Office 4 through Abdelali Elouaradia, Director, AC/CVD Operations, Office 4 to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations regarding, "Antidumping Duty Investigation of Silica Bricks and Shapes from the People's Republic of China: Scope Modification," dated May 14, 2013.

¹⁵ See Initiation Notice, 77 FR at 73985.

¹⁶ See Memorandum to the File from Rebecca Pandolph dated concurrently with this memorandum. The Department issued questionnaires to the following companies: (1) Luoyang Zhongte Refractories Co., Ltd. (2) Smetal Group Co., Ltd. (3) Yangquan Rising Commercials Ltd. (4) Zhengzhou Chengtong Refractory Co., Ltd. (5) Zhengzhou Sunrise Technology Co., Ltd. (6) Zibo Hitech Material Co., Ltd. (7) Zibo Tashan Refractory Material Factory (8) Zibo Xindi Refractory Material Co., Ltd. and (9) Zibo Yonganda Industry And Trade Co., Ltd.

¹⁷ See Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 77 FR 21734 (April 11, 2012).

comparable merchandise.¹⁸ To determine which countries are at a similar level of economic development comparability, generally the Department relies solely on gross national income per capita (“GNI”) data from the World Bank’s World Development Report.¹⁹ In addition, if more than one country satisfies the two criteria noted above, the Department narrows the field of potential surrogate countries to a single country (pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOPs in a single surrogate country) based on data availability and quality.

On February 27, 2013, the Department identified Colombia, Costa Rica, Indonesia, the Philippines, South Africa and Thailand as being equally comparable to the PRC in terms of economic development.²⁰ On March 13, 2013, Petitioner and New Century submitted comments on the appropriate surrogate country and surrogate values.²¹ On March 20, 2013, New Century submitted rebuttal comments.²² Petitioner and New Century both argue that Ukraine should be selected as the surrogate country because it is economically comparable to the PRC, there is significant production capacity and actual production of identical and comparable merchandise in Ukraine, and there is Ukrainian information on the record for all of the surrogate values that are needed to calculate a weighted-average dumping margin.²³ Below we explain in greater detail the information on the record relating to each criterion that is used to select the primary surrogate country.

As noted above, the record contains a Surrogate Country Memorandum which identifies six countries that the Department considers as equally having satisfied the economic comparability prong of the surrogate country selection criteria. However, this list is a non-exhaustive list. In the Surrogate Country Memorandum, the Department noted that other countries not identified by the Department as being economically comparable to the PRC may be examined for purposes of selecting a primary surrogate country if there is adequate record information to evaluate them.²⁴ Petitioner provided GNI data for Ukraine from the 2011 World Bank showing that Ukraine’s GNI is within the range of the GNIs of the countries considered by the Department to be economically comparable to the PRC and listed in the Surrogate Country Memorandum.²⁵

¹⁸ See also Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004).

¹⁹ See *id.*

²⁰ See Letter to All Interested Parties from Howard Smith, Program Manager, Office 4, Import Administration, regarding, “Antidumping Investigation of Silica Bricks and Shapes from the People’s Republic of China: Request for Surrogate Country and Surrogate Value Comments,” dated February 27, 2013 (“Surrogate Country Memorandum”).

²¹ See Letter from Petitioner to the Honorable Rebecca Blank, Secretary of Commerce, regarding “Silica Bricks and Shapes from the People’s Republic of China” dated March 13, 2013 (“Petitioner Surrogate Selection Comments”); see also, Letter from New Century to the Honorable Dr. Rebecca Blank, Acting Secretary of Commerce regarding, “Silica Bricks and Shapes from the People’s Republic of China-Section C&D Questionnaire Response,” dated March 13, 2013 (“New Century Surrogate Selection Comments”).

²² See Letter from New Century to the Honorable Dr. Rebecca Blank, Acting Secretary of Commerce, regarding, “Silica Bricks and Shapes from the People’s Republic of China: Tianjin New Century Refractories, Co., Ltd.- Surrogate Country and Surrogate Value Rebuttal Comments,” dated March 20, 2013.

²³ See Petitioner Surrogate Selection Comments and New Century Surrogate Selection Comments.

²⁴ See Surrogate Country Memorandum at Attachment 1.

²⁵ See Petitioner Surrogate Selection Comments at 1-2.

With respect to the significant producer of comparable merchandise criterion, Petitioner stated that it was only able to locate silica brick producers in Thailand and Ukraine.²⁶ New Century provided data for exports of silica bricks and shapes from the following countries: Colombia, Costa Rica, Indonesia, the Philippines, South Africa, Thailand and Ukraine. New Century noted that Ukraine is a significant steel producer and has a developed refractory brick industry to support the steel industry, which is evidenced by the numerous refractory brick companies that exist in Ukraine.²⁷

With respect to data availability, the record contains usable Ukrainian surrogate values for almost every input that must be valued.²⁸ There is no surrogate value information on the record for Colombia, Costa Rica, Indonesia, the Philippines or South Africa. There is a very limited amount of information for Thailand (i.e., a set of financial statements).²⁹

After considering the above information, we have determined that, in addition to the six countries listed in the Surrogate Country Memorandum, Ukraine is also economically comparable to the PRC. To evaluate the significant producer criterion, we considered the export data placed on the record by New Century as reported in the United Nation's Comtrade data (www.comtrade.un.org). The United Nation's Comtrade data demonstrate that the two potential surrogate countries for which surrogate value information is on the record, Thailand and Ukraine, were significant producers of comparable merchandise.³⁰ Furthermore, as noted above, the record contains reliable surrogate value information for Ukraine for almost every one of the FOPs. Thus, pursuant to section 773(c)(4) of the Act, we have preliminarily selected Ukraine as the primary surrogate country. In accordance with 19 CFR 351.301(c)(3)(i), for the final determination interested parties may submit publicly available information to value the FOPs within 40 days after the date of publication of the preliminary determination.³¹

Single Entity Treatment

Pursuant to 19 CFR 351.401(f)(1), the Department will treat two or more producers as a single entity, or "collapse" them, where: (1) those producers are affiliated; (2) the producers have

²⁶ See Petitioner Surrogate Selection Comments at 2 and Exhibit A.

²⁷ See New Century Surrogate Selection Comments at Exhibit 2.

²⁸ See Memorandum from Rebecca Pandolph, International Trade Analyst, AD/CVD Operations, Office 4 through Howard Smith, Program Manager, AD/CVD Operations, Office 4 to the File regarding, "Antidumping Duty Investigation of Silica Bricks and Shapes from the People's Republic of China: Factor Valuation Memorandum" dated concurrently with this memorandum ("Factor Valuation Memorandum").

²⁹ See New Century Surrogate Selection Comments at Exhibits 9 and 10.

³⁰ See New Century Surrogate Selection Comments at Exhibit 1.

³¹ In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) (2008) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record, alternative surrogate value information. See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2. Additionally, for each piece of factual information submitted with surrogate value rebuttal comments, the interested party must provide a written explanation of the information that is already on the record of the ongoing proceeding that the factual information intends to rebut, clarify, or correct.

production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for manipulation of price or production.³² In determining whether a significant potential for manipulation of price or production exists, 19 CFR 351.401(f)(2) states that the Department may consider various factors, including: (1) the level of common ownership of the producers; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether the operations of the affiliated firms are intertwined through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.³³

“Collapsing” starts with a determination as to whether two or more companies are affiliated. Section 771(33) of the Act, identifies “affiliated persons,” as, *inter alia*: two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.³⁴ Section 771(33) of the Act further states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. 19 CFR 351.102(b) states that in determining whether control over another person exists within the meaning of section 771(33) of the Act, the Department will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. Pursuant to 19 CFR 351.102 (b), the Department will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

In proceedings involving NME countries, the Department has recognized that NME companies separate from the NME entity may be connected and that such connections could provide a potential for manipulation affecting dumping margins.³⁵ Thus, to the extent that section 771(33) of the Act does not conflict with the Department’s application of separate rates and enforcement of the NME provision of section 773(c) of the Act, the Department’s practice has been to determine whether affiliated NME companies separate from the NME entity should be treated as a single entity.³⁶ Evidence of significant ownership ties or control between or among affiliated companies may lead the Department to apply the collapsing criteria in an NME context in order

³² See, e.g., Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 63 FR 12764, 12774 (March 16, 1998).

³³ See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan, 62 FR 51427, 51436 (October 1, 1997).

³⁴ See section 771(33)(F) of the Act.

³⁵ See Certain Steel Nails From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination, 73 FR 3928, 3932 (January 23, 2008), unchanged in Certain Steel Nails From the People’s Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value, 73 FR 7254 (February 7, 2008) and Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008).

³⁶ See Certain Preserved Mushrooms from the People’s Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review, 69 FR 10410, 10413 (March 5, 2004) (“Mushrooms”), unchanged in Certain Preserved Mushrooms from the People’s Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review, 69 FR 54635 (September 9, 2004).

to determine whether all, or some, of those affiliates should be treated as one entity.³⁷ 19 CFR 351.401(f) specifically addresses treating producers as a single entity. However, the Department has determined that the factors listed in 19 CFR 351.401(f)(2) are not exhaustive and, in the context of an NME proceeding, other factors unique to the relationships between business entities within the NME country may lead the Department to determine that collapsing is warranted. The Court of International Trade (“CIT”) has upheld the Department’s practice of taking into account one such unique factor, namely export decisions, in applying the collapsing provisions in NME proceedings.³⁸ Thus, although the Department’s regulations do not address the treatment of non-producing entities (e.g., exporters), where non-producing entities are affiliated, and there exists a significant potential for manipulation of prices and/or export decisions, the Department has considered such entities, as well as any other affiliated entities (where appropriate), as a single entity.³⁹

We preliminarily determined that the exporters New Century and Tianjin New World Import & Export Trading Co., Ltd. (“New World”) and the producer XinYi American Advanced Material Co., Ltd. (“XinYi Advanced”) (collectively, “New Century Group”) are affiliated pursuant to section 771(33)(F) of the Act and that there is a significant potential for the manipulation of price or production among these companies. Thus, we are preliminarily treating these companies as a single entity. Portions of the information relied upon in making this determination are proprietary and cannot be discussed in this memorandum. For a full discussion of our single entity determination, see the memorandum from Rebecca Pandolph, International Trade Analyst, AD/CVD Operations, Office 4 through Howard Smith, Program Manager, AD/CVD Operations, Office 4 to Abdelali Elouaradia, Office Director, AD/CVD Operations, Office 4, regarding “Silica Bricks and Shapes from the People’s Republic of China: Affiliation and Single Entity Status,” dated concurrently with this memorandum.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the NME country are subject to government control and, thus, should

³⁷ See Mushrooms, and accompanying Issues and Decision Memorandum at Comment 1.

³⁸ See Hontex Enterprises v. United States, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004), in which the CIT affirmed the Department’s ability to expand the market-economy inquiry into the potential for manipulation to include NME exporters’ export decisions, rather than whether or not the companies share production facilities.

³⁹ See, e.g., Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil; Notice of Final Determination at Sales at Less Than Fair Value, 65 FR 5554 (February 4, 2000); Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 63 FR 55578 (October 16, 1998), and accompanying Issues and Decision Memorandum at Comment 2; Automotive Replacement Glass Windshields from the People’s Republic of China; Preliminary Results of Antidumping Duty Administrative Review, 69 FR 25545 (May 7, 2004); Automotive Replacement Glass Windshields from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review, 69 FR 61790 (October 21, 2004); Mushrooms, and accompanying Issues and Decision Memorandum at Comment 1; see also Hontex Enterprises v. United States, 248 F. Supp. 2d 1323, 1343 (CIT 2003).

be assessed a single antidumping duty rate.⁴⁰ In the Initiation Notice, the Department notified parties of the application process by which exporters may obtain separate rate status in NME proceedings.⁴¹ It is the Department's policy to assign all exporters of merchandise under investigation that are in an NME country a single weighted-average dumping margin unless an exporter can demonstrate that it is sufficiently independent from government control so as to be entitled to a separate rate.⁴² The Department analyzes whether each entity exporting the subject merchandise is sufficiently independent from government control under a test arising from Sparklers,⁴³ as further developed in Silicon Carbide.⁴⁴ In accordance with the separate rates criteria, the Department assigns separate rates to respondents in NME cases if respondents can demonstrate the absence of both de jure and de facto governmental control over their export activities. If, however, the Department determines that a company is wholly foreign owned, then a separate rate analysis is not necessary to determine whether it is independent from government control.

Only New Century Group applied for separate-rate status. As noted above, Shandong Daqiao did not respond to the Department's AD questionnaire nor did it submit separate rate information. Therefore, we are preliminarily treating Shandong Daqiao as part of the PRC-wide entity.

As noted above, we have treated the exporters, New Century and New World, and the producer XinYi Advanced, as a single entity, New Century Group. New Century Group reported that it is partially Chinese-owned. Therefore, the Department must analyze whether New Century Group can demonstrate the absence of both de jure and de facto government control over its export activities.⁴⁵

a) Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments

⁴⁰ See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079, 53082 (September 8, 2006); see also Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China, 71 FR 29303, 29307 (May 22, 2006).

⁴¹ See Initiation Notice, 77 FR at 73985-6.

⁴² 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"), as amplified by 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").

⁴³ See Sparklers, 56 FR at 20588.

⁴⁴ See Silicon Carbide, 59 FR at 22585.

⁴⁵ 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); 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).

decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.⁴⁶

The evidence provided by New Century Group supports a preliminary finding of an absence of de jure government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses;⁴⁷ (2) there are applicable legislative enactments decentralizing control of companies;⁴⁸ and (3) there are formal measures by the government decentralizing control of companies.⁴⁹

b) Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to de facto government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.⁵⁰ The Department 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 over export activities which would preclude the Department from assigning separate rates.

For New Century Group, we determine that the evidence on the record supports a preliminary finding of an absence of de facto government control based on record statements and supporting documentation showing the following: (1) the respondent sets its own export prices independent of the government and without the approval of a government authority;⁵¹ (2) the respondent has the authority to negotiate and sign contracts and other agreements;⁵² (3) the respondent has autonomy from the government regarding the selection of management;⁵³ and (4) the respondent retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses.⁵⁴

Thus, the evidence placed on the record by New Century Group demonstrates an absence of both de jure and de facto government control with respect the company's exports of the merchandise

⁴⁶ See Sparklers, 56 FR at 20589.

⁴⁷ See Letter from New Century to the Acting Secretary of Commerce, the Honorable Dr. Rebecca Blank regarding, "Silica Bricks and Shapes from the People's Republic of China: Tianjin New Century Refractories, Co., Ltd.- Section A Questionnaire Response," dated February 5, 2013 ("Section A Response") at 9-14.

⁴⁸ See Section A Response at 14-15.

⁴⁹ See Section A Response at 14-15.

⁵⁰ 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).

⁵¹ See Section A Response at 17-18 and letter from New Century to the Acting Secretary of Commerce, the Honorable Dr. Rebecca Blank regarding, "Silica Bricks and Shapes from the People's Republic of China: Tianjin New Century Refractories, Co., Ltd.- Section A Questionnaire Response," dated February 25, 2013 at 3-4.

⁵² See Section A Response at 17-18.

⁵³ See Section A Response at 18-19.

⁵⁴ See Section A Response at 19-20.

under consideration, in accordance with the criteria identified in Sparklers and Silicon Carbide. Given this fact, we are preliminarily granting New Century Group separate-rate status.

Application of Facts Available and Adverse Inferences

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (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 AD statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

The Department did not receive a response to its Q&V questionnaire from nine PRC exporters of the merchandise under consideration named in the Petition which were issued the Q&V questionnaire. Further, the Department did not receive from these nine PRC exporters applications for a separate rate. Additionally, as noted above, Shandong Daqiao, which was selected as one of the mandatory respondents, did not respond to the Department's AD questionnaire and did not demonstrate that it is eligible for a separate rate. Since these non-responsive PRC producers/exporters have not demonstrated that they are eligible for separate rate status, they are part of the PRC-wide entity. Thus, the record indicates that the PRC-wide entity withheld information requested by the Department, failed to provide information in a timely manner, and significantly impeded the proceeding by not submitting the requested information. As a result, pursuant to sections 776(a)(2)(A)-(C) of the Act, we find that the use of facts available is appropriate to determine the weighted-average dumping margin for the PRC-wide entity.

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an inference that is adverse to a party if the party failed to cooperate by not acting to the best of its ability to comply with requests for information. When employing an adverse inference, section 776(b) of the Act states that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

We find that the PRC-wide entity's failure to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown.⁵⁵ The PRC-wide entity did not respond to our requests for information, and did not indicate it was having difficulty providing the information nor did it request that it be allowed to submit the information in an alternate form. Therefore, we preliminarily find that the PRC-wide entity failed to cooperate by not acting to the best of its ability to comply with requests for information. Hence, in selecting from among the facts otherwise available, an adverse inference is appropriate.

⁵⁵ See Nippon Steel Corporation v. United States, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that the Department 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"))).

In selecting a weighted-average dumping margin for the PRC-wide entity based on adverse facts available (“AFA”), the Department’s practice is to select 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.⁵⁶ Specifically, it is the Department’s practice to select, as an AFA rate, the higher of: (a) the highest dumping margin alleged in the petition, or (b) the highest calculated dumping margin of any respondent in the investigation.⁵⁷ The Petition dumping margins, which range from 118.47 percent to 290.12 percent, are higher than any of the dumping margins calculated for the participating mandatory respondent. However, because the use of these rates as AFA is subject to the corroboration requirement, as explained below, we examined whether we could corroborate these rates.

Corroboration

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as “information 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.”⁵⁸

The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.⁵⁹ The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.⁶⁰ To corroborate secondary information, the Department will, to the extent practicable, determine whether the information used has probative value through examining the reliability and relevance of the information.⁶¹ In order to determine the probative value of the dumping margins alleged in the Petition for assigning an AFA rate, we examined information on the record and found we were unable to corroborate the dumping margins contained in the petition.⁶²

⁵⁶ See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland, 69 FR 77216 (December 27, 2004), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland, 70 FR 28279 (May 17, 2005).

⁵⁷ See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From the People's Republic of China, 65 FR 34660 (May 21, 2000), and accompanying Issues and Decision Memorandum, at “Facts Available.”

⁵⁸ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (“SAA”), H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994).

⁵⁹ See *id.*

⁶⁰ See *id.*

⁶¹ See 19 CFR 351.308(d).

⁶² For details regarding this finding, see the Memorandum from Rebecca Pandolph, International Trade Analyst, AD/CVD Operations, Office 4 through Howard Smith, Program Manager, AD/CVD Operations, Office 4 to Abdelali Elouaradia, Office Director, AD/CVD Operations, Office 4, regarding “Silica Bricks and Shapes from the People’s Republic of China: Corroboration of Margin Based on Adverse Facts Available,” dated concurrently with this memorandum (“Corroboration Memorandum”).

Therefore, for the preliminary determination, we have assigned to the PRC-wide entity a weighted-average dumping margin of 91.16 percent, which is the highest transaction-specific dumping margin for New Century Group. It is unnecessary to corroborate this rate because it was obtained in the course of this investigation and, therefore, is not secondary information. The transaction underlying this dumping margin is neither unusual in terms of transaction quantities nor otherwise atypical. For further information, see the Corroboration Memorandum.

Date of Sale

New Century Group reported invoice date as the date of sale to unaffiliated U.S. customers.⁶³ The Department found no evidence contrary to the respondent's claims that invoice date is the appropriate date of sale. Therefore, the Department used invoice date as the date of sale for this preliminary determination in accordance with 19 CFR 351.401(i).⁶⁴

Fair Value Comparisons

In accordance with section 777A(d)(1) of the Act, to determine whether the mandatory respondents sold the merchandise under consideration to the United States at LTFV during the POI, we compared, as described in the "Determination of a Comparison Method" section below, the weighted-average export price of the U.S. sales to normal value, as described in "Export Price" and "Normal Value" sections of this notice.

Comparisons to Normal Value

Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether New Century Group's sales of the subject merchandise from the PRC to the United States were made at less than normal value, the Department compared the export price to the normal value as described in the "Export Price" and "Normal Value" sections of this memorandum.

Determination of the Comparison Method

A. Differential Pricing Analysis

Pursuant to 19 CFR 351.414(c) (2012), the Department calculates dumping margins by comparing weighted-average normal values to weighted-average export prices (or constructed export prices (the average-to-average method) unless the Secretary determines another method is appropriate in a particular situation. The Department's regulations also provide that dumping margins may be calculated by comparing normal values, based on individual transactions, to the export prices (or constructed export prices) of individual transactions (transaction-to-transaction method) or, when certain conditions are satisfied, by comparing weighted-average normal values

⁶³ See Letter from New Century to the Honorable Dr. Rebecca Blank, Acting Secretary of Commerce, regarding "Silica Bricks and Shapes from the People's Republic of China: Tianjin New Century Refractories, Co. Ltd.- Section C&D Questionnaire Response," dated February 25, 2013 at 14.

⁶⁴ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

to the export prices (or constructed export prices) of individual transactions (average-to-transaction method).⁶⁵ In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of the average-to-average method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) (2012).⁶⁶ The Department may determine that in particular circumstances, consistent with section 777A(d)(1)(B) of the Act, that it is appropriate to use the average-to-transaction method. The Department will continue to develop its approach in this area based on comments received in this investigation and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of export prices (or constructed export prices) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used in this preliminary determination evaluates all purchasers, regions, and time periods to determine whether a pattern of significant price differences exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the customer codes reported by New Century Group. 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 POI being examined based upon the reported date of sale. For purposes of analyzing sales transactions by customer, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that the Department uses in making comparisons between export price (or constructed export price) and normal value for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region, or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed

⁶⁵ See 19 CFR 351.414(b)(1) and (2).

⁶⁶ See Memoranda to Paul Piquado, Assistant Secretary for Import Administration, from Abdelali Elouaradia, Director of AD/CVD Operations Office 4, entitled “Less Than Fair Value Investigation of Xanthan Gum from Austria: Post-Preliminary Analysis and Calculation Memorandum”, “Less Than Fair Value Investigation of Xanthan Gum from the People's Republic of China: Post-Preliminary Analysis and Calculation Memorandum for Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., T Jd.) and Shandong Fufeng Fermentation Co., Ltd.”, and “Less Than Fair Value Investigation of Xanthan Gum from the People's Republic of China: Post-Preliminary Analysis and Calculation Memorandum for Deosen Biochemical Ltd,” all dated March 4, 2013.

thresholds defined by the Cohen's *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant 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 export prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

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

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

B. Results of the Differential Pricing Analysis

For New Century Group, based on the results of the differential pricing analysis, the Department finds that 100 percent of New Century Group's export sales confirm the existence of a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or

time periods. Further, the Department determines that the average-to-average method can appropriately account for such differences because there is not a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and the average-to-transaction method. Accordingly, the Department has preliminarily determined to use the average-to-average method for all U.S. sales in making comparisons of export price or constructed export price and normal value for New Century Group.

Export Price

In accordance with section 772(a) of the Act, we based U.S. price on export price because the first sale to an unaffiliated purchaser was made prior to importation and the use of constructed export price was not otherwise warranted. We calculated export price based on the packed prices at which the merchandise under consideration was sold to unaffiliated purchasers in the United States, or sold for exportation to the United States. In calculating export price, we made deductions from the reported U.S. price for movement expenses, as appropriate (e.g., foreign inland freight from the plant to the port of exportation, domestic brokerage, and international freight), in accordance with section 772(c)(2)(A) of the Act. Where foreign inland freight, foreign brokerage and handling fees, or international freight were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate values.⁶⁷

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases normal value on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.⁶⁸ Thus, we calculated normal value based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.⁶⁹

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated normal value based on the FOPs reported by the individually examined respondent. To calculate normal value, the Department multiplied the reported per-unit factor-consumption rates by publicly available surrogate values. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1)

⁶⁷ See "Factor Valuation Methodology" section below for further discussion of surrogate value rates.

⁶⁸ 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).

⁶⁹ See section 773(c)(3)(A)-(D) of the Act.

of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are product-specific non-export values representative of a broad market average that are exclusive of taxes and duties and contemporaneous with, or closest in time to, the POI.⁷⁰ Furthermore, as appropriate, we adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added a surrogate freight cost, where appropriate, to surrogate 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. This adjustment is in accordance with the decision of the Federal Circuit in Sigma Corp. v. United States, 117 F.3d 1401, 1408 (Fed. Cir. 1997). Additionally, where necessary, we adjusted the surrogate values for inflation, exchange rates, and taxes.

The record shows that Ukraine import data obtained through Global Trade Atlas ("GTA"), as well as data used from other Ukrainian sources, are product-specific, tax-exclusive, and generally contemporaneous with the POI.⁷¹ Thus, for the preliminary determination, except as noted below, we used Ukraine import data, as published by GTA and other publicly available sources from Ukraine in order to calculate surrogate values for New Century Group's FOPs (e.g., surrogate values for direct materials and packing materials) and certain movement expenses.⁷² In those instances where we could not obtain publicly available Ukraine surrogate values contemporaneous with the POI with which to value FOPs, we adjusted the surrogate values using, where appropriate, the Ukraine Price Indexes as published in the International Monetary Fund's International Financial Statistics.

With regard to the Ukraine import-based surrogate values, we disregarded import prices that we have reason to believe or suspect may be subsidized. It is the Department's practice, guided by legislative history, not to conduct a formal investigation to ensure that such prices are not subsidized.⁷³ Rather, the Department bases its decision on this matter on information that is available to it at the time that it makes its determination.⁷⁴ Specifically, we have reason to believe or suspect that prices of inputs from Indonesia, India, South Korea, and Thailand may have been subsidized because in other proceedings we found that these countries maintain

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

⁷¹ A detailed description of all surrogate values used for New Century Group can be found in the Factor Valuation Memorandum.

⁷² See *id.*

⁷³ See Omnibus Trade and Competitiveness Act of 1988, Conference Report, H.R. Rep. 100-576 at 590 (1988); Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China, 72 FR 30758, 30763 (June 4, 2007), unchanged in Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007); Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 73 FR 24552, 24559 (May 5, 2008), unchanged in 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 (September 24, 2008).

⁷⁴ See *id.*

broadly available, non-industry-specific export subsidies.⁷⁵ Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized and thus it is appropriate to disregard imports into Ukraine from these countries in our calculations.⁷⁶ Additionally, consistent with our practice, we disregarded prices from NME countries and excluded from our calculation of average per-unit surrogate values imports labeled as originating from an “unspecified” country because the Department could not be certain that they were not from either an NME country or a country with generally available export subsidies.⁷⁷ Therefore, we have not used prices from such countries in calculating the Ukraine import-based surrogate values or in calculating ME input values. A summary of the surrogate values used for certain inputs, other than direct and packing materials, is below.

With respect to labor, on June 21, 2011, the Department revised its methodology for valuing the labor input in NME AD proceedings.⁷⁸ In Labor Methodologies, the Department determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (“ILO”) Yearbook of Labor Statistics (“Yearbook”). Accordingly, relying on Chapter 6A of the Yearbook, we calculated the value of the labor input using labor cost data reported by Ukraine to the ILO under Sub-Classification 26 of the ISIC-Revision 3-D, in accordance with section 773(c)(4) of the Act.⁷⁹ We preliminarily determine that the two-digit description under Sub-Classification 26 of the ISIC-Revision 3-D (“Manufacture of Other Non-Metallic Mineral”) is the best available information because it is specific to the industry being examined and, therefore, is derived from industries that produce comparable merchandise. The ILO data from Chapter 6A of the Yearbook reflect all costs related to labor, including wages, and indirect labor costs such as benefits, housing, and training. The financial statements used to calculate the surrogate financial ratios do not include itemized details regarding the indirect labor costs incurred. Therefore, we have not made adjustments to the surrogate financial ratios for such indirect costs.

⁷⁵ See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20.

⁷⁶ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People’s Republic of China, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

⁷⁷ 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); see also Citric Acid and Certain Citrate Salts From the People’s Republic of China: Preliminary Results of the First Administrative Review of the Antidumping Duty Order; and Partial Rescission of Administrative Review, 76 FR 34048, 34051 (June 10, 2011), unchanged in Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order, 76 FR 77772 (December 14, 2011).

⁷⁸ See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) (“Labor Methodologies”).

⁷⁹ See Factor Valuation Memorandum at Attachment 3.

We valued electricity using the updated electricity price data for small, medium, and large industries, as published by the National Electricity Regulatory Commission of Ukraine, an administrative body of the Government of the Ukraine. We did not inflate this value because utility rates represent current rates, as indicated by the effective dates listed for each of the rates provided.⁸⁰

We valued brokerage and handling expenses using a price list for export procedures necessary to export a standardized cargo of goods from Ukraine in a 20-foot container. The price list was published in the World Bank publication, Doing Business in Ukraine. We did not inflate this price because it is contemporaneous with the POI.⁸¹

We valued truck freight using Ukrainian January 2012 data published on the Web site of Della Trucking, a Ukrainian trucking company, available at www.della-ua.com. We inflated this rate to a POI value.⁸²

We valued financial ratios using the financial statements of Patra Refractory Co., Ltd., a Thai company. There are only two financial statements on the record. Those of Patra Refractory Co., Ltd. and the financial statements of the Ukrainian company, Krasnogorivskij Refractory Plant. Both financial statements are from producers of comparable merchandise, cover the same period, are complete, have no indication of countervailable subsidies. Although Krasnogorivskij Refractory Plant is a Ukrainian producer of merchandise comparable to the merchandise under consideration, and it is in the primary surrogate country, it incurred a loss during the year ending December 2011, the year covered by the company's financial statements that were placed on the record. The Department has an established practice of not relying on financial statements that are from an unprofitable company.⁸³ Therefore, to value factory overhead, selling, general, and administrative expenses, and profit, we used the audited financial statements from Patra Refractory Co., Ltd., a producer of comparable merchandise in Thailand. As discussed above, Thailand was identified by the Department as being economically comparable to the PRC, and United Nation's Comtrade data indicate that it is a significant producer of merchandise comparable to the merchandise under consideration.⁸⁴ The Thai financial statements cover the fiscal year ending December 2011.⁸⁵

⁸⁰ See Factor Valuation Memorandum at Attachment 4.

⁸¹ See Factor Valuation Memorandum at Attachments 5 and 6.

⁸² See Factor Valuation Memorandum at Attachment 7.

⁸³ 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 Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 76336 (December 16, 2008), and accompanying Issues and Decision Memorandum at Comment 6.

⁸⁴ See New Century Surrogate Selection Comments at Exhibit 1.

⁸⁵ See Factor Valuation Memorandum at Attachment 8.

Currency Conversion

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

VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information from New Century Group.

CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Import Administration

13 JUNE 2017
Date