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Investigation
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November 19, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Antidumping Duty Investigation of 53-Foot Domestic Dry
Containers from the People's Republic of China

SUMMARY

The Department of Commerce (Department) preliminarily determines that 53-foot domestic dry containers (domestic dry containers) 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 period of investigation (POI) is October 1, 2013, through March 31, 2014. The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

BACKGROUND

On April 30, 2014, the Department received antidumping duty (AD) and countervailing duty (CVD) petitions concerning imports of domestic dry containers from the PRC filed in proper form by Stoughton Trailers, LLC (Petitioner).¹ The Department published the initiation of this investigation, as well as the companion countervailing duty investigation (CVD) concerning imports of domestic dry containers from the PRC, on May 19, 2014.²

¹ See "Antidumping Duty Petition 53-Foot Domestic Dry Containers from the People's Republic of China," dated April 30, 2014 (AD Petition) at 12-13.

² See *53-Foot Domestic Dry Containers From the People's Republic of China: Initiation of Antidumping Duty Investigations*, 79 FR 28674 (May 19, 2014) (*Initiation Notice*). On the same date we also published a notice of initiation for the CVD investigation of domestic dry containers from the PRC. See *53-Foot Domestic Dry Containers From the People's Republic of China: Initiation of Countervailing Duty Investigations*, 79 FR 28679 (May 19, 2014) (*CVD Initiation*).



On May 20, 2014, the Department mailed quantity and value (Q&V) questionnaires to the three PRC exporters and/or producers of domestic dry containers named in the petition.³ On May 30, 2014, the Department received timely filed Q&V questionnaire responses from two exporters/producers. The Department did not receive a Q&V questionnaire response from the third exporter and/or producer, Shanghai C & Jindo Container Co Ltd.⁴

In the *Initiation Notice*, the Department requested comments from interested parties, by June 2, 2014, regarding the appropriate physical characteristics of domestic dry containers to be reported in response to the Department's AD questionnaires. The Department also set aside a period for interested parties to raise issues regarding product coverage. In response to a letter from respondent China International Marine Containers (Group) Ltd., China International Marine Containers (HK) Ltd., Guangdong Xinhui CIMC Special Transportation Equipment Co., Ltd., Nantong CIMC-Special Transportation Equipment Manufacture Co., Ltd., Qingdao CIMC Container Manufacture Co., Ltd., and Xinhui CIMC Container Co., Ltd. (collectively, CIMC)⁵ dated May 23, 2014, the Department extended the deadline for all interested parties to submit comments on the scope of the investigation as well as the product characteristics for factors of production reporting and product-comparison purposes until June 9, 2014, and for parties to submit rebuttal comments by June 16, 2014.⁶

On June 9, 2014, Petitioner filed comments on the scope and product characteristics.⁷ We also received comments from CIMC,⁸ and from respondent Hui Zhou Pacific Container Co., Ltd. (HPCL), Qingdao Pacific Container Co., Ltd. (QPCL), and Qidong Singamas Energy Equipment Co., Ltd. (QSCL), Singamas Management Services Limited, and their holding company Singamas Container Holdings Limited (collectively, Singamas).⁹ On June 16, 2014, the Department received rebuttal comments from both CIMC¹⁰ and Singamas.¹¹

On June 13, 2014, the U.S. International Trade Commission (ITC) published its preliminary determination in which it determined that there is a reasonable indication that the establishment

³ Petitioner named the following companies as known exporters and/or producers of domestic dry containers from the PRC: China International Marine Containers (Group) Co., Ltd., Singamas, and Shanghai C& Jindo Container Co Ltd. *See* Petition for the Imposition of Antidumping and Countervailing Duties: 53-Foot Domestic Dry Containers from the People's Republic of China, dated April 23, 2014, Volume I at pages 12-13.

⁴ According to FedEx, the Q&V questionnaire was delivered to Shanghai C& Jindo Container Co Ltd. *See* Memorandum to the File, from John K. Drury, International Trade Compliance Analyst, "Delivery Documents Relating to the Quantity and Value Questionnaire," dated June 24, 2014 ("Q&V Delivery").

⁵ As discussed in the Single Entity Treatment section below, we are treating the CIMC companies as a single entity.

⁶ *See* Letter to All Interested Parties dated May 23, 2014.

⁷ *See* Letter to the Secretary of Commerce from Petitioner, dated June 9, 2014 (Petitioner Product Characteristic Comments).

⁸ *See* Letter to the Secretary of Commerce from CIMC, dated June 9, 2014 (CIMC Product Characteristic Comments).

⁹ *See* Letter to the Secretary of Commerce from Singamas, dated June 9, 2014 (Singamas Product Characteristic Comments).

¹⁰ *See* Letter to the Secretary of Commerce from CIMC, dated June 16, 2014 (CIMC Product Characteristic Rebuttal Comments).

¹¹ *See* Letter to the Secretary of Commerce from Singamas, dated June 16, 2014 (Singamas Product Characteristic Rebuttal Comments).

of an industry in the United States is materially retarded by reason of imports from the PRC of domestic dry containers.¹²

On July 3, 2014, the Department issued a letter to all interested parties requesting further clarification and comment on the product characteristic comments submitted by Petitioner, CIMC and Singamas. The Department received responses to the request from CIMC, Singamas, and Petitioner, on July 10, 2014.¹³ We received further rebuttal comments from Singamas on July 14, 2014.¹⁴

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in non-market economy (NME) investigations.¹⁵ The process requires exporters and producers to submit a separate rate status application (SRA)¹⁶ and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities. In the *Initiation Notice*, we stated that the SRAs would be due 60 days after publication of the notice. On July 16, 2014, the Department received a request to extend the SRA deadline from Singamas. Also on July 16, 2014, the Department received a request to extend the SRA deadline from CIMC. On July 17, 2014, the Department notified these parties that it was unable to grant these SRA extension requests.¹⁷ We received separate rate applications from CIMC for Guangdong Xinhui CIMC Special Transportation Equipment Co., Ltd., Nantong CIMC-Special Transportation Equipment Manufacture Co., Ltd., and Qingdao CIMC Container Manufacture Co., Ltd., as part of CIMC's Section A response on August 21, 2014.¹⁸ CIMC submitted a separate rate application for China International Marine Containers (Group) Ltd. on October 21, 2014.¹⁹

On July 17, 2014, the Department issued its standard antidumping (AD) NME questionnaire to CIMC and Singamas.²⁰

On July 25, 2014, Petitioner timely requested pursuant to section 733(c)(1)(A) and 19 CFR 351.205(e) a postponement of the preliminary determination because the Department was still gathering questionnaire responses from the mandatory respondents and publicly-available

¹² See *53-Foot Domestic Dry Containers From China*, 79 FR 33950 (June 13, 2014). See also *53-Foot Domestic Dry Containers from China*, Investigation Nos. 701-TA-514 & 731-TA-1250 (Preliminary), Publication 4454 (June 2014) (*ITC's Preliminary Report*).

¹³ See Letter to the Secretary of Commerce from Singamas, dated July 10, 2014 (Additional Singamas Product Characteristic Comments); Letter to the Secretary of Commerce from CIMC, dated July 10, 2014 (Additional CIMC Product Characteristic Comments); and Letter to the Secretary of Commerce from Petitioner, dated July 10, 2014 (Additional Petitioner Product Characteristic Comments).

¹⁴ See Letter to the Secretary of Commerce from Singamas, dated July 14, 2014 (Additional Singamas Product Characteristic Rebuttal Comments).

¹⁵ See *Initiation Notice*, 79 FR at 28677.

¹⁶ 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>.

¹⁷ See Letters to Singamas and CIMC, dated July 17, 2014.

¹⁸ See Letter to the Secretary of Commerce from CIMC, dated August 21, 2014 (CIMC Section A response) at pages A-3 through A-30.

¹⁹ See Letter to the Secretary of Commerce from CIMC, dated October 21, 2014 (CIMC Section A supplemental response) at Exhibit 1.

²⁰ See Letters to Singamas and CIMC, dated July 17, 2014.

information necessary to value respondents' factors of production (FOPs).²¹ On September 30, 2014, Department officials conducted a plant tour of Petitioner's facilities.²²

As discussed below, the Department preliminarily determines pursuant to section 771(33)(F) of the Act that the producers HPCL, QPCL, QSCL, Singamas Management Services Limited, and Singamas Containers Holders Limited are affiliated, and that these companies should be treated as a single entity for AD purposes pursuant to 19 CFR 351.401(f). Also, the Department preliminarily determines that China International Marine Containers (Group) Ltd., China International Marine Containers (HK) Ltd., Guangdong Xinhui CIMC Special Transportation Equipment Co., Ltd., Nantong CIMC-Special Transportation Equipment Manufacture Co., Ltd., Qingdao CIMC Container Manufacture Co., Ltd., and Xinhui CIMC Container Co., Ltd. are affiliated, and that these companies should be treated as a single entity for AD purposes pursuant to 19 CFR 351.401(f).²³ Between August 21, 2014, and October 30, 2014, CIMC and Singamas submitted responses to the Department's AD questionnaire and supplemental questionnaires and Petitioner submitted comments on those questionnaire responses.

On October 9, 2014, Crowley Maritime Corporation requested permission to file comments related to the scope²⁴ and on October 14, 2014, the Department granted it permission to do so.²⁵ On October 17, 2014, Crowley Maritime Corporation filed comments related to the scope.²⁶ On October 24, 2014, Petitioner filed rebuttal comments to Crowley Maritime Corporation's October 17, 2014, comments.²⁷ On October 24 and 27, 2014, respectively, the Department issued "double remedy" questionnaires to CIMC and Singamas.

On October 30, 2014, Petitioner filed a critical circumstances allegation and made a timely request pursuant to section 733(e)(1)(A) of the Act.²⁸ Also, on October 30, 2014, Petitioner submitted comments for consideration in the preliminary determination with respect to CIMC.²⁹

²¹ See Letter from Petitioner to the Department, "53-Foot Domestic Dry Containers from the People's Republic of China," dated July 25, 2014.

²² See Memorandum to the File, "Antidumping Duty Investigation of 53-Foot Domestic Dry Containers (Domestic Dry Containers) from the People's Republic of China: Department of Commerce Visit to Stoughton Trailers, LLC," dated October 9, 2014.

²³ See Memorandum from Brian Davis, International Trade Compliance Analyst, Enforcement & Compliance, Office VI, to Richard Weible, Director, Enforcement & Compliance, Office IV, regarding "Certain 53-Foot Domestic Dry Containers from the People's Republic of China: Affiliation and Single Entity Status" dated November 19, 2014. (Singamas Single Entity Memo) and Memorandum from John Drury, International Trade Analyst, Enforcement & Compliance, Office VI, to Richard Weible, Director, Enforcement & Compliance, Office IV, regarding "Certain 53-Foot Domestic Dry Containers from the People's Republic of China: Affiliation and Single Entity Status" dated November 19, 2014 (CIMC Single Entity Memo).

²⁴ See Letter from Crowley Maritime Corporation to the Department, "AD Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Request for Scope Comment," dated October 9, 2014.

²⁵ See Letter to Crowley Maritime Corporation from the Department, dated October 14, 2014.

²⁶ See Letter from Crowley Maritime Corporation to the Department, "AD Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China; Scope Comment," dated October 17, 2014.

²⁷ See Letter from Petitioner to the Department, "53-Foot Domestic Dry Containers from the People's Republic of China," dated October 24, 2014.

²⁸ See Letter from Petitioner to the Department, "53-Foot Domestic Dry Containers from the People's Republic of China," dated October 30, 2014 (Petitioner's Critical Circumstances Allegation).

²⁹ See Letter from Petitioner to the Department, "53-Foot Domestic Dry Containers from the People's Republic of China," dated October 30, 2014.

On November 5, 2014, Petitioner submitted comments for consideration in the preliminary determination with respect to CIMC and Singamas.³⁰ On November 6, 2014, CIMC submitted comments for consideration in the preliminary determination.³¹ On November 7, 2014, Singamas filed a response to the Department's double remedy questionnaire.³² Also, on November 7, 2014, Singamas filed comments in response to Petitioner's critical circumstances allegation.³³ On November 10, 2014, CIMC filed comments in response to Petitioner's Critical Circumstances Allegation.³⁴ On November 10, 2014, J.B. Hunt Transport, Inc. (J.B. Hunt), a U.S. importer of the subject domestic dry containers, filed comments for the Department's consideration in reaching its preliminary determination.³⁵ On November 12, 2014, J.B. Hunt filed comments in response to Petitioner's Critical Circumstances Allegation.³⁶ Department officials met with company officials from J.B. Hunt and Hub City Terminals, Inc. and their counsel on November 12, 2014.³⁷

On November 12, 2014, we received rebuttal comments from CIMC regarding Petitioner's November 5, 2014, pre-preliminary comments which included comments on surrogate values.³⁸ On November 12, 2014, we requested quantity and value shipment data from CIMC in light of Petitioner's Critical Circumstances Allegation.³⁹ We received CIMC's response to our request

³⁰ See Letter from Petitioner to the Department, "53-Foot Domestic Dry Containers from the People's Republic of China," dated November 5, 2014.

³¹ See Letter from CIMC to the Department, "Antidumping Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Pre-Preliminary Determination Comments," dated November 6, 2014.

³² On November 17, 2014, we rejected CIMC's double-remedy questionnaire response as untimely. See Letter from the Department to CIMC, dated November 17, 2014. See also the Memorandum to the File, "Antidumping Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China; Request to Take Action on Certain Barcodes," dated November 17, 2014.

³³ See Letter from Singamas to the Department, "53-Foot Domestic Dry Containers from the People's Republic of China: Response to Petitioner's Critical Circumstances Allegation," dated November 7, 2014 (Singamas's Response to Petitioner's Critical Circumstances Allegation).

³⁴ See Letter from CIMC to the Department, "Antidumping Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Response to Petitioner's "Critical Circumstances" Allegation," dated November 10, 2014 (CIMC's Response to Petitioner's Critical Circumstances Allegation).

³⁵ See Letter from J.B. Hunt to the Department, "Antidumping Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Pre-Preliminary Determination Comments of JB Hunt Transport, Inc. Regarding Ownership of CIMC," dated November 10, 2014.

³⁶ See Letter from J.B. Hunt to the Department, "53-Foot Domestic Dry Containers from the People's Republic of China: Comments of JB Hunt Transport, Inc. Regarding Petitioner's Critical Circumstances Allegation," dated November 12, 2014 (J.B. Hunt's Response to Petitioner's Critical Circumstances Allegation).

³⁷ See Memorandum to the File from John K. Drury, International Trade Compliance Analyst, "Antidumping Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Ex parte Meeting with Interested Parties J.B. Hunt Transportation, Inc., and Hub City Terminals, Inc.," dated November 18, 2014.

³⁸ See Letter from CIMC to the Department, "Antidumping Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Comments Regarding the Department's Preliminary Determination Antidumping Duty Margin Calculation for CIMC and Rebuttal of Petitioner's Comments," dated November 12, 2014. In particular, CIMC argued that Petitioner's November 5, 2014, filing contained untimely filed new factual information with respect to certain surrogate value information. We reviewed CIMC's allegations and determine that the information at issue contained in Petitioner's November 5, 2014, pre-preliminary comments meet the requirements of 19 CFR 351.301(2)(vi), wherein such information rebuts or clarifies information submitted by CIMC in its October 30, 2014, supplemental questionnaire response (which contained new information regarding the inputs used to produce subject domestic dry containers). Therefore, we are accepting Petitioner's November 5, 2014, filing.

³⁹ See Letter from the Department to CIMC, dated November 12, 2014.

for shipment data on November 17, 2014. Also, on November 17, 2014,⁴⁰ CIMC filed a letter requesting that if the Department were to find it not entitled to a separate rate that we should still rely upon on its reported sales and FOPs data to determine the PRC-wide entity rate. On November 18, 2014, CIMC filed a letter requesting the Department reconsider its rejection of its double remedy questionnaire response.⁴¹

PERIOD OF INVESTIGATION

The POI is October 1, 2013, through March 31, 2014. This period corresponds to the two most recently completed fiscal quarters as of the month preceding the month in which the petition was filed, which was April 2014.⁴²

POSTPONEMENT OF PRELIMINARY DETERMINATION

On August 28, 2014, pursuant to section 733(c)(1)(B) of the Act and 19 CFR 351.205(b)(2), the Department published a 50-day postponement of the preliminary AD determination on domestic dry containers from the PRC.⁴³

SCOPE OF THE INVESTIGATION

The merchandise subject to investigation is closed (*i.e.*, not open top) van containers exceeding 14.63 meters (48 feet) but generally measuring 16.154 meters (53 feet) in exterior length, which are designed for the intermodal transport⁴⁴ of goods other than bulk liquids within North America primarily by rail or by road vehicle, or by a combination of rail and road vehicle (domestic containers). The merchandise is known in the industry by varying terms including “53-foot containers,” “53-foot dry containers,” “53-foot domestic dry containers,” “domestic dry containers” and “domestic containers.” These terms all describe the same article with the same design and performance characteristics. Notwithstanding the particular terminology used to describe the merchandise, all merchandise that meets the definition set forth herein is included within the scope of this investigation.

Domestic containers generally meet the characteristic for closed van containers for domestic intermodal service as described in the American Association of Railroads (AAR) Manual of Standards and Recommended Practices Intermodal Equipment Manual Closed Van Containers for Domestic Intermodal Service Specification M 930 Adopted: 1972; Last Revised 2013 (AAR

⁴⁰ On November 17, 2014, the Department contacted CIMC and requested that it file for the record certain databases that were not readable or were inadvertently not included in its October 31, 2014, second supplemental response by 5 p.m. Eastern Time on November 17, 2014. See Memorandum to the File from John K. Drury, International Trade Compliance Analyst, “Antidumping Duty Investigation of 53-Foot Domestic Dry Containers from the People’s Republic of China: Telephone Conversation with Counsel to CIMC,” dated November 19, 2014.

⁴¹ See Letter from CIMC to the Department, “Antidumping Duty Investigation of 53-Foot Domestic Dry Containers from the People’s Republic of China: Double-Remedy AD Cash Deposit Offset for CIMC,” dated November 18, 2014.

⁴² See 19 CFR 351.204(b)(1).

⁴³ See *53-Foot Domestic Dry Containers From the People’s Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 79 FR51305 (August 28, 2014).

⁴⁴ “Intermodal transport” refers to a movement of freight using more than one mode of transportation, most commonly on a container chassis for on-the-road transportation and on a rail car for rail transportation.

Specifications) for 53-foot and 53-foot high cube containers. The AAR Specifications generally define design, performance and testing requirements for closed van containers, but are not dispositive for purposes of defining subject merchandise within this scope definition. Containers which may not fall precisely within the AAR Specifications or any successor equivalent specifications are included within the scope definition of the subject merchandise if they have the exterior dimensions referenced below, are suitable for use in intermodal transportation, are capable of and suitable for double-stacking⁴⁵ in intermodal transportation, and otherwise meet the scope definition for the subject merchandise.

Domestic containers have the following actual exterior dimensions: an exterior length exceeding 14.63 meters (48 feet) but not exceeding 16.154 meters (53 feet); an exterior width of between 2.438 meters and 2.60 meters (between 8 feet and 8 feet 6 3/8 inches); and an exterior height of between 2.438 meters and 2.908 meters (between 8 feet and 9 feet 6 1/2 inches), all subject to tolerances as allowed by the AAR Specifications. In addition to two frames (one at either end of the container), the domestic containers within the scope definition have two stacking frames located equidistant from each end of the container, as required by the AAR Specifications. The stacking frames have four upper handling fittings and four bottom dual aperture handling fittings, placed at the respective corners of the stacking frames. Domestic containers also have two forward facing fittings at the front lower corners and two downward facing fittings at the rear lower corners of the container to facilitate chassis interface.

All domestic containers as described herein are included within this scope definition, regardless of whether the merchandise enters the United States in a final, assembled condition, or as an unassembled kit or substantially complete domestic container which requires additional manipulation or processing after entry into the United States to be made ready for use as a domestic container.

The scope of this investigation excludes the following items: 1) refrigerated containers; 2) trailers, where the cargo box and rear wheeled chassis are of integrated construction, and the cargo box of the unit may not be separated from the chassis for further intermodal transport; 3) container chassis, whether or not imported with domestic containers, but the domestic containers remain subject merchandise, to the extent they meet the written description of the scope. Imports of the subject merchandise are provided for under subheading 8609.00.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Imports of the subject merchandise which meet the definition of and requirements for “instruments of international traffic” pursuant to 19 U.S.C. §1322 and 19 C.F.R. §10.41a may be classified under subheading 9803.00.50, HTSUS. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise as set forth herein is dispositive.

SCOPE COMMENTS

In accordance with the preamble to the Department’s regulations, and as noted in the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the

⁴⁵ “Double-stacking” refers to two levels of intermodal containers on a rail car, one on top of the other.

Initiation Notice.⁴⁶ On May 29, 2014, we received a request from CIMC to extend the deadline for scope comments by seven days. On May 30, 2014, we granted CIMC's extension request.⁴⁷ On June 9, 2014, we received scope comments from Petitioner and Singamas requesting no changes to the scope language, as it was written in the *Initiation Notice*.

Crowley Maritime Corporation requested that the Department confirm that "Crowley's 53-foot marine ISO containers" are outside the scope of this investigation. It noted that its containers are fundamentally different from the subject domestic dry containers. It states that its containers are ISO certified and used in international marine trade whereas subject domestic dry containers are used primarily for transporting merchandise primarily by road and rail. It notes that because of the applications of its 53-foot marine ISO containers, they are made with more steel, are heavier, and have different lifting points than the subject domestic dry containers. These qualities also allow them to be more stable when lifting and they have higher stacking capability than the subject domestic dry containers. On October 24, 2014, Petitioner filed comments opposing Crowley Maritime Corporation's request. It noted that Crowley's 53-foot marine ISO containers "fit squarely within the black-and-white language of the scope of this investigation."

We agree with Petitioner, the 53-foot marine ISO containers possess the same dimensional characteristics as the subject domestic dry containers, and have the stacking frames and fittings as detailed in the scope language. Therefore, an analysis of Crowley Maritime Corporation's 53-foot marine ISO containers indicates that its products meet the plain language of the scope of this investigation. Although there are certain differences between the subject domestic dry containers and the 53-foot marine ISO containers, these differences are not characteristics that define the scope of this investigation.

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country

The Department considers the PRC to be an NME country.⁴⁸ 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. No information or argument has been presented to demonstrate that the PRC should not be considered to be an NME. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination.

⁴⁶ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); see also *Initiation Notice*, 79 FR at 28679-80.

⁴⁷ See Letter to CIMC from Angelica Mendoza, Program Manager, AD/CVD Operations, Office VI, Enforcement and Compliance, dated May 30, 2014.

⁴⁸ See, e.g., *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).

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 (NV), in most circumstances, on the NME producer's 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: (A) at a level of economic development comparable to that of the NME country; and (B) significant producers of comparable merchandise."⁴⁹ To determine which countries are at a comparable level of economic development, the Department generally relies solely on per capita gross national income (GNI) data from the World Bank's *World Development Report*.⁵⁰ 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 prefers to value FOPs in a single surrogate country) based on data availability and quality.

On May 19, 2014, the Department identified Bulgaria, Colombia, Ecuador, Indonesia, South Africa, and Thailand as being at the same level of economic development as the PRC.⁵¹ On May 21, 2014, the Department issued a letter to the interested parties that not only solicited comments on the list of countries that the Department determined, based on per capita GNI, to be at the same level of economic development as the PRC, and the selection of the primary surrogate country, but also provided deadlines for the consideration of any submitted surrogate value information for the preliminary determination.⁵² On May 23, 2014, the Department received a request from CIMC to extend the deadline to submit comments on the Surrogate Country Memo.⁵³ The Department granted this requested extension on May 23, 2014.⁵⁴ The Department received timely comments on the surrogate country list and surrogate country selection from Petitioner, and timely filed rebuttal comments from CIMC.⁵⁵ Singamas submitted information indicating the countries that are at the same level of economic development as the PRC, relating to the issue of surrogate country selection.

⁴⁹ For a description of the Department's practice, see Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on the Department's website at <http://enforcement.trade.gov/policy/bull04-1.html>.

⁵⁰ *Id.*

⁵¹ See Memorandum from Carole Showers, Director, Office of Policy, to Angelica Mendoza, Program Manager, Office IV, Enforcement and Compliance, "Request for a List of Surrogate Countries for an Antidumping Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China," dated May 19, 2014 (Surrogate Country Memo).

⁵² See Letter to All Interested Parties, "Antidumping Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information," dated May 21, 2014.

⁵³ See Letter from CIMC, "Re: AD Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Request for Extension of Deadlines to Submit Quantity and Value Questionnaire Response and File Comments on the Department's Proposed List of Surrogate Countries," dated May 23, 2014.

⁵⁴ See Letter to All Interested Parties extending the deadline to submit comments on the Surrogate Country Memo, dated May 23, 2014.

⁵⁵ See Surrogate Country Memo comments filed by Petitioner on June 11, 2014 and rebuttal comments filed by CIMC on June 16, 2014.

In its comments, Petitioner recommended that the Department select Thailand as the primary surrogate country, in particular because Thailand is at the same level of economic development as the PRC, is a significant producer of identical or comparable merchandise, and the data from Thailand used for valuing the factors of production for domestic dry containers are available and reliable. In its rebuttal comments, CIMC argued that the Department should expand the list of surrogate countries to include Ukraine, Romania, and Malaysia. Alternatively, if the Department determines the final list should be limited to only six countries, CIMC requested that Ukraine, Romania, and Malaysia be added to the list, and that Colombia, Bulgaria, and Ecuador be removed from the list, as these latter three countries are not known to CIMC as significant producers of merchandise comparable to domestic dry containers.⁵⁶ Singamas submitted a table of “Key indicators of development” from the World Bank’s 2014 *World Development Report*; identifying countries at the same level of economic development as the PRC.

A. Economic Comparability

As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable options because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.⁵⁷

Consistent with its practice, and section 773(c)(4)(A) of the Act,⁵⁸ the Department identified Bulgaria, Colombia, Ecuador, Indonesia, South Africa, and Thailand as countries at the same level of economic development as the PRC based on the most current annual issue of *World Development Report 2014*.⁵⁹

B. Significant Producer of Comparable Merchandise

Among the factors we consider in determining whether a country is a significant producer of comparable merchandise is whether the country is an exporter of comparable merchandise. In order to determine whether the above-referenced countries are significant producers of comparable merchandise, we examined whether any of the potential surrogate countries exported merchandise comparable to the merchandise under consideration. Accordingly, the Department obtained export data for the six-digit Harmonized Tariff System (HTS) number listed in the description of the scope of this investigation specific to domestic dry containers (*i.e.*, 8609.00) for each of the six potential surrogate countries listed above. We found that only Thailand was a

⁵⁶ We note that in support of its comments CIMC did not provide documentation to support that Ukraine, Romania, and Malaysia were significant producers of merchandise comparable to domestic dry containers. CIMC also did not provide any surrogate data from any of these countries in its later surrogate value submissions. CIMC did supply Gross National Income figures in support of its contention that all three countries were at a similar level of development as the PRC. *See* Letter from CIMC to the Secretary of Commerce, dated June 16, 2014.

⁵⁷ *See* Surrogate Country Memo.

⁵⁸ *See* Surrogate Country Memo.

⁵⁹ *See id.*

significant producer of merchandise comparable to the merchandise under consideration during the POI. Additionally, we preliminarily find that record evidence does not suggest that the Department should add Ukraine, Romania or Malaysia to the list of potential surrogate countries. While CIMC provided Gross National Income figures to support its claim that the three countries were at a comparable level of development to the PRC, they did not provide any evidence indicating that the countries were significant producers of domestic dry containers or any surrogate value information from any of these countries.⁶⁰ Furthermore, Petitioner, CIMC, and Singamas all agree that only Thailand was a significant producer of merchandise comparable to the merchandise under consideration during the POI. Given the foregoing, we conclude that Thailand is the only country that satisfies the statutory criterion of being a significant producer.

C. Data Availability

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, the Department selects the primary surrogate country based on data availability and reliability.⁶¹ Although Thailand is the only country we determine satisfies both statutory requirements that the surrogate country be at a level of economic development comparable to the PRC and a significant producer of subject merchandise, we also examined the availability and reliability of surrogate value data from Thailand. When evaluating surrogate value data, the Department considers several factors, including whether the surrogate values are publicly available, contemporaneous with the POI, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.⁶²

Petitioner, CIMC, and Singamas placed surrogate value data on the record for Thailand. All three parties are in agreement that only Thailand was a significant producer of merchandise comparable to the merchandise under consideration during the POI. Given the foregoing, we selected Thailand as the primary surrogate country. Therefore, the Department calculated NV using Thai import prices when available and appropriate to value respondents' FOPs.

Surrogate Value Comments

Petitioner, CIMC, and Singamas filed surrogate value comments and surrogate value information with which to value the FOPs in this proceeding on September 22, 2014. Petitioner filed rebuttal surrogate value comments on September 29, 2014. On October 20, 2014, Petitioner filed additional comments related to surrogate financial ratios and on October 30, 2014, Singamas filed rebuttal comments to those comments. For a detailed discussion of the surrogate values used in this LTFV proceeding, *see* the "Factor Valuation Methodology" section below and the Preliminary SV Memorandum.

Separate Rates

In proceedings involving NME countries, the Department maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be

⁶⁰ *See* Letter from CIMC to the Secretary of Commerce, dated June 16, 2014.

⁶¹ For a description of our practice, *see* Policy Bulletin 04.1.

⁶² *See id.*

assessed a single weighted-average dumping margin.⁶³ The Department'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.⁶⁴ The Department analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*⁶⁵ and further developed in *Silicon Carbide*.⁶⁶ According to this separate rate test, the Department 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, the Department 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.

The Department continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from the PRC antidumping duty proceeding, and Commerce's determinations therein.⁶⁷ In particular, in litigation involving the diamond sawblades from the PRC proceeding, the U.S. Court of International Trade (CIT) found the Department's existing separate rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity had significant ownership in the respondent exporter.⁶⁸ As described below with respect to CIMC, and in light of the CIT's decisions in the diamond sawblades from the PRC litigation, we consider the level of government ownership and the control exercised by the government through such ownership over the operations of the company, including, for example,

⁶³ 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).

⁶⁴ 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*).

⁶⁵ *Id.*

⁶⁶ 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*).

⁶⁷ See *Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China* (May 6, 2013) in *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), affirmed in *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd* (mandate pending) Case No. 2014-1154 (Fed. Cir. 2014) (*Advanced Technology II*). This remand redetermination is on the Enforcement and Compliance website at <http://enforcement.trade.gov/remands/12-147.pdf>. See also *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013) and accompanying Preliminary Decision Memo at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) and accompanying Issues and Decision Memorandum at Comment 1.

⁶⁸ 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 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).

the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate.

A. Separate Rate Recipient

The Department preliminarily grants Singamas a separate rate. Singamas provided evidence that it is a wholly-foreign owned limited company.⁶⁹ Accordingly, a separate rate analysis is not necessary for this company.

B. Company Not Receiving a Separate Rate

The Department preliminarily has not granted a separate rate to CIMC. The Department preliminarily determines that CIMC has not demonstrated an absence of *de facto* government control. According to evidence on the record, in 2013, two companies, China Ocean Shipping (Group) Company (COSCO) and China Merchants Group Limited (China Merchants) owned an approximately combined 48.26 percent of all outstanding shares in CIMC Group.⁷⁰ Both COSCO and China Merchants are 100 percent owned by State-owned Assets Supervision and Administration Commission (SASAC),⁷¹ and through affiliates own and control a substantial amount of the shares of CIMC. The record shows that COSCO and China Merchants each have the right to elect directors to the board.⁷² Additionally, with respect to the Board of Directors, we note that of the seven members of the Board listed in CIMC's 2013 annual report, four of those members also hold positions on the Boards of Directors for COSCO and China Merchants (or their affiliates).⁷³ For example, My Li Jianhong is listed as the Chairman of the Board for CIMC, and also is the director and president of China Merchants.⁷⁴ Also, the Chairman of the Supervisory Committee and Chief Financial Officer is also listed as a member on the board of COSCO.⁷⁵

CIMC asserts that neither COSCO, China Merchants, nor SASAC, actively participate in the day-to-day operations of CIMC.⁷⁶ However, record evidence shows that members of boards of directors for both COSCO and China Merchants participate in the day-to-day operations of CIMC.⁷⁷ CIMC's Board implements business and investment plans and has authority to appoint

⁶⁹ See Singamas's Section A questionnaire response, dated August 21, 2014 at 7, 9, 13-15, 23-15, and Exhibits-A 6-19.

⁷⁰ See Letter to the Secretary of Commerce from CIMC, "Antidumping Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Response to Supplemental Section A Questionnaire," dated October 21, 2014 (CIMC SAQR) at pages 4-5 of Exhibit 4 (pages 100-101 of CIMC Group's 2013 Annual Report), and Exhibit 7.

⁷¹ The PRC's State-owned Assets Supervision and Administration Commission of the State Council (SASAC).

⁷² Article 62 defines a "controlling shareholder" as someone who has the power to elect half of the board, or who has the power to exercise 30 percent of the voting rights of shareholders, who owns 30 percent or more of shares, or who has de facto ownership of the company. See SAQR at pages 99-100 of Exhibit 6 (pages 25-26 of CIMC's Articles of Association).

⁷³ See CIMC SAQR, Exhibit 7 at pages 923-925 (pages 104 – 106 of CIMC Group's 2013 Annual Report).

⁷⁴ *Id.* at page 923 (page 104 of CIMC Group's 2013 Annual Report).

⁷⁵ *Id.* at page 932 (page 112 of CIMC Group's 2013 Annual Report).

⁷⁶ See CIMC SAQR at pages 4 – 5.

⁷⁷ *Id.* at Exhibit 6 at pages 128 - 133 (pages 54 – 59 of CIMC's Articles of Association) for a list of the functions and responsibilities of the board of directors for CIMC.

or dismiss senior managers.⁷⁸ CIMC's board also has the authority to appoint independent directors⁷⁹ and appoints the president of the company.⁸⁰ Therefore, although the SASAC ownership is less than a majority, record evidence leads us to conclude that COSCO and China Merchants are "controlling shareholders" as defined by the Articles of Association for CIMC.⁸¹ Accordingly, based on this evidence, we find that CIMC has not demonstrated an absence of *de facto* government control and is considered to be the PRC-wide entity.

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation.⁸² This practice is described in Policy Bulletin 05.1.⁸³

The PRC-wide Entity

As discussed above, we have determined not to grant a separate rate to CIMC. Specifically, we found that CIMC has not demonstrated an absence of *de facto* government control. Petitioner initially listed Jindo as a potential known exporter and/or producer of merchandise under consideration in the Petition, which prompted the Department to issue a Q&V questionnaire.⁸⁴ As explained above, the Department did not receive a response to its Q&V questionnaire from Jindo.⁸⁵ However, subsequently Petitioner stated that CIMC and Singamas are the only two known producers/exporters of the subject merchandise in the PRC.⁸⁶ Therefore, we are preliminarily not considering Jindo to be an exporter and/or producer of merchandise under consideration during the POI.⁸⁷ In light of Petitioner's recent statement that there are only two known producers and exporters, Singamas and CIMC, absent information to the contrary, and our determination that CIMC is not entitled to a separate rate, CIMC has reported information to calculate a dumping margin as the PRC-wide entity for purposes of this investigation. The Department notes that its practice regarding separate rates determinations has recently evolved in response to the CIT's rejection of the Department's granting of a separate rate in circumstances similar to those with respect to CIMC.⁸⁸ Therefore, given the unique facts

⁷⁸ *Id.* at Exhibit 6 at pages 129 (page 55 of CIMC's Articles of Association).

⁷⁹ *Id.* at Exhibit 6 at page 134 (page 61 of CIMC's Articles of Association).

⁸⁰ *Id.* at Exhibit 6 at pages 144 – 145 (pages 71 – 72 of CIMC's Articles of Association).

⁸¹ See SAQR at pages 99-100 of Exhibit 6 (pages 25-26 of CIMC's Articles of Association).

⁸² See *Initiation Notice*.

⁸³ See *Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries*, dated April 5, 2005 found at: <http://enforcement.trade.gov/policy/bull05-1.pdf>.

⁸⁴ See AD Petition at 12-13.

⁸⁵ See Q&V Delivery.

⁸⁶ See Petitioner's Critical Circumstances Allegation at 5, footnote 7, wherein Petitioner cites to the ITC's Preliminary Report at 4.

⁸⁷ We note that in the preliminary determination of the companion CVD investigation, we found that there were only two producers/exporters of domestic dry containers from the PRC. See *Countervailing Duty Investigation of 53-Foot Domestic Dry Containers From the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 79 FR 58320 (September 29, 2014) and accompanying Preliminary Decision Memorandum at 5 and footnote 12.

⁸⁸ See *Advanced Technology I*, 885 F. Supp. 2d 1343 (CIT 2012); *Advanced Technology II*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd* (mandate pending) Case No. 2014-1154 (Fed. Cir. 2014).

in this investigation, the statutory deadlines for the conduct of this investigation, and as CIMC has responded to our requests for information and has been cooperative throughout this proceeding, we preliminarily calculated the PRC-wide entity rate using CIMC's reported sales and factor-of-production data.⁸⁹

Single Entity Treatment

To the extent that the Department's practice does not conflict with section 773(c) of the Act, the Department has, in prior cases, treated certain NME exporters and/or producers as a single entity if the facts of the case supported such treatment.⁹⁰ Pursuant to 19 CFR 351.401(f)(1), the Department will treat producers as a single entity, or "collapse" them, where: (1) those producers are affiliated; (2) the producers have 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.⁹¹ In determining whether a significant potential for manipulation exists, 19 CFR 351.401(f)(2) states that the Department may consider various factors, including: (1) the level of common ownership; (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, such as 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.⁹²

Section 771(33) of the Act identifies persons that shall be considered "affiliated" or "affiliated persons," including, *inter alia*: (1) members of a family, including brothers and sisters (whether by whole or half-blood), spouses, ancestors, and lineal descendants, (2) any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization; (3) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (4) any person who controls any other person and such other person.⁹³ Section

⁸⁹ See Memorandum to the File, "53-Foot Domestic Dry Containers from the People's Republic of China: Antidumping Duty Investigation; Preliminary Analysis Memorandum for the PRC-Wide Entity," dated concurrently with this memorandum (PRC-Wide Entity Preliminary Analysis Memorandum) for additional information.

⁸⁹ See Memorandum to the File, "53-Foot Domestic Dry Containers from the People's Republic of China: Antidumping Duty Investigation; Preliminary Analysis Memorandum for Hui Zhou Pacific Container Co., Ltd. (HPCL), Qingdao Pacific Container Co., Ltd. (QPCL), Qidong Singamas Energy Equipment Co., Ltd. (QSCL) and Singamas Management Services Limited (SMSL) and their holding company Singamas Container Holdings Limited (collectively, Singamas)," dated concurrently with this memorandum (Singamas Preliminary Analysis Memorandum) for additional information.

⁹⁰ 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).

⁹¹ See, e.g., *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12774-12775 (March 16, 1998).

⁹² See also, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan*, 62 FR 51427, 51436 (October 1, 1997).

⁹³ See sections 771(33)(E)-(G) of the Act.

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.

We preliminarily determine that HPCL, QPCL, QSCL, Singamas Management Services Limited, and Singamas Container Holdings Limited are affiliated pursuant to section 771(33)(F) of the Act and that these companies should be treated as a single entity for AD purposes pursuant to 19 CFR 351.401(f).⁹⁴ These companies are under common control of Singamas Container Holdings Limited⁹⁵ and, therefore, are affiliated in accordance with section 771(33)(F) of the Act. As explained in the proprietary Singamas Single Entity Memo, there is significant common ownership and other shared operations between the producing affiliates and the holding company.⁹⁶ Further, we found that these companies operate production facilities that produce similar or identical products.⁹⁷ We have also determined that there is a significant potential for the manipulation of price or production among these companies as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature of the operations of these companies.^{98,99} Thus we have preliminarily treated these companies as a single entity.

Additionally, we preliminarily determine that China International Marine Containers (Group) Ltd., China International Marine Containers (HK) Ltd., Guangdong Xinhui CIMC Special Transportation Equipment Co., Ltd., Nantong CIMC-Special Transportation Equipment Manufacture Co., Ltd., Qingdao CIMC Container Manufacture Co., Ltd., and Xinhui CIMC Container Co., Ltd. are affiliated pursuant to section 771(33)(F) of the Act and that these companies should be treated as a single entity for AD purposes pursuant to 19 CFR 351.401(f).¹⁰⁰ As explained in the proprietary CIMC Single Entity Memo, there is significant common ownership and other shared operations between the producing affiliates and the group company.¹⁰¹ We preliminarily find that these companies operate production facilities that produce similar or identical products.¹⁰² We have also preliminarily determine that there is a significant potential for the manipulation of price or production among these companies as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature of the operations of these companies.^{103,104} Thus, we have treated these

⁹⁴ See Memorandum from Brian Davis, International Trade Compliance Analyst, Enforcement & Compliance, Office VI, to Richard Weible, Director, Enforcement & Compliance, Office IV, regarding “Certain 53-Foot Domestic Dry Containers from the People’s Republic of China: Affiliation and Single Entity Status” dated November 19, 2014 (Singamas Single Entity Memo).

⁹⁵ See Singamas Single Entity Memorandum.

⁹⁶ *Id.*

⁹⁷ See 19 CFR 351.401(f)(1).

⁹⁸ See Singamas Single Entity Memorandum.

⁹⁹ See 19 CFR 351.401(f)(2).

¹⁰⁰ See Memorandum from John Drury, International Trade Compliance Analyst, Enforcement & Compliance, Office VI, to Richard Weible, Director, Enforcement & Compliance, Office VI, regarding “Certain 53-Foot Domestic Dry Containers from the People’s Republic of China: Affiliation and Single Entity Status” dated November 19, 2014 (CIMC Single Entity Memorandum).

¹⁰¹ *Id.*

¹⁰² See 19 CFR 351.401(f)(1).

¹⁰³ See CIMC Single Entity Memorandum.

¹⁰⁴ See 19 CFR 351.401(f)(2).

companies as a single entity for purposes of preliminarily determining a rate for the PRC-wide entity.

Date of Sale

In identifying the date of sale of the merchandise under consideration, the Department will normally, in accordance with 19 CFR 351.401(i), “use the date of invoice, as recorded in the exporter or producer’s records kept in the normal course of business.” The date of sale is generally the date on which the parties agree upon all material terms of the sale. This normally includes the price, quantity, delivery terms, and payment terms.¹⁰⁵

Singamas indicated that the material terms of its U.S. sales occurred on the shipment date.¹⁰⁶ Singamas also reported that shipment date precedes invoice date. Therefore, we are relying on shipment date as the date of Singamas’s U.S. sales for this preliminary determination.^{107,108}

CIMC indicated that the material terms of its U.S. sales occurred on the commercial invoice date.¹⁰⁹ However, CIMC also reported that the commercial invoice is sometimes issued after the merchandise has shipped. Therefore, we are relying on the commercial invoice as the date of sale except in instances where the shipment date precedes the commercial invoice date; in such instances we will rely upon the shipment date as the date of sale for CIMC’s U.S. sales for this preliminary determination.¹¹⁰

Fair Value Comparisons

In accordance with section 777A(d)(1)(A) of the Act, the Department compared the weighted-average price of the U.S. sales of the merchandise under consideration to the weighted-average NV to determine whether the individually-examined respondents sold merchandise under consideration to the United States at LTFV during the POI.¹¹¹

Export Price

In accordance with section 772(a) of the Act, “the term ‘export price’ means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the

¹⁰⁵ See, e.g., *Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Comment 1.

¹⁰⁶ See Singamas Section A questionnaire response, dated August 21, 2014, at 25.

¹⁰⁷ See *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; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁰⁸ See Singamas Preliminary Analysis Memorandum for additional information.

¹⁰⁹ See CIMC’s second supplemental, dated October 30, 2014, at pages 18-19.

¹¹⁰ See PRC-Wide Entity Preliminary Analysis Memorandum for additional information.

¹¹¹ See “Export Price” and “Normal Value” sections below.

producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).” The Department defined the U.S. price of merchandise under consideration based on the EP for all sales reported by CIMC and Singamas.¹¹² The Department calculated the EP based on the prices at which merchandise under consideration was sold to unaffiliated purchasers in the United States.

The Department made deductions, as appropriate, from the reported U.S. price for billing adjustments, movement expenses (*i.e.*, domestic and foreign inland freight, domestic inland insurance, domestic brokerage and handling, international movement expenses, and marine insurance, drayage fee, and WTP removal fee).¹¹³ The Department based movement expenses on surrogate values where the service was purchased from a PRC company.¹¹⁴

Value-Added Tax

The Department’s recent practice in NME cases is to adjust EP or CEP for the amount of any unrefunded value-added tax (VAT), in accordance with section 772(c)(2)(B) of the Act.¹¹⁵ The Department 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, the Department will reduce the respondent’s EP and CEP prices accordingly by the amount of the tax, duty or charge paid, but not rebated.¹¹⁶ Where the irrecoverable VAT is a fixed percentage of CEP or EP, the Department explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. CEP or EP downward by this same percentage.¹¹⁷ The Department’s methodology, as explained above and applied in this investigation, essentially amounts to performing two basic steps: (1) determining the irrecoverable VAT on subject merchandise, and (2) reducing U.S. price by the amount (or rate) determined in step one.

The Department requested that CIMC and Singamas report net unrefunded VAT for the subject merchandise.¹¹⁸ CIMC and Singamas reported that the official VAT rate for exports of subject merchandise is 17 percent and the refund rate is 15 percent, under the applicable PRC regulations.¹¹⁹

Thus, CIMC and Singamas incurred an effective VAT rate of two percent on exports of domestic dry containers. Because CIMC and Singamas’s reported that they pay VAT associated with

¹¹² See Singamas CQR at C-10.

¹¹³ See section 772(c)(2)(A) of the Act. See also Singamas CQR at C-23 through C-31.

¹¹⁴ See “Factor Valuation Methodology” section below.

¹¹⁵ See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36483-84 (June 19, 2012) (*Methodological Change*).

¹¹⁶ *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 Issues and Decision Memorandum at Comment 5.A.

¹¹⁷ *Id.*

¹¹⁸ See Letters to Singamas and CIMC, dated July 17, 2014.

¹¹⁹ See CIMC Section C-D questionnaire response, dated September 11, 2014 and Singamas’s Section C-D questionnaire response, dated September 10, 2014.

subject merchandise that is not refunded at a rate of two percent, the Department adjusted CIMC (as the PRC-wide entity for this investigation) and Singamas's net price for the unrefunded VAT, in order to calculate export price (EP) net of VAT.¹²⁰ We note that this is consistent with the Department's longstanding policy and the intent of the statute, that dumping comparisons be tax-neutral.¹²¹

Normal Value

Section 773(c)(1) of the Act provides that the Department 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. The Department bases NV 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.¹²² Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), the Department 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 employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.¹²³

Factor Valuation Methodology

In accordance with section 773(c) of the Act, the Department calculated NV based on FOP data reported by CIMC (as the PRC-wide entity for this investigation) and Singamas.¹²⁴ To calculate NV, the Department multiplied the reported per-unit factor-consumption rates by publicly available surrogate values or ME purchase prices, where appropriate, as discussed below. Further, we added freight costs, based on surrogate freight rates, where appropriate, to the inputs that we valued using surrogates. CIMC and Singamas stated that they recovered and sold certain by-products in the production of subject merchandise. In calculating NV we also granted these by-product offsets for CIMC and Singamas, based upon the reported by-product generated during the POI.¹²⁵

¹²⁰ See PRC-Wide Entity Preliminary Analysis Memorandum and Singamas Preliminary Analysis Memorandum.

¹²¹ See *Methodological Change*, (citing *Antidumping Duties; Countervailing Duties*, 62 FR27296, 27369 (May 19, 1997) and Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. I 03-316, vol. I, 827, reprinted in 1994 U.S.C.A.N. 3773, 4172); see also *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Results of Antidumping Administrative Review*; 2011-2012, 78 FR 78333 (December 26, 2013) and accompanying Preliminary Decision Memorandum at Issue 9, unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2011-2012, 79 FR 37715 (July 2, 2014).

¹²² 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).

¹²³ See section 773(c)(3)(A)-(D) of the Act.

¹²⁴ CIMC reported the FOP of wood flooring and I-beams purchased from affiliated suppliers and the FOPs for tolled merchandise, i.e., square tubes, provided by an unaffiliated toller. Singamas reported the FOPs for unaffiliated suppliers/subcontractors of steel, steel scrap, zinc, zinc scrap, welding wire, and coal and the FOP for tolled merchandise provided by unaffiliated tollers, i.e., steel scrap, welding wire, electricity, and labor.

¹²⁵ See Singamas DQR at D-17.

A. ME Prices

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs produced in an ME, from an ME supplier, and pays in an ME currency, the Department normally will use the actual price paid by the respondent to value, in whole or in part, those inputs, except when prices may have been distorted by findings of dumping in the PRC and/or subsidies. Where the Department finds ME purchases to constitute substantially all of the total factor purchased from all sources, (*i.e.*, 85 percent or more),¹²⁶ the Department normally uses the actual purchase prices to value the inputs. Where the quantity of the reported input purchased from ME suppliers is below 85 percent of the total volume of the input purchased from all sources during the POI, and where otherwise valid, the Department weight-averages the ME input's purchase price with the appropriate surrogate value for the input according to their respective shares of the reported total volume of purchases.

Based on information reported by CIMC (as the PRC-wide entity for this investigation) and Singamas that demonstrates that it sourced some of its inputs from an ME country and paid for those inputs in ME currencies,¹²⁷ the Department used CIMC and Singamas's actual ME purchase prices to value those inputs, either in whole, or in part, based upon purchase volume, in accordance with 19 CFR 351.408(c). Where appropriate, we added freight expenses to the ME prices of the inputs. For a detailed description of the values used for the reported ME inputs, *see* PRC-Wide Entity Preliminary Analysis Memorandum¹²⁸ and Singamas's Preliminary Analysis Memorandum.¹²⁹

B. Surrogate Values

When selecting the surrogate values, the Department considered, among other factors, the quality, specificity, and contemporaneity of the data.¹³⁰ As appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. Specifically, the Department 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.¹³¹ An overview of the surrogate values used to calculate weighted-average dumping margins for CIMC (as the PRC-wide entity for this investigation) and Singamas is below. A detailed description of all surrogate values used

¹²⁶ *See Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46699 (August 2, 2013) (where the Department changed its methodology in NME cases, and now requires respondents' purchases of market economy inputs to equal or exceed 85 percent to warrant use of market economy prices to value the input.); *see also Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-61718 (October 19, 2006) (*Antidumping Methodologies: Market Economy Inputs*).

¹²⁷ *See* Singamas DQR at Exhibit D-6 and D-7.

¹²⁸ *See* PRC-Wide Entity Preliminary Analysis Memorandum for additional information.

¹²⁹ *See* Singamas Preliminary Analysis Memorandum for additional information.

¹³⁰ *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 Issues and Decision Memorandum at Comment 9.

¹³¹ *See Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).

to calculate weighted-average dumping margin for the mandatory respondents can be found in the Preliminary Surrogate Value Memorandum.¹³²

We used Thai import data, as published by Global Trade Atlas (GTA), and other publicly available sources from Thailand to calculate surrogate values for CIMC and Singamas's FOPs. In accordance with section 773(c)(1) of the Act, the Department applied the best available information for valuing FOPs by selecting, to the extent practicable, surrogate values which are (1) non-export average values, (2) contemporaneous with, or closest in time to, the POI, (3) product-specific, and (4) tax-exclusive.¹³³ The record shows that Thai import data obtained through GTA, as well as data from other Thai sources, are product-specific, tax-exclusive, and generally contemporaneous with the POI.¹³⁴ In those instances where the Department could not obtain information contemporaneous with the POI with which to value FOPs, the Department adjusted the surrogate values using, where appropriate, Thailand's producer price index (PPI) or consumer price index in the case of labor. Both indices were published in the International Monetary Fund's (IMF) *International Financial Statistics*.

When calculating Thai import-based, per-unit surrogate values, the Department disregarded import prices that it has reason to believe or suspect may be dumped or subsidized. It is the Department's practice, guided by the legislative history, not to conduct a formal investigation to ensure that such prices are not dumped or subsidized; rather, the Department bases its decision on information that is available to it at the time it makes its determination.¹³⁵ In this case, the Department has reason to believe or suspect that prices of exports from India, Indonesia, and South Korea are subsidized. The Department found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, consequently, it is

¹³² See Memorandum to the File, from Brian Davis, International Trade Compliance Analyst, "53-Foot Domestic Dry Containers from the People's Republic of China: Surrogate Values for the Preliminary Determination of the Less-Than-Fair-Value Investigation," dated November 19, 2014 (Preliminary Surrogate Value Memorandum).

¹³³ 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).

¹³⁴ See Preliminary Surrogate Value Memorandum.

¹³⁵ 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 at 55039 (September 24, 2008).

reasonable to infer that all exports from these countries to all markets may be subsidized.¹³⁶ Therefore, the Department has not used data from these countries in calculating Thai import-based surrogate values.

Additionally, the Department disregarded data from NME countries when calculating Thai import-based per-unit surrogate values. The Department also excluded from the calculation of Thai import-based per-unit surrogate values imports labeled as originating from an “unidentified” country because it could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.¹³⁷

In *Labor Methodologies*,¹³⁸ the Department determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country. We valued labor using data reported by the Thailand National Statistics Office which we inflated to be contemporaneous with the POI in this case.¹³⁹

We valued electricity using Thai data from the Metropolitan Electricity Authority of Thailand and Thai data from GTA (coal and natural gas).¹⁴⁰ We did not inflate or deflate the rates as they are contemporaneous with the POI.

We valued water using data from the Metropolitan Waterworks Authority of Thailand. We did not inflate or deflate the rates as they are contemporaneous with the POI.¹⁴¹

We valued steam using data from the 2013 annual report of Glow Energy Public Company Limited, a Thai company that supplies electricity, steam, and water for industrial use.¹⁴²

We valued truck freight using data from the World Bank’s *2014 Doing Business in Thailand*. We did not inflate or deflate the truck rate because it is contemporaneous with the POI.¹⁴³

¹³⁶ See *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; *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; and *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.

¹³⁷ 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).

¹³⁸ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

¹³⁹ See Preliminary Surrogate Value Memorandum at Attachments 1 and 2, respectively.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

We valued inland water freight using South African data found in an article published by the Human Sciences Research Council, a South African research agency. We do not have information on the record from Thailand to value this input, and therefore used available information from another country that the Department determines is at a level of economic development comparable to the PRC as the best available information. The inland water freight rate cited in this article was in effect in 2005 and thus we have adjusted this price based on the difference in PPI between 2005 and the POI.¹⁴⁴

We valued rail freight using domestic rail freight rates for the State Railway of Thailand. We did not inflate or deflate the rail freight rate because it is contemporaneous with the POI.¹⁴⁵

We valued brokerage and handling expenses using a price list for charges related to exporting and importing a standardized cargo of goods in and out of South Africa as published in the World Bank's *2014 Doing Business in Thailand*. We did not inflate or deflate the rate cited in this survey because it is contemporaneous with the POI.¹⁴⁶

We valued marine and foreign inland insurance using a marine insurance rate offered by RJG Consultants.¹⁴⁷ RJG Consultants is an ME provider of marine insurance. The rate is a percentage of the value of the shipment; thus we did not inflate or deflate the rate.

We valued ocean freight using rates from the website <https://my.maerskline.com>, which lists international ocean freight rates offered by Maersk Line.¹⁴⁸ These rates are publicly available and cover a wide range of shipping rates which are reported on a daily basis. We did not inflate or deflate the rate cited in this survey because it is contemporaneous with the POI.

The record contains the 2013 audited financial statements for two Thai companies, Cho Thavee Dollasien Co., Ltd. (and its subsidiary) and GCS Group Corporation Co., Ltd., who produce merchandise comparable to the merchandise under investigation. We used the financial statements of these two companies to value factory overhead, selling, general, and administrative expenses, and profit. Specifically, we applied a simple average to both sets of factory overhead, selling, general, and administrative expenses, and profit and applied that average to CIMC and Singamas. We found that Kitti Container Co., Ltd., another Thai company whose 2013 audited financial statements are on the record, did not produce merchandise similar to that being investigated. Therefore, we did not rely on Kitti Container Co., Ltd.'s financial statement for purposes of this preliminary determination. The financial statements of Cho Thavee Dollasien Co., Ltd. (and its subsidiary) and GCS Group Corporation Co., Ltd. cover the fiscal year ending December 2013 and, therefore, are contemporaneous with the POI.¹⁴⁹

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ See Letter from Petitioner entitled, "53-Foot Domestic Dry Containers from the Republic of China," dated September 22, 2014, at Exhibit 12.

¹⁴⁹ *Id.* at Attachment VI.

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 CIMC and Singamas's sales of the subject merchandise to the United States were made at less than NV, the Department compared the EP to the NV as described above in the "Export Price" and "Normal Value" sections of this memorandum.

A. Determination of Comparison Method

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

In recent investigations and reviews, the Department applied a "differential pricing" analysis to determine whether application of A-T comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.¹⁵⁰ The Department finds that the differential pricing analysis used in those recent investigations and reviews may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the A-A method in calculating weighted-average dumping margins.¹⁵¹

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of EPs for comparable merchandise that differs significantly among purchasers, regions, or time periods. When we find such a pattern the differential pricing analysis evaluates whether such differences can be taken into account when using the A-A method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise, which is defined by the parameters within each respondents reported data fields, *e.g.*, reported consolidated customer code; reported destination code (*e.g.*, zip codes or cities) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau; and quarters within the POI being examined based upon

¹⁵⁰ See, *e.g.*, *Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013) and accompanying Issues and Decisions Memorandum at Comment 5. Differential pricing was also used in the antidumping duty administrative review of certain activated carbon from the People's Republic of China: *Certain Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 26748 (May 8, 2013), unchanged in *Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013) and accompanying Issues and Decisions Memorandum at Comments 2-4.

¹⁵¹ *Id.*

the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that the Department uses in making comparisons between EP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. The Cohen’s *d* coefficient evaluates 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. One of three fixed thresholds defined by the Cohen’s *d* test can quantify the extent of these differences: 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, and the sales are considered to have passed the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and 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 A-T method to all sales as an alternative to the A-A 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 A-T method to those sales identified as passing the Cohen’s *d* test as an alternative to the A-A method, and application of the A-A 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 A-A 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, we examine whether using only the A-A 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 A-A method only. If the difference between the two calculations is meaningful, this demonstrates that the A-A method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A meaningful difference in the weighted-average dumping margins occurs if (1) there is a 25 percent relative change in the weighted average dumping margin between the A-A 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 this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

B. Results of the Differential Pricing Analysis

For CIMC, based on the results of the first stage of the differential pricing analysis, the Department finds that the total sales that passed the Cohen's *d* test was less than 33 percent, and as such, these results do not confirm the existence of a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions or time periods and these results do not support consideration of an alternative to the A-A method.¹⁵² Accordingly, the Department has preliminarily determined to use the A-A method in making comparisons of EP and NV for CIMC.¹⁵³

For Singamas, based on the results of the first stage of the differential pricing analysis, the Department finds that the total sales that passed the Cohen's *d* test was greater than 33 percent, and as such, these results confirm the existence of a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions or time periods and confirms the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions or time periods. Accordingly, the Department considered whether using only the A-A method can appropriately account for such differences. The Department finds that, for Singamas, there is not a meaningful difference in the weighted-average dumping margin when calculated using the A-A method and an alternative comparison method based on the A-to-T method applied to all U.S. sales, and, thus, determines that the A-A method can appropriately account for such differences. Accordingly, the Department has determined to use the A-A method in making comparisons of EP and NV for Singamas.

Currency Conversion

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.

ALLEGATION OF CRITICAL CIRCUMSTANCES

On October 30, 2014, Petitioner timely filed an allegation of critical circumstances regarding CIMC and Singamas.¹⁵⁴ On November 7, 2014, Singamas filed comments in response to

¹⁵² See Singamas's Preliminary Analysis Memorandum.

¹⁵³ In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8104 (February 14, 2012). In particular, the Department compared monthly weighted-average export prices with monthly weighted-average NV s and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

¹⁵⁴ See Petitioner's Critical Circumstances Allegation dated October 30, 2014.

Petitioner's Critical Circumstances Allegation.¹⁵⁵ On November 10, 2014, CIMC also filed comments in response to Petitioner's Critical Circumstances Allegation.¹⁵⁶ On November 12, 2014, interested party J.B. Hunt also filed comments in response to Petitioner's critical circumstance allegation.¹⁵⁷

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. For the reasons explained below, we are preliminarily determining that Petitioner's allegation of critical circumstances for Singamas and the PRC-wide entity (as based on CIMC data for this investigation) is deficient.

Specifically, to demonstrate critical circumstances under section 733(e)(1) of the Act, in addition to demonstrating that imports of the subject merchandise were massive over a relatively short period, Petitioner must demonstrate that, as explained above, there is a reasonable basis to believe or suspect that (1) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (2) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales.

Petitioner did not allege that there has been a history of dumping and material injury pursuant to section 733(e)(1)(A)(i) of the Act. Regarding the importer's knowledge of material injury, it is the Department's normal practice to look to the preliminary determination by the ITC.¹⁵⁸ In this case, however, the ITC preliminarily determined that there is a reasonable indication that the establishment of an industry in the United States is materially retarded by reason of imports of subject merchandise. With respect to Petitioner's allegation that the importers knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales, the Department is not relying on the ITC's

¹⁵⁵ See Singamas's Response to Petitioner's Critical Circumstances Allegation dated November 7, 2014.

¹⁵⁶ See CIMC's Response to Petitioner's Critical Circumstances Allegation dated November 10, 2014.

¹⁵⁷ See Letter from J.B. Hunt to the Secretary of Commerce, dated November 12, 2014.

¹⁵⁸ See, e.g., *Certain Oil Country Tubular Goods From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 79 FR 10478 (February 25, 2014) and accompanying Issues and Decision Memorandum at 20, unchanged in *Certain Oil Country Tubular Goods From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 41973 (July 18, 2014); *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 Issues and Decision Memorandum at 16, unchanged in *Carbon and Certain Alloy Steel Wire Rod 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*, (signed November 12, 2014, not yet published in the *Federal Register*).

preliminary determination of material retardation.¹⁵⁹ Petitioner has failed to provide any evidence that importers knew or should have known that there was likely to be material injury by reason of such sales in a situation where the U.S. industry has not been established. Based on the above, we find Petitioner's Critical Circumstances Allegation to be insufficient to find that critical circumstances exist for exports of merchandise under consideration by the PRC-wide entity and Singamas.

VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information from the PRC-wide entity and Singamas upon which we will rely in making our final determination.

ADJUSTMENT UNDER SECTION 777A(F) OF THE ACT

In applying section 777A(f) of the Act in this investigation, the Department examined (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) 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 (3) whether the Department 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.¹⁶⁰ For a subsidy meeting these criteria, the statute requires the Department to reduce the antidumping duty by the estimated amount of the increase in the weighted average dumping margin subject to a specified cap.¹⁶¹

Since the Department has relatively recently started conducting an analysis under section 777A(f) of the Act, the Department is continuing to refine its practice in applying this section of the law. The Department examined whether the respondents 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.

As a result of our analysis, the Department is preliminarily making an adjustment to the calculation of the cash deposit rate for antidumping duties for Singamas, pursuant to section 777A(f) of the Act, in the manner described below. In making this adjustment, the Department

¹⁵⁹ See, *e.g.*, *Certain Potassium Phosphate Salts from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation*, 75 FR 24572 (May 5, 2010); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 62 FR 61787, 61793 (November 19, 1997) (regarding examination of importer knowledge of material injury when ITC affirmative preliminary determination is based on threat of material injury rather than present material injury). In *Laminated Woven Sacks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 73 FR 5801 (January 31, 2008), the Department found the importer knowledge prong satisfied based on an affirmative preliminary determination of the ITC, which was based on a finding that there was a reasonable indication that the establishment of an industry was materially retarded. The Department's practice with regard to knowledge of present material injury was not fully discussed in that case, and the Department declines to follow that approach here.

¹⁶⁰ See sections 777A(f)(1)(A)-(C) of the Act.

¹⁶¹ See sections 777A(f)(1)-(2) of the Act.

has not concluded that concurrent application of NME ADs and 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.

The Department examined the preliminary report issued by the ITC,¹⁶² which indicates that prices decreased during January 2011 to March 2014.¹⁶³ Based on this information, the Department preliminarily finds that prices of imports of the class or kind of merchandise during the relevant period decreased.

Singamas demonstrated that the Provision of Hot Rolled Sheet and Plate for LTAR and Provision of Electricity for LTAR impacted its cost of manufacturing (COM), and that the other subsidy programs under investigation (*e.g.*, grant programs and tax programs) did not.¹⁶⁴ We preliminarily determine Singamas's questionnaire responses indicate a subsidies-to-cost linkage for certain subsidy programs. Singamas provided information indicating that the price at which it sells subject merchandise to its customers is impacted by the cost of raw materials and energy.¹⁶⁵ Thus, Singamas's questionnaire responses indicate a cost-to-price linkage for the steel sheet and plate and electricity programs that impact COM.

In the companion CVD proceeding, the Department preliminarily determined program-specific rates of subsidized hot rolled sheet and plate and electricity for Singamas.¹⁶⁶ Thus, the Department has the necessary information from the companion CVD proceeding to make the adjustment in this proceeding for purposes of this preliminary determination.

Because the record indicates that several factors other than the cost of hot rolled sheet and plate and electricity impact Singamas's prices to customers,¹⁶⁷ the Department is applying a documented ratio of cost-price changes for the PRC manufacturing sector as a whole, which is based on data provided by Bloomberg, *i.e.*, 94.96, as the estimate of the extent of subsidy pass-through.¹⁶⁸ Accordingly, we are adjusting the preliminary cash deposit rate for estimated domestic subsidy pass through for Singamas by 6.39 percent. However, we are not adjusting the PRC-wide entity rate for estimated domestic subsidy pass through because we have no basis upon which to make such an adjustment.

¹⁶² See *ITC's Preliminary Report*.

¹⁶³ *Id.* at V-4.

¹⁶⁴ See Submission from Singamas, "Double Remedies Questionnaire Response," dated November 7, 2014 (Singamas Double Remedies Response).

¹⁶⁵ *Id.*

¹⁶⁶ See *Countervailing Duty Investigation of 53-Foot Domestic Dry Containers From the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 79 FR 58320 (September 29, 2014) and the accompanying Decision Memorandum.

¹⁶⁷ See Singamas Double Remedies Response at 2-4.

¹⁶⁸ See Double Remedies Calculation Memorandum, dated concurrently with this memorandum.

CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

19 NOVEMBER 2014
Date