



A-570-062
Investigation
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February 12, 2018

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Cast Iron Soil Pipe Fittings
from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that cast iron soil pipe fittings (soil pipe fittings) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

II. BACKGROUND

On July 13, 2017, Commerce received an antidumping duty (AD) petition covering imports of soil pipe fittings from China, filed in proper form on behalf of the Cast Iron Soil Pipe Institute (the petitioner).¹ Commerce initiated this investigation on August 2, 2017.² In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate rate status in non-market economy (NME) LTFV investigations. The process requires exporters to submit a separate rate application (SRA) and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities.³

¹ See Petition for the Imposition of Antidumping Duties: Cast Iron Soil Pipe Fittings from the People's Republic of China, dated July 13, 2017 (Petition).

² See *Cast Iron Soil Pipe Fittings from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 82 FR 37053 (August 8, 2017) (*Initiation Notice*).

³ *Id.*, 82 FR at 37056; see also, 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>.



We stated in the *Initiation Notice* that, in the event respondent selection became necessary, we intended to base our selection of mandatory respondents on responses to quantity and value (Q&V) questionnaires to be sent to each potential respondent named in the Petition.⁴ On August 4, 2017, Commerce issued Q&V questionnaires to the 22 companies that the petitioner identified as potential producers/exporters of soil pipe fittings from China.⁵ In addition, Commerce posted the Q&V questionnaire on its website and, in the *Initiation Notice*, invited parties who did not receive a Q&V questionnaire to file a response to the Q&V questionnaire by the applicable deadline.⁶ We received responses from a total of 14 producers/exporters of subject merchandise.⁷

Additionally, in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of soil pipe fittings to be reported in response to Commerce's AD questionnaire.⁸ NewAge Casting, L.P. (NewAge), an importer of cast iron soil pipe fittings from China, submitted comments regarding the physical characteristics.⁹ No party filed comments on the scope of the investigation in response to Commerce's solicitation in the *Initiation Notice*. However, in its pre-preliminary comments, the petitioner commented on the harmonized tariff schedule (HTS) number relevant to the scope.¹⁰ For further discussion, *see* the "Scope Comments" section, below.

On August 28, 2017, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of cast iron soil pipe fittings from China.¹¹

On September 5, 2017, based on responses to the Q&V questionnaires, we selected Kingway Pipe Co., Ltd. (Kingway Pipe), Shanxi Xuanshi Industrial Group Co., Ltd. (Shanxi Xuanshi), and Wor-Biz International Trading Co., Ltd. (Anhui) (Wor-Biz) for individual examination as mandatory respondents.¹² On September 8, 2017, Kingway Pipe notified Commerce of its intention not to participate in this investigation.¹³ Consequently, on September 19, 2017, we selected Sibol International Limited (Sibol) as an additional company for individual examination.¹⁴

⁴ In the *Initiation Notice*, we also stated that the presumption of NME status for China has not been revoked by Commerce and, therefore, remains in effect for purposes of the initiation of this investigation. *See Initiation Notice*, 82 FR at 37056.

⁵ *See* Commerce Letter, "Quantity and Value Questionnaire for the Antidumping Duty Investigation of Cast Iron Soil Pipe Fitting from People's Republic of China," dated August 4, 2017, and Memorandum, "Quantity and Value Questionnaire Delivery Results," dated August 18, 2017 (Q&V Delivery Results); *see also*, Petition at Volume I, Exhibit I-4.

⁶ *See Initiation Notice*, 82 FR at 37056.

⁷ *See* Memorandum, "Antidumping Duty Investigation of Cast Iron Soil Pipe Fittings from the People's Republic of China: Respondent Selection," dated September 5, 2017 (Respondent Selection Memorandum).

⁸ *See Initiation Notice*, 82 FR at 37054.

⁹ *See* Letter from NewAge, "Cast Iron Soil Pipe Fittings from the People's Republic of China: Comments on Physical Characteristics," dated August 17, 2017.

¹⁰ *See* Letter from the petitioner, "Cast Iron Soil Pipe Fittings from the People's Republic of China: Pre-Preliminary Comments," dated January 18, 2018 (Petitioner's Pre-Preliminary Comments).

¹¹ *See Investigations: Cast Iron Soil Pipe Fittings from China*, 82 FR 42113 (September 6, 2017).

¹² *Id.* at 6.

¹³ *See* Letter from Kingway Pipe, "Cast Iron Soil Pipe Fittings from the People's Republic of China ("Soil Pipe Fittings"); A-570-062; Notification," dated September 8, 2017 (Kingway Pipe Notification).

¹⁴ *See* Memorandum, "Antidumping Duty Investigation of Cast Iron Soil Pipe Fittings from the People's Republic of China: Selection of Additional Mandatory Respondent," dated September 19, 2017.

In October 2017, Wor-Biz, Sib0, and Shanxi Xuanshi submitted timely responses to section A of Commerce’s AD questionnaire, *i.e.*, the section relating to general information.¹⁵ From October 2017 through November 2017, Wor-Biz, Sib0, and Shanxi Xuanshi submitted timely responses to sections C and D of Commerce’s AD questionnaire, *i.e.*, the sections relating to U.S. sales, and factors of production (FOP)/normal value (NV), respectively.¹⁶ From November 2017 through January 2018, we issued supplemental questionnaires to the respondents. We received responses to these supplemental questionnaires during the same time period.¹⁷ On November 27, 2017, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), Commerce published in the *Federal Register* a postponement of the preliminary determination by 50 days until no later than February 8, 2018.¹⁸ On January 23, 2018, Commerce tolled the deadline for the preliminary determination until February 12, 2018, due to the partial shutdown of the Federal Government from January 20, 2018, through January 22, 2018.¹⁹ From January 2018 through February 2018, we received comments for the preliminary determination from the petitioner and

¹⁵ See Letters from Shanxi Xuanshi, “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Response to Section A of the Department Questionnaire,” dated October 10, 2017 (Shanxi Xuanshi AQR); Wor-Biz, “Cast Iron Soil Pipe Fittings from the People’s Republic of China: Submission Of Section A Response,” dated October 12, 2017 (Wor-Biz AQR); and, Sib0, “Cast Iron Soil Pipe Fittings from the People’s Republic of China: Section A Questionnaire Response,” dated October 17, 2017 (Sib0 AQR).

¹⁶ See Letters from Shanxi Xuanshi, “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Response to Sections C and D and Appendix V of the Department Questionnaire,” dated October 30, 2017 (Shanxi Xuanshi CDQR); Wor-Biz, “Cast Iron Soil Pipe Fittings from the People’s Republic of China; Sections C and D Response of Wor-Biz Trading Co., Ltd. (Anhui),” dated October 31, 2017 (Wor-Biz CDQR); and, Sib0, “Republic of China: Section C Questionnaire Response,” and “Cast Iron Soil Pipe Fittings from the People’s Republic of China: Section D Questionnaire Response,” both dated November 6, 2017 (collectively, Sib0 CDQR).

¹⁷ See Letters from Shanxi Xuanshi, “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Response to the Department’s Supplemental Section A Questionnaire Dated November 3, 2017,” dated November 16, 2017 (Shanxi Xuanshi SQR1); Wor-Biz, “Cast Iron Soil Pipe Fittings from the People’s Republic of China: Submission of Supplemental Section A Response,” dated November 17, 2017 (Wor-Biz SQR1); Sib0, “Cast Iron Soil Pipe Fittings from the People’s Republic of China: Supplemental Section C Questionnaire Response,” dated December 15, 2017 (Sib0 SQR1); Shanxi Xuanshi, “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Response to the Department’s Supplemental Section C and D Questionnaire,” dated December 21, 2017 (Shanxi Xuanshi SQR2a); Sib0, “Cast Iron Soil Pipe Fittings from the People’s Republic of China: Supplemental Section D Questionnaire Response,” dated December 28, 2017 (Sib0 SQR2); Wor-Biz, “Cast Iron Soil Pipe Fittings from the People’s Republic of China: Submission of 2nd Supplemental Response,” dated December 28, 2017 (Wor-Biz SQR2); Shanxi Xuanshi, “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Response to the Department’s Supplemental Section C and D Questionnaire,” dated December 29, 2017 (Shanxi Xuanshi SQR2b); and, Wor-Biz, “Cast Iron Soil Pipe Fittings from the People’s Republic of China: Submission of 3rd Supplemental Response,” dated January 22, 2018 (Wor-Biz SQR3).

¹⁸ See *Cast Iron Soil Pipe Fittings from People’s Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 82 FR 55989 (November 27, 2017).

¹⁹ See Memorandum for the Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Shutdown of the Federal Government” (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

Wor-Biz.²⁰ On January 31, 2018, petitioner requested to meet with Commerce officials to discuss issues pertaining to the preliminary determination.²¹ Shanxi Xuanshi and Sibó objected to the meeting on February 1 and 2, 2018, respectively.²² This meeting was held on February 2, 2018.²³

Commerce is conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2017, through June 30, 2017. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition, which was July 2017.²⁴

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Pursuant to section 735(a)(2) of the Act, Wor-Biz, Sibó, and Shanxi Xuanshi requested that Commerce postpone the final determination and extend provisional measures from four months to six months.²⁵ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because: (1) our preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*, and we are extending provisional measures from

²⁰ See Petitioner's Pre-Preliminary Comments, and Letter from the petitioner, "Cast Iron Soil Pipe Fittings from the People's Republic of China: Additional Pre-Preliminary Comments," dated January 26, 2018. See also, Letter from Wor-Biz, "Cast Iron Soil Pipe Fittings from the People's Republic of China: Submission of Pre-Preliminary Comments," dated February 2, 2018. Commerce is unable to consider the latter two submissions for the preliminary determination because they were filed in such close proximity to the preliminary determination deadline, and there is not sufficient time for Commerce to fully analyze the comments or, if necessary, issue an additional supplemental questionnaire. We will take these comments into account during verification and in the final determination.

²¹ See Petitioners' Letter, "Cast Iron Soil Pipe Fittings from the People's Republic of China: Ex-Parte Meeting Request," dated January 31, 2018.

²² See Shanxi Xuanshi's Letter, "Cast Iron Soil Pipe Fittings from the People's Republic of China, A-570-062; Objection to *Ex Parte* Meeting," dated February 1, 2018; and Sibó's Letter, "Cast Iron Soil Pipe Fittings from the People's Republic of China, Letter in Support of Xuanshi's Objection to Petitioner Meeting," dated February 2, 2018.

²³ See Memorandum, "Cast Iron Soil Pipe Fittings from the People's Republic of China - *Ex Parte* Memorandum," dated February 5, 2018.

²⁴ See 19 CFR 351.204(b)(1).

²⁵ See Letters from Wor-Biz, "Cast Iron Soil Pipe Fittings from the People's Republic of China: Request to Fully Extend the Final Results," dated January 18, 2018; Sibó, "Cast Iron Soil Pipe Fittings from the People's Republic of China - Submission Seeking Extension of Final Determination and Provisional Measures," dated January 19, 2018; and Shanxi Xuanshi, "Cast Iron Soil Pipe Fittings from the People's Republic of China ("Soil Pipe Fittings"); A-570-062; Request for Extension of Final Determination and Provisional Measures," dated January 25, 2018. The petitioner does not oppose postponement of the final determination. See Letter from the petitioner, "Cast Iron Soil Pipe Fittings from the People's Republic of China: Request to Extend Final Determination," dated January 16, 2018.

four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

V. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,²⁶ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.²⁷ No interested party suggested alternative scope language, within the allotted time frame, that would alter the existing framework for coverage or exclusion of products. However, in Petitioner's Pre-Preliminary Comments, the petitioner argued that record evidence indicates that subject merchandise has entered under HTS codes 7324.29.00 and 7307.92.31010 and that, therefore, these HTS codes should be added to the scope of the investigation.²⁸ Interested parties are invited to comment on the petitioner's argument within seven days of the publication of this preliminary determination in the *Federal Register*. Comments must be placed on the record of this and the companion countervailing duty (CVD) investigation of soil pipe fittings from China by the specified deadline.

VI. SCOPE OF THE INVESTIGATION

For a full description of the scope of this investigation, *see* this memorandum's accompanying *Federal Register* notice at Appendix I.

VII. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy Country

Commerce considers China to be an NME country.²⁹ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat China as an NME country for purposes of this preliminary determination.

B. Surrogate Country and Surrogate Value Comments

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

²⁶ *See Antidumping Duties: Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

²⁷ *See Initiation Notice*, 82 FR at 37054.

²⁸ *See* Petitioner's Pre-Preliminary Comments at 40 – 41.

²⁹ *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017) and accompanying decision memorandum, *China's Status as a Non-Market Economy*.

that of the {NME} country; and (B) significant producers of comparable merchandise.”³⁰ As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME country unless it is determined that none of the countries are viable options because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available surrogate value (SV) data, or (c) are not suitable for use based on other reasons.³¹ 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.³² To determine which countries are at the same level of economic development, Commerce generally relies on per capita gross national income (GNI) data from the World Bank’s World Development Report.³³ Further, Commerce normally values all FOPs in a single surrogate country.³⁴

On November 7, 2017, Commerce identified Romania, Mexico, Brazil, Bulgaria, Thailand, and South Africa, as countries that are at the same level of economic development as China based on per capita 2016 GNI data.³⁵ On November 9, 2017, we solicited comments on the list of potential surrogate countries and the selection of the primary surrogate country, and provided deadlines for submission of SV information for consideration in the preliminary determination.³⁶

On November 17, 2017, we received timely comments on surrogate country selection from the petitioner and Shanxi Xuanshi, with the petitioner suggesting Brazil as the surrogate country, and Shanxi Xuanshi stating that all six identified countries qualify for selection on the basis of economic development and production of comparable merchandise.³⁷ On November 20, 2017, the petitioner submitted rebuttal comments in further support of selecting Brazil as the surrogate country.³⁸ On November 24, 2017, Shanxi Xuanshi filed rebuttal comments arguing that Brazil lacked casting companies comparable to those in China.³⁹

From November 2017, through December 2017, Commerce received SV data for Mexico, Brazil, and South Africa.⁴⁰ On December 8, 2017, the petitioner, Shanxi Xuanshi, and Sibos submitted

³⁰ See Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on Commerce’s website at <http://enforcement.trade.gov/policy/bull04-1.html>.

³¹ *Id.*

³² See Letter to All Interested Parties, “Request for Surrogate Country and Surrogate Value Comments and Information,” dated November 9, 2017 (Surrogate Country Memorandum). See also, Memorandum, “Clarification on Surrogate Country and Surrogate Value Schedule,” dated November 13, 2017.

³³ *Id.*

³⁴ See 19 CFR 351.408(c)(2).

³⁵ See Surrogate Country Memorandum at the Attachment.

³⁶ *Id.*

³⁷ See Letters from petitioner, “Cast Iron Soil Pipe Fittings from the People’s Republic of China: Comments on Surrogate Country Selection,” and Shanxi Xuanshi, “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Comments on Surrogate Country Selection” (Shanxi Xuanshi Surrogate Country Comments) both dated November 17, 2017.

³⁸ See Letter from petitioner, “Cast Iron Soil Pipe Fittings from the People’s Republic of China: Rebuttal Comments on Surrogate Country Selection,” dated November 20, 2017.

³⁹ See Letter from Shanxi Xuanshi, “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Rebuttal Comments on Surrogate Country Selection,” dated November 24, 2017.

⁴⁰ See Letter from Sibos, “Cast Iron Soil Pipe Fittings from the People’s Republic of China: SV Submission,” dated November 30, 2017 (Sibos SV Comments). See also, Letters from the petitioner, “Cast Iron Soil Pipe Fittings from the People’s Republic of China: Comments on Surrogate Value Selection” (Petitioner SV Comments); Shanxi

rebuttal comments.⁴¹ The petitioner argued that there was no indication that suitable financial statements are available from Mexico or South Africa.⁴² Shanxi Xuanshi and Sibio argued that the Brazilian import data are aberrational and, thus, unreliable.⁴³ Shanxi Xuanshi also argued that the financial statements of Brazilian producer, Tupy S.A. (Tupy), are unsuitable as they are not contemporaneous with the POI.⁴⁴

In January 2017, we received factual information to value FOPs from Shanxi Xuanshi, Wor-Biz, and the petitioner.⁴⁵ Shanxi Xuanshi and Wor-Biz submitted data to value FOPs from South Africa, Mexico, and Brazil, both arguing that the Brazil data are aberrational.⁴⁶ The petitioner also submitted additional data to value FOPs from Brazil.⁴⁷

1. *Economic Comparability*

For this investigation, as noted above, Commerce identified Romania, Mexico, Brazil, Bulgaria, Thailand, and South Africa as countries at the same level of economic development as China, based on per capita GNI.⁴⁸

2. *Significant Producer of Comparable Merchandise*

Section 773(c)(4)(B) of the Act requires Commerce, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor Commerce's regulations, however, provide guidance on what may be considered comparable merchandise. To determine if the above-referenced countries are significant producers of comparable merchandise, Commerce's practice is to examine which countries on the surrogate country list exported merchandise comparable to the merchandise under consideration. Information on the record indicates that Romania, Mexico, Brazil, Bulgaria, Thailand, and South

Xuanshi, "Cast Iron Soil Pipe Fittings from the People's Republic of China ("Soil Pipe Fittings"); A-570-062; Surrogate Value for Preliminary Determination" (Shanxi Xuanshi SV Comments); and Wor-Biz, "Cast Iron Soil Pipe Fittings from the People's Republic of China: Submission of Surrogate Value Information" (Wor-Biz SV Comments), all dated December 1, 2017.

⁴¹ See Letters from petitioner, "Cast Iron Soil Pipe Fittings from the People's Republic of China: Surrogate Value Rebuttal Comments" (Petitioner SV Rebuttal Comments), Shanxi Xuanshi, "Cast Iron Soil Pipe Fittings from the People's Republic of China ("Soil Pipe Fittings"); A-570-062; Rebuttal to Surrogate Value Submission of Petitioner" (Shanxi Xuanshi SV Rebuttal Comments), and Sibio, "Cast Iron Soil Pipe Fittings from the People's Republic of China: Rebuttal SV Submission" (Sibio SV Rebuttal Comments), all dated December 8, 2017.

⁴² See Petitioner SV Rebuttal Comments at 2.

⁴³ See Shanxi Xuanshi SV Rebuttal Comments at 2 – 6 and Sibio SV Rebuttal Comments at Exhibits 1 – 5.

⁴⁴ See Shanxi Xuanshi SV Rebuttal Comments at 6 – 7.

⁴⁵ See Letters from Shanxi Xuanshi, "Cast Iron Soil Pipe Fittings from the People's Republic of China ("Soil Pipe Fittings"); A-570-062; Final Surrogate Value Submission of Petitioner," dated January 8, 2018 (Shanxi Xuanshi FOP Comments); Wor-Biz, "Cast Iron Soil Pipe Fittings from the People's Republic of China: Submission of Additional Surrogate Value Information," dated January 9, 2018 (Wor-Biz FOP Comments); and petitioner, "Cast Iron Soil Pipe Fittings from the People's Republic of China: Submission of Factual Information to Value Factors of Production," dated January 9 2017 (Petitioner FOP Comments). See also, Letter from Shanxi Xuanshi, "Cast Iron Soil Pipe Fittings from the People's Republic of China ("Soil Pipe Fittings"); A-570-062; Rebuttal to Final Surrogate Value Submission of Petitioner," dated January 16, 2017 (Shanxi Xuanshi Rebuttal FOP Comments).

⁴⁶ See Shanxi Xuanshi FOP Comments at Exhibits 1 – 5 and Wor-Biz FOP Comments at 3.

⁴⁷ See Petitioner FOP Comments at Exhibits 3 – 7.

⁴⁸ For further discussion, see Memorandum, "Less-Than-Fair-Value Investigation of Cast Iron Soil Pipe Fittings from the People's Republic of China: Surrogate Values for the Preliminary Determination," dated concurrently with this document (Preliminary SV Memorandum).

Africa were all net exporters during the POI of such comparable merchandise.⁴⁹ Accordingly, we preliminarily find that these countries have met the significant producer of comparable merchandise prong of the surrogate country selection criteria.

3. *Data Availability*

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, Commerce selects the primary surrogate country based on data availability and reliability.⁵⁰ When evaluating SV data, Commerce considers several factors, including whether the SVs are publicly available, contemporaneous with the POI, representative of a broad-market average, tax- and duty-exclusive, and specific to the inputs being valued.⁵¹ There is no hierarchy among these criteria.⁵² Commerce's preference is to satisfy the breadth of the aforementioned selection criteria.⁵³ Moreover, it is Commerce's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.⁵⁴ Commerce must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the "best" available SV for each input.⁵⁵ Additionally, pursuant to 19 CFR 351.408(c)(2), Commerce has a preference of valuing all FOPs in a single surrogate country.

Interested parties have placed on the record SV data from Brazil, Mexico, and South Africa for the inputs (materials, labor, energy, and financial ratios) required to construct NV.⁵⁶ However, while the data from these three countries are specific to the inputs, are tax- and duty-exclusive, and represent a broad market average, only the data for South Africa are contemporaneous and useable. Specifically, the financial statements of the Brazilian company, Tupy, are for fiscal year 2015, *i.e.*, prior to the POI.⁵⁷ Additionally, the financial statements of the Mexican company, Grupo Industrial Saltillo (GIS), while contemporaneous to the POI, do not sufficiently identify the cost of goods sold components, and are thus not useable.⁵⁸ Finally, the annual report of the South African company, Scaw Metals Group (Scaw), does not provide any information from which to value financial ratios.⁵⁹ Instead, we preliminarily determine that the 2016 financial

⁴⁹ See, e.g., Shanxi Xuanshi Surrogate Country Comments.

⁵⁰ See Policy Bulletin 04.1.

⁵¹ *Id.*

⁵² See, e.g., *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

⁵³ See, e.g., *Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940, 51943 (August 19, 2011), and accompanying IDM at Comment 2.

⁵⁴ See *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) (*Mushrooms—China*), and accompanying IDM at Comment 1; see also *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002), and accompanying IDM at Comment 2.

⁵⁵ See, e.g., *Mushrooms—China* at Comment 1.

⁵⁶ See Petitioner SV Comments, Shanxi Xuanshi SV Comments, Sibio SV Comments, and Wor-Biz SV Comments.

⁵⁷ See Petitioner SV Comments at Exhibit IV-A. Because we preliminarily determine that Tupy's financial statements are not contemporaneous to the POI and because there are other, better usable data on the record, we do not address the allegations that the Brazilian import statistics are aberrational.

⁵⁸ See Shanxi Xuanshi at Exhibit M-4 and the Petition, Volume II at Exhibit II-13

⁵⁹ See Shanxi Xuanshi SV Comments at Exhibit M-4.

statements of South African producer Tata Africa Steel Processors Proprietary Limited (Tata Africa), which were placed on the record by the petitioner in the Petition, serve as the most reliable financial statements on the record, as they are both contemporaneous to the POI and do not suffer from the aforementioned deficiencies of the Tupy, GIS, and Scaw financial statements.⁶⁰ As noted in the *Initiation Notice*, Tata Africa is a South African steel processor and producer of aluminum wire rods.⁶¹

Accordingly, Commerce preliminarily determines, pursuant to section 773(c)(4) of the Act, that it is appropriate to use South Africa as the primary surrogate country because it is: (1) at the same level of economic development as China; (2) a significant producer of merchandise comparable to the subject merchandise such that can be determined from the information available; and (3) provides the best useable data and information with which to value FOPs, such as direct materials, labor, energy, and financial ratios. Therefore, Commerce has calculated NV using South African SV data to value the respondents' FOPs.

C. Separate Rates

In proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.⁶² Commerce's policy is to assign all exporters of subject merchandise 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.⁶³ Commerce analyzes whether each entity exporting the subject merchandise is sufficiently independent under a test established in *Sparklers*⁶⁴ and further developed in *Silicon Carbide*.⁶⁵ According to this separate rate test, Commerce will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If, however, Commerce determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

⁶⁰ See Letter from the petitioner, "Cast Iron Soil Pipe Fittings from the People's Republic of China: Response to Supplemental Questions – Antidumping Duties," dated July 26, 2017 at Exhibit 11.

⁶¹ See *Initiation Notice*, 82 FR at 37056.

⁶² 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).

⁶³ 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*).

⁶⁴ *Id.*

⁶⁵ 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*).

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of *Diamond Sawblades* and its determinations therein.⁶⁶ In particular, in litigation involving the *Diamond Sawblades* proceeding, the Court of International Trade (CIT) found Commerce’s existing separate rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity had significant ownership in the respondent exporter.⁶⁷ Following the Court’s reasoning, in recent proceedings, we have concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company’s operations generally.⁶⁸ This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profit distribution of the company.

From September 2017, through October 2017, we received SRAs from 11 entities.⁶⁹ Additionally, on October 24, 2017, Shijiazhuang Jipeng notified Commerce that it would not

⁶⁶ See Final Results of Redetermination pursuant to *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), available at <http://enforcement.trade.gov/remands/12-147.pdf>, *aff’d* *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff’d* *Advanced Technology & Materials Co., Ltd., et al. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014) (*Advanced Technology II*). See also *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013), and accompanying Preliminary Decision Memorandum (PDM) at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying IDM at Comment 1 (*Diamond Sawblades*).

⁶⁷ 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).

⁶⁸ See, e.g., *Carbon and Certain Alloy Steel Wire Rod from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying PDM at 5 – 9.

⁶⁹ See Letters from Yangcheng County Huawang Universal Spun Cast Pipe Foundry (Yangcheng Foundry), “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Separate Rate Application,” dated September 14, 2017 (Yangcheng Foundry SRA); Dalian Lino F.T.Z. Co., Ltd. (Dalian Lino), “Cast Iron Soil Pipe Fittings from the People’s Republic of China: Separate Rate Application” (Dalian Lino SRA); Dalian Metal I/E Co., Ltd. (Dalian Metal), “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Separate Rate Application” (Dalian Metal SRA); Dinggin Hardware (Dinggin Hardware) “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Separate Rate Application” (Dinggin SRA); Hebei Metals & Engineering Products Trading Co., Ltd. (Hebei Metals), “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Separate Rate Application” (Hebei Metals SRA); Qinshui Shunshida Casting Co., Ltd. (Qinshui Shunshida), “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Separate Rate

respond to Commerce’s supplemental SRA questionnaire.⁷⁰ Lastly, Sib0 opted to withdraw its SRA in consideration of its section A questionnaire response.⁷¹

1. Separate Rate Recipients

Commerce preliminary determines that the following exporters are eligible to receive a separate rate, as explained below:

- 1) Shanxi Xuanshi
- 2) Sib0
- 3) Wor-Biz
- 4) Dalian Lino
- 5) Dalian Metal
- 6) Dinggin Hardware
- 7) Hebei Metals
- 8) Qinshui Shunshida
- 9) Richang Qiaoshan
- 10) Shanxi Zhongrui
- 11) Shijiazhuang Axiya

Application” (Qinshui Shunshida SRA); Richang Qiaoshan Trade Co., Ltd. (Richang Qiaoshan), “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Separate Rate Application” (Richang Qiaoshan SRA); Shanxi Zhongrui Tianyue Trading Co., Ltd. (Shanxi Zhongrui), “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Separate Rate Application” (Shanxi Zhongrui SRA); Shijiazhuang Axiya Casting Co., Ltd. (Shijiazhuang Axiya), “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Separate Rate Application” (Shijiazhuang Axiya SRA); Shijiazhuang Jipeng Imp. and Exp. Co., Ltd. (Shijiazhuang Jipeng), “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Separate Rate Application” (Shijiazhuang Jipeng SRA); and Sib0, “Cast Iron Soil Pipe Fittings from the People’s Republic of China: Separate Rate Application,” (Sib0 SRA) all dated September 15, 2017. *See also*, Letters from Yangcheng Foundry, “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Response to SRA Supplemental Questionnaire,” dated October 24, 2017; Dalian Lino, “Cast Iron Soil Pipe Fittings from the People’s Republic of China: Submission of Supplemental Response,” dated October 24, 2017; Dalian Metal, “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Response to SRA Supplemental Questionnaire,” dated October 17, 2017; Dinggin Hardware, “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Response to SRA Supplemental Questionnaire,” dated October 17, 2017; Hebei Metals, “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Response to SRA Supplemental Questionnaire,” dated October 17, 2017; Qinshui Shunshida, “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Separate Rate Application-Correction to Narrative Response,” dated September 15, 2017; Richang Qiaoshan, Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Response to SRA Supplemental Questionnaire,” dated October 17, 2017; Shanxi Zhongrui, Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Response to SRA Supplemental Questionnaire,” dated October 17, 2017; Shijiazhuang Axiya, “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Response to SRA Supplemental Questionnaire,” dated October 24, 2017; and Shijiazhuang Axiya, “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Response to Department Letter of November 6, 2017,” dated November 7, 2017.

⁷⁰ *See* Letter from Shijiazhuang Jipeng, “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Notification,” dated October 24, 2017 (Shijiazhuang Jipeng Notification).

⁷¹ *See* Sib0 AQR at 4 – 5 and Appendix X.

a. Wholly Foreign-Owned Applicants

One company, Sibio, demonstrated in its section A questionnaire response that it is a wholly-owned Hong Kong company.⁷² As there is no Chinese ownership of Sibio, and because Commerce has no evidence indicating that Sibio is under the control of the Chinese government, further analyses of the *de jure* and *de facto* criteria are not necessary to determine whether it is independent from government control of its export activities.⁷³ Therefore, we preliminarily determine that Sibio is eligible for a separate rate.

b. Absence of *De Jure* Control

Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.⁷⁴

Evidence provided by the following companies support a preliminary finding of an absence of *de jure* government control:

- 1) Shanxi Xuanshi⁷⁵
- 2) Wor-Biz⁷⁶
- 3) Dalian Lino⁷⁷
- 4) Dalian Metal⁷⁸
- 5) Dinggin Hardware⁷⁹
- 6) Hebei Metals⁸⁰
- 7) Qinshui Shunshida⁸¹
- 8) Richang Qiaoshan⁸²

⁷² See Sibio AQR at 9.

⁷³ See, e.g., *Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001), unchanged in *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001); See also, *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71104-05 (December 20, 1999).

⁷⁴ See *Sparklers* at 20589.

⁷⁵ See Shanxi Xuanshi AQR at 2 – 27.

⁷⁶ See Wor-Biz AQR at 11-15.

⁷⁷ See Dalian Lino SRA at 6-9.

⁷⁸ See Dalian Metal SRA at 10-14.

⁷⁹ See Dinggin SRA at 11-15.

⁸⁰ See Hebei Metals SRA. See also, Letter from Hebei, "Cast Iron Soil Pipe Fittings from the People's Republic of China ("Soil Pipe Fittings"); A-570-062; Response to SRA Supplemental Questionnaire," dated October 17, 2017.

⁸¹ See Qinshui Shunshida SRA at 10-14.

⁸² See Richang Qiaoshan SRA at 9-13.

- 9) Shanxi Zhongrui⁸³
- 10) Shijiazhuang Axiya⁸⁴

c. Absence of *De Facto* Control

Typically, Commerce considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (EPs) or constructed export prices (CEPs) are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.⁸⁵ Commerce has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control which would preclude Commerce from assigning separate rates.

The separate rate information provided by the 10 companies listed above also support a preliminary finding of an absence of *de facto* government control, based on record statements and supporting documentation showing that the companies: (1) set their own EPs or CEPs independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses.

Therefore, the evidence placed on the record of this investigation by these companies demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, Commerce preliminarily grants separate rates to these companies.

d. *Margin for the Separate Rate Companies*

The Act and Commerce's regulations do not address the establishment of a separate rate to be applied to companies not selected for individual examination when Commerce limits its examination pursuant to section 777A(c)(2) of the Act. Normally, Commerce's practice is to assign to separate rate entities that were not individually examined a rate equal to the weighted average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis*, or based entirely on facts available, using as guidance section

⁸³ See Shanxi Zhongrui SRA. See also, Letter from Shanxi Zhongrui, "Cast Iron Soil Pipe Fittings from the People's Republic of China ("Soil Pipe Fittings"); A-570-062; Response to SRA Supplemental Questionnaire," dated October 17, 2017.

⁸⁴ See Shijiazhuang Axiya SRA. See also, Letters from Shijiazhuang Axiya, "Cast Iron Soil Pipe Fittings from the People's Republic of China ("Soil Pipe Fittings"); A-570-062; Response to SRA Supplemental Questionnaire," dated October 24, 2017, and "Cast Iron Soil Pipe Fittings from the People's Republic of China ("Soil Pipe Fittings"); A-570-062; Response to Department Letter of November 6, 2017," dated November 7, 2017.

⁸⁵ See *Silicon Carbide*, at 59 FR 22586-87.

735(c)(5)(A) of the Act.⁸⁶ However, pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely under section 776 of the Act, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.⁸⁷

As stated above, Commerce's practice is to assign to separate rate entities that were not individually examined a rate equal to the weighted average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis*, or based entirely on facts available. In this proceeding, Commerce calculated an above-*de minimis* rate that is not based entirely on facts available for each of the mandatory respondents under individual examination. Thus, consistent with our practice, we are assigning the weighted average of the rates calculated for the mandatory respondents as the rate for non-individually examined companies that have preliminarily qualified for a separate rate.⁸⁸ This long-standing practice is also Court-affirmed.⁸⁹

D. Affiliation

Wor-Biz reported that it shares ownership in a joint-venture company in the United States with NewAge, its exclusive distributor, and a third party.⁹⁰ Wor-Biz also reported that it and NewAge

⁸⁶ See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).

⁸⁷ See the Statement of Administrative Action, H.R. Rep. No. 103-316, Vol. 1 (1994) (SAA) at 870-873. See also section 735(c)(5)(B) of the Act.

⁸⁸ See, e.g., *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314, 42316 (June 29, 2016) ("Under section 735(c)(5)(A) of the Act, the rate for all other companies that have not been individually examined is normally an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely on the basis of facts available. In this final determination, the Department has calculated a rate for TTI that is not zero, *de minimis*, or based entirely on facts available. Therefore, {Commerce} has assigned to the companies that have not been individually examined, but have demonstrated their eligibility for a separate rate, a margin of 101.82 percent, which is the rate for TTI."); *Certain Corrosion-Resistant Steel Products From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35316, 35317 (June 2, 2016) ("In this final determination, we calculated a weighted-average dumping margin for Yieh Phui (the only cooperating mandatory respondent) which is not zero, *de minimis*, or based entirely on facts available. Accordingly, we determine to use Yieh Phui's weighted-average dumping margin as the margin for the separate rate companies."); *Narrow Woven Ribbons with Woven Selvedge from Taiwan; Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 60627, 60627 (October 7, 2015) unchanged in *Narrow Woven Ribbons with Woven Selvedge from Taiwan; Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 22578 (April 18, 2016).

⁸⁹ See, e.g., *Changzhou Wujin Fine Chemical Factory Co., Ltd., v. United States*, 942 F. Supp. 2d 1333, 1339 (CIT 2013) (*Fine Chemical*); *Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (CIT 2008) (affirming Commerce's determination to assign a 4.22 percent dumping margin to the separate rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively).

⁹⁰ See Wor-Biz AQR at 2 – 3.

have intertwined operations such that they make joint sales calls and share certain production costs with respect to the subject merchandise.⁹¹

Section 771(33) of the Act provides that the following persons shall be considered to be “affiliated” or “affiliated persons”:

- (A) Members of a family, including brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants;
- (B) Any officer or director of an organization and such organization;
- (C) Partners;
- (D) Employer and employee;
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization;
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; or,
- (G) Any person who controls any other person and such other person.

The SAA accompanying the Uruguay Round Agreement Act states the following:

The traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm ‘operationally in a position to exercise restraint or direction’ over another in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchise or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.⁹²

Section 351.102(b)(3) of Commerce’s regulations defines affiliated persons and affiliated parties as having the same meaning as in section 771(33) of the Act. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, Commerce considers the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The regulation directs Commerce not to find that control exists on the basis of these factors unless the relationship has “the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.” The regulation also directs Commerce to consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

Based on the evidence on the record noted above,⁹³ we preliminarily determine that Wor-Biz and NewAge are affiliated with each other pursuant to section 771(33)(F) of the Act.

⁹¹ See Wor-Biz SQR1 at 3.

⁹² See SAA, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994) at 838.

⁹³ See Wor-Biz AQR at 2 – 3 and Wor-Biz SQR1 at 3.

E. China-Wide Entity

The record indicates that certain Chinese exporters and/or producers of the merchandise under consideration during the POI did not respond to Commerce's requests for information. Specifically, Commerce did not receive responses to its Q&V questionnaire from 12 exporters and/or producers of subject merchandise that were named in the Petition and to whom Q&V questionnaires were successfully delivered.⁹⁴ In addition, Zezhou Golden Autumn Foundry Co., Ltd. and Hua Wang Universal Spun Casting Co. refused delivery of the Q&V questionnaire and did not file SRAs,⁹⁵ Shijiazhuang Jipeng did not respond to our supplemental SRA questionnaire,⁹⁶ and Kingway Pipe refused to participate as a mandatory respondent.⁹⁷ Because these companies did not respond to our requests for information, they have not demonstrated that they are eligible for a separate rate. Commerce, therefore, considers them to be part of the China-wide entity.

With respect to Yangcheng Foundry, we find that this company has not demonstrated that it is entitled to a separate rate. Commerce has based this determination on facts that are subject to the administrative protective order of this administrative review. Accordingly, we have addressed this matter in a business proprietary memorandum.⁹⁸ As Yangcheng Foundry is not eligible for a separate rate, Commerce preliminarily determines to treat this company as part of the China-wide entity.

Furthermore, as explained below, we are preliminarily determining the China-wide rate on the basis of adverse facts available (AFA).

F. Application of Facts Available and Adverse Inferences

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

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to

⁹⁴ See Q&V Delivery Results at 1-2 and Attachment I. The companies to whom Q&V questionnaire were issued that did not timely respond are: Dinsen Impex Corporation; Handan County Conscience Cast Iron Pipe Co. Ltd.; Hebei Beisai Metal Products Co. Ltd.; Heng Tong Casting Co. Ltd.; L&Y Interior Decoration Material Co.; Leisure International Company Limited; Nanpi County Daqiang Hardware Products; Qingdao Hengtong Casting Co., Ltd.; Shijiazhuang Casting Trading Co., Ltd.; Shijiazhuang Shunjinguangao Trade Co., Ltd.; Snode Pipes Product; and Taiyuan Water Industrial Co., Ltd.

⁹⁵ See Q&V Delivery Results at 2 and Attachment III.

⁹⁶ See Shijiazhuang Jipeng Notification.

⁹⁷ See Kingway Pipe Notification.

⁹⁸ See Memorandum, "Preliminary Separate Rate Analysis Memorandum for Yangcheng County Huawang Universal Spun Cast Pipe Foundry," dated concurrently with this memorandum.

remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.⁹⁹ The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.¹⁰⁰

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the Petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.¹⁰¹

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as the Petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the Petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹⁰² The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value,¹⁰³ although under the TPEA, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.¹⁰⁴ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.¹⁰⁵

⁹⁹ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, Commerce published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

¹⁰⁰ *Id.* at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

¹⁰¹ See also 19 CFR 351.308(c).

¹⁰² See SAA at 870.

¹⁰³ *Id.*; see also 19 CFR 351.308(d).

¹⁰⁴ See section 776(c)(2) of the Act; TPEA, section 502(2).

¹⁰⁵ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March

Under section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

1. Application of Facts Available

As noted above, certain producers/exporters refused to respond to Commerce’s requests for information. Thus, these companies failed to provide necessary information, withheld information requested by Commerce, and significantly impeded this proceeding by not submitting the requested information. Accordingly, Commerce preliminarily determines that the use of facts available is warranted in determining the rate of the China-wide entity, pursuant to sections 776(a)(1), (a)(2)(A)-(C) of the Act.¹⁰⁶

2. Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that Commerce, in selecting from among the facts otherwise available, may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Commerce finds that the China-wide entity’s failure to respond to Commerce’s questionnaires constitutes circumstances under which it is reasonable to conclude that the China-wide entity has failed to cooperate by not acting to the best of its ability to comply with Commerce’s request for information.¹⁰⁷

Moreover, the China-wide entity failed to file documents indicating that it was having difficulty providing the information, nor did it request to submit the information in an alternate form. Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available with respect to the China-wide entity in accordance with section 776(b) of the Act and 19 CFR 351.308(a).¹⁰⁸

3. Selection and Corroboration of the AFA Rate

To determine the appropriate rate for the China-wide entity based on AFA, Commerce first examined whether the highest petition margin was less than or equal to the highest calculated margin for any respondent, and determined that the highest calculated margin of 109.95 percent was the higher of the two. Therefore, for purposes of this preliminary determination, we assigned the China-wide entity, as AFA, a dumping margin of 109.95 percent. Because this rate was a calculated rate, based on a mandatory respondent’s data in this segment of the proceeding, it does not constitute secondary information and, therefore, there is no need to corroborate it.

13, 1997).

¹⁰⁶ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

¹⁰⁷ *Id.*

¹⁰⁸ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

G. Date of Sale

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.¹⁰⁹ The CIT has stated that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' {Commerce} that a different date better reflects the date on which the exporter or producer establishes the material terms of sale."¹¹⁰ The date of sale is generally the date on which the parties establish the material terms of the sale,¹¹¹ which normally includes the price, quantity, delivery terms and payment terms.¹¹² In addition, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.¹¹³

All three mandatory respondents reported the invoice date as the date of sale for their U.S. sales and demonstrated that the material terms of sale were established on the invoice date.¹¹⁴ In light of 19 CFR 351.401(i), Commerce preliminarily used the invoice date as the date of sale for all sales of subject merchandise made during the POI.

H. Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether the respondents' sales of the subject merchandise from China to the United States were made at less than NV, Commerce compared the EP or CEP, as appropriate, to the NV as described in the "U.S. Price" and "Normal Value" sections of this memorandum.

1. Determination of Comparison Method

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

¹⁰⁹ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (*Allied Tube*) (quoting 19 CFR 351.401(i)).

¹¹⁰ See *Allied Tube*, 132 F. Supp. 2d at 1090 (brackets and citation omitted).

¹¹¹ See 19 CFR 351.401(i).

¹¹² See *USEC Inc. v. United States*, 31 CIT 1049, 1055 (CIT 2007).

¹¹³ See, e.g., *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 36881 (June 8, 2016), and accompanying PDM at Section VII, unchanged in *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 81 FR 75030 (October 28, 2016).

¹¹⁴ See Shanxi Xuanshi AQR at 29 – 30, Wor-Biz CDQR at 9-10, and Sibio AQR at 21.

In recent investigations, Commerce applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.¹¹⁵ Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

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

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

¹¹⁵ See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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

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

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

2. *Results of the Differential Pricing Analysis*

For Wor-Biz, based on the results of the differential pricing analysis, Commerce preliminarily finds that 73.1 percent of the value of U.S. sales pass the Cohen's *d* test,¹¹⁶ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-

¹¹⁶ See Memorandum, "Preliminary Determination Margin Calculation for Wor-Biz Trading Co., Ltd," dated concurrently with this memorandum (Wor-Biz Preliminary Calculation Memo).

average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, Commerce is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Wor-Biz.

For Shanxi Xuanshi, based on the results of the differential pricing analysis, Commerce preliminarily finds that 34.0 percent of the value of U.S. sales pass the Cohen's *d* test,¹¹⁷ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for this preliminary determination, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Shanxi Xuanshi.

For Sibio, based on the results of the differential pricing analysis, Commerce preliminarily finds that 83.7 percent of the value of its U.S. sales pass the Cohen's *d* test,¹¹⁸ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Sibio.

I. U.S. Price

Export Price

In accordance with section 772(a) of the Act, Commerce defined the U.S. price of subject merchandise based on EP for all sales reported by Shanxi Xuanshi and Sibio. Commerce calculated EP based on the prices at which subject merchandise was sold to unaffiliated purchasers in the United States.

We based EP on the packed prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, domestic brokerage and handling, international freight, and marine insurance, using SVs, as applicable.¹¹⁹

¹¹⁷ See Memorandum, "Preliminary Determination Margin Calculation for Shanxi Xuanshi Industrial," dated concurrently with this memorandum (Shanxi Xuanshi Preliminary Calculation Memo).

¹¹⁸ See Memorandum, "Preliminary Determination Margin Calculation for Sibio International Limited," dated concurrently with this memorandum (Sibio Preliminary Calculation Memo).

¹¹⁹ *Id.*

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).” As discussed above in the “Affiliation” section, Commerce finds that Wor-Biz is affiliated with its U.S. distributor, NewAge. Because Wor-Biz reported that during the POI, it made all of its sales to unaffiliated customers in the United States through NewAge, we treated all of Wor-Biz’s sales as CEP sales.

We based CEP on the packed prices to unaffiliated purchasers in the United States. We made deductions for discounts and rebates, as appropriate. In accordance with section 772(c)(2)(A) of the Act, we also made deductions for foreign inland freight, domestic brokerage and handling, international freight, marine insurance, U.S. customs duties (including processing fees and harbor maintenance fees), U.S. brokerage and handling, and U.S. inland freight. For foreign inland freight and domestic brokerage and handling, we used SVs, as applicable.¹²⁰ For certain U.S. sales, Wor-Biz reported an amount for freight revenue.¹²¹ In accordance with our practice,¹²² we capped the freight revenue by the amount of the freight expense.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted from CEP those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, epoxy coating and repacking) and indirect selling expenses (including inventory carrying costs). Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with Commerce’s practice,¹²³ we calculated the CEP profit rate based on information contained in the financial statements for producers of the subject merchandise in the surrogate country selected in this investigation (*see* “Factor Valuation Methodology” section for further discussion).

J. Value-Added Tax (VAT)

In 2012, Commerce announced a change of methodology with respect to the calculation of EP and CEP to include an adjustment of any irrecoverable VAT in certain NME countries in accordance with section 772(c)(2)(B) of the Act.¹²⁴ Commerce explained that, when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, Commerce will reduce the respondent’s EP and CEP prices accordingly, by the amount of the tax, duty or

¹²⁰ See Memorandum, “Preliminary Determination Margin Calculation for Wor-Biz Trading Co., Ltd.,” dated concurrently with this memorandum (Wor-Biz Preliminary Calculation Memo).

¹²¹ See Wor-Biz CDQR at C-24 and Wor-Biz SQR3.

¹²² See, *e.g.*, *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying IDM at Comment 2.

¹²³ See Import Administration Policy Bulletin 97/1: Calculation of Profit for Constructed Export Price Transactions (September 4, 1997).

¹²⁴ See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012) (*VAT Methodological Change*).

charge paid, but not rebated.¹²⁵ Where the irrecoverable VAT is a fixed percentage of EP or CEP, Commerce explained that the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. EP or CEP downward by this same percentage.¹²⁶

Commerce's methodology, as explained above and applied in this investigation, incorporates two basic steps: (1) determine the irrecoverable VAT on subject merchandise, and (2) reduce U.S. price by the amount determined in step one. Information placed on the record of this investigation by the respondents indicate that, according to the China VAT schedule, the standard VAT levy is 17 percent and the rebate rate for the subject merchandise is 9 percent.¹²⁷

Irrecoverable VAT is: (1) the free-on-board value of the exported good, applied to the difference between; (2) the standard VAT levy rate; and (3) the VAT rebate rate applicable to exported goods. The first variable, export value, is unique to each respondent and sale, while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in Chinese law and regulations.¹²⁸

Irrecoverable VAT, as defined in Chinese law, is a net VAT burden that arises solely from, and is specific to, exports. It is VAT paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost.¹²⁹ We have consistently stated that irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exportation of the subject merchandise to the United States.¹³⁰ The Act does not define the terms "export tax, duty, or other charge imposed" on the exportation of subject merchandise. We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as a result of export sales. It is set forth in Chinese law and, therefore, can be "imposed" by the exporting country on exportation of subject merchandise. Further, an adjustment for irrecoverable VAT achieves what is called for under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a tax-neutral net price received by the seller. This deduction is consistent with our long-standing policy, which is consistent with the intent of the Act, that dumping margin calculations be tax-neutral.¹³¹

Accordingly, consistent with Commerce's standard methodology and based on record information, for purposes of this preliminary determination, we removed from gross U.S. price the amount calculated based on the difference between the above-specified standard rates (*i.e.*,

¹²⁵ *Id.*; see also *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014), and accompanying IDM at Comment 5.A.

¹²⁶ *Id.*

¹²⁷ See Shanxi Xuanshi CDQR at 46 – 47, Sibio SCQR1 at 3 – 4, and Wor-Biz SQR1 at 32 – 33.

¹²⁸ See *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 82 FR 14876 (March 23, 2017) (*HEDP*), and accompanying IDM at Comment 17; see also *Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China*, 79 FR 25572 (May 5, 2014) (*Steel Rail Tie Wire*), and accompanying IDM at Comment 1, n.35. See also, Shanxi Xuanshi CDQR at Exhibits C-3 – C-5 (Chinese VAT Law).

¹²⁹ See *HEDP* at Comment 17; see also *Steel Rail Tie Wire* at Comment 1, n.36.

¹³⁰ See, e.g., *HEDP* at Comment 17; *Frontseating Service Valves from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71385 (December 2, 2014), and accompanying IDM at Comment 5.

¹³¹ See *VAT Methodological Change*, 77 FR at 36483, and *Notice of Final Rule, Antidumping Duties, Countervailing Duties*, 62 FR 27296 (May 19, 1997) (citing the SAA).

eight percent) applied to the U.S. export sales value, consistent with the definition of irrecoverable VAT under Chinese tax law and regulation.

K. Normal Value

Section 773(c)(1) of the Act provides that Commerce shall determine NV using the FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home market prices, third-country prices, or constructed value under section 773(a) of the Act. Commerce bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under Commerce's normal methodologies.¹³² Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), Commerce 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.¹³³

L. Factor Valuation Methodology

In accordance with section 773(c) of the Act, Commerce calculated NV based on FOP data reported by each of the three respondents. To calculate NV, Commerce multiplied the reported per-unit factor-consumption rates by publicly available SVs. When selecting the SVs, Commerce considered, among other factors, the quality, specificity, and contemporaneity of the data.¹³⁴ As appropriate, Commerce adjusted input prices by including freight costs to make them delivered prices. Specifically, Commerce 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.¹³⁵ A detailed description of SVs used for the respondents can be found in the Preliminary SV Memorandum.¹³⁶

As discussed above, for the preliminary determination, Commerce is using South African import data, as published by Global Trade Atlas (GTA), and other publicly available sources from South African to calculate SVs for the respondents' FOPs. In accordance with section 773(c)(1) of the Act, Commerce applied the best available information for valuing FOPs by selecting, to the extent practicable, SVs which are: (1) tax-exclusive, non-export average values; (2) contemporaneous with, or closest in time to, the POI; (3) product-specific; and (4) broad-market

¹³² 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).

¹³³ See section 773(c)(3)(A)-(D) of the Act.

¹³⁴ See, e.g., *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying IDM at Comment 9.

¹³⁵ See *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).

¹³⁶ See Memorandum, "Surrogate Values for the Preliminary Determination," dated concurrently with this memorandum (Preliminary SV Memorandum).

averages.¹³⁷ The record indicates that South African import data obtained through GTA, as well as data from other South African sources, are broad-market averages, product-specific, tax-exclusive, and generally contemporaneous with the POI.¹³⁸

Commerce continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be dumped or subsidized.¹³⁹ In this regard, Commerce has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry-specific export subsidies.¹⁴⁰ Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POI, Commerce finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Therefore, Commerce has not used prices from those countries in calculating the South African import-based SVs. Commerce also excluded, from the calculation of the import-based per-unit SVs, imports labeled as originating from an “unidentified” country, because Commerce could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.¹⁴¹

We used South African import statistics from GTA to value raw materials, packing materials, and certain energy inputs such as coke and coal.¹⁴² With respect to electricity, we calculated an average rate using publicly-available data from Eskom, the largest public utility provider in South Africa.¹⁴³ We valued truck freight, in addition to brokerage and handling, using average rates from the World Bank’s report, *Doing Business 2017: South Africa (Doing Business)*.¹⁴⁴ This World Bank report gathers information concerning the distance and cost to transport a containerized shipment weighing 15 metric tons from the peri-urban area of South Africa’s largest business city to the country’s major port.¹⁴⁵ We calculated international freight using

¹³⁷ 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) (*Vietnam Shrimp*), 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).

¹³⁸ See Preliminary SV Memorandum.

¹³⁹ See Section 505 of the TPEA (amending Section 773(c)(5) of the Act to permit Commerce to disregard price or cost values without further investigation if it has determined that certain subsidies existed with respect to those values); see also *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46795 (August 6, 2015).

¹⁴⁰ See, e.g., *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination; 2011-2012*, 78 FR 42492 (July 16, 2013), and accompanying IDM at 7-19; *Certain Lined Paper Products from Indonesia: Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 76 FR 73592 (November 29, 2011), and accompanying IDM at 1; *Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 46770 (August 11, 2014), and accompanying IDM at 4; and *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013), and accompanying IDM at IV.

¹⁴¹ See, e.g., *Vietnam Shrimp*, 69 FR at 42682-42683.

¹⁴² See Preliminary SV Memorandum.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

ocean shipping rates obtained from Freightos, an online provider of market-economy freight quotes.¹⁴⁶

As no interested parties provided SVs for water or marine insurance, we valued these expenses using data obtained from the Government of South Africa's National Statistical Office (NSO) and RJG Consultants (a market-economy freight forwarder), respectively.¹⁴⁷

In NME antidumping proceedings, Commerce prefers to value labor solely based on data from the surrogate country.¹⁴⁸ In *Labor Methodologies*, Commerce determined that the best methodology to value labor is to use industry-specific labor rates from the surrogate country. Additionally, we determined that the best data source for industry-specific labor rate is manufacturing labor rates from ILOSTAT, the labor database compiled by the International Labor Organization.¹⁴⁹ In this investigation, we find that the ILOSTAT data on the record from South Africa are the best available information for valuing labor because they are specific to manufacturing and represent the closest labor valuation to the industry in question from the surrogate country.¹⁵⁰

Commerce's criteria for choosing surrogate financial statements from which we derive the financial ratios are the availability of contemporaneous financial statements, comparability to the respondent's experience, and public availability of information.¹⁵¹ Moreover, for valuing factory overhead, selling, general, and administrative (SG&A) expenses and profit, Commerce normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.¹⁵² In addition, the CIT has held that in the selection of surrogate producers, Commerce may consider how closely the surrogate producers approximate the NME producer's experience.¹⁵³

To value factory overhead, SG&A expenses, and profit, Commerce relied on the 2016 financial statements of Tata Africa because it is an African producer of comparable merchandise.¹⁵⁴ While Tata Africa produces comparable rather than identical merchandise, Tata Africa is a South African steel processor and producer of aluminum wire rods, of which soil pipe fittings are downstream products. Therefore, we preliminarily find that the financial data of this producer of steel wire rod is appropriate to approximate the financial costs of the respondents' production of soil pipe fittings.¹⁵⁵

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at Attachment I and II.

¹⁴⁸ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

¹⁴⁹ See Preliminary SV Memorandum.

¹⁵⁰ *Id.*

¹⁵¹ See, e.g., *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), and accompanying IDM at Comment 3.

¹⁵² See, e.g., *Diamond Sawblades and Parts Thereof from the People's Republic of China, Final Determination in the Antidumping Duty Investigation*, 71 FR 29303 (May 22, 2006), and accompanying IDM at Comment 2; see also section 773(c)(4) of the Act; 19 CFR 351.408(c)(4).

¹⁵³ See *Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1253-54 (CIT 2002); see also *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005), and accompanying IDM at Comment 1.

¹⁵⁴ For more information on the surrogate financial ratios calculations, see the Preliminary SV Memorandum.

¹⁵⁵ *Id.*

Commerce's practice is to grant the respondents an offset to the reported FOPs for by-products generated during the production of the subject merchandise if evidence is provided that such by-product has commercial value.¹⁵⁶ Of the three respondents, only Shanxi Xuanshi claimed byproduct offsets and provided evidence of byproduct revenue. Accordingly, we accounted for such offsets in the calculation of the NV for Shanxi Xuanshi.¹⁵⁷

VIII. CURRENCY CONVERSION

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

IX. ADJUSTMENT UNDER SECTION 777A(f) of the Act

In applying section 777A(f) of the Act, Commerce examines: (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 Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise. For a subsidy meeting these criteria, the statute requires Commerce to reduce the AD cash deposit rate by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.

Since Commerce has relatively recently started conducting an analysis under section 777A(f) of the Act, Commerce is continuing to refine its practice in applying this section of the law. On November 20, 2017, Commerce issued questionnaires to the mandatory respondents – Shanxi Xuanshi, Sibos, and Wor-Biz¹⁵⁸ – and received timely responses on November 30, 2017, and December 4, 2017. We examined the mandatory respondents' submissions to determine whether they 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.

In conducting this analysis, Commerce 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.

¹⁵⁶ See *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews*, 70 FR 54897 (September 19, 2005), and accompanying IDM at Scrap Offset.

¹⁵⁷ See Shanxi Xuanshi CDQR at D-18.

¹⁵⁸ See Letters from Commerce, "Antidumping Duty Investigation of Cast Iron Soil Pipe Fittings from the People's Republic of China," dated November 20, 2017.

In order to examine the effects of concurrent countervailable subsidies in calculating antidumping margins for respondents in this investigation, Commerce requested that Sibbo, Wor-Biz, and Shanxi Xuanshi submit information with respect to subsidies relevant to its eligibility for an adjustment to the calculated weighted-average dumping margin.¹⁵⁹ Commerce examined whether the respondents demonstrated: (1) a subsidies-to-cost link, *e.g.*, subsidy impact on cost of manufacture; and (2) a cost-to-price link, *e.g.*, respondents' prices changed as a result of changes in the cost of manufacture.

Wor-Biz identified three programs that potentially impact COM: Provision of Electricity for less than adequate remuneration (LTAR), Provision of Pig Iron for LTAR, and Provision of Ferrous Scrap for LTAR.¹⁶⁰ However, while noting that both electricity and material inputs are important production costs, Wor-Biz stated that it would adjust prices only in response to changes in the cost of pig iron or ferrous scrap.¹⁶¹ Additionally, Wor-Biz stated that, for the POI, it only purchased and used ferrous scrap in production (*i.e.*, not pig iron).¹⁶² Lastly, while stating that export prices were updated four times "in responsible {sic} to changes of material costs,"¹⁶³ the evidence provided in support of this assertion fails to demonstrate that prices were adjusted during the POI due to a change in the cost of ferrous scrap.¹⁶⁴ Therefore, while Wor-Biz may have demonstrated a subsidies-to-cost linkage, it failed to identify a cost-to-price linkage as no price fluctuations were tied directly to the change in cost associated with the subsidy identified in the relevant period. Accordingly, we made no adjustment for double remedies for purposes of this preliminary determination.

Sibbo identified two programs that potentially impact COM: Provision of Pig Iron for LTAR and Provision of Electricity for LTAR.¹⁶⁵ However, Sibbo stated that the cost of electricity was fixed during the POI.¹⁶⁶ Additionally, while noting that fluctuations in the price of pig iron occurred throughout the POI, Sibbo stated there was only one instance where a fluctuation resulted in a change in the price of subject merchandise, and failed to provide any evidence in support of that claim.¹⁶⁷ Therefore, while Sibbo may have demonstrated a subsidies-to-cost linkage, it failed to identify a cost-to-price linkage as no price fluctuations were tied directly to the change in cost associated with the subsidy identified in the relevant period. Accordingly, we made no adjustment for double remedies for purposes of this preliminary determination.

Finally, Shanxi Xuanshi identified one program that potentially impacts COM: Provision of Electricity for LTAR.¹⁶⁸ However, Shanxi Xuanshi notes that the cost of electricity does not

¹⁵⁹ See Letters from Sibbo, "Cast Iron Soil Pipe Fittings from the People's Republic of China: Double Remedies Questionnaire Response," dated November 30, 2017 (Sibbo Double Remedies QR); Wor-Biz, "Cast Iron Soil Pipe Fittings People's Republic of China: Submission of Double Remedy Response of Double Remedy Response," dated November 30, 2017 (Wor-Biz Double Remedies QR); and Shanxi Xuanshi, "Cast Iron Soil Pipe Fittings from the People's Republic of China ("Soil Pipe Fittings"); A-570-062; Response to the Department's Double Remedies Questionnaire," dated December 1, 2017 (Shanxi Xuanshi Double Remedies QR).

¹⁶⁰ See Wor-Biz Double Remedies QR at 5.

¹⁶¹ *Id.* at 6.

¹⁶² *Id.* at 8.

¹⁶³ *Id.* at 6 – 7 citing Wor-Biz SQR1 at Exhibit SA-12.

¹⁶⁴ See Wor-Biz SQR1 at Exhibit SA-12.

¹⁶⁵ See Sibbo Double Remedies QR at 6.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 6 – 7.

¹⁶⁸ See Shanxi Xuanshi Double Remedies QR at 6.

vary significantly, and the company would not adjust its sales prices only due to a change in electricity cost.¹⁶⁹ Therefore, while Shanxi Xuanshi may have demonstrated a subsidies-to-cost linkage, it failed to identify a cost-to-price linkage, as no price fluctuations were tied directly to the change in cost associated with the subsidy identified in the relevant period. Accordingly, we made no adjustment for double remedies for purposes of this preliminary determination.

X. CRITICAL CIRCUMSTANCES

On January 17, 2018, the petitioner filed a timely allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the merchandise under consideration.¹⁷⁰ On January 18, 2018, Commerce requested shipment data related to the critical circumstances allegation and received responses from Shanxi Xuanshi and Wor-Biz on January 24, 2018, and Sibio on February 2, 2018.¹⁷¹

In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, Commerce must issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination.

A. Legal Framework

Section 733(e)(1) of the Act provides that Commerce, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) 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 (ii) 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 were massive imports of the subject merchandise over a relatively short period.

Further, 19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise have been “massive,” Commerce normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, “[i]n general, unless the imports during the ‘relatively short period’ . . . have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.” 19 CFR 351.206(i) defines “relatively short period” generally as the period starting on the date the proceeding begins (*i.e.*, the date the Petition is filed) and ending at least three months later. This section of the regulations further provides that, if Commerce “finds that importers, or exporters or producers, had reason to believe, at some time prior to the

¹⁶⁹ *Id.*

¹⁷⁰ See Letter from petitioner, “Cast Iron Soil Pipe Fittings from the People’s Republic of China: Critical Circumstances Allegation,” dated January 17, 2018 (Critical Circumstances Allegation).

¹⁷¹ See Letters from Shanxi Xuanshi, “Cast Iron Soil Pipe Fittings from the People’s Republic of China (“Soil Pipe Fittings”); A-570-062; Response to the Department’s Request for Critical Circumstances Data,” dated January 24, 2018; Wor-Biz, “Cast Iron Soil Pipe Fittings from the People’s Republic of China: Submission Monthly Quantity and Value Data,” dated January 24, 2018; and, Sibio, “Cast Iron Soil Pipe Fittings from the People’s Republic of China: Sibio 2017 Shipment Data – Monthly Quantity & Value,” dated February 2, 2018.

beginning of the proceeding, that a proceeding was likely,” then Commerce may consider a period of not less than three months from that earlier time.

B. Critical Circumstances Allegation

In its allegation, the petitioner contends that because the estimated dumping margin for soil pipe fittings from China in the Petition was 92.48 percent, there is information on the record of this investigation to impute knowledge to importers that soil pipe fittings from China were being sold in the United States at LTFV.¹⁷² The petitioner also contends that, based on the preliminary determination of injury by the ITC, there is a reasonable basis to impute to importers the knowledge that material injury is likely by reason of such imports.¹⁷³

As part of its allegation and pursuant to 19 CFR 351.206(h)(2), the petitioner submitted import data compiled from U.S. ITC Trade Data Web for the merchandise covered by the scope of this investigation as evidence of massive imports of soil pipe fittings from China during a relatively short period.¹⁷⁴

The petitioner argues that Commerce may rely on the margins alleged in the Petition to decide whether importers knew, or should have known, that dumping was occurring.¹⁷⁵ The estimated dumping margin for soil pipe fittings from China alleged in the Petition was 92.48 percent, significantly exceeding the 15 percent threshold used by Commerce to impute knowledge of dumping in CEP transactions.¹⁷⁶ The petitioner further argues that importers of Chinese soil pipe fittings have been on notice that dumped imports are likely to cause injury since the ITC’s September 6, 2017, preliminary affirmative injury finding.¹⁷⁷

Considering the date on which the Petition was filed (July 13, 2017), the petitioner argues that, to establish whether there have been “massive imports of the subject merchandise over a relatively short period” pursuant to section 733(e)(1)(B) of the Act, Commerce should compare import volumes of soil pipe fittings from China for the base period of January 2017 – June 2017 to its import volumes for the comparison period of July 2017 – November 2017, as provided under 19 CFR 351.206(i).¹⁷⁸ The petitioner alleges that import statistics released by the ITC permit three different comparisons – one based on three-month, four-month, and five-month time periods.¹⁷⁹ The petitioner contends that the data show that imports have been massive by any measure (*i.e.*, 27.7 – 63.2 percent) between the base period and whichever comparison period used, and as a result, exceeded the threshold for “massive” imports of soil pipe fittings from China, as provided under 19 FR 351.206(h) and (i).¹⁸⁰ The petitioner further states that it is unaware of any seasonal trends or consumption trends that could explain this large increase in imports since the filing of

¹⁷² See Critical Circumstances Allegation at 3.

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 4.

¹⁷⁵ See Critical Circumstances Allegation at 3.

¹⁷⁶ *Id.* at 4.

¹⁷⁷ *Id.* citing *Investigations: Cast Iron Soil Pipe Fittings from China*, 82 FR 42113 (September 6, 2017) (ITC Preliminary Injury Finding).

¹⁷⁸ See Critical Circumstances Allegation at 6.

¹⁷⁹ *Id.* at 4.

¹⁸⁰ *Id.*

the Petition.¹⁸¹ No respondent submitted comments to rebut petitioner’s critical circumstances allegation.

C. Analysis

Commerce’s normal practice in determining whether critical circumstances exist pursuant to the statutory criteria has been to examine evidence available to Commerce, such as: (1) the evidence presented in the petitioner’s critical circumstances allegation; (2) import statistics released by the ITC; and (3) shipment information submitted to Commerce by the respondents selected for individual examination.¹⁸²

Section 733(e)(1)(A)(i) of the Act: History of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise

In order to determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, Commerce generally considers current or previous AD duty orders on subject merchandise from the country in question in the United States and current orders in any other country with regard to imports of subject merchandise.¹⁸³ The petitioner identifies no such proceeding with respect to Chinese-origin soil pipe fittings, nor are we aware of an AD order in any country on soil pipe fittings. Accordingly, we find no history of injurious dumping of soil pipe fittings from China pursuant to section 733(e)(1)(A)(i) of the Act; thus, this criterion is not met.

Because there is no prior history of injurious dumping, we next examined whether 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. When evaluating whether such imputed knowledge exists, Commerce normally considers margins of 25 percent or more for EP sales or 15 percent or more for CEP sales sufficient to meet the quantitative threshold to impute knowledge of dumping.¹⁸⁴ For purposes of this investigation, we preliminarily determine that the knowledge standard is met because the preliminary margins for the mandatory respondents, the separate rate respondents, and the China-wide entity exceed the threshold for EP or CEP sales.¹⁸⁵

¹⁸¹ *Id.* at 4 – 5.

¹⁸² See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China*, 73 FR 31970, 31972-73 (June 5, 2008); and *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People’s Republic of China*, 74 FR 2049, 2052-53 (January 14, 2009).

¹⁸³ See, e.g., *Certain Oil Country Tubular Goods From the People’s Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 74 FR 59117, 59120 (November 17, 2009), unchanged in *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010).

¹⁸⁴ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17416 (March 26, 2012).

¹⁸⁵ See “Preliminary Determination” section of the accompanying *Federal Register* notice.

Accordingly, because the statutory criteria of section 733(e)(1)(A) of the Act has been satisfied, we examined whether imports from respondents were massive over a relatively short period, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).

1) Sib0

Using six-month base and comparison periods, consistent with 19 CFR 351.206(h)(2), we preliminarily find that imports based on Sib0's reported shipments of subject merchandise during the comparison period (*i.e.*, July 2017 through December 2017) increased by more than 15 percent over its respective imports in the base period (*i.e.*, January 2017 through June 2017).¹⁸⁶ Therefore, we preliminarily find there to be massive imports for Sib0, pursuant to section 733(e)(1)(B) of the Act, 19 CFR 351.206(c)(2)(i) and 19 CFR 351.206(h)(2).

2) Shanxi Xuanshi

With respect to Shanxi Xuanshi, pursuant to section 733(e) of the Act, we preliminarily determine that critical circumstances do not exist. Specifically, Shanxi Xuanshi's reported shipments of subject merchandise in the comparison period (*i.e.*, July 2017 through December 2017) did not increase by at least 15 percent from its imports of subject merchandise during the base period (*i.e.*, January 2017 through June 2017).¹⁸⁷ Therefore, we preliminarily determine that critical circumstances do not exist with respect to Shanxi Xuanshi.

3) Wor-Biz

Regarding Wor-Biz, pursuant to section 733(e) of the Act, we preliminarily determine that critical circumstances do not exist. Specifically, Wor-Biz's reported shipments of subject merchandise in the comparison period (*i.e.*, July 2017 through December 2017) did not increase by at least 15 percent from its imports of subject merchandise during the base period (*i.e.*, January 2017 through June 2017).¹⁸⁸ Therefore, we preliminarily determine that critical circumstances do not exist with respect to Wor-Biz.

4) Non-Individually Examined Respondents

In order to determine whether the non-selected separate rate respondents have massive imports, it is Commerce's practice to rely upon GTA import statistics specific to the merchandise covered by the scope of the investigation less the mandatory respondents' reported shipment data.¹⁸⁹ In doing so, in this case, Commerce found that these imports

¹⁸⁶ See Memorandum to the File from Denisa Ursu entitled "Less-Than-Fair-Value Investigation of Cast Iron Soil Pipe Fittings from the People's Republic of China: Critical Circumstances Massive Imports Analysis," dated currently with this memorandum.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ See, e.g., *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 81 FR 5098 (February 1, 2016) and accompanying Preliminary Decision Memorandum at "Critical Circumstances", unchanged in *Hydrofluorocarbon Blends and Components*

were massive as well. From this data, it is clear that there was an increase in imports of more than 15 percent during a “relatively short period” of time, in accordance with 19 CFR 351.206(h) and (i). Therefore, we preliminarily find there to be massive imports for the non-selected separate rate respondents, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).

5) China-Wide Entity

In determining whether imports of the subject merchandise have been “massive” for the China-Wide entity, we make our preliminary determination with respect to whether or not there were massive imports on facts otherwise available, with an adverse inference, because the China-wide entity has been uncooperative with Commerce, as explained above.¹⁹⁰ Specifically, with respect to critical circumstances, we are making an adverse inference that the China-wide entity dumped “massive imports” over a “relatively short period,” in accordance with sections 733(e) and 776(a) and (b) of the Act and 19 CFR 351.206.

We will make a final determination concerning critical circumstance when we issue our final determination of sales at LTFV for this investigation.

XI. ADJUSTMENT FOR COUNTERAVAILABLE EXPORT SUBSIDIES

In AD investigations where there is a CVD investigation, it is Commerce’s normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent’s weighted-average dumping margin to account for export subsidies found for each respective respondent in the concurrent CVD investigation. Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S. price “shall be increased by the amount of any countervailing duty imposed on the subject merchandise ... to offset an export subsidy.”¹⁹¹

Commerce determined in the preliminary determination of the companion CVD investigation that Shanxi Xuanshi and Wor-Biz benefitted from an export subsidy. For Shanxi Xuanshi, we find that an export subsidy adjustment of 0.09 percent to the cash deposit rate is warranted.¹⁹² For Wor-Biz, we find that an export subsidy adjustment of 0.23 percent to the cash deposit rate is warranted.¹⁹³ With respect to the separate rate companies and Sibio, we find that an export subsidy adjustment of 0.16 percent to the cash deposit rate is warranted because this is the export subsidy rate included in the CVD all-others rate, to which these companies are subject in the

Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 81 FR 42314 (June 29, 2016).

¹⁹⁰ See, e.g., *Non-Oriented Electrical Steel from the People's Republic of China: Preliminary Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*, 79 FR 29421 (December 6, 2013), and accompanying Preliminary Decision Memorandum at “Critical Circumstances”, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determinations of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014).

¹⁹¹ See *Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 38076, 38077 (July 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

¹⁹² See Shanxi Xuanshi Preliminary Calculation Memorandum.

¹⁹³ See Wor-Biz Preliminary Calculation Memorandum.

companion CVD proceeding.¹⁹⁴ For the China-wide entity, which preliminarily received an AFA margin, as an extension of the adverse inference found necessary pursuant to section 776(b) of the Act, Commerce has adjusted the China-wide entity's AD cash deposit rate by the lowest export subsidy rate determined for any party in the companion CVD proceeding.¹⁹⁵ That rate is 0.09 percent.¹⁹⁶

XII. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information the respondents submitted in response to Commerce's questionnaires.

XIII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

Agree

Disagree

2/12/2018

X



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

¹⁹⁴ See *Cast Iron Soil Pipe Fittings from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 82 FR 60178 (December 19, 2017) (Soil Pipe Fittings CVD Preliminary Determination) and accompanying Preliminary Decision Memorandum.

¹⁹⁵ See, e.g., *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Affirmative Determination of Critical Circumstances; In Part and Postponement of Final Determination*, 80 FR 4250 (January 27, 2015), and accompanying Issues and Decision Memorandum at 35.

¹⁹⁶ See *Soil Pipe Fittings CVD Preliminary Determination*, 82 FR at 60179.