



A-570-066  
Investigation  
Public Document  
AD/CVD I: TES/MR

April 30, 2018

**MEMORANDUM TO:** Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of  
the 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 Polytetrafluoroethylene  
Resin from the People's Republic of China

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## I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that imports of polytetrafluoroethylene (PTFE) resin 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, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The preliminary margins of sales at less than fair value are shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

## II. BACKGROUND

On September 28, 2017, we received an antidumping duty (AD) petition covering imports of PTFE resin from China,<sup>1</sup> which was filed in proper form on behalf of The Chemours Company FC LLC (the petitioner). We initiated this investigation on October 18, 2017.<sup>2</sup>

On October 19, 2017, we issued quantity and value (Q&V) questionnaires to companies

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<sup>1</sup> See Letter to the Secretary of Commerce, "Polytetrafluoroethylene (PTFE) Resin from the People's Republic of China and India: Antidumping and Countervailing Duty Petitions," dated September 28, 2017 (the Petition).

<sup>2</sup> See *Polytetrafluoroethylene Resin from India and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 49587 (October 26, 2017) (*Initiation Notice*).



identified in the Petition.<sup>3</sup> On November 15, 2017, in accordance with section 777A(c)(2)(B) of the Act, we selected the two exporters accounting for the largest volume of PTFE resin from China during the period of investigation (POI), *i.e.*, Daikin Fluorochemicals (China) Co., Ltd. (Daikin), and Shandong Dongyue Polymer Material Co., Ltd. (Dongyue), for individual examination.<sup>4</sup>

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 PTFE resin to be reported in response to Commerce's AD questionnaire.<sup>5</sup> In response to comments and rebuttals filed by interested parties on the scope of the investigation, we issued the preliminary scope determination on February 28, 2018.<sup>6</sup>

On November 13, 2017, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of PTFE resin from China.<sup>7</sup>

On November 27, 2017, we issued its AD questionnaire to Daikin and Dongyue.<sup>8</sup> From December 20, 2017 through January 18, 2018, we received questionnaire responses from Daikin<sup>9</sup> and the Dongyue.<sup>10</sup> We then issued supplemental questionnaires to the respondents and we received responses to these supplemental questionnaires from February 21, 2018 through April 20, 2018.<sup>11</sup> The petitioner submitted comments with respect to the responses submitted by these two respondents.<sup>12</sup>

Commerce received timely separate rate applications (SRA) from three companies. In February 2018, we issued, and received a response to, a separate rate supplemental questionnaire.

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<sup>3</sup> See Quantity and Value Questionnaire for the Antidumping Duty Investigation of Polytetrafluoroethylene (PTFE) Resin from the People's Republic of China dated October 19, 2017 (Q&V Questionnaire).

<sup>4</sup> See Memorandum, "Antidumping Duty Investigation of Polytetrafluoroethylene Resin from the People's Republic of China: Respondent Selection," dated November 15, 2017 (Respondent Selection Memorandum).

<sup>5</sup> See *Initiation Notice*, 82 FR at 49587.

<sup>6</sup> See Memorandum, "Polytetrafluoroethylene Resin from India and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations," (Preliminary Scope Decision Memorandum) dated February 28, 2018.

<sup>7</sup> See *Polytetrafluoroethylene ("PTFE") Resin from China and India*, 82 FR 53521 (November 16, 2017), and *Polytetrafluoroethylene ("PTFE") Resin from China and India: Inv. Nos. 701-TA-588 and 731-TA-1392-1393*, USITC Pub. 4741 (November 2017) (Preliminary).

<sup>8</sup> See the AD questionnaire to Daikin and Dongyue dated November 27, 2017.

<sup>9</sup> See Daikin's section A response dated December 20, 2017 (Daikin AQR), and sections C and D response dated January 10, 2018 (Daikin CDQR).

<sup>10</sup> See Dongyue's section A response dated December 27, 2017 (Dongyue AQR), section C response dated January 10, 2018 (Dongyue CQR), and section D response dated January 18, 2018 (Dongyue DQR).

<sup>11</sup> See Daikin's supplemental response dated February 21, 2018, March 5, 2018, March 20, 2018, and April 16, 2018 (Daikin SQR1, Daikin SQR2, Daikin SQR3 and Daikin SQR4, respectively), and Dongyue's supplemental response dated February 20, 2018, March 2, 2018, April 10, 2018, April 17, 2018, and April 20, 2018 (Dongyue SQR1, Dongyue SQR2, Dongyue SQR3-1, Dongyue SQR3-2, and Dongyue SQR3-3, respectively).

<sup>12</sup> See the petitioner's deficiency comments for Daikin dated March 30, 2018, and the petitioner's deficiency comments for Dongyue dated February 26, 2018, and April 20, 2018.

On November 14, 2017, we placed on the record a list of potential surrogate countries.<sup>13</sup> On November 14, 2017, we invited interested parties to comment on the selection of the primary surrogate country and provide surrogate values (SVs) information.<sup>14</sup> We received comments on the selection of the primary surrogate country and SVs information and rebuttals thereof from the petitioner,<sup>15</sup> Daikin,<sup>16</sup> and Dongyue.<sup>17</sup>

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

### III. PERIOD OF INVESTIGATION

The 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 September 2017.<sup>18</sup>

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<sup>13</sup> See Memorandum, “Request for a List of Surrogate Countries for an Antidumping Duty Investigation of Polytetrafluoroethylene Resin (“PTFE”) from the People’s Republic of China (“China”),” dated November 14, 2017 (Office of Policy Memorandum).

<sup>14</sup> See Commerce’s Letter to All Interested Parties, “Antidumping Duty Investigation of Polytetrafluoroethylene Resin from the People’s Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information,” dated November 14, 2017 (Surrogate Country and Values Comments Invitation Letter).

<sup>15</sup> See the petitioner’s Letters, “Polytetrafluoroethylene (PTFE) Resin from China: Petitioner’s Rebuttal Comments on Surrogate Country Selection,” dated January 19, 2018 (Petitioner’s SC Rebuttal Comments), “Polytetrafluoroethylene (PTFE) Resin from the People’s Republic of China: Initial Surrogate Value Data,” dated January 31, 2018 (Petitioner’s SV Comments), “Polytetrafluoroethylene (PTFE) Resin from the People’s Republic of China: Petitioner’s Rebuttal to Factor Value Submission of Daikin and Shandong Dongyue,” dated February 12, 2018 (Petitioner’s SV Rebuttal Comments), “Polytetrafluoroethylene (PTFE) Resin from the People’s Republic of China: Petitioner’s Rebuttal Factual Information,” dated April 9, 2018 (Petitioner’s SV Rebuttal Comments 2), and “Polytetrafluoroethylene (PTFE) Resin from the People’s Republic of China: Rebuttal to Daikin’s Pre-Preliminary Determination Comments,” dated April 16, 2018 (Petitioner’s SV Rebuttal Comments 3).

<sup>16</sup> See Daikin’s Letters, “Polytetrafluoroethylene (PTFE) Resin from the People’s Republic of China: Comments on Surrogate Country Selection,” dated January 9, 2018 (Daikin’s SC Comments), “Polytetrafluoroethylene (PTFE) Resin from the People’s Republic of China: Comments on Surrogate Country Selection,” dated January 31, 2018 (Daikin’s SV Comments 1), “Polytetrafluoroethylene (PTFE) Resin from the People’s Republic of China: Surrogate Value Rebuttal Comments,” dated February 12, 2018 (Daikin’s SV Rebuttal Comments), “Polytetrafluoroethylene (PTFE) Resin from the People’s Republic of China: Surrogate Value Rebuttal Comments,” dated March 30, 2018 (Daikin’s SV Comments 2), “Polytetrafluoroethylene (PTFE) Resin from the People’s Republic of China: Factual Information,” dated April 2, 2018 (Daikin’s SV Comments 3), “Polytetrafluoroethylene (PTFE) Resin from the People’s Republic of China: Reply to Chemours Comments of April 9, 2018,” dated April 18, 2018 (Daikin’s SV Rebuttal Comments 2), and “Polytetrafluoroethylene (PTFE) Resin from the People’s Republic of China: Reply to Chemours’ Comments of April 16, 2018,” dated April 19, 2018 (Daikin’s SV Rebuttal Comments 3).

<sup>17</sup> See Dongyue’s Letters, “PTFE Resin from the People’s Republic of China: Submission of Initial Surrogate Value Information,” dated January 31, 2018 (Dongyue’s SV Comments 1), and “PTFE Resin from the People’s Republic of China: Submission of Additional Surrogate Value Information,” dated March 30, 2018 (Dongyue’s SV Comments 2).

<sup>18</sup> See 19 CFR 351.204(b)(1).

#### IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,<sup>19</sup> we set aside a period of time until November 7, 2017, for parties to comment on product coverage (scope).<sup>20</sup> Based on our analysis of the comments and rebuttals we received, we have preliminarily not modified the scope of this investigation.<sup>21</sup> The scope of this and the companion PTFE resin investigations will be finalized with the final determination in the concurrent countervailing duty (CVD) investigation of PTFE resin from India.

#### V. PRODUCT CHARACTERISTICS

In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product characteristics until November 7, 2017.<sup>22</sup> The petitioner and other interested parties provided comments<sup>23</sup> which we took into consideration in determining the physical characteristics outlined in the AD questionnaire.<sup>24</sup>

#### VI. SELECTION OF RESPONDENTS

Section 777A(c)(1) of the Act directs Commerce to calculate an individual weighted-average dumping margin for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives Commerce discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted-average dumping margin determinations because of the large number of exporters and producers involved in the investigation. Pursuant to section 777A(c)(2) of the Act, Commerce may limit its examination to: (A) a sample of exporters, producers or types of products that Commerce determines is statistically valid based on the information available to Commerce at the time of selection; or (B) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that Commerce determines can be reasonably examined. In this AD proceeding, because of the large number of companies involved in the investigation and its limited resources, Commerce selected respondents that account for the largest volume of the subject merchandise that can reasonably be examined, pursuant to section 777A(c)(2)(B) of the Act.

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<sup>19</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

<sup>20</sup> See *Initiation Notice*, 82 FR at 49587.

<sup>21</sup> See Preliminary Scope Decision Memorandum for a full discussion of all scope comments.

<sup>22</sup> See *Initiation Notice*, 82 FR at 49588.

<sup>23</sup> See the Daikin's Letter, "Polytetrafluoroethylene (PTFE) Resin from the People's Republic of China: Comments on Product Characteristics," dated November 7, 2017, Gujarat Fluorochemicals Ltd.'s (GFL's) Letter, "Polytetrafluoroethylene Resin From India and the People's Republic of China; GFL Comments on Product Characteristics," dated November 7, 2017, the petitioner's Letter, "Polytetrafluoroethylene (PTFE) Resin from the People's Republic of China and India: Petitioner's Response to Comments Regarding Product Characteristics," dated November 17, 2017, and GFL's Letter, "Polytetrafluoroethylene Resin From India and the People's Republic of China: GFL's Rebuttal Comments on Product Characteristics," dated November 17, 2017.

<sup>24</sup> See the AD questionnaire to Daikin and Dongyue dated November 27, 2017.

In the *Initiation Notice*, Commerce stated its intent to base respondent selection on the responses to Q&V questionnaires.<sup>25</sup> On October 19, 2017, we issued the Q&V questionnaire to companies identified in the Petition.<sup>26</sup> In addition, we posted the Q&V questionnaire on its website and, in the *Initiation Notice*, invited parties that did not receive a Q&V questionnaire from Commerce to file a response to the Q&V questionnaire by the applicable deadline if they wished to be included in the pool of companies from which Commerce would select mandatory respondents.<sup>27</sup> We received five timely Q&V questionnaire responses.<sup>28</sup> However, 29 companies received the Q&V questionnaire, but failed to respond to Commerce’s request for Q&V information.<sup>29</sup> On November 15, 2017, we limited the number of respondents selected for individual examination to the two exporters accounting for the largest volume of exports from China to the United States during the POI that could be reasonably examined, *i.e.*, Daikin and Dongyue.<sup>30</sup>

## VII. DISCUSSION OF THE METHODOLOGY

### A. Non-Market Economy Country

Commerce considers China to be a non-market economy (NME) country.<sup>31</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of this preliminary determination.

### B. Surrogate Country

When Commerce is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value (NV), in most circumstances, on the NME producer’s factors of production (FOPs), valued in a surrogate market economy (ME) country or countries considered to be appropriate by Commerce. Specifically, in accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce shall utilize, “to the extent possible, the prices or costs of {FOPs} in one or more ME countries that are: (A) at a level of economic development comparable to that of the {NME} country; and (B) significant producers of comparable merchandise.”<sup>32</sup> As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME, unless it is determined that none of the countries are viable options because they either: (a) are not significant producers of comparable merchandise, (b) do not

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<sup>25</sup> See *Initiation Notice*, 82 FR at 49590.

<sup>26</sup> See Q&V Questionnaire.

<sup>27</sup> See *Initiation Notice*, 82 FR at 49590, and Q&V Questionnaire.

<sup>28</sup> See Respondent Selection Memorandum at Attachment for the list of all companies that filed their response to the Q&V Questionnaire.

<sup>29</sup> See Memorandum, “Quantity & Value Questionnaires: Delivery Confirmation” dated January 18, 2018.

<sup>30</sup> See Respondent Selection Memorandum.

<sup>31</sup> 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*.

<sup>32</sup> For a description of our practice, see Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on Commerce’s website at <http://enforcement.trade.gov/policy/bull04-1.html>.

provide sufficient reliable sources of publicly available surrogate value (SV) data, or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development. To determine which countries are at the same level of economic development as the NME, Commerce generally relies on per capita gross national income (GNI) data from the World Bank's World Development Report.<sup>33</sup> Further, Commerce normally values all FOPs in a single surrogate country.<sup>34</sup>

On November 14, 2017, Commerce identified Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand as countries that are at the same level of economic development as China based on per capita 2016 GNI data.<sup>35</sup> On November 14, 2017, we issued a letter to interested parties soliciting comments on the list of countries that Commerce determined, based on per capita 2016 GNI, to be at the same level of economic development as China, and the selection of the primary surrogate country, as well as providing deadlines for the consideration of any submitted SV information for the preliminary determination.<sup>36</sup> In response, Daikin recommended Mexico and Brazil<sup>37</sup> and the petitioner recommended Mexico<sup>38</sup> as the primary surrogate country in this investigation.

#### 1. Economic Comparability

Consistent with its practice, and section 773(c)(4) of the Act, and as stated above, we identified Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand as countries at the same level of economic development as China based on the *per capita* GNI data from the World Bank's World Development Report.<sup>39</sup> Therefore, we consider all six countries as having met this prong of the surrogate country selection criteria. The countries identified are not ranked and are considered equivalent in terms of economic comparability.

#### 2. Significant Producer of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires Commerce, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor Commerce's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, Commerce looks to other sources such as the Policy Bulletin 04.1 for guidance on defining comparable merchandise. The Policy Bulletin 04.1 states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."<sup>40</sup> Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is

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<sup>33</sup> *Id.*

<sup>34</sup> See 19 CFR 351.408(c)(2).

<sup>35</sup> See Office of Policy Memorandum.

<sup>36</sup> See Surrogate Country and Values Comments Invitation Letter.

<sup>37</sup> See Daikin's SV Comments.

<sup>38</sup> See Petitioner's SV Rebuttal Comments.

<sup>39</sup> See Office of Policy Memorandum.

<sup>40</sup> See Policy Bulletin 04.1 at 2.

sufficient in selecting a surrogate country.<sup>41</sup> Further, when selecting a surrogate country, the statute requires Commerce to consider the comparability of the merchandise, not the comparability of the industry.<sup>42</sup> “In cases where the identical merchandise is not produced, Commerce must determine if other merchandise that is comparable is produced. How Commerce does this depends on the subject merchandise.”<sup>43</sup> In this regard, Commerce recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.<sup>44</sup>

Further, the statute grants Commerce discretion to examine various data sources for determining the best available information.<sup>45</sup> Moreover, while the legislative history provides that the term “significant producer” includes any country that is a significant “net exporter,”<sup>46</sup> it does not preclude reliance on additional or alternative metrics. It is Commerce’s practice is to evaluate whether production is significant based on characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics).<sup>47</sup> In this case, because production data of comparable merchandise are not available, we analyzed exports of comparable merchandise from the six countries, as a proxy for production data.<sup>48</sup> We obtained export data from the Global Trade Atlas (GTA) for entries made under the Harmonized Tariff Schedule (HTS) subheading 3904.61: “Polytetrafluoroethylene (PTFE)” (this HTS subheadings incorporates subject merchandise reportable under Harmonized Tariff Schedule of the United States categories 3904.61.0010 and 3904.61.0090).<sup>49</sup> All of the six potential surrogate countries except Bulgaria reported export volumes of comparable merchandise in the

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<sup>41</sup> The Policy Bulletin 04.1 also states that “if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.” *Id.* at note 6.

<sup>42</sup> See *Sebacic Acid from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) (“{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.”).

<sup>43</sup> See Policy Bulletin 04.1 at 2.

<sup>44</sup> *Id.*, at 3.

<sup>45</sup> See section 773(c) of the Act. See also *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

<sup>46</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

<sup>47</sup> See *Xanthan Gum from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2252 (January 10, 2013) and accompanying Preliminary Decision Memorandum at 4-7, unchanged in *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013).

<sup>48</sup> See Memorandum, “Polytetrafluoroethylene Resin from the People’s Republic of China: Surrogate Values for the Preliminary Affirmative Determination of Sales at Less Than Fair Value,” dated concurrently with this memorandum (Preliminary SV Memorandum), at Exhibit 1.

<sup>49</sup> *Id.*

POI. As such, we find that all potential surrogate countries except Bulgaria meet the “significant producer” requirement of section 773(c)(4) of the Act.<sup>50</sup>

### 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.<sup>51</sup> When evaluating SV data, Commerce considers several criteria including whether the SV data are publicly available, contemporaneous with the period under consideration, broad-market averages, tax and duty-exclusive, and specific to the inputs being valued.<sup>52</sup> There is no hierarchy among these criteria.<sup>53</sup> Commerce’s preference is to satisfy the breadth of these aforementioned selection criteria.<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup>

The petitioner, Daikin, and Dongyue placed data on the record from Mexico.<sup>57</sup> We find that the Mexican data are the best available data for valuing the two individually investigated respondents’ FOPs because we have complete, publicly-available, contemporaneous, specific Mexican data for almost all of the inputs used by the two individually investigated respondents to produce the subject merchandise during the POI. Although Dongyue also placed data on the record for Brazil and Romania, these data only included potential surrogate values for select material inputs, by-products, and packing materials. As a result, we do not have data on the record with which to value labor, water, electricity, or financial ratios. Moreover, the material-input data on the record for Brazil and Romania do not capture all the inputs used by Daikin. Accordingly, we do not have complete, publicly-available, contemporaneous, specific Brazilian or Romanian data for many of the inputs used by the two individually investigated respondents to produce the subject merchandise during the POI. Therefore, Commerce preliminarily determines that the Mexican data are the best available surrogate value data.

Given the above facts, we selected Mexico as the primary surrogate country for this investigation. Mexico is at the level of economic development of China, is a significant producer of comparable merchandise, and generally has reliable and usable SV data. A detailed

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<sup>50</sup> *Id.*

<sup>51</sup> See Policy Bulletin 04.1.

<sup>52</sup> *Id.*

<sup>53</sup> See, e.g., *Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) (*Mushrooms China*) and accompanying I&D Memo at Comment 1.

<sup>54</sup> See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 2010-2011*, 78 FR 17350 (March 21, 2013) (*Frozen Fish Fillets March 2013*), and accompanying I&D Memo at Comment I(C).

<sup>55</sup> See *Mushrooms China* and accompanying I&D Memo at Comment 1.

<sup>56</sup> *Id.*

<sup>57</sup> See the petitioner’s SV Comments, Daikin’s SV Comments 1, and Dongyue’s SV Comments 1.

description of the SVs selected by Commerce is provided below in the “Factor Valuation Methodology” section below and the Preliminary SV Memorandum.

### C. Surrogate Value Comments

On January 31, 2018, the petitioner, Daikin, and Dongyue filed surrogate factor valuation comments and SV information with which to value the FOPs in this proceeding.<sup>58</sup> On February 12, 2018, the petitioner and Daikin filed rebuttal surrogate factor valuation comments and surrogate value information.<sup>59</sup> Daikin and Dongyue timely filed additional surrogate factor valuation comments and SV information on March 30, 2018, and April 2, 2018, pursuant to 19 CFR 351.301(c)(3)(i) and rebuttals thereof on April 9, 2018, pursuant to 19 CFR 351.301(c)(3)(iv).<sup>60</sup> For a detailed discussion of the SVs used in this AD investigation, *see* the “Factor Valuation Methodology” section below and the Preliminary SV Memorandum.

### D. 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.<sup>61</sup> In the *Initiation Notice*, Commerce notified parties of the application process by which exporters may obtain separate rate status in this investigation.<sup>62</sup> The process requires exporters to submit a SRA<sup>63</sup> and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities. In the *Initiation Notice*, Commerce required that “that respondents submit a response to both the Q&V questionnaire and the separate-rate application by their respective deadlines in order to receive consideration for separate-rate status.”<sup>64</sup>

Commerce’s policy is to assign all exporters of merchandise under consideration that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.<sup>65</sup> Commerce analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*<sup>66</sup> and further developed in *Silicon Carbide*.<sup>67</sup> According to this separate

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<sup>58</sup> *Id.*

<sup>59</sup> *See* Petitioner’s SV Rebuttal Comments and Daikin’s SV Rebuttal Comments.

<sup>60</sup> *See* Daikin’s SV Comments 2, Daikin’s SV Comments 3, Dongyue’s SV Comments 2, and Petitioner’s SV Rebuttal Comments 2.

<sup>61</sup> *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).

<sup>62</sup> *See Initiation Notice*, 82 FR at 21527-28.

<sup>63</sup> *See* Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005) (Policy Bulletin 05.1), available at <http://enforcement.trade.gov/policv/bull05-1.pdf>.

<sup>64</sup> *See Initiation Notice*, 82 FR at 21528.

<sup>65</sup> *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*).

<sup>66</sup> *Id.*

<sup>67</sup> *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*).

rate test, Commerce will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If, however, Commerce determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China AD proceeding, and its determinations therein.<sup>68</sup> In particular, in litigation involving the diamond sawblades from China proceeding, the U.S. Court of International Trade (CIT) found Commerce's existing separate rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity exercised control over the respondent exporter.<sup>69</sup> Following the CIT's reasoning, in recent proceedings, we have concluded that where a government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, this interest in and of itself means that the government exercises or has the potential to exercise control over the company's operations generally.<sup>70</sup> This may include control over, for example, the selection of board members and management, key factors in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with our normal separate rate practice, any ability to control, or possess an interest in controlling, the operations of the company (including the selection of board members, management, and the profit distribution of the company) by a government entity is subject to Commerce's rebuttable presumption that all companies within the NME country are subject to government control.

In the *Initiation Notice*, we stated that SRAs would be due 30 days after publication of the notice, *i.e.*, November 25, 2017. As noted above, Daikin and Dongyue timely submitted

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<sup>68</sup> See Final Results of Redetermination pursuant to *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), and available at <http://enforcement.trade.gov/remands/12-147.pdf>, *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014) (*Advanced Technology II*). See also *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013) and accompanying Preliminary Decision Memorandum at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying I&D Memo at Comment 1.

<sup>69</sup> 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).

<sup>70</sup> See *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying Preliminary Decision Memorandum at 5-9.

responses to section A of the AD questionnaire, in which each company submitted information pertaining to its eligibility for a separate rate.<sup>71</sup> Furthermore, we received timely filed SRAs from the following applicants:

Hangzhou Fine Fluorotech Co., Ltd. (Fine Fluorotech)  
Shanghai Huayi 3f New Materials Sales Co., Ltd. (Huayi 3f)  
Zhejiang Jusheng Fluorochemical Co., Ltd. (Jusheng)

We issued a supplemental questionnaire and received a supplemental response from Huayi 3f.<sup>72</sup>

### 1. Separate Rate Analysis

We are preliminarily granting the following companies a separate rate, as explained below.

#### a. Wholly Foreign-Owned

Daikin and Dongyue reported that they are wholly owned by market economy companies located in market economy countries. We preliminarily find these companies eligible for a separate rate.

#### b. Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

Fine Fluorotech and Huayi 3f reported that they are wholly owned by either Chinese individuals or a Chinese company. Therefore, we must analyze whether these respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

### 2. 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.<sup>73</sup>

The evidence placed on the record of this investigation with respect to the wholly Chinese-owned companies listed in this section supports a preliminary finding of an absence of *de jure* government control for each of these companies based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of companies; and (3)

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<sup>71</sup> See Daikin AQR and Dongyue AQR.

<sup>72</sup> See Letter from Huayi 3f, "Polytetrafluorethylene (PTFE) Resin from the People's Republic of China: Supplemental SRA Response," dated February 15, 2018.

<sup>73</sup> See *Sparklers*, 56 FR at 20589.

the implementation of formal measures by the government decentralizing control of Chinese companies.<sup>74</sup>

### 3. Absence of *De Facto* Control

Typically, Commerce considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the prices are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.<sup>75</sup> Commerce has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude Commerce from assigning separate rates.

The evidence placed on the record of this investigation, with the exception of the company listed in the next subsection, supports a preliminary finding of an absence of *de facto* government control based on record statements and supporting documentation showing that the companies: (1) set their own prices independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses.<sup>76</sup>

Therefore, the evidence placed on the record of this investigation with respect to the wholly Chinese-owned companies listed in this section demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, we preliminarily grants separate rates to the separate rate applicants identified above.

### 4. Companies Not Receiving a Separate Rate

We preliminarily denied a separate rate to the following separate rate applicant:

Zhejiang Jusheng Fluorochemical Co., Ltd.

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<sup>74</sup> See Letter from Fine Fluorotech, “Polytetrafluorethylene (PTFE) Resin from the People’s Republic of China: Submission or Separate Rate Application,” (November 27, 2017), letter from Huayi 3f, “Polytetrafluorethylene (PTFE) Resin from the People’s Republic of China: SRA,” (November 27, 2017), and letter from Huayi 3f, “Polytetrafluorethylene (PTFE) Resin from the People’s Republic of China: Supplemental SRA Response,” (February 15, 2018).

<sup>75</sup> See *Silicon Carbide*, 59 FR at 22586-87, and *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People’s Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

<sup>76</sup> See letter from Fine Fluorotech, “Polytetrafluorethylene (PTFE) Resin from the People’s Republic of China: Submission or Separate Rate Application,” (November 27, 2017), letter from Huayi 3f, “Polytetrafluorethylene (PTFE) Resin from the People’s Republic of China: SRA,” (November 27, 2017), and letter from Huayi 3f, “Polytetrafluorethylene (PTFE) Resin from the People’s Republic of China: Supplemental SRA Response,” (February 15, 2018).

The evidence on the record with respect to Jusheng does not support a preliminary finding of an absence of *de facto* government control. Because of the proprietary nature of our analysis, *see* the Jusheng Preliminary Analysis Memorandum for our analysis.<sup>77</sup>

#### E. Dumping Margin for the Separate Rate Companies

The statute and Commerce’s regulations do not address the establishment of a rate to be applied to individual companies not selected for individual examination when Commerce limits its examination in an investigation pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation for guidance when calculating the rate for separate rate respondents which we did not individually examine. Section 735(c)(5)(A) of the Act articulates a preference that we not calculate an all-others rate using rates which are zero, *de minimis* or based entirely on facts available. Accordingly, Commerce’s usual practice has been to average the weighted-average dumping margins for the individually examined companies, excluding rates that are zero, *de minimis*, or based entirely on facts available.<sup>78</sup> Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, *de minimis*, or based entirely on facts available, we may use “any reasonable method” for assigning the all-others rate, including “averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.”

In this investigation, we calculated a rate for the two individually investigated respondents that are not zero, *de minimis*, or based entirely on facts available. The weighted average of the rates of these two companies are applicable to companies not selected for individual examination and eligible for a separate rate. For non-selected respondents eligible for a separate rate, we cannot apply our normal methodology of calculating a weighted-average margin using the actual net U.S. sales values and antidumping duty amounts of Daikin and Dongyue because doing so could indirectly disclose business proprietary information to both of these companies. Alternatively, we have previously applied the simple average of the margins we determined for the selected companies.<sup>79</sup> In order to strike a balance between our duty to safeguard parties’ business proprietary information and our attempt to adhere to the guidance set forth in section 735(c)(5)(A) of the Act, we calculated a weighted-average margin for non-selected separate rate respondents using the publicly available, ranged total U.S. sales values of the selected respondents, compared the resulting public, weighted-average margin to the simple average of the antidumping duty margins, and used the amount which is closer to the actual weighted-average margin of the selected respondents as the margin for the non-selected respondents.<sup>80</sup>

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<sup>77</sup> See Memorandum to file, “Polytetrafluoroethylene Resin from the People’s Republic of China: Preliminary Analysis Memorandum for Zhejiang Jusheng Fluorochemical Co., Ltd.,” dated concurrently with this memorandum (Jusheng Preliminary Analysis Memorandum).

<sup>78</sup> See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying I&D Memo at Comment 16.

<sup>79</sup> See, e.g., *Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008).

<sup>80</sup> See *Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative*

Accordingly, for the preliminary determination of this investigation, we are assigning the weighted average of the two individually examined respondents' rates based on their publicly available, ranged U.S. sales values and dumping margins. The separate rate for the eligible non-selected respondents is 78.74 percent.

#### F. Combination Rates

Consistent with the *Initiation Notice*, we calculated combination rates for the respondents that are eligible for a separate rate in this investigation.<sup>81</sup> This practice is described in Policy Bulletin 05.1.

#### G. China-Wide Entity

As discussed above, the separate rate applicants for which we are preliminarily denying separate rate eligibility failed to establish entitlement to a separate rate. Because these companies have not demonstrated that they are eligible for separate rate status, Commerce considers them part of the China-wide entity. Further, the record indicates that there are other China exporters and/or producers of the merchandise under consideration during the POI which did not respond to our requests for information. Specifically, as noted in the "Selection of Respondents" section, above, we did not receive responses to its Q&V questionnaire from certain China exporters and/or producers of the merchandise under consideration that were named in the Petition and received the Q&V questionnaires that we issued. Because non-responsive China companies have not demonstrated that they are eligible for separate rate status, we find that they have not rebutted the presumption of government control and, therefore, considers them to be part of the China-wide entity. Furthermore, as explained below, we are determining the preliminary China-wide rate based on adverse facts available (AFA).

#### H. 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 statute, or (D) provides such information but the information cannot be verified, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

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

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*Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53662 (September 1, 2010), and the accompanying I&D Memo at Comment 1.

<sup>81</sup> See *Initiation Notice*, 82 FR at 21528.

The Trade Preferences Extension Act of 2015 (TPEA) amended section 776(b) and (c) of the Act and added section 776(d) of the Act,<sup>82</sup> which are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.<sup>83</sup>

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 antidumping duty investigation, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information 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.<sup>84</sup> 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. Use of Facts Available

We preliminarily find that the China-wide entity, which includes certain China exporters and/or producers that did not respond to our requests for information, withheld information requested and significantly impeded this proceeding by not submitting the requested information. Specifically, 29 companies within the China-wide entity failed to respond to our request for Q&V information.<sup>85</sup> Thus, necessary information is not on the record and the China-wide entity, which encompasses the parties that failed to respond to the request for Q&V information, has withheld requested information, failed to provide such information in a timely manner or in the

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<sup>82</sup> See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). 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) (*Application Notice*).

<sup>83</sup> See *Application Notice*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

<sup>84</sup> See SAA at 870.

<sup>85</sup> See Memorandum, “Quantity & Value Questionnaires: Delivery Confirmation” dated January 18, 2018. See also Respondent Selection Memorandum at 2.

form or manner requested, and significantly impeded the proceeding. Therefore, we preliminarily determine that the use of facts available is warranted in determining the rate of the China-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.<sup>86</sup>

## 2. Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that in selecting from among the facts otherwise available, Commerce may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Commerce finds that the China-wide entity's failure to submit Q&V information constitutes circumstances under which it is appropriate to conclude that the China-wide entity failed to cooperate to the best of its ability to comply with Commerce's request for information.<sup>87</sup> With respect to the missing information, the China-wide entity did not file any document indicating difficulty providing the information or any request to allow the information to be submitted in an alternate form. Therefore, we preliminarily find that an adverse inference is warranted in selecting from among the facts otherwise available with respect to the China-wide entity, in accordance with section 776(b) of the Act and 19 CFR 351.308(a).<sup>88</sup>

## 3. Selection of the AFA Rate

In applying an adverse inference, Commerce may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.<sup>89</sup> In selecting an AFA rate, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.<sup>90</sup> In an investigation, Commerce's practice with respect to the assignment of an AFA rate is to select the higher of: (1) the highest dumping margin alleged in the petition; or (2) the highest calculated dumping margin of any respondent in the investigation.<sup>91</sup> However, based on the information on the record, we are unable to corroborate the highest petition rate of 408.90 percent.<sup>92</sup>

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<sup>86</sup> 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).

<sup>87</sup> See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that Commerce need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (*i.e.*, information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.")).

<sup>88</sup> See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

<sup>89</sup> See section 776(b) of the Act.

<sup>90</sup> See SAA at 870.

<sup>91</sup> See, e.g., *Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016).

<sup>92</sup> See Antidumping Duty Investigation Initiation Checklist: Polytetrafluoroethylene (PTFE) Resin from the People's Republic of China dated October 18, 2018 (Initiation Checklist), at 10. See also Memorandum to file, "Polytetrafluoroethylene Resin from the People's Republic of China: Corroboration of a Rate Based on Adverse Facts Available," dated concurrently with this memorandum.

In attempting to corroborate that rate, we compared the highest petition rate of 408.90 percent to the individually-investigated respondents' highest transaction-specific dumping margins within the appropriate comparison method (*see* Section J.2 below) and found the petition rate to be significantly higher than the individually-investigated respondents' highest calculated model-specific dumping margins. Because we were unable to corroborate the highest dumping margin contained in the petition, we assigned to the China-wide entity a dumping margin of 208.16 percent, which is the highest model-specific dumping margin for Daikin. Because we are relying on information obtained in the course of this investigation as the AFA rate, not on secondary information, it is not necessary to corroborate this rate.<sup>93</sup>

### I. Date of Sale

In identifying the date of sale of the merchandise under consideration, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business.<sup>94</sup> Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>95</sup>

Daikin reported the commercial invoice date as the date of sale for its U.S. sales.<sup>96</sup> Daikin explained that the "price and quantity of the sale are subject to change until the invoice is issued. For example, the customer may decide that a different quantity is needed and change the quantity, the amount of product available may not be exactly the same as what the customer ordered, or market conditions could lead to a price change."<sup>97</sup> Daikin demonstrated with supporting documentation that the material terms of sale could change up until the date of invoice.<sup>98</sup>

Dongyue reported the commercial invoice date as the date of sale for its U.S. sales.<sup>99</sup> Dongyue explained that the "invoice date is the date on which the material sales terms are finally set without change. While the initial agreement between Shandong Dongyue and its U.S. customers may be in the form of a purchase order or proforma invoice, the sales terms in the purchase order

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<sup>93</sup> See *1,1,1,2-Tetrafluoroethane from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 62597 (October 20, 2014), and accompanying Issues and Decision Memorandum at 3. See also section 776(c) of the Act and 19 CFR 351.308(c) and (d). See also, *Certain Carbon and Alloy Steel Cut-To-Length Plate from Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 79427 (November 14, 2016).

<sup>94</sup> See 19 CFR 351.401(i).

<sup>95</sup> *Id.* See also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001) (*Allied Tube & Conduit Corp.*) ("As elaborated by Department practice, a date other than invoice date 'better reflects' the date when 'material terms of sale' are established if the party shows that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date.").

<sup>96</sup> See Daikin AQR at 23.

<sup>97</sup> *Id.*, at 24.

<sup>98</sup> See Daikin SQR1 at 2-3 and Exhibits SA-4 and SA-5.

<sup>99</sup> See Dongyue AQR at A-24.

or proforma invoice could change.”<sup>100</sup> Dongyue demonstrated with supporting documentation that the material terms of sale could change up until the date of invoice.<sup>101</sup>

Consistent with 19 CFR 351.401(i), we preliminarily determine to use the invoice date as the date of all sales for Daikin and Dongyue.

## J. Comparisons to Fair Value

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

### 1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In antidumping duty 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.

Commerce has 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.<sup>102</sup> Commerce finds that the differential pricing analysis used in prior 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

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<sup>100</sup> *Id.*

<sup>101</sup> See Dongyue SQR1 at 2-3 and Exhibit S1-3.

<sup>102</sup> See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of investigation based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that Commerce uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

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

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

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative

comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

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

## 2. Results of the Differential Pricing Analysis

For Daikin, based on the results of the differential pricing analysis, we preliminarily find that 93.7 percent of the value of U.S. sales pass the Cohen's *d* test<sup>103</sup> and confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, we are applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Daikin.

For Dongyue, based on the results of the differential pricing analysis, we preliminarily find that 95.5 percent of the value of U.S. sales pass the Cohen's *d* test<sup>104</sup> and confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, we are applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Dongyue.

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<sup>103</sup> See Memorandum to the File, "Polytetrafluoroethylene Resin from the People's Republic of China: Preliminary Analysis Memorandum for Daikin Fluorochemicals (China) Co., Ltd.," dated concurrently with this Preliminary Decision Memorandum (Daikin Preliminary Analysis Memorandum).

<sup>104</sup> See Memorandum to the File, "Polytetrafluoroethylene Resin from the People's Republic of China: Preliminary Analysis Memorandum for Shandong Dongyue Polymer Material Co., Ltd.," dated concurrently with this Preliminary Decision Memorandum (Dongyue Preliminary Analysis Memorandum).

## K. U.S. Price

### 1. Export Price Sales

For Dongyue's reported sales, in accordance with section 772(a) of the Act, we based the U.S. price of merchandise under consideration on EP. We calculated EP based on the prices at which merchandise under consideration was sold to unaffiliated purchasers in the United States.

We made deductions, as appropriate, from the reported U.S. price for movement expenses for Dongyue, *e.g.*, foreign inland freight expenses and foreign brokerage and handling expenses.<sup>105</sup> We based movement expenses on SVs where the service was purchased from a China company.<sup>106</sup>

### 2. Constructed Export Price Sales

For Daikin's U.S. sales, we based U.S. price on CEP, in accordance with section 772(b) of the Act, because sales were made on behalf of China-based exporter by a U.S. sales affiliate to unaffiliated customers in the United States. For these sales, we based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, or U.S. movement expenses, in accordance with section 772(c)(2)(A) of the Act. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by China service providers or paid in renminbi, we valued these services using SVs.<sup>107</sup> For those expenses that were provided by an ME provider and paid for in an ME currency, we used the reported expense.

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States. We deducted, where appropriate, commissions, inventory carrying costs, credit expenses, warranty expenses, and indirect selling expenses. Finally, we deducted CEP profit from U.S. price, in accordance with sections 772(d)(3) and 772(f) of the Act.

### 3. Value-Added Tax

In 2012, Commerce announced a change of methodology with respect to the calculation of EP and CEP to include an adjustment of any irrecoverable value-added tax (VAT) in certain NME countries in accordance with section 772(c)(2)(B) of the Act.<sup>108</sup> 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

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<sup>105</sup> See Section 772(c)(2)(A) of the Act.

<sup>106</sup> See the Factor Valuation Methodology section below.

<sup>107</sup> See the Factor Valuations Methodology section below for further discussion.

<sup>108</sup> 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).

tax, duty or charge paid, but not rebated.<sup>109</sup> Where the irrecoverable VAT is a fixed percentage of EP or CEP, Commerce explained that the final step in arriving at a tax-neutral dumping comparison is to reduce the EP or CEP downward by this same percentage.<sup>110</sup>

Commerce's methodology, as explained above and applied in this investigation, incorporates two basic steps: (1) determine the irrecoverable VAT on subject merchandise, and (2) reduce U.S. price by the amount determined in step one. Information placed on the record of this investigation indicates that according to China VAT schedule, the standard VAT levy is 17 percent and the rebate rates for the merchandise under consideration are 13 percent.<sup>111</sup> Consistent with our standard methodology, for purposes of this preliminary determination we based the calculation of irrecoverable VAT on the difference between those standard rates, applied to a free-on-board price at the time of exportation.<sup>112</sup> Thus, because the VAT levy and VAT rebate rates on exports are different and the net result is four percent, we adjusted the two individually investigated respondents' U.S. sales for irrecoverable VAT.

#### L. 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.<sup>113</sup> Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), we calculated NV based on FOPs. Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials used; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.<sup>114</sup>

#### M. Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by the two individually investigated respondents. To calculate NV, we multiplied the reported per-unit FOP consumption rates by publicly available SVs. When selecting SVs, we considered,

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<sup>109</sup> *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 I&D Memo at Comment 5.A.

<sup>110</sup> *Id.*

<sup>111</sup> See Daikin CDQR at C-42 and Exhibits C-6, and Dongyue CQR at 37 and Exhibit C-4.

<sup>112</sup> See *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013*, 80 FR 33241 (June 11, 2015), and accompanying I&D Memo at Comment 5.

<sup>113</sup> 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).

<sup>114</sup> See section 773(c)(3)(A)-(D) of the Act.

among other factors, the quality, specificity, and contemporaneity of the SV data.<sup>115</sup> As appropriate, we adjusted FOP costs by including freight costs to make them delivered values. Specifically, we added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory.<sup>116</sup> A detailed description of the SVs used can be found in the Preliminary SV Memorandum.<sup>117</sup>

## 1. Direct and Packing Materials

For the preliminary determination, we used Mexican import data, as published by the GTA, and other publicly available sources from Mexico to calculate SVs for FOPs. In accordance with section 773(c)(1) of the Act, we used the best available information for valuing FOPs by selecting, to the extent practicable, SVs which are: (1) broad market averages, (2) product-specific, (3) tax-exclusive, non-export average values, and (4) contemporaneous with, or closest in time to, the POI.<sup>118</sup>

As noted in the "Surrogate Value Comments" and "Data Availability" sections above, the parties made several submissions regarding the appropriate surrogate valuation of the respondents' reported material FOPs. In instances where the parties disagree with respect to the particular Harmonized Tariff System (HTS) subheading under which a particular material input should be valued, we used an HTS subheading selection method based on the best match between the reported physical description and function of the input and the HTS subheading description.<sup>119</sup>

Pursuant to 19 CFR 351.408(c)(1), where a factor is produced in one or more market economy countries, purchased from one or more market economy suppliers and paid for in a market economy currency, the Department normally will use the prices paid to the market economy suppliers if substantially all (*i.e.*, 85 percent or more) of the total volume of the factor is purchased from the market economy suppliers. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 85 percent of its total volume of purchases of the input during the period, Commerce will weight-average the ME purchase price with an appropriate SV, according to their respective shares of the total volume of purchases. When a firm has made ME input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, Commerce will exclude them from the numerator of the ratio to ensure a fair determination of

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<sup>115</sup> 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 I&D Memo at Comment 9.

<sup>116</sup> See *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).

<sup>117</sup> See Preliminary SV Memorandum.

<sup>118</sup> See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

<sup>119</sup> See Preliminary SV Memorandum for further discussion.

whether valid ME purchases meet the 85 percent threshold.<sup>120</sup> Daikin provided evidence that it had ME purchases of specific inputs during the POI that were produced in an ME.<sup>121</sup> We used Daikin's reported ME purchase data for those inputs, where appropriate, in the preliminary determination.<sup>122</sup> We also added freight expenses to Daikin's reported ME prices for those inputs, where appropriate.<sup>123</sup> Dongyue reported no input purchases from ME suppliers.<sup>124</sup>

The record shows that for the remaining inputs, Mexican import data obtained through GTA, are broad market averages, product-specific, tax-exclusive, and generally contemporaneous with the POI.<sup>125</sup>

Pursuant to section 773(c)(5) of the Act and Commerce's long-standing practice, Commerce disregards SVs if it has a reason to believe or suspect the source data may comprise dumped or subsidized prices.<sup>126</sup> 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.<sup>127</sup> Based on the existence of the subsidy programs that were generally available to all exporters and producers in these countries at the time of the POI, Commerce finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies. Therefore, we have not used prices from these four countries in calculating the Mexican import-based SVs.

Additionally, we disregarded data from NME countries when calculating Mexican import-based per-unit SVs. We also excluded from the calculation of Mexican import-based per-unit SVs imports labeled as originating from an "unidentified" country because we could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.<sup>128</sup>

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<sup>120</sup> See *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013)

<sup>121</sup> See Daikin CDQR at D-7 and Exhibit D-4-2.

<sup>122</sup> See Preliminary SV Memorandum.

<sup>123</sup> See Daikin Preliminary Analysis Memorandum.

<sup>124</sup> See Dongyue DQR at 6.

<sup>125</sup> See Preliminary SV Memorandum.

<sup>126</sup> See section 773(c)(5) of the Act, as amended in section 505 of the TPEA 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).

<sup>127</sup> 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 I&D Memo at 7-19. See also *Certain Lined Paper Products from Indonesia: Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 76 FR 73592 (November 29, 2011), and accompanying I&D Memo at 1, *Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 46770 (August 11, 2014), and accompanying I&D Memo at 4, *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013), and accompanying I&D Memo at IV.

<sup>128</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China*, 69 FR 75294, 75301 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005).

Finally, Daikin argued that Commerce should not use Mexican import data to value R-22.<sup>129</sup> According to Daikin, R-22 is the most important input into the production of PTFE resin in China. Daikin contends that R-22 is being phased out as a refrigerant under the Montreal Protocol and, as a result, the market for R-22 in Mexico is highly regulated. Daikin also asserts that, although the use of R-22 as feedstock for chemical production is not restricted, there are no companies that use R-22 as feedstock in Mexico. Because of this, Daikin asserts, the Mexican GTA data is not representative of the prices of R-22 as feedstock. Daikin argues that Commerce should instead value R-22 using Puerto Rico import prices derived from the ITC Dataweb that is on the record of this investigation.

We preliminarily determine that, based on record evidence, Daikin has not demonstrated that Mexican import data for R-22 are unreliable or distorted such that they are not usable as a surrogate value. For instance, although Daikin submitted information showing that R-22 is being phased out by signatories to the Montreal Protocol, including Mexico, it is not evident from the record that the phase-out has affected the volume of consumption or imports of R-22 in Mexico. The information Daikin submitted shows that Mexico would begin to freeze production and consumption of R-22 in 2016 based on 2015 levels.<sup>130</sup> Evidence on the record shows that the maximum permitted R-22 consumption in Mexico in 2017 remains the same as in 2015.<sup>131</sup> The record further shows that Mexican imports of R-22 have not declined significantly since the phase-out began: Mexican imports of R-22 in 2017 was 2,400 MTs, down from 2,800 MTs in 2015 and 2016 (which also represents the highest level of imports between 2007 and 2017); moreover, the level of Mexican imports of R-22 in 2017 is at the same level as it was in 2007.<sup>132</sup> Given that the volume of consumption or imports has not changed significantly since the phase-out began, it is not evident from the record that the phase-out has thus far affected prices of R-22 in Mexico.

Daikin also put on the record invoices to show the price differences between R-22 feedstock and refrigerant.<sup>133</sup> However, whereas these invoices provide R-22 feedstock purchases by a U.S. company, they provide R-22 refrigerant purchases by a Mexican company. These invoices are not indicative of a broad market average. Moreover, there is no way for us to ascertain whether these prices may be representative of the markets as a whole. Thus, we find that these prices are not reliable, public benchmarks for ascertaining whether the Mexican R-22 market is distorted.

Finally, Daikin also submitted Mexican import and export data showing that the Mexican import prices are more than twice the Mexican export prices for R-22.<sup>134</sup> Daikin asserts that this shows that the Mexican market for R-22 is distorted. However, apart from the fact that the record shows that the phase-out is a global phenomenon,<sup>135</sup> comparing Mexican import data with

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<sup>129</sup> See Letter from Daikin, “Polytetrafluoroethylene (PTFE) Resin from the People’s Republic of China: Preliminary Determination Comments,” dated April 4, 2018.

<sup>130</sup> See Daikin’s SV Comments 3 at Exhibit 1 (“Survey of HCFCs in Mexico” at 13).

<sup>131</sup> See Daikin’s SV Rebuttal Comments at Exhibit 4, pages 16-17.

<sup>132</sup> See Daikin’s SV Comments 2 at Exhibit 7, page 66.

<sup>133</sup> See Daikin’s SV Rebuttal Comments at Exhibit 7 and Daikin’s SV Comments 2 at Exhibit 11.

<sup>134</sup> See Daikin’s SV Rebuttal Comments at Exhibit 9.

<sup>135</sup> See, e.g., Daikin’s SV Comments 2 at Exhibit 7.

Mexican export data is not an appropriate comparison because there is no reason to believe that Mexican export prices would necessarily track Mexican import prices.

For these reasons, we preliminarily conclude that the record does not support the contention that the Mexican market for R-22 is necessarily distorted. Accordingly, we have used Mexican import data to value R-22 for this preliminary determination.

## 2. Energy

We preliminarily valued electricity at the utility cost of 1.73 Pesos/kwh based on the POI data from the International Energy Agency.<sup>136</sup> Because the electricity data are contemporaneous with the POI,<sup>137</sup> we did not adjust the data for inflation.

We preliminarily valued natural gas using the GTA data for HTS subheading 2711.11 or 2711.21, depending on whether the natural gas was purchased in gaseous or liquified state. We preliminarily valued coal using the GTA data for HTS subheading 2702.12 or 2701.19, depending on whether the coal was bituminous or not.

We preliminarily valued water using data from Conagua, Mexico's water utility authority.<sup>138</sup> Because the 2016 data predate the POI, we adjusted the data for inflation using the Producer Price Index.<sup>139</sup> We also converted water reported in the water data from cubic meters to kilograms, as applicable. To value steam, we calculated 14.52 percent of the surrogate value of natural gas (obtained as described above) consistent with prior practice.<sup>140</sup>

## 3. Movement Expenses

As appropriate, we added freight costs to SVs. Specifically, we added surrogate inland freight costs to import values used as SVs. We calculated freight SVs using the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest port to the factory that produced the subject merchandise, where appropriate.<sup>141</sup>

We valued brokerage and handling and inland truck freight expenses using the data from the World Bank Group's *Doing Business 2018 – Mexico (Doing Business)* and the average of the

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<sup>136</sup> See Exhibit 2, "Surrogate Value" tab. See also Petitioner's SV Comments at Exhibit 5 and Daikin's SV Comments at Exhibit SV-5.

<sup>137</sup> See Petitioner's SV Comments at Exhibit 5 and Daikin's SV Comments at Exhibit SV-5.

<sup>138</sup> See Exhibit 2, "Surrogate Value" tab. See also Petitioner's SV Comments at Exhibit 6 and Daikin's SV Comments at Exhibit SV-6.

<sup>139</sup> See Exhibit 2, "Surrogate Value" and "PPI" tabs.

<sup>140</sup> See *Certain Steel Wheels from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67703, 67714 (November 2, 2011) (unchanged in final; 77 FR 17021 (March 23, 2012)).

<sup>141</sup> See *Sigma Corp.*, 117 F.3d at 1407-08.

distances between 1) Mexico City and the Nuevo Laredo border crossing, and 2) Monterrey and the Nuevo Laredo border crossing.<sup>142</sup> The value for truck freight in *Doing Business* is publicly available and the data in *Doing Business* is current as of June 2017.<sup>143</sup> Because the *Doing Business* data are contemporaneous with the POI, we did not adjust the data for inflation.

#### 4. Labor

We calculated an hourly labor rate using industry-specific data from the primary surrogate country, Mexico. In particular, we relied on industry-specific labor data from the International Labor Organization's ILOSTAT statistics database that cover 2008.<sup>144</sup> Because the 2008 data predate the POI, we adjusted the data for inflation.<sup>145</sup>

#### 5. Financial Ratios

According to 19 CFR 351.408(c)(4), Commerce is directed to value overhead, selling, general and administrative (SG&A) expenses, and profit using non-proprietary information gathered from producers of merchandise that is identical or comparable to the merchandise under consideration in the surrogate country. Commerce's preference is to derive surrogate overhead expenses, SG&A expenses, and profit using financial statements covering a period that is contemporaneous with the POI, that show a profit, from companies with a production experience similar to the respondents' production experience, and that are not distorted or otherwise unreliable, such as financial statements that indicate the company received subsidies.<sup>146</sup>

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we used the 2016 audited public financial statements of CYDSA S.A. de C.V. (CYDSA). CYDSA is a Mexican producer of comparable merchandise, *i.e.*, R-22, a key input into PTFE resin production.<sup>147</sup> The only other public financial statements on the record were the consolidated financial statements for Mexichem, a multi-national corporation with various operations around the World; we preliminarily did not use Mexichem's financial statements because the consolidated financial statements reflect Mexichem's worldwide operations, which include subsidiaries in Europe, Asia, and South America.<sup>148</sup> Because of this, we preliminarily determine that these financial statements are not specific to Mexico.

#### N. Currency Conversion

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<sup>142</sup> See Petitioner's SV Comments at Exhibit 7 and Daikin's SV Comments at Exhibit SV-7.

<sup>143</sup> *Id.*

<sup>144</sup> See Exhibit 2, "Surrogate Value" and "Labor" tabs, and Petitioner's SV Comments at Exhibit 4.

<sup>145</sup> See Exhibit 2, "Surrogate Value" and "PPI" tabs.

<sup>146</sup> See *Hand Trucks and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2010-2011, 78 FR 28801 (May 16, 2013), and accompanying I&D Memo at Comment 2; *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 78 FR 5414 (January 25, 2013), and accompanying I&D Memo at Comment 1.

<sup>147</sup> See Petitioner's SV Comments at Exhibit 10.

<sup>148</sup> See Daikin's SV Comments at Exhibit SV-9.

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

**VIII. CONCLUSION**

We recommend applying the above methodology for this preliminary determination.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

4/30/2018

X  \_\_\_\_\_

Signed by: GARY TAVERMAN

\_\_\_\_\_  
Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of  
the Assistant Secretary for Enforcement and Compliance