



A-570-093
Investigation
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May 28, 2019

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

FROM: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Refillable Stainless Steel
Kegs from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that imports of refillable stainless steel kegs (kegs) 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 20, 2018, we received an antidumping duty (AD) petitions covering imports of kegs from China, the Federal Republic of Germany, and Mexico, filed in proper form, by the American Keg Company, LLC (the petitioner), a domestic producer of kegs.¹ The AD Petitions were accompanied by a countervailing duty (CVD) Petition concerning imports of kegs from China.² Commerce initiated this investigation on October 10, 2018.³

On October 11, 2018, we issued quantity and value (Q&V) questionnaires to companies identified in the Petitions.⁴ On October 31, 2018, in accordance with section 777A(c)(2)(B) of

¹ See the petitioner's Letter, "Petitions for the Imposition of Antidumping Duties on Imports of Refillable Stainless Steel Kegs from Germany, Mexico, and the People's Republic of China and Countervailing Duties on Imports of Refillable Stainless Steel Kegs from the People's Republic of China," dated September 20, 2018 (Petitions).

² See Volume V of the Petitions.

³ See *Refillable Stainless Steel Kegs from the People's Republic of China, the Federal Republic of Germany, and Mexico: Initiation of Less-Than-Fair-Value Investigations*, 83 FR 52195 (October 16, 2018) (*Initiation Notice*).

⁴ See Petitions, Volume I at Exhibit GEN-23 and Commerce's Letter, "Quantity and Value Questionnaire for the



the Act, we selected for individual examination the two exporters accounting for the largest volume of kegs imported from China during the period of investigation (POI), *i.e.*, Ningbo Master International Trade Co., Ltd. (Ningbo Master), and Penglai Jinfu Stainless Steel Products (Jinfu).⁵

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 kegs to be reported in response to Commerce's AD questionnaire.⁶ In response to comments and rebuttals filed by interested parties on the scope of the investigation, we issued the preliminary scope determination on March 29, 2019.⁷

On October 16, 2018, Commerce issued a correction of the scope of the investigation.⁸ Additionally, in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as, on the appropriate physical characteristics of kegs to be reported in response to Commerce's AD questionnaire.⁹ We received comments and rebuttal comments from interested parties concerning the scope of the investigations.¹⁰

On November 9, 2018, 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 kegs from China.¹¹

On November 1, 2018, we issued the AD questionnaire to Ningbo Master and Jinfu.¹² On November 26, 2018, Jinfu informed us that it would not participate in this investigation;¹³ we received no questionnaire response from Jinfu. We received questionnaire responses from

Antidumping Duty Investigation of Refillable Stainless Steel Kegs from the People's Republic of China," dated October 19, 2018 (Q&V Questionnaire).

⁵ See Memorandum, "Less-Than-Fair-Value Investigation of Refillable Stainless Steel Kegs from the People's Republic of China: Respondent Selection," dated October 31, 2018 (Respondent Selection Memorandum).

⁶ See *Initiation Notice*, 83 FR at 52196 and 52197.

⁷ See Memorandum, "Refillable Stainless Steel Kegs from the People's Republic of China, Germany, and Mexico: Scope Comments Decision Memorandum for the Preliminary Determinations," dated March 29, 2019 (Preliminary Scope Decision Memorandum).

⁸ See Memorandum, "Antidumping Duty Investigations on Refillable Stainless Steel Kegs from the People's Republic of China, Germany, and Mexico, and Countervailing Duty Investigation of Refillable Stainless Steel Kegs from the People's Republic of China; Correction to Scope Published in the Initiation Notice," dated October 16, 2018.

⁹ See *Initiation Notice*, 83 FR at 52196-97.

¹⁰ See Blefa's Letter, "Refillable Stainless Steel Kegs From the People's Republic of China, the Federal Republic of Germany, and Mexico/Blefa Scope Comments," dated November 2, 2018; THIELMANN's Letter, "Refillable Stainless Steel Kegs from Germany, Mexico, and the People's Republic of China: Comments on Scope," dated November 2, 2018; the petitioner's Letter, "Refillable Stainless Steel Kegs from the People's Republic of China, the Federal Republic of Germany, and Mexico: Rebuttal Comments on Scope," dated November 9, 2018.

¹¹ See *Refillable Stainless Steel Kegs from China, Germany, and Mexico*, 83 FR 56102 (November 9, 2018), *see also* *Refillable Stainless Steel Kegs from China, Germany, and Mexico: Investigation Nos. 701-TA-610 and 731-TA-1425-1427 (Preliminary)*, USITC Publication 4844, November 2018.

¹² See Commerce's AD questionnaire to Ningbo Master and Jinfu dated November 1, 2018.

¹³ See Jinfu's Letter, "Jinfu Withdrawal from the Antidumping Duty Investigation of Refillable Stainless Steel Kegs from the People's Republic of China (A-570-093)," dated November 26, 2018.

Ningbo Master on November 30, 2018, and February 5, 2019.¹⁴ We then issued supplemental questionnaires to Ningbo Master and we received responses to these supplemental questionnaires on March 15, 2019, April 22, 2019, and April 30, 2019, May 10, 2019, and May 15, 2019.¹⁵ The petitioner submitted comments with respect to the responses submitted by Ningbo Master.¹⁶

Commerce received timely separate rate applications (SRA) from three companies: Guangzhou Jingye Machinery Co., Ltd. (Jingye), Guangzhou Ulix Industrial & Trading Co., Ltd. (Ulix), and Ningbo Haishu Direct Import and Export Trade Co., Ltd. (Haishu).¹⁷ In February 2019, we issued, and received a response to, separate rate supplemental questionnaires to each of these companies.¹⁸

On October 30, 2018, we placed on the record a list of potential surrogate countries and we invited interested parties to comment on the selection of the primary surrogate country and provide surrogate values (SVs) information.¹⁹ We received comments on the selection of the

¹⁴ See Ningbo Master's separate rate application dated November 21, 2018 (Ningbo Master SRA); section A response dated November 30, 2018 (Ningbo Master AQR); and sections C and D response dated February 5, 2019 (Ningbo Master CDQR).

¹⁵ See Ningbo Master's Letters, "Refillable Stainless Steel Kegs from China- First Supplemental Questionnaire Response," dated March 15, 2019 (SQR1); "Refillable Stainless Steel Kegs from China- Second Supplemental Questionnaire Response," dated April 22, 2019 (SQR2); "Refillable Stainless Steel Kegs from China- Third Supplemental Questionnaire Response," April 30, 2019 (SQR3); "Refillable Stainless Steel Kegs from China- Supplemental Double Remedies Questionnaire Response," dated May 10, 2019 (SQR4); and "Refillable Stainless Steel Kegs from China- Fourth Supplemental Questionnaire Response," dated May 15, 2019 (SQR5).

¹⁶ See the petitioner's Letters, "Refillable Stainless Steel Kegs from the People's Republic of China: Comments on Ningbo Master International Trade Co., Ltd.'s November 25, 2018 Separate Rate Application and November 30, 2018 Section A Questionnaire Response," dated December 14, 2018; "Refillable Stainless Steel Kegs from the People's Republic of China: Comments on Ningbo Master International Trade Co., Ltd.'s February 5, 2019 Sections C and D Questionnaire Response," dated February 19, 2019; "Refillable Stainless Steel Kegs from the People's Republic of China: Supplemental Comments on Ningbo Master International Trade Co., Ltd.'s Section C Questionnaire Response," dated April 18, 2019.

¹⁷ See Haishu's separate rate applications dated November 20, 2018; Jingye's and Ulix's separate rate applications dated November 21, 2018.

¹⁸ See Jingye's supplemental response dated December 18, 2018; Ulix's supplemental responses dated December 18, 2018, February 21, 2019, and March 14, 2019; and Haishu's supplemental responses dated December 20, 2018, February 19, 2019, March 13, 2019, and April 11, 2019.

¹⁹ See Commerce's Letter, "Antidumping Duty Investigation of Refillable Stainless Steel Kegs from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated October 30, 2018 (Surrogate Country and Values Comments Invitation Letter).

primary surrogate country and SVs information and rebuttals thereof from the petitioner,²⁰ Ningbo Master,²¹ and Jinfu.²²

On May 2, 2019, the petitioner timely filed an allegation that critical circumstances exist with respect to imports of kegs from China.²³ On May 3, 2019, Commerce issued a letter to Ningbo Master, Haishu, Jinye, and Ulix requesting monthly quantity and value (Q&V) shipment data pursuant to the critical circumstances allegation.²⁴ All four companies submitted their respective monthly Q&V shipment data on May 15, 2019.²⁵

²⁰ See the petitioner's Letters, "Refillable Stainless Steel Kegs from the People's Republic of China: Comments on Selection of the Primary Surrogate Country," dated December 10, 2018 (Petitioner SC Comments), "Refillable Stainless Steel Kegs from the People's Republic of China: Surrogate Value Information," dated February 19, 2019 (Petitioner SV Comments), "Refillable Stainless Steel Kegs from the People's Republic of China: Rebuttal and Other Surrogate Value Information," dated March 1, 2019 (Petitioner SV Rebuttal Comments) and "Refillable Stainless Steel Kegs from the People's Republic of China: Rebuttal Surrogate Value Information," dated May 6, 2019 (Petitioner SV Rebuttal Comments 2).

²¹ See Ningbo Master's Letters, "Refillable Stainless Steel Kegs from the People's Republic of China - Comments on the Surrogate Country List," dated November 6, 2018 (Ningbo Master LED Comments); "Refillable Stainless Steel Kegs from the People's Republic of China - Comments on the Surrogate Country List," dated December 10, 2018 (Ningbo Master SC Comments); "Refillable Stainless Steel Kegs from China - Preliminary Surrogate Value Submission," dated February 19, 2019 (Ningbo Master SV Comments); and "Refillable Stainless Steel Kegs from China - Final Surrogate Value Submission," dated April 29, 2019 (Ningbo Master SV Comments 2).

²² See Jinfu's Letter, "Jinfu's Comments on the List of Economically Comparable Countries in the Antidumping Duty Investigation on Refillable Stainless Steel Kegs from the People's Republic of China (A-570-093)," dated January 31, 2018 (Jinfu LED Comments).

²³ See the petitioner's Letter, "Refillable Stainless Steel Kegs from the People's Republic of China: Petitioner's Critical Circumstances Allegation," dated May 2, 2019.

²⁴ See Commerce's Letters, "Antidumping Duty Investigation of Refillable Stainless Steel Kegs from the People's Republic of China: Request for Monthly Quantity and Value Shipment Data" to Ningbo Master, Haishu, Jinye, and Ulix, all dated May 8, 2019.

²⁵ See Ningbo Master's Letter, "Refillable Stainless Steel Kegs from China-Monthly Quantity and Value Shipment Data;" Haishu's Letter, "Haishu Submission of Critical Circumstances Quantity and Value Shipment Data in the Antidumping Duty Investigation on Refillable Stainless Steel Kegs from the People's Republic of China (A-570-093);" Jinye's Letter, "Refillable Stainless Steel Kegs from China-Monthly Quantity and Value Shipment Data;" and Ulix's Letter, "Refillable Stainless Steel Kegs from China-Monthly Quantity and Value Shipment Data," all dated May 15, 2019.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.²⁶ On March 19, 2019, Commerce postponed the deadline for the preliminary determination at the request of the petitioner.²⁷ Accordingly, the revised deadline for the preliminary determination is May 28, 2019.²⁸

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

III. PERIOD OF INVESTIGATION

The POI is January 1, 2018, through June 30, 2018. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was September 2018.²⁹

IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,³⁰ we set aside a period of time, as stated in the *Initiation Notice*, for parties to raise issues regarding product coverage (*i.e.*, scope) and encouraged all parties to submit comments within 20 calendar days of publication of that notice.³¹ On October 16, 2018, the same day as the *Initiation Notice* published, Commerce issued a memorandum which revised an HTSUS number in the scope of the investigations.³² We received several comments concerning the scope of the AD and countervailing duty (CVD) investigations of refillable stainless steel kegs from China, as well as Mexico and Germany, which were also placed on the record of this investigation. The Preliminary Scope Decision Memorandum, issued concurrently with the CVD preliminary determination concerning China, includes an explanation of our consideration of the parties' comments and our preliminary modifications to the scope of the investigation.³³

²⁶ See Memorandum to the Record from 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, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding affected by the partial federal government closure have been extended by 40 days.

²⁷ See *Refillable Stainless Steel Kegs from the Federal Republic of Germany, Mexico and the People's Republic of China: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 84 FR 10033 (March 19, 2019) (*Postponement Notice*).

²⁸ *Id.*

²⁹ See 19 CFR 351.204(b)(1).

³⁰ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

³¹ See *Initiation Notice*, 83 FR at 52195.

³² See Memorandum, "Antidumping Duty Investigations on Refillable Stainless Steel Kegs from the People's Republic of China, Germany, and Mexico, and Countervailing Duty Investigation of Refillable Stainless Steel Kegs from the People's Republic of China; Correction to Scope Published in the Initiation notice," dated October 16, 2018 (Scope Revision Memorandum).

³³ See Memorandum, "Refillable Stainless Steel Kegs from the People's Republic of China, Germany, and Mexico: Scope Comments Decision Memorandum for the Preliminary Determinations," dated March 29, 2019 (Preliminary Scope Decision Memorandum).

V. PRODUCT CHARACTERISTICS

In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product characteristics until October 30, 2018.³⁴ The petitioner and other interested parties provided comments,³⁵ which we took into consideration in determining the physical characteristics outlined in the AD questionnaire.³⁶

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.

In the *Initiation Notice*, Commerce stated its intent to base respondent selection on the responses to Q&V questionnaires.³⁷ On October 11, 2018, we issued the Q&V questionnaire to companies

³⁴ See *Initiation Notice*, 83 FR at 52197.

³⁵ See the petitioner's Letter, "Refillable Stainless Steel Kegs from the People's Republic of China, the Federal Republic of Germany, and Mexico: Comments on Product Characteristics," dated November 2, 2018; Blefa GmbH's (Blefa) Letter, "Refillable Stainless Steel Kegs From the People's Republic of China, the Federal Republic of Germany, and Mexico/Blefa Product Characteristics Comments," dated November 2, 2018; Thielmann Mexico S.A. de C.V.'s (Thielmann) Letter, "Refillable Stainless Steel Kegs from Germany, Mexico, and the People's Republic of China: Comments on Product Characteristics for AD Questionnaires," dated November 2, 2018; Jinfu's Letter, "Jinfu's Comments on Product Characteristics in the Antidumping Duty Investigation on Refillable Stainless Steel Kegs from the People's Republic of China, Mexico, and Germany," dated November 9, 2018, the petitioner's Letter, "Refillable Stainless Steel Kegs from the People's Republic of China, the Federal Republic of Germany, and Mexico: Rebuttal Comments on Product Characteristics," dated November 9, 2018; Blefa's Letter, "Refillable Stainless Steel Kegs From the People's Republic of China, the Federal Republic of Germany, and Mexico: Blefa Product Characteristics Rebuttal Comments," dated November 9, 2018, Thielmann's Letter, "Refillable Stainless Steel Kegs from Germany, Mexico, and the People's Republic of China: Rebuttal Comments on Product Characteristics for AD Questionnaires," dated November 9, 2018; and Jinfu's Letter, "Jinfu's Rebuttal Comments on Product Characteristics in the Antidumping Duty Investigation on Refillable Stainless Steel Kegs from the People's Republic of China, Mexico, and Germany," dated November 9, 2018.

³⁶ See Commerce's Letter, "Product Characteristics and Section 232 Questionnaire Appendix for the Less-Than-Fair-Value Antidumping Duty Investigations of refillable stainless steel kegs from the Federal Republic of Germany, Mexico, and the People's Republic of China," dated November 26, 2018.

³⁷ See *Initiation Notice*, 83 FR at 52199.

identified in the Petition.³⁸ In addition, we posted the Q&V questionnaire on the Commerce 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.³⁹ We received five timely Q&V questionnaire responses.⁴⁰ An additional 18 companies received the Q&V questionnaire and failed to respond to Commerce’s request for Q&V information.⁴¹ On October 31, 2018, 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.*, Ningbo Master and Jinfu.⁴²

VII. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy Country

Commerce considers China to be a non-market economy (NME) country.⁴³ 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.”⁴⁴ As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME, unless it is determined that none of the countries are viable options because they either: (a) are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available 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

³⁸ See Q&V Questionnaire.

³⁹ See *Initiation Notice*, 83 FR at 52199, and Q&V Questionnaire.

⁴⁰ See Respondent Selection Memorandum at Attachment for the list of all companies that filed their response to the Q&V Questionnaire.

⁴¹ See Memorandum, “Quantity & Value Questionnaires: Delivery Confirmation” dated October 29, 2018.

⁴² See Respondent Selection Memorandum.

⁴³ 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*.

⁴⁴ 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>.

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.⁴⁵ Further, Commerce normally values all FOPs in a single surrogate country.⁴⁶

On October 30, 2018, Commerce identified Brazil, Kazakhstan, Malaysia, Mexico, Romania, and Russia as countries that are at the same level of economic development as China based on per capita 2017 GNI data, and issued a letter to interested parties soliciting comments on the list of countries that Commerce determined, based on per capita 2017 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.⁴⁷ Both the petitioner and Ningbo Master recommended Malaysia as the primary surrogate country in this investigation.⁴⁸

1. Economic Comparability

Consistent with its practice, and section 773(c)(4) of the Act, and as stated above, we identified Brazil, Kazakhstan, Malaysia, Mexico, Romania, and Russia 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.⁴⁹ Therefore, we consider all six countries to meet 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."⁵⁰ Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.⁵¹ Further, when selecting a surrogate country, the statute requires Commerce to consider the comparability of the merchandise, not the

⁴⁵ *Id.*

⁴⁶ See 19 CFR 351.408(c)(2).

⁴⁷ See Surrogate Country and Values Comments Invitation Letter.

⁴⁸ See Petitioner SV Rebuttal Comments 2 and Ningbo Master's SV Comments.

⁴⁹ See Surrogate Country and Values Comments Invitation Letter.

⁵⁰ See Policy Bulletin 04.1 at 2.

⁵¹ 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.

comparability of the industry.⁵² “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.”⁵³ 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.⁵⁴

Further, the statute grants Commerce discretion to examine various data sources for determining the best available information.⁵⁵ Moreover, while the legislative history provides that the term “significant producer” includes any country that is a significant “net exporter,”⁵⁶ it does not preclude reliance on additional or alternative metrics. It is Commerce’s practice to evaluate whether production is significant based on characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics).⁵⁷ 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.⁵⁸ We obtained export data from the Global Trade Atlas (GTA) for entries made under the Harmonized Tariff Schedule (HTS) subheadings 731010 (“Tanks, Drums, Cans, And Similar Plain Containers, A Capacity Of 50 Liters (13.21 Gal.) Or More, But Not Over 300 Liters (79.25 Gal.), Of Iron Or Steel”) and 731029 (“Tanks, Casks, Drums, Cans, Boxes And Similar Plain, Unfitted Containers Nesoi, Of A Capacity Of Less Than 50 Liters (13.21 Gal.), Of Iron Or Steel”).⁵⁹ All of the six potential surrogate countries reported export volumes of comparable merchandise during the POI. As such, we preliminarily find that all potential surrogate countries meet the “significant producer” requirement of section 773(c)(4) of the Act.⁶⁰

⁵² 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.”).

⁵³ See Policy Bulletin 04.1 at 2.

⁵⁴ *Id.* at 3.

⁵⁵ See section 773(c) of the Act; see also *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

⁵⁶ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

⁵⁷ 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).

⁵⁸ See Memorandum, “Refillable Stainless Steel Kegs 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.

⁵⁹ *Id.*

⁶⁰ *Id.*

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.⁶¹ 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.⁶² There is no hierarchy among these criteria.⁶³ Commerce's preference is to satisfy the breadth of these aforementioned selection criteria.⁶⁴ 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.⁶⁵ 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.⁶⁶

As an initial matter, Brazil and Malaysia are the only potential surrogate countries for which we have complete SV data on the record.⁶⁷ Hence, we examined the quality of those data to determine whether one surrogate source was preferable over the other. Both sets of SVs are publicly available, contemporaneous with the POI, and generally include tax-exclusive broad market average prices. However, the Brazilian SV data are reported on a free-on-board (FOB) basis, while the Malaysian are reported on a cost, insurance and freight (CIF) basis. Commerce prefers to rely on SVs reported on a CIF basis because they include the costs associated with purchasing these inputs from foreign exporters, including brokerage and handling, marine insurance, and international freight because this is the price that is most representative of a domestic price for the input in the surrogate country.⁶⁸ The petitioner did not submit the costs necessary to calculate a CIF adjustment from the Brazilian FOB data (*i.e.*, a public source for the international freight SV).

In addition, there are multiple Malaysian financial statements from producers of comparable merchandise on the record but there is only one comparable Brazilian financial statement;⁶⁹

⁶¹ See Policy Bulletin 04.1.

⁶² *Id.*

⁶³ 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.

⁶⁴ 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).

⁶⁵ See *Mushrooms China* and accompanying I&D Memo at Comment 1.

⁶⁶ *Id.*

⁶⁷ See Petitioner's SV Comments and Ningbo Master's SV Comments.

⁶⁸ For a description of our practice see Department Policy Bulletin No. 10.2, "Inclusion of International Freight Costs When Import Prices Constitute Normal Value," dated November 1, 2010 (Policy Bulletin 10.2) at 2, stating "when the import statistics of the surrogate country do not include such {CIF} costs, {Commerce} has added surrogate values for international freight and foreign brokerage and handling charges to the calculation of normal value," available on Commerce's website at <https://enforcement.trade.gov/policy/PB-10.2.pdf>. See also *Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part*, 75 FR 50992 (August 18, 2010) and accompanying Issues and Decision Memorandum at Comment 16.

⁶⁹ See Ningbo Master SV Comments at Exhibit SV-9, Ningbo Master SV Comments 2 at Exhibits SV2-1, SV2-2,

when possible, Commerce's preference is to use multiple financial statements to determine surrogate financial ratios, which allows Commerce to average the factory overhead, SG&A, and profit ratios and, thus, to normalize any potential distortions that may arise from using those of a single producer.⁷⁰

Furthermore, the Brazilian labor and water surrogates are not contemporaneous with the POI while the Malaysian surrogates are contemporaneous with the POI. Although the petitioner has argued that the Malaysian labor figures are "unreliable and aberrational," the petitioner's argument rests on the assertion that the Malaysian wage rate reflects child and forced labor practices.⁷¹ However, in general, Commerce does not make SV determinations based on criteria other than specificity, contemporaneity, whether the value is a broad market average, publicly available, or tax/duty exclusive.⁷²

Given the above factors, we have preliminarily selected Malaysia as the primary surrogate country for this investigation. Malaysia is at the same level of economic development as China, is a significant producer of comparable merchandise, and generally has reliable and usable SV data. A detailed 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 February 19, 2019, the petitioner and Ningbo Master filed surrogate factor valuation comments and SV information with which to value the FOPs in this proceeding.⁷³ On March 1, 2019, the petitioner filed rebuttal surrogate factor valuation comments and surrogate value information.⁷⁴ Ningbo Master timely filed additional surrogate factor valuation comments and SV information on April 29, 2019, pursuant to 19 CFR 351.301(c)(3)(i)⁷⁵ and the petitioner timely filed additional rebuttal surrogate factor valuation comments on May 6, 2019.⁷⁶ For a detailed discussion of the SVs used in this AD investigation, *see* the "Factor Valuation Methodology" section below and the Preliminary SV Memorandum.

SV2-3, and SV3-4, and the Petitions, Volume II at Exhibit PRC-AD-2.

⁷⁰ *See Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2010-2011*, 78 FR 28803 (May 16, 2013), and accompanying Issues and Decision Memorandum at Comment I.D.

⁷¹ *See* Petitioner SV Rebuttal Comments at 2 and Exhibits 1 through 5.

⁷² *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2013-2014*, 80 FR 55328 (September 15, 2015), and accompanying I&D Memorandum at Comment 9.

⁷³ *See* Petitioner's SV Comments and Ningbo Master's SV Comments.

⁷⁴ *See* Petitioner's SV Rebuttal Comments.

⁷⁵ *See* Ningbo Master's SV Comments 2.

⁷⁶ *See* Petitioner's SV Rebuttal Comments 2.

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.⁷⁷ In the *Initiation Notice*, Commerce notified parties of the application process by which exporters may obtain separate rate status in this investigation.⁷⁸ The process requires exporters to submit a SRA⁷⁹ 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.”⁸⁰

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 to be entitled to a separate rate.⁸¹ Commerce analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*⁸² and further developed in *Silicon Carbide*.⁸³ According to this separate rate test, Commerce will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If, however, Commerce determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China AD proceeding, and its determinations therein.⁸⁴ 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

⁷⁷ 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).

⁷⁸ See *Initiation Notice*, 82 FR at 21527-28.

⁷⁹ 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>.

⁸⁰ See *Initiation Notice*, 82 FR at 21528.

⁸¹ 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*).

⁸² *Id.*

⁸³ 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*).

⁸⁴ 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.

circumstances of that case, in which a government-owned and controlled entity exercised control over the respondent exporter.⁸⁵ 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.⁸⁶ 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.*, by November 25, 2018. As noted above, Ningbo Master timely submitted a response to the separate-rates application.⁸⁷ Furthermore, we received timely filed SRAs from Jingye, Ulix, and Haishu.⁸⁸ We issued supplemental questionnaires and received supplemental responses from all three companies.⁸⁹

1. Separate Rate Analysis

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

a. Wholly Foreign-Owned

Ningbo Master reported that it is wholly owned by market economy companies located in market economy countries. We preliminarily find Ningbo Master to be eligible for a separate rate.

⁸⁵ 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).

⁸⁶ 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.

⁸⁷ See Ningbo Master SRA.

⁸⁸ See Haishu’s separate rate application dated November 20, 2018; Jingye’s and Ulix’s separate rate applications dated November 21, 2018.

⁸⁹ See Jingye’s supplemental response dated December 18, 2018, Ulix’s supplemental responses dated December 18, 2018, and February 21, 2019, and Haishu’s supplemental responses dated December 20, 2018, and February 19, 2019.

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

Jingye, Ulix, and Haishu all reported that they are wholly owned by Chinese individuals. 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.⁹⁰

The evidence placed on the record of this investigation with respect to the companies wholly owned by Chinese individuals 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) the implementation of formal measures by the government decentralizing control of Chinese companies.⁹¹

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.⁹² 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 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

⁹⁰ See *Sparklers*, 56 FR at 20589.

⁹¹ See Haishu's separate rate application dated November 20, 2018; Jingye's and Ulix's separate rate applications dated November 21, 2018.

⁹² 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).

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.⁹³

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. Company Not Receiving a Separate Rate

We preliminarily deny a separate rate to Jinfu because Jinfu did not respond to our questionnaire.⁹⁴

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.⁹⁵ 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 Ningbo Master that is not zero, *de minimis*, or based entirely on facts available. The rate of Ningbo Master is applicable to companies not selected for individual examination and eligible for a separate rate. Accordingly, for the preliminary determination of this investigation, we are assigning Ningbo Master’s rate. The separate rate for the eligible non-selected respondents is 2.01 percent.

⁹³ See Haishu’s separate rate application dated November 20, 2018; and Jingye’s and Ulix’s separate rate applications dated November 21, 2018.

⁹⁴ See Jinfu’s Letter, “Jinfu Withdrawal from the Antidumping Duty Investigation of Refillable Stainless Steel Kegs from the People’s Republic of China (A-570-093),” dated November 26, 2018.

⁹⁵ 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.

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.⁹⁶ This practice is described in Policy Bulletin 05.1.

G. China-Wide Entity

As discussed above, Jinfu did not respond to our questionnaire and thereby failed to establish entitlement to a separate rate. Because Jinfu has not demonstrated that it is eligible for separate rate status, Commerce considers it 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 the Q&V questionnaire from certain China exporters and/or producers of the subject merchandise 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.

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 so doing, 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

⁹⁶ See *Initiation Notice*, 83 FR at 52200.

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.⁹⁷ Moreover, 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, 17 companies within the China-wide entity failed to respond to our request for Q&V information⁹⁸ and Jinfu failed to respond to our antidumping duty questionnaire.⁹⁹ Thus, necessary information is not on the record and the China-wide entity, which encompasses the parties that failed to respond to the request for Q&V information, has withheld requested information, failed to provide such information in a timely manner or in the form or manner requested, and significantly impeded the proceeding. Therefore, we preliminarily determine that the use of facts available is warranted in determining the rate of the China-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.¹⁰⁰

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

⁹⁷ See SAA at 870.

⁹⁸ See Memorandum, “Quantity & Value Questionnaires: Delivery Confirmation” dated January 18, 2018; *see also* Respondent Selection Memorandum at 2.

⁹⁹ See Jinfu’s Letter, “Jinfu Withdrawal from the Antidumping Duty Investigation of Refillable Stainless Steel Kegs from the People’s Republic of China (A-570-093),” dated November 26, 2018.

¹⁰⁰ 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).

cooperate to the best of its ability to comply with Commerce’s request for information.¹⁰¹ 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).¹⁰² Moreover, we find that adverse inferences are warranted in selecting from the facts available regarding certain aspects of our preliminary determination of critical circumstances. We detail our use of adverse inferences in selecting from among the facts otherwise available below.

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.¹⁰³ 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.¹⁰⁴ 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.¹⁰⁵ However, based on the information on the record, we are unable to corroborate the highest petition rate of 204.42 percent.¹⁰⁶

In attempting to corroborate that rate, we compared the highest petition rate of 204.42 percent to the individually-investigated respondent’s 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 Ningbo Master’s highest calculated transaction-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 79.71 percent, which is the highest transaction-specific dumping margin for Ningbo Master. 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.¹⁰⁷

¹⁰¹ *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.”)).

¹⁰² *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

¹⁰³ *See* section 776(b) of the Act.

¹⁰⁴ *See* SAA at 870.

¹⁰⁵ *See, e.g., Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016).

¹⁰⁶ *See* Antidumping Duty Investigation Initiation Checklist: Refillable Stainless Steel Kegs from the People’s Republic of China dated October 10, 2018 (Initiation Checklist), at 10.

¹⁰⁷ *See 1,1,1,2-Tetrafluroethane 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); *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).

I. Date of Sale

In identifying the date of sale of the subject merchandise, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business.¹⁰⁸ 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.¹⁰⁹ Furthermore, we have a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.¹¹⁰

Ningbo Master reported the commercial invoice date as the date of sale for its U.S. sales.¹¹¹ Ningbo Master explained that the “actual quantity shipped and unit price might change until the commercial invoice is issued.”¹¹² Ningbo Master demonstrated with supporting documentation that the material terms of sale could change up until the date of commercial invoice.¹¹³

Consistent with 19 CFR 351.401(i), we preliminarily determine to use the commercial invoice date as the date of all sales for Ningbo Master.

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 Ningbo Master'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) to the NV as described in the “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-

¹⁰⁸ See 19 CFR 351.401(i).

¹⁰⁹ *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.”).

¹¹⁰ See, e.g., *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 10670 (March 12, 2018), and accompanying Preliminary Decision Memorandum at 6-7, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 32629 (July 13, 2018).

¹¹¹ See Ningbo Master CDQR at C-14.

¹¹² See Ningbo Master AQR at 17.

¹¹³ See Ningbo Master SQR1 at 7 and Exhibit SQ1-3.

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.¹¹⁴ 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 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

¹¹⁴ 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).

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 Ningbo Master, based on the results of the differential pricing analysis, we preliminarily find that 79.1 percent of the value of U.S. sales pass the Cohen's *d* test¹¹⁵ 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 a 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-transaction method for all U.S. sales to calculate the weighted-average dumping margin for Ningbo Master.

K. U.S. Price

1. Export Price Sales

For Ningbo Master'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 subject merchandise was sold to unaffiliated purchasers in the United States.

We made deductions, as appropriate, from the reported U.S. price for discounts and for movement expenses for Ningbo Master, *e.g.*, foreign inland freight expenses, foreign brokerage and handling expenses, international freight, marine insurance, U.S. inland freight, and U.S. brokerage and handling expenses.¹¹⁶ We based movement expenses on SVs where the service was purchased from a China company.¹¹⁷ We also made an adjustment for a proprietary item which is discussed in the Ningbo Master Preliminary Analysis Memorandum.¹¹⁸

2. Value-Added Tax

In 2012, Commerce announced a change of methodology with respect to the calculation of EP and CEP to include an adjustment of any irrecoverable value-added tax (VAT) in certain NME countries in accordance with section 772(c)(2)(B) of the Act.¹¹⁹ Commerce explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, Commerce will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.¹²⁰ Where the irrecoverable VAT is a fixed percentage

¹¹⁵ See Memorandum, "Refillable Stainless Steel Kegs from the People's Republic of China: Preliminary Analysis Memorandum for Ningbo Master International Trade Co., Ltd.," dated concurrently with this Preliminary Decision Memorandum (Ningbo Master Preliminary Analysis Memorandum).

¹¹⁶ See Section 772(c)(2)(A) of the Act.

¹¹⁷ See the Factor Valuation Methodology section.

¹¹⁸ See Ningbo Master Preliminary Analysis Memorandum at 3.

¹¹⁹ 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).

¹²⁰ *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.

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.¹²¹

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 during the period January 1, 2018, through April 30, 2018, was 17 percent and the rebate rates for the merchandise under consideration are 15 percent, while the standard VAT levy during the period May 1, 2018, through June 30, 2018, was 16 percent and the rebate rates for the merchandise under consideration are 15 percent.¹²² 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.¹²³ Thus, because the VAT levy and VAT rebate rates on exports are different, we adjusted Ningbo Master's U.S. sales for irrecoverable VAT.

The petitioner argued that Ningbo Master claimed a VAT refund based on an incorrect HTS category.¹²⁴ However, Ningbo Master reported that it used the HTS category indicated in its Chinese export declarations and that it actually received the refund amounts it reported.¹²⁵ Because Ningbo Master claimed that the actual VAT refunds it reported were based on the HTS category it indicated, we are preliminarily accepting Ningbo Master's reported VAT refund claim. However, we intend to examine this issue further at verification.

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.¹²⁶ 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

¹²¹ *Id.*

¹²² See Ningbo Master CDQR at C-38 and Exhibit C-3.

¹²³ 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.

¹²⁴ See the petitioner's Letter, "Refillable Stainless Steel Kegs from the People's Republic of China: Pre-Preliminary Determination Comments," dated May 10, 2019, at 19-23.

¹²⁵ See SQR3 at 1-2.

¹²⁶ 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).

required; (2) quantities of raw materials used; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.¹²⁷

M. Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by Ningbo Master. To calculate NV, we multiplied the reported per-unit FOP consumption rates by publicly available SVs. When selecting SVs, we considered, among other factors, the quality, specificity, and contemporaneity of the SV data.¹²⁸ 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.¹²⁹ A detailed description of the SVs used can be found in the Preliminary SV Memorandum.¹³⁰

1. Direct and Packing Materials

For the preliminary determination, we used Malaysian import data, as published by the GTA, and other publicly available sources from Malaysia 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.¹³¹

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.¹³²

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, Commerce normally will use the prices paid to the market economy suppliers

¹²⁷ See section 773(c)(3)(A)-(D) of the Act.

¹²⁸ 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.

¹²⁹ See *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).

¹³⁰ See Preliminary SV Memorandum.

¹³¹ 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).

¹³² See Preliminary SV Memorandum for further discussion.

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 whether valid ME purchases meet the 85 percent threshold.¹³³ Ningbo Master provided evidence that it had ME purchases of specific inputs during the POI that were produced in an ME.¹³⁴ We used Ningbo Master's reported ME purchase data for those inputs, where appropriate, in the preliminary determination.¹³⁵ We also added freight expenses to Ningbo Master's reported ME prices for those inputs, where appropriate.¹³⁶

The record shows that for the remaining inputs, Malaysian import data obtained through GTA, are broad market averages, product-specific, tax-exclusive, and generally contemporaneous with the POI.¹³⁷

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.¹³⁸ 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.¹³⁹ 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 Malaysian import-based SVs.

¹³³ See *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013)

¹³⁴ See Ningbo Master CDQR at D-7 and Exhibit D-4.

¹³⁵ See Preliminary SV Memorandum.

¹³⁶ See Ningbo Master Preliminary Analysis Memorandum.

¹³⁷ See Preliminary SV Memorandum.

¹³⁸ 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).

¹³⁹ 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.

Additionally, we disregarded data from NME countries when calculating Malaysian import-based per-unit SVs. We also excluded from the calculation of Malaysian 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.¹⁴⁰

2. Energy

We preliminarily valued electricity at the utility cost of 0.28 Ringgit per kwh based on the POI data from the Malaysian Investment Development Authority.¹⁴¹ Because the electricity data are contemporaneous with the POI,¹⁴² we did not adjust the data for inflation.

We preliminarily valued natural gas using the GTA data for HTS subheading 2711.12. The preliminary SV is 11.18 Ringgit per/KG.¹⁴³

We preliminarily valued water at 1.62 Ringgit per m³ based on data from the Malaysian Investment Development Authority.¹⁴⁴ To value steam, we calculated 14.52 percent of the surrogate value of natural gas (obtained as described above) consistent with prior practice.¹⁴⁵

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.¹⁴⁶

We valued brokerage and handling and inland truck freight expenses using the data from the World Bank Group’s *Doing Business 2018 –Malaysia (Doing Business)* and the average of the distances between the factory and the port.¹⁴⁷ The value for truck freight in *Doing Business* is

¹⁴⁰ 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).

¹⁴¹ See Preliminary SV Memorandum at Exhibit 2, “Surrogate Value” tab; see also Ningbo Master SV Comments at Exhibit SV-5.

¹⁴² See Ningbo Master SV Comments at Exhibit SV-5.

¹⁴³ Ningbo Master did not report using natural gas in its production of the subject merchandise. We have valued natural gas for the purpose of valuing steam.

¹⁴⁴ See Preliminary SV Memorandum at Exhibit 2, “Surrogate Value” tab; see also Ningbo Master SV Comments at Exhibit SV-6.

¹⁴⁵ 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)).

¹⁴⁶ See *Sigma Corp.*, 117 F.3d at 1407-08.

¹⁴⁷ See Ningbo Master SV Comments at Exhibit SV-7.

publicly available and the data in *Doing Business* is current as of 2018.¹⁴⁸ Because the *Doing Business* data are contemporaneous with the POI, we did not adjust the data for inflation.

To value marine insurance, we used the insurance rate indicated for international shipments of chemicals and hazardous materials from RJG Consultants.¹⁴⁹ Because the data is an *ad valorem* rate, we have not attempted to inflate the data.

4. Labor

We calculated an hourly labor rate using industry-specific data from the primary surrogate country, Malaysia. In particular, we relied on industry-specific labor data from the Malaysia Department of Statistics.¹⁵⁰ We calculated an industry-specific labor cost rate of 18.557 Ringgit per hour.

The petitioner argued that we should not use Malaysian labor data on the grounds that it is unreliable and aberrational because of the prevalence of forced labor in Malaysia and suggests that we use Brazilian labor data instead.¹⁵¹ We have preliminarily not adopted this suggestion. Specifically, Commerce prefers to value labor solely based on data from the primary surrogate country.¹⁵²

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.¹⁵³

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we used the 2018 audited public financial statements of HS Heng Seng Metal Sdn Bhd (Heng Seng). We preliminarily determine that Heng Seng is a Malaysian producer of comparable

¹⁴⁸ *Id.*

¹⁴⁹ See Petitioner SV Comments at Exhibit 2.

¹⁵⁰ See Preliminary SV Memorandum at Exhibit 2, "Surrogate Value" and "Labor" tabs, and Petitioner's SV Comments at Exhibit 4.

¹⁵¹ See Petitioner SV Rebuttal Comments 2 at 26-34.

¹⁵² See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

¹⁵³ 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.

merchandise.¹⁵⁴ Although we also have on the record audited public financial statements from other Malaysian companies, only Heng Seng's is contemporaneous with the POI.¹⁵⁵

N. Currency Conversion

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

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

In applying section 777A(f) of the Act, Commerce examines: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise; (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period; and (3) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.¹⁵⁶ For a subsidy meeting these criteria, the statute requires Commerce to reduce the AD duty by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.¹⁵⁷

Because Commerce has relatively recently started conducting analyses under section 777A(f) of the Act, Commerce is continuing to refine its practice in applying this section of the law. For this preliminary determination, Commerce examined whether the respondent demonstrated: (1) a subsidies-to-cost link, *e.g.*, subsidy impact on cost of manufacture (COM); and (2) a cost-to-price link, *e.g.*, respondent's prices changed as a result of changes in the COM.¹⁵⁸

In order to examine the effects of concurrent countervailable subsidies in calculating margins for Ningbo Master, Commerce provided the respondent with an opportunity to submit information with respect to subsidies relevant to their eligibility for an adjustment to the calculated weighted-average dumping margins.¹⁵⁹ Ningbo Master submitted its double remedy questionnaire response.¹⁶⁰ A finding that there is an overlap in remedies and any resulting adjustments are

¹⁵⁴ See Ningbo Master SV Comments 2 at Exhibit SV2-4.

¹⁵⁵ See Ningbo Master SV Comments at Exhibits 9 and 10 and Ningbo Master SV Comments 2 at Exhibits SV2-1, SV2-2, SV2-3, and SV2-4.

¹⁵⁶ See section 777A(f)(1)(A)-(C) of the Act.

¹⁵⁷ See section 777A(f)(1)-(2) of the Act.

¹⁵⁸ See, *e.g.*, *Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 36876 (June 8, 2016), and accompanying Preliminary Decision Memorandum at 36, unchanged in *Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 75032 (October 28, 2016).

¹⁵⁹ See Commerce's Letters to Ningbo Master dated April 25, 2019 and May 3, 2019.

¹⁶⁰ See Ningbo Master's double remedy response dated May 2, 2019 and SQR4.

based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute.¹⁶¹

Ningbo Master has claimed a domestic pass-through adjustment for stainless steel coils,¹⁶² for which Commerce made preliminary affirmative determinations of the PRC government's provision for less than adequate remuneration (LTAR) in the concurrent CVD investigation of refillable stainless steel kegs from China.¹⁶³ Ningbo Master provided its accounting records indicating that the LTAR programs for stainless steel coils affected its COM.¹⁶⁴ Therefore, we preliminarily determine that Ningbo Master established a subsidy-to-cost link because subsidies for the provisions of stainless steel coils for LTAR affect Ningbo Master's costs for the production of subject merchandise.

For the cost-to-price link, we examined whether Ningbo Master demonstrated that changes in costs affected prices or that it takes into consideration changes in costs in setting prices. Ningbo Master explained that it primarily considered "overall cost of manufacturing, including the costs of major inputs such as the costs of stainless steel coil, energy (electricity), labor, etc., in particular, the cost of stainless steel coils, which is the major cost of manufacturing the subject merchandise" in setting and changing the prices of subject merchandise during the POI.¹⁶⁵ Ningbo Master demonstrated that its employees monitor input costs and set prices of the subject merchandise depending on updates in key raw material purchase costs and manufacturing costs.¹⁶⁶ Finally, Ningbo Master demonstrated that the raw materials' cost changes affect the selling price negotiations with its customers.¹⁶⁷ Therefore, we preliminarily determine that Ningbo Master established the cost-to-price link between the U.S. prices of the subject merchandise and Ningbo Master's per-unit cost of stainless steel coil.

Based on the foregoing, Commerce preliminarily finds that the requirements of sections 777A(f)(1)(A)-(C) of the Act have been met for Ningbo Master. Therefore, we preliminarily find a basis for adjusting the AD cash deposit rate for Ningbo Master under section 777A(f) of the Act and, we have preliminarily determined an adjusted AD cash deposit rate based on the program-specific CVD rates found in the companion CVD investigation for Ningbo Master for the provision of stainless steel coil for LTAR.¹⁶⁸ Because Ningbo Master's double remedy response indicates that factors other than the cost of stainless steel coil impact prices to customers,¹⁶⁹ for purposes of this preliminary determination, Commerce is applying a documented ratio of cost-price changes for the relevant manufacturing sector as a whole, which

¹⁶¹ See, e.g., *Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part*, 82 FR 28629 (June 23, 2017), and accompanying Preliminary Decision Memorandum at 43.

¹⁶² See Ningbo Master's double remedy response dated May 2, 2019.

¹⁶³ See *Refillable Stainless Steel Kegs from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 13634 (April 5, 2019) (*Kegs CVD Prelim*), and accompanying Preliminary Decision Memorandum at 37-38.

¹⁶⁴ See SQR4 at 1 and Exhibit DRSQ1-1.

¹⁶⁵ See Ningbo Masters' double remedy response dated May 2, 2019 at 2.

¹⁶⁶ *Id.* at 2-10 and Exhibit DR-2.

¹⁶⁷ See Ningbo Masters' double remedy response dated May 2, 2019 at 3 and Exhibit DR-1.

¹⁶⁸ See *Kegs CVD Prelim* and accompanying Preliminary Decision Memorandum at 37-38.

¹⁶⁹ See Ningbo Master's double remedy response dated May 2, 2019 at 2.

is based on data provided by Bloomberg, as the estimate of the extent of subsidy pass-through.¹⁷⁰ Accordingly, we made preliminary domestic pass-through adjustment for Ningbo Master with respect to the provision of stainless steel coils at LTAR.

To determine whether to grant a domestic pass-through adjustment for non-selected separate rate respondents, Commerce relies on the experience of the individually investigated respondents, subject to section 777A(f)(2) of the Act.¹⁷¹ Because Ningbo Master is eligible for a domestic pass-through adjustment, we made a domestic pass-through adjustment for the non-selected separate rate respondents using the domestic pass-through adjustment rate for Ningbo Master, which is consistent with section 777A(f)(2) of the Act.

For the China-wide entity, which received an AFA rate as discussed above, we would normally adjust the China-wide entity's AD cash deposit rate by the lowest estimated domestic pass-through adjustment rate determined for any party in this investigation.¹⁷² In this investigation, the lowest domestic pass-through adjustment rate is the rate we calculated for Ningbo Master, so we made an adjustment using that rate.

Ningbo Master also claimed a domestic pass-through adjustment for electricity,¹⁷³ for which Commerce made preliminary affirmative determinations of the PRC government's provision for less than adequate remuneration (LTAR) in the concurrent CVD investigation of refillable stainless steel kegs from China.¹⁷⁴ Ningbo Master provided its accounting records indicating that the LTAR programs for stainless steel coils affected its COM.¹⁷⁵ Therefore, we preliminarily determine that Ningbo Master established a subsidy-to-cost link because subsidies for the provisions of electricity for LTAR affect Ningbo Master's costs for the production of subject merchandise.

For the cost-to-price link, we examined whether Ningbo Master demonstrated that changes in electricity costs affected prices or that it takes into consideration changes in costs in setting prices.¹⁷⁶ Ningbo Master claimed that "if the electricity costs changed substantially, it would

¹⁷⁰ See Memorandum, "Preliminary Determination of Sales at less than Fair Value; Refillable Stainless Steel Kegs from the People's Republic of China: Preliminary Analysis of Double Remedy," dated concurrently with this Preliminary Decision Memorandum (Preliminary Double Remedy Memorandum) at Attachments 1 and 2.

¹⁷¹ See *Aluminum Extrusions from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 32347 (June 8, 2015), and accompanying Preliminary Decision Memorandum at 34, unchanged in *Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 75060, 75063 (December 1, 2015).

¹⁷² See *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 75 (January 4, 2016), and accompanying Preliminary Decision Memorandum at 25-26, unchanged in *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35316, 35318 (June 2, 2016).

¹⁷³ See Ningbo Master's double remedy response dated May 2, 2019.

¹⁷⁴ See *Kegs CVD Prelim*, and accompanying Preliminary Decision Memorandum at 37-38.

¹⁷⁵ See SQR4 at 1 and Exhibit DRSQ1-1.

¹⁷⁶ See *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Rescission, in Part; 2015-2016*, 82 FR 42281 (September 7, 2017), and accompanying Preliminary Decision Memorandum at 32.

impact the overall costs of manufacturing, and then factor into the selling price changes of the subject merchandise.”¹⁷⁷ However, while Ningbo Master provided evidence that electricity is a component of its benchmark prices,¹⁷⁸ it acknowledges that electricity is a “small cost component in the cost of manufacturing.”¹⁷⁹ Moreover, in contrast to stainless steel coil, Ningbo Master provided no evidence indicating that electricity cost changes affect the selling price negotiations with its customers. Therefore, we preliminarily determine that Ningbo Master did not establish the cost-to-price link between the U.S. prices of the subject merchandise and Ningbo Master’s per-unit cost of electricity. Accordingly, we have not made a preliminary domestic pass-through adjustment for Ningbo Master with respect to the provision of electricity at LTAR, nor have we made a preliminary domestic pass-through adjustment for the non-selected separate rate respondents or for the China-wide entity with respect to electricity.

IX. CRITICAL CIRCUMSTANCES

Background

On May 2, 2019, the petitioner timely filed an allegation that critical circumstances exist with respect to imports of kegs from China.¹⁸⁰ In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, Commerce must issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist by no later than the date of the preliminary determination.

Legal Framework

Section 733(e)(1) of the Act provides that Commerce, upon receipt of a timely filed allegation of critical circumstances, will preliminarily determine that critical circumstances exist in AD investigations if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

As provided by 19 CFR 351.206(h)(2), generally, imports must increase by at least 15 percent during the “relatively short period” to be considered “massive” and section 351.206(i) defines a “relatively short period” as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed)¹⁸¹ and ending at least three months later.¹⁸² Commerce’s regulations also provide, however, that, if Commerce finds that importers, or exporters or

¹⁷⁷ See Ningbo Master’s double remedy response dated May 2, 2019 at 9.

¹⁷⁸ *Id.* at Exhibit DR-2.

¹⁷⁹ See SQR4 at 2.

¹⁸⁰ See the petitioner’s Letter, “*Refillable Stainless Steel Kegs from the People’s Republic of China: Petitioner’s Critical Circumstances Allegation*,” dated May 2, 2019 (Allegation).

¹⁸¹ See 19 CFR 351.102(b)(40) (providing that a proceeding begins on the date of the filing of a petition).

¹⁸² See 19 CFR 351.206(h)(2) and (i).

producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from that earlier time.¹⁸³

Critical Circumstances Allegation

In its allegation, the petitioner contends that, based on the dumping margin alleged in the Petition, importers knew, or should have known, that the subject merchandise was being sold at less than fair value.¹⁸⁴ The petitioner also contends that, based on the preliminary determination of injury by the U.S. International Trade Commission (ITC), there is a reasonable basis to impute importers' knowledge that material injury is likely by reason of such imports.¹⁸⁵ Finally, the petitioner contends that, because verifiable shipment data do not exist because 19 companies – including one of the companies selected for individual examination - failed to cooperate with this investigation, an adverse inference can be made that these companies' imports were massive during the relevant time period.¹⁸⁶

Critical Circumstances Analysis

History of Dumping and Material Injury/Knowledge of Sales Below Fair Value and Material Injury

To determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, Commerce generally considers current or previous AD orders on the subject merchandise from the country in question in the United States and current orders imposed by other countries with regard to imports of the same merchandise.¹⁸⁷ In this case, the current investigation of the subject merchandise marks the first instance that Commerce has examined whether sales of the subject merchandise have been made at less than fair value in the United States. Accordingly, Commerce previously has not imposed an AD order on the subject merchandise. Moreover, Commerce is not aware of any AD order on the subject merchandise from China in another country. Therefore, Commerce finds no history of injurious dumping of the subject merchandise pursuant to section 733(e)(1)(A)(i) of the Act.

¹⁸³ See 19 CFR 351.206(i).

¹⁸⁴ See Allegation at 7-9.

¹⁸⁵ *Id.* at 9-10.

¹⁸⁶ *Id.* at 10-11.

¹⁸⁷ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970, 31972-73 (June 5, 2008); *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 2049, 2052-53 (January 14, 2009).

To determine whether importers knew or should have known that exporters were selling the subject merchandise at less than fair value, pursuant section 733(e)(1)(A)(ii) of the Act, we typically consider the magnitude of dumping margins, including margins alleged in the petition.¹⁸⁸ Commerce has found margins of 15 percent or more (for constructed export price or CEP) to 25 percent or more (for export price or EP) to be sufficient for this purpose.¹⁸⁹

Because the preliminary margins for Ningbo Master and the separate-rate applicants, Haishu, Jingye, and Ulix, do not exceed the threshold sufficient to impute knowledge of dumping, we preliminarily find, with respect to these companies, that there is not a reasonable basis to believe or suspect that importers knew or should have known that any of these companies were selling subject merchandise at less than fair value.

Because the preliminary margin for the China-wide entity exceeds the threshold sufficient to impute knowledge of dumping, it provides a sufficient basis for imputing knowledge of sales of subject merchandise at less than fair value to the importers, satisfying the criteria under section 733(e)(1)(A)(ii) of the Act.

To determine whether importers knew or should have known that there was likely to be material injury caused by reason of such imports pursuant to section 733(e)(1)(A)(ii) of the Act, Commerce normally will look to the preliminary injury determination of the ITC.¹⁹⁰ If the ITC finds a reasonable indication of material injury (rather than the threat of injury) to the relevant U.S. industry, Commerce will normally determine that a reasonable basis exists to impute to importers sufficient knowledge of injury by such imports. In this AD investigation, the ITC found that there is a “reasonable indication” of material injury to the domestic industry because of the imported subject merchandise.¹⁹¹ Therefore, the ITC’s preliminary injury determination in this investigation is sufficient to impute knowledge of the likelihood of material injury to importers. Thus, we preliminarily determine that importers knew, or should have known, that there was likely to be material injury caused by reason of such imports, pursuant to section 733(e)(1)(A)(ii) of the Act.

¹⁸⁸ See, e.g., *Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People’s Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504 (November 5, 2015).

¹⁸⁹ *Id.*; see also *Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China*, 62 FR 31972, 31978 (June 11, 1997) unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People’s Republic of China*, 62 FR 61964 (November 20, 1997); *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 (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).

¹⁹⁰ See, e.g., *Certain Potassium Phosphate Salts from the People’s Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation*, 75 FR 24572, 24573 (May 5, 2010) unchanged in *Certain Potassium Phosphate Salts from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Termination of Critical Circumstances Inquiry*, 75 FR 30377 (June 1, 2010).

¹⁹¹ See *Refillable Stainless Steel Kegs from China, Germany, and Mexico*, Inv. Nos. 701-TA-610 and 731-TA-1425-1427 (Preliminary), USITC Publication 4844, November 2018 at 1; see also *Refillable Stainless Steel Kegs From China, Germany, and Mexico*, 83 FR 56102 (November 9, 2018).

Massive Imports

In determining whether imports of subject merchandise from China were “massive” over a relatively short period, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(h), Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the “base period”) to a comparable period of at least three months following the filing of the petition (*i.e.*, the “comparison period”). Imports will normally be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

It is the Department’s practice to base the critical circumstances analysis on all available data, using base and comparison periods of no less than three months.¹⁹² Based on this practice, we chose to examine the base period January 2018 through September 2018, and the corresponding comparison period October 2018 through April 2019 in order to determine whether imports of subject merchandise were massive. These base and comparison periods satisfy the Department’s practice that the comparison period is at least three months.

As discussed above, for Ningbo Master and the separate-rate applicants, the statutory criteria of section 733(e)(1)(A) of the Act has not been satisfied. Accordingly, we did not examine whether imports from these companies were massive over a relatively short period pursuant to section 733(e)(1)(B) of the Act. Moreover, we preliminarily determine that critical circumstances do not exist regarding imports of kegs from China shipped by Ningbo Master or the separate-rate applicants, pursuant to section 733(e) of the Act and 19 CFR 351.206.

As discussed above, we are applying adverse facts available in reaching our findings for certain aspects of this preliminary determination of critical circumstances with respect to the China-wide entity. We do not have information regarding import volumes for the China-wide entity, based on its non-participation in this investigation. As such, we preliminarily find that the China-wide entity had massive imports of subject merchandise over a relatively short period, satisfying the criteria under section 733(e)(1)(B) of the Act and 19 CFR 351.206(h). Thus, we preliminarily determine that critical circumstances exist regarding imports of kegs from China shipped by the China-wide entity, pursuant to section 733(e) of the Act and 19 CFR 351.206.

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

¹⁹² See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 47111, 47118-19 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India*, 69 FR 76916 (December 23, 2004); and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People’s Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 3.

X. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

Agree

Disagree

5/28/2019

X 

Signed by: CHRISTIAN MARSH

Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance