



A-570-898  
Administrative Review  
POR: 06/01/2017-05/31/2018  
**Public Document**  
E&C/OVII: SC

August 9, 2019

**MEMORANDUM TO:** Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for the Preliminary Results of the 2017-  
2018 Antidumping Duty Administrative Review: Chlorinated  
Isocyanurates from the People's Republic of China

---

## I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that Heze Huayi Chemical Co. Ltd. (Heze Huayi) and Juancheng Kangtai Chemical Co. Ltd. (Kangtai) (collectively, respondents) made sales in the United States at prices below normal value (NV). The details of this finding are explained in the “Discussion of the Methodology” section below. The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying Federal Register notice.

Interested parties are invited to comment on these preliminary results. We intend to issue final results no later than 120 days from the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

## II. BACKGROUND

On August 10, 2018, Commerce initiated the administrative review of the antidumping duty (AD) order on chlorinated isocyanurates (chlorinated isos) from China covering the period June 1, 2017 through May 31, 2018.<sup>1</sup> This review covers two producers/exporters; Heze Huayi and Kangtai. On September 10, 2018, Heze Huayi and Kangtai each submitted a separate rate certification.<sup>2</sup>

---

<sup>1</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 39688 (August 10, 2018) (*Initiation Notice*).

<sup>2</sup> See Heze Huayi's Letter, “Chlorinated Isocyanurates from the People's Republic of China: Separate Rate Certification,” dated September 10, 2018 (Heze Huayi SRC); Kangtai's Letter, “Chlorinated Isocyanurates from the

On September 24, 2018, Commerce issued its AD questionnaire to Heze Huayi and Kangtai, to which Heze Huayi and Kangtai responded in a timely manner. On April 16 and April 24, 2019, Commerce issued supplemental questionnaires to Heze Huayi and Kangtai, respectively, to which both companies responded in a timely manner. We issued the double remedy questionnaire to Heze Huayi and Kangtai on May 21, 2019, and received timely responses from both respondents.

On October 3, 2018, Commerce placed the Surrogate Country List on the record and solicited interested party comments regarding the selection of the surrogate country and the opportunity to provide surrogate value (SV) data.<sup>3</sup> Bio-Lab, Inc., Clearon Corporation, and Occidental Chemical Corporation (collectively, the petitioners), Heze Huayi, and Kangtai placed information on the record and provided argument regarding the selection of the surrogate country and SVs between December 4, 2018 and July 23, 2019.

A verification request was submitted by the petitioners on November 16, 2018, to verify Kangtai's questionnaire responses in accordance with 19 CFR 351.307(b)(1)(v), because Heze Huayi was not verified in the two preceding administrative reviews.<sup>4</sup> On June 10, 2019, the petitioners submitted comments relating to the verification of Heze Huayi.<sup>5</sup> From June 13 through June 18, 2019, Commerce verified the questionnaire responses of Heze Huayi.<sup>6</sup>

On November 13, 2018, the petitioners submitted comments regarding Heze Huayi's and Kangtai's section A questionnaire responses.<sup>7</sup> The petitioners submitted additional comments on the section C and D questionnaire responses from these two respondents on February 19, 2019.<sup>8</sup> The petitioners submitted factual information which contained Heze Huayi's and Kangtai's factors of production (FOPs) data and customer information in the current and prior reviews on

---

People's Republic of China: Separate Rate Certification," dated September 10, 2018 (Kangtai SRC) (collectively, Separate Rate Certifications).

<sup>3</sup> See 2017-2018 Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information, dated October 3, 2018 (Request for Surrogate Country and Value Comments), and Attachment I, Memorandum from the Office of Policy: List of Surrogate Countries for the 2017-2018 Administrative Review of Chlorinated Isocyanurates from the PRC (Surrogate Country List).

<sup>4</sup> See Petitioners' Letter, "Chlorinated Isocyanurates from the People's Republic of China (13<sup>th</sup> Antidumping Administrative Review): Request for Verification," dated November 16, 2018.

<sup>5</sup> See Petitioners' Letter, "Chlorinated Isocyanurates from the People's Republic of China (13<sup>th</sup> Antidumping Administrative Review): Comments Concerning the Verification of Heze Huayi," dated June 10, 2019.

<sup>6</sup> See Memorandum, "Verification of the Questionnaire Responses of Heze Huayi Chemical Co., Ltd. in the Antidumping Review of Chlorinated Isocyanurates from the People's Republic of China," dated August 1, 2019 (Heze Huayi Verification Report).

<sup>7</sup> See Petitioners' Letter, "Chlorinated Isocyanurates from the People's Republic of China (13<sup>th</sup> Antidumping Administrative Review): Comments on Section A Responses of Kangtai and Huayi," dated November 13, 2018.

<sup>8</sup> See Petitioners' Letter, "Chlorinated Isocyanurates from the People's Republic of China (13<sup>th</sup> Antidumping Administrative Review): Comments on Sections C & D Responses of Kangtai and Huayi," dated February 19, 2019.

November 28, 2018<sup>9</sup> and May 31, 2019.<sup>10</sup> Pre-preliminary determination comments were submitted by the petitioners on July 11, 2019<sup>11</sup> and by Heze Huayi and Kangtai on July 23, 2019.<sup>12</sup>

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.<sup>13</sup> Commerce extended the time limit for the preliminary results on April 10, 2019, which fully extended the deadline until August 9, 2019.<sup>14</sup>

### III. SCOPE OF THE ORDER

The products covered by the order are chlorinated isocyanurates (chlorinated isos), which are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isos: (1) trichloroisocyanuric acid ( $\text{Cl}_3(\text{NCO})_3$ ), (2) sodium dichloroisocyanurate (dihydrate) ( $\text{NaCl}_2(\text{NCO})_3(2\text{H}_2\text{O})$ ), and (3) sodium dichloroisocyanurate (anhydrous) ( $\text{NaCl}_2(\text{NCO})_3$ ). Chlorinated isos are available in powder, granular, and tableted forms. The order covers all chlorinated isos. Chlorinated isos are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.40.50, 3808.50.40 and 3808.94.50.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isos and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

---

<sup>9</sup> See Petitioners' Letter, "Chlorinated Isocyanurates from the People's Republic of China (2017-2018 Review): Petitioners' Submission of Factual Information Concerning the Questionnaire Responses to Sections C and D," dated November 28, 2018.

<sup>10</sup> See Petitioners' Letter, "Chlorinated Isocyanurates from the People's Republic of China (201-2018 Review): Petitioners' Submission of Factual Information Concerning the Supplemental Questionnaire Responses of Huayi and Kangtai," dated May 31, 2019 (Petitioners' Supplemental Factual Information).

<sup>11</sup> See Petitioners' Letter, "Chlorinated Isocyanurates from the People's Republic of China (13<sup>th</sup> Antidumping Administrative Review): Comments Concerning the Preliminary Determination," dated July 11, 2019 (Petitioners' Pre-Preliminary Comments), at 8.

<sup>12</sup> See Respondents' Letter, "Certain Chlorinated Isocyanurates from the People's Republic of China Pre-Preliminary Comments," dated July 23, 2019 (Respondents' Pre-Preliminary Comments).

<sup>13</sup> 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 have been extended by 40 days.

<sup>14</sup> See Memorandum, "Chlorinated Isocyanurates from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated April 10, 2019.

## IV. DISCUSSION OF THE METHODOLOGY

### *Non-Market Economy Country Status*

In every AD case conducted by Commerce involving China, China has been treated as a non-market economy (NME) country.<sup>15</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. No party has argued to change, or submitted evidence on the record calling into question, this determination. Therefore, Commerce continues to treat China as an NME country for purposes of these preliminary results. Accordingly, Commerce calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

### *Separate Rates*

In proceedings involving NME countries, Commerce has a rebuttable presumption that all companies within China are subject to government control and, thus, should be assessed a single AD rate.<sup>16</sup> It is Commerce's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its exports. To establish whether a company is sufficiently independent to be eligible for a separate, company-specific rate, Commerce analyzes each exporting entity in an NME country under the test established in *Sparklers*<sup>17</sup> and further clarified in *Silicon Carbide*.<sup>18</sup> However, if Commerce determines that a company is wholly foreign-owned or located in a market economy (ME) country, then a separate-rate analysis is not necessary to determine whether it is independent from government control.

In order to demonstrate separate rate status eligibility, Commerce normally requires entities, for whom a review was requested, and who were assigned a separate rate in a previous segment of this proceeding, to submit a separate-rate certification stating that they continue to meet the criteria for obtaining a separate rate.<sup>19</sup> For entities that were not assigned a separate rate in the previous segment of a proceeding, to demonstrate eligibility, Commerce requires a separate-rate

---

<sup>15</sup> See, e.g., *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 Preliminary Decision Memorandum (PDM) (citing Memorandum, "China's Status as a Non-Market Economy," dated October 26, 2017), unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018).

<sup>16</sup> See, e.g., *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 24892, 24899 (May 6, 2010), unchanged in *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010).

<sup>17</sup> See *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).

<sup>18</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

<sup>19</sup> See *Initiation Notice*, 80 FR at 45948.

application.<sup>20</sup> Companies that submit a separate rate application or separate rate certification which are subsequently selected as mandatory respondents must respond to all parts of Commerce’s questionnaire in order to be eligible for separate rate status.<sup>21</sup>

In this review, Heze Huayi and Kangtai each submitted a separate rate certification.<sup>22</sup> Both respondents have previously demonstrated their eligibility for a separate rate.<sup>23</sup> In their respective separate rate certifications, each company reported that they are wholly Chinese-owned companies.<sup>24</sup>

### 1. 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) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.<sup>25</sup>

The evidence Heze Huayi and Kangtai provided in their questionnaire response supports a preliminary finding of absence of *de jure* government control based on the following factors: (1) an absence of restrictive stipulations associated with the individual exporter’s business and export licenses; (2) applicable legislative enactments decentralizing control of the companies; and (3) formal measures by the government decentralizing control of Chinese companies.<sup>26</sup>

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

As stated in previous cases, there is evidence that certain enactments of the Chinese central government have not been implemented uniformly among different sectors and/or jurisdictions in China.<sup>27</sup> Therefore, Commerce has determined that an analysis of *de facto* control is critical in determining whether Heze Huayi and Kangtai are, in fact, subject to a degree of government control over export activities which would preclude Commerce from assigning separate rates. Commerce considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the

---

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> See Separate Rate Certifications.

<sup>23</sup> See *Chlorinated Isocyanurates from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 31953 (July 10, 2018) (*2016-2017 Prelim Results*), and accompanying PDM at 3-5.

<sup>24</sup> See Heze Huayi SRC at 1; see also Kangtai SRC at 1.

<sup>25</sup> See *Sparklers*.

<sup>26</sup> See Heze Huayi’s Letter, “Chlorinated Isocyanurates from the People’s Republic of China: Section A Questionnaire Response,” dated October 30, 2018 (Heze Huayi Section A Response), at 2-6; see also Kangtai’s Letter, “Chlorinated Isocyanurates from the People’s Republic of China: Section A Questionnaire Response,” dated October 30, 2018 (Kangtai Section A Response), at 2-6.

<sup>27</sup> See, e.g., *Silicon Carbide*, 59 FR at 22586-87.

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 disposition of profits or financing of losses.<sup>28</sup>

The evidence Heze Huayi and Kangtai provided in their questionnaire responses<sup>29</sup> supports a preliminary finding of absence of *de facto* government control based on the following factors: (1) an absence of restrictive government control on export prices; (2) a showing of authority to negotiate and sign contracts and other agreements; (3) a showing that Heze Huayi and Kangtai maintain autonomy from the government in making decisions regarding the selection of management; and (4) a showing that Heze Huayi and Kangtai retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses.

The evidence placed on the record of this administrative review by Heze Huayi and Kangtai demonstrates an absence of *de jure* and *de facto* government control, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, Commerce has preliminarily granted Heze Huayi and Kangtai a separate rate.

### *Surrogate Country*

When Commerce is investigating imports from an NME country, section 773(c)(1) of the Act directs it to determine NV, in most circumstances, on the NME producer's factors of production (FOP) based on the best available information regarding the values of such factors in a surrogate ME country, or countries, considered to be appropriate by Commerce. In accordance with section 773(c)(4) of the Act, in valuing 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. Moreover, Commerce's practice to select an appropriate surrogate country based on the availability and reliability of data from the countries.<sup>30</sup>

On October 3, 2018, Commerce invited parties to comment on surrogate country selection and provide information regarding FOP valuation in the instant review.<sup>31</sup> These comments are summarized below.

On December 4, 2018, petitioners stated in their surrogate country comments that comparable merchandise is produced in each of the six economically comparable countries on the Surrogate Country List, but that Mexico is the only country on the Surrogate Country List which exports and produces significant quantities of chlorinated isos. This latter assertion was based on a reconciliation of the Mexican export data from the PIERS Cross-Border report to the Global

---

<sup>28</sup> *Id.*; see also *Sparklers*, 56 FR at 20589; and *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

<sup>29</sup> See Heze Huayi Section A Response at 7-10; see also Kangtai Section A Response at 7-10.

<sup>30</sup> See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin).

<sup>31</sup> See Request for Surrogate Country and Value Comments.

Trade Atlas (GTA) export data for subject merchandise from Mexico, showing the Mexican firm Aqua Chlor to be a producer and major exporter of chlorinated isos during the POR; product registrations filed by Aqua Chlor with the U.S. Environmental Protection Agency (EPA) for subject merchandise marketed in the United States; GTA exports figures that demonstrate Mexico exported significant quantities of chlorinated isos during the POR.<sup>32</sup> Petitioners also noted that in *2016-2017 Chlorinated Isos Review*, *2015-2016 Chlorinated Isos Review*, and *2014-2015 Chlorinated Isos Review*, Commerce relied on the same information in selecting Mexico as the primary surrogate country because it was the only economically comparable country that was a significant producer of both comparable and identical merchandise, and had the highest quality SVs.<sup>33</sup> On February 19, 2019, petitioners submitted SV data from Mexico based on Mexican import data published by the GTA for all the material and packing inputs reported by the respondents, and other Mexican data sources for the remaining SVs.<sup>34</sup>

The respondents submitted their surrogate country selection comments on December 4, 2018, noting that all six economically comparable countries on the Surrogate Country List export comparable merchandise, and arguing that only Brazil, Malaysia, and Romania are suitable choices for a surrogate country.<sup>35</sup> On February 19, 2019, the respondents submitted SV information for Malaysia and Romania, arguing that one of these countries should be selected as the primary surrogate country.<sup>36</sup> This included information on two possible chlorinated isos producers in Malaysia—Leeson Chemical (Leeson) and Setia Maju Chemie Industry (Setia Maju).<sup>37</sup>

Additional SV information was submitted by the respondents on July 10, 2019, that included four Malaysian financial statements (two of the financial statements included a holding company and its related company, Mey Chern Chemicals SDN. BHD. (Mey Chern)); financial statements and information on comparable and/or subject merchandise traded and/or produced by Accot

---

<sup>32</sup> See Petitioners' Letter, "Chlorinated Isocyanurates from the People's Republic of China (2017-2018 Review): Petitioners' Comments on Primary Surrogate Country Selection," dated December 4, 2018 (Petitioners' SC Comments), at 4-7 and Exhibits 1-3.

<sup>33</sup> See *2016-2017 Prelim Results* PDM at 6 and 10-14, unchanged in *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 5053 (February 20, 2019) (*2016-2017 Chlorinated Isos Review*), and accompanying Issues and Decision Memorandum (IDM); see also *Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 35183 (July 28, 2017) (*2015-2016 Prelim Results*), and accompanying PDM at 6 and 13, unchanged in *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 5243 (February 6, 2018) (*2015-2016 Chlorinated Isos Review*), and accompanying IDM; and IDM; *Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 45128 (July 12, 2016) (*2014-2015 Prelim Results*), and accompanying PDM at 7 and 11, unchanged in *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 4852 (January 17, 2017) (*2014-2015 Chlorinated Isos Review*), and accompanying IDM.

<sup>34</sup> See Petitioners' Letter, "Chlorinated Isocyanurates from the People's Republic of China (2017-2018 Review): Initial Surrogate Value Data," dated February 19, 2019 (Petitioners' SV Submission).

<sup>35</sup> See Letter from the respondents, "Chlorinated Isocyanurates from the People's Republic of China: Comments on Surrogate Countries," (Respondents' SC Comments), dated December 4, 2018, at 2.

<sup>36</sup> See Respondents' Letter, "Certain Chlorinated Isocyanurates from the People's Republic of China: Surrogate Values for the Preliminary Results," dated February 19, 2019 (Respondents' SV Submission).

<sup>37</sup> *Id.* at Exhibit SV-3.

Technologies Sdn. Bhd. (Accot) and CCM Chemicals Sdn. Bhd. (CCM); additional information regarding Lessonic and Setia Maju,<sup>38</sup> and, a subscription-based market research report on the world pool chemical industry.<sup>39</sup>

Rebuttal SV information was submitted by the respondents on February 26, 2019, to rebut the ILO Mexican labor value based on a contemporaneous Mexican labor rate published by the Mexican National Institute of Statistics and Geography (INEGI), using labor data from the Monthly Survey of the Manufacturing Industry (EMIM).<sup>40</sup> In addition, the respondents included additional information on the products manufactured by the Mexican company CYDSA, the surrogate company used by the petitioners to calculate financial ratios.<sup>41</sup>

On February 26, 2019, the petitioners rebutted respondents' argument regarding two Malaysian companies that apparently sell chlorinated isos. Unlike Mexico, there is no evidence of production since the harmonized tariff schedule (HTS) of Malaysia does not separately break out chlorinated isos within the basket of products included in classification 2933.69, whereas the Mexican export statistics include an eight-digit level that specifically applies to subject merchandise.<sup>42</sup> Petitioners argue that without any information establishing the volume of production by either company, and lacking any data even to confirm the volume of exports, it is not possible to verify either that there is production or that it is "significant" within the meaning of the statute.<sup>43</sup> The petitioners' SV rebuttal comments also noted concerns regarding the use of certain Malaysian SVs for labor and electricity. Specifically, the labor data from the Malaysian Department of Statistics are less specific than the Mexican labor data because they are reflective of the general manufacturing industry in Malaysia, whereas the Mexican labor data are specific to the manufacture of chemicals.<sup>44</sup> Furthermore, the Malaysian electricity rates published by the Malaysian Investment Development Authority (MIDA) are not superior to the Mexican data because the former do not indicate whether they are exclusive of VAT or other taxes and information suggests that the Malaysian government subsidized its electricity rates during the POR to avoid passing along additional coal costs and exchange rates that increase the price of gas.<sup>45</sup> In contrast, the petitioners noted that that Mexican electricity rates published by the International Energy Agency (IEA) are exclusive of taxes.<sup>46</sup>

The petitioners rebutted the use of the Romanian import data for material inputs, the Romanian SVs for labor and electricity, and the Romanian financial statements. First, the petitioners

---

<sup>38</sup> See Respondents' Letter, "Certain Chlorinated Isocyanurates from the People's Republic of China: Final Surrogate Value Submission," dated July 10, 2019 (Respondents' Final SV Submission).

<sup>39</sup> See Respondents' Letter, "Certain Chlorinated Isocyanurates from the People's Republic of China: Final Surrogate Value Submission – BPI Exhibit 7," dated July 10, 2019 (Respondents' Final SV Submission – BPI Exhibit 7).

<sup>40</sup> See Respondents' Letter, "Certain Chlorinated Isocyanurates from the People's Republic of China: Rebuttal Surrogate Values for the Preliminary Results," dated February 26, 2019, at Exhibits SVR-1 and SVR-2.

<sup>41</sup> *Id.* at Exhibit SVR-3.

<sup>42</sup> See Petitioners' Letter, "Chlorinated Isocyanurates from the People's Republic of China (2017-2018 Review): Petitioners' Rebuttal Comments on Surrogate Values," dated February 26, 2019 (Petitioners' SV Rebuttal), at 3.

<sup>43</sup> *Id.* at 4.

<sup>44</sup> *Id.* at 6.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 7 and Exhibit 3.

contend that the EUROSTAT import data for Romania cannot be relied upon because respondents did not reconcile this data with the official import statistics reported by GTA. According to the petitioners, this is consistent with Commerce's practice to not use third-party data which does not capture all the imports reported by the official import statistics.<sup>47</sup> Second, the petitioners argue that the Romanian labor data constitutes wages and not the full cost of labor because it is based on nominal gross earnings less social security contributions and benefits.<sup>48</sup> The petitioners also state that the Romanian electricity rate is not fully contemporaneous with the POR because it lacks the first month of the POR, whereas the Mexican electricity rate includes all the months of the POR.<sup>49</sup> Finally, the financial statements of Oltchim S.A. (Oltchim) are not an appropriate basis for calculating financial ratios because the Romanian government holds a majority of the shares and provided "Income from Subsidies" as part of an aid package to assist with its restructuring plan.<sup>50</sup>

On July 22, 2019, the petitioners provided their final rebuttal comments regarding respondents' final SV submission. First, the petitioners reiterate that Mexico is the only potential surrogate country that is both economically comparable and a producer of subject merchandise. The petitioners stated that in the prior reviews in selecting Mexico as the primary surrogate country, Commerce stated its preference to select a surrogate country that produces identical merchandise over one that only produces comparable merchandise, and only when there is an absence of production of identical merchandise does Commerce need to consider whether another potential surrogate country produces comparable merchandise.<sup>51</sup>

The petitioners rebut Respondents Final SV Submission arguing that the Malaysian financial statements and website information on the record do not specifically identify any of these companies as manufacturers of subject merchandise, or in some cases, even comparable merchandise. First, the petitioners note that there is no information in the Mey Chern financial statements that identifies the merchandise involved in its trading and/or manufacturing, and the website only identifies it as a trader of sodium hypochlorite, a comparable product.<sup>52</sup> The petitioners also note that the second Malaysian financial statement is Mey Chern's parent holding company, Whiting Sdn. Bhd. (Whiting), which operates only as an investment company. Moreover, both companies' financial statements only cover one month of the POR.<sup>53</sup>

The petitioners also rebut the information in the financial statements and website of the third Malaysian company, Accot, noting that neither source identify the specific products that it produces. Rather, the record indicates that it is only an importer and distributor and not a

---

<sup>47</sup> *Id.* at 8, citing to *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 26712 (May 9, 2014), and accompanying IDM at Comment 6.

<sup>48</sup> *Id.* at 8-9.

<sup>49</sup> *Id.* at 9.

<sup>50</sup> *Id.* at 10-11.

<sup>51</sup> See Petitioners' Letter, "Chlorinated Isocyanurates from the People's Republic of China (2017-2018 Review): Petitioners' Rebuttal Comments on Respondents' Final Surrogate Values," dated July 23, 2019 (Petitioners' Final Rebuttal), at 2, citing Policy Bulletin at note 6.

<sup>52</sup> See Petitioners' Final Rebuttal Comments at 3.

<sup>53</sup> *Id.* at 4.

producer of comparable merchandise.<sup>54</sup> Regarding the fourth financial statement, the petitioners acknowledge that CCM produced comparable products but state that there is no evidence that it produced subject merchandise, while noting concerns about alleged indirect Malaysian government ownership and support for the company.<sup>55</sup> The petitioners also note that website information concerning Leeson and Setia Maju do not demonstrate that either is a Malaysian producer of chlorinated isos.<sup>56</sup> Finally, the petitioners note that the subscription-based market research report on the world pool chemical industry submitted by the respondents, provides no evidence of chlorinated isos production in Malaysia.<sup>57</sup>

## 1. Economic Comparability

Section 773(c)(4)(A) of the Act is silent with respect to how Commerce may determine that a country is economically comparable to the NME country. As such, Commerce's longstanding practice, in accordance with its regulation 19 CFR 351.408(b), has been to identify those countries which are at a level of economic development similar to China in terms of per capita GNI data available in the World Development Report provided by the World Bank.<sup>58</sup>

Furthermore, providing parties with a range of countries with varying GNIs is reasonable given that any alternative would require a complicated analysis of factors affecting the relative GNI differences between China and other countries, which is not required by the statute. In contrast, by identifying countries that are economically comparable to China based on GNI, Commerce provides parties with a predictable practice which is reasonable and consistent with the statutory requirements. We note that identifying potential surrogate countries based on GNI data has been affirmed by the U.S. Court of International Trade (CIT), which found the use of per capita GNI to be a "consistent, transparent, and objective metric to identify and compare a country's level of economic development" and "a reasonable interpretation of the statute."<sup>59</sup>

Pursuant to section 773(c)(4) of the Act, Commerce listed Brazil, Kazakhstan, Malaysia, Mexico, Romania, and Russia as countries that are comparable to China in terms of economic development based on 2016 per capita gross national income (GNI) data available in the World Development Report provided by the World Bank; Commerce provided parties an opportunity to comment on this list.<sup>60</sup> No party challenged Commerce's list of economically comparable countries.

Commerce is satisfied that the countries on the Surrogate Country List are equally comparable in terms of economic development and serve as an adequate group to consider when gathering SV data. As Commerce's policy is to consider all countries on the Surrogate Country List to be equally comparable economically to China, we did not use GNI alone as the rationale for

---

<sup>54</sup> *Id.* at 5.

<sup>55</sup> *Id.* at 6-7.

<sup>56</sup> *Id.* at 8.

<sup>57</sup> *Id.* at 9-10.

<sup>58</sup> See, e.g., *Pure Magnesium from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 75 FR 80791 (December 23, 2010), and accompanying IDM at Comment 4.

<sup>59</sup> See *Jiaying Brother Fastener Co. v. United States*, 961 F. Supp. 2d 1323, 1329 (CIT 2014).

<sup>60</sup> See Request for Surrogate Country and Value Comments at Attachment I, Surrogate Country List.

selecting among these six countries. Instead, as further discussed below, we evaluated which of these countries is a significant producer of identical and/or comparable merchandise and also has reliable data.

## 2. Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires Commerce 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 for guidance on defining comparable merchandise. The *Policy Bulletin* states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."<sup>61</sup> Therefore, if the record contains a producer of identical merchandise, the requirement of comparable merchandise under section 773(c)(4) of the Act is satisfied. There is no need to look further at countries with only comparable merchandise.

Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.<sup>62</sup> Further, when selecting a surrogate country, the statute requires Commerce to consider the comparability of the merchandise, not the comparability of the industry.<sup>63</sup> "In cases where the identical merchandise is not produced, Commerce must determine if other merchandise that is comparable is produced. How Commerce does this depends on the subject merchandise."<sup>64</sup> In this regard, Commerce recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.<sup>65</sup>

Further, the statute grants Commerce discretion to examine various data sources for determining the best available information.<sup>66</sup> Moreover, while the legislative history provides that the term

---

<sup>61</sup> See Policy Bulletin at 2.

<sup>62</sup> The Policy Bulletin also states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." *Id.* at note 6.

<sup>63</sup> See *Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) ("To impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.").

<sup>64</sup> See Policy Bulletin at 2.

<sup>65</sup> *Id.* at 3.

<sup>66</sup> See section 773(c) of the Act; see also *Nation Ford Chem. Co. v. United States*, 166 F. 3d 1373, 1377 (Fed. Cir.1990).

“significant producer” includes any country that is a significant “net exporter,”<sup>67</sup> it does not preclude reliance on additional or alternative metrics.

In this case, Commerce finds that calcium hypochlorite and sodium hypochlorite are comparable to subject merchandise because, as previously determined, in prior segments of this proceeding, it has similar physical characteristics and end uses, and a similar production process, as the subject merchandise.<sup>68</sup> The respondents have placed evidence on the record which shows that all six economically comparable countries have exports in commercial quantities of comparable merchandise based on UN Comtrade data.<sup>69</sup> The petitioners have placed evidence on the record which shows that all but Kazakhstan have exports in commercial quantities of comparable merchandise based on GTA data.<sup>70</sup>

Commerce finds that the petitioners provided sufficient evidence demonstrating Mexican production of chlorinated isos by AquaClor S.A. de C.V. (Aqua Chlor) based on its company registration with the National Association of the Chemical Industry in Mexico; product registrations filed with the EPA for specific brand names of subject merchandise; and, information that corroborates the extensive PIERS cross-border trade data for shipments of subject merchandise with the GTA export data, showing that 99.5 percent of these exports were of “trichlor” manufactured by AquaClor and shipped to Haviland Pool and Spa Products in the United States.<sup>71</sup>

The respondents provided information in the form of four Malaysian financial statements and select webpages from producers and/or suppliers of chlorinated isos in Malaysia.<sup>72</sup> As noted above, Mey Chern’s financial statements do not identify the merchandise involved in its trading and/or manufacturing activities, and the website information only identifies the company as a trader of sodium hypochlorite, a comparable product.<sup>73</sup> The petitioners are correct in noting that the second financial statement is Mey Chern’s parent holding company, Whiting, which operates only as an investment company.<sup>74</sup> The financial statements of the third company, Accot, only identifies its principal activity as industrial chemicals.<sup>75</sup> The website information on Accot does identify one comparable product, calcium hypochlorite,<sup>76</sup> but the petitioners provided information from a product data sheet that shows Japan as the place of origin for this product.<sup>77</sup> The fourth Malaysian financial statement and related website information identifies CCM as a chlor-alkali manufacturer which produces comparable merchandise, sodium hypochlorite and

---

<sup>67</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576 (1988), at 590.

<sup>68</sup> See, e.g., *Chlorinated Isocyanurates From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 4539, January 28, 2015 (*2012-2013 Review*), and accompanying IDM at Comment 2.

<sup>69</sup> See Respondents’ SC Comments at Exhibit 1.

<sup>70</sup> See Petitioners’ SC Comments at Exhibit 5.

<sup>71</sup> *Id.* at Exhibits 1-4.

<sup>72</sup> See Respondents’ SV Comments at Exhibit SV-3; see also Respondents’ Final SVs at Exhibits SV2-1 to SV2-7.

<sup>73</sup> See Respondents’ Final SVs at Exhibit SV2-1.

<sup>74</sup> *Id.* at SV2-2, “Director’s Report,” “Principal Activities” section of Whiting’s financial statements.

<sup>75</sup> *Id.* at SV2-3, Note 1 of Accot’s financial statements.

<sup>76</sup> *Id.* at SV2-3, website [www.accot.biz/background.html](http://www.accot.biz/background.html).

<sup>77</sup> See Petitioners’ Final Rebuttal Comments at Exhibit 1.

calcium hypochlorite.<sup>78</sup> Based on the information noted above concerning these four Malaysian companies, we preliminarily find CCM to be the only Malaysian company that has sufficient information on the record showing it to be a producer of comparable merchandise. However, the respondents have not provided any corroborating information to show that CCM is even a significant producer of comparable merchandise. Unlike Mexico which has an eight-digit level HTS number that applies to subject merchandise,<sup>79</sup> the Malaysia HTS number is a basket category that does not separately break out chlorinated isos within the basket of products included in classification 2933.69.

The respondents also provided only website information for two additional Malaysian producers, Leesonics and Setia Maju. Leesonics is described as a privately held specialty chemicals producer that serves the following major markets: aviation, surface finishing, oil exploration and production, adhesives, sheet molded compounds, catalyst, personal care, glass and fiberglass.<sup>80</sup> No arguments have been made by the respondents to explain how any of these markets would encompass comparable or subject merchandise.

In the case of Setia Maju, there is information on the website that suggests this company which specializes in swimming pool chemicals, may be a producer of subject merchandise.<sup>81</sup> The petitioners argue that the information behind the hyperlinks on this website show that the subject merchandise was supplied from China.<sup>82</sup> We disagree. The only information that ties these two websites is the “CAS Registry Number” which is used as a specific identifier for a chemical substance, which in this case, is the subject merchandise dichlor and trichlor. Our review of the website information on the record shows that neither contradicts the other but rather, provides separate search results where one is based on a “supplier listing” and the other is based on a “chemical listing.”

Therefore, based on the information above, we preliminarily find one producer, Setia Maju, to be a producer of identical merchandise in Malaysia. However, unlike the Mexican data, no production information was provided by the respondents that shows this producer or Malaysia in general, to be a significant producer of identical merchandise. In the case of Mexico, we found significant production because the GTA export data was specific to subject merchandise and can be corroborated with extensive PIERS cross-border trade data for shipments of subject merchandise. In the case of Malaysia, we have no such shipment information on subject merchandise and even if such information were available, it cannot be corroborated with the six-digit Malaysian HTS number which is a basket category of products. Finally, we note that the subscription-based market research report on the world pool chemical industry, does not include any discussion of Malaysian producers or their representation within the Malaysian pool market.<sup>83</sup>

---

<sup>78</sup> See Respondents’ Final SVs at Exhibits SV2-4.

<sup>79</sup> See Petitioners’ SV Rebuttal at 3.

<sup>80</sup> See Respondents’ Final SV Submission at Exhibit SV2-5.

<sup>81</sup> See Respondents SV Submission at Exhibit SV-3; *see also* Respondents’ Final SVs at Exhibit SV2-5

<sup>82</sup> See Petitioners’ Final Rebuttal Comments at Exhibit 3.

<sup>83</sup> See Respondents’ Final SV Submission – BPI Exhibit 7 at 90-91.

Thus, Commerce finds that each of the countries on the Surrogate Country List (Brazil, Kazakhstan, Malaysia, Mexico, Romania, and Russia) are significant producers of comparable merchandise (calcium hypochlorite or sodium hypochlorite), but only Mexico is a significant producer of identical merchandise. Accordingly, the record supports the selection of Mexico as the primary surrogate country based on Commerce's preference to select a surrogate country that produces identical merchandise over one that only produces comparable merchandise. This is consistent with our selection of Mexico as the primary surrogate country in the three prior administrative reviews.<sup>84</sup>

### 3. Data Availability

In accordance with 19 CFR 351.408(c)(1) and its practice, when evaluating SV data, Commerce considers several factors including whether the SVs are publicly available, contemporaneous with the POR, represent a broad-market average, from an approved surrogate country, tax and duty-exclusive, and specific to the inputs.<sup>85</sup> There is no hierarchy among these criteria. Commerce will often rely on the SV data derived from GTA data, as published by the Global Trade Information Services. Furthermore, in accordance with 19 CFR 351.408(c)(4), Commerce will normally use non-proprietary information from producers of identical or comparable merchandise in the surrogate country as the basis for calculation of the surrogate ratios. It is Commerce's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.<sup>86</sup>

In this case, Commerce has identified a number of FOPs for which we require SV data, with chlorine and caustic soda considered among the most significant inputs used in the production of chlorinated isos. Commerce also requires useable financial statements from a producer of identical or comparable merchandise surrogate country. There is no SV data on the record for Brazil, Kazakhstan, and Russia, nor any surrogate financial statements. With these countries disqualified, Commerce is left with Malaysia, Mexico, and Romania as options for potential primary surrogate country.

Commerce has available to it on the record of this administrative review SV data for the respondent's FOPs for Malaysia, Mexico, and Romania. Of these, only Mexico has useable SVs for all the respondents' FOPs, including surrogate financial statements. In the case of Malaysia, Commerce preliminarily finds that all the Malaysian SVs for raw materials, packing, and energy other than electricity, are sourced from the Trade Data Monitor (TDM). Commerce has previously declined to use data from this database.<sup>87</sup>

---

<sup>84</sup> See *2016-2017 Prelim Results* PDM at 10-12, unchanged in *2016-2017 Chlorinated Isos Review* IDM at Comment 1; see also *2015-2016 Prelim Results* PDM at 12-15, unchanged in *2015-2016 Chlorinated Isos Review*; and *2014-2015 Chlorinated Isos Review* IDM at Comment 1.

<sup>85</sup> See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079 (September 8, 2006), and accompanying IDM at Comment 1.

<sup>86</sup> See Policy Bulletin.

<sup>87</sup> See, e.g., *Steel Propane Cylinders from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination Measures*, 83 FR 66675 (December 27, 2018), and accompanying PDM at 11, unchanged in *Steel Propane Cylinders from the People's Republic of China*:

The petitioners argue that the Malaysian labor and electricity SVs are inferior to Mexican ones.<sup>88</sup> We disagree and find the Malaysian labor data<sup>89</sup> to be equal to the Mexican labor data because the Malaysian data is more contemporaneous than the Mexican data,<sup>90</sup> even though it is less specific because it applies only to general manufacturing rather than chemical manufacturers. In addition, we find the Malaysian electricity rates reliable as evidenced by Commerce's use in recent investigations.<sup>91</sup>

Finally, as discussed above in the "Significant Producers of Comparable Merchandise" section, we preliminarily find the Malaysian financial statements for CCM to be usable because the record evidence shows it to be a producer of comparable merchandise. Commerce has previously found calcium hypochlorite and sodium hypochlorite to be comparable to subject merchandise because it has similar physical characteristics and end uses, and a similar production process, as the subject merchandise.<sup>92</sup> Both the petitioners and the respondents have placed evidence on the record for economically comparable countries based on exports in commercial quantities of either calcium hypochlorite and/or sodium hypochlorite, the comparable merchandise.<sup>93</sup> No party has identified any other product as comparable to subject merchandise. In conclusion, we preliminarily determine that we do not have usable Malaysian SVs for raw materials, packing, and energy other than electricity, because they are sourced from TDM. However, we do find the other reported Malaysian SVs reliable, including the SVs for labor and electricity, and the use of CMM's financial statements for calculating the SV financial ratios.

Our review of the Romanian SV data shows that the one financial statement placed on the record is not usable. We find Oltchim SA's financial statement unsuitable for use in the calculation of the SV financial ratios because the company was undergoing judicial reorganization during the POR. The information on the record shows that the company's business was being carried out according to the procedures regulated by the provisions of law on insolvency and that it was in the stage of judicial reorganization. As such, the company was operating under a reorganization plan led by a consortium of judicial administrators and not independent management or an independent board of directors.<sup>94</sup> The fact that the company is being managed according to a reorganization plan calls into question whether its financial circumstances are an appropriate proxy for the respondents. For example, the report indicates concerns with the company's continuity of operations pending completion of liquidation and sale,<sup>95</sup> thus calling into question

---

*Final Determination of Sales at Less Than Fair Value*, 84 FR 29161 (June 21, 2019), and accompanying IDM at Comment 3.A, page 22

<sup>88</sup> See Petitioners' Rebuttal SV Comments at 6.

<sup>89</sup> See Respondents' SV Submission at Exhibit SV-4.

<sup>90</sup> See Petitioners' SV Submission at Exhibit 4.

<sup>91</sup> See *Steel Propane Cylinders from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination Measure*, 83 FR 66675 (December 27, 2018), and accompanying PDM at 26, unchanged in *Steel Propane Cylinders from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 84 FR 29161 (June 21, 2019)

<sup>92</sup> See, e.g., *2012-2013 Review* IDM at Comment 2.

<sup>93</sup> See Respondents' SC Comments at Exhibit 1.

<sup>93</sup> See Petitioners' SC Comments at Exhibit 5; see also Respondents' SC Comments at Exhibit 1.

<sup>94</sup> See Respondents' SV Submission at Exhibit SV-16, Note 1, pages 13-14.

<sup>95</sup> *Id.* at Section "Key Audit Matters," pages 2-3.

whether its sales and cost data are reflective of a producer of comparable merchandise during normal operations.

Contrary to the petitioners' arguments and concerns regarding the use of the Romanian import statistics from Eurostat, we have previously found the Romanian SV import data reliable and usable. Specifically, Commerce has previously found that the GTA import data for Romania, as listed in the GTA table that shows the data source, is "Eurostat."<sup>96</sup> Based on this information, we preliminarily found the Eurostat data to be from the same source that GTA data would have relied on in reporting Romanian import data. In addition, we have also found the Romanian labor and electricity data reliable for using as SVs.<sup>97</sup> However, we do agree with the petitioners that the Mexican electricity data is preferable to the Romanian data because the Mexican electricity data covers the entire POR, whereas the Romania one lacks the first month of the POR.

In weighing the quality of data of Mexico as compared to Malaysia and Romania, we preliminarily find Mexico to have better SV data because it has usable SVs for all inputs. Specifically, we preliminarily find the Malaysian SVs for raw materials, packing, and energy other than electricity, unusable because they are sourced from TDM, a subscription-based database. As explained above, the Romanian data lacks usable financial statements to calculate surrogate financial ratios. In contrast, CYDSA's financial statement is contemporaneous and indicative of a producer that sells comparable merchandise.<sup>98</sup> Finally, we find the Mexican electricity data is better in quality than the Romanian data, which does not cover the entire POR.

Based on examination of all record evidence, as discussed above, we find Mexico to have the highest quality SV data on the record, and to be the best choice for the primary surrogate country. A detailed explanation of the SVs is provided below in the "Normal Value" section of this notice and in the Preliminary SV Memorandum.<sup>99</sup>

### *Date of Sale*

Pursuant to 19 CFR 351.401(i), Commerce starts with a presumption that invoice date is the correct date of sale unless record evidence indicates that the material terms of sale such as price and quantity are established on another date. Heze Huayi and Kangtai reported that the date of sale should be the invoice date because the material terms of the sale are fixed at invoice date.<sup>100</sup>

---

<sup>96</sup> See *Certain Steel Racks and Parts Thereof from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 35595 (July 24, 2019), and accompanying IDM at Comment 1, pages 8-9.

<sup>97</sup> *Id.* at Comment 1, page 7.

<sup>98</sup> See Petitioners' SV Submission at Exhibit 10, CYDSA 2017 Annual Report at 24-25.

<sup>99</sup> See Memorandum, "2016-2017 Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results SV Memorandum," dated concurrently with this memorandum (Preliminary SV Memorandum).

<sup>100</sup> See Heze Huayi's Letter, "Chlorinated Isocyanurates from the People's Republic of China: Sections C&D Questionnaire Responses," dated November 15, 2018 (Heze Huayi Section C&D Response), at C-10; Heze Huayi's Letter, "Chlorinated Isocyanurates from the People's Republic of China: Supplemental Sections A, C&D Questionnaire Response," dated May 21, 2019 (Heze Huayi Supplemental Response), at 3; *see also* Kangtai's Letter, "Chlorinated Isocyanurates from the People's Republic of China: Sections C&D Questionnaire Responses," dated November 15, 2018 (Kangtai Section C&D Response), at C-9.

In this case, as Commerce has found no evidence contrary to Heze Huayi's and Kangtai's claims that the invoice date was the appropriate date of sale, we have used invoice date as the date of sale for these preliminary results in accordance with 19 CFR 351.401(i).<sup>101</sup>

### *Normal Value Comparisons*

In accordance with section 773(a) of the Act, Commerce compared the export price (EP) or constructed export price (CEP) of the U.S. sales of the merchandise under consideration, to the weighted-average NV to determine whether the individually-examined respondents sold merchandise under consideration to the United States at less than normal value during the POR.

#### 1. Export Price

In accordance with section 772(a) of the Act, "the term 'export price' means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)."

The petitioners argue that the information on the record supports finding Heze Huayi affiliated with its U.S. customer, a trading company/reseller, under the general principles of agency.<sup>102</sup> The petitioners question the nature of the reported U.S. customer (*i.e.*, is it really a trading company) and express concerns that the customer is, in fact, acting as a sales agent for the purpose of manipulating the export value and disguising the true prices being charged to the ultimate or real U.S. customers (*i.e.*, downstream customers or end-purchasers).<sup>103</sup> The petitioners claim the following facts on the record support finding the U.S. customer to be a sales agent: (1) the U.S. customer does not maintain inventory and the subject merchandise is delivered directly to downstream customers; (2) Heze Huayi attends U.S. trade shows; and, (3) the identity of the downstream customer is known to Heze Huayi.<sup>104</sup>

In the absence of an agency contract, "the analysis of whether a relationship constitutes an agency is case-specific and can be quite complex; there is no bright line test."<sup>105</sup> Commerce's examination of allegations of an agency relationship has focused on a range of criteria, including (but not limited to) the following: (1) the foreign producer's role in negotiating price and other terms of sale; (2) the extent of the foreign producer's interaction with the downstream customer; (3) whether the agent/reseller maintains inventory; (4) whether the agent/reseller takes title to the merchandise and bears the risk of loss; (5) whether the agent/reseller further processes or

---

<sup>101</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying IDM at Comment 10.

<sup>102</sup> See Petitioners' Pre-Preliminary Comments at 2-4.

<sup>103</sup> See Petitioners' Supplemental Factual Information at 3.

<sup>104</sup> See Petitioners' Pre-Preliminary Comments at 3-4.

<sup>105</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan*, 62 FR 24394, 24403 (May 5, 1997).

otherwise adds value to the merchandise; (6) the means of marketing a product by the producer to the downstream customer in the pre-sale period; and (7) whether the identity of the producer on sales documentation implies such an agency relationship.<sup>106</sup>

As there was no agency contract or other explicit agency relationship between Heze Huayi and the reseller, Commerce examined the above factors for determining principal-agent relationships.

- (1) *Heze Huayi's role in negotiating price and other terms of sale:* The record evidence shows that Heze Huayi's role in negotiating price and other terms of sale is limited to the price and terms of sale between itself and the U.S. customer/reseller. Heze Huayi also stated that it does not provide customer lists to, or make joint sales calls with, the reseller.<sup>107</sup> In other words, Heze Huayi does not assist the reseller in making sales to downstream customers. Heze Huayi provided an affidavit from the U.S. customer/reseller indicating that the price negotiations between Heze Huayi and the U.S. customer/reseller did not extend to the downstream customer.<sup>108</sup> Our examination of the record and our verification of Heze Huayi finds no information contradicting the claims of Heze Huayi (during verification, we examined sales documentation extensively, as well as the respondent's books and records). There is nothing on the record indicating that Heze Huayi was involved in negotiating the sales price or other material terms of sale with downstream customers.
- (2) *The extent of Heze Huayi's interaction with the downstream customers:* The record indicates no interaction between Heze Huayi and downstream customers. The record indicates merely that the Heze Huayi knows the name of the downstream customers (it ships directly to the downstream customers and attaches their labeling to its products, at the direction of the reseller) and that it attended at least one trade show in the United States.<sup>109</sup> Although the petitioners may infer from Heze Huayi's attendance at the trade show that it must have had some interaction with the downstream customers, there is no information on the record indicating such interaction.<sup>110</sup> In fact, the record indicates only interaction between Heze Huayi and the reseller. For example, the information on the record indicates that Heze Huayi and the reseller interact by phone and instant message,<sup>111</sup> that the reseller visited Heze Huayi in China at which time the reseller made its first purchase,<sup>112</sup> and that the reseller maintains a sales office in Suzhou City, China.<sup>113</sup>

---

<sup>106</sup> See *Stainless Steel Sheet and Strip from Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682 (February 13, 2002), and accompanying IDM at Comment 23.

<sup>107</sup> See Heze Huayi Section A Response, at 13.

<sup>108</sup> See Heze Huayi's Letter Heze Huayi Supplemental Response at Exhibit SQ1-8.

<sup>109</sup> *Id.* at 5.

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

<sup>111</sup> *Id.* at 4.

<sup>112</sup> See Heze Huayi Verification Report at 5.

<sup>113</sup> *Id.*

- (3) *Whether the agent/reseller maintains inventory:* The reseller maintains no inventory of Heze Huayi's products, and Heze Huayi delivers the subject merchandise directly to the downstream customers.<sup>114</sup>
- (4) *Whether the agent/reseller takes title to the merchandise and bears the risk of loss:* The record indicates the reseller takes title before the merchandise leaves Heze Huayi's factory.<sup>115</sup>
- (5) *Whether the agent/reseller further processes or otherwise adds value to the merchandise:* Because the reseller never takes possession of the merchandise,<sup>116</sup> it can neither further process it, nor otherwise add value to the product (beyond providing packaging and labeling materials).
- (6) *The means of marketing the product by Heze Huayi to downstream customers in the pre-sale period:* The record indicates no interaction between Heze Huayi and downstream customers, including any marketing or sales interactions. Although the petitioner infers some type of sales effort by Heze Huayi to the downstream customer from the fact that Heze Huayi attended a trade show in the United States, the record shows no interaction between Heze Huayi and the reseller's customers.
- (7) *Whether the identity of the producer on sales documentation implies an agency relationship:* Heze Huayi is clearly identified on the sales documentation between itself and the reseller and is a party to the contract between itself and the reseller. However, there is nothing in such sales documents indicating a principal-agency relationship, implying that the reseller is acting on Heze Huayi's behalf, or suggesting that the reseller is simply an intermediary between Heze Huayi and the downstream customers. To the contrary, the documentation indicates an independent, arm's length transaction between a buyer and seller. At verification, for example, Commerce reviewed complete sales traces between Heze Huayi and the reseller, which included the documentation one would typically expect to see for independently negotiated sales: purchase orders, sales contracts, invoices, *etc.*<sup>117</sup> Likewise, at verification, Commerce reviewed purchase orders and invoices between the reseller and the downstream customers.<sup>118</sup> In its review of both sets of documentation, Commerce saw no indication that one party was dictating prices to another party or any evidence that the prices were fixed prices or something akin to a "transfer" price.

Therefore, the only information on the record supporting the agency argument of the petitioners is the fact that the reseller does not ever maintain inventory of the product, never takes physical custody of the product, and does not further process the product. On the other hand, and importantly, the record provides no indication that anyone other than the reseller is conducting the actual sales with the downstream customers and the reseller takes title to the merchandise

---

<sup>114</sup> See Respondents' Pre-Preliminary Comments at 13.

<sup>115</sup> See Heze Huayi Section A response at 7.

<sup>116</sup> See Respondents' Pre-Preliminary Comments at 13.

<sup>117</sup> See, e.g., Heze Huayi Verification Report at 5.

<sup>118</sup> *Id.*

before shipment by Heze Huayi. The record indicates two independent sales negotiations taking place: one between Heze Huayi and the reseller (with no reference to the downstream customers), and the second between the reseller and the downstream customers (with no Heze Huayi involvement). Thus, the only price being set by Heze Huayi is the price to the reseller. Moreover, Commerce does not believe excessive weight should be given in our totality of the circumstances analysis in this case to the fact that the reseller never takes physical custody of the product and does not process it. This is not an unusual set of circumstances between a U.S. reseller and a foreign producer, and it is in fact a relationship that Commerce has seen frequently before under this order.<sup>119</sup> The arrangement, in this case, simply does not give rise to any suspicion that Heze Huayi is actually the party making the sale to the downstream customer.

Therefore, because the merchandise was sold prior to importation by Heze Huayi outside the United States to the first unaffiliated purchaser in the United States, the reported U.S. customer/reseller, we have based the U.S. price on EP. Commerce also defined the U.S. price of merchandise under consideration based on the EP for all sales reported by Kangtai. We calculated the EP based on the prices at which merchandise under consideration was sold to unaffiliated purchasers in the United States. To this price, we added amounts for components that were supplied free of charge (Heze Huayi<sup>120</sup> and Kangtai<sup>121</sup>), where applicable, pursuant to section 772(c)(1)(A) of the Act and consistent with our treatment of sales in prior reviews.<sup>122</sup> For free packing materials, we added the SVs for these materials, multiplied by the reported FOPs for these items, to the U.S. price paid by Heze Huayi's or Kangtai's customer. Commerce finds, as in prior reviews, that the respondents have fully addressed our questions regarding the use and reporting of free-of-charge packing materials, including the name and address of all suppliers of these packing materials, the materials that were provided, and the name of the U.S. customer providing these materials.<sup>123</sup>

In accordance with section 772(c) of the Act, where appropriate, we deducted from the starting prices to the unaffiliated purchasers, the expenses for: foreign inland freight; international freight; brokerage and handling; marine insurance; and U.S. customs duties.<sup>124</sup> For the expenses

---

<sup>119</sup> See Petitioners' Supplemental Factual Information at Exhibits 3-6.

<sup>120</sup> See Heze Huayi Supplemental Response, at 9-11.

<sup>121</sup> See Heze Huayi Supplemental Response at 9-10; see also Kangtai's Letter, "Chlorinated Isocyanurates from the People's Republic of China: Kangtai First Supplemental Questionnaire," dated March 24, 2019 (Kangtai Supplemental Response), at 7-8.

<sup>122</sup> See, e.g., *Chlorinated Isocyanurates from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 43391 (July 25, 2014) (*2012-2013 Preliminary Results*) and accompanying PDM at 13, unchanged in *2012-2013 Review*.

<sup>123</sup> See *2016-2017 Chlorinated Isos Review IDM* at Comment 4; see also *2015-2016 Chlorinated Isos Review IDM* at Comment 4.

<sup>124</sup> See Memorandum, "Analysis for the Preliminary Results of the 2017-2018 Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China: Heze Huayi Chemical Co. Ltd.," dated concurrently with this memorandum (Heze Huayi Preliminary Analysis Memorandum); see also Memorandum, "Analysis for the Preliminary Results of the 2017-2018 Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China: Juancheng Kangtai Chemical Co., Ltd.," dated concurrently with this memorandum (Kangtai Preliminary Analysis Memorandum).

that were either provided by an NME vendor or paid for using an NME currency, we used SVs, as appropriate.<sup>125</sup>

## 2. Value-Added Tax

Commerce's practice in NME cases is to adjust EP or CEP for the amount of any un-refunded value-added tax (VAT), in accordance with section 772(c)(2)(B) of the Act.<sup>126</sup> Commerce explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, Commerce will reduce the respondent's EP and CEP prices accordingly by the amount of the tax, duty or charge paid, but not rebated.<sup>127</sup> Where the irrecoverable VAT is a fixed percentage of CEP or EP, Commerce explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. CEP or EP downward by this same percentage.<sup>128</sup> Commerce's methodology, as explained above and applied in this review, essentially amounts to performing two basic steps: (1) determining the irrecoverable VAT tax on subject merchandise, and (2) reducing U.S. price by the amount determined in step one.

Commerce requested that the respondents report net un-refunded VAT for the subject merchandise. Heze Huayi and Kangtai both reported that the official VAT rate for exports of subject merchandise was 17 percent from June 1, 2017 to April 30, 2018, and 16 percent from May 1, 2018 to May 31, 2018. The refund rate was nine percent during the POR, under the applicable Chinese regulations.<sup>129</sup> Thus, they incurred an effective VAT rate of eight percent and on exports of domestically produced chlorinated isos before the change in the VAT rate, and an effective VAT rate of seven percent after the change in the VAT rate. Because they pay VAT associated with subject merchandise and it is not refunded at these effective VAT rates, Commerce adjusted each company's net price for the un-refunded VAT to calculate EP net of VAT. We note that this is consistent with Commerce's policy and the intent of the statute, that dumping comparisons be tax-neutral.<sup>130</sup>

## 3. Normal Value

Section 773(c)(1) of the Act provides that, in an NME proceeding, Commerce shall determine NV using a FOP methodology if the merchandise is exported from an NME and the information

---

<sup>125</sup> See the "Factor Valuations" section below for details regarding the SVs for movement expenses.

<sup>126</sup> See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36483-84 (June 19, 2012) (*Methodological Change*).

<sup>127</sup> *Id.*; see also *2011-2012 Chlorinated Isos Review* IDM at Comment 5.A.

<sup>128</sup> *Id.*

<sup>129</sup> See Heze Huayi Section C&D Response at C-31 to C-32; see also Kangtai Section C&D Response at C-29 to C-30.

<sup>130</sup> See *Methodological Change* (citing *Antidumping Duties; Countervailing Duties*, 62 FR27296, 27369 (May 19, 1997); and Statement of Administrative Action Accompanying H.R. 5110, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994), at 827; see also *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Results of Antidumping Administrative Review; 2011-2012*, 78 FR 78333 (December 26, 2013), and accompanying PDM at Issue 9, unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 37715 (July 2, 2014).

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 in NMEs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under Commerce's normal methodologies. Therefore, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). Under section 773(c)(3) of the Act, FOPs include: (1) hours of labor required; (2) quantities of raw materials consumed; (3) amounts of energy and other utilities consumed; (4) representative capital costs; and (5) transportation costs. We used the FOPs reported by the respondent for materials, energy, labor, by-products, packing and freight. These reported FOPs included FOPs for various materials provided free of charge by the customer as discussed in the "Export Price" section, above.

### *Factor Valuation Methodology*

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by Heze Huayi and Kangtai for the POR. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Mexican SVs. In selecting the SVs, we selected, where possible, publicly available data, which represent an average non-export value and are contemporaneous with the POR, product-specific, and tax-exclusive. As appropriate, we adjusted input prices by including freight costs to render them delivered prices. Specifically, we added to the import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory.<sup>131</sup> Additionally, where necessary, Commerce adjusted SVs for exchange rates and converted all applicable FOPs data to a per-kilogram basis.

A detailed description of all SVs used to calculate the weighted-average dumping margins for the mandatory respondents can be found in the Preliminary SV Memorandum. An overview of the SVs used to calculate weighted-average dumping margins for Heze Huayi and Kangtai are below.

### *Surrogate Values*

For the preliminary determination, Commerce used Mexican import data, as published by GTA, and other publicly available sources from Mexico to calculate SVs for respondents' FOPs. In accordance with section 773(c)(1) of the Act, Commerce applied the best available information for valuing FOPs by selecting, to the extent practicable, SVs which are (1) non-export average values, (2) contemporaneous with or closest in time to the POR, (3) product-specific, and (4) tax-exclusive.<sup>132</sup> The record shows that that Mexico import data obtained through GTA, as well as data from other Mexican sources, are broad market averages, product-specific, tax-exclusive, and

---

<sup>131</sup> See *Sigma Corp. v. United States*, 117 F. 3d 1401, 1408 (Fed. Cir. 1997).

<sup>132</sup> See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

contemporaneous with the POR, the only exception being the Mexican ILO labor data from 2008.<sup>133</sup> In this instance, the ILO labor data was adjusted using, where appropriate, Mexico's producer price index, as published in the International Monetary Fund's (IMF's) International Financial Statistics.

We preliminarily find that we can use all the material and packing inputs included in the GTA import data for Mexico. In accordance with the legislative history of the Omnibus Trade and Competitiveness Act of 1988,<sup>134</sup> Commerce continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may include subsidies.<sup>135</sup> Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, Commerce finds it is reasonable to infer that all exporters from India, Indonesia, Korea, and Thailand may have benefitted from these subsidies.<sup>136</sup>

Additionally, Commerce disregarded data from NME countries when calculating Mexican import-based per-unit SVs.<sup>137</sup> Commerce also excluded from the calculation of Mexican import-based per-unit SVs imports labeled as originating from an "unidentified" country because Commerce could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.<sup>138</sup>

As noted above, Commerce used Mexican import statistics from GTA to value raw materials, by-products, packing materials, and certain energy inputs, except as listed below.

#### *Free of Charge Raw Materials*

As noted above, Heze Huayi and Kangtai reported that certain U.S. customers provided certain packing materials free of charge.<sup>139</sup> Packing materials that are provided free of charge to a respondent by its customer and materials for which a respondent is separately reimbursed by its customer are part of the cost of manufacturing and must be included when calculating NV. Thus, for Heze Huayi's and Kangtai's products that included packing materials provided free of charge, consistent with Commerce's practice and section 773(c)(1)(B) of the Act, we used the

---

<sup>133</sup> See Preliminary SV Memorandum.

<sup>134</sup> See Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

<sup>135</sup> See *China Nat'l Mach. Import & Export Corp. v. United States*, CIT 01-1114, 293 F. Supp. 2d at 1334 (CIT 2003), aff'd 104 Fed. Appx. 183 (Fed. Cir. 2004).

<sup>136</sup> See, e.g., *Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia*, 70 FR 45692 (August 8, 2005), and accompanying IDM at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying IDM at Comment 1, pages 17, 19-20; and *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Countervailing Duty Determination*, 66 FR 50410 (October 3, 2001), and accompanying IDM at Comment 1.

<sup>137</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China*, 69 FR 75294, 75301 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005).

<sup>138</sup> *Id.*

<sup>139</sup> See Heze Huayi Supplemental Response at 9-11; see also Kangtai Supplemental Response at 7-8.

built-up cost (*i.e.*, the SV for these packing materials multiplied by the reported FOPs for these items) in the NV calculation.<sup>140</sup> Where applicable, we also adjusted these values to account for freight expenses incurred between the nearest port of entry and each company's respective plants.<sup>141</sup>

### *Water*

Because water was used by the respondents in the production of chlorinated isos, Commerce considers water to be a direct material input rather than part of overhead. We valued water using data from Mexico's National Commission for Water published in Water Statistics in Mexico 2016. The rates are for water for industrial users in select cities in Mexico.<sup>142</sup>

### *By-products*

Commerce's practice is to grant respondents an offset to the reported FOPs for by-products generated during the production of the merchandise under consideration if evidence is provided that such by-product was produced during the POR and has commercial value.<sup>143</sup> Commerce recently explained its practice as follows: "the by-product offset is limited to the total production quantity of the by-product ... produced during the POR, so long as it is shown that the by-product has commercial value."<sup>144</sup> Heze Huayi and Kangtai claimed an offset for ammonium sulfate, sodium chloride, and calcium chloride during the POR.<sup>145</sup> The factual pattern in the instant review for ammonium sulfate remains the same as in previous reviews. Commerce is unable to determine the value of the specific by-products generated at the split-off point (*i.e.*, ammonia gas and the discharged sulfuric acid solution) using SVs in accordance with Commerce's normal practice. Therefore, consistent with our methodology in the previous reviews,<sup>146</sup> we valued waste ammonia gas and waste sulfuric acid by subtracting the further manufacturing costs and expenses used to make ammonium sulfate from these two by-products, from the ammonium sulfate GTA SV.<sup>147</sup>

Heze Huayi reported two new by-products generated in the production of subject merchandise, sodium chloride and calcium chloride, after the waste-water treatment process. Heze Huayi

---

<sup>140</sup> See, e.g., *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), and accompanying IDM at Comment 17.

<sup>141</sup> See Preliminary SV Memorandum.

<sup>142</sup> *Id.*

<sup>143</sup> See *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35245 (June 12, 2013), and accompanying IDM at Issue 10.

<sup>144</sup> See *Frontseating Service Valves from the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 70706 (November 15, 2011), and accompanying IDM at Comment 18.

<sup>145</sup> See Heze Huayi Section C&D Response at D-9 and Exhibit D-7; see also Kangtai Section C&D Response at D-9 and Exhibit D-6.

<sup>146</sup> See *2015-2016 Chlorinated Isos Review* IDM at Comment 3.

<sup>147</sup> See *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 1167 (January 11, 2016), and accompanying IDM at Comment 5.

derived industrial grade sodium chloride from the evaporated waste water discharged from TCCA production.<sup>148</sup> Similarly, industrial grade calcium chloride was derived from the evaporated waste water discharged from SDIC production.<sup>149</sup> Heze Huayi reported the additional electricity and labor costs for the production of both sodium chloride and calcium chloride.<sup>150</sup> In addition, the domestic sale of these products by Heze Huayi demonstrated that both have commercial value.<sup>151</sup> Therefore, we are preliminarily granting a by-product offset for sodium chloride and calcium chloride limited to the total POR production quantity. We subtracted the further electricity and labor costs used to make these two by-products, from the industrial grade sodium chloride and calcium chloride GTA SVs.

### *Electricity*

For electricity, we used data from the website of the International Energy Agency, which contains pricing data contemporaneous with the POR for electricity rates in Mexico. We used the published electricity usage rate identified as “Electricity for industry” in the last two quarters of 2017 and the first quarter of 2018.<sup>152</sup> These electricity rates represent publicly available, broad-market averages.

### *Truck Freight and Brokerage and Handling*

We valued truck freight expenses using data from the World Bank’s “Doing Business 2018: Mexico” publication. We also valued brokerage and handling expenses using this data source, which provided a price list of export procedures necessary to export a standardized cargo of goods in Mexico. We did not inflate these prices because they are contemporaneous with the POR.<sup>153</sup> Moreover, because the value was denominated in USD, no currency conversion was required.

### *Ocean Freight*

We valued ocean freight charges using two price quotes from Maersk that are based on the cost of transporting products in 40-foot containers from Shanghai to Long Beach, California and Shanghai to Houston, Texas.<sup>154</sup> Because this is a POR value, no inflation was necessary. Moreover, because the value was denominated in USD, no currency conversion was required.

---

<sup>148</sup> See Heze Huayi Section C&D Response at D-9 and Exhibit D-8.

<sup>149</sup> *Id.* at D-9 and Exhibit D-9.

<sup>150</sup> *Id.* at D-9.

<sup>151</sup> See Heze Huayi Verification Report at 23 and VE-23.

<sup>152</sup> See Preliminary SV Memorandum.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

## *Labor*

On June 21, 2011, Commerce revised its methodology for valuing the labor input in NME AD proceedings.<sup>155</sup> In *Labor Methodologies*, Commerce determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, Commerce determined that the best data source for industry-specific labor rates is Chapter 6A of the Yearbook of Labor Statistics (Yearbook).<sup>156</sup> We have used this source in prior administrative reviews and continue to find this to be the best available information to value labor. We inflated the labor rate to calculate a contemporaneous value.

The respondents provided an alternative contemporaneous Mexican SV wage rate published by INEGI from the EMIM. This is the same data that Commerce found in the previous administrative review to be not broad enough to capture all labor costs.<sup>157</sup> Accordingly, we continue to find the 2008 ILO data to be the best available information on the record to use as the SV for industry-specific labor rates.

## *Financial Ratios*

Commerce's criteria for choosing surrogate financial statements from which we derive the financial ratios are the availability of contemporaneous financial statements, comparability to the respondent's experience, and publicly available information.<sup>158</sup> Moreover, for valuing factory overhead, selling, general and administrative expenses (SG&A), and profit, Commerce normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.<sup>159</sup> In addition, the CIT has held that in the selection of surrogate producers, Commerce may consider how closely the surrogate producers approximate the NME producer's experience.<sup>160</sup>

To calculate SVs for factory overhead, SG&A, and profit for these preliminary results, we used financial information from Mexican producer CYDSA, which was submitted by the petitioners.<sup>161</sup> CYDSA's 2017 annual financial statements are contemporaneous, publicly available, and the only Mexican financial statement on the record. This financial statement contains evidence of production of comparable merchandise. From this information, we can determine average factory overhead as a percentage of the total raw materials, labor, and energy (ML&E), average SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture),

---

<sup>155</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

<sup>156</sup> See Preliminary SV Memorandum.

<sup>157</sup> See *2015-2016 Chlorinated Isos Review* IDM at Comment 5.C.

<sup>158</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005), and accompanying IDM at Comment 3.

<sup>159</sup> See, e.g., *Diamond Sawblades and Parts Thereof from the People's Republic of China, Final Determination in the Antidumping Duty Investigation*, 71 FR 29303 (May 22, 2006), and accompanying IDM at Comment 2; see also 19 CFR 351.408(c)(4); and section 773(c)(4) of the Act.

<sup>160</sup> See *Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1253-1254 (CIT 2002); see also *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005), and accompanying IDM at Comment 1.

<sup>161</sup> See Petitioners' SV Submission at Exhibit 10.

and an average profit rate as a percentage of the cost of manufacture plus SG&A. Therefore, as in previous reviews, we continue to find CYDSA's financial statements to be the best source to calculate surrogate financial ratios.<sup>162</sup>

### *Comparisons to Normal Value*

Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Heze Huayi's and Kangtai's sales of the subject merchandise to the United States were made at less than NV, Commerce compared the EP to the NV as described above 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 individual dumping margins by comparing weighted-average NVs to weighted-average EP (the average-to-average (A-A) method) unless the Secretary determines that another method is appropriate in a particular situation. In AD investigations, Commerce examines whether to compare weighted-average NVs to the EPs of individual transactions (the average-to-transaction (A-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in AD investigations.<sup>163</sup> In previous investigations, Commerce applied a "differential pricing" analysis for determining whether application of A-T comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.<sup>164</sup> Commerce finds the differential pricing analysis used in those investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. 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 A-A method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs for comparable merchandise that differs significantly among purchasers, regions, or time periods.<sup>165</sup> If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the A-A method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all

---

<sup>162</sup> See *2015-2016 Chlorinated Isos Review* IDM at Comment 5.A.

<sup>163</sup> See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012).

<sup>164</sup> See *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013), and the accompanying IDM at Comment 3; and *Hardwood and Decorative Plywood from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013), and the accompanying IDM at Comment 3.

<sup>165</sup> As noted above, differential pricing was used in recent investigations. We also have used it in AD administrative reviews. See, e.g., *Polyester Staple Fiber from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 17637 (March 22, 2013), and accompanying PDM.

purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes for Heze Huayi and Kangtai. Regions are defined using the reported destination codes (*i.e.*, zip codes) for Heze Huayi and Kangtai, 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 POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP and NV for the individual dumping margins.

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

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

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

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

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

## 2. Results of the Differential Pricing Analysis

Based on the results of the differential pricing analysis, Commerce finds that the value of Heze Huayi's U.S. sales passing the Cohen's *d* test is only 31.8 percent.<sup>166</sup> Since the value of U.S. sales passing the Cohen's *d* test is not substantial, the value does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the A-A method. Accordingly, Commerce preliminarily determines to apply the A-A method to calculate the weighted-average dumping margin for Heze Huayi.<sup>167</sup>

For Kangtai, the differential pricing analysis results show that no U.S. sales pass the Cohen's *d* test and therefore, does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions or time periods.<sup>168</sup> Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the A-to-A method. Accordingly, Commerce preliminarily determines to apply the A-to-A method for all U.S. sales to calculate the weighted-average dumping margin for Kangtai.

### *Adjustments for Countervailable Subsidies*

In determining whether to make an adjustment under section 777A(f) of the Act, Commerce considers (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

---

<sup>166</sup> See Heze Huayi Preliminary Analysis Memorandum.

<sup>167</sup> In these preliminary results for Heze Huayi and Kangtai, Commerce applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012). In particular, Commerce compared monthly weighted-average EPs with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

<sup>168</sup> See Kangtai Preliminary Analysis Memorandum.

section 773(c) of the Act, has increased the weighted average dumping margin for the class or kind of merchandise.<sup>169</sup> For a subsidy meeting these criteria, the statute requires Commerce to reduce the antidumping duty by the estimated amount of the increase in the weighted average dumping margin subject to a specified cap.<sup>170</sup> In this case, none of the mandatory respondents established eligibility for the adjustment. Therefore, for each respondent in these preliminary results, Commerce did not make an adjustment pursuant to section 777A(f) of the Act for countervailable domestic subsidies.

Pursuant to section 772(c)(1)(C) of the Act, Commerce made an adjustment for one countervailable export subsidy used by Heze Huayi and Kangtai that was based on the subsidy rate for the Export Seller's Credit Program from the most recent countervailing duty review.<sup>171</sup> For the China-wide entity, since the entity is not currently under review, its rate is not subject to change.<sup>172</sup>

### *Currency Conversion*

Where necessary, Commerce made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. These exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange/index.html>.

---

<sup>169</sup> See section 777A(f)(1)(A)(C) of the Act.

<sup>170</sup> See section 777A(f)(1)(2) of the Act.

<sup>171</sup> See *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2016, 84 FR 37627 (August 1, 2019), and accompanying IDM at 6; see also Heze Huayi Preliminary Analysis Memorandum; and Kangtai Preliminary Analysis Memorandum.

<sup>172</sup> See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65969-70 (November 4, 2013).

**RECOMMENDATION**

We recommend applying the above methodology for these preliminary results.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

**X**  
\_\_\_\_\_

\_\_\_\_\_  
Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

August 9, 2019

\_\_\_\_\_  
(Date)