



A-570-102
Investigation
POI: 01/01/2018-12/31/2018
Public Document
ADCVD/OII: MR

September 3, 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 Determination in the
Less-Than-Fair-Value Investigation of Certain Fabricated
Structural Steel from the People's Republic of China

I. SUMMARY

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

II. BACKGROUND

On February 4, 2019, Commerce received antidumping duty (AD) and countervailing duty (CVD) petitions covering imports of fabricated structural steel from China, filed on behalf of the American Institute of Steel Construction, LLC Full Member Subgroup (the petitioner).¹ On February 25, 2019, we released U.S. Customs and Border Protection (CBP) data to all interested parties under an administrative protective order and requested comments regarding the data and respondent selection.²

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China," dated February 4, 2019 (Petition).

² See Memorandum, "Less-Than-Fair-Value Investigation of Certain Fabricated Structural Steel from the People's Republic of China: Release of U.S. Customs and Border Protection Data," dated February 25, 2019.

On February 25, 2019, we initiated this investigation.³ In the *Initiation Notice*, Commerce notified the public that we would select the companies required to respond to our AD questionnaire using data collected via “quantity-and-value” (Q&V) questionnaires.⁴ Also in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of fabricated structural steel to be reported in response to Commerce’s AD questionnaire.⁵ Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. For further discussion of these comments, *see* the “Scope of the Investigation” section below.

On March 27, 2019, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of fabricated structural steel from China.⁶

On June 19, 2019, the petitioner requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation, from an initial deadline of July 15, 2019, to September 3, 2019.⁷ Based on the request, and pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), on July 1, 2019, Commerce published in the *Federal Register* a postponement of the preliminary determination by 50 days, until no later than September 3, 2019.⁸

From June 2019 through August 2019, we received comments from the petitioner and the mandatory respondents⁹ regarding the selection of the appropriate surrogate country from which

³ *See Certain Fabricated Structural Steel from Canada, Mexico, and the People’s Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 84 FR 7330 (March 4, 2019) (*Initiation Notice*).

⁴ *See Initiation Notice*, 84 FR at 7335.

⁵ *Id.*, at 7340.

⁶ *See Fabricated Structural Steel from Canada, China, and Mexico*, 84 FR 11554 (March 27, 2019).

⁷ *See* Petitioner’s Letter, “Certain Fabricated Structural Steel from Canada, Mexico, and the People’s Republic of China: Request to Postpone Preliminary Antidumping Duty Determination and to Align Final Countervailing Duty Determination with Final Antidumping Duty Determination,” dated June 19, 2019.

⁸ *See Certain Fabricated Structural Steel from Canada, Mexico, and the People’s Republic of China: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 84 FR 31301 (July 1, 2019).

⁹ The mandatory respondents are Jinhuan Construction Group Co., Ltd. (JCG); Modern Heavy Industries (Taicang) Co., Ltd. (Modern Heavy); and Wison (Nantong) Heavy Industry Co. Ltd. (Wison).

to select surrogate values (SVs) in the investigation,¹⁰ as well as initial factual information relating to SVs from the relevant countries¹¹ and other topics.¹²

We are conducting this investigation in accordance with section 733(b) of the Act.

A. Respondent Selection

As noted above, in the *Initiation Notice*, we stated that we would select respondents in this investigation using data collected via Q&V questionnaires.¹³ On March 4, 2019, we posted the Q&V questionnaire to Commerce's website, and on March 5, 2019, we also issued Q&V questionnaires to the largest 33 identifiable exporters/producers of fabricated structural steel in China, according to CBP data. From March 13 through March 18, 2019, Commerce received timely Q&V responses from 16 of these companies,¹⁴ as well as from 25 additional exporters/producers.

¹⁰ See Petitioner's Letter, "Certain Fabricated Structural Steel from the People's Republic of China: Comments on Surrogate Country Selection," dated June 14, 2019 (Petitioner Surrogate Country Comments); JCG's and Modern Heavy's Letter, "JCG's and MHI's Surrogate Country Comments in the Antidumping Duty Investigation on Fabricated Structural Steel from the People's Republic of China," dated June 14, 2019 (JCG and Modern Heavy Surrogate Country Comments); and Wison's Letter, "Certain Fabricated Structural Steel from the People's Republic of China: Surrogate Values Information," dated August 5, 2019 (Wison SV Comments).

¹¹ See Petitioner's Letter, "Certain Fabricated Structural Steel from the People's Republic Of China: Petitioner's Initial Surrogate Value Comments," dated July 15, 2019 (Petitioner Initial SV Comments); Petitioner's Letter, "Certain Fabricated Structural Steel from the People's Republic Of China: Petitioner's Final Surrogate Value Comments," dated August 5, 2019 (Petitioner Final SV Comments); Petitioner's Letter, "Certain Fabricated Structural Steel from the People's Republic of China: Petitioner's Submission of Other Factual Information," dated August 5, 2019 (Petitioner Other Factual Information); Petitioner's Letter, "Certain Fabricated Structural Steel from the People's Republic of China: Petitioner's Supplemental Surrogate Value Information," dated August 7, 2019; JCG's and Modern Heavy's Letter, "JCG's and MHI's First Surrogate Value Comments in the Antidumping Duty Investigation on Fabricated Structural Steel from the People's Republic of China," dated July 15, 2018 (JCG and Modern Heavy Initial SV Comments); JCG's and Modern Heavy's Letter, "Certain Fabricated Structural Steel from the People's Republic of China: Surrogate Values Information," dated August 5, 2019 (JCG and Modern Heavy Final SV Comments); Wison SV Comments; Petitioner's Letter, "Certain Fabricated Structural Steel from the People's Republic of China: Petitioner's Initial Rebuttal Surrogate Value Comments," dated July 22, 2019; Petitioner's Letter, "Certain Fabricated Structural Steel from the People's Republic of China: Petitioner's Final Rebuttal Surrogate Value Information," dated August 15, 2019; JCG's and Modern Heavy's Letter, "JCG's and MHI's Second Surrogate Value Rebuttal Comments in the Antidumping Duty Investigation on Fabricated Structural Steel from the People's Republic of China," dated August 15, 2019; and Wison's Letter, "Certain Fabricated Structural Steel from the People's Republic of China: Rebuttal Surrogate Value Comments," dated August 16, 2019.

¹² See Petitioner Other Factual Information.

¹³ See *Initiation Notice*, 84 FR at 7335.

¹⁴ See Memorandum, "Quantity and Value Delivery Confirmation in the Less-Than-Fair-Value Investigation of Certain Fabricated Structural Steel from the People's Republic of China," dated March 21, 2019 (Q&V Questionnaire Delivery Memo) at Attachment I. As detailed in this memorandum, Commerce did not receive responses to 17 Q&V questionnaires, from 11 companies which received them and from six companies which did not (including three which refused delivery). The 11 non-responding companies which received the Q&V questionnaire are: (1) Beijing Chemclin Biotech Co., Ltd (Beijing Biotech); (2) China Grand Engineering Ltd. (China Grand); (3) Hongju Metals Co., Ltd (Hongju Metals); (4) Huaye Steel Structure Co. (Huaye Steel); (5) Jiangsu Zhengchang Cereal Oil & Feed (Jiangsu Cereal); (6) Ningbo Win Success Machinery Co., Ltd (Ningbo Win); (7) Qingdao Big Farm Building Co., Ltd. (Qingdao Big Farm); (8) Sunshine Group; (9) Suzhou Unique Precision Technology Co., Ltd. (Suzhou Precision Technology); (10) Weihai Gaodao Saltern (Weihai Saltern); and

On March 29, 2019, Commerce limited the number of respondents selected for individual examination to the two largest producers/exporters of the subject merchandise by volume, Anshan Zizhu International Trading Co., Ltd. (Anshan Zizhu), and Modern Heavy.¹⁵ On April 1, 2019, we issued initial questionnaires to Anshan Zizhu and Modern Heavy to solicit information regarding all U.S. projects that each company substantially completed during the period January 2018 through March 2019.

In its response to this initial questionnaire, Anshan Zizhu stated that all of its exports to the United States in the period of investigation (POI) were of non-subject merchandise.¹⁶ Therefore, on April 11, 2019, we selected JCG, the next largest producer/exporter of subject merchandise by volume, as a mandatory respondent in this case,¹⁷ and we issued an initial questionnaire to JCG regarding its U.S. projects during the time period noted above.

Thereafter, on May 17, 2019, we also selected Wison, the next largest producer/exporter of subject merchandise by volume.¹⁸

B. Questionnaire and Responses

In April 2019, we received timely separate rate applications (SRAs) from 30 companies.¹⁹ In this same month, we also issued initial questionnaires to Anshan Zizhu, JCG, and Modern Heavy to solicit information regarding all U.S. projects that each company substantially completed during the period January 1, 2018 through March 31, 2019. We received timely responses to

(11) Yixin Handcrafts Co., Ltd. (Yixin Handcrafts). The six non-responding companies which did not receive the Q&V questionnaire are: (1) Eastar Metal Product Co., Ltd. (Eastar Metal); (2) Henan Shidai Swine Equipment Co., Ltd (Henan Swine Equipment); (3) Qingdao Guoheng Technology Industrial Co., Ltd. (Qingdao Technology); (4) Ningbo Jiangbei Huarentai Trade (Ningbo Huarentai Trade) (refused delivery); (5) Sinopec Engineering (Group) Co., Ltd (Sinopec Engineering) (refused delivery); and (6) Zhenyu Metal Furniture Co., Ltd (Zhenyu Metal) (refused delivery).

¹⁵ See Memorandum, “Less-Than-Fair-Value Investigation of Certain Fabricated Structural Steel from the People’s Republic of China: Respondent Selection,” dated March 29, 2019 (First Respondent Selection Memorandum).

¹⁶ See Anshan Zizhu’s April 8, 2019 Mini Section A Questionnaire Response (Anshan Zizhu April 9, 2019 MAQR) at 1 and Exhibit 1.

¹⁷ See Memorandum, “Antidumping Duty Investigation of Certain Fabricated Structural Steel from the People’s Republic of China: Selection of Replacement Mandatory Respondent for Individual Examination,” dated April 11, 2019.

¹⁸ See Memorandum, “Antidumping Duty Investigation of Certain Fabricated Structural Steel from the People’s Republic of China: Selection of Additional Mandatory Respondent for Individual Examination,” dated May 17, 2019.

¹⁹ For a list of the companies that submitted timely SRAs, see the “Separate Rates” section, below. We subsequently also received SRAs from two additional companies, ESC (China) Co., Limited (ESC) and SinoStruct Pty Ltd (SinoStruct). See ESC’s Letter, “Certain Fabricated Structural Steel from the People’s Republic of China: Separate Rate Application of ESC (China) Co., Limited,” dated April 3, 2019; see also SinoStruct’s Letter, “Certain Fabricated Structural Steel from the People’s Republic of China: Separate Rate Application of SinoStruct Pty Ltd.,” dated April 3, 2019. However, because ESC and SinoStruct failed to submit timely Q&V responses as required by the *Initiation Notice*, we removed these submissions from the record, pursuant to Commerce’s regulations and practice. See Commerce’s Letters to ESC and SinoStruct, “Antidumping Duty Investigation of Certain Fabricated Structural Steel from the People’s Republic of China: Rejection of Separate Rate Application,” each dated July 17, 2019.

these questionnaires in the same month.²⁰ Based on Anshan Zizhu's claim in its response that it did not export subject merchandise to the United States during the period under consideration, we required no further information from Anshan Zizhu.

Also, in April 2019, we issued the AD questionnaire to JCG and Modern Heavy. We received timely responses to section A of this questionnaire (*i.e.*, the section relating to general information) from Modern Heavy in April and from JCG in May.²¹ Also, in May 2019, we received timely responses to sections C and D of the questionnaire (*i.e.*, the sections relating to U.S. sales and factors of production (FOPs), respectively) from Modern Heavy, as well as the majority of the response to these sections of the questionnaire from JCG.²²

Further, in May and June 2019, we issued initial questionnaires to Wison regarding the U.S. projects that it substantially completed during the period January 1, 2018 through March 31, 2019, as well as two follow-up questionnaires to clarify the information collected. We received Wison's timely responses to these questionnaires during the same months.²³

In June 2019, we issued the AD questionnaire to Wison. We received a timely response to this questionnaire from Wison, as well as the remainder of the response to sections C and D of the questionnaire from JCG, in June and July 2019.²⁴

From June through August 2019, we issued supplemental questionnaires to each of the mandatory respondents, as well as to a number of companies which submitted SRAs. We received timely responses to these supplemental questionnaires during the same time period.²⁵

²⁰ See Anshan Zizhu April 9, 2019 MAQR; JCG's April 17, 2019 Mini Section A Questionnaire Response (JCG April 17, 2019 MAQR); and Modern Heavy's April 5, 2019 Mini Section A Questionnaire Response (Modern Heavy April 5, 2019 MAQR).

²¹ See Modern Heavy's April 29, 2019 Section A Questionnaire Response (Modern Heavy April 29, 2019 AQR); and JCG's May 13, 2019 Section A Questionnaire Response (JCG May 13, 2019 AQR).

²² See JCG's May 28, 2019 Section C and D Questionnaire Response (JCG May 28, 2019 CDQR); Modern Heavy's May 15, 2019 Section C and D Questionnaire Response (Modern Heavy May 15, 2019 CDQR); and Modern Heavy's May 22, 2019 Sales and Cost Reconciliations, Double Remedies, and 232 Duties Questionnaire Response (Modern Heavy May 22, 2019 CDQR).

²³ See Wison's May 28, 2019 Mini Section A Questionnaire Response (Wison May 28, 2019 MAQR); Wison's June 4, 2019 Second Mini Section A Questionnaire Response; and Wison's June 10, 2019 Third Mini Section A Questionnaire Response (Wison June 10, 2019 MAQR).

²⁴ See Wison's June 18, 2019 Section A Questionnaire Response; JCG's June 4, 2019 Sales and Cost Reconciliations, Double Remedies, and 232 Duties Questionnaire Response (JCG June 4, 2019 CDQR); Wison's July 1, 2019 Section C Questionnaire Response; Wison's July 8, 2019 Section D Questionnaire Response (Wison July 8, 2019 DQR); and Wison's July 15, 2019, Sales and Cost Reconciliations, Double Remedies, and 232 Duties Questionnaire Response (Wison July 15, 2019 CDQR).

²⁵ See JCG's June 21, 2019 Section A Supplemental Questionnaire Response; JCG's August 23, 2019 Sections A, C, and D Supplemental Questionnaire Response (JCG August 23, 2019 SACDQR); JCG's August 7, 2019 Section D Supplemental Questionnaire Response (JCG August 7, 2019 SDQR); Modern Heavy's June 28, 2019 Sections A, C, and D Supplemental Questionnaire Response (Modern Heavy June 28, 2019 SACDQR); Modern Heavy's July 3, 2019 Supplemental Section D Questionnaire Response (Modern Heavy July 3, 2019 SDQR); Modern Heavy's August 16, 2019 Second Supplemental Section C and D Questionnaire Response; Wison's August 5, Supplemental Sections A, C, and D Supplemental Questionnaire Response (Wison August 5, 2019 SACDQR); Wison's August 5, Section E Supplemental Questionnaire Response (Wison August 5, 2019 SEQR); Formosa Heavy Industries Corporation's (Formosa's) Letter, "Certain Fabricated Structural Steel from the People's Republic of China: SRA

On August 23, 2019, and September 3, 2019, we issued final supplemental questionnaires to Wison and JCG, respectively. Because the responses to these questionnaires will not be received in time for consideration in this preliminary determination, we will verify them and consider the information in our final determination.

III. PERIOD OF INVESTIGATION

The POI is July 1, 2018 through December 31, 2018. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition.²⁶

IV. POSTPONEMENT OF THE FINAL DETERMINATION

On July 19, 2019, in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), the respondents requested that, if the preliminary determination in the above-reverenced investigation is affirmative, Commerce postpone the final determination and the provisional measures by the corresponding period of extension (*e.g.*, by an additional 60

Supplemental Questionnaire Response,” dated July 17, 2019 (Formosa Supplemental SRA Response); Wap Intelligence Storage Equipment (Shanghai) Corp., Ltd.’s (WAP’s) Letter, “Certain Fabricated Structural Steel from the People’s Republic of China – Supplemental Separate Rate Application Questionnaire Response, dated July 22, 2019 (WAP Supplemental SRA Response); Weihai Gaosai Metal Product Co., Ltd.’s (Weihai Gaosai’s) Letter, “Fabricated Structural Steel from the People’s Republic of China – Supplemental Separate Rate Application Questionnaire Response,” dated July 25, 2019 (Weihai Gaosai Supplemental SRA Response); Wuxi Anjie Scaffolding Co., Ltd.’s (Wuxi Anjie’s), Shanghai Fullwon Industrial Co., Ltd.’s (Shanghai Fullwon’s), Wuxi Jusheng Construction Properties Co., Ltd.’s (Wuxi Jusheng’s), Wuxi Rapid Scaffolding (Engineering) Co., Ltd.’s (Wuxi Rapid’s), Wuxi Shuanghuan Heavy Industry Co., Ltd.’s (Wuxi Shuanghuan’s), Wuxi Universal Scaffolding Co., Ltd.’s (Wuxi Universal’s), and Taizhou Yahua Import & Export Co., Ltd.’s (Taizhou Yahua’s) Letter, “Certain Fabricated Structural Steel from the People’s Republic of China: Response to Separate Rates Application Supplemental Questionnaires,” dated July 26, 2019 (Scaffolding Companies’ Supplemental SRA Responses); Jiangsu Huilian Access Floor Co., Ltd.’s (Jiangsua Huilian’s) Letter, “Certain Fabricated Structural Steel from the People’s Republic of China: Separate Rate Application – Supplemental Questionnaire,” dated July 31, 2019 (Jiangsu Huilian Supplemental SRA Response); Wuxi Huishan Metalwork Technology Co. Ltd.’s (Wuxi Huishan’s) Letter, “Certain Fabricated Structural Steel from the People’s Republic of China; Separate Rate Supplemental Response,” dated July 31, 2019 (Wuxi Huishan Supplemental SRA Response); Ocean Steel and Construction Ltd.’s Letter, “Certain Fabricated Structural Steel from Canada, Mexico, and the People’s Republic of China: Response to Supplemental Scope Questionnaire,” dated August 2, 2019, WAP’s Letter, “Certain Fabricated Structural Steel from the People’s Republic of China – Second Supplemental Separate Rate Application Questionnaire Response,” dated August 2, 2019; United Steel Structures Ltd.’s (United Steel’s) Letter, “Certain Fabricated Structural Steel from the People’s Republic of China: Supplemental SRA Questionnaire Response,” dated August 2, 2019 (United Steel Supplemental SRA Response); Zhejiang Zhengte Co., Ltd.’s (Zhejiang Zhengte’s) Letter, “Certain Fabricated Structural Steel from the People’s Republic of China: Response to SRA Supplemental Questionnaire,” dated August 6, 2019; Shelterlogic Manufacturing (Ningbo) Co., Ltd.’s (Shelterlogic’s) Letter, “Response to Separate Rate Application Supplemental Questionnaire: Fabricated Structural Steel from the People’s Republic of China,” dated August 6, 2019; Rhino Outdoor Products (Taizhou) Co., Ltd.’s (Rhino’s) Letter, “Response to Separate Rate Application Supplemental Questionnaire: Fabricated Structural Steel from the People’s Republic of China,” dated August 6, 2019; Shanghai COSCO Kawasaki Heavy Industries Steel Structure Co., Ltd.’s (COSCO Kawasaki’s) Letter, “Fabricated Structural Steel from the People’s Republic of China: Separate Rate Application Supplemental Questionnaire Response,” dated August 16, 2019; and Shanghai Shuangyan (Shanghai Shuangyan) Chemical Equipment Manufacturing Co., Ltd.,” dated August 14, 2019.

²⁶ See 19 CFR 351.204(b)(1).

days) which represents a period not to exceed six months, in accordance with 19 CFR 351.210(b)(2)(ii).²⁷

On July 23, 2019, the petitioner also requested to extend the final determination of this investigation.²⁸

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' request. Thus, we are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*, and we are extending provisional measures from four months to a period not to exceed six months.

V. SCOPE COMMENTS

In accordance with the preamble to Commerce's regulations,²⁹ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.³⁰ Certain interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice*. On July 5, 2019, Commerce addressed certain scope comments raised by interested parties, and where appropriate, preliminarily made revisions to the scope of this investigation, and the scope of the companion CVD investigation for China and the companion AD and CVD investigations for Canada and Mexico.³¹ We have addressed the remainder of the scope comments in this preliminary determination.³² After analyzing those comments, we made additional modifications to the scope. For discussion of the changes to the scope from that identified in the *Initiation Notice*, see the preliminary scope decision memoranda.³³

VI. SCOPE OF THE INVESTIGATION

For a full description of the scope of this investigation, as modified in the preliminary scope decision memoranda, see the accompanying *Federal Register* notice at Appendix I.

²⁷ See JCG's and Modern Heavy's Letter, "JCG/MHI Joint Request to Extend the Final Determination: Antidumping Duty Investigation of Certain Fabricated Structural Steel from the People's Republic of China (A-570-102)," dated July 19, 2019.

²⁸ See Petitioner's Letter, "Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Request to Extend Final Determination," dated July 23, 2019.

²⁹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

³⁰ See *Initiation Notice*, 84 FR at 7331.

³¹ See Memorandum, "Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Preliminary Scope Decision Memorandum," dated July 5, 2019 (First Preliminary Scope Decision Memorandum).

³² See Memorandum, "Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Second Preliminary Scope Memorandum," dated concurrently with this memorandum (Second Preliminary Scope Decision Memorandum).

³³ See First Preliminary Scope Decision Memorandum; and Second Preliminary Scope Decision Memorandum.

VII. AFFILIATION AND COLLAPSING

On August 27, 2019, we preliminarily determined to collapse Wison and its affiliated exporter Wison Offshore & Marine (Hong Kong) Limited, because they are affiliated pursuant to sections 771(33)(F) of the Act, and they sold subject merchandise during the POI. Further, we preliminarily found that there is a significant potential for manipulation of prices. Therefore, we are treating them as a single entity for the purposes of our analysis in this preliminary determination, in accordance with 19 CFR 351.401(f).³⁴

VIII. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy (NME) Country

Commerce considers China to be an NME country.³⁵ In accordance with section 771(18)(C)(i) of the Act, a determination that a country is an NME country shall remain in effect until revoked by the administering authority. Further, no party submitted a request to reconsider China's NME status as part of this investigation. Therefore, we continue to treat China as an NME country for purposes of this preliminary determination.

B. Surrogate Country

When Commerce is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value (NV), in most circumstances, on the NME producer's FOPs, valued in a surrogate market economy (ME) country or countries considered to be appropriate by Commerce. Specifically, in accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce shall utilize, "to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (A) at a level of economic development comparable to that of the NME country; and (B) significant producers of comparable merchandise."³⁶ As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable options because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly-available SV data, or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development. To determine which countries are at a similar level of economic development, Commerce

³⁴ For a detailed discussion of our analysis, see Memorandum, "Whether to Collapse Wison (Nantong) Heavy Industry Co., Ltd. with an Affiliate in the Less-Than-Fair-Value Investigation of Certain Fabricated Structural Steel from the People's Republic of China," dated August 27, 2019.

³⁵ See *Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017) (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).

³⁶ See Commerce Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on Commerce's website at <http://enforcement.trade.gov/policy/bull04-1.html>.

generally relies solely on per capita gross national income (GNI) data from the World Bank's World Development Report.³⁷ In addition, if more than one country satisfies the two criteria noted above, Commerce narrows the field of potential surrogate countries to a single country (pursuant to 19 CFR 351.408(c)(2), Commerce will normally value FOPs in a single surrogate country) based on data availability and quality.

On May 21, 2019, Commerce issued a letter to interested parties soliciting comments on the list of countries that Commerce determined, based on per capita GNI, to be at the same level of economic development as China, as well as the selection of the primary surrogate country, and we provided deadlines for the consideration of any submitted SV information for the preliminary determination.³⁸ Commerce identified Brazil, Kazakhstan, Malaysia, Mexico, Romania, and Russia as countries that are at the same level of economic development as China, based on per capita 2017 GNI data.³⁹ We received timely comments on surrogate country selection from the petitioner, JCG, Modern Heavy, and Wison.⁴⁰

The petitioner argues that Commerce should select Brazil (or, in the event that Commerce does not select Brazil, Mexico) as the primary surrogate country.⁴¹ The petitioner notes that Brazil and Mexico are not only comparable in terms of economic development with China, but they are also significant exporters of identical and comparable merchandise and offer reliable import data to value the respondents' FOPs. JCG, Modern Heavy, and Wison argue that Commerce should select Russia as the primary surrogate country for similar reasons (*i.e.*, Russia is economically comparable to China, is a significant producer of identical or comparable merchandise, and offers reliable import data to value respondents' FOPs).⁴²

Economic Comparability

Section 773(c)(4) of the Act states that Commerce "shall utilize, to the extent possible, the prices or costs of {FOP}s in one or more market economy countries that are . . . at a level of economic development comparable to that of the {NME} country." However, the applicable statute does not expressly define the phrase "level of economic development comparable" or what methodology Commerce must use in evaluating the criterion. Commerce's regulations at 19 CFR 351.408(b) state that, in determining whether a country is at a level of economic development comparable to the NME country, Commerce will place primary emphasis on per capita gross domestic product (GDP) as the measure of economic comparability.⁴³ The Court of

³⁷ *Id.*

³⁸ See Commerce's Letter, "Less Than Fair Value Investigation of Certain Fabricated Structural Steel from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated May 21, 2019 (Surrogate Country Memo).

³⁹ *Id.*

⁴⁰ See Petitioner Surrogate Country Comments; JCG and Modern Heavy Surrogate Country Comments; and Wison SV Comments at 2.

⁴¹ See Petitioner Surrogate Country Comments at 3; Petitioner Initial Surrogate Value Comments at 2; and Petitioner's Letter, "Certain Fabricated Structural Steel from China: Petitioner's Comments in Advance of the Preliminary Determination," dated August 15, 2019, at 3-6.

⁴² See JCG and Modern Heavy Final Surrogate Value Comments at 2; and Wison Surrogate Value Comments at 2.

⁴³ Commerce uses per capita GNI as a proxy for per capita GDP. GNI is GDP plus net receipt of primary income (compensation of employees and property income) from nonresident sources. See Policy Bulletin 04.1.

International Trade (CIT) has 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.”⁴⁴

Unless it is determined that none of the countries identified above are viable options because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons, we will rely on data from one of these countries.

Consistent with its practice, and section 773(c)(4)(A) of the Act,⁴⁵ as noted above, Commerce identified Brazil, Kazakhstan, Malaysia, Mexico, Romania, and Russia as countries at the same level of economic development as China based on the most current annual issue of *World Development Report* (The World Bank).⁴⁶

Significant Producer of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires Commerce, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor Commerce’s regulations provide further guidance on what may be considered comparable merchandise. Among the factors we consider in determining whether a country is a significant producer of comparable merchandise is whether the country is an exporter of comparable merchandise. In order to determine whether the above-referenced countries are significant producers of comparable merchandise, Commerce’s practice is to examine which countries on the surrogate country list exported merchandise comparable to the subject merchandise. Parties have placed on the record complete data for Mexico, Brazil, Russia and limited data for Malaysia.⁴⁷ No party provided complete SV information for the other countries on the list (*i.e.*, for Kazakhstan or Romania), nor has any party argued in favor of using SV information for any of the other countries.

Information on the record indicates that Brazil, Mexico, Russia and Malaysia are significant exporters of merchandise covered by Harmonized Tariff Schedule categories identified in the scope of this investigation.⁴⁸ Accordingly, we preliminarily find that Brazil, Mexico, Russia and Malaysia meet the significant-producer-of-comparable-merchandise prong of the surrogate country selection criteria, as provided in section 773(c)(4)(B) of the Act. However, given the data availability issues (discussed below), we preliminarily determine that Russia best meets our selection criteria because it qualifies as a producer of identical merchandise and has better quality data.

⁴⁴ See *Jiaxing Brother Fastener Co. v. United States*, 961 F. Supp. 2d 1323, 1329 (CIT 2014).

⁴⁵ See Surrogate Country Memo.

⁴⁶ *Id.*

⁴⁷ See Petitioner Initial SV Comments; Petitioner Final SV Comments; JCG and Modern Heavy Initial SV Comments; JCG and Modern Heavy Final SV Comments; and Wison SV Comments.

⁴⁸ See Petitioner Surrogate Country Comments at 2-3 and Exhibits 1 and 2; and JCG and Modern Heavy Surrogate Country Comments at Exhibit 1, showing that, of the six countries on the surrogate country list, only Kazakhstan did not export subject merchandise during the POI.

Data Availability

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, Commerce selects the primary surrogate country based on data availability and reliability.⁴⁹ When evaluating SV data, Commerce considers several factors, including whether the SVs are publicly available, contemporaneous with the POI, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.⁵⁰ There is no hierarchy among these criteria.⁵¹ It is Commerce's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.⁵²

Parties have placed complete data for Brazil, Mexico, Russia, and limited data for Malaysia, on the record.⁵³ The petitioner argues that we should use Global Trade Atlas (GTA) and financial statement data from Mexico or Brazil to value the respondents' FOPs, while the mandatory respondents argue that Commerce should collect GTA data for Russia and use them along with submitted Russian financial statements. Commerce finds that the Russian data are the best available data for valuing the respondents' FOPs because we have complete, specific Russian GTA data for each input used by the respondents, as well as financial statements from four companies that produce fabricated structural steel, which is merchandise identical to the merchandise under consideration in this investigation.

Therefore, because complete SV information is available from Russia and the financial statements from Russia are more reliable, Commerce preliminarily determines that Russia data are the best available SV data. For the reasons stated above, Commerce preliminarily determines, pursuant to section 773(c)(4) of the Act, that it is appropriate to use Russia as the primary surrogate country because Russia is (1) at the same level of economic development as China; (2) a significant producer of merchandise comparable to the subject merchandise; and (3) contains the best available data for valuing FOPs. Therefore, Commerce has calculated NV using Russian data when available and appropriate to value the respondents' FOPs.

For a detailed discussion of the surrogate values used in this LTFV proceeding, *see* the "Factor Valuation" section below and the Preliminary SV Memo.⁵⁴

⁴⁹ *See* Policy Bulletin 04.1.

⁵⁰ *Id.*

⁵¹ *See, e.g., Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

⁵² *See* Policy Bulletin 04.1.

⁵³ *See* Petitioner Initial SV Comments; Petitioner Final SV Comments; JCG and Modern Heavy Initial SV Comments; JCG and Modern Heavy Final SV Comments; and Wison SV Comments.

⁵⁴ *See* Memorandum, "Less-Than-Fair-Value Investigation of Certain Fabricated Structural Steel from the People's Republic of China: Surrogate Value Memorandum for the Preliminary Determination," dated concurrently with this memorandum (Preliminary SV Memo).

C. Separate Rates

In NME proceedings, there is a rebuttable presumption that companies are subject to government control and, thus, should be assessed a single antidumping duty rate.⁵⁵ In the *Initiation Notice*, Commerce notified parties of the application process by which exporters may obtain separate rate status in an NME proceeding.⁵⁶ It is Commerce's policy to assign exporters of the subject merchandise from an NME country 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 export activities. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, Commerce analyzes each exporting entity in a NME country under the test established in *Sparklers*,⁵⁷ as amplified by *Silicon Carbide*.⁵⁸ However, if Commerce determines that a company is wholly foreign-owned, then consideration of the *de jure* and *de facto* criteria is not necessary to determine whether it is independent from government control.⁵⁹

Under the separate rates test, Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.⁶⁰

Further, Commerce typically considers four factors in evaluating whether a 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 government in making decisions regarding the selection of management; and, (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.⁶¹

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the *Diamond Sawblades from China* AD proceeding, and Commerce's determinations therein.⁶²

⁵⁵ 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, 53082 (September 8, 2006) (*Lined Paper from China*); see also *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

⁵⁶ See *Initiation Notice*, 84 FR at 7335.

⁵⁷ 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*).

⁵⁸ 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*).

⁵⁹ See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

⁶⁰ See *Sparklers*, 56 FR at 20589.

⁶¹ See *Silicon Carbide*, 59 FR at 22586-89; *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) (*Furfuryl Alcohol*).

⁶² See *Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from*

In particular, we note that in litigation involving the *Diamond Sawblades* proceeding, the CIT found Commerce’s existing separate rates analysis deficient in the circumstances of that proceeding, in which a government-controlled entity had significant ownership in the respondent exporter.⁶³ We have concluded that, where a government entity holds a majority ownership share, either directly or indirectly, in an exporter, the majority ownership holding in and of itself means that the government exercises or has the potential to exercise control over the company’s operations generally, which may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect that a majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company. Accordingly, we have considered the level of government ownership, where necessary.

D. Separate Rate Recipients

In accordance with our practice, Commerce analyzed whether each company submitting both a Q&V response and an SRA in this investigation demonstrated the absence of *de jure* and *de facto* governmental control over its export activities. In the instant investigation, as discussed below, we preliminarily find no evidence of Chinese government ownership of JCG, Modern Heavy, Wison, or the eight exporters listed below, and we further preliminarily find that those companies otherwise are entitled to a separate rate in this investigation. Also as discussed below, we preliminarily find that an additional 19 companies have not demonstrated entitlement to a separate rate.

the People’s Republic of China (May 6, 2013) in *Advanced Technology & Materials Co., Ltd. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology*), affirmed in *Advanced Technology & Materials Co., Ltd. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013). This remand redetermination is available on the Enforcement and Compliance website at <http://enforcement.trade.gov/remands/12-147.pdf>; see also *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013), and accompanying Preliminary Decision Memorandum (PDM) at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying IDM at Comment 1.

⁶³ See, e.g., *Advanced Technology*, 885 F. Supp. 2d at 1349 (“The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it.”); *id.* at 1351 (“Further substantial evidence of record does not support the inference that SASAC’s {state-owned assets supervision and administration commission} ‘management’ of its ‘state-owned assets’ is restricted to the kind of passive-investor *de jure* ‘separation’ that Commerce concludes.”) (footnotes omitted); *id.* at 1355 (“The point here is that ‘governmental control’ in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a ‘degree’ of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to ‘day-to-day decisions of export operations,’ including terms, financing, and inputs into finished product for export.”); and *id.* at 1357 (“AT&M *itself* identifies its ‘controlling shareholder’ as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control *over* nomination.”) (footnotes omitted).

1. Wholly Foreign-Owned Companies

One exporter, Brantingham & Carroll International Ltd. (Brantingham & Carroll), submitted information indicating that it is wholly foreign-owned by a company and/or individual located in an ME country.⁶⁴ Because it is wholly foreign-owned, and we have no evidence indicating that the Chinese government controls the company's export activities, an analysis of the *de jure* and *de facto* criteria is not necessary to determine whether Brantingham & Carroll is independent from government control.⁶⁵ Therefore, we are preliminarily granting a separate rate to Brantingham & Carroll, where it acted as the exporter of fabricated structural steel purchased from producers in China.⁶⁶

2. Wholly China-Owned Companies and Joint Ventures

We received SRAs from seven exporters,⁶⁷ plus JCG, Modern Heavy and Wison, who stated that they are either Chinese joint-stock limited companies or are wholly Chinese-owned companies. In accordance with our practice, Commerce analyzed whether these companies demonstrated the absence of *de jure* and *de facto* governmental control over their respective export activities.

a. Absence of *De Jure* Control

Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.⁶⁸

The evidence provided by JCG, Modern Heavy, and Wison and the seven exporters listed above supports a preliminary finding of an absence of *de jure* government control for each of these companies based on the following: (1) an absence of restrictive stipulations associated with the

⁶⁴ See Brantingham & Carroll's Letter, "BCI Separate Rate Application in the Antidumping Duty Investigation on Fabricated Structural Steel from the People's Republic of China," dated April 3, 2019 (Brantingham & Carroll SRA), at 9-14 and Exhibits 4-8.

⁶⁵ See, e.g., *Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 26716, 26720 (May 12, 2010), unchanged in *Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 60725 (October 1, 2010).

⁶⁶ During the POI, Brantingham & Carroll also made U.S. sales of fabricated structural steel which it purchased from an ME reseller located in a market economy. See Brantingham & Carroll SRA at 8. Because it is unclear that Brantingham & Carroll controlled the sale relevant to the dumping analysis with respect to these transactions (*i.e.*, it was the first exporter in the chain of distribution with a sale to an ME entity, and it had knowledge that the merchandise was destined for the United States), we have preliminarily not granted Brantingham & Carroll a separate rate for shipments through this chain. We have requested additional information from Brantingham & Carroll and will consider it for purposes of the final determination.

⁶⁷ These companies are: (1) Beijing Chengdong International Modular Housing Corporation (Beijing Chengdong); (2) Shanghai Shuangyan; (3) Shanghai Yanda Engineering Co., Ltd. (Shanghai Yanda); (4) WAP; (5) Wuxi Hengtong Metal Framing System Co., Ltd. (Wuxi Hengtong); (6) Wuxi Huishan; and (7) Yanda (Haimen) Heavy Equipment Manufacturing Co., Ltd. (Yanda Haimen).

⁶⁸ See *Sparklers*, 56 FR at 20589.

individual exporters' business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of the companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.⁶⁹

b. Absence of *De Facto* Control

Typically, Commerce considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (EPs) are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.⁷⁰ Commerce has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude Commerce from assigning separate rates.

The evidence provided by JCG, Modern Heavy, Wison and the exporters listed in above supports a preliminary finding of an absence of *de facto* government control based on record statements and supporting documentation showing that the companies: (1) set their own EPs independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses.⁷¹

Therefore, the evidence placed on the record of this investigation by JCG, Modern Heavy, Wison and the exporters listed above demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*.⁷² Accordingly, we are preliminarily granting separate rates to JCG, Modern Heavy, Wison and the exporters listed above.

⁶⁹ See, e.g., JCG May 13, 2019 AQR at 11 to 17; Modern Heavy April 29, 2019 AQR at 9 to 14; and Wison April 10, 2019 Separate Rate Application (Wison SRA) at 9-15.

⁷⁰ See *Silicon Carbide*, 59 FR at 22586-87; and *Furfuryl Alcohol*, 60 FR at 22545.

⁷¹ See JCG May 13, 2019 AQR; Modern Heavy April 29, 2019 AQR; Wison SRA; Beijing Chengdong's Letter, "Certain Fabricated Structural Steel from the People's Republic of China: Separate Rate Application," dated April 3, 2019; Shanghai Shuangyan's Letter, "Fabricated Structural Steel from the People's Republic of China: Separate Rate Application," dated April 10, 2019; Shanghai Yanda's Letter, "Fabricated Structural Steel from the People's Republic of China: Separate Rate Application," dated April 10, 2019; WAP's Letter, "Certain Fabricated Structural Steel from the People's Republic of China – Separate Rate Application," dated April 10, 2019 (WAP SRA); WAP Supplemental SRA Response; Wuxi Hengtong's Letter, "Fabricated Structural Steel from the People's Republic of China: Separate Rate Application," dated April 10, 2019; Wuxi Huishan's Letter, "Certain Fabricated Structural Steel from the People's Republic of China; Separate Rate Response," dated April 3, 2019; Wuxi Huishan Supplemental SRA Response; and Yanda Haimen's Letter, "Fabricated Structural Steel from the People's Republic of China: Separate Rate Application," dated April 10, 2019.

⁷² See *Sparklers*, 56 FR at 20589; and *Silicon Carbide*, 59 FR at 22586-89; see also, e.g., JCG May 13, 2019 AQR at 2 to 17; Modern Heavy April 29, 2019 AQR at 1 to 14; and Wison SRA at 9-24.

E. Companies Not Receiving a Separate Rate

We preliminarily determine that 19 companies are not eligible to receive a separate rate, as explained below. These companies fall into three groups: (1) companies who did not export subject merchandise to the United States during the POI; (2) companies who did not have a relevant sale of subject merchandise during the POI; and (3) companies who have not established an absence of government control. Each company is discussed further below.

1. No U.S. Sales or Exports of Subject Merchandise during the POI

Commerce has preliminarily determined that 15 companies are not eligible to receive separate rates because they had no shipments of subject merchandise to the United States during the POI, as explained below.⁷³ These companies are: (1) Anshan Zizhu; (2) Jiangsu Huilian; (3) Rhino; (4) Shanghai Fullwon; (5) Shelterlogic; (6) Taizhou Yahua; (7) Valmont Industries (China) Ltd. (Shanghai Factory) (Valmont China); (8) Valmont Industries (Guangdong) Co., Ltd.; (9) Weihai Gaosai; (10) Wuxi Anjie; (11) Wuxi Jusheng; (12) Wuxi Rapid; (13) Wuxi Shuanghuan; (14) Wuxi Universal; and (15) Zhejiang Zhengte.

a. Anshan Zizhu

In March 2019, certain parties submitted comments in which they argued that Commerce should find U- and Z-pilings to be outside the scope of the investigation.⁷⁴ In its First Preliminary Scope Decision Memorandum, Commerce preliminarily determined that U- and Z-pilings are not covered by the scope of the investigation.⁷⁵

As noted above, Commerce originally selected Anshan Zizhu as a mandatory respondent in this investigation.⁷⁶ In April 2019, however, Anshan Zizhu certified that all its shipments to the United States during the POI were of Z-pilings (*i.e.*, it did not ship any subject merchandise).⁷⁷ Thus, given that Anshan Zizhu had no shipments of subject merchandise to the United States during the POI, Commerce preliminarily determines that Anshan Zizhu is not eligible to receive a separate rate.

⁷³ See Memorandum, “Less-Than-Fair-Value Investigation of Certain Fabricated Structural Steel from the People’s Republic of China: Placing Information on the Record – Separate Rate Application,” dated August 22, 2019, at Attachment I (“To be considered for separate-rate treatment, the applicant must have a relevant U.S. sale of subject merchandise to an unaffiliated purchaser.”).

⁷⁴ See, e.g., Anshan Zizhu’s Letter, “Certain Fabricated Structural Steel (CFSS) from the People’s Republic of China – Comments on Scope AND Scope Exclusion Request,” dated March 25, 2019.

⁷⁵ See First Preliminary Scope Decision Memorandum at Comment 2.

⁷⁶ See First Respondent Selection Memorandum.

⁷⁷ See Anshan Zizhu April 9, 2019 MAQR; and Anshan Zizhu’s Letter, “Certain Fabricated Structural Steel from the People’s Republic of China – Separate Rate Application,” dated April 10, 2019.

b. Jiangsu Huilian

In March 2019, certain parties submitted comments in which they argued the scope of the investigation should be amended to directly exclude raised access flooring systems.⁷⁸ In its First Preliminary Scope Decision Memorandum, Commerce preliminarily determined that raised access flooring systems were excluded from the scope of the investigation and preliminarily modified the scope to include the exclusion language.⁷⁹

In its SRA application, Jiangsu Huilian stated that it exported raised access flooring systems to the United States during the POI, and in a supplemental SRA response, Jiangsu Huilian confirmed that it only shipped merchandise to the United States during the POI that met the exclusion for raised access flooring systems (*i.e.*, it did not ship any subject merchandise).⁸⁰ Thus, given that Jiangsu Huilian had no shipments of subject merchandise to the United States during the POI, Commerce preliminarily finds that Jiangsu Huilian is ineligible to receive a separate rate.

c. Rhino, Shelterlogic and Zhejiang Zhengte

From March through August 2019, various parties, including Shelterlogic and Zhejiang Zhengte, requested that Commerce exclude certain consumer products packaged for retail sale and sold for do-it-yourself assembly, pool kits, tent components, fencing and fencing parts, kennels and kennel parts, and concrete formwork products from the scope of the investigation.⁸¹

On August 6, 2019, in a response to a supplemental SRA questionnaire, Rhino and Shelterlogic provided detailed lists of all merchandise they exported to the United States which were potentially covered by the scope of this investigation.⁸² Both companies stated that all the merchandise identified in their supplemental SRA responses were “packaged for retail sale and sold to residential end-use consumers for do-it-yourself assembly.”⁸³ On the same date, Zhejiang Zhengte also provided supplemental information about the products it shipped to the United

⁷⁸ See, e.g., ASM Modular System Inc.’s Letter, “Fabricated Structural Steel from Canada, Mexico, and the People’s Republic of China: Scope Comments,” dated March 25, 2019.

⁷⁹ See First Preliminary Scope Decision Memorandum at Comment 6.

⁸⁰ See Jiangsu Huilian’s Letter, “Certain Fabricated Structural Steel from the People’s Republic of China: Separate Rate Application – Supplemental Questionnaire,” dated July 31, 2019.

⁸¹ See, e.g., Shelterlogic’s Letter, “Comments on the Scope of the Investigations: Antidumping and Countervailing Duty Investigations of Certain Fabricated Structural Steel from the People’s Republic of China, Mexico, and Canada,” dated March 25, 2019; and Zhejiang Zhengte’s Letter, “Certain Fabricated Structural Steel from the People’s Republic of China: Re-Filing of Additional Scope Comments,” dated August 6, 2019 (Zhejiang Zhengte’s Additional Scope Comments).

⁸² See Rhino’s Letter, “Response to Separate Rate Application Supplemental Questionnaire: Fabricated Structural Steel from the People’s Republic of China,” dated August 6, 2019 (Rhino Supplemental SRA Response); see also Shelterlogic’s Letter, “Response to Separate Rate Application Supplemental Questionnaire: Fabricated Structural Steel from the People’s Republic of China,” dated August 6, 2019 (Shelterlogic Supplemental SRA Response).

⁸³ See Rhino Supplemental SRA Response at 4; and Shelterlogic Supplemental SRA Response at 4.

States during the POI (*i.e.*, fencing, and parts thereof, kennels, and parts thereof, and certain consumer items packaged for retail and sold to end-use consumers for do-it-yourself assembly).⁸⁴

In its Second Preliminary Scope Decision Memorandum, Commerce preliminarily determined that the products exported by Rhino and Shelterlogic, as well as products produced by another company which appear to be similar to those produced by Zhejiang Zhengte, are outside the scope of the investigation.⁸⁵ Thus, because Rhino, Shelterlogic, and Zhejiang Zhengte had no shipments of subject merchandise to the United States during the POI, Commerce preliminarily determines that Rhino, Shelterlogic, and Zhejiang Zhengte are ineligible for separate rates.

d. Scaffolding Companies

In March and April 2019, certain parties requested that Commerce exclude scaffolding, shuttering, propping, and pit-propping from the scope of the investigation.⁸⁶ On July 3, 2019, the petitioner agreed that it would be appropriate to exclude scaffolding from scope. Thus, in its First Preliminary Scope Decision Memorandum, Commerce added exclusion language for scaffolding.⁸⁷

On July 26, 2019, seven companies (*i.e.*, Shanghai Fullwon, Taizhou Yahua, Wuxi Anjie, Wuxi Jusheng, Wuxi Rapid, Wuxi Shuanghuan, and Wuxi Universal) confirmed that all of their merchandise shipped to the United States during the POI met the exclusion for scaffolding.⁸⁸ Thus, because none of these companies had any sales of subject merchandise to the United States during the POI, Commerce preliminarily determines that each company is ineligible to receive a separate rate.

e. Valmont China and Valmont Guangdong

In March 2019, Valmont China and Valmont Guangdong requested that Commerce find electrical transmission poles, electrical distribution poles, electrical substation poles, lighting poles, sports lighting poles, and communication poles (collectively, steel monopoles) to be outside the scope of the investigation.⁸⁹ Subsequently, Valmont China and Valmont Guangdong refiled their respective Q&V responses to reflect that they had no shipments of subject

⁸⁴ See Zhejiang Zhengte's Letter, "Certain Fabricated Structural Steel from the People's Republic of China: Response to SRA Supplemental Questionnaire," dated August 6, 2019; and Zhejiang Zhengte's Additional Scope Comments.

⁸⁵ See Second Preliminary Scope Decision Memorandum at Comments 1 and 17.

⁸⁶ See Proscraft Enterprises Inc.'s Letter, "Certain Fabricated Structural Steel from Canada, China, and Mexico: Proscraft's Scope Comments," dated March 25, 2019; and Direct Scaffold Supply's Letter, "Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Rebuttal Scope Comments," dated April 10, 2019.

⁸⁷ See First Preliminary Scope Decision Memorandum at Comment 4.

⁸⁸ See Scaffolding Companies' Supplemental SRA Responses at Exhibits 1-7.

⁸⁹ See Valmont China's and Valmont Guangdong's Letter, "Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Valmont Scope Comments," dated March 25, 2019.

merchandise during the POI, in light of the fact that they shipped only steel monopoles to the United States.⁹⁰

In its First Preliminary Scope Decision Memorandum, Commerce preliminarily found that steel monopoles were excluded from the scope of the investigation and modified the scope using exclusion language supplied by the petitioner.⁹¹ Thus, because neither Valmont China nor Valmont Guangdong had any sales of subject merchandise to the United States during the POI, Commerce preliminarily determines that neither of these companies is eligible to receive a separate rate.

f. Weihai Gaosai

On March 25, 2019, Weihai Gaosai filed scope comments requesting that Commerce find pig feeding and breeding systems, and components thereof, to be outside the scope of the investigation.⁹² In its First Preliminary Scope Decision Memorandum, Commerce preliminarily found that pig feeding and breeding systems, and components thereof, are not covered by the scope of this investigation.⁹³ On July 25, 2019, Weihai Gaosai confirmed that all of the merchandise it shipped to the United States during the POI met the exclusion for pig breeding and feeding systems.⁹⁴ Thus, given that Weihai Gaosai had no shipments of subject merchandise to the United States during the POI, Commerce preliminarily finds that Weihai Gaosai is ineligible to receive a separate rate.

2. No Relevant Sale of Subject Merchandise During the POI

a. Formosa

Formosa, a wholly foreign-owned company located in Taiwan and third-country reseller, stated in its SRA, and subsequent Supplemental SRA Response, that it shipped merchandise produced by WAP to the United States during the POI.⁹⁵ According to the documents supplied by Formosa, this merchandise is part of the same sale used by WAP to apply for a separate rate.⁹⁶ In WAP's SRA, WAP provided documentation demonstrating that, at the time of sale, it knew that the ultimate destination of the merchandise was the United States. Based on these facts, we preliminarily find that WAP, not Formosa, is the party that made the U.S. sale which is relevant for Commerce's dumping analysis.⁹⁷ Because Formosa stated that all sales it made of subject

⁹⁰ See Valmont China's Letter, "Fabricated Structural Steel from the People's Republic of China: REVISED Quantity and Value Responses for Valmont Industries (China) Ltd. (Shanghai Factory)," dated April 29, 2019; see also Valmont Guangdong's Letter, "Fabricated Structural Steel from the People's Republic of China: REVISED Quantity and Value Responses for Valmont Industries (Guangdong) Co., Ltd.," dated April 29, 2019.

⁹¹ See First Preliminary Scope Decision Memorandum at Comment 7.

⁹² See Weihai Gaosai's Letter, "Antidumping and Countervailing Duty Investigations of Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China – Scope Comments," dated March 25, 2019.

⁹³ See First Preliminary Scope Decision Memorandum at Comment 1.

⁹⁴ See Weihai Gaosai Supplemental SRA Response at Attachment I.

⁹⁵ See Formosa's Letter, "Certain Fabricated Structural Steel from the People's Republic of China: Separate Rate Application," dated April 3, 2019 (Formosa SRA) at 4-6; see also Formosa Supplemental SRA Response at 1-3.

⁹⁶ See Formosa SRA at Exhibit 1; see also WAP SRA.

⁹⁷ See WAP SRA at 3 and Exhibit 1.

merchandise during the POI were supplied by WAP,⁹⁸ we preliminarily find that Formosa is not eligible for a separate rate.

In addition, we preliminarily find that Formosa is ineligible for a separate rate on other grounds because Formosa provided no evidence that it sold the exported merchandise to an unaffiliated purchaser in the United States. Specifically, Formosa stated that it instead sold the merchandise to its U.S. affiliate, Formosa Plastics Corporation, who then consumed the merchandise.⁹⁹ Commerce's SRA questionnaire states, "To be considered for separate-rate treatment, the applicant must have a relevant U.S. sale of subject merchandise to an unaffiliated purchaser," and "If your firm has only made sales to affiliated parties during the {POI}, you must provide evidence of the first sale to an unaffiliated U.S. customer by the affiliated party to qualify for a separate rate."¹⁰⁰ As Formosa did not have a relevant sale of subject merchandise to an unaffiliated customer in the United States during the POI, it also preliminarily is not eligible for a separate rate on this basis.

3. Government Control

a. Absence of *De Jure* Control

The evidence provided by COSCO Kawasaki,¹⁰¹ Shanghai Matsuo,¹⁰² and United Steel¹⁰³ supports a preliminary finding of an absence of *de jure* government control for each of these companies based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of the companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.

b. Failure to Demonstrate Absence of *De Facto* Control

Commerce preliminarily determines that COSCO Kawasaki, Shanghai Matsuo, and United Steel have not demonstrated an absence of *de facto* government control. As discussed above, Commerce considers four factors in evaluating whether a respondent is subject to *de facto* government control: (1) whether it sets its own EPs independent of the government and without the approval of a government authority; (2) whether it has the authority to negotiate and sign contracts and other agreements; (3) whether it maintains autonomy from the government in

⁹⁸ See Formosa Supplemental SRA Response at 1.

⁹⁹ See Formosa SRA at 3-4.

¹⁰⁰ See Memorandum, "Less-Than-Fair-Value Investigation of Certain Fabricated Structural Steel from the People's Republic of China: Placing Information on the Record – Separate Rate Application," dated August 22, 2019, at Attachment I.

¹⁰¹ See COSCO Kawasaki's Letter, "Fabricated Structural Steel from the People's Republic of China: Separate Rate Application," dated April 10, 2019; see also COSCO Kawasaki's Letter, "Fabricated Structural Steel from the People's Republic of China: Separate Rate Application Supplemental Questionnaire Response," dated August 16, 2019.

¹⁰² See Shanghai Matsuo's Letter, "Fabricated Structural Steel from the People's Republic of China: Separate Rate Application," dated April 10, 2019.

¹⁰³ See United Steel's Letter, "Certain Fabricated Structural Steel from the People's Republic of China: Separate Rate Application," dated April 3, 2019; and United Steel Supplemental SRA Response.

making decisions regarding the selection of management; and (4) whether it retains the proceeds of its respective export sales and make independent decisions regarding disposition of profits or financing of losses.

Certain information regarding Chinese government entities' involvement with each of these companies is business proprietary; therefore, we provide a complete discussion of the facts regarding these companies and their failure to demonstrate an absence of *de facto* government control in separate memoranda.¹⁰⁴

F. Margin for the Separate Rate Companies

Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate rate respondents which we did not individually examine. Section 735(c)(5)(A) of the Act indicates that we are not to calculate an all-others rate using rates that are zero, *de minimis*, or based entirely on adverse facts available (AFA), in accordance.¹⁰⁵ Accordingly, Commerce's usual practice has been to average the weighted-average dumping margins for the individually-examined respondents, excluding rates that are zero, *de minimis*, or based entirely on facts available, in calculating the separate rate.¹⁰⁶ The statute further provides that, where all margins are zero rates, *de minimis* rates, or rates based entirely on facts available, Commerce may use "any reasonable method" for assigning the rate to non-selected respondents.¹⁰⁷

For this preliminary determination, we have calculated weighted-average dumping margins which are above the *de minimis* threshold and which are not based on total facts available for two of the three mandatory respondents. Because there are only two relevant weighted-average dumping margins for this preliminary determination, using a weighted average of these two rates risks disclosure of business proprietary information data. Therefore, Commerce has assigned a weighted-average margin using the publicly ranged quantities submitted by mandatory

¹⁰⁴ See Memoranda, "Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Fabricated Structural Steel from the People's Republic of China: Separate Rate Memorandum – Shanghai COSCO Kawasaki Heavy Industries Steel Structure Co., Ltd.;" "Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Fabricated Structural Steel from the People's Republic of China: Separate Rate Memorandum – Shanghai Matsuo Steel Structure Co., Ltd.;" and "Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Fabricated Structural Steel from the People's Republic of China: Separate Rate Memorandum – United Steel Structures Ltd.," dated concurrently with this memorandum.

¹⁰⁵ See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).

¹⁰⁶ See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying IDM at Comment 16.

¹⁰⁷ See 735(c)(5)(B) of the Act.

respondents, JCG and Wison, to the separate rate companies for this preliminary determination.¹⁰⁸ This approach is consistent with our practice.¹⁰⁹

G. Combination Rates

In the *Initiation Notice*, Commerce stated that it would calculate combination rates for respondents that are eligible for separate rates in this investigation.¹¹⁰ This practice is described in Policy Bulletin 05.1.

H. The China-Wide Entity

The record indicates that there are other Chinese exporters and/or producers of fabricated structural steel during the POI that did not respond to Commerce's requests for information. Specifically, Commerce did not receive responses to its Q&V questionnaire from numerous Chinese exporters and/or producers of fabricated structural steel that were named in the Petition, as well as certain of these exporters to whom Commerce issued the Q&V questionnaire.¹¹¹ Because non-responsive Chinese companies have not demonstrated that they are eligible for separate rate status, Commerce considers them part of the China-wide entity. Furthermore, as explained in the next section, we preliminarily determine to calculate the China-wide rate on the basis of AFA. We have preliminarily assigned the China-wide entity a dumping margin of 141.38 percent.

As discussed above, we have determined not to grant a separate rate to COSCO Kawasaki, Shanghai Matsuo, and United Steel. Specifically, we found these companies have not demonstrated an absence of *de facto* government control. Because COSCO Kawasaki, Shanghai Matsuo, and United Steel have not demonstrated that they are eligible for separate rate status, Commerce considers them part of the China-wide entity.

¹⁰⁸ See Memorandum, "Antidumping Duty Investigation of Certain Fabricated Structural Steel from the People's Republic of China: Preliminary Determination Margin Calculation for Separate Rate Companies," dated concurrently with this memorandum. This memorandum contains Commerce's comparison of (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted average of the dumping margins calculated for the mandatory respondents using each company's publicly ranged quantities for merchandise under consideration. Based upon that comparison, Commerce determines that, (C), a weighted average using each company's publicly ranged quantities, is closest to the weighted average of margins calculated using business proprietary information and, thus, is the most appropriate rate for use in this preliminary determination.

¹⁰⁹ See, e.g., *Hardwood and Decorative Plywood from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013), and accompanying IDM at "Separate Rate Companies."

¹¹⁰ See *Initiation Notice*, 84 FR 7335-7336.

¹¹¹ See Q&V Questionnaire Delivery Memo, documenting that FedEx delivered the Q&V questionnaires to 11 companies who failed to provide Q&V questionnaire responses, and it attempted to deliver the Q&V questionnaire to six companies that refused to accept delivery of it. These companies are: (1) Beijing Biotech; (2) China Grand; (3) Eastar Metal; (4) Henan Swine Equipment; (5) Hongju Metals; (6) Huaye Steel; (7) Jiangsu Cereal; (8) Ningbo Huarentai Trade; (9) Ningbo Win; (10) Qingdao Big Farm; (11) Qingdao Technology; (12) Sinopec Engineering; (13) Sunshine Group; (14) Suzhou Precision Technology; (15) Weihai Gaodao Saltern (Weihai Saltern); and (16) Yixin Handcrafts; and (17) Zhenyu Metal.

1. Application of Facts Available and Adverse Inferences

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

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

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

2. Use of Facts Available

Commerce preliminarily finds that the China-wide entity which includes Chinese exporters and/or producers that did not respond to Commerce's requests for information, failed to provide necessary information, withheld information requested by Commerce, failed to provide information in a timely manner and significantly impeded this proceeding by not submitting the requested information. Accordingly, Commerce preliminarily determines that use of facts available is warranted in determining the rate of the China-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.¹¹²

3. Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that Commerce, in selecting from among the facts otherwise available, may use an inference that is adverse to the interests of a party if that party has failed to

¹¹² See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

cooperate by not acting to the best of its ability to comply with a request for information. Commerce finds that the China-wide entity's failure to provide the requested information constitutes circumstances under which it is reasonable to conclude that the China-wide entity was not fully cooperative.¹¹³ The China-wide entity neither filed documents indicating that it was having difficulty providing the information, nor did it request to submit the information in an alternate form. Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available with respect to the China-wide entity in accordance with section 776(b) of the Act and 19 CFR 351.308(a).¹¹⁴

4. Selection and Corroboration of the AFA Rate

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as the Petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the Petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹¹⁵ The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value,¹¹⁶ although Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.¹¹⁷ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used, although Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.¹¹⁸

In applying an adverse inference, Commerce may rely on information derived from the Petition, the final determination in the investigation, any previous review, or any other information placed on the record.¹¹⁹ In selecting an AFA rate, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to

¹¹³ See *Nippon Steel Corporation v. United States*, 337 F. 3d 1373, 1383 (Fed. Cir. 2003) (*Nippon Steel*) (noting that Commerce need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (*i.e.*, information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.")).

¹¹⁴ See *Nippon Steel*, 337 F. 3d at 1382-83.

¹¹⁵ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA), at 870.

¹¹⁶ *Id.*; see also 19 CFR 351.308(d).

¹¹⁷ See section 776(c)(2) of the Act.

¹¹⁸ See section 776(d)(3) of the Act; see, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

¹¹⁹ See SAA at 870.

cooperate than if it had fully cooperated.¹²⁰ In an investigation, Commerce's practice with respect to the assignment of an AFA rate is to select the higher of: (1) the highest dumping margin alleged in the Petition; or (2) the highest calculated dumping margin of any respondent in the investigation.¹²¹ However, based on the information placed on the record since we initiated this investigation, we are unable to corroborate the highest petition rate of 222.35 percent for this preliminary determination.¹²²

Specifically, in attempting to corroborate that rate, we compared the highest petition rate of 222.35 percent to the individually-investigated respondents' highest transaction-specific dumping margins within the appropriate comparison method and found the petition rate to be significantly higher than any of the highest calculated transaction-specific dumping margins. Because we were unable to corroborate the highest petition margin of 222.35 percent with individual transaction-specific margins from the respondents, we next applied a component approach and compared the NVs and net U.S. prices underlying the highest petition margin to the NVs and net U.S. prices calculated for the respondents. We found, however, that we were also unable to corroborate the highest petition margin of 222.35 with this component approach. Specifically, Commerce finds that NVs and net U.S. prices calculated for the respondents, are not within the range of the NVs and net U.S. prices underlying the highest margin alleged in the Petition. Because we were unable to corroborate the highest dumping margin contained in the Petition, we assigned to the China-wide entity a dumping margin of 141.38 percent, which is the highest transaction-specific dumping margin for any of the mandatory respondents. Because we are relying on information obtained in the course of this investigation as the AFA rate, not on secondary information, it is not necessary to corroborate this rate.¹²³

I. Date of Sale

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.¹²⁴ In this investigation, because fabricated structural steel is sold on a project basis, Commerce has determined that using the contract date as the date of sale most accurately reflects the date on which the material terms of sale were established.

¹²⁰ *Id.*

¹²¹ See, e.g., *Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016).

¹²² See Antidumping Duty Investigation Initiation Checklist: *Certain Fabricated Structural Steel from the People's Republic of China*, dated February 25, 2019, at 11.

¹²³ See section 776(c) of the Act; see also *1,1,1,2-Tetrafluoroethane from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 62597 (October 20, 2014), and accompanying IDM at 3.

¹²⁴ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

Therefore, for JCG, Modern Heavy, and Wison, we are preliminarily using the date the contract was signed as the date of sale for all U.S. sales.¹²⁵

J. Universe of Sales

In Commerce's standard AD questionnaire for investigations, respondents are instructed to report all sales made during the POI. The date of sale, defined as noted above, is generally used to determine whether a sale was made within the POI. However, fabricated structural steel is unique in that it is typically custom manufactured for a specific project which may take a significant amount of time to complete. The period of time between the initial contract and final delivery and payment for the fabricated structural steel may take longer than one year. Hence, the final price and all movement charges and adjustments for sales of fabricated structural steel may not be known until it has been produced and the project completed. Given these facts, we determined that the universe of U.S. sales examined should include only sales of products that were substantially completed during the investigated time period, and we gathered information necessary to determine the length of this period.

Specifically, from April 2019 through June 2019, we issued initial questionnaires to JCG, Modern Heavy, and Wison to collect information regarding all U.S. projects substantially completed during the POI, as well as in the following calendar quarter. We received timely responses to these questionnaires from each respondent.¹²⁶ After examining this information, we instructed JCG, Modern Heavy, and Wison to report all projects they substantially completed during the POI (*i.e.*, July through December 2018).¹²⁷ In addition, because Wison substantially completed one additional project in the following calendar quarter, we also instructed Wison to report that sale.¹²⁸

K. Export Price (EP)/Constructed Export Price (CEP)

JCG reported its U.S. sale as an EP transaction, in accordance with section 772(a) of the Act, because it claims that the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation. JCG also reported that two affiliated companies located in the United States were involved in the transaction, and each of these U.S. companies provided services (*i.e.*, consulting, project coordination, customs support) in connection with this sale.¹²⁹ Of particular note, JCG stated that one of the affiliates entered into a consulting agreement with JCG's unaffiliated customer to provide services integral to completing the sale, including acting as importer of record among other things.¹³⁰ Because the record currently does not contain complete information on the scope of the affiliates' involvement in the sale or on the expenses

¹²⁵ See JCG May 28, 2019 CDQR at 8; Modern Heavy May 15, 2019 CDQR at 8; and Wison July 15, 2019 CDQR at C-8 and C-9.

¹²⁶ See JCG April 17, 2019 MAQR; Modern Heavy April 5, 2019 MAQR; Wison May 28, 2019 MAQR; Wison June 4, 2019 MAQR; and Wison June 10, 2019 MAQR.

¹²⁷ See Commerce's Letters, "Antidumping Duty Questionnaire," dated April 1, April 12, and May 17, 2019, at C-1.

¹²⁸ See Commerce's Letter to Wison, "Less-Than-Fair-Value Investigation of Certain Fabricated Structural Steel from the People's Republic of China," dated June 17, 2019.

¹²⁹ See JCG August 23, 2019 SACDQR at 6.

¹³⁰ *Id.* at 7.

that they incurred in connection with it, we have accepted JCG's EP classification for purposes of the preliminary determination. However, we are currently collecting additional information from JCG and we will consider this information when determining whether it is more appropriate to treat JCG's sale as a CEP sale for the final determination.¹³¹

For all sales made by Modern Heavy, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts on the record. For Wison, we used CEP methodology, in accordance with section 772(b) of the Act, because the subject merchandise was sold in the United States by a U.S. seller affiliated with the respondent and EP methodology was not otherwise warranted.

1. JCG

We calculated EP based on packed prices to unaffiliated customers in the United States. We made adjustments, where appropriate, to the starting price for price adjustments associated with change orders. We also made deductions, as appropriate, from the starting price for movement expenses (*i.e.*, foreign inland freight, foreign inland insurance, foreign brokerage and handling, marine insurance, and international freight) in accordance with section 772(c)(2)(A) of the Act. We based movement expenses on surrogate values where the service was purchased from a Chinese company.¹³²

2. Modern Heavy

We calculated EP based on packed prices to unaffiliated customers in the United States. We made adjustments, where appropriate, to the starting price for billing adjustments associated with change orders. We also made deductions, as appropriate, from the starting price for movement expenses (*i.e.*, foreign inland freight, foreign brokerage and handling, marine insurance, international freight, and U.S. customs duties,) for Modern Heavy, in accordance with section 772(c)(2)(A) of the Act. We based movement expenses on surrogate values where the service was purchased from a Chinese company.¹³³

3. Wison

We calculated CEP for Wison's sales, based on packed prices to unaffiliated purchasers in the United States. We made adjustments, where appropriate, from the starting price for price adjustments related to change orders. We also made deductions from the starting price for movement expenses, as appropriate, in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight, foreign brokerage and handling, marine insurance, international freight, U.S. brokerage and handling, U.S. customs duties, and U.S. inland freight from the port to the unaffiliated customer, and U.S. inland insurance, where applicable. We based movement expenses on surrogate values where the service was purchased from a Chinese company, except

¹³¹ See Commerce's Letter to JCG, "Investigation of Certain Fabricated Structural Steel from the People's Republic of China: Second Supplemental C Questionnaire," dated September 3, 2019.

¹³² See "Factor Valuation Methodology," below.

¹³³ *Id.*

in instances where Wison's purchases of those services from ME suppliers in U.S. dollars was significant; in those instances, we valued the services using the per-unit expense paid to the ME supplier.

In accordance with section 772(d)(1) of the Act, we calculated Wison's CEP by deducting selling expenses associated with economic activities occurring in the United States, including direct selling expenses (imputed credit, bond, insurance, and further manufacturing/assembly expenses) and indirect selling expenses (other indirect selling expenses). Further, as facts available, in accordance with section 776(a) of the Act, we have preliminarily adjusted Wison's calculated further manufacturing expenses to correct the general and expenses ratio for three miscalculations in Wison's response.¹³⁴ We also made an adjustment for profit allocated to CEP selling expenses, in accordance with section 772(d)(3) of the Act. In accordance with sections 772(d)(3) and 772(f) of the Act, we deducted CEP profit for Wison and its U.S. affiliate, Wison Petrochemicals (NA) LLC.

4. Value Added Tax (VAT)

In 2012, Commerce announced a change of methodology with respect to the calculation of EP and CEP to include an adjustment of any irrecoverable VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.¹³⁵ 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, where the EP and CEP prices include such amount.¹³⁶ The amount of irrecoverable VAT is a liability calculated based on the standard VAT rate and the refund rate specific to the exported good. Where the irrecoverable VAT is a fixed percentage of EP or CEP, Commerce explained that the final step in arriving at a tax neutral dumping comparison is to reduce the EP or CEP downward by this same percentage.¹³⁷

Commerce's methodology, as explained above and applied in this investigation, incorporates two basic steps: (1) determine the amount of irrecoverable VAT on subject merchandise, and (2) reduce EP or CEP price by the amount determined in step one. Information placed on the record of this investigation by JCG, Modern Heavy, and Wison indicates that, according to the Chinese VAT schedule, the standard VAT rate is 16 percent and the refund rate for fabricated structural steel was nine percent to 13 percent as of September 15, 2018, and that the EP or CEP prices include irrecoverable VAT.¹³⁸ Consistent with Commerce's standard methodology, for purposes

¹³⁴ See Wison August 5, 2019 SEQR; and Memorandum, "Preliminary Analysis Memorandum for Wison," dated concurrently with this memorandum (Wison Prelim Analysis Memo).

¹³⁵ See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012) (*Methodological Change for NME Proceedings*).

¹³⁶ *Id.*; see also *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) (*Chloro Isos Final Results*), and accompanying IDM at Comment 5.A.

¹³⁷ See *Methodological Change for NME Proceedings*; and *Chloro Isos Final Results* IDM at Comment 5.A.

¹³⁸ See JCG May 28, 2019 CDQR at 33-35 and Exhibits C-12 and C-13; Modern Heavy May 15, 2019 CDQR at 27-29 and Exhibit C-7; and Wison July 1, 2019 CQR at C-39 – C-41 and Exhibit C-12.

of this preliminary determination, in our calculations for JCG, Modern Heavy, and Wison, we reduced EP or CEP by the amount of irrecoverable VAT included in the EP or CEP price, calculated as the difference between those rates (*i.e.*, three to seven percent) and applied to the export sales value, consistent with the definition of irrecoverable VAT under Chinese tax law and regulation.

L. Normal Value

Section 773(c)(1) of the Act provides that Commerce shall determine NV using FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home market prices, third-country prices, or constructed value under section 773(a) of the Act. Commerce bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under Commerce's normal methodologies.¹³⁹ Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), Commerce calculated NV based on FOPs. Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.¹⁴⁰ Commerce used FOPs reported by the respondents for materials (including welding supplies and welding gases) and packing, but excluded electricity and labor, because the financial statements used to calculate the financial ratios for this preliminary determination were not sufficiently detailed to allow Commerce to isolate energy and labor expenses from other expenses such as selling, general, and administrative expenses.¹⁴¹ When individual costs are not specifically broken out in the financial statements, Commerce presumes that these costs are accounted for in the surrogate financial ratios.¹⁴² Therefore, Commerce was able to calculate an overhead surrogate ratio based on the full cost of manufacturing, including electricity and labor. In order to not double count the respondents' electricity and labor costs, we have not separately valued these costs in our NV calculation.

Factor Valuation Methodology

In accordance with section 773(c) of the Act, Commerce calculated NV based on FOP data reported by JCG, Modern Heavy, and Wison. To calculate NV, Commerce multiplied the reported per-unit factor-consumption rates by publicly available SVs. Commerce's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POI, and exclusive of taxes and duties.¹⁴³

¹³⁹ See, e.g., *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19703 (April 17, 2006), unchanged in *Lined Paper from China*.

¹⁴⁰ See sections 773(c)(3)(A)-(D) of the Act.

¹⁴¹ See Preliminary SV Memo.

¹⁴² See, e.g., *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 16838 (April 13, 2009), and accompanying IDM at Comment 2.

¹⁴³ See, e.g., *Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at*

When selecting the SVs, Commerce considered, among other factors, the quality, specificity, and contemporaneity of the data.¹⁴⁴ As appropriate, Commerce adjusted input prices by including freight costs to make them delivered prices. Specifically, Commerce added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory.¹⁴⁵ A detailed description of all SVs used for JCG, Modern Heavy, and Wison can be found in the Preliminary SV Memo.

For this preliminary determination, Commerce used Russian import data, as published by GTA, and data from other publicly available sources from Russia, 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 POI, (3) product-specific, and (4) tax-exclusive.¹⁴⁶ The record shows that Russian import data obtained through GTA, as well as data from other Russian sources, are broad market averages, product-specific, tax-exclusive, and generally contemporaneous with the time period under investigation.¹⁴⁷ In those instances where Commerce could not obtain information contemporaneous with the POI with which to value FOPs, Commerce adjusted the SVs using, where appropriate, Russia's consumer price index or producer price index as published in the International Monetary Fund's International Financial Statistics.

Commerce continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be dumped or subsidized.¹⁴⁸ In this regard, Commerce has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.¹⁴⁹ Based on the existence of these subsidy programs that

Less Than Fair Value, 73 FR 48195 (August 18, 2008), and accompanying IDM at Comment 2.

¹⁴⁴ See, e.g., *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying IDM at Comment 9.

¹⁴⁵ See *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407-08 (Fed. Cir. 1997).

¹⁴⁶ 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).

¹⁴⁷ Commerce's normal practice is to use data that is contemporaneous with the POI to calculate SVs; however, because the respondents' sales are project-based and most of the production took place throughout 2018, we find it appropriate to capture data from the entire year of 2018 instead. See Preliminary SV Memo.

¹⁴⁸ See section 773(c)(5) of the Act (permitting Commerce to disregard price or cost values without further investigation if it has determined that certain subsidies existed with respect to those values).

¹⁴⁹ See, e.g., *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination; 2011-2012*, 78 FR 42492 (July 16, 2013), and accompanying IDM at 7-19; *Certain Lined Paper Products from Indonesia: Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 76 FR 73592 (November 29, 2011), and accompanying IDM at 1; *Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 46770 (August 11, 2014), and accompanying IDM at 4; and *Certain Frozen Warmwater*

were generally available to all exporters and producers in these countries at the time of the POI, Commerce finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Therefore, Commerce has not used prices from these countries in calculating Russian import-based SVs.

Additionally, Commerce disregarded data from NME countries when calculating Russian import-based per-unit SVs.¹⁵⁰ Commerce also excluded imports labeled as originating from an “unidentified” country from the calculation of Russian import-based per-unit SVs because Commerce could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.¹⁵¹

Pursuant to 19 CFR 351.408(c)(1), where a factor is produced in one or more ME countries, purchased from one or more ME suppliers and paid for in an ME currency, Commerce normally will use the prices paid to the ME suppliers if substantially all (*i.e.*, 85 percent or more) of the total volume of the factor is purchased from the ME suppliers. In those instances where less than substantially all of the total volume of the factor is produced in one or more ME countries and purchased from one or more ME suppliers, Commerce will weight-average the actual prices paid for the ME portion and the SV for the NME portion by their respective quantities. Because JCG and Wison purchased certain inputs that are produced in ME countries, from ME suppliers and paid for in ME currency,¹⁵² we valued those inputs in accordance with 19 CFR 351.408(c).¹⁵³

Commerce used Russian import statistics from GTA to value the remaining raw materials, packing materials, and other inputs, except as listed below. Additionally, for two direct materials and two packing materials which Wison reported as overhead materials,¹⁵⁴ as facts available, in accordance with section 776(a) of the Act, we have preliminarily used the reported factors and valuation for similar inputs.¹⁵⁵

We valued truck freight expenses using data from the World Bank’s *Doing Business 2019: Russian Federation* 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 Russia.

Shrimp from Thailand: Final Negative Countervailing Duty Determination, 78 FR 50379 (August 19, 2013), and accompanying IDM at IV.

¹⁵⁰ 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).

¹⁵¹ *Id.*

¹⁵² See JCG May 28, 2019 CDQR at 6; and Wison July 8, 2019 DQR at D-7 – D-9 and Exhibit D-6.

¹⁵³ See Memorandum, “Preliminary Analysis Memorandum for JCG,” dated concurrently with this memorandum; and Wison Prelim Analysis Memo.

¹⁵⁴ See Wison August 5, 2019 SACDQR at 19 and Exhibits D-20 and D-21.

¹⁵⁵ See Wison Prelim Analysis Memo.

We valued marine insurance expense using a 2010 rate offered by RJG Consultants, an ME provider of marine insurance.¹⁵⁶ The rate is a percentage of the value of the shipment; thus, we did not inflate or deflate the rate. Because there are no source data for domestic inland insurance on the record, we also valued domestic inland insurance using the marine insurance rate.

We valued ocean freight based on rates identified by Descartes identified at its website. These rates are publicly available and cover a wide range of shipping routes which are reported on a daily basis from July through December 2018.¹⁵⁷

With respect to the financial ratios (factory overhead; selling, general, and administrative expenses; and profit), the record contains four financial statements for companies with production of identical merchandise in Russia: (1) ZOK Joint-Stock Company (ZOK JSC); (2) Chelyabinsk Steel Structure Plant Joint-Stock Company (ChZMK JSC); (3) Kashira Steel Structures and Boiler Building Plant Joint Stock Company (Kashira Steel); and (4) Energostalkonstrucktsiya Open Joint-Stock Company (ESK OJSC). ZOK JSC, ChZMK JSC, Kashira Steel, and ESK OJSC produce fabricated structural steel in Russia.¹⁵⁸ Therefore, for this preliminary determination, we calculated the surrogate financial ratios by averaging the financial ratios from these financial statements.

JCG, Modern Heavy, and Wison provided information regarding the sales of their reported by-products of steel scrap.¹⁵⁹ However, we preliminarily find that this information is insufficient to grant a by-product offset to any of the companies. Specifically, the respondents did not maintain records demonstrating the production quantity of steel scrap during the POI.¹⁶⁰ It is Commerce's practice to deny claims for by-product offsets where companies are unable to provide by-product production data to support their claims, and in such instances we have not granted a scrap or by-product offset.¹⁶¹ Because JCG, Modern Heavy, and Wison did not provide records to support their claimed production of steel scrap, we are, consistent with our practice, preliminarily not granting a by-product offset for these respondents' reported quantities of steel scrap.

a. 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 JCG's, Modern Heavy's, and Wison's sales of the subject merchandise to the United States were made at less than NV, Commerce compared the EPs and CEPs, where appropriate, to

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ See JCG May 28, 2019 CDQR 13-14; Modern Heavy May 15, 2019 CDQR; and Wison July 8, 2019 DQR at D-16.

¹⁶⁰ See JCG August 7, 2019 SDQR at 13; Modern Heavy July 3, 2019 SDQR at 11; and Wison August 5, 2019 SACDQR at 13-14.

¹⁶¹ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Results of the New Shipper Review; 2012-2013*, 80 FR 4244 (January 27, 2015), and accompanying IDM at Comment 3, where we denied claims for a by-product offset where the companies did not provide data of their, or their subcontractors', by-product production during the period of review.

the NVs, as described in the “Export Price and Constructed Export Price” and “Normal Value” sections of this memorandum.

Determination of Comparison Method

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

In numerous LTFV investigations and AD reviews, Commerce has applied a “differential pricing” analysis for determining whether application of an alternative comparison method is appropriate in a particular situation pursuant to 19 CFR 351.414(c) and consistent with section 777A(d)(1)(B) of the Act.¹⁶² Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses a standard comparison method in calculating a respondent’s weighted-average dumping margin.

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

¹⁶² See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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

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

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

weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.¹⁶³

Results of the Differential Pricing Analysis

For all respondents, based on the results of the differential pricing analysis, we preliminarily find for each respondent that zero percent of the respondents' U.S. sales pass the Cohen's *d* test,¹⁶⁴ and 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 comparison method. Accordingly, we preliminarily determine to use a standard comparison method for all U.S. sales to calculate the weighted-average dumping margin for these respondents.

IX. CURRENCY CONVERSION

We made no currency conversions, in accordance with section 773A(a) of the Act, because all of the reported sales data, as well all of the SV data, were stated in U.S. dollars.

X. ADJUSTMENT UNDER SECTION 777A(f) OF THE ACT

In applying section 777A(f) of the Act, Commerce examines: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise; (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period; and (3) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.¹⁶⁵ For a subsidy meeting these criteria, the statute requires Commerce to reduce the dumping margin by the estimated amount of the increase in the weighted-average dumping margin due to a countervailable subsidy, subject to a specified cap.¹⁶⁶ In conducting this analysis, Commerce has not concluded that concurrent application of NME dumping duties and countervailing duties necessarily and automatically results in overlapping remedies. Rather, a finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the

¹⁶³ The Court of Appeals for the Federal Circuit (CAFC) has affirmed much of Commerce's differential pricing methodology. *See, e.g., Apex Frozen Foods v. United States*, 862 F.3d 1322 (Fed. Cir. 2017). We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

¹⁶⁴ *See* Memorandum, "Preliminary Analysis Memorandum for JCG," dated concurrently with this memorandum; Memorandum, "Preliminary Analysis Memorandum for Modern Heavy," dated concurrently with this memorandum; and Wison Prelim Analysis Memo.

¹⁶⁵ *See* section 777A(f)(1)(A)-(C) of the Act.

¹⁶⁶ *See* sections 777A(f)(1)-(2) of the Act.

totality of facts on the administrative record for that segment of the proceeding as required by the statute.¹⁶⁷

For purposes of our analysis under sections 777A(f)(1)(A) and (C) of the Act, Commerce requested firm-specific information from the mandatory respondents as part of the initial antidumping questionnaire.¹⁶⁸ The information sought included information regarding whether the companies consumed merchandise for which Commerce was examining whether countervailable subsidies were received during the relevant period, information on costs, and information regarding the respondents' pricing policies and practices. Additionally, the respondents were required to provide documentary support for the information provided. JCG, Modern Heavy, and Wison submitted responses to Commerce's firm-specific double remedies questionnaire.¹⁶⁹ The responses received from JCG, Modern Heavy, and Wison included information concerning purchases of inputs during the relevant period, which Commerce determined were subsidized in the companion CVD investigation, as well as information regarding their cost and pricing practices.

In the companion CVD investigation, Commerce found the provision of electricity, hot-rolled steel, wide flange beams, steel channels, steel angles, and hollow structural shapes for less than adequate remuneration (LTAR) to be countervailable with respect to the class or kind of merchandise under consideration.¹⁷⁰ Modern Heavy is a mandatory respondent in the companion CVD investigation and reported purchasing electricity, hot-rolled steel, wide flange beams, steel channels, steel angles, and hollow structural shapes, all of which were part of Commerce's preliminary findings with respect to Modern Heavy in the companion CVD investigation.¹⁷¹ Further, even though JCG and Wison are not mandatory respondents in the companion CVD investigation, they also reported purchasing electricity, hot-rolled steel, wide flange beams, steel channels, steel angles, and hollow structural shapes during the relevant period.¹⁷² Modern Heavy, JCG, and Wison provided sample POI costs for their purchases of electricity, hot-rolled steel, wide flange beams, steel channels, steel angles, and hollow structural shapes.¹⁷³

¹⁶⁷ See, e.g., *Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part*, 82 FR 28629 (June 23, 2017), and accompanying PDM at 43.

¹⁶⁸ See Commerce's Initial Antidumping Duty Questionnaire issued to the mandatory respondents at page 2 of the cover letter and Appendix XII, "Double Remedies Questionnaire."

¹⁶⁹ See JCG June 4, 2019 CDQR at Appendix XII; JCG August 23, 2019 SACDQR; Modern Heavy May 22, 2019 CDQR at Appendix XII; and Wison July 15, 2019 CDQR at Appendix XII.

¹⁷⁰ See *Certain Fabricated Structural Steel from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 33224 (July 12, 2019) (*CVD FSS Preliminary Determination*), and accompanying PDM.

¹⁷¹ See Modern Heavy May 22, 2019 CDQR at Appendix XII. Note that Modern Heavy also reported the purchase cut-to-length plate, but Commerce did not separately countervail this program in the *CVD FSS Preliminary Determination*.

¹⁷² See JCG June 4, 2019 CDQR at Appendix XII; and Wison July 15, 2019 CDQR at Appendix XII. Note that JCG and Wison also reported the purchase cut-to-length plate, but Commerce did not separately countervail this program in the *CVD FSS Preliminary Determination*.

¹⁷³ See JCG June 4, 2019 CDQR at Appendix XII; JCG August 23, 2019 SACDQR; Modern Heavy May 22, 2019 CDQR at Appendix XII; and Wison July 15, 2019 CDQR at Appendix XII.

In accordance with section 777A(f)(1)(A) of the Act, Commerce examined whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise. Because Commerce found the provision of electricity, hot-rolled steel, wide flange beams, steel channels, steel angles, and hollow structural shapes for LTAR to be countervailable with respect to the class or kind of merchandise under consideration in the companion CVD investigation,¹⁷⁴ Commerce preliminarily finds that the requirement of section 777A(f)(1)(A) of the Act has been met.

Additionally, in accordance with section 777A(f)(1)(C) of the Act, Commerce examined whether JCG, Modern Heavy, and Wison demonstrated: (1) a subsidies-to-cost link, *i.e.*, a subsidy effect on the cost of manufacturing (COM) of the merchandise under consideration; and (2) a cost-to-price link, *i.e.*, respondent's prices were dependent on changes in the COM. With respect to the subsidies-to-cost link, in their double remedies questionnaire responses, JCG, Modern Heavy, and Wison reported that they consumed electricity, hot-rolled steel, wide flange beams, steel channels, steel angles, and hollow structural shapes in the production of subject merchandise.¹⁷⁵

However, the mandatory respondents failed to demonstrate that the subsidies received resulted in a change to their COM during the relevant period. The respondents only provided sample accounting vouchers that cover just a fraction of the POI to substantiate their claims that the programs impact their COM.¹⁷⁶ However, no additional documents were provided, such as company accounting records, to demonstrate a connection between subsidies received and COM. Additionally, with respect to electricity, all three respondents reported that the electricity only affected overhead and was not directly tied to their cost of production. Therefore, the respondents have not satisfied the subsidies-to-cost linkage for this preliminary determination. Additionally, because the respondents failed to identify a subsidies-to-cost link, they also failed to identify a cost-to-price linkage, as no price fluctuations were tied directly to the change in cost associated with the subsidy identified in the relevant period. Even if we separately consider the narrative and documentation provided to substantiate the cost-to-price linkage, with respect to the provision of hot-rolled steel, wide flanges, steel channels, steel angles, and hollow structural steel for LTAR, we note that unlike commodity products which are made-for-stock, fabricated structural steel is project-specific and none of the respondents maintain price lists, conduct market research on pricing, or set quarterly price targets, but instead bid on projects individually.

Further, none of the respondents provided evidence of a linkage between cost and price for the U.S. sales under consideration, or, more generally, how they budgeted price in response to change in cost item (*i.e.*, including documentary support for pricing decisions or changes to price). Wison specifically stated that it “does not have a standard practice of changing cost due to raw material prices” and that after a contract is signed, it only “increases the price of a contract when the project owner makes an order change that affects the cost of production such {as} the costs of raw materials and labor.”¹⁷⁷ Additionally, Modern Heavy stated that it

¹⁷⁴ See *CVD FSS Preliminary Determination PDM*.

¹⁷⁵ See JCG June 4, 2019 CDQR at Appendix XII; JCG August 12, 2019 SACDQR; Modern Heavy May 22, 2019 CDQR at Appendix XII; and Wison July 15, 2019 CDQR at Appendix XII.

¹⁷⁶ *Id.*

¹⁷⁷ See Wison July 15, 2019 CDQR at Appendix XII, page 3.

“observed no significant cost changes occurring during the POI,”¹⁷⁸ and that it “could not identify any specific adjustments relating to the sales price based on input cost changes for the sales reported in the U.S. sales database.”¹⁷⁹ Further, JCG stated that it “does not have a formal or standard process of price changing,” and was not able to provide any example of a price change for its project under examination.¹⁸⁰ In sum, all three mandatory respondents only indicated that they would ever increase prices for their customers due to an increase in material costs but never provided explanation or examples regarding a decrease in prices for their customers. Thus, the respondents have not demonstrated a cost-to-price linkage such that they are actually passing on savings from the subsidies to their customers but rather may be absorbing the savings from any subsidized materials in the form of increased profits, and only, in certain instances (*i.e.*, either in the case of a change in scope of work or for sales other than those under consideration) they actually increased prices. Additionally, with respect to the provision of electricity for LTAR, no respondents provided evidence of fluctuations in price that would affect cost and, in fact, JCG stated that it “did not renegotiate prices for its sales of {fabricated structural steel} to the United States based upon fluctuations in electricity costs.”¹⁸¹ Accordingly, Commerce is not making any such adjustment to the rate being assigned to any of the mandatory respondents, the separate rate respondents, or the China-wide entity.

XI. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES

In an LTFV investigation, where there is a concurrent CVD investigation, it is Commerce’s normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent’s estimated weighted-average dumping margin to account for export subsidies found for each respective respondent in the concurrent CVD investigation. Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S. price “shall be increased by the amount of any countervailing duty imposed on the subject merchandise . . . to offset an export subsidy.”¹⁸²

Commerce determined in the preliminary determination of the companion CVD investigation that two of the mandatory respondents (*i.e.*, Modern Heavy and Shanghai Matsuo), the non-selected respondents (*i.e.*, the “All Others” companies), and the companies receiving subsidy rates based upon total AFA, each benefitted from the export buyers credit subsidy program, which is export contingent, and whose subsidy rate equals 10.54 percent.¹⁸³ Accordingly, in order to avoid a double remedy as a result of export subsidies which are collected as part of the companion CVD proceeding, Commerce must adjust the estimated weighted-average dumping margins by the amount of export subsidies that are countervailed as a result of the companion

¹⁷⁸ See Modern Heavy May 22, 2019 CDQR at Appendix XII, page 5.

¹⁷⁹ See Modern Heavy June 28, 2019 SACDQR at 20. Although Modern Heavy provided examples or price amendments, none of the provided examples pertained to any of the sales under examination and in fact did not even appear to be U.S. sales. See Modern Heavy May 22, 2019 CDQR at Appendix XII.

¹⁸⁰ See JCG June 4, 2019 CDQR at Appendix XII, page 3. Note that JCG did provide an example of a price renegotiation for a different project than the one being examined, but this is not indicative of JCG’s pricing practices with respect to its sale under examination in this investigation. *Id.* at Exhibit DR-1.

¹⁸¹ See JCG August 23, 2019 SACDQR at 16.

¹⁸² See *Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 38076, 38077 (July 1, 2010), and accompanying IDM at Comment 1.

¹⁸³ See *CVD FSS Preliminary Determination PDM*.

CVD proceeding. Therefore, Commerce is adjusting each of the estimated weighted-average dumping margins for this preliminary determination by 10.54 percent to determine the cash deposit rate for the mandatory respondents, the non-examined companies which are eligible for a separate rate, and the China-wide entity.

XII. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information from JCG, Modern Heavy, and Wison upon which we will rely in making our final determination.

XIII. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

Agree

Disagree

9/3/2019



Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance