



A-570-114  
Investigation  
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April 22, 2020

**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 Glass Containers  
from the People's Republic of China

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## I. SUMMARY

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

## II. BACKGROUND

On September 25, 2019, Commerce received antidumping duty (AD) and countervailing duty (CVD) petitions covering imports of glass containers from China, filed on behalf of the American Glass Packaging Coalition (the petitioner).<sup>1</sup> On October 15, 2019, we initiated an AD investigation of glass containers from China.<sup>2</sup>

In the *Initiation Notice*, Commerce notified the public that it would select mandatory respondents using data collected via "quantity-and-value" (Q&V) questionnaires.<sup>3</sup> We also noted that we would limit the number of Q&V questionnaires issued based on U.S. Customs and Border Protection (CBP) data. On October 10, 2019, we released CBP data to all interested parties

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<sup>1</sup> See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Certain Glass Containers from the People's Republic of China," dated September 25, 2019 (Petition).

<sup>2</sup> See *Certain Glass Containers from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 84 FR 56174 (October 21, 2019) (*Initiation Notice*).

<sup>3</sup> See *Initiation Notice*, 84 FR 56174, 56177.

under an administrative protective order and invited interested parties to comment on the data.<sup>4</sup> In October 2019, we issued Q&V questionnaires to potential respondents (*see* the “Respondent Selection” section of this memorandum below).

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 glass containers to be reported in response to Commerce’s AD questionnaire.<sup>5</sup> 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 of this memorandum below.

On November 8, 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 glass containers from China.<sup>6</sup>

In November 2019, we selected two companies for individual examination (the mandatory respondents) and issued Commerce’s AD questionnaire to them.<sup>7</sup> From December 2019 through April 2020, we received questionnaire and supplemental questionnaire responses from the mandatory respondents. For additional details *see* the “Respondent Selection” and “Questionnaire and Responses” sections of this memorandum below. Also, in November 2019, we received timely separate rate applications (SRAs) from 60 companies.<sup>8</sup>

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<sup>4</sup> *See* Commerce Memorandum, “Release of U.S. Customs and Border Protection Data,” dated October 10, 2019.

<sup>5</sup> *See Initiation Notice*, 84 FR at 56175-56176.

<sup>6</sup> *See Glass Containers From China; Determinations*, 84 FR 63677 (November 18, 2019).

<sup>7</sup> The mandatory respondents are Guangdong Huaxing Glass Co., Ltd. (Huaxing) and Qixia Changyu Glass Co., Ltd. (Qixia Changyu).

<sup>8</sup> *See* Zibo E&T’s November 27, 2019 Separate Rate Application; Zibo Zhaohai’s November 27, 2019 Separate Rate Application; Zibo Yuedai’s November 27, 2019 Separate Rate Application; Zibo Yadong’s November 27, 2019 Separate Rate Application; Wenbao’s November 27, 2019 Separate Rate Application; Zibo Truly’s November 27, 2019 Separate Rate Application; Zibo Sunfect’s November 27, 2019 Separate Rate Application; Shine Chin’s November 27, 2019 Separate Rate Application; Zibo Shelley’s November 27, 2019 Separate Rate Application; Zibo Redisland’s November 27, 2019 Separate Rate Application; Happyann’s November 20, 2019 Separate Rate Application; HK Happyann’s November 20, 2019 Separate Rate Application; Phoenix’s November 20, 2019 Separate Rate Application; Changshengtai’s November 27, 2019 Separate Rate Application; Dingxin’s November 27, 2019 Separate Rate Application; Shandong Excel’s November 20, 2019 Separate Rate Application; Shandong Glassware’s November 20, 2019 Separate Rate Application; Honghan’s November 20, 2019 Separate Rate Application; Shandong Injoy’s November 20, 2019 Separate Rate Application; Shandong Pharmaceutical’s November 27, 2019 Separate Rate Application; Xuzhou Credible’s November 20, 2019 Separate Rate Application; Xuzhou Das Packing’s November 20, 2019 Separate Rate Application; Xuzhou Huihe’s November 20, 2019 Separate Rate Application; Zibo Ace’s November 27, 2019 Separate Rate Application; Comm-Mountain’s November 27, 2019 Separate Rate Application; Zibo Derola’s November 20, 2019 Separate Rate Application; Grandeur’s November 20, 2019 Separate Rate Application; Green Light’s November 20, 2019 Separate Rate Application; Zibo Melory’s November 20, 2019 Separate Rate Application; Top Arts’ November 20, 2019 Separate Rate Application; Longrui’s November 27, 2019 Separate Rate Application; Zibo Fecund’s November 27, 2019 Separate Rate Application; Fortune’s November 27, 2019 Separate Rate Application; Heishan Glass’ November 27, 2019 Separate Rate Application; Hicheon’s November 27, 2019 Separate Rate Application; Huapeng’s November 27, 2019 Separate Rate Application; Zibo Lijiang’s November 27, 2019 Separate Rate Application; Lucky Ship’s November 27, 2019 Separate Rate Application; Meridian’s November 27, 2019 Separate Rate Application; Zibo Modern’s November 27, 2019 Separate Rate Application; Shandong Jiaye’s November 27, 2019 Separate Rate

On February 3, 2020, 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 March 3, 2020, to April 22, 2020.<sup>9</sup> Based on the request, and pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), on February 19, 2020, Commerce published in the *Federal Register* a postponement of the preliminary determination by 50 days, until no later than April 22, 2020.<sup>10</sup>

From February 2020 through March 2020, we received comments from the petitioner and the mandatory respondents regarding the appropriate surrogate country and surrogate values (SVs) to be used in this investigation.<sup>11</sup> In April 2020, both mandatory respondents and the petitioner requested that Commerce postpone the final determination.<sup>12</sup>

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

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Application; Zibo Anto's November 27, 2019 Separate Rate Application; Zibo Intrue Light's November 27, 2019 Separate Rate Application; Golden Ace's November 27, 2019 Separate Rate Application; Shandong Top-Peak's November 27, 2019 Separate Rate Application; Sinoglass' November 27, 2019 Separate Rate Application; Zibo Sailing's November 27, 2019 Separate Rate Application; Top Glass's November 27, 2019 Separate Rate Application; Zibo Top-Peak's November 27, 2019 Separate Rate Application; Uni-Shine's November 27, 2019 Separate Rate Application; Photo USA's November 27, 2019 Separate Rate Application; Qingdao Gemmy's November 20, 2019 Separate Rate Application; YGQ's November 26, 2019 Separate Rate Application; Creative's November 20, 2019 Separate Rate Application; Meienlanda's November 20, 2019 Separate Rate Application; Yibin Global's November 20, 2020, Separate Rate Application; New Spark's November 20, 2019 Separate Rate Application; Fengyang's November 27, 2019 Separate Rate Application; Sanhui's November 20, 2019 Separate Rate Application; and Wuxi Huazhong's November 27, 2019 Separate Rate Application.

<sup>9</sup> See Petitioner's Letter, "Certain Glass Containers from the People's Republic of China: Request to Postpone Preliminary Determination," dated February 3, 2020.

<sup>10</sup> See *Certain Glass Containers from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 85 FR 9458 (February 19, 2020).

<sup>11</sup> See Petitioner's Letter, "Certain Glass Containers from the People's Republic of China: Comments on Surrogate Country Selection," dated February 12, 2020, (Petitioner's Surrogate Country (SC) Comments); see also Petitioner's Letter, "Certain Glass Containers from the People's Republic of China: Comments on Surrogate Values," dated February 12, 2020, (Petitioner's Initial SV Comments); Huaxing's Letter, "Certain Glass Containers from the People's Republic of China: Surrogate Country Comments and Preliminary SV Submission," dated February 12, 2020, (Huaxing's SC and SV Comments); Qixia Changyu's Letter, "Certain Glass Containers from the People's Republic of China: Surrogate Country and Surrogate Value Comments," dated February 12, 2020, (Qixia Changyu's SC and SV Comments); Petitioner's Letter, "Certain Glass Containers from the People's Republic of China: Rebuttal Surrogate Country Comments," dated February 19, 2020, (Petitioner's SC and SV Rebuttal Comments); Qixia Changyu's Letter, "Certain Glass Containers from the People's Republic of China: Surrogate Country and Surrogate Value Rebuttal Comments," dated February 19, 2020 (Qixia Changyu's SC and SV Rebuttal Comments); Petitioner's Letter, "Certain Glass Containers from the People's Republic of China: Final Surrogate Value Comments and Submission of New Factual Information, dated March 23, 2020 (Petitioner's Final SC and SV Comments); Petitioner's Letter, "Certain Glass Containers from the People's Republic of China: Pre-Preliminary Comments," dated March 30, 2020 (Petitioner's Pre-Prelim Comments); Huaxing's Letter, "Certain Glass Containers from the People's Republic of China: Pre-Preliminary Comments," dated March 30, 2020 (Huaxing's Pre-Prelim Comments); Qixia Changyu's Letter, "Certain Glass Containers from the People's Republic of China: Pre-Preliminary Comments," dated March 30, 2020 (Qixia Changyu's Pre-Prelim Comments).

<sup>12</sup> See the "Postponement of the Final Determination" section of this notice below.

## A. Respondent Selection

As noted above, in the *Initiation Notice*, we informed interested parties that we would select respondents in this investigation using data collected via Q&V questionnaires.<sup>13</sup> On October 16, 2019, we posted the Q&V questionnaire to Commerce’s website and issued Q&V questionnaires to the largest 48 exporters/producers of glass containers in China, by volume, according to CBP data.<sup>14</sup> Commerce received timely Q&V questionnaire responses from 62 companies.<sup>15</sup>

On November 20, 2019, Commerce limited the number of respondents selected for individual examination to the two largest producers/exporters of the subject merchandise by volume, Huaxing and Qixia Changyu.<sup>16</sup>

## B. Questionnaire and Responses

In November 2019, we issued the AD questionnaire to Huaxing and Qixia Changyu. We received timely responses to section A of this questionnaire (*i.e.*, the section relating to general information) from Huaxing and Qixia Changyu in December 2019.<sup>17</sup> In January 2020, 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 Huaxing and Qixia Changyu.<sup>18</sup>

From February through April 2020, 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.<sup>19</sup>

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<sup>13</sup> See *Initiation Notice*, 84 FR at 56177.

<sup>14</sup> See Memorandum, “Quantity and Value Questionnaires,” dated October 18, 2019.

<sup>15</sup> See Memorandum, “Less-Than-Fair-Value Investigation of Certain Glass Containers from the People’s Republic of China: Respondent Selection,” dated November 20, 2019.

<sup>16</sup> *Id.*

<sup>17</sup> See Huaxing’s December 19, 2019, Section A Questionnaire Response; and Qixia Changyu’s December 18, 2019 Section A Questionnaire Response.

<sup>18</sup> See Huaxing’s January 3, 2020, Section C Questionnaire Response (Huaxing CQR); Huaxing’s January 8, 2020, Section D Questionnaire Response; and Qixia Changyu’s January 9, 2020, Section C and D Questionnaire Response (Qixia Changyu CDQR).

<sup>19</sup> See Huaxing’s February 19, 2020, Supplemental Section A Questionnaire Response; Huaxing’s February 21, 2020, Supplemental Section C Questionnaire Response; Huaxing’s March 2, 2020, Supplemental Section D Questionnaire Response; Huaxing’s March 25, 2020, Second Supplemental Sections A and C Questionnaire Response; Huaxing’s April 6, 2020, Second Supplemental Section D Questionnaire Response; Qixia Changyu’s February 25, 2020, Supplemental Sections A, C, and D Questionnaire Response; Qixia Changyu’s March 16, 2020, Second Supplemental Questionnaire Response; Qixia Changyu’s April 6, 2020; Qixia Changyu’s April 7, 2020; HK Happyann’s Letter, “Certain Glass Containers from the People’s Republic of China: Response to Separate Rate Application Supplemental Questionnaire,” dated February 27, 2020; Dingxin’s Letter, “Glass Containers from China: Supplemental Separate Rate Application,” dated February 27, 2020; YGQ’s Letter, “Certain Glass Containers from the People’s Republic of China: Separate Rate Application; First Supplemental Questionnaire Response,” dated March 11, 2020; Zibo Meienlanda’s Letter, “Certain Glass Containers from the People’s Republic of China: Case No. A-570-114: Zibo Meienlanda’s Separate Rate Application Supplemental Questionnaire,” dated March 11, 2020; Qingdao Gemmy’s Letter, “Certain Glass Containers from the People’s Republic of China: Case No. A-570-114: Qingdao Gemmy’s Separate Rate Application Supplemental Questionnaire,” dated March 13, 2020; Zibo Creative’s Letter, “Glass Containers from China - Supplemental Separate Rate Application,” dated March 13, 2020; Dingxin’s Letter, “Glass Containers from China – Second Supplemental Separate Rate

### III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2019 through June 30, 2019. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition.<sup>20</sup>

### IV. POSTPONEMENT OF THE FINAL DETERMINATION

On April 13, 2020 and April 15, 2020, 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 is affirmative, Commerce postpone the final determination and extend the provisional measures to a period not to exceed six months.<sup>21</sup> On April 16, 2020, the petitioner also requested that Commerce extend the final determination in this investigation.<sup>22</sup>

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.

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Application,” dated March 17, 2020; HK Happyann’s Letter, “Certain Glass Containers from the People’s Republic of China: Response to Second Supplemental Questionnaire,” dated March 24, 2020; Zibo Yadong’s Letter, “Glass Containers from China - Supplemental Separate Rate Application,” dated April 2, 2020; Zibo Sunfect’s Letter, “Glass Containers from China - Supplemental Separate Rate Application,” dated April 2, 2020; Zibo Zhaohai’s Letter, “Glass Containers from China – Supplemental Separate Rate Application,” dated April 3, 2020; Golden Ace’s Letter, “Certain Glass Containers from China; A-570-114; Response to Supplemental Questionnaire,” dated April 7, 2020; Hicheon’s Letter, “Glass Containers from China – Supplemental Separate Rate Application,” dated April 7, 2020; Comm-Mountain’s Letter, “Glass Containers from China – Supplemental Separate Rate Application,” dated April 8, 2020; Zibo Lijiang’s Letter, “Glass Containers from China – Supplemental Separate Rate Application,” dated April 8, 2020; Lucky Ship’s Letter, “Glass Containers from China – Supplemental Separate Rate Application,” dated April 8, 2020; Sinoglass’ Letter, “Certain Glass Containers from China; A-570-114; Response to Supplemental Questionnaire,” dated April 9, 2020; Intrue Light’s Letter, “Certain Glass Containers from China; A-570-114; Response to Supplemental Questionnaire,” dated April 9, 2020; Zibo Anto’s Letter, “Certain Glass Containers from China; A-570-114; Response to Supplemental Questionnaire,” dated April 9, 2020; Shandong Top-Peak’s Letter, “Certain Glass Containers from China; A-570-114; Response to Supplemental Questionnaire,” dated April 9, 2020; and Longrui’s Letter, “Glass Containers from China – Supplemental Separate Rate Application,” dated April 10, 2020.

<sup>20</sup> See 19 CFR 351.204(b)(1).

<sup>21</sup> See Qixia Changyu’s Letter, “Certain Glass Containers from the People’s Republic of China: Request for Postponement of the Final Determination,” dated April 13, 2020; see also Huaxing’s Letter, “Certain Glass Containers from the People’s Republic of China: Request to Extend Final Determination and Provisional Measures,” dated April 15, 2020.

<sup>22</sup> See Petitioner’s Letter, “Certain Glass Containers from the People’s Republic of China: Petitioners’ Request for Postponement of the Final Determination,” dated April 16, 2020.

## V. SCOPE COMMENTS

In accordance with the preamble to Commerce’s regulations,<sup>23</sup> in the *Initiation Notice* we set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.<sup>24</sup> Certain interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice*. Those parties requested that Commerce clarify that certain products are excluded from, and/or add certain exclusion language to, the scope. After analyzing those comments, we have not made any modifications to the scope. For a complete discussion of the scope issues raised by interested parties, *see* the Preliminary Scope Decision Memorandum.<sup>25</sup>

## VI. SCOPE OF THE INVESTIGATION

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

## VII. DISCUSSION OF THE METHODOLOGY

### A. Non-Market Economy (NME) Country

Commerce considers China to be an NME country.<sup>26</sup> 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.”<sup>27</sup> As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the

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<sup>23</sup> *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

<sup>24</sup> *See Initiation Notice*, 84 FR at 56174, 56175.

<sup>25</sup> *See* Memorandum, “Certain Glass Containers from the People’s Republic of China: Preliminary Scope Decision Memorandum,” dated April 3, 2020 (Preliminary Scope Decision Memorandum).

<sup>26</sup> *See Antidumping Duty Investigation of Certain Aluminum Foil from the People’s Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017) (citing Memorandum, “China’s Status as a Non-Market Economy,” dated October 26, 2017), unchanged in *Certain Aluminum Foil from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018).

<sup>27</sup> *See* Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on Commerce’s website at <http://enforcement.trade.gov/policy/bull04-1.html>.

NME country unless it is determined that none of the potential surrogate countries are viable options because they either: (1) are not significant producers of comparable merchandise, (2) do not provide sufficient reliable sources of publicly-available SV data, or (3) are not suitable for use based on other reasons. Countries that are not at the same level of economic development as the NME country, but that are still at a level of economic development comparable to the NME country, are selected as the surrogate country only if data considerations outweigh the difference in levels of economic development.<sup>28</sup> To determine which countries are at a similar level of economic development as the NME country, Commerce generally relies solely upon per capita gross national income (GNI) data from the World Bank's *World Development Report*.<sup>29</sup> 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 January 29, 2020, Commerce issued a letter to interested parties soliciting comments on the list of countries that it 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 SVs.<sup>30</sup> Commerce identified Brazil, Bulgaria, Malaysia, Mexico, Russia, and Turkey as countries at the same level of economic development as China, based on per capita 2018 GNI data.<sup>31</sup> On February 4, 2020, we extended the deadlines to submit comments and rebuttal comments regarding economic comparability, surrogate country, and SVs.<sup>32</sup> We received timely comments on surrogate country selection and SVs from the petitioner, Huaxing, and Qixia Changyu.<sup>33</sup>

The petitioner argues that Commerce should select Mexico (or, in the event that Commerce does not select Mexico, Malaysia) as the primary surrogate country.<sup>34</sup> The petitioner notes that Mexico and Malaysia are not only comparable with China in terms of economic development, but they are also significant exporters of merchandise that is identical or comparable to subject merchandise and they offer reliable import data to value the respondents' FOPs. Huaxing and Qixia Changyu argue that Commerce should select Turkey as the primary surrogate country because it is economically comparable to China, a significant producer of merchandise that is

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<sup>28</sup> *Id.*

<sup>29</sup> See Commerce's Letter, "Antidumping Duty Investigation of Glass Containers from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated January 29, 2020 (Request for Surrogate Country and Surrogate Value Comments)

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> See Memorandum, "Antidumping Duty Investigation of Certain Glass Containers from the People's Republic of China: Deadline Extension to Submit Comments and Rebuttal Comments on Surrogate Country and Surrogate Value Selection," dated February 4, 2020.

<sup>33</sup> See Petitioner's SC Comments, Initial SV Comments, SC and SV Rebuttal Comments, Final SC and SV Comments and Pre-Prelim Comments; Huaxing's SC and SV Comments and Pre-Prelim Comments; and Qixia Changyu's SC and SV Comments, SC and SV Rebuttal Comments, and Pre-Prelim Comments.

<sup>34</sup> See Petitioner's SC Comments, Initial SV Comments, SC and SV Rebuttal Comments, Final SC and SV Comments, and Pre-Prelim Comments.

identical or comparable to subject merchandise, and it offers reliable import data to value respondents' FOPs.<sup>35</sup>

## 1. 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 this 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. Commerce uses per capita GNI as a proxy for per capita GDP.<sup>36</sup> The U.S. Court of 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.”<sup>37</sup>

Unless it is determined that none of the countries identified above are viable surrogate country options because they either: (1) are not significant producers of comparable merchandise, (2) do not provide sufficient reliable sources of publicly available SV data, or (3) are not suitable for use based on other reasons, we will rely on data from one of these countries to value FOPs.

Consistent with its practice, and section 773(c)(4)(A) of the Act, as noted above, Commerce identified Brazil, Bulgaria, Malaysia, Mexico, Russia, and Turkey, 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).<sup>38</sup>

## 2. Significant Producer of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires Commerce, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor Commerce’s regulations provide further guidance on what may be considered comparable merchandise. Among the factors that we consider in determining whether a country is a significant producer of comparable merchandise is whether the country is an exporter of comparable merchandise.<sup>39</sup>

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<sup>35</sup> See Huaxing’s SC and SV Comments and Pre-Prelim Comments; and Qixia Changyu’s SC and SV Comments, SC and SV Rebuttal Comments, and Pre-Prelim Comments.

<sup>36</sup> GNI is GDP plus net receipt of primary income (compensation of employees and property income) from nonresident sources. See Policy Bulletin 04.1.

<sup>37</sup> See *Jiaying Brother Fastener Co. v. United States*, 961 F. Supp. 2d 1323, 1329 (CIT 2014).

<sup>38</sup> See Request for Surrogate Country and Surrogate Value Comments.

<sup>39</sup> See *Certain Fabricated Structural Steel from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 84 FR 47491 (September 10, 2019) (*FSS from China Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM) at 10, unchanged in *Certain Fabricated Structural Steel From the People’s Republic of China: Final Affirmative*

Information on the record indicates that all six countries, Brazil, Bulgaria, Russia, Mexico, Malaysia, and Turkey, are exporters of the merchandise covered by the Harmonized Tariff Schedule numbers identified in the scope of this investigation.<sup>40</sup> Accordingly, we preliminarily find that all six countries, Brazil, Bulgaria, Russia, Mexico, Malaysia, and Turkey, 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.

### 3. Data Availability

If more than one potential surrogate country satisfies the statutory requirements for selection as the primary surrogate country, Commerce selects the primary surrogate country based on SV data availability and reliability.<sup>41</sup> 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.<sup>42</sup> There is no hierarchy among these criteria.<sup>43</sup> It is Commerce's practice to carefully consider the available evidence in light of the particular facts regarding the industry under consideration when undertaking its analysis.<sup>44</sup>

Parties have placed on the record complete SV data for Mexico and Turkey and limited SV data for Malaysia.<sup>45</sup> Complete SV data for the other countries on the list (*i.e.*, Brazil, Bulgaria, and Russia), are not on the record, nor has any party argued in favor of using SV data from any of these countries to value FOPs. Therefore, we have not further considered relying on these other countries as the primary surrogate country in this investigation.

The petitioner argues that we should use Trade Data Monitor (TDM) or Global Trade Atlas (GTA) data from Mexico and financial statements for a Mexican company to value the respondents' FOPs, while the mandatory respondents argue that Commerce should use GTA or UN Comtrade Export Data from Turkey and financial statements for a Turkish company to value FOPs.

We preliminarily determine that Mexican SV data are the best available SV data on the record, and overall best meets our selection criteria, and, for these reasons, we are selecting Mexico as the primary surrogate country for this preliminary determination. We find that the GTA Mexico import data are more specific (at the eight-digit HTS level) and better meet our selection criteria

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*Determination of Sales at Less Than Fair Value*, 85 FR 5376 (January 30, 2020) (*FSS From China Final Determination*), and accompanying Issues and Decision Memorandum (IDM) at Comment 2.

<sup>40</sup> See Petitioner's SC Comments at 2-4 and Exhibits 1 and 2; Huaxing's SC and SV Comments at 2 and Exhibit SV-1; Qixia Changyu's SC and SV Rebuttal Comments at 2 and Exhibit 1; and Petitioner's Final SC and SV Comments at 2-4 and Exhibit 1.

<sup>41</sup> See Policy Bulletin 04.1.

<sup>42</sup> *Id.*

<sup>43</sup> See, e.g., *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006), and accompanying IDM at Comment 1.

<sup>44</sup> See Policy Bulletin 04.1.

<sup>45</sup> See Petitioner's SC Comments, Initial SV Comments, and Final SC and SV Comments; Huaxing's SC and SV Comments; and Qixia Changyu's SC and SV Comments.

for valuing FOPs and no less specific, for the primary inputs, than the GTA Turkey import data provided to value Qixia Changyu's FOPs. Although Qixia Changyu contends that GTA Mexico import data are distorted and unreliable; there is no record evidence detailing what values are distorted or by how much the values may be distorted. Moreover, we find that the 2018 Mexican financial statements for Vitro, S.A.B. de C.V. (Vitro) are the only complete and useable financial statements on the record.<sup>46</sup> The Turkish financial statements for Denizli Cam Sanayii Ve Ticaret A.S. (DSC) cover a period further from the POI than the periods covered by any of the other financial statements on the record and do not include an auditor's report.<sup>47</sup> The Turkish financial statements for Anadolu Cam Sanayii A.S. (ACS) are consolidated statements which reflect significant production outside of Turkey and are without any segmented information for Turkey. We have declined to rely on financial statements with similar issues in the past.<sup>48</sup> Additionally, there are no complete Malaysian financial statements on the record; only an incomplete financial report regarding Malaya Glass Products SDN. For these reasons, we have declined to further consider Malaysia as the primary surrogate country.

Therefore, for the reasons outlined above, Commerce preliminarily determines, pursuant to section 773(c)(4) of the Act, that it is appropriate to use Mexico as the primary surrogate country because: (1) Mexico is at the same level of economic development as China; (2) Mexico is a significant producer of merchandise comparable to the subject merchandise; and (3) the Mexican SV data on the record is the best available data for valuing FOPs. Therefore, Commerce has used Mexico data, where appropriate, to value the respondents' FOPs. For a detailed discussion of the SVs used in this LTFV investigation, *see* the "Factor Valuation" section of this memorandum below and the Preliminary SV Memorandum.<sup>49</sup>

### 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.<sup>50</sup> In the *Initiation Notice*, Commerce notified parties of the application process by which exporters may obtain separate rate status in an NME proceeding.<sup>51</sup> 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

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<sup>46</sup> See Petitioner's Initial SV Comments.

<sup>47</sup> See Qixia Changyu's SC and SV Comments.

<sup>48</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 35616 (July 27, 2018), and accompanying IDM at Comment 10.

<sup>49</sup> See Memorandum, "Less-Than-Fair-Value Investigation of Certain Glass Containers from the People's Republic of China: Surrogate Value Memorandum for the Preliminary Determination," dated concurrently with this memorandum (Preliminary SV Memorandum).

<sup>50</sup> See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 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).

<sup>51</sup> See *Initiation Notice*, 84 FR at 56178.

entitled to a separate, company-specific rate, Commerce analyzes each exporting entity in a NME country under the test established in *Sparklers*,<sup>52</sup> as amplified by *Silicon Carbide*.<sup>53</sup> 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 the company is independent from government control.<sup>54</sup>

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 the export activities of companies; and (3) other formal measures by the government decentralizing control over the export activities of companies.<sup>55</sup>

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 (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.<sup>56</sup>

Commerce continues to evaluate its practice with regard to its separate rates analysis in light of the *Diamond Sawblades from China* AD proceeding, and Commerce's determinations therein.<sup>57</sup> In particular, we note that in litigation involving the *Diamond Sawblades from China* AD 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.<sup>58</sup> We have concluded that, where a government entity

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<sup>52</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).

<sup>53</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

<sup>54</sup> 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).

<sup>55</sup> See *Sparklers*, 56 FR at 20589.

<sup>56</sup> 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*).

<sup>57</sup> See *Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from 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 Enforcement and Compliance's 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 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.

<sup>58</sup> 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

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 a majority shareholder of a company, 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, in our separate rates analysis in this investigation.

#### D. Separate Rate Recipients

As noted above, we received timely SRAs from 60 companies. Our analysis of those SRAs is below.

##### 1. Wholly Foreign-Owned Companies

Five companies, Photo USA Electronic Graphic Inc. (Photo USA), Sinoglass Housewares Co., Ltd. (Sinoglass), Yamamura Glass Qinhuangdao Co., Ltd. (YGQ), Fengyang Huazhong Glass Co., Ltd. (Fengyang), and Wuxi Huazhong Glass Co., Ltd. (Wuxi Huazhong), reported that they are wholly foreign-owned by a company and/or individual located in an ME country.<sup>59</sup> We find that because Photo USA, Sinoglass, and YGQ are wholly foreign-owned, and we have no evidence indicating that the Chinese government controls these companies' export activities, an analysis of the *de jure* and *de facto* criteria is not necessary to determine whether these three companies are independent from government control.<sup>60</sup> Therefore, we are preliminarily granting a separate rate to Photo USA, Sinoglass, and YGQ. As explained below, we did not grant a separate rate to Fengyang or Wuxi Huazhong because these companies failed to file Q&V questionnaire responses.

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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).

<sup>59</sup> See Photo USAs Letter, "Certain Glass Containers from the People's Republic of China: Case No. A-570-114: Separate Rate Application, dated November 27, 2019; Sinoglass' Letter, "Certain Glass Containers from China; A-570-114; Separate Rate Application," dated November 27, 2019; and YGQ's Letter, "Certain Glass Containers from China (A-570-114, C-570-115) Request for Business Proprietary Document of Separate Rate Application," dated November 26, 2019.

<sup>60</sup> 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).

## 2. Wholly China-Owned Companies and Joint Ventures

We received SRAs from 55 exporters<sup>61</sup> and the mandatory respondents Huaxing and Qixia Changyu, which reported that they are either wholly Chinese-owned companies or Chinese joint-stock limited companies. In accordance with Commerce's practice, we analyzed whether these companies demonstrated an 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 the export activities of companies; and (3) other formal measures by the government decentralizing control over the export activities of companies.<sup>62</sup>

We preliminarily find an absence of *de jure* government control for Huaxing, Qixia Changyu, and the other 52 companies identified above based on record evidence showing the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and

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<sup>61</sup> These companies are: (1) Anhui Longrui Glass Co., Ltd. (Anhui Longrui); (2) Golden Ace Industrial Co., Ltd. (Golden Ace); (3) Happyann Crafts Int'l Co., Ltd. (Happyann); (4) Hongkong Happyann Trading Company Limited, (HK Happyann); (5) Meridian International Ltd.; (6) Qingdao Gemmy Imp. & Exp. Co., Ltd. (Qingdao Gemmy); (7) Qingdao Huoyan Phoenix Import & Export Co., Ltd. (Phoenix); (8) Shandong Changshengtai Glass Products Co., Ltd. (Changshengtai); (9) Shandong Dingxin Electronic Glass Group Co., Ltd. (Dingxin); (10) Shandong Excel Light Industrial Products Co., Ltd. (Shandong Excel); (11) Shandong Glassware Corporation (Shandong Glassware); (12) Shandong Heishan Glass Group Co., Ltd. (Heishan Glass); (13) Shandong Honghan International Trading Co., Ltd. (Honghan); (14) Shandong Huapeng Glass Co., Ltd. (Huapeng); (15) Shandong Injoy Houseware Co., Ltd. (Shandong Injoy); (16) Shandong Jiaye General Merchandise Co., Ltd. (Shandong Jiaye); (17) Shandong Pharmaceutical Glass Co., Ltd. (Shandong Pharmaceutical); (18) Shandong Shine Chin Glassware Co., Ltd. (Shine Chin); (19) Shandong Top-Peak Enterprise Co., Ltd. (Shandong Top-Peak); (20) Shandong Wenbao Technology Products Co., Ltd. (Wenbao); (21) Xuzhou Credible Glass Products Co., Ltd. (Xuzhou Credible); (22) Xuzhou Das Packing Solutions Co., Ltd. (Xuzhou Das Packing); (23) Xuzhou Huihe International Trade Co., Ltd. (Xuzhou Huihe); (24) Zibo Ace International CO., Ltd. (Zibo Ace); (25) Zibo Anto Glass Industry Co., Ltd. (Zibo Anto); (26) Zibo Comm-Mountain Glassware Co., Ltd. (Comm-Mountain); (27) Zibo Creative International Trade Co., Ltd. (Zibo Creative); (28) Zibo Derola Houseware Co., Ltd. (Zibo Derola); (29) Zibo E&T General Merchandise Co., Ltd. (Zibo E&T); (30) Zibo Fecund Trading Co., Ltd. (Zibo Fecund); (31) Zibo Fortune Trading Co., Ltd. (Fortune); (32) Zibo Grandeur Light Industrial Products Co., Ltd. (Grandeur); (33) Zibo Green Light Industrial Co., Ltd. (Green Light); (34) Zibo Hicheon Homeware Corp., Ltd. (Hicheon); (35) Zibo Intrue Light Industrial Products Co., Ltd. (Intrue Light); (36) Zibo Lijiang Light Industrial Products Co., Ltd. (Zibo Lijiang); (37) Zibo Lucky Ship International Trading Co., Ltd. (Lucky Ship); (38) Zibo Meienlanda International Trading Co., Ltd. (Zibo Meienlanda); (39) Zibo Melory Import & Export Trade Co., Ltd. (Zibo Melory); (40) Zibo Modern International Co., Ltd. (Zibo Modern); (41) Zibo Redisland General Merchandise Co., Ltd. (Zibo Redisland); (42) Zibo Sailing Pacific Import and Export Co., Ltd. (Zibo Sailing); (43) Zibo Shelley Trading Co., Ltd. (Zibo Shelley); (44) Zibo Sunfect International Trade Co., Ltd. (Zibo Sunfect); (45) Zibo Top Arts Co., Ltd. (Top Arts); (46) Zibo Top Glass Industry Co., Ltd (Zibo Top-Glass); (47) Zibo Top-Peak Enterprises Ltd. (Zibo Top-Peak); (48) Zibo Truely Light Industrial Products Co., Ltd. (Zibo Truely); (49) Zibo Uni-Shine Industry Co., Ltd (Uni-Shine); (50) Zibo Yadong Import and Export Trade Co., Ltd. (Zibo Yadong); (51) Zibo Yuedai Shangmao Company Ltd. (Zibo Yuedai); and (52) Zibo Zhaohai Light Industrial Products Co., Ltd. (Zibo Zhaohai).

<sup>62</sup> See *Sparklers*, 56 FR at 20589.

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.<sup>63</sup>

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 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.<sup>64</sup> Commerce has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude Commerce from assigning them separate rates.

We preliminarily find an absence of *de facto* government control for Huaxing, Qixia Changyu, and the 52 exporters identified above based on record evidence 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 the disposition of profits or the financing of losses.<sup>65</sup>

Because record evidence demonstrates both an absence of *de jure* and *de facto* government control, under the criteria identified in *Sparklers* and *Silicon Carbide*,<sup>66</sup> for Huaxing, Qixia Changyu, and the 52 exporters identified above, we are preliminarily granting each of them separate rates status.

E. Companies Not Receiving a Separate Rate

In the *Initiation Notice*, Commerce explained that it:

requires that companies from China submit a response to both the Q&V questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.<sup>67</sup>

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<sup>63</sup> See SRAs referenced above in the “Background” section of this memorandum.

<sup>64</sup> See *Silicon Carbide*, 59 FR at 22586-87; and *Furfuryl Alcohol*, 60 FR at 22545.

<sup>65</sup> See SRAs and SRA supplemental questionnaire responses referenced above in the “Background” section of this memorandum.

<sup>66</sup> See *Sparklers*, 56 FR at 20589; and *Silicon Carbide*, 59 FR at 22586-89.

<sup>67</sup> See *Initiation Notice*, 84 FR at 56178.

Fengyang, Shandong Sanhui Glass Co., Ltd. (Sanhui), Wuxi Huazhong, and Zibo New Spark Commerce Co., Ltd. (New Spark) failed to file a Q&V questionnaire response and therefore we are preliminarily not granting these companies a separate rate.

In addition, we preliminarily determine that the information provided by Sichuan Yibin Global Group CO., Ltd. (Yibin Global),<sup>68</sup> the nature of which is proprietary, does not demonstrate a *de facto* absence of government control with respect to this company. Therefore, we are preliminarily not granting Yibin Global a separate rate.<sup>69</sup>

#### F. Dumping 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).<sup>70</sup> 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.<sup>71</sup> 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.<sup>72</sup>

We calculated above *de minimis* weighted-average dumping margins for both of the mandatory respondents. Therefore, consistent with our practice described above, we based the preliminary dumping margin for the separate rate recipients not individually examined on an average of the weighted-average dumping margins calculated for the individually-examined respondents.<sup>73</sup>

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<sup>68</sup> See Yibin Global's Letter, "Certain Glass Containers from the People's Republic of China: Case No. A-570-114: Yibin Global's Separate Rate Application," dated November 20, 2020.

<sup>69</sup> See Memorandum "Preliminary Separate Rates Analysis of Sichuan Yibin Global Group Co., Ltd. in the Antidumping Duty Investigation of Certain Glass Containers From the People's Republic of China", dated concurrently with this memorandum.

<sup>70</sup> 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).

<sup>71</sup> See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying IDM at Comment 16.

<sup>72</sup> See section 735(c)(5)(B) of the Act.

<sup>73</sup> See Memorandum, "Antidumping Duty Investigation of Certain Glass Containers from the People's Republic of China: Preliminary Determination Margin Calculation for Separate Rate Companies," dated concurrently with this memorandum; see also, 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."

## G. Combination Rates

In the *Initiation Notice*, Commerce informed parties that it would calculate combination rates for respondents that are eligible for separate rates in this investigation.<sup>74</sup> This practice is described in Policy Bulletin 05.1.<sup>75</sup>

## H. The China-Wide Entity

For the reasons discussed below, we have preliminarily based the dumping margin for the China-wide entity, which includes Fengyang, Sanhui, Wuxi Huazhong, Yibin Global, and New Spark, on adverse facts available (AFA).

### 1. Statutory Framework

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 section 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 with 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 from that party, 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.

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<sup>74</sup> See *Initiation Notice*, 84 FR 56174.

<sup>75</sup> See Policy Bulletin No. 05.1 Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005) (Policy Bulletin 05.1) available on Commerce's website at <https://enforcement.trade.gov/policy/bull05-1.pdf>.

## 2. Use of Facts Available

Commerce issued Q&V questionnaires to 48 exporters/producers of glass containers in China but only received responses to the Q&V questionnaire from 8 of these companies.<sup>76</sup> We confirmed receipt that 36 companies received our Q&V questionnaire. The companies that received a Q&V questionnaire but did not respond are not eligible for separate rate status, and are part of the China-wide entity. Thus, the China-wide entity withheld information requested by Commerce, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested Q&V information. Moreover, necessary Q&V information is not available on the record because of these non-responsive companies. Accordingly, we preliminarily determine that use of facts available is warranted in determining the dumping margin of the China-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.<sup>77</sup>

## 3. Use of Adverse Inferences

Section 776(b) of the Act provides that Commerce, in selecting from among the facts otherwise available, may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Given the China-wide entity's failure to provide the requested information, it is reasonable to conclude that the China-wide entity was not cooperative.<sup>78</sup> The companies that did not respond to the Q&V questionnaire did not indicate they were having difficulty providing the requested information, nor did they request to submit the information in an alternate form. Therefore, we preliminarily find that an adverse inference is warranted in selecting from among the facts otherwise available with respect to the China-wide entity in accordance with section 776(b) of the Act and 19 CFR 351.308(a).<sup>79</sup>

## 4. Selection and Corroboration of the AFA Rate

As noted above, relying on an adverse inference in selecting from the facts available 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. Section 776(c) of the Act provides that when Commerce relies on secondary information (such as the Petition) in making an adverse inference, rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, that information from independent

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<sup>76</sup> See Memorandum, "Antidumping Duty Investigation of Certain Glass Containers from the People's Republic of China: Delivery of Quantity and Value Questionnaires," dated November 20, 2019.

<sup>77</sup> See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

<sup>78</sup> 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.")).

<sup>79</sup> See *Nippon Steel*, 337 F. 3d at 1382-83.

sources that are reasonably at its disposal. Secondary information is defined as information derived from the Petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>80</sup> The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information used has probative value.<sup>81</sup> To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information upon which it is basing the AFA dumping margin, although Commerce is not required to estimate what the dumping margin of an uncooperative interested party would have been if the interested party failing to cooperate had cooperated or to demonstrate that the AFA dumping margin used for the uncooperative party reflects an “alleged commercial reality” of the party.<sup>82</sup> Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of an antidumping proceeding when applying an adverse inference, including the highest of such margins.<sup>83</sup> If Commerce is unable to corroborate the highest petition margin using individual-transaction specific margins; Commerce may use the component approach.<sup>84</sup>

Specifically, in attempting to corroborate the petition margin, we compared the highest petition rate of 255.68 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 255.68 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 that we were able to corroborate the highest petition margin of 255.68 percent through this component approach. Specifically, Commerce finds that NVs and net U.S. prices calculated for the respondents are within the range of the NVs and net U.S. prices underlying the highest margin alleged in the Petition.<sup>85</sup> Because we were able to corroborate the highest dumping margin contained in the Petition, we assigned to the China-wide entity a dumping margin of 255.68 percent. Accordingly, we have corroborated the Petition margin to the extent practicable within the meaning of section 776(c) of the Act.

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<sup>80</sup> See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA), at 870.

<sup>81</sup> *Id.*; see also 19 CFR 351.308(d).

<sup>82</sup> See section 776(d)(3) of the Act; also 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).

<sup>83</sup> See section 776(d)(1)-(2) of the Act.

<sup>84</sup> See *Polyester Textured Yarn from India: Final Determination of Sales at Less Than Fair Value*, 84 FR 63843 (November 19, 2019), and accompanying IDM at Comment 7

<sup>85</sup> See Memorandum, “Corroboration of the Adverse Facts Available Rate for the Preliminary Determination in the Antidumping Duty Investigation of Certain Glass Containers from the People’s Republic of China,” dated concurrently with this memorandum.

## I. Date of Sale

Section 351.401(i) of Commerce’s regulations provides that Commerce will normally use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business, as the date of sale of the subject merchandise unless it determines that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>86</sup> Mandatory respondents Huaxing and Qixia Changyu reported the invoice date as the date of sale. Because record evidence does not indicate that a different date better reflects the date on which the mandatory respondents established the material terms of sale, we are preliminarily using the date of invoice as the date of sale for all of the mandatory respondents’ reported U.S. sales.<sup>87</sup>

## J. Fair Value Comparisons

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether the mandatory respondents sales of the subject merchandise to the United States were made at less than NV, we compared export price (EP) to NV as described in the “Export Price” and “Normal Value” sections below.

### 1. 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 constructed export prices (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 Commerce 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.<sup>88</sup> 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

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<sup>86</sup> 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)).

<sup>87</sup> See Huaxing CQR at 7-8; and Qixia Changyu CDQR at 16-17.

<sup>88</sup> 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).

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.

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.<sup>89</sup>

## 2. Results of the Differential Pricing Analysis

A total of 20.50 percent of Huaxing's EP sales pass the Cohen's *d* test, which does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods.<sup>90</sup> Thus, the results of the Cohen's *d* test do not support consideration of an alternative comparison method. Accordingly, we preliminarily determine to use the average-to-average comparison method for all U.S. sales to calculate the weighted-average dumping margin for Huaxing.

A total of 57.70 percent of Qixia Changyu's EP sales pass the Cohen's *d* test, which confirms the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods.<sup>91</sup> However, we find that there is not a meaningful difference in the weighted-average dumping margins calculated using the average-to-average comparison method and the mixed comparison method when both methods are applied to all

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<sup>89</sup> 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.

<sup>90</sup> *See* Memorandum, "Preliminary Analysis Memorandum for Huaxing" dated concurrently with this memorandum.

<sup>91</sup> *See* Memorandum, "Preliminary Analysis Memorandum for Qixia Changyu," dated concurrently with this memorandum.

sales.<sup>92</sup> Accordingly, we preliminarily determine to use a mixed comparison method for all U.S. sales to calculate the weighted-average dumping margin for Qixia Changyu.

#### K. Export Price

In accordance with section 772(a) of the Act, we used an EP methodology for all sales made by Huaxing and Qixia Changyu during the POI because they sold subject merchandise 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.

We based EPs on the prices for packed subject merchandise that the mandatory respondents charged to unaffiliated customers in the United States. We made adjustments to those prices, where appropriate, for billing adjustments associated with change orders. We also deducted from those prices, where appropriate, movement expenses (*i.e.*, foreign inland freight, foreign inland insurance, foreign brokerage and handling, marine insurance, international freight, and U.S. customs duties) 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.<sup>93</sup>

#### L. Value Added Tax (VAT)

Commerce's recent practice in NME cases is to adjust EP (or the CEP) for the amount of any unrefunded, (herein irrecoverable) VAT in certain NMEs in accordance with section 772(c)(2)(B) of the Act.<sup>94</sup> In changing the practice, Commerce explained that, when an NME government imposes an export tax, duty, or other charges on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, Commerce will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty, or charge paid, but not rebated.<sup>95</sup> Where the irrecoverable VAT is a fixed percentage of EP or CEP, Commerce explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. EP or CEP downward by this same percentage.<sup>96</sup>

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 by the amount determined in step one. Record information indicates that there was no difference between the standard VAT rates and the refund rates during the POI and thus no irrecoverable VAT.<sup>97</sup> Hence, no reduction of EPs for VAT is necessary.

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<sup>92</sup> *Id.*

<sup>93</sup> See the "Factor Valuation Methodology" section of this memorandum below.

<sup>94</sup> See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012).

<sup>95</sup> See *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) and accompanying IDM at Comment 5.A.

<sup>96</sup> *Id.*

<sup>97</sup> See Huaxing CQR at 26-28 and Exhibits C-6, C-7, and C-8; and Qixia Changyu CDQR at 39-41 and Exhibits C-3, C-4, and C-5.

## M. Normal Value

Section 773(c)(1) of the Act provides that Commerce shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home market prices, third-country prices, or constructed value under section 773(a) of the Act. Commerce bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under Commerce's normal methodologies.<sup>98</sup> 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.<sup>99</sup> Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), we calculated NV in this investigation by valuing FOPs with SVs as discussed below.

### 1. Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV by summing the cost of the FOPs reported by Huaxing and Qixia Changyu with surrogate factory overhead costs, selling, general and administrative (SG&A) expenses, and profit. To calculate the cost of FOPs, we multiplied the reported per-unit consumption rates for inputs, including materials, by publicly available SVs. In accordance with section 773(c)(1) of the Act, we used the best available information on the record for valuing FOPs by selecting, to the extent practicable, SVs which are: (1) broad market averages, (2) product-specific, (3) tax-exclusive, non-export average values, and (4) contemporaneous with, or closest in time to, the POI.<sup>100</sup> As appropriate, we adjusted FOP costs by including freight costs to make them delivered values. Specifically, we added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier of the input to the respondent's factory or the distance from the nearest seaport to the respondent's factory.<sup>101</sup> A detailed description of the SVs used can be found in the Preliminary SV Memorandum.<sup>102</sup>

#### a. Direct and Packing Materials

We valued direct and packing materials using Mexican import data, as published by GTA, and other publicly available Mexican sources of data, where necessary. Mexican import data, as well

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<sup>98</sup> See, e.g., *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19703 (April 17, 2006), unchanged in *Lined Paper from China*.

<sup>99</sup> See sections 773(c)(3)(A)-(D) of the Act.

<sup>100</sup> See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

<sup>101</sup> See, e.g., *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407-08 (Fed. Cir. 1997).

<sup>102</sup> See Memorandum, "Preliminary Determination in the Antidumping Duty Investigation of Certain Glass Containers from the People's Republic of China: Surrogate Value Memorandum," dated concurrently with this memorandum (Preliminary SV Memorandum).

as data from other Mexican sources, are broad market averages, product-specific, tax-exclusive, and generally contemporaneous with the POI.<sup>103</sup> In those instances where we could not obtain SVs contemporaneous with the POI with which to value FOPs, we adjusted the SVs, where appropriate, Mexico's consumer price index or producer price index as published in the International Monetary Fund's International Financial Statistics.

We disregarded certain Mexican import data when calculating SVs. Specifically, pursuant to section 773(c)(5) of the Act and Commerce's long-standing practice, we disregarded certain import values for which there was a reason to believe or suspect the source data may comprise subsidized prices.<sup>104</sup> In this regard, Commerce previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because Commerce determined that these countries maintain broadly available, non-industry specific export subsidies.<sup>105</sup> Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POI, we find that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Therefore, we have not used prices from these countries in calculating the Mexican import-based SVs. Additionally, when calculating Mexican import-based per-unit SVs, we disregarded data from NME countries<sup>106</sup> and imports labeled as originating from an "unidentified" country because we could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.<sup>107</sup>

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities and pays for the inputs in an ME currency, Commerce uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.<sup>108</sup> Where Commerce finds ME purchases to be of significant quantities (*i.e.*, 85 percent or more of total purchases of the input), in accordance with the statement of policy as outlined in *Market Economy Inputs*,<sup>109</sup> Commerce uses the actual purchase prices to value the inputs. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 85 percent of its total volume of

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<sup>103</sup> See Preliminary SV Memorandum.

<sup>104</sup> See section 773(c)(5) of the Act (permitting Commerce to disregard prices or costs without further investigation if it determines that certain subsidies exist with respect to those values).

<sup>105</sup> See, e.g., *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination; 2011-2012*, 78 FR 42492 (July 16, 2013), and accompanying IDM at 7-19; *Certain Lined Paper Products from Indonesia: Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 76 FR 73592 (November 29, 2011), and accompanying IDM at 1; *Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 46770 (August 11, 2014), and accompanying IDM at 4; and *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013), and accompanying IDM at IV.

<sup>106</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China*, 69 FR 75294, 75301 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005).

<sup>107</sup> *Id.*

<sup>108</sup> See, e.g., *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

<sup>109</sup> See *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013) (*Market Economy Inputs*).

purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the purchase prices, Commerce will typically weight-average the ME purchase prices with an appropriate SV, according to their respective shares of the total volume of purchases.<sup>110</sup> When a firm's ME purchases may have been based on dumped or subsidized sales, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, Commerce will exclude them from its calculation to determine whether there were significant quantities of ME purchases (the 85 percent threshold).<sup>111</sup> Where either of the mandatory respondents purchased inputs that were produced in ME countries from ME suppliers and paid for the inputs in a ME currency, we valued those inputs in accordance with 19 CFR 351.408(c).

b. Energy

We valued water using data from Datos Abiertos, valued electricity using the World Bank's *Doing Business 2020: Mexico* publication, valued natural gas using the U.S. Energy Information Administration's Mexico natural gas imports statistics, and valued petroleum coke, coal, diesel, ethylene tar, and bio-mass fuel using Mexican import data published by GTA.<sup>112</sup>

c. Labor

In *Labor Methodologies*,<sup>113</sup> Commerce determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country. Commerce does not, however, preclude the use of other sources for valuing labor. Rather, we continue to follow our practice of selecting the best available information. Here we valued labor using industry-specific labor data from the Bureau of Labor Statistics, within the "Manufacturing HR Compensation" series for the "other nonmetallic mineral products" industry, and find no record evidence that the labor data include taxes similar to VAT or excise tax. We inflated these rates because they were not contemporaneous with the POI.<sup>114</sup>

d. Movement Services

As appropriate, we added certain movement expenses to the SVs used to value direct and/or packing materials and subtracted certain movement expenses from the reported gross unit U.S. sales prices. We based inland truck freight rates and brokerage and handling rates on data from the World Bank's *Doing Business 2020: Mexico* publication. We valued marine insurance using a January through June 2019 rate.<sup>115</sup> We based rail freight on the OECD publication *Freight Railway Development in Mexico*.<sup>116</sup> Because this rate is from 2012, we inflated this rate using the Producer Price Index.<sup>117</sup> We based ocean freight rates on Maersk rates. These rates are

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

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

<sup>112</sup> See Preliminary SV Memorandum.

<sup>113</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

<sup>114</sup> See Preliminary SV Memorandum.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

publicly available and cover a specific route and the period January through June 2019.<sup>118</sup> Because there are no SVs for barge transportation on the record, we based the barge rate on the ocean freight rate.

e. Financial Ratios

According to 19 CFR 351.408(c)(4), Commerce is directed to value overhead, SG&A expenses, and profit using non-proprietary information gathered from producers of merchandise that is identical or comparable to the merchandise under consideration in the surrogate country. Commerce's preference is to derive surrogate overhead expenses, SG&A expenses, and profit using financial statements covering a period that is contemporaneous with the POI,<sup>119</sup> that show a profit, from companies with a production experience similar to respondents' production experience, and that are not distorted or otherwise unreliable, such as financial statements that indicate the company received subsidies.<sup>120</sup>

The record contains financial statements for one company in Mexico, Vitro.<sup>121</sup> The financial statements on the record for this company cover 2018, which is close in time with the POI (no financial statements on the record for any of the potential surrogate countries overlap with the POI), show a profit, are for a company that produces merchandise identical to subject merchandise, and are not distorted or otherwise unreliable due to countervailable subsidies or the financial condition of the company. Therefore, we calculated surrogate financial ratios using Vitro's financial statements.

## VIII. CURRENCY CONVERSION

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

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

In applying section 777A(f) of the Act, Commerce examines: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise; (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period; and (3) whether Commerce can reasonably estimate the extent to which that countervailable subsidy,

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

<sup>119</sup> See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010-2011*, 78 FR 17350 (March 21, 2013), and accompanying IDM at Comment 1.

<sup>120</sup> See *Hand Trucks and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 28801 (May 16, 2013), and accompanying IDM at Comment 2; *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 78 FR 5414 (January 25, 2013), and accompanying IDM at Comment 1.

<sup>121</sup> *Id.*

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.<sup>122</sup> 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.<sup>123</sup> 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 totality of facts on the administrative record for that segment of the proceeding as required by the statute.<sup>124</sup>

Our analysis shows that while countervailable subsidies have been provided with respect to glass containers, we have not found a general decrease in the U.S. average import price during the relevant period. Section 777A(f) of the Act requires Commerce to determine whether such countervailable subsidies have been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period. To make this determination, we normally examine the preliminary report issued by the ITC.<sup>125</sup> In that report the ITC concluded that “{i}n general, prices increased during January 2016 to June 2019.”<sup>126</sup> In particular, the ITC preliminary report shows an upward movement in prices during the POI. Based on this information, we preliminarily find that import prices of the class or kind of merchandise at issue during the relevant period increased. Based on these data, we do not find a general decrease in the U.S. average import price during the relevant period. Thus, we preliminarily find that the requirement under section 777A(f)(1)(B) of the Act has not been met; and hence we did not make an adjustment under section 777A(f) of the Act to Qixia Changyu or Huaxing’s AD cash deposit rate or to the AD cash deposit rate of the companies that are not being individually examined but that preliminarily are being granted separate-rate status.

## **X. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES**

In an AD investigation with a companion CVD investigation, it is Commerce’s practice to adjust the AD cash deposit rates for any related export subsidies found in the companion CVD investigation. Doing so is in accordance with section 772(c)(1)(C) of the Act, which provides

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<sup>122</sup> See section 777A(f)(1)(A)-(C) of the Act.

<sup>123</sup> See sections 777A(f)(1)-(2) of the Act.

<sup>124</sup> 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 Determination of Critical Circumstances, in Part*, 82 FR 28629 (June 23, 2017), and accompanying PDM at 43, unchanged in *Certain Hardwood Plywood Products from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 53460 (November 16, 2017).

<sup>125</sup> See, e.g., *Forged Steel Fittings from the People’s Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 83 FR 22948 (May 17, 2018), and accompanying PDM at section “IX. Adjustment Under Section 777A(f) of the Act,” unchanged in *Forged Steel Fittings from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 50339 (October 5, 2018).

<sup>126</sup> See *ITC Preliminary Determination* at V-14, tables V-3, V-5, and V-7.

that U.S. price “shall be increased by the amount of any countervailing duty imposed on the subject merchandise ... to offset an export subsidy.”<sup>127</sup>

In the preliminary determination for the companion CVD investigation, Commerce found that both Qixia Changyu and Huaxing benefitted from export subsidies.<sup>128</sup> Accordingly, we adjusted the AD cash deposit rates by 10.54 percent for these export subsidies.

## XII. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

4/22/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

<sup>127</sup> See *FSS from China Preliminary Determination*, unchanged in *FSS from China Final Determination*.

<sup>128</sup> See *Glass Containers from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 85 FR 12256 (March 2, 2020), and accompanying PDM.