



A-570-124
Investigation
POI: 07/01/2019 – 12/31/2019
Public Document
E&C/OII: WH/BAL

DATE: October 14, 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 Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that certain vertical shaft engines between 99 cc and up to 225cc, and parts thereof (small vertical engines) 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 period of investigation (POI) is July 1, 2019 through December 31, 2019. The estimated margins of sales at LTFV are shown in the accompanying *Federal Register* notice.

II. BACKGROUND

On March 18, 2020, Commerce received antidumping duty (AD) and countervailing duty (CVD) petitions concerning imports of small vertical engines from China, filed in proper form on behalf of Briggs & Stratton Corporation (the petitioner).¹ Commerce published the initiation of this investigation on April 14, 2020.²

In the *Initiation Notice*, Commerce notified the public that we would select the companies required to respond to our AD questionnaire using data collected via “quantity and value”

¹ See Petitioner’s Letter, “Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China,” dated March 18, 2020 (the Petition).

² See *Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof from the People’s Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 85 FR 20670 (April 14, 2020) (*Initiation Notice*).



(Q&V) questionnaires.³ 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 small vertical engines to be reported in response to Commerce’s AD questionnaire.⁴ From May through August 2020, we received comments from certain interested parties on the scope of this investigation as it appeared in the *Initiation Notice*.⁵ For further discussion of these comments, *see* the “Scope Comments” section below.

In May 2020, the U.S. International Trade Commission (ITC) determined that there is a reasonable indication that an industry in the United States was materially injured by reason of imports of small vertical engines from China.⁶

A. Respondent Selection

As noted above, in the *Initiation Notice*, Commerce notified the public that we would select the companies required to respond to our AD questionnaire using data collected via Q&V questionnaires.⁷ In the *Initiation Notice*, we also stated that separate rate applications (SRAs) would be due 30 days after publication of the notice, which fell on May 14, 2020.⁸ On April 9, 2020, we issued the Q&V questionnaire to interested parties.⁹ On April 14, 2020, we issued a memorandum clarifying that we were sending the Q&V questionnaire to the largest ten publicly-identifiable exporters of small vertical engines under United States Harmonized Tariff Schedule (HTSUS) code 8407.90.1010 in China, according to data obtained from U.S. Customs and

³ *See Initiation Notice*, 85 FR at 20673.

⁴ *Id.* at 20671.

⁵ *See* Changzhou Kawasaki and Kwang Yang Engine Co., Ltd., Kawasaki Heavy Industries, Ltd., and Kawasaki Motors Corp., U.S.A.’s Letter, “Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Scope Comments,” dated May 4, 2020; The Toro Company and Toro Purchasing Company’s (collectively, Toro’s) Letter, “Certain Vertical Shaft Engines Between 99cc and Up To 225cc from the People’s Republic of China: Comments on the Proposed Scope of the Investigations,” dated May 4, 2020; MAT Engine Technologies, LLC’s Letter, “Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Comments on Scope of the Investigations,” dated May 4, 2020; Sumec Hardware and Tools Co., Ltd.’s Letter, “Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof from the People’s Republic of China: Scope Comments,” dated May 4, 2020; Petitioner’s Letter, “Small Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Petitioner’s Rebuttal to the Scope Comments of Toro, Kawasaki, and Sumec,” dated May 21, 2020; Petitioner’s Letter, “Small Vertical Shaft Engines Between 99cc and up to 225cc, and Parts Thereof, from the People’s Republic of China: Petitioner’s Additional Comments on Scope,” dated June 18, 2020; Toro’s Letter, “Certain Vertical Shaft Engines Between 99cc and Up To 225cc from the People’s Republic of China: Response to Petitioner’s Scope Revision Request,” dated June 19, 2020; Petitioner’s Letter, “Small Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof, from the People’s Republic of China: Petitioner’s Revised Additional Comments on Scope,” dated August 7, 2020; Toro’s Letter, “Certain Vertical Shaft Engines Between 99cc and Up To 255cc from the People’s Republic of China: Response to Petitioner’s Revised Additional Comments on Scope,” dated August 7, 2020; and American Honda Motor Co., Inc. and Honda Power Equipment Mfg. Inc.’s Letter, “Certain Vertical Shaft Engines Between 99cc and Up To 225cc and Parts Thereof from the People’s Republic of China: Response to Petitioner’s Revised Additional Comments on Scope,” dated August 11, 2020.

⁶ *See Small Vertical Shaft Engines from China*, Investigations Nos. 701-TA-643 and 731-TA-1493 (Preliminary), ITC Publication 5054 (May 2020).

⁷ *See Initiation Notice*, 85 FR at 20673.

⁸ *Id.*, 85 FR at 20674.

⁹ *See* Commerce’s Q&V Questionnaire, dated April 9, 2020.

Border Protection (CBP).¹⁰ From April 23, 2020 through April 24, 2020, Commerce received timely Q&V responses from four of these companies, as well as 11 additional exporters/producers.¹¹

On April 30, 2020, Commerce limited the number of respondents selected for individual examination to the two largest small vertical engines producers/exporters, by volume, which submitted a Q&V questionnaire response, and we issued the AD questionnaire to them.¹² These companies are Chongqing Kohler Engines Ltd. (Chongqing Kohler)¹³ and Chongqing Zongshen General Power Machine Co., Ltd. (Chongqing Zongshen).¹⁴

B. Questionnaire and Responses

As noted above, on April 30, 2020, we issued the questionnaire to Chongqing Kohler and the Zongshen Companies. We received timely responses to section A of this questionnaire (*i.e.*, the section relating to general information) from Chongqing Kohler in May and from the Zongshen Companies in June.¹⁵

From May 14, 2020 through May 21, 2020, we received timely SRAs from nine companies.¹⁶ In June 2020, the petitioner made timely comments regarding the SRAs of Loncin Motor Co., Ltd.

¹⁰ See Memorandum, “Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof, from the People’s Republic of China: Quantity and Value Questionnaire,” dated April 14, 2020.

¹¹ See Memorandum, “Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof, from the People’s Republic of China: Quantity and Value Delivery Determination,” dated April 27, 2020 (Q&V Delivery Confirmation Memo) at Attachment I. As detailed in this memorandum, Commerce did not receive responses to six Q&V questionnaires. Each of these six companies received the Q&V questionnaire; however, some of these companies refused the delivery of the questionnaire. These companies are, respectively: (1) Chongqing Lifan & Hongda Industry; (2) Lifan Industry (Group) Co., Ltd.; (3) Makita (Kunshan) Co., Ltd.; (4) Ningbo Chariot Industry Trade Co., Ltd.; (5) Shangdong Huasheng Zhongtian Machinery Group Co., Ltd.; and (6) Zhejiang Yaofeng Power Technology Co., Ltd.

¹² See Memorandum, “Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Selection of Mandatory Respondents for Individual Examination,” dated April 30, 2020 (Respondent Selection Memo).

¹³ See Respondent Selection Memo at 1. We note that Commerce selected Chongqing Kohler using the name “Chongqing Kohler YinXiang Ltd.” However, Chongqing Kohler informed us that its name was changed to Chongqing Kohler Engines Ltd. in 2014. See Chongqing Kohler’s May 28, 2020 Initial Section A Questionnaire Response (Chongqing Kohler’s May 28, 2020 AQR).

¹⁴ Chongqing Zongshen subsequently submitted its questionnaire response on a consolidated basis with an affiliated party, Chongqing Dajiang Power Equipment Co., Ltd. (Chongqing Dajiang). Commerce has preliminarily determined that these companies and another affiliate, Chongqing Zongshen Power Machinery Co., Ltd. (Zongshen Power), are affiliated pursuant to section 771(33)(F) of the Act, and that they should be treated as a single entity pursuant to 19 CFR 351.401(f). See “Whether to Collapse Chongqing Zongshen General Power Machine Co., Ltd. and Two Affiliates in the Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China,” dated concurrently with this memorandum (Collapsing Memo). We hereafter refer to the collapsed entity as the Zongshen Companies unless referring to a particular company within the collapsed entity.

¹⁵ See Chongqing Kohler’s May 28, 2020 AQR; and Zongshen Companies’ June 1, 2020 Initial Section A Questionnaire Response (Zongshen Companies’ June 1, 2020 AQR).

¹⁶ For a list of the companies that submitted SRAs, see Appendix III. The mandatory respondents applied for separate rate status as part of their responses to section A of Commerce’s initial antidumping questionnaire.

(Loncin) and Chongqing Rato Technology Co., Ltd. (Chongqing Rato).¹⁷ That same month, both Chongqing Rato and Loncin filed rebuttal comments.¹⁸

Also in May 2020, we received a letter from Chongqing Kohler notifying Commerce that it was having difficulties responding to Commerce’s questionnaire and requesting that Commerce exclude it from reporting certain engine specifications and sales.¹⁹ On May 22, 2020, we granted the request.²⁰ On June 15, 2020, the Zongshen Companies requested that Commerce excuse them from reporting all sales made by Chongqing Dajiang Power Equipment Co., Ltd. (Chongqing Dajiang).²¹ On June 17, 2020, the petitioner filed rebuttal comments regarding the Zongshen Companies’ exclusion request.²² On June 25, 2020, we denied the Zongshen Companies’ request.²³

In June 2020, we received 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 each of the mandatory respondents.²⁴ We also received a response to Appendix XII, related to the existence of double remedies, from Chongqing Kohler and the Zongshen Companies.²⁵

On July 15, 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.²⁶ Based on the request, and pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), on

¹⁷ See Petitioner’s Letter, “Small Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, From the People’s Republic of China: Petitioner’s Comments and Information Regarding the Separate Rate Applications of Loncin Motor Co., Ltd., and Chongqing Rato Technology Co., Ltd.,” dated June 4, 2020.

¹⁸ See Chongqing Rato’s Letter, “Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof from the People’s Republic of China; Submission of Rebuttal Comments and New Factual information to Petitioner’s Comments,” dated June 9, 2020; and Loncin’s Letter, “Loncin Rebuttal Comments: Antidumping Duty Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China,” dated June 15, 2020.

¹⁹ See Chongqing Kohler’s Letter, “Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Notice of Difficulty in Responding to the Department’s Initial Questionnaire,” dated May 14, 2020.

²⁰ See Commerce’s Letter, “Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Request to Be Excused from Reporting Certain Sales and Factors of Production Data,” dated May 22, 2020.

²¹ See Zongshen Companies’ Letter, “Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof from China; AD Investigation; Request for Exclusion of Certain Sales from Reporting Requirement,” dated June 15, 2020.

²² See Petitioner’s Letter, “Small Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, From the People’s Republic of China: Petitioner’s Rebuttal to the Request for Exclusion of Certain Sales Reporting Submitted by Chongqing Zongshen General Power Machine Co., Ltd.,” dated June 17, 2020.

²³ See Commerce’s Letter, “Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Denying Zongshen’s Reporting Exclusion Requests,” dated June 25, 2020.

²⁴ See Kohler’s June 29, 2020 Sections C and D Initial Questionnaire Response (Kohler June 29, 2020 CDQR); Zongshen Companies’ June 29, 2020 Section C Initial Questionnaire Response (Zongshen Companies’ June 29, 2020 CDQR); and Zongshen Companies’ June 29, 2020 Section D Initial Questionnaire Response (Zongshen Companies’ June 29, 2020 DQR).

²⁵ See Kohler June 29, 2020 CDQR at Appendix XII; and Zongshen June 29, 2020 CQR at Appendix XII.

²⁶ See Petitioner’s Letter, “Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Petitioner’s Request for Postponement of the Preliminary Determination,” dated July 15, 2020.

August 5, 2020, Commerce published in the *Federal Register* a postponement of the preliminary determination by 50 days, until no later than October 14, 2020.²⁷

From July 2020 through September 2020, we received comments from the petitioner and the Zongshen Companies regarding the selection of the appropriate surrogate country from which to select surrogate values (SVs) in the investigation,²⁸ as well as affirmative and rebuttal factual information relating to SVs from the relevant countries.²⁹

From July through October 2020, we issued supplemental questionnaires to each of the mandatory respondents (*i.e.*, Chongqing Kohler and the Zongshen Companies), as well as to a number of companies which submitted SRAs. We received timely responses to these supplemental questionnaires during the same time period.³⁰

²⁷ See *Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 85 FR 47357 (August 5, 2020).

²⁸ See Petitioner's Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Petitioner's Comments on Primary Surrogate Country Selection," dated July 10, 2020 (Petitioner's Surrogate Country Comments); Chongqing Zongshen's Letter, "Certain Vertical Shaft Engines Between 99cc and Up to 225, and Parts Thereof, from China; AD Investigation; Chongqing Zongshen Comments on Selection of Primary Surrogate Country," dated July 10, 2020 (Zongshen Companies' Surrogate Country Comments); and Petitioner's Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Petitioner's Rebuttal Comments on Primary Surrogate Country Selection," dated July 17, 2020 (Petitioner's Surrogate Country Rebuttal Comments).

²⁹ See Petitioner's Letter, "Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof, from the People's Republic of China: Petitioner's Comments and Information on Surrogate Values," dated August 3, 2020 (Petitioner's 1st SV Submission); Petitioner's Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Petitioner's Final Submission of Information on Surrogate Values," dated September 14, 2020 (Petitioner's 2nd SV Submission); and Chongqing Zongshen's Letter, "Certain Vertical Shaft Engines Between 99cc and up to 225cc, and Parts Thereof from China; AD Investigation; Chongqing Zongshen Factual Information and Surrogate Value Submission," dated September 14, 2020 (Zongshen Companies' SV Submission); and Petitioner's Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Petitioner's Rebuttal to Information Submitted by Chongqing Zongshen General Power Machine Co., Ltd. and Request to Reject New Factual Information Improperly Placed on the Record," dated September 24, 2020 (Petitioner's Rebuttal SV Submission).

³⁰ See Chongqing Kohler's July 30, 2020 Supplemental Sections A and D Questionnaire Response (Chongqing Kohler's July 30, 2020 SADQR); Zongshen Companies' August 18, 2020 Supplemental Sections A, C, and D Questionnaire Response (Zongshen Companies' August 18, 2020 SACDQR); Chongqing Kohler's August 19, 2020 Second Supplemental Section D Questionnaire Response (Chongqing Kohler's August 19, 2020 2nd SDQR); CHONGQING SENCI IMPORT&EXPORT TRADE CO., LTD's (SENCI's) August 25, 2020 Supplemental SRA Questionnaire Response (SENCI's Supplemental SRA Response); Wenling Qianjiang Imp. & Exp. Co., Ltd.'s (Wenling Qianjiang's) August 25, 2020 Supplemental SRA Questionnaire Response (Wenling Qianjiang's Supplemental SRA Response); Chongqing HWASDAN Power Technology Co., Ltd.'s (HWASDAN's) August 25, 2020 Supplemental SRA Questionnaire Response (HWASDAN's Supplemental SRA Response); Chongqing Chen Hui Electric Machinery Co., Ltd.'s (Chen Hui's) August 25, 2020 Supplemental SRA Questionnaire Response (Chen Hui's Supplemental SRA Response); Changzhou Kawasaki and Kwang Yang Engine Co., Ltd.'s (Changzhou Kawasaki's) August 25, 2020 Supplemental SRA Questionnaire Response (Changzhou Kawasaki's Supplemental SRA Response); Zhejiang Amerisun Technology Co., Ltd.'s (Zhejiang Amerisun's) August 28, 2020 Supplemental SRA Questionnaire Response (Zhejiang Amerisun's Supplemental SRA Response); Zongshen Companies' September 18, 2020 Second Supplemental Sections A, C, and D Questionnaire Response (Zongshen Companies' September 18, 2020 2nd SACDQR); Chongqing Kohler's September 24, 2020 Third Supplemental Section D Questionnaire Response (Chongqing Kohler's September 24, 2020 3rd SDQR); Chongqing Kohler's September 30, 2020 Supplemental Section C Questionnaire Response (Chongqing Kohler's September 30, 2020 SCQR); Zongshen

On September 24, 2020, the petitioner alleged that critical circumstances exist with respect to imports of small vertical engines from China.³¹ At our request, the mandatory respondents provided information regarding their exports of small vertical engines into the United States in October 2020.³² Certain Q&V data related to critical circumstances for the months of September 2020 and October 2020 from Chongqing Kohler and the Zongshen Companies is due by October 15, 2020, and November 16, 2020 (*i.e.*, after the date of this preliminary determination).³³

III. PERIOD OF INVESTIGATION

The POI is July 1, 2019 through December 31, 2019. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition, which was March 2020.³⁴

IV. SCOPE COMMENTS

In accordance with the *Preamble* to our regulations,³⁵ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.³⁶ As noted in the “Background” section above, from May through August 2020, we received comments from certain interested parties on the scope of this investigation as it appeared in the *Initiation Notice*.³⁷ Based on our analysis of these comments, we issued the Preliminary Scope Memorandum on August 17, 2020.³⁸ In the Preliminary Scope Memorandum, we preliminarily

Companies’ October 1, 2020 Third Supplemental Sections C and D Questionnaire Response (Zongshen Companies’ October 1, 2020 3rd SCDQR); Chongqing Kohler’s October 6, 2020 Fourth Supplemental Section D Questionnaire Response (Chongqing Kohler’s October 6, 2020 4th SDQR); Zongshen Companies’ October 6, 2020 Fourth Supplemental Sections C and D Questionnaire Response (Zongshen Companies’ 4th SCDQR); and Loncin Motor Co., Ltd.’s (Loncin’s) October 6, 2020 Supplemental SRA Questionnaire Response (Loncin’s Supplemental SRA Response).

³¹ See Petitioner’s Letter, “Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Critical Circumstances Allegation,” dated September 24, 2020 (Critical Circumstances Allegation).

³² See Zongshen Companies’ Letter, “Certain Vertical Shaft Engines Between 225cc and 999cc {sic} and Parts Thereof, from China; AD Investigation; Chongqing Zongshen Monthly Q&V Data,” dated October 2, 2020 (Zongshen CC Data); and Chongqing Kohler’s Letter, “Certain Vertical Shaft Engines Between 99cc and 225cc, and Parts Thereof from the People’s Republic of China: Chongqing Kohler’s Monthly Quantity and Value Data,” dated October 2, 2020 (Kohler CC Data).

³³ See Commerce’s Letters, “Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Request for Monthly Quantity and Value Shipment Data,” both dated September 25, 2020.

³⁴ See 19 CFR 351.204(b)(1).

³⁵ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

³⁶ See *Initiation Notice*, 83 FR at 20671.

³⁷ As noted in the “Background” section, above, we received affirmative and/or rebuttal comments on the scope of this investigation from: the petitioner; Changzhou Kawasaki and Kwang Yang Engine Co., Ltd., Kawasaki Heavy Industries, Ltd., and Kawasaki Motors Corp., U.S.A.; The Toro Company and Toro Purchasing Company; MAT Engine Technologies, LLC; Sumec Hardware and Tools Co., Ltd.; and American Honda Motor Co., Inc. and Honda Power Equipment Mfg. Inc.

³⁸ See Memorandum, “Antidumping and Countervailing Duty Investigations of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof from the People’s Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination,” dated August 17, 2020 (Preliminary Scope Memorandum).

modified the scope to include the following exclusion language for certain commercial small vertical engines:

Specifically excluded from the scope of the investigation are “Commercial” or “Heavy Commercial” engines under 40 CFR 1054.107 and 1054.135 that have (1) a displacement of 160 cc or greater, (2) a cast iron cylinder liner, (3) an automatic compression release, and (4) a muffler with at least three chambers and volume greater than 400 cc.³⁹

This preliminary scope modification is reflected in Appendix I of the accompanying *Federal Register* notice to this preliminary decision memorandum. For a summary of the scope comments and rebuttal responses submitted to the record for this preliminary determination and accompanying analysis of all comments timely received, *see* the Preliminary Scope Memorandum.⁴⁰

On September 23, 2020, we received letters in lieu of case briefs related to the scope of the investigation from various parties.⁴¹ On September 28, 2020, we received a scope rebuttal brief from the petitioner.⁴² We will issue a determination on the issues raised in these scope briefs no later than the date of the final determination of this investigation.

V. SCOPE OF THE INVESTIGATION

For a full description of the scope of the investigation, as modified in the Preliminary Scope Memorandum, *see* the accompanying *Federal Register* notice at Appendix I.

VI. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy Country

Commerce considers China to be a non-market economy (NME) country.⁴³ In accordance with section 771(18)(C)(i) of the Act, 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

³⁹ *Id.* at Comment 5.

⁴⁰ *Id.*

⁴¹ *See* Chongqing Kohler’s and Kohler Co.’s Letter, “Certain Vertical Shaft Engines Between 99cc and 225 from the People’s Republic of China: Letter in Lieu of a Scope Brief,” dated September 23, 2020; and The Toro Company’s and Toro Purchasing Company’s Letter, “Certain Vertical Shaft Engines between 99cc and up to 225cc from the People’s Republic of China: Letter in Lieu of Brief on Scope Issues,” dated September 23, 2020.

⁴² *See* Petitioner’s Letter, “Small Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Petitioner’s Rebuttal to Toro’s Letter on Scope Issues,” dated September 28, 2020 (Petitioner’s Scope Rebuttal Brief).

⁴³ *See Antidumping Duty Investigation of Certain Aluminum Foil from the People’s Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017) (citing Memorandum, “China’s Status as a Non-Market Economy,” dated October 26, 2017 (China NME Status Memo)), 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).

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."⁴⁴ As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable options because: (a) they either are not significant producers of comparable merchandise; (b) do not provide sufficient reliable sources of publicly available SV data; or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development. To determine which countries are at a similar level of economic development, Commerce generally relies solely on per capita gross national income (GNI) data from the World Bank's World Development Report.⁴⁵ 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 June 22, 2020, Commerce issued a letter to the interested parties soliciting comments on the list of countries that Commerce determined, based on per capita GNI, to be at the same level of economic development as China and the selection of the primary surrogate country, and we provided deadlines for the consideration of any submitted SV information for the preliminary determination.⁴⁶ We received timely comments on the surrogate country list and surrogate country selection from the petitioner and the Zongshen Companies.⁴⁷

The petitioner argues that Commerce should select Turkey as the primary surrogate country.⁴⁸ The petitioner notes that Turkey is not only comparable in terms of economic development with China, but it is also a significant exporter of identical or comparable merchandise and offers

⁴⁴ See Commerce Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on Commerce's website at <http://enforcement.trade.gov/policy/bull04-1.html>.

⁴⁵ *Id.*

⁴⁶ See Commerce's Letter, "Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof, from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated June 22, 2020 (Surrogate Country Letter) (containing Memorandum, "List of Surrogate Countries for Antidumping Investigations and Reviews from the People's Republic of China ('China')," dated August 15, 2019 (Surrogate Country Memo)).

⁴⁷ See Petitioner's Surrogate Country Comments; Zongshen Companies' Surrogate Country Comments; Petitioner's Rebuttal Surrogate Country Comments; and Petitioner's 1st SV Submission.

⁴⁸ See Petitioner's 1st SV Submission at 1-7.

reliable import data to value the respondents' FOPs. The petitioner further argues that, as needed, Commerce should select Brazil as the secondary surrogate country, noting that Brazil is also economically comparable to China, is a significant exporter of identical or comparable merchandise, and offers high quality data with which to value respondents' FOPs.⁴⁹ However the petitioner contends that the Turkish data is the most complete and appropriate choice for valuing the respondents' FOPs.⁵⁰ The Zongshen Companies argue that either Turkey or Mexico would be the appropriate choice for the primary surrogate country because both are economically comparable to China, are significant producers of identical or comparable merchandise, and have available data for all of the respondents' FOPs.⁵¹

Economic Comparability

Section 773(c)(4) of the Act states that Commerce "shall utilize, to the extent possible, the prices or costs of {FOP}s in one or more market economy countries that are. . . at a level of economic development comparable to that of the {NME} country." However, the applicable statute does not expressly define the phrase "level of economic development comparable" or what methodology Commerce must use in evaluating the criterion. Commerce's regulations at 19 CFR 351.408(b) state that, in determining whether a country is at a level of economic development comparable to the NME country, Commerce will place primary emphasis on per capita gross domestic product (GDP) as the measure of economic comparability.⁵² The 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."⁵³

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

Consistent with its practice and section 773(c)(4)(A) of the Act,⁵⁴ as noted above, Commerce identified Malaysia, Turkey, Russia, Mexico, Brazil, and Bulgaria 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).⁵⁵ Commerce does not consider any of the countries on the surrogate country list to be more comparable to China than any other country on the surrogate country list.⁵⁶

⁴⁹ *Id.* at 7-11.

⁵⁰ *Id.* at 8.

⁵¹ See Zongshen Companies' Surrogate Country Comments.

⁵² Commerce uses per capita GNI as a proxy for per capita GDP. GNI is GDP plus net receipt of primary income (compensation of employees and property income) from nonresident sources. See Policy Bulletin 04.1.

⁵³ See *Jiaxing Brother Fastener Co. v. United States*, 961 F. Supp. 2d 1323, 1329 (CIT 2014).

⁵⁴ See Surrogate Country Memo.

⁵⁵ *Id.*

⁵⁶ See Policy Bulletin 04.1 ("The surrogate countries on the list are not ranked and should be considered equivalent in terms of economic comparability.").

Significant Producer of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires Commerce, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor Commerce's regulations provide further guidance on what may be considered comparable merchandise. Among the factors we consider in determining whether a country is a significant producer of comparable merchandise is whether the country is an exporter of comparable merchandise. In order to determine whether the above-referenced countries are significant producers of comparable merchandise, Commerce's practice is to examine which countries on the surrogate country list exported merchandise comparable to the subject merchandise. Parties have placed complete data for Turkey and Brazil and limited data for Mexico on the record.⁵⁷ No party provided SV information for the other countries on the list (*i.e.*, for Malaysia, Russia, and Bulgaria), nor has any party argued in favor of using SV information for any of the other countries.

Information on the record indicates that Turkey, Brazil, and Mexico are significant exporters of merchandise covered by harmonized tariff schedule (HTS) categories identified in the scope of this investigation (*i.e.*, identical merchandise).⁵⁸ Accordingly, we preliminarily find that Turkey, Brazil, and Mexico 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.

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.⁵⁹ 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.⁶⁰ There is no hierarchy among these criteria.⁶¹ Commerce's preference is to satisfy the breadth of these aforementioned selection criteria.⁶² Moreover, 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 of valuing the FOPs.⁶³ Commerce must weigh

⁵⁷ See Petitioner's 1st SV Submission; Petitioner's 2nd SV Submission; and Zongshen Companies' SV Submission.

⁵⁸ See, *e.g.*, Petitioner Surrogate Country Comments at 2-3 and Attachment I. The petitioner provided export data from Global Trade Atlas (GTA) for each country on the surrogate country list for HTS subheadings 8407.90, 8433.11, 8409.91, and 8424.30. The 10-digit HTSUS subheadings listed in the scope of the investigation for small vertical engines, mounted small vertical engines, and small vertical engine subassemblies fall under these six-digit subheadings; see also Zongshen Companies' Surrogate Country Comments at 3 and Exhibit 1. The Zongshen Companies provided United Nations Comtrade data for HTS subheadings 8407.90 and 8409.91.

⁵⁹ See Policy Bulletin 04.1.

⁶⁰ *Id.*

⁶¹ See, *e.g.*, *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) (*Mushrooms from China*), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

⁶² See, *e.g.*, *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 2010-2011*, 78 FR 17350 (March 21, 2013), and accompanying IDM at Comment I(C).

⁶³ See Policy Bulletin 04.1.

the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the “best” available SV for each input.⁶⁴ Additionally, pursuant to 19 CFR 351.408(c)(2), Commerce has a preference for valuing all FOPs in a single surrogate country.

Parties have placed complete SV data for Turkey and Brazil on the record.⁶⁵ Complete SV data for the other countries on the list (*i.e.*, Bulgaria, Malaysia, Mexico, 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.⁶⁶ 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 Global Trade Atlas (GTA) data from Turkey to value the respondents’ FOPs.⁶⁷ Additionally, the petitioner submitted four sets of financial statements from Turkish machinery manufacturers.⁶⁸ The Zongshen Companies also argue that Commerce should use SV data from Turkey and placed competing Turkish SV data on the record.⁶⁹ The Zongshen Companies also provided two financial statements from Turkish companies.⁷⁰

All parties that provided arguments with respect to this issue agree that SV data from Turkey is appropriate to value respondents’ FOPs, and Turkish SV data is publicly available, contemporaneous with the POI, generally include tax-exclusive broad market averages, and more specific than the Brazilian SV data on the record. Thus, Commerce preliminarily determines that Turkish SV data are the best available SV data on the record and best meet our selection criteria. For these reasons, we are selecting Turkey as the primary surrogate country for this preliminary determination.

Therefore, for the reasons outlined above, Commerce preliminarily determines, pursuant to section 773(c)(4) of the Act, that it is appropriate to use Turkey as the primary surrogate country because: (1) Turkey is at the same level of economic development as China; (2) Turkey is a significant producer of merchandise identical or comparable to the subject merchandise; and (3) the Turkish SV data on the record is the best available data for valuing FOPs. Therefore, Commerce used Turkish data, where appropriate, to value the respondents’ FOPs. For a detailed

⁶⁴ See *Mushrooms from China* IDM at Comment 1.

⁶⁵ See Petitioner’s 1st SV Submission; Petitioner’s 2nd SV Submission; and Zongshen Companies’ SV Submission.

⁶⁶ See Zongshen Companies’ SC Comments at 3-4. We note that the Zongshen Companies initially argued that Mexico and Turkey are appropriate surrogate countries for this investigation. However, the Zongshen Companies only provided Mexican SVs for its own direct materials and packing materials. It did not provide SVs for other FOPs such as its energy inputs, labor inputs, or the surrogate financial ratios. In addition, the Zongshen Companies do not state the source of the data they placed on the record for Mexico. See Zongshen Companies’ SV Submission at Exhibits 13-14.

⁶⁷ See Petitioner’s 1st SV Submission at 3-4 and Exhibits 1, 2, 12, and 13; and Petitioner’s 2nd SV Submission at Exhibits 1-3.

⁶⁸ See Petitioner’s 1st SV Submission at 3-4 and Exhibits 14-17. The Turkish machinery manufacturers for whom the petitioner placed financial statements on the record are: (1) Alarko Carrier Sanayi ve Ticaret A.S. (Alarko); (2) Safkar Ege Soğutmacılık Klima Soğuk Hava Tesisleri İhracat İthalat Sanayi ve Ticaret A.S. (Safkar); (3) Arcelik A.S. (Arcelik); and (4) Vestel Beyaz Eşya Sanayi ve Ticaret A.S. (Vestel).

⁶⁹ See Zongshen Companies’ SV Submission at Exhibits 1-9.

⁷⁰ *Id.* at Exhibit 9. These companies are: (1) Alarko; and (2) Türk Traktör Ve Ziraat Makineleri A.S. (Turk Traktor).

discussion of the SVs used in this investigation, *see* the “Factor Valuation Methodology” section of this memorandum and the Preliminary SV Memorandum.⁷¹

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 AD rate.⁷² In the *Initiation Notice*, Commerce notified parties of the application process by which exporters may obtain separate rate status in an NME proceeding.⁷³ It is Commerce’s policy to assign exporters of the subject merchandise from an NME country a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, Commerce analyzes each exporting entity in a NME country under the test established in *Sparklers*,⁷⁴ as amplified by *Silicon Carbide*.⁷⁵ However, if Commerce determines that a company is wholly foreign-owned, then consideration of the *de jure* and *de facto* criteria is not necessary to determine whether it is independent from government control.⁷⁶

Under the separate rates test, Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter’s business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.⁷⁷

Further, Commerce typically considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4)

⁷¹ See Memorandum, “Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Surrogate Value Memorandum for the Preliminary Determination,” dated concurrently with this memorandum (Preliminary SV Memorandum).

⁷² 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); *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).

⁷³ See *Initiation Notice*, 85 FR at 20674.

⁷⁴ 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*).

⁷⁵ 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*).

⁷⁶ 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).

⁷⁷ See *Sparklers*, 56 FR at 20589.

whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.⁷⁸

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the *Diamond Sawblades from China* AD proceeding and Commerce's determinations therein.⁷⁹ In particular, we note that in litigation involving the *Diamond Sawblades* proceeding, the CIT found Commerce's existing separate rates analysis deficient in the circumstances of that proceeding, in which a government-controlled entity had significant ownership in the respondent exporter.⁸⁰ We have concluded that, where a government entity holds a majority ownership share, either directly or indirectly, in an exporter, the majority ownership holding in and of itself means that the government exercises or has the potential to exercise control over the company's operations generally, which may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect that a majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company. Accordingly, we have considered the level of government ownership, where necessary.

D. Separate Rate Recipients

In accordance with our practice, Commerce analyzed whether each company submitting both a Q&V response and an SRA in this investigation demonstrated the absence of *de jure* and *de facto* governmental control over their respective export activities. In the instant review, we preliminarily find no evidence of Chinese Government ownership of Chongqing Kohler, the Zongshen Companies, and the exporters listed in Appendices I and II of this document, and we

⁷⁸ 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*).

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

⁸⁰ See, e.g., *Advanced Technology*, 885 F. Supp. 2d at 1349 ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *id.* at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {state-owned assets supervision and administration commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor *de jure* 'separation' that Commerce concludes.") (footnotes omitted); *id.* at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations, ' including terms, financing, and inputs into finished product for export."); and *id.* at 1357 ("AT&M *itself* identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control *over* nomination.") (footnotes omitted).

further preliminarily find that those companies otherwise are entitled to a separate rate in this review. Moreover, as discussed below, we preliminarily find that Loncin has not demonstrated its entitlement to a separate rate.

1. Wholly Foreign-Owned Companies

Chongqing Kohler, Changzhou Kawasaki and Kwang Yang Engine Co., Ltd. (CK&K), and Jialing-Honda Motors Co., Ltd (Jialing-Honda) submitted information indicating that they are wholly foreign-owned by a company and/or individual located in a ME country.⁸¹ Because they are wholly foreign-owned, and we have no evidence indicating that the Chinese government controls Chongqing Kohler's, CK&K's, and Jialing-Honda's export activities, an analysis of the *de jure* and *de facto* criteria is not necessary to determine whether these companies are independent from government control.⁸² Therefore, we are preliminarily granting separate rates to Chongqing Kohler, CK&K, and Jialing-Honda. For a list of the wholly foreign-owned companies receiving a separate rate, *see* Appendix I.

2. Wholly China-Owned Companies and Joint Ventures

We received SRAs from seven exporters, plus the Zongshen Companies, who stated that they are either Chinese joint-stock limited companies or are wholly Chinese-owned companies.⁸³ In accordance with our practice, Commerce analyzed whether these companies demonstrated the absence of *de jure* and *de facto* governmental control over their respective export activities.

a) Absence of *De Jure* Control

Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.⁸⁴

The evidence provided by the Zongshen Companies and the exporters listed in Appendix II supports a preliminary finding of an absence of *de jure* government control for each of these companies based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of the companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.⁸⁵

⁸¹See CK&K's Letter, "Antidumping Duty Investigation of Certain Vertical Shaft Engines Between 99cc and Up to 225cc and Parts Thereof from the People's Republic of China: Separate Rate Application," dated May 14, 2020; and Chongqing Kohler's May 28, 2020 AQR.

⁸² 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).

⁸³ See Appendix II for a list of these exporters.

⁸⁴ See *Sparklers*, 56 FR at 20589.

⁸⁵ See, e.g., Zongshen June 1, 2020 AQR at Volume I at 6-10 and Volume II at 8-12.

b. Absence of *De Facto* Control

Typically, Commerce considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (EPs) are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.⁸⁶ Commerce has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude Commerce from assigning separate rates.

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

Therefore, the evidence placed on the record of this investigation by the Zongshen Companies and the exporters listed in Appendix II demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*.⁸⁷ Accordingly, we are preliminarily granting separate rates to the Zongshen Companies and the exporters listed in Appendix II.

E. Company Not Receiving a Separate Rate

We preliminarily determine that Loncin is not eligible to receive a separate rate, as explained below.

1. Absence of *De Jure* Control

The evidence provided by Loncin⁸⁸ supports a preliminary finding of an absence of *de jure* government control based on the following: (1) an absence of restrictive stipulations associated with Loncin's business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of the Loncin; and (3) the implementation of formal measures by the government decentralizing control of Loncin.

⁸⁶ See *Silicon Carbide*, 59 FR at 22586-87; and *Furfuryl Alcohol*, 60 FR at 22545.

⁸⁷ See *Sparklers*, 56 FR at 20589; and *Silicon Carbide*, 59 FR at 22586-89; see also, e.g., Zongshen June 1, 2020 AQR at Volume I at 6-22 and Volume II at 8-22.

⁸⁸ See Loncin's May 14, 2020 Separate Rate Application; and Loncin's October 6, 2020 Supplemental Questionnaire Response.

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

Commerce preliminarily determines that Loncin has not demonstrated an absence of *de facto* government control. As discussed above, Commerce considers four factors in evaluating whether a respondent is subject to *de facto* government control: (1) whether it sets its own EPs independent of the government and without the approval of a government authority; (2) whether it has the authority to negotiate and sign contracts and other agreements; (3) whether it maintains autonomy from the government in making decisions regarding the selection of management; and (4) whether it retains the proceeds of its respective export sales and make independent decisions regarding disposition of profits or financing of losses.

Certain information regarding Chinese government entities' involvement with Loncin is business proprietary; therefore, we provide a complete discussion of the facts regarding Loncin and its failure to demonstrate an absence of *de facto* government control in separate memorandum.⁸⁹

F. Margin for the Separate Rate Companies

Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate rate respondents that 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).⁹⁰ 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.⁹¹ 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.⁹²

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

⁸⁹ See Memorandum, "Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Separate Rate Memorandum – Loncin Motor Co., Ltd.," dated concurrently with this memorandum.

⁹⁰ 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).

⁹¹ 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.

⁹² See section 735(c)(5)(B) of the Act.

Kohler and the Zongshen Companies, to the separate rate companies for this preliminary determination.⁹³ This approach is consistent with our practice.⁹⁴

G. Combination Rates

In the *Initiation Notice*, Commerce stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation.⁹⁵ This practice is described in Policy Bulletin 05.1.

H. The China-Wide Entity

The record indicates that there are Chinese exporters and/or producers of small vertical engines during the POI that did not respond to Commerce's requests for information. Specifically, Commerce did not receive responses to its Q&V questionnaire from numerous Chinese exporters and/or producers of small vertical engines that were named in the Petition, as well as certain of these exporters to whom Commerce issued the Q&V questionnaire.⁹⁶ Because non-responsive Chinese companies have not demonstrated that they are eligible for separate rate status, Commerce considers them part of the China-wide entity. Furthermore, as explained in the next section, because the China-wide entity has failed to cooperate to the best of its ability, we preliminarily determine to calculate the China-wide rate on the basis of AFA. We have preliminarily assigned the China-wide entity an estimated weighted-average dumping margin of 541.75 percent, the highest margin alleged in the Petition.

As discussed above, we have preliminarily determined not to grant a separate rate to Loncin. Specifically, we preliminarily found this company has not demonstrated an absence of *de facto* government control. Because Loncin has not demonstrated that it is eligible for separate rate status, Commerce considers it part of the China-wide entity.

I. Application of Facts Available and Adverse Inferences

⁹³ See Memorandum, "Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Margin Calculation for Separate Rate Companies for the Preliminary Determination," dated concurrently with this memorandum. This memorandum contains Commerce's comparison of: (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted average of the dumping margins calculated for the mandatory respondents using each company's publicly ranged quantities for merchandise under consideration. Based upon that comparison, Commerce determines that, (C), a weighted average using each company's publicly ranged quantities, is closest to the weighted average of margins calculated using business proprietary information and, thus, is the most appropriate rate for use in this preliminary determination.

⁹⁴ See, e.g., *Hardwood and Decorative Plywood from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013), and accompanying IDM at "Separate Rate Companies."

⁹⁵ See *Initiation Notice*, 85 FR at 20674.

⁹⁶ See Q&V Delivery Confirmation Memo, documenting that Chongqing Lifan & Hongda Industry, Lifan Industry (Group) Co., Ltd., Makita (Kunshan) Co., Ltd., Ningbo Chariot Industry Trade Co., Ltd., Shangdong Huasheng Zhongtian Machinery Group Co., Ltd., and Zhejiang Yaofeng Power Technology Co., Ltd. did not respond to the Q&V questionnaire.

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

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

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

1. Use of Facts Available

Commerce preliminarily finds that the China-wide entity, which includes Loncin and other Chinese exporters and/or producers that did not respond to Commerce's requests for information, failed to provide necessary information, withheld information requested by Commerce, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. Accordingly, Commerce preliminarily determines that use of facts available is warranted in determining the rate of the China-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.⁹⁷

2. Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that Commerce, in selecting from among the facts otherwise available, may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Commerce finds that the China-wide entity's failure to provide the requested information constitutes circumstances under which it is reasonable to conclude that the China-wide entity

⁹⁷ 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).

was not fully cooperative.⁹⁸ The China-wide entity neither filed documents indicating that it was having difficulty providing the information nor did it request to submit the information in an alternate form. Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available with respect to the China-wide entity in accordance with section 776(b) of the Act and 19 CFR 351.308(a).⁹⁹

3. Selection and Corroboration of the AFA Rate

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as the Petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the Petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹⁰⁰ The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value,¹⁰¹ although Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.¹⁰² To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used, although Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.¹⁰³ Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.¹⁰⁴

In selecting an AFA rate, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.¹⁰⁵ Consistent with sections 776(b)(2) and 776(d)(2) of the Act, in an investigation, Commerce’s practice with respect to the assignment of an AFA rate is to select the higher of: (1) the highest dumping margin alleged in the petition; or (2) the highest calculated

⁹⁸ 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.”)).

⁹⁹ See *Nippon Steel*, 337 F.3d at 1382-83.

¹⁰⁰ See Statement of Administrative Action, H.R. Doc. No. 316, Vol. I, 103d Cong., 2d Sess. (1994) (SAA) at 870.

¹⁰¹ *Id.*; see also 19 CFR 351.308(d).

¹⁰² See section 776(c)(2) of the Act.

¹⁰³ 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).

¹⁰⁴ See section 776(d)(1)-(2) of the Act.

¹⁰⁵ See SAA at 870.

dumping margin of any respondent in the investigation.¹⁰⁶ In this investigation, the highest dumping margin alleged in the Petition is higher than the highest calculated rate for the individually-investigated respondents. Based on the information on the record, we are able to corroborate the highest petition rate of 541.75 percent.

In attempting to corroborate that rate, we compared the highest petition rate of 541.75 percent¹⁰⁷ to the individually-investigated respondents' highest transaction-specific dumping margins and found the petition rate to be significantly higher than Chongqing Kohler's highest calculated transaction-specific dumping margins. However, the Zongshen Companies' highest calculated, non-outlier, transaction-specific dumping margin exceeded the highest petition rate. 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 541.75 percent as AFA.

J. Critical Circumstances

On September 24, 2020, the petitioner filed a timely allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of small vertical engines from China.¹⁰⁸ On September 25, 2020, Commerce requested shipment data from the Zongshen Companies and Chongqing Kohler concerning the critical circumstances allegation. These companies responded to the Commerce's request for shipment data on October 1, 2020.¹⁰⁹

In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, Commerce must issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination.

Legal Framework

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

Further, 19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise have been "massive," Commerce normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by

¹⁰⁶ See, e.g., *Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016).

¹⁰⁷ See *Initiation Notice*, 85 FR at 20673.

¹⁰⁸ See *Critical Circumstances Allegation*.

¹⁰⁹ See *Zongshen CC Data*; and *Kohler CC Data*.

the imports. In addition, 19 CFR 351.206(h)(2) provides that, “{i}n general, unless the imports during the ‘relatively short period’ . . . have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.” 19 CFR 351.206(i) defines “relatively short period” generally as the period starting on the date the proceeding begins (*i.e.*, the date the Petition is filed) and ending at least three months later. This section of the regulations further provides that, if Commerce “finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,” then Commerce may consider a period of not less than three months from that earlier time.

Critical Circumstances Allegation

In its allegation, the petitioner contends that, because Commerce has not yet made its preliminary determination in this investigation, Commerce may rely on the margins alleged in the Petition to decide whether importers knew, or should have known, that dumping was occurring.¹¹⁰ The estimated dumping margins for small vertical engines from China in the Petition range from 457.52 to 541.75 percent.¹¹¹ Therefore, the petitioner maintains that there is information on the record of this investigation to impute knowledge to importers that small vertical engines from China was being sold in the United States at LTFV.¹¹²

The petitioner also contends that, based on the preliminary determination of injury by the ITC, there is a reasonable basis to impute importers’ knowledge that material injury is likely by reason of such imports.¹¹³

Finally, as part of their allegation and pursuant to 19 CFR 351.206(h)(2), the petitioner submitted import statistics for the subject merchandise covered by the scope of this investigation for the period January 2020 through June 2020, as evidence of massive imports of small vertical engines from China during a relatively short period.¹¹⁴

Analysis

Commerce’s normal practice in determining whether critical circumstances exist pursuant to the statutory criteria has been to examine evidence available to Commerce, such as: (1) the evidence presented in the petitioner’s critical circumstances allegation; (2) import statistics released by the ITC; and (3) shipment information submitted to Commerce by the respondents selected for individual examination.¹¹⁵ As further provided below, in determining whether the above statutory criteria have been satisfied in this case, we have examined: (1) the evidence presented

¹¹⁰ See Critical Circumstances Allegation at 3.

¹¹¹ See *Initiation Notice*, 85 FR at 20673.

¹¹² See Critical Circumstances Allegation at 3.

¹¹³ *Id.* at 3.

¹¹⁴ *Id.* at Exhibit 1.

¹¹⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China*, 73 FR 31970, 31972-73 (June 5, 2008); and *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People’s Republic of China*, 74 FR 2049, 2052-53 (January 14, 2009).

in the petitioner's September 24, 2020 allegation; (2) information obtained since the initiation of this investigation; and (3) the ITC's preliminary injury determination.

We considered each of the statutory criteria for finding critical circumstances below.

Section 733(e)(1)(A)(i) of the Act: History of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise

In order to determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, Commerce generally considers current or previous AD duty orders on subject merchandise from the country in question in the United States and current orders in any other country with regard to imports of subject merchandise.¹¹⁶ There have been no previous orders on small vertical engines in the United States, and Commerce is not aware of the existence of any active AD orders on small vertical engines from China in other countries. As a result, Commerce does not find that there is a history of injurious dumping of small vertical engines from China pursuant to section 733(e)(1)(A)(i) of the Act.

Section 733(e)(1)(A)(ii) of the Act: Whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales

In determining whether an importer knew or should have known that the exporter was selling subject merchandise at LTFV and that there was likely to be material injury by reason of such sales, Commerce must rely on the facts before it at the time the determination is made. Commerce generally bases its decision with respect to knowledge on the margins calculated in the preliminary determination and the ITC's preliminary injury determination.

Commerce normally considers margins of 25 percent or more for EP sales and 15 percent or more for constructed export price (CEP) sales sufficient to impute importer knowledge of sales at LTFV.¹¹⁷ In this investigation Chongqing Kohler reported only EP sales and the Zongshen Companies reported both EP and CEP sales. Chongqing Kohler's and the Zongshen Companies' preliminary margins are 374.31 percent and 316.88 percent, respectively. Further, we are assigning a rate of 342.88 percent, the weighted average of the rates calculated for the mandatory

¹¹⁶ See, e.g., *Certain Oil Country Tubular Goods from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 74 FR 59117, 59120 (November 17, 2009), unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010).

¹¹⁷ See, e.g., *Carbon and Alloy Steel Wire Rod from Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances*, 67 FR 6224, 6225 (February 11, 2002) (*Steel Wire Rod Prelim*), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Moldova*, 67 FR 55790 (August 30, 2002) (*Steel Wire Rod Final*); and *Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China*, 69 FR 59187 (October 4, 2004) (*Magnesium Metal Prelim*), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal from the People's Republic of China*, 70 FR 9037 (February 24, 2005) (*Magnesium Metal Final*).

respondents using each company’s publicly ranged quantities,¹¹⁸ to the non-individually investigated companies qualifying for a separate rate, and a rate of 541.75 percent to the China-wide entity. Because the preliminary dumping margins exceed the threshold sufficient to impute knowledge of dumping, we preliminarily find for all producers/exporters of small vertical engines from China, that there is a reasonable basis to believe or suspect that all producers/importers of small vertical engines knew, or should have known, that exporters were selling subject merchandise at LTFV.

In determining whether an importer knew or should have known that there was likely to be material injury caused by reason of such imports, Commerce normally will look to the preliminary injury determination of the ITC.¹¹⁹ If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, Commerce will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports.¹²⁰ Therefore, because the ITC preliminarily found a reasonable indication that an industry in the United States is materially injured by imports of small vertical engines from China,¹²¹ Commerce determines that importers knew or should have known that there was likely to be material injury by reason of sales of small vertical engines at LTFV by all producers/exporters of small vertical engines from China.

Section 733(e)(1)(B) of the Act: Whether There Have Been Massive Imports Over a Relatively Short Period

As detailed in the “Legal Framework” section, Commerce considers an increase in the imports during the ‘relatively short period’ of at least 15 percent over the imports during an immediately preceding period of comparable duration to be evidence of a ‘massive’ increase. In determining whether a massive increase has occurred, the comparison period is normally compared to a corresponding period prior to the filing of the Petition (*i.e.*, the base period).

The petitioner included in its submission U.S. import data compiled from tariff and trade data from Commerce and the ITC for the period January 2020 through June 2020.¹²² Based on these data, the petitioner calculated the monthly average imports for the base period (*i.e.*, imports for January 2020 through March 2020) and for the comparison period (*i.e.*, imports for April 2020 to June 2020) and found that imports of small vertical engines from China increased by 37.01 percent by volume during the three-month comparison period over the three month base period. Thus, the petitioner concluded that there were massive imports during a relatively short period.¹²³

¹¹⁸ See Preliminary Separate Rates Memo.

¹¹⁹ See, e.g., *Certain Potassium Phosphate Salts from the People’s Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation*, 75 FR 24572, 24573 (May 5, 2010).

¹²⁰ See, e.g., *Steel Wire Rod Prelim*, 67 FR at 6225, unchanged in *Steel Wire Rod Final*; and *Magnesium Metal Prelim*, 70 FR at 5607, unchanged in *Magnesium Metal Final*.

¹²¹ See *Small Vertical Shaft Engines from China*, 85 FR 27243 (May 7, 2020).

¹²² See Critical Circumstances Allegation at Exhibit 1.

¹²³ *Id.*

It is Commerce’s practice to base the critical circumstances analysis on all available data, using base and comparison periods of no less than three months.¹²⁴ Based on this practice, we examined the base period December 2019 through March 2020, and the corresponding comparison period April 2020 through July 2020, in order to determine whether imports of subject merchandise were massive during a relatively short period. The base and comparison periods satisfy Commerce’s practice and the requirement of 19 CFR 351.206(i) that the comparison period is at least three months.

For the individually-investigated companies, we preliminarily find that the Zongshen Companies’ reported shipments of subject merchandise during the comparison period increased by more than 15 percent over their respective imports in the base period.¹²⁵ For Chongqing Kohler, we preliminarily find that shipments of subject merchandise during the comparison period did not increase by more than 15 percent over its respective imports in the base period.¹²⁶ For the non-individually investigated companies, we relied upon GTA import statistics specific to small vertical engines, less the reported shipment data for the mandatory respondents, to determine if imports in the post-Petition period for the subject merchandise were massive.¹²⁷ However, because the quantity of imports shown in the GTA data is smaller than that in the combined mandatory respondents’ data, we find the normal method of subtracting the mandatory respondent’s data (*i.e.*, that of Chongqing Kohler and the Zongshen Companies) from the GTA data to be an unreliable indicator of the experience of the all-others companies for purposes of the “massive” determination. Therefore, we are basing the “massive” finding for the non-individually investigated companies on the experience of Chongqing Kohler.

Because, as explained below, the China-wide entity has been unresponsive, as AFA, we preliminarily find there to be massive imports for the China-wide entity, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).

Therefore, based on the above analysis, we preliminarily find that critical circumstances did not exist for Chongqing Kohler and the non-selected companies receiving a separate rate, and did exist for the Zongshen Companies and the China-wide entity.

K. Date of Sale

Section 351.401(i) of Commerce’s regulations states that, in identifying the date of sale of the subject merchandise, Commerce normally will use the date of invoice, as recorded in the

¹²⁴ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 47111, 47118-19 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 76916 (December 23, 2004); and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People’s Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying IDM at Comment 3.

¹²⁵ See Memorandum, “Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Critical Circumstances Analysis,” dated concurrently with this memorandum (Prelim Critical Circumstances Memo).

¹²⁶ *Id.*

¹²⁷ See Prelim Critical Circumstances Memo at Attachment 1 for our analysis of these data.

exporter or producer's records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.¹²⁸ Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.¹²⁹

Chongqing Kohler reported the invoice date as its date of sale and argued that invoice date was the appropriate date of sale because the material terms of sale are not fixed until the commercial invoice is issued to the customer.¹³⁰ However, in a subsequent supplemental questionnaire response, Chongqing Kohler reported the shipment date as the date of sale where that date preceded the invoice date.¹³¹ Therefore, we have preliminarily accepted Chongqing Kohler's dates of sale as reported in its supplemental questionnaire response, *i.e.*, the earlier of the invoice or shipment date.

The Zongshen Companies reported date of sale based on the invoice date.¹³² The Zongshen Companies argued that invoice date is the most appropriate the date of sale because its price and quantity can change after the date of shipment but prior to the invoice date.¹³³ However, the Zongshen Companies failed to demonstrate the material terms of sale changed after the date of shipment.¹³⁴ Therefore, consistent with Commerce's long-standing practice,¹³⁵ we used the earlier of invoice or shipment date as the date of sale for the Zongshen Companies in our preliminary margin calculations.

L. Fair Value Comparisons

In accordance with section 777A(d)(1)(A) of the Act, Commerce compared the weighted-average price of the U.S. sales of subject merchandise to the weighted-average NV to determine whether the mandatory respondents sold subject merchandise to the United States at LTFV during the POI.¹³⁶

¹²⁸ 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)).

¹²⁹ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007) (*Shrimp from Thailand*), and accompanying IDM at Comment 11; and *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) (*Steel Beams from Germany*), and accompanying IDM at Comment 2.

¹³⁰ See Chongqing Kohler's May 28, 2020 AQR at A-27 – A-29; Chongqing Kohler's June 26, 2020 CDQR at C-15; Zongshen Companies' June 1, 2020 AQR at Volume I pages 26-29 and Volume II pages 28-29.

¹³¹ See Chongqing Kohler's September 29, 2020 SCQR at SC-7.

¹³² See Zongshen Companies' June 26, 2020 CQR at C-9 – C-10.

¹³³ See Zongshen Companies' August 18, 2020 SACDQR at 6.

¹³⁴ *Id.*

¹³⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying IDM at Comment 10.

¹³⁶ See "Export Price and Constructed Export Price" and "Normal Value," below.

M. Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, Commerce defined the U.S. price of subject merchandise based on EP for certain of the sales reported by the Zongshen Companies.¹³⁷ Commerce calculated EP based on the prices at which subject merchandise was sold to unaffiliated purchasers in the United States. In accordance with section 772(b) of the Act, Commerce defined the U.S. price of subject merchandise based on CEP for certain of the sales reported by the Zongshen Companies and all of the sales reported by Chongqing Kohler.¹³⁸ Commerce calculated the CEP based on the prices at which subject merchandise was sold to unaffiliated purchasers in the United States by the producer/exporter's affiliated U.S. seller.

1. Export Price

For the Zongshen Companies, we calculated EP based on packed prices to unaffiliated customers in the United States. We deducted billing adjustments, as appropriate, from the starting price. We also made deductions, as appropriate, from the starting price for movement expenses (*i.e.*, foreign inland freight and foreign brokerage and handling), in accordance with section 772(c)(2)(A) of the Act. We based movement expenses on SVs where the service was purchased from a Chinese company.¹³⁹ For all U.S. sales of mounted merchandise, we revised the gross unit price by multiplying the amount reported for finished mounted merchandise by the ratio of the input costs of small vertical engines to the total input costs of the mounted merchandise.

2. Constructed Export Price

We calculated CEP for Chongqing Kohler's sales based on packed prices to unaffiliated purchasers in the United States. We made adjustments, where appropriate, from the starting price for discounts, and rebates.¹⁴⁰ We also made deductions from the starting price for movement expenses, in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. customs duties, U.S. warehousing expenses, and U.S. inland freight, where applicable.¹⁴¹ We based movement expenses on SVs where the service was purchased from a Chinese company.

In accordance with section 772(d)(1) of the Act, we calculated Chongqing Kohler's CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (*i.e.*, imputed credit, warranty expenses, technical service

¹³⁷ See Zongshen Companies' June 26, 2020 CQR at C-II-9 ("During the POI, Dajiang made both EP and CEP sales of subject merchandise to the United States.").

¹³⁸ See Chongqing Kohler's June 26, 2020 CDQR at C-13 ("All of {Chongqing Kohler}'s sales during the POI were CEP sales.").

¹³⁹ See "Factor Valuation Methodology," below.

¹⁴⁰ See Chongqing Kohler's June 26, 2020 CDQR at C-20 – C-23; and Chongqing Kohler's September 29, 2020 SCQR at SC-12 – SC-19. Chongqing Kohler also reported certain billing adjustments; however, we did not adjust U.S. price with respect to these adjustments. For a further analysis of Chongqing Kohler's reported billing adjustments, see Memorandum, "Preliminary Analysis Memorandum for Chongqing Kohler Engines Ltd.," dated October 14, 2020 (Chongqing Kohler Preliminary Analysis Memorandum).

¹⁴¹ See Chongqing Kohler's June 26, 2020 CDQR at C-24 – C-34.

expenses), where appropriate, and indirect selling expenses (inventory carrying costs and other indirect selling expenses), where appropriate.¹⁴² Finally, we deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act.

We calculated CEP for the Zongshen Companies, where warranted, based on packed prices to unaffiliated purchasers in the United States. As noted above, we revised the Zongshen Companies' gross unit price for mounted merchandise by multiplying the reported gross unit price for finished mounted merchandise by a ratio of the input costs of small vertical engines to the total input cost of the mounted merchandise. We made deductions from the starting (or revised) price for movement expenses, in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight, foreign brokerage and handling, international freight, U.S. inland freight, U.S. warehousing, and U.S. customs duties, where applicable.¹⁴³ We based movement expenses on SVs where the service was purchased from a Chinese company.

In accordance with section 772(d)(1) of the Act, we calculated the Zongshen Companies' CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (*i.e.*, commissions and imputed credit), where appropriate.¹⁴⁴ The Zongshen Companies reported no indirect selling expenses incurred in the United States on its CEP sales.¹⁴⁵ Finally, we deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act.

3. Value Added Tax (VAT)

In 2012, Commerce announced a change of methodology with respect to the calculation of EP and CEP to include an adjustment of any irrecoverable VAT in certain NME countries in accordance with section 772(c)(2)(B) of the Act.¹⁴⁶ Commerce explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, Commerce will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated, where the EP and CEP prices include such amount.¹⁴⁷ The amount of irrecoverable VAT is a liability calculated based on the standard VAT rate and the refund rate specific to the exported good. Where the irrecoverable VAT is a fixed percentage of EP or CEP, Commerce explained that the final step in arriving at a tax neutral dumping comparison is to reduce the EP or CEP downward by this same percentage.¹⁴⁸

Commerce's methodology, as explained above and applied in this investigation, incorporates two basic steps: (1) determine the amount of irrecoverable VAT on subject merchandise; and (2) reduce EP or CEP price by the amount determined in step one. Information placed on the record

¹⁴² *Id.* at C-36 – C-42.

¹⁴³ *See* Zongshen Companies' October 1, 2020 3rd SCDQR at 3-10.

¹⁴⁴ *Id.* at 11-15.

¹⁴⁵ *Id.* at 16-17.

¹⁴⁶ *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).

¹⁴⁷ *Id.*; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014), and accompanying IDM at Comment 5.A.

¹⁴⁸ *Id.*

of this investigation by Chongqing Kohler and the Zongshen Companies indicates that, according to the Chinese VAT schedule, the standard VAT rate is 13 percent and the refund rate for small vertical engines is 13 percent, and that the EP or CEP prices do not include irrecoverable VAT.¹⁴⁹ Consistent with Commerce's standard methodology, for purposes of this preliminary determination, we would reduce EP or CEP by the amount of irrecoverable VAT included in the EP or CEP price, calculated as the difference between those rates (*i.e.*, zero percent) and applied to the export sales value, consistent with the definition of irrecoverable VAT under Chinese tax law and regulation. However, because the difference between the tax rate and the refund rate is zero and there is no irrecoverable VAT included in the EP or CEP price, we made no adjustments for irrecoverable VAT for the preliminary determination.

N. Normal Value

Section 773(c)(1) of the Act provides that Commerce shall determine NV using the FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home market prices, third-country prices, or constructed value under section 773(a) of the Act. Commerce bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under Commerce's normal methodologies.¹⁵⁰ Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), Commerce calculated NV based on FOPs. Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.¹⁵¹

Factor Valuation Methodology

In accordance with section 773(c) of the Act, Commerce calculated NV based on FOP data reported by Chongqing Kohler and the Zongshen Companies. To calculate NV, Commerce multiplied the reported per-unit factor-consumption rates by publicly available SVs. Commerce's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POI, and exclusive of taxes and duties.¹⁵²

The Zongshen Companies reported that a substantial portion of small vertical engines sold by Chongqing Dajiang were mounted on finished equipment (*i.e.*, lawn mowers and pressure washers).¹⁵³ In calculating NV for Chongqing Dajiang's mounted merchandise, Commerce used

¹⁴⁹ See Chongqing Kohler's June 26, 2020 CDQR at C-43 – C-44 and Exhibit 17; and Zongshen Companies' June 26, 2020 CQR at Volume I pages C-31 – C-32 and Exhibit C-I-3 and Volume II pages C-33 – C-34.

¹⁵⁰ See, *e.g.*, *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19703 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079 (September 8, 2006).

¹⁵¹ See section 773(c)(3)(A)-(D) of the Act.

¹⁵² See, *e.g.*, *Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), and accompanying IDM at Comment 2.

¹⁵³ See Zongshen Companies' June 1, 2020 AQR at Volume II page 2.

only the SVs related to the manufacture of small vertical engines. However, to correctly calculate the packing expenses, Commerce used all SVs related to packing the mounted merchandise as reported by Chongqing Dajiang.

When selecting the SVs, Commerce considered, among other factors, the quality, specificity, and contemporaneity of the data.¹⁵⁴ As appropriate, Commerce adjusted input prices by including freight costs to make them delivered prices. Specifically, Commerce added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest port to the respondent's factory.¹⁵⁵ A detailed description of all SVs used for Chongqing Kohler and the Zongshen Companies can be found in the Preliminary SV Memorandum.

For this preliminary determination, Commerce used Turkish import data, as published by GTA, and data from other publicly available sources from Turkey, to calculate SVs for respondents' FOPs. In accordance with section 773(c)(1) of the Act, Commerce applied the best available information for valuing FOPs by selecting, to the extent practicable, SVs which are: (1) non-export average values; (2) contemporaneous with, or closest in time to, the POI; (3) product-specific; and (4) tax-exclusive.¹⁵⁶ The record shows that Turkish import data obtained through GTA, as well as data from other Turkish sources, are broad market averages, product-specific, tax-exclusive, and generally contemporaneous with the POI.¹⁵⁷ In those instances where Commerce could not obtain information contemporaneous with the POI with which to value FOPs, Commerce adjusted the SVs using, where appropriate, Turkey's consumer price index (CPI) or producer price index (PPI), as published in the International Monetary Fund's (IMF's) International Financial Statistics. For certain U.S. freight expenses for which we have used an SV and the information is not contemporaneous with the POI, Commerce adjusted the SVs using the United States' PPI as published in the IMF's International Financial Statistics.

Commerce continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be dumped or subsidized.¹⁵⁸ In this regard, Commerce has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea, and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.¹⁵⁹ Based on the existence of these subsidy

¹⁵⁴ See, e.g., *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying IDM at Comment 9.

¹⁵⁵ See *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).

¹⁵⁶ 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).

¹⁵⁷ See Preliminary SV Memorandum.

¹⁵⁸ See section 773(c)(5) of the Act (permitting Commerce to disregard price or cost values without further investigation if it has determined that certain subsidies existed with respect to those values).

¹⁵⁹ 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*

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

Additionally, Commerce disregarded data from NME countries when calculating Turkish import-based per-unit SVs.¹⁶⁰ Commerce also excluded imports labeled as originating from an “unidentified” country from the calculation of Turkish import-based per-unit SVs because Commerce could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.¹⁶¹

Pursuant to 19 CFR 351.408(c)(1), where a factor is produced in one or more ME countries, purchased from one or more ME suppliers, and paid for in an ME currency, Commerce normally will use the prices paid to the ME suppliers if substantially all (*i.e.*, 85 percent or more) of the total volume of the factor is purchased from the ME suppliers. In those instances where less than substantially all of the total volume of the factor is produced in one or more ME countries and purchased from one or more ME suppliers, Commerce will weight-average the actual prices paid for the ME portion and the SV for the NME portion by their respective quantities. Both Chongqing Kohler and the Zongshen Companies purchased certain material inputs that were produced in ME countries, from ME suppliers, and paid for in an ME currency during the POI.¹⁶² Thus, where appropriate, Commerce valued those material inputs, according to the methodology stated above, using ME prices in the preliminary determination.

Commerce used Turkish import statistics from GTA to value raw materials, packing materials, and certain energy inputs, except as listed below.

In NME AD proceedings, Commerce prefers to value labor solely based on data from the primary surrogate country.¹⁶³ In *Labor Methodologies*, Commerce determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, Commerce determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing from the International Labor Organization Yearbook of Labor Statistics. 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 hourly labor data from the Turkish Statistical Institute, within the “Manufacturing of machinery and equipment not

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.

¹⁶⁰ 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).

¹⁶¹ *Id.*

¹⁶² See Chongqing Kohler’s June 26, 2020 CDQR at D-7 – D-8 and Exhibit D-4; and Zongshen Companies’ June 26, 2020 DQR at D-9 and Exhibits D-12 – D-13.

¹⁶³ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

elsewhere classified” industry, and we find no record evidence that the labor data include taxes similar to VAT or excise tax. We inflated these rates using the Turkish CPI because they were not contemporaneous with the POI.¹⁶⁴

We valued electricity using data from the International Energy Agency’s publication *Energy Prices and Taxes for OECD Countries: 2019*, which contains pricing data for the first and second quarters of calendar year 2019 for electricity rates in Turkey.¹⁶⁵ We also valued natural gas using this source, which contains natural gas rates for Turkey for the first and second quarter of calendar year 2019.¹⁶⁶ We valued water using data from the Istanbul Water and Sewerage Administration (ISKI), which contains water rates in Turkey for the period January through May 2019.¹⁶⁷ Because none of these rates are contemporaneous with the POI, we inflated all of them using the Turkish PPI. We valued gasoline using Turkish import statistics from GTA; specifically, Turkish HTS subheading 2710.12.41.0000 (“Engine Gasoline (Except Aircraft); Octane (Ron) Less Than 95”).¹⁶⁸ These energy rates represent publicly available, broad-market averages.

We valued foreign inland truck freight expenses using data from the World Bank’s *Doing Business 2020: Turkey* publication.¹⁶⁹ We also valued brokerage and handling (B&H) expenses using this data source, which provided a price list of export procedures necessary to export a standardized cargo of goods in Turkey.¹⁷⁰ Because these data predate the POI, we inflated these prices using the Turkish PPI to be contemporaneous with the POI.¹⁷¹

As stated in the “Constructed Export Price” section of this memorandum, above, where certain U.S. movement expenses were sourced from NME providers, we valued these expenses using a SV. We valued U.S. inland truck freight expenses using data from the World Bank’s *Doing Business 2020: United States* publication.¹⁷² We also valued U.S. B&H expenses using this data source, which provided a price list of import procedures necessary to import a standardized cargo of goods in the United States.¹⁷³ We valued U.S. rail freight expenses using data from the Association of American Railroads.¹⁷⁴ Because these data predate the POI, we inflated these prices using the United States’ PPI to be contemporaneous with the POI.¹⁷⁵

We valued marine insurance expenses using a 2010 rate offered by RJG Consultants, an ME provider of marine insurance.¹⁷⁶ The rate is a percentage of the value of the shipment; thus, we did not inflate or deflate the rate. Because there are no source data for domestic inland insurance

¹⁶⁴ See Preliminary SV Memorandum.

¹⁶⁵ See Petitioner’s 1st SV Submission at Exhibit 4.

¹⁶⁶ *Id.*

¹⁶⁷ See Zongshen Companies’ SV Submission at Exhibit 5.

¹⁶⁸ The description for Turkish HTS code 2710.12.41.0000 is provided in Turkish by GTA. We have used the translation provided by the petitioner. See Petitioner’s 1st SV Submission at Exhibit 1.

¹⁶⁹ See Petitioner’s 1st SV Submission at Exhibit 7; and Zongshen Companies’ SV Submission at Exhibit 7a.

¹⁷⁰ *Id.*

¹⁷¹ See Preliminary SV Memorandum.

¹⁷² See Zongshen Companies’ SV Submission at Exhibit 7b.

¹⁷³ *Id.*

¹⁷⁴ *Id.* at Exhibit 7c.

¹⁷⁵ See Preliminary SV Memorandum at Exhibit 2-D.

¹⁷⁶ See Petitioner’s 1st SV Submission at Exhibit 8.

expenses on the record, we also valued domestic inland insurance using the marine insurance rate.

We valued ocean freight expenses based on rates identified by Descartes on its website. These rates are publicly available and cover a wide range of shipping routes which are reported on a daily basis from July through December 2019.¹⁷⁷

According to 19 CFR 351.408(c)(4), Commerce is directed to value overhead, selling, general and administrative expenses (SG&A) 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, and profit using financial statements that cover a period that is contemporaneous with the POI,¹⁷⁸ show a profit, are from companies with a production experience similar to respondents' production experience, and are not distorted or otherwise unreliable, such as financial statements that indicate the company received countervailable subsidies.¹⁷⁹

The record contains financial statements for five companies in Turkey: Arcelik;¹⁸⁰ Alarko;¹⁸¹ Safkar;¹⁸² Turk Traktor;¹⁸³ and Vestel.¹⁸⁴ The financial statements on the record for these companies all cover 2019, which overlaps with the POI, show a profit, and are not distorted or otherwise unreliable due to countervailable subsidies or the financial condition of the company. In addition, we preliminarily find that the financial statements on the record are for companies that produce merchandise comparable to the merchandise under consideration.

Since all of these companies' financial statements are publicly available and contemporaneous with the POI, Commerce considered the other criteria of specificity and comparability to the respondents' production experience. Alarko produces submersible motors, pumps, gas-powered heaters and equipment, radiators, residential and commercial air conditions, and related accessories.¹⁸⁵ Similar to our respondents, Alarko's products are then sold to downstream customers for use in larger systems or products.¹⁸⁶ Record information suggests that Safkar produces powered air conditioning equipment to be mounted on buses, trains, and residential and commercial properties.¹⁸⁷ While Arcelik does produce motors, it also produces a myriad of

¹⁷⁷ See Zongshen Companies' SV Submission at Exhibit 8a; and Petitioner's 1st SV Submission at Exhibit 9.

¹⁷⁸ 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.

¹⁷⁹ 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; see also *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.

¹⁸⁰ See Petitioner's 1st SV Submission at Exhibit 16.

¹⁸¹ *Id.* at Exhibit 14; see also Zongshen Companies' SV Submission at Exhibit 9b.

¹⁸² See Petitioner's 1st SV Submission at Exhibit 15.

¹⁸³ See Zongshen Companies' SV Submission at Exhibit 9d.

¹⁸⁴ See Petitioner's 1st SV Submission at Exhibit 17.

¹⁸⁵ *Id.* at Exhibit 19.

¹⁸⁶ See Petitioner's Pre-Preliminary Comments at 12.

¹⁸⁷ See Petitioner's 1st SV Submission at Exhibit 20.

different products including televisions, smart phones, microwave ovens, and washing machines which appears to comprise the majority of its business.¹⁸⁸ Vestel produces refrigerators, room air conditioning units, washing machines, cookers, dishwashers, and water heaters.¹⁸⁹ Finally, Turk Traktor produces tractors, harvesters, loaders, and other agricultural vehicles.¹⁹⁰ While Turk Traktor does produce engines, these engines are only one part of many which go into the agricultural equipment the company produces. Thus, we find that Alarko's production experience is more similar to our respondents' production experience than is Safkar's, Arcelik's, Vestel's, or Turk Traktor's. Therefore, for the preliminary determination, we calculated surrogate financial ratios (*i.e.*, manufacturing overhead, SG&A, and profit) using Alarko's financial statements.¹⁹¹

The Zongshen Companies provided information regarding their reported by-product of aluminum scrap.¹⁹² Specifically the Zongshen Companies claimed a by-product offset for the production of certain inputs produced and supplied to Chongqing Zongshen by its affiliate, Zongshen Power.¹⁹³ However, the information provided by the Zongshen Companies regarding the production of their reported by-product of aluminum scrap is insufficient to grant them a by-product offset. Specifically, the Zongshen Companies did not maintain records demonstrating the production quantity of the aluminum scrap during the POI;¹⁹⁴ rather, they provided sales documentation for December 2019, an allocation calculation,¹⁹⁵ and photos¹⁹⁶ to support their claimed production of aluminum scrap. In other instances where companies have been unable to provide POI production records to support their claims, it has been Commerce's practice to not grant a scrap or by-product offset.¹⁹⁷ Because the Zongshen Companies did not provide records to support their claimed production of the aluminum scrap by-product, we are, consistent with our practice, preliminarily not granting a by-product offset for the Zongshen Companies' reported quantities of aluminum scrap.

O. Comparisons to Normal Value

Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Chongqing Kohler's and the Zongshen Companies' sales of the subject merchandise to the United States were made at less than NV, Commerce compared the EPs and CEPs, where

¹⁸⁸ *Id.* at Exhibit 16 at Note 1 and Exhibit 21.

¹⁸⁹ *Id.* at Exhibit 17.

¹⁹⁰ See Zongshen Companies' SV Submission at Exhibits 9d at Note 1 and Exhibit 9e.

¹⁹¹ See Preliminary SV Memorandum.

¹⁹² See Zongshen Companies' June 26, 2020 DQR at D-22 – D-24; and Zongshen Companies' August 18, 2020 SACDQR at 17-18.

¹⁹³ See Zongshen Companies' June 26, 2020 DQR at D-22 – D-24.

¹⁹⁴ See Zongshen Companies' August 18, 2020 SACDQR at 18 (“In the company's daily operations, Chongqing Zongshen does not book the actual generation of aluminum scrap. Only at the time the aluminum scrap is sold does the company book the quantity and value of sales.”).

¹⁹⁵ See Zongshen Companies' June 26, 2020 DQR at Exhibits 29-31.

¹⁹⁶ See Zongshen Companies' August 18, 2020 SACDQR at Exhibit SD-16.

¹⁹⁷ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Results of the New Shipper Review; 2012-2013*, 80 FR 4244 (January 27, 2015), and accompanying IDM at Comment 3 (denying claims for a by-product offset where the companies did not provide data of their, or their subcontractors, ' by-product production during the period of review).

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

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or CEPs, *i.e.*, the average-to-average method, unless the Secretary determines that another method is appropriate in a particular situation. In 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 investigations, Commerce has applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation, pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.¹⁹⁸ Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of 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.*, zip code, and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the 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

¹⁹⁸ 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).

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.¹⁹⁹

Results of the Differential Pricing Analysis

Chongqing Kohler

For Chongqing Kohler, based on the results of the differential pricing analysis, Commerce preliminarily finds that 0.00 percent of the value of U.S. sales pass the Cohen's *d* test²⁰⁰ and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, Commerce preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Chongqing Kohler.

The Zongshen Companies

For the Zongshen Companies, based on the results of the differential pricing analysis, Commerce preliminarily finds that 63.70 percent of the value of U.S. sales pass the Cohen's *d* test²⁰¹ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. However, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales that passed the Cohen's *d* test and the average-to-average method to those sales that did not pass the Cohen's *d* test. Thus, for this preliminary determination, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for the Zongshen Companies.

VII. CURRENCY CONVERSION

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

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

In applying section 777A(f) of the Act, Commerce examines: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise; (2) whether such countervailable subsidy has been demonstrated to have reduced

¹⁹⁹ 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.

²⁰⁰ *See* Chongqing Kohler Preliminary Analysis Memorandum.

²⁰¹ *See* Memorandum, "Preliminary Analysis Memorandum for the Zongshen Companies," dated October 14, 2020.

the average price of imports of the class or kind of merchandise during the relevant period; and (3) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.²⁰² 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.²⁰³

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.²⁰⁴

For purposes of our analysis under sections 777A(f)(1)(A) and (f)(1)(C) of the Act, Commerce requested firm-specific information from the mandatory respondents as part of the initial antidumping questionnaire.²⁰⁵ We sought information regarding whether the respondents received countervailable subsidies during the relevant period, the respondents' costs, and the respondents' pricing policies and practices. Additionally, we required the respondents to provide documentary support for this information. Chongqing Kohler and the Zongshen Companies submitted responses to Commerce's firm-specific double remedies questionnaire²⁰⁶ and subsequent supplemental questionnaires.²⁰⁷

In the companion CVD investigation, Commerce preliminarily found the provision of electricity, land, and unwrought aluminum for less than adequate remuneration (LTAR), as well as various other subsidies, to be countervailable with respect to the class or kind of merchandise under consideration.²⁰⁸ Chongqing Kohler and the Zongshen Companies (*i.e.*, Chongqing Zongshen) are both mandatory respondents in the companion CVD investigation. In this companion investigation, both respondents reported purchases of land and electricity which Commerce preliminarily found provided a countervailable benefit.²⁰⁹ Further, Commerce also preliminarily found that the Zongshen Companies and Chongqing Kohler benefited from several other

²⁰² See section 777A(f)(1)(A)-(C) of the Act.

²⁰³ See section 777A(f)(1)-(2) of the Act.

²⁰⁴ See, e.g., *Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part*, 82 FR 28629 (June 23, 2017), and accompanying PDM at 43.

²⁰⁵ See Commerce's Letter, "Initial Antidumping Duty Questionnaire," dated April 30, 2020 at page 2 and Appendix XII.

²⁰⁶ See Chongqing Kohler's June 26, 2020 CDQR at Exhibit C-20; and Zongshen Companies' June 26, 2020 CQR at Appendix XII.

²⁰⁷ See Chongqing Kohler's September 29, 2020 SCQR at SC-25 – SC-26 and Exhibit SC-15; and Zongshen Companies' October 6, 2020 4th SCDQR at 6.

²⁰⁸ See *Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 85 FR 52086 (August 24, 2020) (*CVD Small Vertical Engines Preliminary Determination*), and accompanying PDM.

²⁰⁹ See Chongqing Kohler's June 26, 2020 CDQR at Exhibit C-20; see also Zongshen Companies' June 26, 2020 CQR at Appendix XII.

countervailable subsidies, including purchasing unwrought aluminum for LTAR.²¹⁰ Chongqing Kohler and the Zongshen Companies provided worksheets showing POI purchases and costs of electricity and/or unwrought aluminum.

In accordance with section 777A(f)(1)(A) of the Act, Commerce examined whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise. Because Commerce found the above-referenced subsidy programs to be countervailable with respect to the class or kind of merchandise under consideration in the companion CVD investigation,²¹¹ Commerce preliminarily finds that the requirement of section 777A(f)(1)(A) of the Act has been met.

Additionally, in accordance with section 777A(f)(1)(C) of the Act, Commerce examined whether Chongqing Kohler and the Zongshen Companies demonstrated: (1) a subsidies-to-cost link, *i.e.*, a subsidy effected the cost of manufacturing (COM) of the merchandise under consideration; and (2) a cost-to-price link, *i.e.*, the respondent's prices were dependent on changes in the COM. With respect to the subsidies-to-cost link, in their double remedies questionnaire responses, Chongqing Kohler and the Zongshen Companies reported that they consumed electricity and/or unwrought aluminum in the production of subject merchandise.²¹² Chongqing Kohler and the Zongshen Companies also argued that the provision of land, electricity, and the other subsidies offset their COMs and their prices were affected by these changes in their COMs. Additionally, the Zongshen Companies argued that the provision of unwrought aluminum for LTAR offset their COM and this offset affected their prices.

For the provision of unwrought aluminum for LTAR, Commerce requires additional time to evaluate whether the Zongshen Companies provided adequate information to establish a link between subsidies (*i.e.*, the provision of unwrought aluminum for LTAR), costs, and prices. In accordance with section 777A(f)(1)(C) of the Act, the Zongshen Companies provided certain information indicating that the provision of unwrought aluminum for LTAR subsidy program affected their COM (*i.e.*, the subsidy-to-cost link). Specifically, the Zongshen Companies stated that they identify and monitor the cost fluctuations of aluminum alloy ingots and provided evidentiary support.²¹³ Further, the Zongshen Companies reported that Chongqing Zongshen coordinates with Zongshen Power's personnel (*i.e.*, with respect to the price of aluminum related to the cost of inputs purchased by Chongqing Zongshen from Zongshen Power) and reports cost changes in aluminum alloy ingots to the personnel that are responsible for setting the price of subject merchandise.²¹⁴

²¹⁰ See Zongshen Companies' June 26, 2020 CQR at Appendix XII

²¹¹ See *CVD Small Vertical Engines Preliminary Determination PDM*.

²¹² See Chongqing Kohler's June 26, 2020 CDQR at Exhibit C-20, pages 6-8, and Exhibit C-20.1; see also Zongshen Companies' June 26, 2020 CQR at Appendix XII, 9 and 11, and Exhibit DR-4.

²¹³ See Zongshen Companies' June 26, 2020 CQR at Appendix XII at page 9-10, and Exhibit DR-3 ("Please see the internal market price report prepared by Zongshen Power for the year 2019 in Exhibit DR-3 where it provides aluminum prices reporting for different specifications on a daily basis.").

²¹⁴ *Id.* at Appendix XII page 6.

For the cost-to-price link, the Zongshen Companies stated that they consider fluctuations of the price of aluminum when negotiating U.S. prices.²¹⁵ In addition, the Zongshen Companies provided documentation in their June 1, 2020 AQR that they argue demonstrates Chongqing Zongshen’s management actively considers or adopts changes to budgeted prices in response to changes in the price of aluminum.²¹⁶

Section 777A(f)(1)(B) of the Act provides that, in addition to the criteria set forth in sections 777A(f)(1)(A) and (C) of the Act, Commerce must determine that “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.” Commerce’s usual practice is to examine the U.S. import price data contained in the ITC’s preliminary report to determine whether or not there was a decrease in import prices during the relevant period.²¹⁷

Because we require additional time to examine the information provided by the Zongshen Companies and the ITC’s U.S. import price data (which we examine under section 777A(f)(1)(B) of the Act), we are preliminarily denying the domestic subsidy pass-through adjustment for the provision of unwrought aluminum for LTAR with respect to the Zongshen Companies. However, we intend to analyze this data further for the final determination.

For the provision of land for LTAR, the provision of electricity for LTAR, and the other subsidies, we preliminarily find that the mandatory respondents failed to demonstrate that these subsidies resulted in a change to their COMs during the relevant period pursuant to section 777A(f)(1)(C) of the Act. The respondents provided worksheets showing the consumption and cost of electricity and the Zongshen Companies provided a snapshot of its accounting system showing how electricity is recorded in broad overview.²¹⁸ Chongqing Kohler provided a copy of its land-use contract, land-use agreement, and land-use certificate.²¹⁹ The Zongshen Companies provided a snapshot of their accounting system showing how electricity and other subsidies are recorded in broad overview.²²⁰ However, the respondents did not provide any additional documentation, such as company accounting records (*e.g.*, monthly accounting vouchers covering the entirety of the POI), to demonstrate a connection between the subsidies received by Chongqing Kohler and the Zongshen Companies and their COM. In addition, the Zongshen

²¹⁵ *Id.* at Appendix XII pages 4-5, and 10 (“When the cost of the input materials fluctuates on an overall basis over the past year, a certain adjustment to the prices of engines is made accordingly based on discussion and negotiations between Chongqing Zongshen. . . {and whom?}” and “During the negotiation. . . Chongqing Zongshen. . . looked into the fluctuations in market prices of the major inputs during the previous year and studied the projections of future markets of inputs, and made respective changes to the price of exports of subject merchandise. . . . For example, the price changes of aluminum alloy ingots, the major material input for the production of crankcases and crankcase covers over the last year is an important factor that would be taken into account.”).

²¹⁶ See Zongshen Companies’ June 1, 2020 AQR at Exhibits A-I-11 and A-I-12.

²¹⁷ See *Certain Steel Racks and Parts Thereof from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 35595 (July 24, 2019), and accompanying IDM at Comment 5.

²¹⁸ See Chongqing Kohler’s June 26, 2020 CDQR at Exhibit C-20.1; see also Zongshen Companies’ June 26, 2020 CQR at Exhibits DR-2 and DR-4.

²¹⁹ See Chongqing Kohler’s June 26, 2020 CDQR at Exhibits C-20.2 and C-20.3.

²²⁰ See Zongshen Companies’ June 26, 2020 CQR at Exhibits DR-2. We note that the documentation provided is a POI snapshot of the accounting system and does not show how the Zongshen Companies COM changed as a result of these subsidies.

Companies reported that the purchase price of land and its rate and term of electricity are a fixed and not a variable cost;²²¹ thus, there is no change in cost associated with these items during the POI. Chongqing Kohler also admits that because there were no changes to the cost of its land-use rights, it is “unable to demonstrate that any change to Chongqing Kohler’s prices for engines was a direct result of the land-use rights for LTAR subsidy program.”²²² Further, Chongqing Kohler provided insufficient documentation to support the subsidy-to-cost link for the other subsidies.²²³

Therefore, the respondents have not satisfied the subsidies-to-cost linkage for this preliminary determination for the provision of land and electricity and other subsidies. Additionally, because the respondents failed to identify a subsidies-to-cost link, they also failed to identify a cost-to-price linkage, as no price fluctuation could be directly tied to any change in COM associated with the subsidies identified in the relevant period. Even if we separately considered the narrative and documentation provided to substantiate the cost-to-price linkage with respect to the provision of electricity and land for LTAR and for the other subsidies, the respondents failed to demonstrate this link as well. While both companies stated that there was no threshold for changes in cost items under which the companies would not adjust price,²²⁴ neither company substantiated these claims through submitted documentation. Neither company could show relevant internal communications between relevant business units demonstrating how management considered or adopted changes to budgeted prices in response to changes in the relevant cost items.²²⁵ Chongqing Kohler provided a snapshot of an internal “cost pressure file” and argued that the 2019 “cost pressures for electricity substantiate the cost-to-price link.”²²⁶ However, the electricity worksheet provided as part of its double remedies response and the evidence of negotiations provided as part of Chongqing Kohler’s May 28, 2020 AQR do not support this conclusion or demonstrate that Chongqing Kohler’s and Kohler Co.’s (*i.e.*, Chongqing Kohler’s U.S. selling affiliate) considered or adopted changes to budgeted price for the relevant period in response to changes to the electricity cost item. For the provision of land for LTAR and other subsidies for both companies, and for the provision of electricity of LTAR for the Zongshen Companies, neither company provided documentation that demonstrates how they budgeted price in response to changes in cost items. The Zongshen Companies provided no documentation for these cost items, and Chongqing Kohler only referred Commerce to its price list and evidence of sales negotiations,²²⁷ neither of which demonstrates how Chongqing Kohler budgeted price in relation to any changes in cost associated with these cost items.

Thus, the respondents have not demonstrated a cost-price linkage such that they are actually passing on savings from the subsidies to their customers rather than absorbing these savings from the form of increased profits. Additionally, with respect to the provision of electricity and land for LTAR, neither respondent provided sufficient evidence of fluctuations in price that would affect cost. Finally, because neither the subsidies-to-cost nor cost-to-price link was established,

²²¹ See Zongshen Companies’ 4th SCDQR at 6.

²²² See Chongqing Kohler’s September 29, 2020 SCQR at SC-26.

²²³ See Chongqing Kohler’s June 26, 2020 CDQR at Exhibits C-20.5 and 20.6.

²²⁴ See Chongqing Kohler’s June 26, 2020 CDQR at Exhibit C-20 page 7; *see also* Zongshen Companies’ June 26, 2020 CQR at Appendix XII page 9.

²²⁵ See Chongqing Kohler’s June 26, 2020 CDQR at Exhibit C-20 page 7; *see also* Zongshen Companies’ June 26, 2020 CQR at Appendix XII page 10.

²²⁶ See Chongqing Kohler’s September 29, 2020 SCQR at SC-25 and Exhibit SC-15.

²²⁷ See Chongqing Kohler’s May 28, 2020 AQR at Exhibit A-10 and A-16.

we did not review the average price of imports of the class or kind of merchandise for these programs pursuant 777A(f)(1)(B).

Accordingly, for the preliminary determination, Commerce is not making any double remedies adjustment to the estimated weighted-average dumping margins assigned to any producer/exporter of subject merchandise with respect to the provision of land for LTAR, the provision of electricity for LTAR, the provision of unwrought aluminum for LTAR, or the other subsidies reported.

IX. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES

In an LTFV investigation, where there is a concurrent CVD investigation, it is Commerce's normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent's estimated weighted-average dumping margin to account for export subsidies found for each respective respondent in the concurrent CVD investigation. Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S. price "shall be increased by the amount of any countervailing duty imposed on the subject merchandise. . . to offset an export subsidy."²²⁸

Commerce determined in the preliminary determination of the companion CVD investigation that two of the mandatory respondents (*i.e.*, Chongqing Kohler and Chongqing Zongshen), and the non-selected respondents (*i.e.*, the "All Others" companies) each benefitted from the export buyers credit subsidy program, which is export contingent, and whose subsidy rate equals 10.54 percent.²²⁹ Further Commerce determined that Chongqing Zongshen benefitted from the export sellers credit subsidy program, which is export contingent, and whose subsidy rate equals 1.22 percent.²³⁰ Because Commerce calculated the estimated subsidy rate for the "All Others" companies in the companion CVD investigation using the simple average of Chongqing Kohler and Chongqing Zongshen's estimated subsidy rates,²³¹ we have calculated a simple average of the subsidy rates assigned to Chongqing Kohler (*i.e.*, zero) and Chongqing Zongshen (*i.e.*, 1.22 percent) for the export sellers credit subsidy program to determine a rate of 0.61 percent assigned to the "All Others" companies with respect to the export sellers credit subsidy program.

Accordingly, in order to avoid a double remedy as a result of export subsidies that are found as part of the companion CVD proceeding, Commerce must adjust the estimated weighted average dumping margins by the amount of export subsidies that are countervailed. Therefore, Commerce is adjusting the estimated weighted-average dumping margins for this preliminary determination by 10.54 percent for Chongqing Kohler, 11.76 percent for the Zongshen Companies, and 11.15 percent for the non-examined companies that are eligible for a separate rate and the China-wide entity.

²²⁸ See *Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 38076, 38077 (July 1, 2010), and accompanying IDM at Comment 1.

²²⁹ See *CVD Small Vertical Engines Preliminary Determination* PDM at 29.

²³⁰ *Id.* at 28-29.

²³¹ See *CVD Small Vertical Engines Preliminary Determination*, 85 FR at 52087.

X. ITC NOTIFICATION

In accordance with section 733(f) of the Act, we will notify the ITC of our preliminary determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement or Compliance. In accordance with section 735(b)(2) of the Act, the ITC will make its final determination before the later of 120 days after the date of this preliminary determination or 45 days after Commerce makes its final affirmative determination.

XI. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

Agree

Disagree

10/14/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

Appendix I

List of Wholly Foreign-Owned Companies Receiving Separate Rates

Exporters Receiving a Separate Rate (Foreign-Owned)
Chongqing Kohler Engines Ltd.
Changzhou Kawasaki and Kwang Yang Engine Co., Ltd.
Jialing-Honda Motors Co., Ltd.

Appendix II

List of China-Owned Companies Receiving Separate Rates

Exporters Receiving a Separate Rate (China-Owned or Joint-Venture)
Chongqing Chen Hui Electric Machinery Co., Ltd.
Chongqing HWASDAN Power Technology Co., Ltd.
Chongqing Rato Technology Co., Ltd.
CHONGQING SENCI IMPORT&EXPORT TRADE CO., LTD.
Chongqing Zongshen General Power Machine Co., Ltd./Chongqing Dajiang Power Equipment Co., Ltd./Chongqing Zongshen Power Machinery Co., Ltd.
Wenling Qianjiang Imp. & Exp. Co., Ltd.
Zhejiang Amerisun Technology Co., Ltd.

Appendix III

List of Companies Which Filed Separate Rate Applications

	Exporter	SRA Submission Date
1	Changzhou Kawasaki and Kwang Yang Engine Co., Ltd.	5/14/2020
2	Chongqing Chen Hui Electric Machinery Co., Ltd.	5/21/2020
3	Chongqing HWASDAN Power Technology Co., Ltd.	5/21/2020
4	Chongqing Rato Technology Co., Ltd.	5/20/2020
5	CHONGQING SENCI IMPORT&EXPORT TRADE CO., LTD	5/21/2020
6	Jialing-Honda Motors Co., Ltd.	5/14/2020
7	Loncin Motor Co., Ltd.	5/21/2020
8	Wenling Qianjiang Imp. & Exp. Co., Ltd.	5/21/2020
9	Zhejiang Amerisun Technology Co., Ltd.	5/21/2020