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January 11, 2021

MEMORANDUM TO: Joseph A. Laroski Jr.
Deputy Assistant Secretary
for Policy and Negotiations

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

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in Less-Than-Fair-Value Investigation of
Difluoromethane (R-32) from the People’s Republic of China

I. SUMMARY

We analyzed the comments of the interested parties in the less-than-fair-value (LTFV) investigation of difluoromethane (R-32) from the People’s Republic of China (China). As a result of our analysis, we made no changes to the margin calculations for Taizhou Qingsong Refrigerant New Material Co., Ltd. (Taizhou Qingsong) and Zibo Feiyuan Chemical Co., Ltd. (Zibo Feiyuan), the mandatory respondents in this case.

We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

Comment 1: Whether to Apply Partial Adverse Facts Available (AFA) to Taizhou Qingsong and Zibo Feiyuan for Reporting Issues
Comment 2: Selection of the Primary Surrogate Country
Comment 3: Calculation of the Surrogate Value for Russian Truck Freight

II. BACKGROUND

On August 27, 2020, the Department of Commerce (Commerce) published the *Preliminary Determination* in the LTFV investigation of R-32 from China.¹ The period of investigation (POI) is July 1, 2019 through December 31, 2019. On October 21, 2020, we notified parties that due to travel restrictions, we were unable to travel to conduct verification in this investigation,

¹ See *Difluoromethane (R-32) from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 85 FR 52590 (August 27, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).



and invited parties to comment on the *Preliminary Determination*.² On November 3 and 4, 2020, respectively, Arkema, Inc. (the petitioner) and the respondents timely submitted case briefs.³ On November 12, 2020, the petitioner and the respondents timely submitted rebuttal briefs.⁴

III. CHINA-WIDE RATE

For the final determination, we continue to base the China-wide rate on AFA. In the *Preliminary Determination*, Commerce used Zibo Feiyuan's preliminary calculated weighted-average margin of 221.06 percent because it was the highest calculated rate. For the final determination, we continued to use the same rate as the China-wide rate.

IV. CALCULATION CHANGES SINCE THE PRELIMINARY DETERMINATION

We calculated export price and normal value (NV) for Taizhou Qingsong and Zibo Feiyuan using the same methodology stated in the *Preliminary Determination*.

V. DISCUSSION OF THE ISSUES

Comment 1: Whether to Apply Partial AFA to Taizhou Qingsong and Zibo Feiyuan for Reporting Issues

Petitioner's Case Brief

- Taizhou Qingsong and Zibo Feiyuan failed to put forth their maximum effort to comply with Commerce's information requests, causing the record to lack necessary information for Commerce's margin calculation.⁵
- Specifically, Commerce has classified inputs as direct materials, not factory overhead (FOH), if they were found to be: (1) consumed continuously with each unit of production; (2) required for a particular segment of the production process; (3) essential for production; (4) not used for incidental purposes; or (5) otherwise a significant input to the manufacturing process rather than a miscellaneous or occasionally used material.⁶
- However, Taizhou Qingsong failed to report nitrogen as a direct material, despite Commerce's multiple requests regarding this input.

² See Memorandum, "Antidumping Duty Investigation of Difluoromethane (R-32) from the People's Republic of China – Cancellation of Verification and Briefing Schedule," dated October 21, 2020.

³ See Petitioner's Letter, "Difluoromethane (R-32) from the People's Republic of China: Case Brief," dated November 3, 2020 (Petitioner Case Brief); and Respondents' Letter, "Antidumping Duty Investigation of Difluoromethane (R-32) from the People's Republic of China: Respondents' Case Brief," dated November 4, 2020 (Respondents Case Brief).

⁴ See Petitioner's Letter, "Difluoromethane (R-32) from the People's Republic of China: Petitioner's Rebuttal to Respondents' Case Brief," dated November 12, 2020 (Petitioner Rebuttal Brief); and Respondents' Letter, "Antidumping Duty Investigation of Difluoromethane (R-32) from the People's Republic of China: Respondents' Rebuttal Case Brief," dated November 12, 2020 (Respondents Rebuttal Brief).

⁵ See Petitioner Case Brief at 4.

⁶ *Id.* at 3 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments, 2013-2014*, 81 FR 39905 (June 20, 2016) (*Solar Cells from China*), and accompanying Issues and Decision Memorandum (IDM) at Comment 20).

- Based on Taizhou Qingsong’s submission,⁷ there is no justification for it not to report a consumption rate in the factors of production (FOP) database for nitrogen; therefore, the application of the highest reported FOP consumption rate is warranted as AFA for this input.
- Taizhou Qingsong also failed to support its labor allocation between subject and non-subject merchandise. In response to Commerce’s question regarding the allocation methodology Taizhou Qingsong used, Taizhou Qingsong simply explained that it allocated indirect and packing labor hours between the different products by the relative production output of each product.⁸
- Taizhou Qingsong provided no support for the allocation factors or how they were calculated and the record lacks information to demonstrate that the methodology Taizhou Qingsong used is not distortive.⁹ Consequently, Commerce should apply AFA by using the total amount of labor hours Taizhou Qingsong reported without any allocation.
- The application of AFA to Zibo Feiyuan is warranted because it failed to report a catalyst used in the production of R-32 as a direct material.¹⁰
- Additionally, Commerce has previously found that a similar catalyst should be reported as a direct material FOP.¹¹ Therefore, Commerce should treat Zibo Feiyuan’s reported catalyst as a direct material and assign it the highest reported FOP consumption rate for purposes of the NV calculation.¹²
- Zibo Feiyuan also improperly classified several additional direct materials as FOH, despite Commerce’s direction and practice of classifying inputs as direct materials, not FOH, if such materials are consumed continuously with each unit of production.¹³
- Zibo Feiyuan disregarded Commerce’s request to report any item directly consumed in the manufacture of R-32 as an FOP. Therefore, Commerce should apply AFA, treat the additional items Zibo Feiyuan reported as directly consumed in the production of R-32 as direct materials, and assign them the highest reported FOP consumption rate for purposes of the NV calculation.¹⁴
- Finally, where information necessary for determining the proper harmonized tariff schedule (HTS) classification of the respondent’s input was missing, Commerce has “looked elsewhere in the record” to decide the most appropriate HTS code for valuation.¹⁵ In doing so, Commerce should apply AFA where appropriate given Zibo Feiyuan’s failure to cooperate.

⁷ *Id.* (citing Taizhou Qingsong’s Letter, “Difluoromethane (R-32) from the People’s Republic of China: Supplemental Section D Questionnaire Response,” dated July 1, 2020 (Taizhou Qingsong July 1, 2020 SDQR) at Exhibit SD-12).

⁸ *Id.* (citing Taizhou Qingsong July 1, 2020 SDQR at Exhibit SD-5).

⁹ *Id.* at 3-4.

¹⁰ *Id.* at 4.

¹¹ *Id.* (citing *Hydrofluorocarbon Blends and Components Thereof from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016) (*HFCs from China*), and accompanying IDM at Comment 24).

¹² *Id.* at 5.

¹³ *Id.* (citing *Solar Cells from China* IDM at Comment 20).

¹⁴ *Id.* at 5-6.

¹⁵ *Id.* at 6 (citing *Multilayered Wood Flooring from the People’s Republic of China: Correction to the Final Results of Antidumping Duty Administrative Review*, 80 FR 41476 (August 31, 2015), and accompanying IDM at Comment 6).

Respondents' Rebuttal Brief

- Taizhou Qingsong and Zibo Feiyuan reported complete and accurate data in their questionnaire responses; therefore, there is no valid reason to apply AFA to either respondent.¹⁶
- Taizhou Qingsong accurately reported that in the production of subject merchandise it used nitrogen for metering, where it does not become part of the finished product or come into contact with the product at all.¹⁷
- According to Commerce's criteria in assessing whether an input is a direct material or FOH, as outlined in *Nails from China*,¹⁸ where inputs are used in the production process but not physically incorporated into the final product, they should be treated as FOH rather than as a direct material.¹⁹
- Commerce should apply the same analysis here, using the information Taizhou Qingsong provided to analyze the four factors outlined in *Nails from China* including, among others: (1) a full FOH list indicating usages;²⁰ and (2) a list of materials that are excluded from the production process.²¹ This information shows that Taizhou Qingsong's reported nitrogen should not be treated as a direct material.
- Regarding its labor allocation, in response to Commerce's supplemental questionnaire, Taizhou Qingsong provided supporting documentation demonstrating its direct labor reported on an actual basis.²²
- Further, Taizhou Qingsong demonstrated that its allocation methodology is not distortive.²³ Specifically, Taizhou Qingsong allocated indirect labor by production volume, consistent with industry practice.
- The record also reflects Zibo Feiyuan's complete and accurate reporting of FOPs pursuant to Commerce's requests and does not lack necessary information for Commerce's margin calculations.²⁴
- If Commerce were to reclassify Zibo Feiyuan's FOH as material inputs, no statutory basis exists to apply adverse inferences and use the reported FOP consumption rates of the other respondent, Taizhou Qingsong, for purposes of Zibo Feiyuan's NV calculation.²⁵

¹⁶ See Respondents Rebuttal Brief at 1.

¹⁷ *Id.* at 5 (citing Taizhou Qingsong's Letter, "Difluoromethane (R-32) from the People's Republic of China: Section D Questionnaire Response," dated May 8, 2020, at D-3).

¹⁸ *Id.* (citing *Certain Steel Nails from the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review; 2010-2011*, 78 FR 16651 (March 18, 2013), and accompanying IDM at Comment 4 (*Nails from China*)).

¹⁹ *Id.* (citing *Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 83 FR 33205 (July 17, 2018), and accompanying IDM at Comment 4).

²⁰ *Id.* (citing Taizhou Qingsong July 1, 2020 SDQR at Exhibit SD-11).

²¹ *Id.* at 5-6 (citing Taizhou Qingsong July 1, 2020 SDQR at Exhibit SD-12).

²² *Id.* at 6 (citing Taizhou Qingsong July 1, 2020 SDQR at Exhibit SD-27).

²³ *Id.* at 7 (citing Taizhou Qingsong July 1, 2020 SDQR at 5).

²⁴ *Id.* at 1-3.

²⁵ *Id.* at 1-2.

- Commerce has previously found that there is no conclusive test for reaching the appropriate classification of inputs that are not easily distinguished as direct materials or FOH, and Commerce decides such issues on a case-by-case basis.²⁶
- Commerce issued a supplemental section D questionnaire to Zibo Feiyuan prior to the *Preliminary Determination*, indicating that it had received all necessary and complete information for its calculation. Because Commerce did not apply AFA in its margin calculations for Zibo Feiyuan in the *Preliminary Determination*, it should find no basis to do so for the final determination.
- To justify the argument that Zibo Feiyuan failed to report a catalyst used in the production of R-32 as a direct material, the petitioner cites *HFCs from China*, where a catalyst with a useful life span of approximately two years was classified as an FOP, not as FOH; however, this fact patten differs from the reporting of Zibo Feiyuan’s catalyst.²⁷
- Zibo Feiyuan’s treatment of the catalyst as FOH is reasonable because Commerce has previously found that a catalyst should be treated as FOH where it is used to precipitate chemical reactions during the production process and is repeatedly and continuously reused.²⁸
- In applying Commerce’s four-part test, the information Zibo Feiyuan provided shows that the additional twelve items the petitioner discusses in its case brief should not be classified as direct materials, but as FOH.²⁹
- The fact that another respondent treats a few similar articles as direct materials, rather than FOH, in its production process is not dispositive of whether they must also be treated as direct materials in Zibo Feiyuan’s production process.³⁰
- However, if Commerce finds that Zibo Feiyuan’s FOH items should be classified as direct materials, then adverse inferences should not be applied. Instead, Commerce should apply Taizhou Qingsong’s reported usage rates to Zibo Feiyuan.

Commerce’s Position: Section 776(a) of the Act list provides the following circumstances under which Commerce will apply the facts available (FA) in making a determination:

- If — (1) necessary information is not available on the record, or
 (2) an interested party or any other person—
- (A) withholds information that has been requested by the administering authority or the Commission under this title,
 - (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782,
 - (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering

²⁶ *Id.* at 2 (citing *Certain Steel Nails from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 18816 (April 8, 2015), and accompanying IDM).

²⁷ *Id.* at 7-8 (citing *HFCs from China* IDM at Comment 24).

²⁸ *Id.* (citing *Notice of Final Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions from Belarus*, 68 FR 9055 (February 27, 2003) (*UANS from Belarus*), and accompanying IDM at Comment 2).

²⁹ *Id.* at 9.

³⁰ *Id.* at 10.

authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Moreover, section 776(b) of the Act provides for the application of AFA under the following circumstances:

- (1) If the administering authority or the Commission (as the case may be) finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this title—
 - (A) may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available

In reviewing the evidence on the record of this investigation as it relates to Taizhou Qingsong and Zibo Feiyuan, we do not find that the statutory requirements for the application of AFA have been met. As discussed below, we determine that necessary information is not missing from the record. In addition, we find that Taizhou Qingsong and Zibo Feiyuan acted to the best of their abilities in timely complying with Commerce's requests for information in this investigation.

We disagree with the petitioner that Commerce should apply partial AFA to Taizhou Qingsong because it did not: (1) report nitrogen as an FOP, rather than as part of FOH; and (2) sufficiently support its allocation of labor between subject and non-subject merchandise. We note that we did not specifically direct Taizhou Qingsong to report nitrogen as an FOP in our supplemental questionnaire. Further, we disagree with the petitioner's reliance on *Solar Cells from China* to support its claim that Taizhou Qingsong should have reported nitrogen separately as a FOP, instead of as part of FOH.³¹ In *Solar Cells from China*, in examining whether a direct material should be valued as an FOP versus part of FOH, Commerce considered: (1) whether the input is physically incorporated into the final product; (2) the input's contribution to the production process and finished product; (3) the relative cost of the input; and (4) the way the cost of the input is typically treated in the industry.³² Here, Taizhou Qingsong stated that nitrogen was used for metering and it does not become part of the finished product.³³ Therefore, we find it appropriate in this instance to continue to treat nitrogen as a part of Taizhou Qingsong's FOH in our calculations for the final determination.

We also find that Taizhou Qingsong complied with our requests for information regarding its labor allocation. In response to our request for additional information regarding any allocations the company used to report its FOPs for several items (*e.g.*, labor), Taizhou Qingsong described how it allocated labor to each type of product based on output quantity.³⁴ Taizhou Qingsong also stated that it not only uses this allocation method in its daily operation, but also that it is commonly used within the industry. Moreover, Taizhou Qingsong provided attendance

³¹ See *Solar Cells from China* IDM at Comment 20.

³² See *Nails from China* IDM at Comment 4.

³³ See Taizhou Qingsong's May 8, 2020 Initial Questionnaire Response at D-3.

³⁴ See Taizhou Qingsong July 1, 2020 SDQR at 5.

worksheets to support its labor allocations and tied its reported labor hours to payroll records for a requested month.³⁵ Thus, we find that Taizhou Qingsong properly explained and supported its reported labor allocation.

Moreover, we disagree with the petitioner that Commerce should apply partial AFA due to Zibo Feiyuan's failure to report FOPs for: (1) a catalyst; and (2) certain other items it reported as part of FOH. We note that we did not specifically direct Zibo Feiyuan to report FOPs for these items in our supplemental questionnaire.

To support its argument that Zibo Feiyuan failed to report catalyst at issue as a direct material, the petitioner cites *HFCs from China*, where Commerce classified a catalyst with a useful life span of approximately two years as a FOP, not FOH.³⁶ However, in deciding how to treat any input for the purpose of calculating NV, Commerce takes into consideration the relative cost of the input, its contribution to the production process and finished product, the frequency of its use, and the way the cost of the input is typically treated in the industry.³⁷ Commerce has previously found that a catalyst should be treated as FOH where it is used to precipitate chemical reactions during the production process, and it is repeatedly and continuously reused, sometimes for periods as long as six years.³⁸ In this case, the catalyst at issue can be used for four to five years, which is a longer period of time than the catalyst at issue in *HFCs from China*.³⁹

In addition, Commerce will consider whether a material is included in the factory overhead of a surrogate producer's financial statements before it decides whether to value the material as an "input" or as a component of overhead.⁴⁰ If, after reviewing a surrogate producer's financial statements, Commerce determines that the material is included in the surrogate producer's overhead, Commerce will generally not value the material separately. However, if Commerce has reason to believe that the material is not included in the surrogate producer's overhead, Commerce will assign the material a separate surrogate value. In this case, Zibo Feiyuan included catalysts and the additional items at issue which it included in FOH in its overhead.⁴¹ Moreover, because the Russian surrogate financial statements include an amount for "current repair of plant property and equipment, goods and materials," which is included in our calculation of FOH, we believe it is reasonable to consider that Zibo Feiyuan's catalyst and the additional items are captured by the amount of the Russian surrogate's FOH.⁴²

Therefore, for the reasons stated above, we find no basis to apply AFA to either Taizhou Qingsong or Zibo Feiyuan in our calculations for the final determination.

³⁵ *Id.* at Exhibits SD-27 – SD-30.

³⁶ See *HFCs from China* IDM at Comment 24.

³⁷ See *UANS from Belarus* IDM at Comment 2.

³⁸ *Id.*

³⁹ See Zibo Feiyuan's Letter, "Difluoromethane (R-32) from the People's Republic of China: Supplemental Section D Questionnaire Response," dated July 6, 2020 (Zibo Feiyuan's Supplemental Section D Response).

⁴⁰ See *UANS from Belarus* IDM at Comment 2.

⁴¹ See Zibo Feiyuan's Supplemental Section D Response at 3-4 and Exhibit S-D-0601.

⁴² See Petitioner's Letter, "Difluoromethane (R-32) from the People's Republic of China: Petitioner's Surrogate Value Comments," dated July 2, 2020 (Petitioner SV Comments) at Exhibit 13. For the same reasons expressed above, we also find it reasonable to consider that Taizhou Qingsong's nitrogen is captured by the amount of the Russian surrogate's FOH.

Comment 2: Selection of the Primary Surrogate Country

Respondents' Case Brief

- Commerce's precedent does not dictate the selection of Russia as the primary surrogate country for this investigation and there are compelling reasons to instead choose Turkey as the surrogate country.⁴³
- There is insufficient evidence that only Russia produces comparable merchandise and Turkey does not.⁴⁴
- The Russian Global Trade Atlas (GTA) data on the record is no more complete than the Turkish GTA data. The Turkish GTA data are of high quality and reliable, while there is a gap in the Russian GTA data (*i.e.*, Commerce had to rely on Malaysian data for one input).⁴⁵
- Commerce failed to adequately support its selection of Russia as the primary surrogate country with substantial evidence and should instead designate Turkey as the primary surrogate country in the final determination.⁴⁶
- The petitioner argues that Russia is a significant producer of comparable product based on a 2017 IHS Markit Ltd. Report (IHS Report) stating that Russia produces R-22; however, the conclusion that Turkey is not a producer of any comparable product because Turkey is not mentioned in the 2017 IHS report is inaccurate because the IHS Report does not explicitly state that Turkey does not produce comparable products.⁴⁷
- An IHS Report is not an authoritative source for Commerce to use in its analysis to determine every single country's production of a particular commodity. Moreover, the IHS report is outdated because it addresses the fluorocarbon market information in 2017, not the POI.⁴⁸
- Information on the record shows that Turkey is a significant producer of comparable merchandise in the form of R-404.⁴⁹
- Even if Commerce continues to use Russia as the primary surrogate country, the Russian financial statements used in the *Preliminary Determination* should not be used because they are not contemporaneous. Instead, the Turkish financial statements should be used.⁵⁰
- It is not unusual for Commerce to consider financial statements from countries other than the primary surrogate country to value other FOP. Commerce has the discretion to choose between reasonable alternatives, where necessary, to select the appropriate financial statements to calculate the financial ratios.⁵¹

⁴³ See Respondents' Case Brief at 1.

⁴⁴ *Id.*

⁴⁵ *Id.* at 1-2.

⁴⁶ *Id.* at 2-4 (citing section 773(c) of the Act).

⁴⁷ *Id.* at 5-6 (citing Petitioner's Letter, "Difluoromethane (R-32) from the People's Republic of China: Petitioner's Surrogate Country Comments," dated July 12, 2020, at Exhibit 1).

⁴⁸ *Id.*

⁴⁹ *Id.* (citing Respondents' Letter, "Less-Than-Fair Value Investigation of Difluoromethane (R-32) from the People's Republic of China: Comments on Surrogate Country Selection," dated June 12, 2020, at Exhibit 7).

⁵⁰ *Id.* at 1 and 7.

⁵¹ *Id.* at 7-8 (citing *Forged Steel Fittings from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 50339 (October 5, 2018), and accompanying IDM at Comment 2; *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-*

- Commerce has previously concluded that contemporaneity may be more important than specificity when deciding which financial ratios to apply.⁵²
- Commerce should also continue to disregard the Mexican financial statements on the record, as it did in the *Preliminary Determination*, because the petitioner provided no basis to rely on them.⁵³

Petitioner's Rebuttal Brief

- Commerce should continue to select Russia as the primary surrogate country and use the Russian financial statements that are on the record because: (1) record evidence indicates that Russia is a significant producer of comparable merchandise, while Turkey is not; (2) contemporaneity is only one factor that Commerce considers when selecting surrogate values; and (3) Russia is superior to Turkey in terms of data quality because the Turkish import value for hydrochloric acid is aberrational and the Turkish financial statements on the record are unusable because the company does not produce comparable merchandise.⁵⁴
- The IHS Report is authoritative and reliable while the webpage printouts the respondents rely on fail to establish Turkey as a producer of comparable merchandise. Moreover, the IHS Report is the authoritative guide on the worldwide fluorocarbon chemical industry, identifying the producers in each region of the world. The IHS report provides the best available information regarding worldwide production of products potentially comparable to R-32 and Commerce should continue to rely on it in deciding whether a country is a significant producer of comparable merchandise.⁵⁵
- Although the IHS report covers a time period earlier than the POI, the record contains no evidence suggesting a relevant change to the companies producing comparable merchandise during the POI. Additionally, the respondents had the opportunity to rebut the information contained in the IHS Report, but failed to do so.⁵⁶
- In determining whether a product can be considered comparable merchandise for a product like R-32, Commerce considers the physical characteristics of the merchandise and the extent of value-added processing.⁵⁷ R-404 is a refrigerant blend, which differs from R-32 in terms of its manufacturing process, customer perception, and other factors.⁵⁸ Commerce recently

2017, 83 FR 53214 (October 22, 2018) (*Activated Carbon from China*), and accompanying IDM at Comment 6; *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of New Shipper Review; 2015-2016*, 82 FR 47469 (October 12, 2017), and accompanying IDM at Comment 2; and *FMC Corp. v. United States*, 27 CIT 240, 251 (CIT 2018), affirmed in *FMC Corp. v. United States*, 87 F. Appx. 735 (Fed. Cir. 2004)).

⁵² *Id.* at 8-9 (citing *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 11962 (February 28, 2020), and accompanying IDM at Comment 6; and *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 49162 (August 20, 2008), and accompanying IDM at Comment 3).

⁵³ *Id.* at 10.

⁵⁴ See Petitioner Rebuttal Brief at 1.

⁵⁵ *Id.* at 3.

⁵⁶ *Id.*

⁵⁷ *Id.* (citing 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>).

⁵⁸ *Id.* at 4.

determined that refrigerant blends are significantly different from the underlying components in terms of the degree of processing in the production process.⁵⁹

- Additionally, the respondents have not submitted any evidence indicating that the alleged Turkish producer of R-404 does anything more than blend non-Turkish origin refrigerants in Turkey. Thus, given the significant differences between blending and refrigerant manufacturing, R-404 is not comparable merchandise to R-32.⁶⁰
- Commerce routinely uses financial statements that are not contemporaneous if they constitute the best available information on the record. Furthermore, Commerce has previously stated that contemporaneity is only one of the factors that it considers when selecting surrogate values.⁶¹
- Commerce has declined to use contemporaneous financial statements of companies that do not produce comparable merchandise or that receive subsidies that Commerce has determined to be countervailable, choosing instead to use non-contemporaneous financial statements that do not suffer from such deficiencies.⁶²

Commerce’s Position: In the *Preliminary Determination*, we selected Russia as the surrogate country. As detailed below, we continue to find that Russia is the appropriate surrogate country with which to value factors in this investigation.

As explained in the *Preliminary Determination*,⁶³ when Commerce is investigating imports from an non-market economy (NME) country, section 773(c)(1) of the Act directs Commerce to base 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.”⁶⁴ 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 sufficiently reliable sources of publicly available surrogate value data; or (c) are not suitable for use based on other reasons.⁶⁵ Surrogate countries

⁵⁹ *Id.* at 4-5 (citing *Hydrofluorocarbon Blends from the People’s Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order for HFC Components; and Extension of Time Limit for Final Determination*, 85 FR 20248 (April 10, 2020), and accompanying PDM).

⁶⁰ *Id.* at 5 and 7 (citing, e.g., *1,1,1,2-Tetrafluoroethane from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 62597 (October 20, 2014), and accompanying IDM at Comment 16).

⁶¹ *Id.* (citing *Laminated Woven Sacks from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 84 FR 14651 (April 11, 2019) (*Sacks from Vietnam*), and accompanying IDM at Comment 2).

⁶² *Id.* at 6 (citing *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 10545 (March 11, 2009) (*HEDP from China*), and accompanying IDM at Comment 1; *Sacks from Vietnam* IDM at Comment 2; and *Certain Woven Electric Blankets from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 38459 (July 2, 2010), and accompanying IDM at Comment 2).

⁶³ See *Preliminary Determination* PDM at 4-5.

⁶⁴ See Policy Bulletin 04.1.

⁶⁵ See, e.g., *Certain Quartz Surface Products from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23767 (May 23, 2019), and accompanying IDM at Comment 8.

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 from the World Bank's *World Development Report*.⁶⁶ 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 "normally will value all factors in a single surrogate country") based on data availability and quality.

Consistent with our practice, and section 773(c)(4)(A) of the Act, we determined that Brazil, Bulgaria, Malaysia, Mexico, Russia, and Turkey were countries at the same level of economic development as China, based on the most current annual issue of *World Development Report*.⁶⁷ No party asserts that we should use a country not on this list.

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, we examined which countries on the surrogate country list exported merchandise comparable to the subject merchandise.⁶⁸ Consistent with our *Preliminary Determination*, we continue to find that none of the countries identified as being economically comparable to China are significant exporters of merchandise covered by the HTS categories identified in the scope of this investigation.⁶⁹ Furthermore, although the respondents claim that Turkey is a significant producer of identical merchandise, we find no evidence to support this contention.⁷⁰ Accordingly, consistent with our *Preliminary Determination*, information on the record demonstrates that none of the six countries at the same level of economic development as China produce R-32.⁷¹

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, Commerce selects the primary surrogate country based on data availability

⁶⁶ See Policy Bulletin 04.1.

⁶⁷ See *Preliminary Determination* PDM at 5; see also Commerce's Letter, "Less-Than-Fair-Value Investigation of Difluoromethane (R-32) from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated May 19, 2020, which contains the Memorandum, "List of Surrogate Countries for Antidumping Investigations and Reviews from the People's Republic of China ('China')," dated August 15, 2019 (*i.e.*, the surrogate country list).

⁶⁸ See *Preliminary Determination* PDM at 6.

⁶⁹ *Id.* at 7.

⁷⁰ While the respondents claim that Turkey is a producer of identical merchandise, they provided data showing production of R-404, another refrigerant gas, not R-32. See Respondents' Letter, "Less-Than-Fair Value Investigation of Difluoromethane (R-32) from the People's Republic of China: Rebuttal Comments on Surrogate Country Selection," dated June 19, 2020, at 2. Moreover, the petitioner provided data showing that Turkey is not a significant producer of fluorocarbon refrigerants, or other fluorocarbon chemicals. See Petitioner Surrogate Country Comments at Exhibit 1.

⁷¹ See Petitioner Surrogate Value Comments at Exhibit 1.

and reliability.⁷² 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.⁷³ There is no hierarchy among these criteria.⁷⁴ It is Commerce’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.⁷⁵ In the *Preliminary Determination*, we found that parties placed complete data for Russia and Turkey on the record;⁷⁶ no party provided complete surrogate value information for the other countries on the list (*i.e.*, for Brazil, Bulgaria, Malaysia, or Mexico). However, for one input, the petitioner provided surrogate value information for Malaysia.⁷⁷ Otherwise, no party argued in favor of using surrogate value information for any of the other countries.

In the *Preliminary Determination*, we found that the Russian data constitutes the best available data for valuing respondents’ FOPs because: (1) we have complete, specific Russian GTA data for almost every input used by the respondents; and (2) the Russian financial data on the record is from a Russian producer of refrigerant gases, which is comparable merchandise to R-32.⁷⁸ Therefore, because complete surrogate value information is available from Russia and the financial statements from Russia are more reliable because they are from a producer of comparable merchandise, we determined that the Russian data is the best available surrogate value data.⁷⁹ The factual record in this case has not changed. Nor have parties pointed to record evidence which is contrary to our findings for the *Preliminary Determination*. Therefore, we continue to find that Russia meets the criteria in section 773(c)(4) of the Act as being: (1) at a similar level of economic development to China; (2) a significant producer of both comparable and identical merchandise; and (3) contains the best available data for valuing FOPs. Thus, we continue to find that Russia is the best choice for the surrogate country in this investigation.

We disagree with the respondents and continue to find that the 2017 IHS Report in this instance may, as best information available, be considered a reliable source to help determine whether Turkey is producer of comparable merchandise, despite the report not being contemporaneous with the POI. The only evidence the respondents provided to establish their claim that Turkey produces comparable merchandise is information from a Turkish company’s website showing the product details for R-404, a hydrofluorocarbon refrigerant blend.⁸⁰ On its own, we do not find that this information confirms that Turkey is a producer of comparable merchandise. Also, Commerce determined in *HFCs from China Anti-Circ* that refrigerant blends differ significantly from hydrofluorocarbon components (such as R-32) in terms of the degree of processing in the

⁷² See Policy Bulletin 04.1; see also, *e.g.*, *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 77323 (December 14, 2015).

⁷³ See Policy Bulletin 04.1.

⁷⁴ See, *e.g.*, *Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006), and accompanying IDM at Comment 1.

⁷⁵ See Policy Bulletin 04.1.

⁷⁶ See *Preliminary Determination* PDM at 8; see also Respondents’ Letter, “Less-Than-Fair Value Investigation of Difluoromethane (R-32) from the People’s Republic of China: Surrogate Value Submission,” dated July 2, 2020; and Petitioner SV Comments.

⁷⁷ See Petitioner SV Comments.

⁷⁸ See *Preliminary Determination* PDM at 8.

⁷⁹ *Id.*

⁸⁰ See Respondents’ Letter, “Less-Than-Fair Value Investigation of Difluoromethane (R-32) from the People’s Republic of China: Comments on Surrogate Country Selection,” dated July 12, 2020, at Exhibit 7.

production process.⁸¹ Therefore, we find that the respondents failed to provide sufficient evidence to support their claim that Turkey produces comparable merchandise. Moreover, while we acknowledge that the 2017 IHS Report is not contemporaneous with the POI, the respondents provided no information to demonstrate that the worldwide producers of fluorocarbons have changed since that time. Thus, we continue to find that the 2017 IHS Report represents the best evidence on the record regarding the countries that are comparable producers of fluorocarbons. As a result, we find no basis to consider Turkey to be a producer of merchandise comparable to R-32.

Finally, we disagree that we should rely on the Turkish surrogate financial statements, not the Russian surrogate financial statements, because the Russian surrogate financial statements are not contemporaneous. The Russian financial statements are from a Russian producer of comparable merchandise, while the Turkish surrogate financial statements are not from a producer of comparable merchandise, but instead from an oil, petroleum, and petrochemical refinery company.⁸² Contemporaneity is only one of the factors that Commerce considers when selecting surrogate values.⁸³ Commerce has previously relied on financial statements that are not contemporaneous if they constitute the best available information on the record.⁸⁴ Because we find that the 2018 Russian surrogate financial statements represent the best information on the record, we continued to rely on them in our calculations for the final determination.

Consequently, consistent with the *Preliminary Determination*,⁸⁵ we continue to find that it is appropriate to use Russia as the primary surrogate country in this investigation because Russia is a significant producer of merchandise comparable to the subject merchandise and meets the other prongs of section 773(c)(4) of the Act. As a result, we continued to calculate NV using Russian data when available and appropriate to value respondents' FOPs.

Comment 3: Calculation of the Surrogate Value for Russian Truck Freight

Respondents' Case Brief

- The averaging of a high value rate from Saint Petersburg to the port with the lower, longer distance rate from Moscow to the Saint Petersburg port distorts the Russian truck freight surrogate value used in the *Preliminary Determination*. The resulting truck freight rate does not reflect the experience of either respondent.⁸⁶
- Commerce has previously acknowledged that the difference between the Moscow and Saint Petersburg freight rates represents long-haul versus short-haul distances. Only the long-haul

⁸¹ See *Anti-Circumvention Inquiry of Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China—HFC Components: Final Determination Not To Include Within the Scope of the Order*, 85 FR 51018 (April 19, 2020), and accompanying IDM (*HFCs from China Anti-Circ*).

⁸² See Respondents' Letter, "Less-Than-Fair Value Investigation of Difluoromethane (R-32) from the People's Republic of China: Surrogate Value Submission," dated July 2, 2020, at Exhibits T-7a and T-7b.

⁸³ See *Sacks from Vietnam* IDM at Comment 2.

⁸⁴ *Id.*; see also *HEDP from China* IDM at Comment 1.

⁸⁵ See *Preliminary Determination PDM* at 8.

⁸⁶ See Respondents Case Brief at 12.

experience applies to the respondents here, as reported in their questionnaire responses.⁸⁷ As a result, only the Moscow rate should be applied because the Saint Petersburg rate does not represent the experience of Taizhou Qingsong and Zibo Feiyuan.⁸⁸

- While the surrogate value data are not aberrational, the average of the two freight rates is incorrectly applied to these respondents.⁸⁹

Petitioner's Rebuttal Brief

- Commerce should continue to average the two Russian truck freight rates provided in the World Bank's "Doing Business 2020: Russian Federation (*Doing Business Russia*) report because averaging the two data points is more representative of: (1) the typical condition in the Russian market than a single data point; and (2) the respondents' experience.⁹⁰
- Commerce previously rejected the argument the respondents raise here and averaged the two Russian truck freight rates in *Doing Business Russia*, reflecting a broad market average of publicly available, contemporaneous data from a highly reliable source.⁹¹
- Respondents failed to support what defines "long-haul" versus "short-haul," nor have they submitted any evidence to support why their warehouse-to-port distances should be deemed "long-haul."⁹²
- Regardless of whether the respondents are challenging the Russian inland freight value as "aberrational," Commerce has previously found that the existence of high or low prices alone does not necessarily indicate that price data is distorted or misrepresentative and it is not a sufficient basis upon which to exclude a particular surrogate value. Moreover, the respondents must provide specific evidence demonstrating that the alleged difference in distance results in actual distortions, which they failed to do here.⁹³

Commerce's Position: Consistent with our methodology in the *Preliminary Determination*, we continued to rely on the costs and distances published in *Doing Business Russia* to calculate a surrogate value for truck freight in the final determination.

As we explained in the *Preliminary Determination*, Commerce valued inland freight charges using *Doing Business Russia* for inland transportation relating to importing and exporting a

⁸⁷ *Id.* (citing Taizhou Qingsong's Letter, "Difluoromethane (R-32) from the People's Republic of China: Supplemental Section A and C Questionnaire Response," dated June 8, 2020, at Exhibit 6; and Zibo Feiyuan's Letter, "Difluoromethane (R-32) from the People's Republic of China: Supplemental Section A and C Questionnaire Response," dated June 3, 2020, at Exhibit C-7).

⁸⁸ *Id.* at 12-13 (citing *Certain Fabricated Structural Steel from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 5376 (January 30, 2020) (*FSS from China*), and accompanying IDM at Comment 4).

⁸⁹ *Id.* at 13 (citing *FSS from China* at Comment 4).

⁹⁰ See Petitioner Rebuttal Brief at 1.

⁹¹ *Id.* at 10 (citing *FSS from China* IDM at Comment 4).

⁹² *Id.*

⁹³ *Id.* at 11 (citing *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2015-2016*, 83 FR 16829 (April 17, 2018), and accompanying IDM at Comment 3; and *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2018*, 84 FR 67925 (December 12, 2019) (*HEDP from China AR*), and accompanying IDM at Comment 8).

standardized cargo of goods.⁹⁴ Thus, Commerce calculated a per-metric ton inland freight rate using the price to export a standardized cargo of 15 metric tons in a 20-foot container based on distances as published in *Doing Business Russia*. Specifically, the 2020 edition of *Doing Business Russia* provides two distances for export: (1) from St. Petersburg to the port (in St. Petersburg) of 8 kilometers (km); and (2) from Moscow to the port in St. Petersburg of 724 km.⁹⁵ Using the 15 metric ton weight and these distances, we calculated a simple-average cost per kilogram per km to truck goods in the primary surrogate country, Russia, based exclusively upon the information and assumptions provided in *Doing Business Russia*.⁹⁶ This is consistent with our practice where we have relied upon all of the assumptions specified in the *Doing Business* when calculating surrogate values.⁹⁷

In selecting surrogate values for inputs, section 773(c)(1) of the Act directs us to use the “best available information.” In determining the “best available information,” it is our practice to consider the following five factors: (1) broad market average; (2) public availability; (3) product specificity; (4) tax and duty exclusivity; and (5) contemporaneity of the data.⁹⁸ Based on these criteria, we find that in this investigation *Doing Business Russia* is the only reliable data source for Russia; no interested party placed alternative truck freight surrogate value information for Russia on the record of this investigation. *Doing Business Russia* provides a publicly available, broad market average freight rate, and we have consistently found the *Doing Business* publication to provide the best available information in other prior cases to value inland freight.⁹⁹ We prefer to value an FOP using prices that are broad market averages because “a single input price reported by a surrogate producer may be less representative of the cost of that input in the surrogate country.”¹⁰⁰ Based on these facts and given that *Doing Business Russia* is a World Bank publication, we find the quality of the data in this publication to be reliable and consistent with our decisions in other NME proceedings.¹⁰¹

Further, the respondents fail to provide record evidence to support their argument against the averaging of the freight rates provided in *Doing Business Russia*. The respondents point to no case where Commerce has relied on only a portion of the data presented in the *Doing Business* publication in order to calculate a truck freight surrogate value. While the respondents claim that the Russian truck freight surrogate value is being distorted by the inclusion of the shorter distance shown in *Doing Business Russia*, Commerce has found that the existence of high or low prices alone does not necessarily indicate that the price data is distorted or misrepresentative, and

⁹⁴ See Memorandum, “Surrogate Value Memorandum for the Preliminary Determination,” dated August 20, 2020 (Preliminary SV Memorandum), at 7-8.

⁹⁵ See Petitioner SV Comments at Exhibit 10.

⁹⁶ See Preliminary SV Memorandum at Exhibit 4.

⁹⁷ See, e.g., *Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Wire from the People’s Republic of China*, 79 FR 25572 (May 5, 2014), and accompanying IDM at Comment 5.

⁹⁸ See, e.g., *Activated Carbon from China* IDM at Comment 2.

⁹⁹ See, e.g., *FSS from China* IDM at Comment 4.

¹⁰⁰ See *Honey from the People’s Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 71 FR 34893 (June 16, 2006), and accompanying IDM at Comment 1.

¹⁰¹ See, e.g., *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 79 FR 35723 (June 24, 2014), and accompanying IDM at Comment 20.

thus, it is not a sufficient basis upon which to exclude a particular surrogate value.¹⁰² Rather, in order for Commerce to exclude a surrogate value on the basis that it is distorted, parties must provide specific evidence demonstrating that the value is aberrational.¹⁰³ The respondents in this investigation have not provided such data, and in fact state that the data in *Doing Business Russia* are not aberrational.¹⁰⁴ Thus, we find no basis to rely on only the longer distance shown in *Doing Business Russia* to calculate the truck freight surrogate value.

Additionally, the respondents' reference to *FSS from China* is unavailing. The respondents point to Commerce's acknowledgement in *FSS from China* that two inland truck freight distances exist in *Doing Business Russia* as a basis for Commerce to apply one truck freight rate instead of averaging the two provided rates.¹⁰⁵ However, in *FSS from China*, Commerce calculated the surrogate value for truck freight by relying on the same calculation methodology and source as calculated here (*i.e.*, averaging the two inland freight distances provided in *Doing Business Russia*). As in *FSS from China*, we find that it is not necessary to adjust the truck freight expense surrogate values on the basis of distance because doing so would introduce inconsistencies into the data reported in *Doing Business Russia*, which relies on a defined methodology and provides a broad market average.

Moreover, to the extent that respondents argue that the short freight distance included in the *Doing Business Russia* average freight rate is not representative of their experience, we disagree. The record evidence does not demonstrate that the inclusion of a short freight distance is unrepresentative.¹⁰⁶ Here, we calculated an inland freight Russian surrogate value based exclusively upon the information and assumptions provided in *Doing Business Russia*. This is consistent with our practice where we have relied upon all of the assumptions specified in *Doing Business Russia* when calculating surrogate values.¹⁰⁷ Thus, in the absence of more specific information, the broad market average provided by the two inland freight distances in *Doing Business Russia* continues to be the "best available information" on the record of this investigation. Therefore, we continue to rely on the simple average of the rates from Moscow and Saint Petersburg to the Saint Petersburg port to calculate the truck freight surrogate value for purposes of this final determination.

¹⁰² See, e.g., *HEDP from China AR* IDM at Comment 8; *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013*, 80 FR 13332 (March 13, 2015), and accompanying IDM at Comment 5; and *Steel Propane Cylinders from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 84 FR 29161 (June 21, 2019), and accompanying IDM at Comment 3.

¹⁰³ See, e.g., *HEDP from China AR* IDM at Comment 8.

¹⁰⁴ See Respondents Case Brief at 13.

¹⁰⁵ *Id.*

¹⁰⁶ The specifics of Taizhou Qingsong and Zibo Feiyuan's freight distances are business proprietary information that cannot be discussed here. See Respondents Case Brief at 12 and Petitioner Rebuttal Brief at 11 (comparing Taizhou Qingsong's reported distance with the average freight distance from *Doing Business Russia*); see also Taizhou Qingsong's Letter, "Difluoromethane (R-32) from the People's Republic of China: Section C Questionnaire Response," dated April 29, 2020, at Exhibit C-1; and Zibo Feiyuan's Letter, "Difluoromethane (R-32) from the People's Republic of China: Section C Questionnaire Response," dated April 29, 2020, at Exhibit C-1.

¹⁰⁷ See *FSS from China* IDM at Comment 4.

VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins in the *Federal Register*.

Agree

Disagree

1/11/2021

X



Signed by: JOSEPH LAROSKI

Joseph A. Laroski Jr.

Deputy Assistant Secretary
for Policy and Negotiations