



A-570-122
Investigation
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January 25, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Certain Corrosion Inhibitors from the People's Republic of China:
Issues and Decision Memorandum for the Final Affirmative
Determination of Sales at Less Than Fair Value

I. SUMMARY

The Department of Commerce (Commerce) determines that imports of certain corrosion inhibitors (corrosion inhibitors) 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 735 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the "Final Determination" section of the accompanying *Federal Register* notice.

As a result of our analysis and consideration of comments submitted by interested parties, we have made changes to the *Preliminary Determination*.¹ We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of issues for which we received comments from interested parties:

Comment 1: Selection of Primary Surrogate Country and Financial Statements
Comment 2: Surrogate Values for Ortho Phenylene Diamine (oPDA) and Ortho Toluene Diamine (oTDA)
Comment 3: Market Economy Purchases
Comment 4: Industry Support

¹ See *Certain Corrosion Inhibitors from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 55825 (September 10, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

II. BACKGROUND

On September 10, 2020, Commerce published its *Preliminary Determination* in the antidumping duty (AD) investigation of corrosion inhibitors from China.² The two mandatory respondents are Jiangyin Delian Chemical Co., Ltd. (Delian) and Nantong Botao Chemical Co., Ltd. (Botao). On October 13, 2020, Wincom Inc. (the petitioner) and Botao requested a hearing.³ In October 2020, we issued and Delian responded to our second double remedy questionnaire.⁴ On November 4, 2020, we issued questionnaires in lieu of on-site verification.⁵ On November 12, 2020, Botao and Delian responded to these in lieu of on-site verification questionnaires.⁶ Botao and Delian submitted case briefs on November 24, 2020.⁷ The petitioner submitted a rebuttal brief on December 4, 2020.⁸ On January 6, 2021, the petitioner and Botao withdrew their hearing requests, so no hearing was held.⁹

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is July 1, 2019, through December 31, 2019. This period corresponds to the most recently completed fiscal quarters prior to the month of the filing of the Petition, which was February 2020.¹⁰

IV. SCOPE COMMENTS

We received no comments from interested parties on the scope of the investigation during this investigation. Thus, Commerce has not modified the scope language of this investigation.

V. SCOPE OF THE INVESTIGATION

For a full description of the scope of this investigation, see the accompanying *Federal Register*

² See *Preliminary Determination* PDM.

³ Set Botao's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Botao Hearing Request," dated October 13, 2020; and Petitioner's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Petitioner's Request for Hearing Pursuant to 19 CFR 351.310(c)," dated October 13, 2020.

⁴ See Commerce's Letter, "Second Double Remedy Questionnaire for Jiangyin Delian Chemical Co., Ltd.," dated October 6, 2020; see also Delian's Letter, "Corrosion Inhibitors from China; A-570-122; Response to Second Double Remedy Questionnaire," dated October 16, 2020 (Delian SDRQR).

⁵ See Commerce's Letters, dated November 4, 2020.

⁶ See Botao's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Botao Verification Questionnaire Response," dated November 12, 2020; see also Delian's Letter, "Corrosion Inhibitors from China; A-570-122; Response to Questionnaire Issued in Lieu of Verification," dated November 12, 2020.

⁷ See Delian's Letter, "Corrosion Inhibitors from China; A-570-122; Case Brief," dated November 24, 2020 (Delian's Case Brief); and Botao's Letter, "Certain Corrosion Inhibitors from the People's Republic of China - Botao Case Brief," dated November 24, 2020 (Botao's Case Brief).

⁸ See Petitioner's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Petitioner's Rebuttal Case Brief," dated December 4, 2020 (Petitioner's Rebuttal Brief).

⁹ Set Botao's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Withdrawal of Hearing Request," dated January 6, 2021, and Petitioner's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Withdrawal of Hearing Request," dated January 6, 2021.

¹⁰ See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Certain Corrosion Inhibitors from China," dated February 5, 2020.

notice at Appendix I.

VI. CHINA-WIDE RATE

For the final determination, we continue to base the China-wide rate on AFA.¹¹ In the *Preliminary Determination*, Commerce used the highest transaction-specific dumping margin calculated for Botao. As explained below, we made changes to our calculations for Botao. Therefore, Botao's highest transaction-specific margin has changed. Thus, for the final determination, we continue to use Botao's highest calculated transaction-specific rate, which is now 277.90 percent.¹² Because we are relying on information obtained in the course of this investigation as the AFA rate, not on secondary information, it is not necessary to corroborate this rate.¹³

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

As discussed in the *Preliminary Determination*,¹⁴ in applying section 777A(f) of the Act, Commerce examines: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise; (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period; and (3) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of normal value (NV) determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.¹⁵ 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.¹⁶ In conducting this analysis, Commerce has not concluded that concurrent application of non-market economy (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.¹⁷

In our *Preliminary Determination*, upon consideration of the responses from both mandatory respondents and the relevant statutory criteria, we concluded that an adjustment under section 777A(f) of the Act was warranted in this investigation.¹⁸ No party challenged Commerce's

¹¹ See *Preliminary Determination PDM* at 14-16.

¹² *Id.* at 14-16.

¹³ See *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 Issues and Decision Memorandum (IDM) at 3; see also section 776(c) of the Act and 19 CFR 351.308(c) and (d); and *Certain Carbon and Alloy Steel Cut-To-Length Plate from Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 79427 (November 14, 2016).

¹⁴ See *Preliminary Determination PDM* at 25-29.

¹⁵ See sections 777A(f)(1)(A)-(C) of the Act.

¹⁶ See sections 777A(f)(1)-(2) of the Act.

¹⁷ See, e.g., *Fine Denier Polyester Staple Fiber from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 24740 (May 30, 2018), and accompanying IDM at Comment 2.

¹⁸ See *Preliminary Determination PDM* at 25-29.

preliminary determination to grant an offset to parties' cash deposit rates. Therefore, consistent with our *Preliminary Determination*, we have continued to make an adjustment under section 777A(f) of the Act to the rates assigned to the mandatory respondents, the separate rate respondents, and the China-wide entity in this final determination.

In the concurrent countervailing duty (CVD) investigation of corrosion inhibitors, Commerce found oPDA was provided for less than adequate remuneration (LTAR) after their preliminary determination. Therefore, in this final determination, we considered information provided by respondents related to oPDA, in addition to the subsidy inputs examined in the *Preliminary Determination* (i.e., electricity, oTDA, and sodium nitrite).¹⁹ For the same reasons outlined in our *Preliminary Determination*,²⁰ we find that Botao²¹ and Delian²² also provided adequate information regarding oPDA to establish a link between subsidies (i.e., oPDA for LTAR), costs, and prices. Because Botao and Delian's double remedy responses indicate that factors other than the cost of the inputs for LTAR impact prices to customers (e.g., prevailing market price for the merchandise), we have applied a documented ratio of cost-price changes for the relevant manufacturing sector as a whole, which is based on data provided by Bloomberg, as the estimate of the extent of subsidy pass-through.²³ Therefore, we are adjusting Botao and Delian's weighted-average dumping margin for a pass-through adjustment for domestic subsidies in the calculation of the cash deposit rates for Botao and Delian. Because both Botao and Delian are mandatory respondents in the companion CVD investigation, we used their own calculated subsidy rates for the provision of electricity, oPDA, oTDA, and sodium nitrite for LTAR, multiplied by the pass-through rate obtained from Bloomberg, in order to obtain the amount of subsidy passed through and deducted from the calculated estimated weighted-average dumping margin for each mandatory respondent.

For the non-selected separate rate respondents, we used the subsidy rates applied to all other companies in the companion CVD investigation, multiplied by the pass-through rate obtained from Bloomberg, in order to obtain the amount of subsidy passed through and deducted from the calculated dumping margin, which is consistent with section 777A(f)(2) of the Act.²⁴

For the China-wide entity, we determined its estimated weighted-average dumping margin based on total AFA, which is the highest individual dumping margin calculated for Botao. Accordingly, the offset for domestic subsidies is based on the lesser of domestic subsidies included in Botao's estimated weighted-average dumping margin (i.e., Botao's relevant domestic

¹⁹ *Id.*

²⁰ *Id.*

²¹ See Botao's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Botao Double Remedy Questionnaire Response," dated June 19, 2020.

²² See Delian SDRQR.

²³ See Memorandum, "Certain Corrosion Inhibitors from the People's Republic of China: Final Double Remedy Calculations," dated concurrently with this memorandum (Final DR Memo).

²⁴ See *Aluminum Extrusions from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 32347 (June 8, 2015), and accompanying PDM at 34, unchanged in *Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 75060, 75063 (December 1, 2015).

subsidies) or the domestic subsidies for all-other companies (*i.e.*, the amount of relevant domestic subsidies collected from the China-wide entity).²⁵

VIII. ADJUSTMENTS TO CASH DEPOSIT RATES

Pursuant to section 772(c)(1)(C) of the Act, Commerce normally makes adjustments for countervailable export subsidies. In the preliminary determination of the concurrent CVD investigation, for the export buyer's credit, we determined a countervailable subsidy rate of 10.54 percent *ad valorem*.²⁶ Therefore, we preliminarily deducted 10.54 percent from the dumping margins to adjust the cash deposit rates.²⁷ For the final determination of the concurrent CVD investigation, we continue to determine that the export buyers credit is an export subsidy at 10.54 percent *ad valorem* for Botao, Delian, the non-selected separate rate respondents, and the China-wide entity.²⁸ Accordingly, for the final determination of this AD investigation, we adjusted the cash deposit rates by 10.54 percent for Botao, Delian, the non-selected separate rate respondents, and the China-wide entity.²⁹

IX. CHANGES SINCE THE PRELIMINARY DETERMINATION

We calculated U.S. price and NV using the same methodology stated in the *Preliminary Determination*. A post-preliminary analysis in the concurrent CVD investigation was completed by Commerce on October 29, 2020 with regard to a new subsidy allegation for oPDA.³⁰ Because this information was not on the record prior to the *Preliminary Determination*, we are adding oPDA into our double remedy calculations for the final determination.³¹ We are also adding energy to the cost of manufacturing for both companies based on information discussed at Comment 1 below.

²⁵ See *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 75 (January 4, 2016), and accompanying PDM at 25-26, unchanged in *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35316, 35318 (June 2, 2016).

²⁶ See *Certain Corrosion Inhibitors from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 85 FR 41960 (July 13, 2020), and accompanying PDM at 39-48.

²⁷ See *Preliminary Determination* PDM at 29.

²⁸ See *Certain Corrosion Inhibitors from the People's Republic of China: Final Affirmative Countervailing Duty Determination (Final CVD Determination)*, dated concurrently with this memorandum.

²⁹ See Memorandum, "Certain Corrosion Inhibitors from the People's Republic of China: Final Separate Rate for Non-Selected Respondents," dated concurrently with this IDM for the cash deposit rate adjustment for non-selected separate rate respondents.

³⁰ See *Final CVD Determination*, dated concurrently with this memorandum, and its accompanying IDM.

³¹ See Final DR Memo.

X. DISCUSSION OF THE ISSUES

Comment 1: Selection of Primary Surrogate Country and Financial Statements

Botao's Comments:

- Commerce should rely on Mexico as the primary surrogate country.³²
- Commerce considers economic comparability, significant production, and availability and quality of data. Botao submits that Mexico best fulfills each of these criteria, sources the best available information to value Botao's inputs, and provides superior financial statements.³³
- Mexico provides more product-specific surrogate value (SV) data for Botao's inputs and this should be a critical factor favoring Mexico as the primary surrogate country.³⁴
- Mexico also contains multiple contemporaneous financial statements from chemical producing companies. While none of these companies produce identical merchandise, Malaysia also does not have contemporaneous statements from identical producers.³⁵
- Commerce unreasonably favored Petronas' Malaysian financial statements over the three Mexican chemical companies' financial statements.³⁶
- All of the companies whose financial statements were considered are conglomerates that focused primarily on the chemical industry, so Petronas cannot reasonably be characterized as more comparable than the three Mexican statements of record.³⁷
- Mexico provides three contemporaneous comparable financial statements compared with only one in Malaysia.³⁸

Delian's Comments:

- Commerce's determination to select Malaysia as the surrogate country instead of selecting Mexico is not correct.³⁹
- With regard to Commerce's selection of the financial statement for Petronas Chemicals Group Berhad (Petronas) as the basis for surrogate financial ratios, Delian asserts that the Mexican financial statements proffered by respondents are superior. Delian notes that Petronas does not produce an "identical product," but at best produces a comparable product. Conversely, Delian states that the SVs submitted for Mexico include multiple usable financial statements and that the producers are all participants in the chemical industry. All the financial statements contain sufficient detail to calculate a proper financial ratio.⁴⁰

³² See Botao's Case Brief at 1.

³³ *Id.*

³⁴ *Id.* at 4.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 7.

³⁸ *Id.* at 8.

³⁹ See Delian's Case Brief at 6.

⁴⁰ *Id.* at 10.

- The Petronas financial statements do not contain any breakdowns for energy and materials and incomplete breakdowns for labor. To the extent that Commerce continues to use the Petronas statement, Commerce should exclude both labor and energy factors of production from the calculation to avoid double counting.⁴¹

Petitioner's Rebuttal:

- Commerce properly chose Malaysia as the primary surrogate country in this investigation because it offered the best financial statements for calculating financial ratios and more specific surrogate data.⁴²
- In their respective case briefs, neither Delian nor Botao disputes that Malaysia satisfies the first two statutory requirements for surrogate country selection: (A) Malaysia is at a level of economic development comparable to that of China; and (B) Malaysia is a significant producer of comparable merchandise.⁴³
- The operations or experience of the proposed Mexican surrogate producers differ fundamentally from the production process for merchandise identical or comparable to subject merchandise.⁴⁴
- Commerce should decline to rely on any one, or any combination of, the financial statements for Mexican producers submitted by Botao, which include: (1) Orbia Advance Corporation, S.A.B. de C.V (Orbia); (2) Grupo Pochteca, S. A. B. de C. V. y Subsidiarias (Pochteca); and (3) Alpek, S. A. B. de C. V. and Subsidiaries (Alpek).⁴⁵
- Orbia's financial statements report that the company's fluent division, which conducts activities related to "pipes, natural gas and high pressure water pipes, telecommunications/data," accounts for over 57.23 percent of total sales during 2019. Considering the fundamental difference in operations, relative to chemical manufacturing, it would be grossly distortive for Commerce to rely on the Orbia financial statements.⁴⁶
- The Pochteca financial statements indicate that the company is only a reseller of products with cost of sales limited to "inventories consumed." Pochteca's status as a reseller of products manufactured by other companies is further confirmed by the absence of any raw material or work-in-process inventory.⁴⁷
- The Alpek financial statements report that the division reporting sales of chemical and plastic products accounts for only 22.64 percent of 2019 revenues, compared to the polyester division which accounts for 75.91 percent of total sales.⁴⁸
- Conversely, as Botao recognizes, "the Petronas Group of companies are primarily focused on chemicals," because 98.42 percent of Petronas' sales revenues relate to chemical products.⁴⁹

⁴¹ *Id.* at 6.

⁴² *See* Petitioner's Rebuttal Brief at 9.

⁴³ *Id.*

⁴⁴ *Id.* at 20.

⁴⁵ *Id.*

⁴⁶ *Id.* at 21.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 22.

- Botao ignores that the Mexican financial statements do not reflect operations that sufficiently relate to chemical manufacturing. Botao criticizes Petronas' income statement disclosure with respect to component parts of cost of goods sold and selling, general & administrative (SG&A) expenses. However, Botao fails to point to any aspect of those disclosures that is inaccurate or results in the calculation of distortive financial ratios. In fact, Petronas' financial statement disclosures provide all of the necessary information to permit an accurate calculation of factory overhead, SG&A, and profit.⁵⁰
- Botao argues that the three Mexican financial statements provide a more accurate calculation compared to the single financial statement available from Malaysia. However, these financial statements do not reflect the financial experience of a producer of merchandise comparable to subject merchandise and, therefore, present lesser specificity for purposes of input valuation.⁵¹
- The account details in the Petronas financial statements provide the necessary information to accurately distinguish factory overhead expenses from energy, material, and labor costs.⁵²
- Delian fails to acknowledge the component parts of cost of goods sold (COGS). COGS represent an aggregation of all product costs incurred to manufacture the product including material, labor, energy, and factory overhead costs. In the case of Petronas, depreciation and amortization costs were the only factory overhead costs deducted from the company's COGS/cost of revenue, which means that the net remaining costs included material, labor, and energy costs. The cost categories included in the remaining net costs, which are used in the denominator of the factory overhead ratio, are consistent with cost categories derived from the FOPs reported by both respondents. Thus, it is appropriate to apply Petronas' factory overhead ratio to the sum of the material, labor, and energy costs as derived from the FOP dataset.⁵³

Commerce's Position: For the final determination, we continue to use Malaysia as the primary surrogate country. In the *Preliminary Determination*, we selected Malaysia over Mexico because of the availability of usable financial statements from Malaysian producers of comparable merchandise for us to calculate the surrogate financial ratios and because we found that Malaysia better meets our selection criteria.⁵⁴ As we stated in the *Preliminary Determination*, while Orbia, Pochteca, and Alpek are all conglomerate companies that produce comparable and non-comparable merchandise, Petronas produces only comparable merchandise (chemical products).⁵⁵

For example, Orbia's "Fluor" division which includes comparable merchandise only accounts for 11.52 percent of total sales revenues for 2019.⁵⁶ Pochteca's financial statements further illuminate its status as a reseller of comparable merchandise with no actual production

⁵⁰ *Id.* at 23.

⁵¹ *Id.* at 24.

⁵² *Id.*

⁵³ *Id.* at 24-25.

⁵⁴ See *Preliminary Determination* PDM at 8.

⁵⁵ *Id.*

⁵⁶ See Botao's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Preliminary Surrogate Value Submission," dated June 26, 2020 at Exhibits SV-10 through SV-12.

comparable to that of the mandatory respondents.⁵⁷ Alpek’s “Plastics and Chemicals” division which includes comparable merchandise only accounts for 22.64 percent of total sales revenues for 2019.⁵⁸ However, Petronas’ financial statements show that 98.42 percent of total sales revenues for 2019 were related to chemical products.⁵⁹ This information clearly shows that Petronas continues to be the best choice for surrogate financial ratios for the final determination. Neither Botao nor Delian argue that the Mexican producers make a product more comparable to their merchandise than the Malaysian producer Petronas does. Therefore, we have chosen to rely on financial statements that are contemporaneous to the POI, and which most closely relate to the operations of a company involved in chemical manufacturing. We agree with the petitioner that the Mexican financial statements do not reflect the financial experience of a producer of merchandise comparable to subject merchandise and, therefore, present lesser specificity for our purposes. We disagree with respondents that having three Mexican financial statements provides a more accurate calculation compared to one Malaysian financial statement because, as mentioned above, the potential Mexican surrogate producers’ business operations are less comparable to that of the mandatory respondents. It is regularly our practice to use a financial statement relating to a single company even when several are available from another potential surrogate country if that single financial statement better meets our criteria.⁶⁰ For the final determination, we continue to rely on the single Malaysian financial statement.

With regard to Delian’s comments that Commerce should exclude both labor and energy factors of production from the calculations, we disagree. We agree with the petitioner that we should apply Petronas’ manufacturing overhead ratio to the total factors of production amounts that include material, labor, and energy (MLE). In *Acid from China*, we recently encountered the same circumstances where depreciation was the only factory overhead expense that could be identified in the surrogate producer’s financial statements.⁶¹ We disagree with Delian that following this approach would lead to double counting because, as stated in *Acid from China* and mirrored in this case, “the sum of MLE is being used to calculate only the denominator of the financial ratios, in order to determine the surrogate manufacturing overhead ratio and, subsequently, the {SG&A} and profit ratios. Thus, Commerce’s calculation of the surrogate financial ratios does not include double counting.”⁶² Therefore, for the final determination, we will apply Petronas’ preliminary manufacturing overhead ratio to the total factors of production amounts that include MLE.⁶³

⁵⁷ *Id.* at SV-11.

⁵⁸ *Id.* at SV-12.

⁵⁹ See Petitioner’s Letter, “Investigation of Corrosion Inhibitors From the People’s Republic of China: Petitioner’s Preliminary Surrogate Values Submission,” dated June 26, 2020, at Attachment 12.

⁶⁰ See *Multilayered Wood Flooring from China: Final Results of Antidumping Administrative Review*, 81 FR 46899 (July 19, 2016) IDM at Comment 1D (indicating that Commerce used the financial statements of a single Romanian company even though multiple financial statements were available for potential surrogate producers located in Thailand).

⁶¹ See *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People’s Republic of China: Final Results of Antidumping Administrative Review and New Shipper Review*, 84 FR 67925 (December 12, 2019) (*Acid from China*), and accompanying IDM at Comment 6.

⁶² *Id.*

⁶³ See Memoranda, “Certain Corrosion Inhibitors from the People’s Republic of China: Final Analysis Memorandum for Jiangyin Delian Chemical Co., Ltd.,” and “Certain Corrosion Inhibitors from the People’s Republic of China: Final Analysis Memorandum for Nantong Botao Chemical Co., Ltd.,” dated concurrently with this memorandum.

Comment 2: Surrogate Values for oPDA and oTDA

Botao's Comments:

- The Mexican SV for oTDA is much more in line with Botao's market economy purchases (MEPs).⁶⁴
- The Mexican SV of oTDA is 55 percent of the oPDA price, which is significantly more accurate in comparison to the Malaysian SV, where the oTDA is 100 percent of the oPDA price because the Malaysian SVs come from the same six-digit HTS source.⁶⁵
- Mexico provides a more product-specific SV for Botao's inputs, and this should be a critical factor favoring Mexico as the primary surrogate country.⁶⁶

Delian's Comments:

- Because both Mexico and Malaysia satisfy the first two gate-keeper tests for the selection of a surrogate country, Delian submits that the final selection of a surrogate country is based on the third criteria, the quality of the available surrogate data. Furthermore, Delian claims that the SV data for Mexico is superior to that of Malaysia, with the most important data points being the aberrational value for the primary raw materials –oTDA and oPDA.⁶⁷
- Delian asserts that the Malaysia SV for oTDA and oPDA is aberrational and does not represent a reasonable value for this raw material.⁶⁸ Delian also asserts that the volume of imports for Malaysia is small compared to Mexico.

Petitioner's Rebuttal:

- The Mexican data for a key raw material input are unreliable given significant differences reflected in import statistics reported by the two data sources on the record.⁶⁹
- Botao submitted Mexican import statistics as reported by Trade Data Monitor (TDM) Mexico, whereas the petitioner submitted Mexican import statistics as reported by Global Trade Atlas (GTA). Botao claims that the POI import per-unit value for oPDA should be \$0.59 per kilogram (kg) based on the Mexican SVs. However, after incorporating the POI shipments that Botao inappropriately excluded, the Mexican POI per-unit import value for oPDA increases to \$15.08 per kg.⁷⁰
- The Mexican import statistics provided by GTA report no imports of oPDA into Mexico during the POI; this stark difference in Mexican import statistics for this key raw material input between the available data sources demonstrates that the Mexican import statistics are unreliable for purposes of this investigation.⁷¹

⁶⁴ See Botao's Case Brief at 3.

⁶⁵ *Id.*

⁶⁶ *Id.* at 4.

⁶⁷ See Delian's Case Brief at 7.

⁶⁸ *Id.*

⁶⁹ See Petitioner's Rebuttal Brief at 10.

⁷⁰ *Id.*

⁷¹ *Id.* at 10-11.

- The proposed Mexican SV for oTDA, which is based almost entirely upon transactions between affiliated parties, fails to represent a broad-market average.⁷²
- Botao claims that the Mexican import data are more specific because the proposed SVs reflect a price differential between oTDA and oPDA that is consistent with the company’s pricing experience. However, a correct analysis incorporating the TDM data placed on the record by Botao demonstrates that the Mexican import value for oPDA far exceeds Botao’s pricing experience, and the POI Malaysian SV.⁷³
- Botao’s monthly acquisition prices for oPDA and oTDA, as reflected in the company’s accounting records, are massively understated as a result of being purchased for LTAR, which Commerce confirmed in the parallel CVD investigation.⁷⁴
- Commerce does not reject SV data as unreliable simply because the volume of imports is purportedly “slight.” Commerce has found that the existence of higher prices alone does not necessarily indicate that the prices are distorted or misrepresentative, and thus, it is not a sufficient basis upon which to exclude a particular SV.⁷⁵
- Of the six listed surrogate countries, the Malaysian value is ranked as the second lowest with four of the six countries reporting values significantly higher than Malaysia.⁷⁶
- Delian attempts to discount the Malaysian SV as also aberrant based on low import volumes but provides no evidence demonstrating how this low volume constitutes aberrational or unrepresentative data, or somehow distorts the overall calculated SV. Even if this volume were to be considered low, Commerce has found, and the Court of International Trade has affirmed, that small quantities of imports are not inherently distortive with respect to the calculation of the NV.⁷⁷

Commerce’s Position: For the final determination, we continue to use the SV for oPDA and oTDA that we used in the *Preliminary Determination*. The Malaysian average unit value (AUV) is from the primary surrogate country and the Mexican AUV is not. The Malaysian AUV is based on a quantity of merchandise imported from multiple countries (Germany, Japan, Taiwan, the United Kingdom, and the United States), whereas the Mexican AUV is based on imports from only two countries.⁷⁸ Therefore, we find that the Malaysian AUV represents the best available information because it better reflects a broader market average compared to the Mexican AUV.⁷⁹ The valuation of this input using the Malaysian import data is also in accordance with our regulatory preference to value all FOPs based on data from a single surrogate country.⁸⁰

As the CIT acknowledged, administrative burden is one reason we do not identify and define “what is and what is not aberrational among these thousands of data points spread along a vast

⁷² *Id.* at 11.

⁷³ *Id.* at 12.

⁷⁴ *Id.*

⁷⁵ *Id.* at 17-18.

⁷⁶ *Id.* at 19.

⁷⁷ *Id.*

⁷⁸ See Petitioner’s Letter, “Investigation of Corrosion Inhibitors from the People’s Republic of China: Petitioner’s Rebuttal Surrogate Values Submission,” dated July 6, 2020 (Petitioner SV Rebuttal Comments).

⁷⁹ See *Preliminary Determination* PDM at 7 (“When evaluating SV data, Commerce considers several criteria including whether the SV data are ... broad-market averages, ...”).

⁸⁰ See 19 CFR 351.408(c)(2).

spectrum of relatively high and low values” as it is “an impossible task.”⁸¹ Another reason to examine whether the AUV is aberrational in aggregate is to prevent parties from advocating “the manipulation of data by removing one or more lines they find objectionable.”⁸² However, the CIT held that, even if “{a} practice that considers values in the aggregate to avoid administrative burdens may be reasonable,” when there was an alleged aberration specific to imports from a specific country within the underlying import data for an AUV, Commerce was required to provide a record-specific explanation.⁸³

The petitioner placed the GTA data on the record with each country’s AUVs in a timely manner in its SV rebuttal letter.⁸⁴ Because we continue to use GTA data for the final determination, we compared the Malaysian AUV and the Mexican AUV against the AUVs from Brazil, Bulgaria, Russia, and Turkey, which the petitioner submitted in its SV rebuttal letter as benchmarks. Of these six AUVs, the Malaysian AUV is the second lowest at \$4.05 per kg and the Mexican AUV is the lowest at \$0.33 per kg. The AUVs from Brazil, Bulgaria, Russia, and Turkey fall into higher ranges at \$20.38 per kg for oPDA and \$24.21 per kg for oTDA, \$22.73 per kg for oPDA and oTDA, \$1,620.60 per kg for oPDA and oTDA, and \$24.02 per kg for oTDA, respectively.⁸⁵ Given these facts, we find that the valuation of oTDA and oPDA, using the Malaysian SV data that we used in the *Preliminary Determination*, was reasonable, and we have not made any adjustments to it for the final determination.

Comment 3: Market Economy Purchases

Botao’s Comments:

- Botao provided sufficient supporting documents to show the origin of the MEPs in its questionnaire responses.⁸⁶
- Botao submitted sample commercial invoices and bills of lading showing that the origin of the goods are market economy countries. Further, in Botao’s supplemental

⁸¹ See *SolarWorld Americas Inc. v. United States*, 320 F. Supp. 3d 1341, 1354 (Ct. Int’l Trade May 18, 2018) (*SolarWorld*) (quoting Final Results of Remand Redetermination, January 18, 2018, at 26, pursuant to *SolarWorld Americas, Inc. v. United States*, 273 F. Supp. 3d 1254 (Ct. Int’l Trade Oct. 18, 2017)).

⁸² See *Canadian Solar Int’l Ltd. v. United States*, 378 F. Supp. 3d 1292, 1304 (Ct. Int’l Trade Apr. 16, 2019) (*Canadian Solar*) (quoting *Final Results of the 2013-2014 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China*, 81 FR 118 (June 20, 2016), and accompanying IDM at 47).

⁸³ See *SolarWorld*, 320 F. Supp. 3d at 1355 (“A practice that considers values in the aggregate to avoid administrative burdens may be reasonable in other cases but, without further explanation, does not appear reasonable on this record.”); see also *Canadian Solar*, 378 F. Supp. 3d at 1303-07 (“Commerce’s current explanation for not disaggregating data is that it simply does not do so as a matter of policy. It justifies its policy on the grounds of administrative burden and to avoid potentially distortive manipulation of import data. Commerce’s justification may be sufficient for most cases. At some point, however, input data may diverge so significantly from other input data that it renders the data set, as a whole, unreliable. Ideally, Commerce, not the court, should identify where that point lies. For module glass, the distortive input data has reached the point where the court cannot say that Commerce selection is reasonable.”). On remand in *SolarWorld* and *Canadian Solar*, under respectful protest, we used a Bulgarian surrogate value for the input in question, and the CIT sustained that determination. See *Canadian Solar International Limited v. United States*, Consol. Court No. 17-00173, Slip Op. 19-152 (Ct. Int’l Trade Dec. 3, 2019); *SolarWorld Americas Inc. v. United States*, 355 F. Supp. 3d 1306, 1313, 1314-17 (CIT 2018).

⁸⁴ See Petitioner SV Rebuttal Comments, at Attachment 1A1 and 1A2.

⁸⁵ *Id.*

⁸⁶ See Botao’s Case Brief at 9.

questionnaire response, Botao submitted more Chinese customs declarations where the market economy sellers declared the inputs' Country of Origins as market economy countries.⁸⁷

- The commercial documents and customs declarations filed with China, without any evidence to the contrary, should be regarded as substantial evidence supporting Botao's MEPs claim.⁸⁸

Delian's Comments:

- Delian asserts that no matter which country is selected as a source for SVs, Commerce should use the MEP prices for the raw materials as the basis for valuing the inputs in question.⁸⁹
- Delian cites *Shakeproof Assembly Components, Division of Illinois Tool Works, Inc. v. United States*, 268 F.3d 1376 (Fed. Cir. 2001) at 1382,⁹⁰ and explains that applying the *Shakeproof* language to the data supports Delian's position that the MEPs data should form the basis for valuing the FOPs for the primary raw material.⁹¹

Petitioner's Rebuttal:

- Commerce correctly declined to adjust its SV calculation for the reported MEPs.⁹²
- Botao challenges Commerce's weighing of the record evidence and claims to have provided sufficient documentation showing the origin of the goods.⁹³
- Delian entirely ignores that the reported MEPs fail to meet Commerce's established criteria and maintains that the 85 percent threshold is met.⁹⁴
- Commerce reasonably disregarded the entirety of the MEPs reported with respect to Delian. In determining whether MEPs meet the 85 percent threshold, Commerce's long-standing practice is to disregard MEPs that may have been dumped or subsidized.⁹⁵
- Considering the MEPs for both Botao and Delian were purchased from a country providing broadly available, non-industry specific export subsidies, the purchase prices do not reflect the best information available for valuation purposes. Delian's reliance on *Shakeproof Assembly Components, Division of Illinois Tool Works, Inc. v. United States* is therefore misplaced.⁹⁶
- Botao incorrectly claims to have provided customs declarations, commercial invoices, and bills of lading that substantiate the market economy origin of the goods.⁹⁷
- In a supplemental questionnaire, Commerce requested that Botao provide "supporting documentation for the production facility where {the} imported product was manufactured," to confirm the market economy nature of these purchases. In response,

⁸⁷ *Id.*

⁸⁸ *Id.* at 10.

⁸⁹ See Delian's Case Brief at 13.

⁹⁰ *Id.* at 14.

⁹¹ *Id.* at 14-15.

⁹² See Petitioner's Rebuttal Brief at 13.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* at 13-14.

⁹⁶ *Id.* at 14.

⁹⁷ *Id.*

Botao failed to provide any documents identifying the production facility associated with these purchases from that particular supplier or any of the other MEPs.⁹⁸

- Instead, with respect to the MEPs from the supplier in question, Botao claimed for the first time that “since the supplier is located in India, Botao filled in ‘India’ as country of origin” for these transactions, which merely confirms that these MEPs were appropriately disregarded.⁹⁹
- The statute authorizes Commerce to disregard the entirety of an original or subsequent response after providing a respondent an opportunity to remedy or explain a deficiency in a questionnaire response. Thus, contrary to Botao’s assertion, Commerce’s supplemental questionnaire satisfies this requirement, and Botao’s response should be disregarded.¹⁰⁰

Commerce’s Position: We determine that it is appropriate to continue to reject both Botao and Delian’s market economy purchase prices for the final determination. As we stated in the *Preliminary Determination*, in accordance with the *Omnibus Trade & Competitiveness Act*, 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 subsidized.¹⁰¹ In this regard, Commerce has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea, and Thailand because we determined that these countries maintain broadly available, non-industry specific export subsidies.¹⁰² Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POI, Commerce finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea, and Thailand may have benefited from these subsidies. This is consistent with past practice, where Commerce has rejected market economy purchase prices from these countries.¹⁰³ We also note that the Trade Preferences Act of 2015 affords Commerce the discretion to reject SVs “without further investigation if it has determined that broadly available export subsidies existed, or particular instances of subsidization occurred with respect to those {surrogate values}.”¹⁰⁴ As neither Botao nor Delian provided first-hand evidence of any MEPs from

⁹⁸ *Id.* at 15-16.

⁹⁹ *Id.* at 16.

¹⁰⁰ *Id.* at 16-17.

¹⁰¹ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, (1988), at 590, reprinted in 1988 U.S.C.A.N. 1547, 1623-24 (*Omnibus Trade & Competitiveness Act*).

¹⁰² See, e.g., *Forged Steel Fittings from the People’s Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 83 FR 22948 (May 17, 2018), and accompanying PDM at 28, unchanged in *Forged Steel Fittings from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 50339 (October 5, 2018), and accompanying IDM.

¹⁰³ See, e.g., *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010), and accompanying IDM at Comment 17; *Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People’s Republic of China*, 67 FR 6482 (February 12, 2002), and accompanying IDM at Comment 1; and *Notice of Final Determination of Sales at Less Than Fair Value: Lawn and Garden Steel Fence Posts from the People’s Republic of China*, 68 FR 20372 (April 25, 2003), and accompanying IDM at Comment 2 (citing *Omnibus Trade Act & Competitiveness Act* at 590-91).

¹⁰⁴ See *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, 2016*, 83 FR 51446 (October 11, 2018), and accompanying PDM at “Korea Development Bank (KDB) and Other Policy Banks’ Short-Term Discounted Loans for Export Receivables,” unchanged in *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 2016*, 84 FR 24087 (May 24, 2019).

countries other than India, Indonesia, South Korea, and Thailand, we find no reason to accept these prices for the final determination.

Comment 4: Industry Support

Delian's Comments:

- Delian alleges that the petitioner does not satisfy the statutory requirements to bring this petition to action.¹⁰⁵
- Delian states that the petition must be supported by 25 percent or more of the total production of the domestic like product and by domestic producers or workers that account for more than 50 percent of the production of the domestic like product produced by those expressing support for or opposition to the petition.¹⁰⁶
- Delian states that the petitioner claims that the industry consists of three companies, Texmark Chemical Inc. and SantoLubes LLC, manufacturers of tolyltriazole (TTA) and Wincom, who only further processes TTA. Delian alleges that the petitioner has not presented any substantial evidence of such production, or the lack of production by other companies, but has instead offered letters of support and otherwise relied upon self-serving affidavits.¹⁰⁷
- Delian stipulates that the petitioner's actual position in the market is one of an importer and processor of imported merchandise, not as a U.S. producer.¹⁰⁸ Delian notes that Suez WTS USA, Inc. (Suez) is an actual producer of domestic merchandise, and Suez "strongly opposes" the petition.¹⁰⁹
- According to Delian, under section 751(4)(B) of the Act, "if a producer of the domestic like product is also an importer of the subject merchandise, the producer may, in appropriate circumstances, be excluded from the industry."¹¹⁰
- Delian concludes that if the petitioner is excluded, there is no longer a petitioner, and this investigation should be terminated.¹¹¹

Petitioner's Rebuttal:

- Commerce should reject Delian's request for Commerce to reconsider its affirmative industry support determination.¹¹²
- Commerce is statutorily prohibited from reconsidering its industry support determination after the initiation of an investigation.¹¹³ Citing section 732(c)(4)(E), the petitioner explains that "after the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered."¹¹⁴

¹⁰⁵ See Delian's Case Brief at 1-2.

¹⁰⁶ *Id.* at 2-3.

¹⁰⁷ *Id.* at 3.

¹⁰⁸ *Id.* at Exhibit SQC-1.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 4.

¹¹¹ *Id.*

¹¹² See Petitioner's Rebuttal Brief at 3.

¹¹³ *Id.* at 3 and 4.

¹¹⁴ *Id.* at 4.

- Commerce reasonably concluded that the petitioner established adequate industry support to warrant initiation in this case.¹¹⁵
- Delian incorrectly maintains that several companies identified by Suez manufacture the domestic like product.¹¹⁶
- The petitioner asserts that the depiction of these additional companies as corrosion inhibitor producers is incorrect and that Commerce, upon evaluating them, correctly determined that “none appear to be producers of TTA or BTA,” and that “most appear to be distributors or importers of the corrosion inhibitors.”¹¹⁷
- Commerce was correct in its determination regarding industry support for the petition and should not reconsider its determination.¹¹⁸

Commerce’s Position: Section 732(c)(4)(E) of the Act directs Commerce as follows regarding the consideration of comments regarding industry support:

Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 771(9) if an investigation were initiated, may submit comments or information on the issue of industry support. *After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.*¹¹⁹

Therefore, Commerce is statutorily precluded from reconsidering its industry support determination at this stage of the investigation. As a result, we continue to rely on our determination of industry support provided in the Initiation Checklist.¹²⁰ As stated in the Initiation Checklist:

Commerce finds that the petitioner provided sufficient information to establish all known producers of the domestic like product...and that record information regarding the production of the domestic like product supports a conclusion that the petitioner has properly accounted for all production of the domestic like product and has demonstrated adequate industry support for initiating the investigations... {W}e find that the domestic producers and workers who support the Petitions account for at least 25 percent of total production of the domestic like product. We further find that domestic producers and workers who support the petitions account for more than 50 percent of the total production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions. Therefore, we find there is adequate industry

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 6.

¹¹⁷ *Id.* at 7.

¹¹⁸ *Id.* at 8.

¹¹⁹ See section 732(c)(4)(E) of the Act (emphasis added); see also, e.g., *Certain Quartz Surface Products from India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 85 FR 25391 (May 1, 2020), and accompanying IDM at Comment 12.

¹²⁰ See Initiation Checklist at Attachment II.

support within the meaning of sections 702(c)(4)(A) and 732(c)(4)(A) of the Act.¹²¹

Further, with respect to Delian's reference to the submission from Suez,¹²² Commerce addressed Suez's arguments in detail at the initiation stage of the investigation.¹²³ Specifically, we stated:

{W}ith regard to the companies identified by Suez,¹²⁴ we note that none appear to be producers of {the domestic like product}.¹²⁵ Of the companies identified, most appear to be distributors or importers of the corrosion inhibitors, rather than producers, and therefore should not be included in the industry support calculation.¹²⁶ Finally, while Suez claims to "oppose" the Petitions, it did not provide its 2019 production of the domestic like product; therefore, even if it were appropriate to consider Suez's production in the industry support calculation, we would be unable to do so because Suez did not provide it.

Thus, we determined that the petitioner had provided sufficient, reasonably available information regarding the production of the domestic like product and that the petitioner had demonstrated adequate industry support for initiating the investigation, which we are not revisiting for the final determination.

¹²¹ *Id.* at Attachment II, pp. 6-8.

¹²² *See* Suez's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Industry Support Comments on the Petitions for Antidumping and Countervailing Duties and Request to Poll Industry," dated February 21, 2020 (Suez Comments).

¹²³ *See* Initiation Checklist at Attachment II, p. 7.

¹²⁴ *See* Suez Comments at Attachment 1.

¹²⁵ *See* Petitioner's Letter, "Certain Corrosion Inhibitors from the People's Republic of China: Petitioner's Response to Comments from SUEZ WTS USA, Inc. Regarding Industry Support," dated February 24, 2020 at 4-5 and Exhibits 3 through 8.

¹²⁶ *Id.*

XI. CONCLUSION

We recommend approving all of the above positions. If these positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

Agree

Disagree

1/25/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance