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May 1, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of the Antidumping Duty Administrative Review: Drawn Stainless Steel Sinks from the People's Republic of China

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I. SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty (AD) order on drawn stainless steel sinks (drawn sinks) from the People's Republic of China (PRC). The period of review (POR) is April 1, 2015, through March 31, 2016. We preliminarily find that respondents Guangdong Dongyuan Kitchenware Industrial Co., Ltd. (Dongyuan) and Guangdong Yingao Kitchen Utensils Co. Ltd (Yingao) made sales of subject merchandise at prices below normal value (NV). We also preliminarily grant separate rates to B&R Industries Limited (B&R); Feidong Import and Export Co., Ltd. (Feidong); Foshan Zhaoshun Trade Co., Ltd (Zhaoshun); Jiangmen Hongmao Trading Co., Ltd. (Hongmao); Jiangmen New Star Hi-Tech Enterprise Ltd. (New Star); KaiPing Dawn Plumbing Products, Inc. (KaiPing); Ningbo Afa Kitchen and Bath Co., Ltd. (Ningbo Afa); Xinhe Stainless Steel Products Co., Ltd. (Xinhe); Zhuhai KOHLER Kitchen & Bathroom Products Co., Ltd. (Zhuhai KOHLER); and Zhongshan Superte Kitchenware Co., Ltd. (Superte), because these companies demonstrated their eligibility for separate rate status, but were not selected for individual examination. The rates assigned to each of these companies can be found in the "Preliminary Results of Review" section of the accompanying preliminary *Federal Register* notice. Finally, we preliminarily find that Guangdong New Shichu Import and Export Company Limited (New Shichu) made no shipments of subject merchandise during the POR.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess AD duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We intend to issue our final results no later than 120 days from the date of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), unless this deadline is extended.

II. BACKGROUND

In April 2013, the Department published in the *Federal Register* an AD duty order on drawn sinks from the PRC.[1] On April 1, 2016, the Department published a notice of opportunity to request an administrative review of the AD duty order on drawn sinks from the PRC for the period April 1, 2015, through March 31, 2016.[2] Pursuant to section 751(a)(1) of the Act and 19 CFR 351.213(b)(1), the Department received timely requests from B&R; Dongyuan; Feidong; Hongmao; KaiPing; New Star; Superte; Yingao; and Xinhe,[3] as well as the petitioner, Elkay Manufacturing Company (the petitioner).[4] On June 6, 2016, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation with respect to 32 companies.[5]

In the *Initiation Notice*, the Department notified parties of the application/certification process by which exporters and producers of merchandise subject to an administrative review in a non-market economy (NME) country may qualify for separate rate status.[6] Exporters and producers wishing to qualify for separate rate status in this administrative review were given 30 calendar days after publication of the *Initiation Notice* to complete, as appropriate, either a separate rate application (SRA) or separate rate certification (SRC).[7] In June and July 2016, we received four SRAs[8] and nine SRCs[9] from those PRC companies requesting separate rate status.

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[1] *See Drawn Stainless Steel Sinks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 78 FR 21592 (April 11, 2013) (*Drawn Sinks LTFV Final*).
[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 81 FR 18826 (April 1, 2016).
[3] *See* letter from B&R, "Drawn Stainless Steel Sinks from China: Administrative Review Request," dated April 20, 2016; letter from Feidong, "Drawn Stainless Steel Sinks from the People's Republic of China: Request for Antidumping Administrative Review," dated April 27, 2016; letter from Dongyuan, "Drawn Stainless Steel Sinks from the People's Republic of China: Request for Antidumping Administrative Review," dated April 29, 2016; letter from Hongmao, "Drawn Stainless Steel Sinks from the People's Republic of China Request for Administrative Review," dated April 27, 2016; letter from KaiPing, "Drawn Stainless Steel Sinks from China: Administrative Review Request," dated April 20, 2016; letter from Superte, "Drawn Stainless Steel Sinks from China; Administrative Review Request," dated April 28, 2016; letter from New Star, "Drawn Stainless Steel Sinks from the People's Republic of China: Request for Antidumping Administrative Review," dated April 29, 2016; and letter from Yingao, "Drawn Stainless Steel Sinks from the People's Republic of China: Request for Antidumping Administrative Review," dated April 29, 2016.
[4] *See* Letter from the petitioner, "Drawn Stainless Steel Sinks from the People's Republic of China: Request for Administrative Review," dated May 2, 2016.
[5] *See Initiation of Antidumping and Countervailing Duty Reviews*, 81 FR 36268, 36274 (June 6, 2016) (*Initiation Notice*).
[6] *See Initiation Notice*, 81 FR at 36269.
[7] *Id.*
[8] *See* KaiPing's July 6, 2016, Separate Rate Application (Kaiping SRA); Xinhe's July 14, 2016, Separate Rate Application (Xinhe SRA); Feidong's July 14, 2016, Separate Rate Application (Feidong SRA); and Hongmao's July 14, 2016, Separate Rate Application (Hongmao SRA).
[9] *See* Zhuhai KOHLER's June 24, 2016, Separate Rate Certification (Zhuhai KOHLER SRC); Ningbo Afa's June 29, 2016, Separate Rate Certification (Ningbo Afa SRC); Dongyuan's July 5, 2016, Separate Rate Certification (Dongyuan SRC); Yingao's July 5, 2016, Separate Rate Certification (Yingao SRC); New Star's July 5, 2016, Separate Rate Certification (New Star SRC); New Shichu's July 5, 2016, Separate Rate Certification and Provisional No Sales Certification (New Shichu SRC/NSC); B&R's July 6, 2016, Separate Rate Certification (B&R SRC); Superte's July 6, 2016 Separate Rate Certification (Superte SRC); and Zhaoshun's July 6, 2016, Separate Rate Certification (Zhaoshun SRC).

The *Initiation Notice* also indicated that in the event that the Department limits the number of respondents selected for individual examination, we would select mandatory respondents based on CBP data for U.S. imports during the POR.[10] On June 27, 2016, the Department released the CBP data to all interested parties under an administrative protective order (APO).[11] On July 5, 2016, we received comments on the CBP data from the petitioner.[12] Additionally, on July 5, 2016, we received a certification of no export sales from New Shichu.[13] On July 11, 2016, we received rebuttal comments on the CBP data and respondent selection from New Star.[14]

On August 18, 2016, the petitioner timely withdrew its requests for review for 24 companies, and on September 6, 2016, it timely withdrew two additional requests for review.[15] On August 26, 2016, pursuant to section 777A(c)(2)(B) of the Act, we selected Dongyuan and Yingao for individual examination in this administrative review and issued the NME AD questionnaire to them on this same date.[16]

In September and October 2016, Dongyuan and Yingao submitted their responses to the initial NME AD questionnaire.[17] In October and November 2016, we issued SRA supplemental questionnaires to Feidong, Hongmao, KaiPing, and Xinhe.[18] We received responses to the SRA supplemental questionnaires in these same months.[19]

On December 5, 2016, we extended the deadline of these preliminary results by 120 days, until May 1, 2017.[20] On December 13, 2016, we rescinded this administrative review with respect to

[10] *See Initiation Notice*, 81 FR at 36268.
[11] *See* Memorandum, "Release of Customs and Border Protection (CBP) Data," dated June 27, 2016.
[12] *See* Letter from the petitioner, "Drawn Stainless Steel Sinks From The People's Republic Of China: Comments on CBP Data," dated July 5, 2016.
[13] *See* New Shichu SRC/NSC.
[14] *See* Letter from New Star, "Drawn Stainless Steel Sinks from the People's Republic of China: Rebuttal Comments re CBP Data and Respondent Selection," dated July 11, 2016.
[15] *See* Letter from the petitioner, "Drawn Stainless Steel Sinks From The People's Republic of China: Withdrawal of Requests For Administrative Review," datedv August 18, 2016; and Letter from the petitioner, "Drawn Stainless Steel Sinks From The People's Republic of China: Second Withdrawal of Requests For Administrative Review," dated September 6, 2016.
[16] *See* Memorandum, "2015-2016 Administrative Review of the Antidumping Duty Order on Drawn Stainless Steel Sinks from the People's Republic of China: Respondent Selection," dated August 26, 2016.
[17] *See* Dongyan's September 23, 2016, Section A Questionnaire Response (Dongyuan AQR); Yingao's September 23, 2016, Section A Questionnaire Response (Yingao AQR); Dongyuan's October 17, 2016, Section C Questionnaire Response (Dongyuan CQR); Yingao's October 17, 2016, Section C Questionnaire Response (Yingao CQR); Dongyuan's October 27, 2016, Section D Questionnaire Response; and Yingao's October 27, 2016, Section D Questionnaire Response.
[18] *See* Department Letter re: First Supplemental SRA for Feidong, dated November 8, 2016; Department Letter re: First Supplemental SRA for Hongmao, dated October 12, 2016; Department Letter re: First Supplemental SRA for KaiPing, dated November 8, 2016; and Department Letter re: First Supplemental SRA for Xinhe, dated November 8, 2016.
[19] *See* Feidong's November 29, 2016, Supplemental SRA; Hongmao's October 26, 2016, Supplemental SRA; KaiPing's November 22, 2016, Supplemental SRA; and Xinhe's November 22, 2016, Supplemental SRA.
[20] See Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated December 5, 2016.

19 companies.[21] On December 19, 2016, we received surrogate value (SV) information for the factors of production (FOP) from Dongyuan and Yingao.[22]

In January 2017, we issued supplemental questionnaires to Dongyuan and Yingao.[23] Dongyuan and Yingao both submitted their responses to these supplemental questionnaires in February 2017.[24]

III. SCOPE OF THE ORDER

The merchandise covered by the order includes drawn stainless steel sinks with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel. Mounting clips, fasteners, seals, and sound-deadening pads are also covered by the scope of this order if they are included within the sales price of the drawn stainless steel sinks.[25] For purposes of this scope definition, the term "drawn" refers to a manufacturing process using metal forming technology to produce a smooth basin with seamless, smooth, and rounded corners. Drawn stainless steel sinks are available in various shapes and configurations and may be described in a number of ways including flush mount, top mount, or undermount (to indicate the attachment relative to the countertop). Stainless steel sinks with multiple drawn bowls that are joined through a welding operation to form one unit are covered by the scope of the order. Drawn stainless steel sinks are covered by the scope of the order whether or not they are sold in conjunction with non-subject accessories such as faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

Excluded from the scope of the order are stainless steel sinks with fabricated bowls. Fabricated bowls do not have seamless corners, but rather are made by notching and bending the stainless steel, and then welding and finishing the vertical corners to form the bowls. Stainless steel sinks

[21] The review was rescinded with respect to: Elkay (China) Kitchen Solutions, Co., Ltd.; Foshan Shunde MingHao Kitchen Utensils Co., Ltd.; Franke Asia Sourcing Ltd.; Grand Hill Work Company; Guangdong G-Top Import & Export Co., Ltd.; Hangzhou Heng's Industries Co., Ltd.; Hubei Foshan Success Imp & Exp Co. Ltd.; J&C Industries Enterprise Limited; Jiangmen Pioneer Import & Export Co., Ltd.; Jiangmen Xinhe Stainless Steel Products Co., Ltd.; Jiangxi Zoje Kitchen & Bath Industry Co., Ltd.; Ningbo Oulin Kitchen Utensils Co., Ltd.; Primy Cooperation Limited; Shenzhen Kehuaxing Industrial Ltd.; Shunde Foodstuffs Import & Export Company Limited of Guangdong; Shunde Native Produce Import and Export Co., Ltd. of Guangdong; Zhongshan Newecan Enterprise Development Corporation; Zhongshan Silk Imp. & Exp. Group Co., Ltd. of Guangdong; and Zhuhai Kohler Kitchen & Bathroom Products Co., Ltd. *See Drawn Stainless Steel Sinks From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review; 2015–2016*, 81 FR 89895 (December 13, 2016) (*Partial Rescission Notice*).

[22] *See* Letter from Dongyuan and Yingao, "Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Surrogate Value Submission," dated December 19, 2016 (SV Submission).

[23] *See* Department Letter re: First Supplemental Questionnaire for Dongyuan, dated January 25, 2017 (Dongyuan First SQ); and Department Letter re: First Supplemental Questionnaire for Yingao, dated January 26, 2017 (Yingao First SQ).

[24] *See* Dongyuan's February 21, 2017 Supplemental Questionnaire Response (Dongyuan February 21, 2017 SQR); and Yingao's February 21, 2017 Supplemental Questionnaire Response (Yingao February 21, 2017 SQR).

[25] Mounting clips, fasteners, seals, and sound-deadening pads are not covered by the scope of this order if they are not included within the sales price of the drawn stainless steel sinks, regardless of whether they are shipped with or entered with drawn stainless steel sinks.

with fabricated bowls may sometimes be referred to as "zero radius" or "near zero radius" sinks. The products covered by this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under statistical reporting number 7324.10.0000 and 7324.10.0010. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

IV. DISCUSSION OF METHODOLOGY

A. Preliminary Determination of No Shipments

In the *Initiation Notice*, we instructed producers or exporters named in the notice that had no exports, sales, or entries during the POR to notify the Department within 30 days of publication of the notice of this fact.[26] On July 5, 2016, New Shichu filed a no-shipment certification indicating that it had no exports, sales, or entries of subject merchandise to the United States during the POR.[27] Upon receiving such claims from companies subject to an administrative review, it is the Department's practice to send an inquiry message to CBP in which we request that CBP import officers alert the Department if it had information contrary to the party's claim.[28] Accordingly, for New Shichu, we sent an inquiry message to CBP. We received no information from CBP contradicting New Shichu's no-shipment claim.

Thus, based on the no-shipment claim submitted by New Shichu and our analysis of the information on the record, we preliminarily determine that New Shichu had no shipments during the POR. In addition, the Department finds that consistent with its practice in NME cases,[29] it is appropriate not to rescind the review, in part, for New Shichu in these circumstances, but rather to complete the review. In accordance with the Department's practice, if the Department determines that New Shichu had no shipments of the subject merchandise, any suspended entries from New Shichu will be liquidated at the PRC-wide rate.[30]

B. Non-Market Economy Country Status

The Department considers the PRC to be an NME country.[31] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.[32] Because no party to this

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[26] *See Initiation Notice*, 81 FR 36268.
[27] *See* New Shichu SRC/NSC.
[28] *See, e.g.*, *Certain Steel Grating From the People's Republic of China: Preliminary Results of Antidumping Administrative Review and Preliminary Determination of No Shipments; 2014-2015*, 81 FR 21843 (April 13, 2016).
[29] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-95 (October 24, 2011) (*NME AD Assessment*).
[30] For a full discussion of this practice, *see NME AD Assessment*.
[31] *See, e.g.*, *Multilayered Wood Flooring From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70267, 70268 (November 25, 2013), unchanged in *Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 26712 (May 9, 2014).
[32] *See, e.g.*, *Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the 2004-2005 Administrative Review and Preliminary Notice of Intent To Rescind the 2004-2005 New Shipper Review*, 71 FR 26736 (May 8, 2006), unchanged in *Brake Rotors from the People's Republic of China: Final Results and*

proceeding contested NME treatment for the PRC, we treated the PRC as an NME country and applied our current NME methodology in accordance with section 773(c) of the Act for purposes of these preliminary results.

C. Separate Rates Determination

In NME proceedings, there is a rebuttable presumption that companies are subject to government control and, thus, should be assessed a single AD rate.[33] In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.[34] It is the Department's policy to assign exporters of the subject merchandise from an NME country a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,[35] as amplified by *Silicon Carbide*.[36] However, if the Department determines that a company is wholly foreign-owned, then consideration of the *de jure* and *de facto* criteria is not necessary to determine whether it is independent from government control.[37]

Under the separate rates test, the Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.[38]

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

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Partial Rescission of the 2005-2005 Administrative Review and Notice of Rescission of 2004-2005 New Shipper Review, 71 FR 66304 (November 14, 2006).

[33] *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); *see also Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

[34] *See Initiation Notice*, 81 FR at 36269.

[35] *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).

[36] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

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

[38] *See Sparklers*, 56 FR at 20589.

(4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.[39]

The Department continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from the PRC AD proceeding, and the Department's determinations therein.[40] In particular, we note that in litigation involving the diamond sawblades proceeding, the U.S. Court of International Trade (CIT) found the Department's existing separate rates analysis deficient in the circumstances of that case, in which a government-controlled entity had significant ownership in the respondent exporter.[41] Following the Court's reasoning, in recent proceedings, we have concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally.[42] This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profit distribution of the company.

[39] *See Silicon Carbide*, 59 FR at 22586-89; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

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

[41] *See, e.g.*, *Advanced Technology & Materials Co., Ltd. v. United States*, 885 F. Supp. 2d 1343, 1349 (CIT 2012) ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *Id.* at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {state-owned assets supervision and administration commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor *de jure* 'separation' that Commerce concludes.") (footnotes omitted); *Id.* at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); *Id.* at 1357 ("AT&M *itself* identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control *over* nomination.") (footnotes omitted).

[42] *See Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying Preliminary Decision Memorandum at 5-9.

In this review, we preliminarily find no evidence of government ownership of the mandatory and the separate rate respondents, B&R, Dongyuan, Feidong, Hongmao, KaiPing, New Star, Ningbo Afa, Superte, Xinhe, Yingao, Zhaoshun, and Zhuhai KOHLER, all of which are limited liability companies. In accordance with our practice, the Department analyzed whether these respondents have demonstrated the absence of *de jure* and *de facto* government control over their respective export activities.

1. Absence of *De Jure* Control

The evidence provided by B&R,[43] Dongyuan,[44] Feidong,[45] Hongmao,[46] KaiPing,[47] New Star,[48] Ningbo Afa,[49] Superte,[50] Xinhe,[51] Yingao,[52] Zhaoshun,[53] and Zhuhai KOHLER[54] supports a preliminary finding of an absence of *de jure* government control for each of these companies based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of the companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.

2. Absence of *De Facto* Control

The evidence provided by B&R,[55] Dongyuan,[56] Feidong,[57] Hongmao,[58] KaiPing,[59] New Star,[60] Ningbo Afa,[61] Superte,[62] Xinhe,[63] Yingao,[64] Zhaoshun,[65] and Zhuhai KOHLER[66] supports a preliminary finding of an absence of *de facto* government control based on record statements and supporting documentation showing that the companies: (1) set their own EPs independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government

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[43] *See* B&R SRC, at 5.
[44] *See* Dongyuan SRC, at 5-6.
[45] *See* Feidong SRA, at 9-14.
[46] *See* Hongmao SRA, at 8-12.
[47] *See* KaiPing SRA, at 10-14.
[48] *See* New Star SRC, at 5-6.
[49] *See* Ningbo Afa SRC, at 5-6.
[50] *See* Superte SRC, at 4-5.
[51] *See* Xinhe SRA, at 9-12.
[52] *See* Yingao SRC, at 5-6.
[53] *See* Zhaoshun SRC, at 4-5.
[54] *See* Zhuhai KOHLER SRC, at 6.
[55] *See* B&R SRC, at 6.
[56] *See* Dongyuan SRC, at 6-7.
[57] *See* Feidong SRA, at 14-23.
[58] *See* Hongmao SRA, at 12-20.
[59] *See* KaiPing SRA, at 14-26.
[60] *See* New Star SRC, at 6-7.
[61] *See* Ningbo Afa SRC, at 6-7.
[62] *See* Superte SRC, at 5.
[63] *See* Xinhe SRA, at 12-20.
[64] *See* Yingao SRC, at 5-6.
[65] *See* Zhaoshun SRC, at 5-6.
[66] *See* Zhuhai KOHLER SRC, at 6-7.

in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding the disposition of profits or financing of losses.

Therefore, the evidence placed on the record of this administrative review by B&R, Dongyuan, Feidong, Hongmao, KaiPing, New Star, Ningbo Afa, Superte, Xinhe, Yingao, Zhaoshun, and Zhuhai KOHLER demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, the Department preliminarily grants separate rates to B&R, Dongyuan, Feidong, Hongmao, KaiPing, New Star, Ningbo Afa, Superte, Xinhe, Yingao, Zhaoshun, and Zhuhai KOHLER.[67]

3. Separate Rate for Non-Selected Companies

In accordance with section 777A(c)(2)(B) of the Act, the Department employed a limited examination methodology, as it was not practical to examine all companies for which an administrative review was initiated. We selected Dongyuan and Yingao as mandatory respondents in this review. As discussed above, B&R, Feidong, Hongmao, KaiPing, New Star, Ningbo Afa, Superte, Xinhe, Zhaoshun, and Zhuhai KOHLER are exporters of subject merchandise that demonstrated their eligibility for a separate rate, but were not selected for individual examination in this review.

The statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for individual examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limiting respondent selection based on exporters accounting for the largest volumes of trade has been to look at section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in investigations. Section 735(c)(5)(B) of the Act provides that "the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under {section 776 of the Act}."

In this review, we calculated weighted-average dumping margins for both mandatory respondents that are above *de minimis* and not based on total facts available. Because there are only two relevant weighted-average dumping margins for these preliminary results, using a weighted-average of these two rates risks disclosure of business proprietary data. Therefore, the Department assigned a margin to the separate rate companies as described in the Separate Rate Calculation Memorandum.[68]

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[67] *See* "Separate Rate for Non-Selected Companies," *infra*.
[68] *See* Memorandum, "Drawn Stainless Steel Sinks from the People's Republic of China: Calculation of the Preliminary Margin for Separate Rate Companies," dated concurrently with this memorandum (Separate Rate Calculation Memorandum). This memorandum contains our comparison of (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company's publicly ranged values for the merchandise under consideration. We compared (B) and (C) to (A) and selected the rate closest to (A) as the most appropriate rate for the separate rate respondents

D. Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it 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 the Department. Specifically, in accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of the FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[69] To determine which countries are at the same level of economic development, the Department generally relies solely on per capita gross national income data from the World Bank's World Development Report.[70] In addition, if more than one country satisfies the two criteria noted above, the Department narrows the field of potential surrogate countries to a single country (pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOPs in a single surrogate country) based on data availability and quality.

As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME country unless it is determined that none of the countries are viable options because (a) they either are not significant producers of comparable merchandise; (b) do not provide sufficient reliable sources of publicly available SV data; or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the differences in levels of economic development.

On November 28, 2016, the Department identified Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand as being at the same level of economic development as the PRC[71] and issued a letter to the interested parties soliciting comments on surrogate country selection.[72] On December 12, 2016, Dongyuan and Yingao submitted comments on the appropriate surrogate country.[73]

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in these preliminary results. *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010).

[69] *See* Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004), available at http://enforcement.trade.gov/policy/ (Policy Bulletin).

[70] *Id.*

[71] *See* Memorandum, "Request for a List of Surrogate Countries for the Administrative Review of the Antidumping Duty Order on Drawn Stainless Steel Sinks from the People's Republic of China ('China')," dated November 28, 2016 (Surrogate Country Recommendation Memorandum).

[72] *See* Department Letter re: Administrative Review of Drawn Stainless Steel Sinks from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information, dated November 28, 2016.

[73] *See* Letter from Dongyuan and Yingao, "Drawn Stainless Steel Sinks From The People's Republic Of China: Surrogate County Comments," dated December 12, 2016 (Surrogate Country Comments).

Dongyuan and Yingao contend that the Department should follow its determinations in prior segments of the proceeding (*i.e.*, the less-than-fair-value (LTFV) investigation and first and second administrative reviews) and continue to rely on Thailand as the surrogate country.[74]

As indicated above, when selecting among several potential surrogate countries, the Department's practice, in accordance with section 773(c)(1) of the Act, is to select a country that provides SV data which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and free of taxes and duties.[75] There is no hierarchy among these criteria. It is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.[76]

1. Economic Comparability

As explained in the Surrogate Country Recommendation Memorandum, the Department considers Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand to be at the same level of economic development as the PRC.[77] Therefore, we consider all six countries as having satisfied this prong of the surrogate country selection criteria.[78]

2. Significant Producer of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the Policy Bulletin for guidance on defining comparable merchandise.[79]

The Policy Bulletin states that "{i}n all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise. In cases where the identical merchandise is not produced, the team must determine if other merchandise that is comparable is produced. How the Department does this, depends on the subject merchandise."[80]

To support their contention that Thailand is a significant producer of comparable merchandise, Dongyuan and Yingao provided UN Comtrade data showing total exports of such merchandise for the listed surrogate countries in 2014 and 2015.[81] Based on the GTA data on the record, we

[74] *Id.*
[75] *See, e.g.*, *First Administrative Review of Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 1336 (January 11, 2010), and accompanying IDM, at Comment 1.
[76] *See, e.g.*, *Certain Steel Threaded Rod From the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review; 2011-2012*, 78 FR 66330 (November 5, 2013), and accompanying IDM, at 7.
[77] *See* Surrogate Country Recommendation Memorandum.
[78] *See* Section 773(c)(4)(A) of the Act.
[79] *See* Policy Bulletin.
[80] *Id.*
[81] *See* Surrogate Country Comments, at 1 and Attachment.

find we find that Brazil, Mexico, Romania, and South Africa, may be considered significant producers of comparable merchandise.

3. Data Availability

If more than one country satisfies the statutory requirements for selection as a surrogate country, the Department selects a surrogate country from among the potential countries based on data availability and quality. When evaluating SV data, the Department considers several factors including whether the SVs are publicly available, contemporaneous with the POR, representative of a broad-market average, from an approved surrogate country, tax and duty-exclusive, and specific to the inputs being valued.[82] In this review, there is no complete SV information on the record for any country on the surrogate country list except for Thailand.[83] Because Thailand is the only country listed on the Surrogate Country Recommendation Memorandum found to be both at the same level of economic development as the PRC and a significant producer of comparable merchandise for which we have reliable data to value all of the FOPs, we have selected Thailand as the surrogate country.

E. Date of Sale

In identifying the date of sale of the merchandise under consideration, the Department will normally, in accordance with 19 CFR 351.401(i), "use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business" unless evidence indicates that another date better reflects the date of which the material terms of sale are established. The material terms of sale normally include the price, quantity, delivery terms, and payment terms.[84]

Dongyuan and Yingao reported that the date of sale was determined by the date of issuance of the commercial invoice.[85] Because the Department found no evidence contrary to Dongyuan's and Yingao's claims that the commercial invoice date was the appropriate date of sale, the Department used the commercial invoice date as the date of sale for these preliminary results, in accordance with 19 CFR 351.401(i).[86]

F. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Dongyuan's and Yingao's sales of the subject merchandise from the PRC to the United States were made at less than NV, the Department compared the EP and constructed export price

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[82] *See, e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006), and accompanying IDM, at Comment 3.
[83] *See* SV Submission.
[84] *See, e.g.*, *Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying IDM, at Comment 1; and *Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying IDM, at Comment 1.
[85] *See* Dongyuan AQR, at 14-15; Yingao AQR, at A-13 – A-14.
[86] *See, e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying IDM, at Comment 10.

(CEP) to the NV as described in the "Export Price," "Constructed Export Price," and "Normal Value" sections of this memorandum.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average (A-A) method), unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, the Department examines whether to compare weighted-average NVs with EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction (A-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(l)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in LTFV investigations.[87]

In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of the A-T method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.[88] The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the A-A method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the A-A method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and

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[87] *See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying IDM, at Comment 1; *see also Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

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

time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

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

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

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

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

2. Results of the Differential Pricing Analysis

For Dongyuan, based on the results of the differential pricing analysis, the Department preliminarily finds that 81.30 percent of the value of U.S. sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, the Department is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Dongyuan.

For Yingao, based on the results of the differential pricing analysis, the Department preliminarily finds that 71.00 percent of the value of U.S. sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, the Department is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Yingao.

3. Export Price/Constructed Export Price

According to section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. Pursuant to section 772(b) of the Act, CEP is "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under {sections 772(c) and (d) of the Act}."

(a) Dongyuan

In accordance with section 772(a) of the Act, we used EP methodology for Dongyuan's sales because the subject merchandise was sold directly to the unaffiliated customer in the United

States prior to importation, and because the use of CEP methodology was not otherwise warranted.[89]

We based Dongyuan's EP on packed prices to its first unaffiliated purchaser in the United States. We made deductions from the starting price for movement expenses, in accordance with section 772(c)(2)(A) of the Act. These expenses included foreign inland freight from the plant to the port of exportation and foreign brokerage and handling. Because these expenses were incurred in the PRC or provided by an NME service provider, we valued these expenses using the SV methodology described in the "Factor Valuation Methodology" section of this memorandum, below. We also deducted value-added tax (VAT) from the starting price as explained below.

(b) Yingao

In accordance with section 772(a) of the Act, we used EP methodology for certain sales made by Yingao sales because the subject merchandise was sold directly to the unaffiliated customer in the United States prior to importation, and because the use of CEP methodology was not otherwise warranted.[90]

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for movement expenses, in accordance with section 772(c)(2)(A) of the Act. These expenses included foreign inland freight from the plant to the port of exportation and foreign brokerage and handling. Because these movement expenses were incurred in the PRC, we valued these expenses using the SV methodology described in the "Factor Valuation Methodology" section of this memorandum, below. We also deducted VAT from the starting price, as explained below.

We calculated CEP for those U.S. sales made by Yingao's U.S. affiliate in the United States based on prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions, where applicable, from the starting price for movement expenses including domestic inland freight from the plant/warehouse to the port of exit; foreign brokerage and handling; international freight; U.S. movement expenses from port to the unaffiliated customer; and U.S. customs duty. For those expenses which were incurred in the PRC, we valued these expenses using the SV methodology described in the "Factor Valuation Methodology" section of this memorandum, below. For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. We also made deductions in accordance with section 772(d)(1) and of the Act for credit expenses and indirect selling expenses which relate to commercial activity in the United States. We also deducted VAT from the starting price, as explained below.

[89] *See* Dongyuan CQR at 15.
[90] *See* Yingao CQR at 16.

4. VAT

The Department's recent practice in NME cases is to adjust EP or CEP for the amount of any un-refunded (hereafter irrecoverable) VAT, in accordance with section 772(c)(2)(B) of the Act.[91] The Department explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EP or CEP prices accordingly by the amount of the tax, duty or charge paid, but not rebated.[92] Where the irrecoverable VAT is a fixed percentage of EP or CEP, the Department explained that the final step in arriving at a tax neutral dumping comparison is to reduce the EP or CEP downward by this same percentage.[93] The Department's methodology, as explained above and applied in this review, essentially amounts to performing two basic steps: (1) determining the irrecoverable VAT tax on subject merchandise, and (2) reducing U.S. price by the amount (or rate) determined in step one.

Information placed on the record of this review by Dongyuan and Yingao indicates that, according to the Chinese VAT schedule, the standard VAT levy is 17 percent,[94] and the rebate rate for subject merchandise is nine percent.[95] For the purposes of these preliminary results, therefore, we removed from U.S. price an amount equal to the difference between the rates (eight percent), which is the irrecoverable VAT as defined under Chinese tax law and regulation.[96] We note that this is consistent with the Department's policy and the intent of the statute, that dumping comparisons be tax-neutral.[97]

5. Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the Department finds that the available information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital

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[91] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012) (*Methodological Change*).
[92] *Id.*; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014), and accompanying IDM, at Comment 5.A.
[93] *See Methodological Change*, 77 FR at 36482.
[94] *See* Dongyuan CQR at 40, and Exhibit C-4.
[95] *Id.* at 41.
[96] *Id.*; *see also* Exhibit C-4.
[97] *See Methodological Change* (citing *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27369 (May 19, 1997), and Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. I 03-316, vol. I, 827, reprinted in 1994 U.S.C.C.A.N. 3773, 4172); *see also Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire From the People's Republic of China*, 79 FR 25572 (May 5, 2014), and accompanying IDM, at Comment 1.

costs. Accordingly, in this review the Department used the FOPs reported by Dongyuan and Yingao for materials, labor, energy, and packing.

G. Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by Dongyuan and Yingao for the POR.

The Department used Thai import data and other publicly-available Thai sources in order to calculate SVs for each of Dongyuan's and Yingao's FOPs. To calculate NV, the Department multiplied the reported per-unit FOPs quantities by publicly available SVs.[98] Further, the Department added a surrogate freight cost, where appropriate, to the SVs using the shorter of the reported distance from the domestic supplier to the respondent's factory or from the nearest seaport to the respondent's factory.[99] Additionally, where necessary, the Department adjusted SVs for inflation and exchange rates, and the Department converted all applicable data for the FOPs to a per-kilogram basis. The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.[100]

A detailed description of all SVs used to calculate the weighted-average dumping margins for Dongyuan can be found in the Preliminary Surrogate Value Memorandum. An overview of the SVs used to calculate the weighted-average dumping margin for Dongyuan and Yingao is presented below.

For the preliminary results, in accordance with the Department's practice, except where noted below, we used Thai import data, as published by the Global Trade Atlas (GTA), and other publicly-available sources from Thailand to calculate SVs for the FOPs reported by Dongyuan and Yingao. The GTA reports import statistics, such as from Thailand, in the original reporting currency, and thus, these data correspond to the original currency value reported by each country. The record shows that data in the Thai import statistics, as well as those from several other Thai sources, are contemporaneous with the POR, product-specific, and tax-exclusive.[101] In those instances where the Department was unable to obtain publicly-available information contemporaneous to the POR with which to value factors, we adjusted the SVs using, where appropriate, the Thai Producer Price Index (PPI) or Consumer Price Index (CPI) (*i.e.,* in the case

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[98] *See* MTF from Brandon Custard and Terre Keaton Stefanova, International Trade Compliance Analysts, "Factor Valuation Memorandum for the Preliminary Results in the Antidumping Duty Administrative Review of Drawn Stainless Steel Sinks from the People's Republic of China," dated concurrently with this memorandum (Preliminary Surrogate Value Memorandum) at Attachment 1.
[99] *See Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997).
[100] *See, e.g., Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), and accompanying IDM, at Comment 2.
[101] *See* Preliminary Surrogate Value Memorandum at 2-7.

of labor), as published in the International Monetary Fund's *International Financial Statistics* (*IFS*).[102]

When calculating Thai import-based SVs, we disregarded import data on inputs that we have reason to believe or suspect may be dumped or subsidized. It is the Department's practice, guided by the legislative history, not to conduct a formal investigation to ensure that such prices are not dumped or subsidized.[103] Rather, the Department bases its decision on information that is available to it at the time it makes its determination.

In this case, the Department has reason to believe or suspect that prices of inputs from India, Indonesia, and the Republic of Korea may have been subsidized. The Department found in other proceedings that these countries maintain broadly-available, non-industry-specific export subsidies.[104] Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[105] Therefore, the Department has not used data from these countries in calculating Thai import-based SVs.

Additionally, consistent with our practice, the Department disregarded data from NME countries when calculating Thai import-based SVs. The Department also excluded from the calculation of Thai import-based SVs imports labeled as originating from an "unspecified" country because it could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.[106]

In our calculation of the SV for stainless steel, we also excluded the import data from countries for which Thailand imposed AD duties on stainless steel products (*i.e.*, Japan and Taiwan).[107]

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[102] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 9591, 9601 (March 5, 2009), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 74 FR 36656 (July 24, 2009).

[103] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988); *see also Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30763 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007); *see also* Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015).

[104] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying IDM, at 4-5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying IDM, at 4; and *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying IDM, at 17, 19-20.

[105] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying IDM, at Comment 7.

[106] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China*, 69 FR 75294, 75300 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502 (May 10, 2005).

[107] *See Drawn Sinks LTFV Final*, and accompanying IDM, at Comment 2.

To value this input, we relied on the quantity and value data from two harmonized tariff schedule subheadings specific to the grade and surface finish of the stainless steel used by the respondent to produce the subject merchandise.

We valued electricity using the calculation methodology applied in *Drawn Sinks LTFV Final, Sodium Hexametaphosphate*, and *Silicon Metal*.[108] The electricity calculation is based on the June 2012 tariff rates applied by the Thailand Metropolitan Electricity Authority (MEA) for "large general service" companies.[109] We find that this methodology represents the "best available" information within the meaning of the statute because the MEA rates are from an approved surrogate country, are publicly available, specific to the input, contemporaneous, and exclusive of taxes. In order to inflate the June 2012 rates to the POR, we used Thailand PPI data obtained from *IFS*.

We valued water using an average of basic rates in effect for "Type 2" (Commerce, government agency, state, enterprise, industry) users, as published in the Thailand Metropolitan Waterworks Authority. These basic rates are for industrial users, are VAT-exclusive, and effective as of December 1999. Therefore, we inflated the average of the basic rates to the POR using Thailand PPI data obtained from *IFS*.

With respect to labor, we valued labor using 2012 data from the Thai National Statistics Office (NSO), an authorized government agency, and calculated an hourly rate based on the number of working days per week and working hours per day for the segment of the fabricated metal products industry that excludes certain non-sink products (*i.e.*, 25999) found in Table 5 of the Thai NSO's 2012 Business Trade and Industrial Census.[110] In order to inflate the 2011 rates to the POR, we used Thailand CPI data obtained from *IFS*.

We valued brokerage and handling expenses using price data from the World Bank publication, *Doing Business 2016: Thailand* (*Doing Business 2016*). Unlike prior years, the 2016 issue of this publication based the rate on the exportation of a standardized cargo of automobile parts from Thailand using a container weighing 15,000 kilograms. We did not inflate this rate because it is contemporaneous with the POR.[111]

We valued truck freight expenses using price data from the World Bank's *Doing Business 2016* and used a calculation methodology based on a container weighing 15,000 kilograms and a distance from Bangkok to Laem Chabang port of 129 kilometers (both of which were noted in

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[108] *See, e.g., Drawn Stainless Steel Sinks From the People's Republic of China: Antidumping Duty Investigation*, 77 FR 60673 (October 4, 2012), unchanged in *Drawn Sinks LTFV Final*; *see also Sodium Hexametaphosphate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 59375 (September 27, 2012) (*Sodium Hexametaphosphate*), and accompanying IDM, at Comment II; and *Silicon Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 54563 (September 5, 2012) (*Silicon Metal*).
[109] *See* Preliminary Surrogate Value Memorandum at Attachment 3a-3b.
[110] *Id*. at Attachment 2a.
[111] *Id*. at Attachment 5.

the *Doing Business 2016* study). We did not inflate this price because it is contemporaneous with the POR.[112]

To value factory overhead, selling, general, and administrative (SG&A) expenses, and profit, we used rates based on data taken from the fiscal year 2014 financial statements of the Thai company Advance Stainless Steel Co., Ltd.[113] These financial statements are from a producer of comparable merchandise, are complete, and do not indicate the existence of countervailable subsidies.

As stated above, the Department used 2012 Thai data, reported to the NSO, which reflect all costs related to labor, including wages, benefits, housing, and training. Because the financial statements used to calculate the surrogate financial ratios do not include an itemized detail of indirect labor costs, the Department made no adjustments to the surrogate financial ratios for these types of expenses. In addition, we treated the SG&A labor costs (*e.g.*, welfare, benefits, bonus, etc.) as SG&A labor expenses, rather than direct production labor expenses, for purposes of deriving the surrogate financial ratios. These expense items are designated as selling and administrative expenses, rather than production expenses, in the surrogate producer's financial report.

Dongyuan and Yingao reported that they recovered and sold stainless steel scrap (*i.e.*, a by-product) from the production of subject merchandise during the POR. Therefore, in calculating NV, we also granted a by-product offset to Dongyuan and Yingao based on the reported kilogram-per-sink by-product amount generated and sold during the POR.

H. Currency Conversion

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

[112] *Id*. at Attachment 4.
[113] *Id*. at Attachment 2.

V. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒	☐
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Agree	Disagree

5/1/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN
Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance