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November 30, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Diamond Sawblades and Parts Thereof from the People's Republic of China: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review; 2015-2016

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## I. SUMMARY

In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (the PRC) covering the period of review (POR) November 1, 2015, through October 31, 2016. The Department preliminarily determines that, during the POR, certain manufacturers/exporters covered by this review made sales of subject merchandise at less than normal value (NV). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. Unless extended, we intend to issue the final results within 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).

## II. BACKGROUND

On November 4, 2009, the Department published in the *Federal Register* an antidumping duty order on diamond sawblades from the PRC.[1] On November 4, 2016, the Department published in the *Federal Register* a notice of opportunity to request an administrative review of the order.[2]

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[1] *See Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea: Antidumping Duty Orders*, 74 FR 57145 (November 4, 2009).
[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request*

Based on timely requests for an administrative review, the Department initiated an administrative review on January 13, 2017.[3] We rescinded the administrative review in part with respect to Husqvarna (Hebei) Co., Ltd.[4] On April 26, 2017, we selected Chengdu Huifeng Diamond Tools Co., Ltd. (Chengdu Huifeng) and the Jiangsu Fengtai Single Entity[5] for individual examination in this review.[6] The preliminary results of this review are currently due on November 30, 2017.[7]

## III. SCOPE OF THE ORDER

The products covered by the order are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of the order are semifinished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the order. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the order. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of the order. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the order. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the order. Merchandise subject to the order is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). When packaged together as a set for retail sale with an item that is separately classified under headings

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*Administrative Review*, 81 FR 76920 (November 4, 2016).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 4294 (January 13, 2017) (*Initiation Notice*).

[4] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Rescission of Antidumping Duty Administrative Review in Part; 2015-2016*, 82 FR 18894 (April 24, 2017), and CBP message number 7129302 dated May 9, 2017, available at http://adcvd.cbp.dhs.gov/adcvdweb/ad_cvd_msgs/22777.

[5] Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd., Jiangsu Fengtai Tools Co., Ltd., and Jiangsu Fengtai Sawing Industry Co., Ltd., comprise the Jiangsu Fengtai Single Entity. *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 26912, 26913 n.5 (June 12, 2017) (*6th Review Final*) and accompanying Issues and Decision Memorandum (I&D Memo).

[6] *See* Memorandum, "Diamond Sawblades and Parts Thereof from the People's Republic of China: Selection of Respondents for Individual Examination," dated April 26, 2017 (Respondent Selection Memorandum).

[7] *See* Memorandum, "Diamond Sawblades and Parts Thereof from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review" dated July 7, 2017.

8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. On October 11, 2011, the Department included the 6804.21.00.00 HTSUS classification number to the customs case reference file, pursuant to a request by CBP.[8] The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

## IV. PRELIMINARY DETERMINATION OF NO SHIPMENTS

The following ten companies that received separate rates in previous segments of the proceeding and are subject to this review reported that they did not have any exports of subject merchandise during the POR:

Danyang City Ou Di Ma Tools Co., Ltd.
Danyang Hantronic Import & Export Co., Ltd.
Danyang Like Tools Manufacturing Co., Ltd.
Danyang Tsunda Diamond Tools Co., Ltd.
Jiangsu Huachang Tools Manufacturing Co., Ltd.
Jiangsu Inter-China Group Corporation
Orient Gain International Limited
Qingdao Hyosung Diamond Tools Co., Ltd.
Qingdao Shinhan Diamond Industrial Co., Ltd.
Sino Tools Co., Ltd.[9]

We requested that CBP report any information contradicting their claims of no shipments.[10] To date, we have not received any contrary information from either CBP in response to our inquiry or any other sources that nine of these companies had any shipments of the subject merchandise sold to the United States during the POR.[11] Consistent with the Department's assessment practice, we are completing the review with respect to these companies and will issue appropriate instructions to CBP based on the final results of the review.[12]

We have information on the record contradicting the no-shipment claim submitted by Qingdao Hyosung Diamond Tools Co., Ltd. (Qingdao Hyosung). Qingdao Hyosung did not rebut the

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[8] *See Diamond Sawblades and Parts Thereof from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 76128, 76130 (December 6, 2011).

[9] *See* the February 6, 2017, no-shipment letters from Danyang City Ou Di Ma Tools Co., Ltd., Danyang Like Tools Manufacturing Co., Ltd., Jiangsu Huachang Tools Manufacturing Co., Ltd., Orient Gain International Limited, Qingdao Hyosung Diamond Tools Co., Ltd., and Sino Tools Co., Ltd.; the February 7, 2017, no-shipment letter from Qingdao Shinhan Diamond Industrial Co., Ltd.; the February 10, 2017, no-shipment letters from Danyang Tsunda Diamond Tools Co., Ltd., and Jiangsu Inter-China Group Corporation; and the February 21, 2017, no-shipment letter from Danyang Hantronic Import & Export Co., Ltd.

[10] *See* CBP message numbers 7167307-7167315, and 7167318 dated June 16, 2017, available at http://adcvd.cbp.dhs.gov/adcvdweb/.

[11] CBP only responds to the Department's inquiry when there are records of shipments from the company in question. *See, e.g., Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Flat Products from Brazil: Notice of Rescission of Antidumping Duty Administrative Review*, 75 FR 65453, 65454 (October 25,2010).

[12] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

contradicting information, nor did it file a separate rate application (SRA) or separate rate certification (SRC). Therefore, we preliminarily find that Qingdao Hyosung is a part of the PRC-wide entity.[13]

## V. DISCUSSION OF THE METHODOLOGY

### A. Non-Market Economy Country Status

The Department considers the PRC to be a non-market economy (NME) country.[14] In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority.[15] None of the parties to this proceeding have contested NME treatment for the PRC. Therefore, for the preliminary results of this review, we treated the PRC as an NME country and applied our current NME methodology in accordance with section 773(c) of the Act.

### B. Separate Rates

There is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.[16] In the *Initiation Notice*, we notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.[17] It is our policy to assign all exporters of the merchandise subject to review in NME countries 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, we analyze each exporting entity in an NME country under the test established in *Sparklers*,[18] as amplified by *Silicon Carbide*.[19] However, if we determine that a company is wholly foreign-owned or located in a market economy (ME),

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[13] *See* the preliminary separate rate denial memorandum for Qingdao Hyosung dated concurrently with this Preliminary Decision Memorandum for more details containing business proprietary information.

[14] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017).

[15] *See, e.g., Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results*, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012).

[16] *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); *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances*, 71 FR 29303, 29307 (May 22, 2006).

[17] *See Initiation Notice*, 82 FR at 4294-95.

[18] *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*).

[19] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586-89 (May 2, 1994) (*Silicon Carbide*).

then a separate rate analysis is not necessary to determine whether it is independent from government control.[20]

The Department continues to evaluate its practice with regard to the separate rates analysis in light of this proceeding and its determinations therein.[21] In particular, in litigation involving this 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-owned and controlled entity exercised control over the respondent exporter.[22] Following the CIT's reasoning, in subsequent segments of proceedings, we have concluded that where a government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, this interest in and of itself means that the government exercises or has the potential to exercise control over the company's operations generally.[23] This may include control over, for example, the selection of board members and management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate.[24] Consistent with normal business practices, we would expect any majority shareholder, including a government to have the ability to control, and possess an interest in controlling, the operations of the company, including the selection of board members, management, and the profitability of the company.

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[20] *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) (*Petroleum Wax Candles*).

[21] *See* Final Results of Redetermination pursuant to *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), and available at http://enforcement.trade.gov/remands/12-147.pdf, *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014) (*Advanced Technology II*). *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 I&D Memo at Comment 1.

[22] *See, e.g.*, *Advanced Technology I*, 885 F. Supp. 2d at 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).

[23] *See, e.g.*, *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, and *Truck and Bus Tires from the People's Republic of China: Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*, 82 FR 8559 (January 27, 2017) (*Truck and Bus Tires*), and accompanying I&D Memo at Comment 2. *See also Diamond Sawblades Manufacturers Coalition v. United States*, 866 F.3d 1304 (Fed. Cir. 2017), and *Diamond Sawblades Manufacturers Coalition v. United States*, Court Nos. 2016-1254, 1255, 2017 WL 3381909, 2017 U.S. App. LEXIS 14472 (Fed. Cir. 2017).

[24] *See, e.g.*, *Truck and Bus Tires* and accompanying I&D Memo at Comment 8.

In this administrative review, 20 companies submitted separate rate information. The remaining companies under review did not provide either an SRA or SRC, as applicable. As a result, we are treating these PRC exporters as part of the PRC-wide entity.[25]

1. Separate Rate Respondents

a. Wholly Foreign-Owned

Danyang NYCL Tools Manufacturing Co., Ltd. (Danyang NYCL) and Weihai Xiangguang Mechanical Industrial Co., Ltd. (Weihai) reported that they are wholly-owned by ME companies located in ME countries.[26] Therefore, a separate rates analysis is not necessary to determine whether their export activities are independent from government control.[27] Accordingly, we preliminarily granted separate rate status to these two companies.

b. Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

The following respondents seeking a separate rate stated that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies:

Bosun Tools Co., Ltd.
Chengdu Huifeng Diamond Tools Co., Ltd.
Danyang Huachang Diamond Tools Manufacturing Co., Ltd.
Danyang Weiwang Tools Manufacturing Co., Ltd.
Guilin Tebon Superhard Material Co., Ltd.
Hangzhou Deer King Industrial and Trading Co., Ltd.
Huzhou Gu's Import & Export Co., Ltd.
Jiangsu Fengtai Single Entity
Jiangsu Youhe Tool Manufacturer Co., Ltd.
Qingyuan Shangtai Diamond Tools Co., Ltd.
Quanzhou Zhongzhi Diamond Tool Co., Ltd.
Rizhao Hein Saw Co., Ltd.
Saint-Gobain Abrasives (Shanghai) Co., Ltd.
Shanghai Jingquan Industrial Trade Co., Ltd.
Shanghai Starcraft Tools Company Limited
Wuhan Wanbang Laser Diamond Tools Co., Ltd.
Xiamen ZL Diamond Technology Co., Ltd.
Zhejiang Wanli Tools Group Co., Ltd.

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[25] *See* the PRC-Wide Entity section, *infra*.
[26] *See* Danyang NYCL's SRC dated February 9, 2017, and Weihai's SRC dated February 10, 2017.
[27] *See, e.g., Petroleum Wax Candles*, 72 FR at 52356; *see also Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001), unchanged in *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104 (December 20, 1999).

In accordance with our practice, we analyzed whether these respondents seeking a separate rate have demonstrated the absence of *de jure* and *de facto* governmental control over their respective export activities.

2. Absence of *De Jure* Control

We consider 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) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[28]

The evidence provided by the above-listed companies supports a preliminary finding of *de jure* absence of government control[29] based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of the companies.[30]

3. Absence of *De Facto* Control

Typically we consider four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (EPs) are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[31]

We determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control over export activities which would preclude us from assigning separate rates. For each of the above-listed companies, we determine that the evidence on the record[32] supports a preliminary finding of *de facto* absence of government control based on record statements and supporting documentation showing the

[28] *See Sparklers*, 56 FR at 20589.
[29] *See* Chengdu Huifeng's section A response dated June 1, 2017, and the Jiangsu Fengtai Single Entity's section A response dated June 1, 2017. For all other respondents listed above, *see* their SRAs and SRCs filed between January 25, 2017, and February 13, 2017. *See also* supplemental responses of Qingyuan Shangtai Diamond Tools Co., Ltd. dated June 26, 2017, Rizhao Hein Saw Co., Ltd., and Shanghai Starcraft Tools Company Limited dated July 3, 2017, and Wuhan Wanbang Laser Diamond Tools Co., Ltd. dated July 6, 2017.
[30] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 89045 (December 9, 2016) (*6th Review Prelim*), and accompanying Preliminary Decision Memorandum at 7, unchanged in *6th Review Final* for the list of the *de jure* criteria.
[31] *See Silicon Carbide*, 59 FR at 22586-87. *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).
[32] *See* footnote 29, *supra*.

following: (1) the respondent sets its own EPs independent of the government and without the approval of a government authority; (2) the respondent has the authority to negotiate and sign contracts and other agreements; (3) the respondent has autonomy from the government regarding the selection of management; and (4) the respondent retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses.[33]

4. Separate Rate for Eligible Non-Selected Respondents

In accordance with section 777A(c)(2)(B) of the Act, we selected Chengdu Huifeng and Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd., a member of the Jiangsu Fengtai Single Entity, for individual examination because we did not have the resources to examine all companies for which a review was requested.[34]

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, we have used section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. Section 735(c)(5)(B) of the Act provides that, where all rates are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the rate to all other respondents. Consistent with the Court of Appeals for the Federal Circuit's decision in *Albemarle Corp. v. United States*,[35] in this review, we have preliminarily used the rate applied to the mandatory respondents as the rate for the non-selected companies.[36] In this administrative review, the preliminary rate for Chengdu Huifeng and the Jiangsu Fengtai Single Entity is the only rate determined for individually examined respondents.[37] Therefore, we assigned the preliminary rate for these two companies, *i.e.*, 82.05 percent, to the non-selected respondents eligible for a separate rate.[38]

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[33] *See, e.g.*, *6th Review Prelim* and accompanying Preliminary Decision Memorandum at 7-8, unchanged in *6th Review Final* for the list of the *de facto* criteria.
[34] *See* Respondent Selection Memorandum.
[35] *See Albemarle Corp. v. United States*, 821 F.3d 1345 (Fed. Cir. 2016).
[36] *See, e.g., Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments; 2015-2016*, 82 FR 44160, 44161 (Sept. 21, 2017) and accompanying I&D Memo at 7-8; *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4 ½ Inches) from Japan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014-2015*, 81 FR 45124, 45124 (July 12, 2016), unchanged in *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4 ½ Inches) from Japan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 81 FR 80640, 80641 (November 16, 2016).
[37] *See* the Application of Facts Available and Adverse Inferences section, *infra*, for our preliminary decision on Chengdu Huifeng and the Jiangsu Fengtai Single Entity.
[38] *See Albemarle Corp.*, 821 F.3d 1345. *See also, e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results, Preliminary Determination of No Shipments, and Partial Rescission of the Antidumping Duty Administrative Review; 2015-2016*, 82 FR 42785 (September 12, 2017), and accompanying Preliminary Decision Memorandum at 9-10.

5. PRC-Wide Entity

Upon the initiation of this review, we provided an opportunity for all companies listed in the *Initiation Notice* that wish to qualify for separate rate status in this review to complete, as appropriate, either an SRA or SRC.[39] We preliminarily find that eight companies listed in the *Initiation Notice* are part of the PRC-wide entity because they did not submit an SRA, SRC, or no-shipment letter. These eight companies that are considered to be part of the PRC-wide entity are ASHINE Diamond Tools Co., Ltd., Hangzhou Kingburg Import & Export Co., Ltd., Hebei XMF Tools Group Co., Ltd., Henan Huanghe Whirlwind Co., Ltd., Henan Huanghe Whirlwind International Co., Ltd., Hong Kong Hao Xin International Group Limited, Pantos Logistics (HK) Company Limited, and Pujiang Talent Diamond Tools Co., Ltd. As explained above, we also preliminarily find that Qingdao Hyosung is part of the PRC-wide entity.

The Department's change in policy regarding conditional review of the PRC-wide entity applies to this review.[40] Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review, and the entity's rate of 82.05 percent is not subject to change.[41]

## VI. Application of Facts Available and Adverse Inferences

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

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

The Trade Preferences Extension Act of 2015 (TPEA), which amended section 776(b) and (c) of the Act and added section 776(d) of the Act,[42] are applicable to all determinations made on or

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[39] *See Initiation Notice*, 82 FR at 4295 ("All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below.").
[40] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65970 (November 4, 2013).
[41] *See, e.g.*, *6th Review Final*, 82 FR at 26913.
[42] *See* Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, *129 Stat. 362* (June 29, 2015) (TPEA). The

after August 6, 2015, and, therefore, applies to this review.[43]

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the less-than-fair-value investigation, a previous administrative review, or other information placed on the record.[44]

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[45]

Finally, under the new section 776(d) of the Act, when applying an adverse inference, the Department may use any dumping margin from any segment of the proceeding under the applicable antidumping order.[46] The TPEA also makes clear that when selecting an AFA margin, the Department is not required to (1) estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or (2) demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.[47]

A. Use of Facts Available

With respect to Chengdu Huifeng, the Department preliminarily finds that the use of facts available is warranted because necessary information is not available on the record, Chengdu Huifeng withheld information requested by the Department, and failed to provide the requested information by the established deadlines. Chengdu Huifeng filed its second supplemental response in an untimely manner.[48] The Department's second supplemental questionnaire to

2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Application Notice*).

[43] *See Application Notice*, 80 FR at 46794-95. The 2015 amendments may be found at https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.

[44] *See also* 19 CFR 351.308(c).

[45] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act (SAA), H.R. Rep. No. 103-316, at 870 (1994), as reprinted in 1994 U.S.C.C.A.N. 4040, 4199.

[46] *See* section 776(d)(1) of the Act; TPEA, section 502(3).

[47] *See* section 776(d)(3) of the Act; TPEA, section 502(3).

[48] *See* Department's rejection letter to Chengdu Huifeng dated October 3, 2017.

Chengdu Huifeng requests a wide range of information relating to, *inter alia*, product codes, date of sale, quantity of U.S. sales, irrecoverable VAT, production process, raw material amounts, labor hours, energy inputs, packing materials, and sales and cost reconciliation for the analysis of all U.S. sales and factors of production reported.[49] Chengdu Huifeng failed to file its second supplemental questionnaire response by the established deadline. Therefore, because necessary information is missing from the record and Chengdu Huifeng withheld the requested information and failed to provide requested information by the established deadline, the Department is applying facts available pursuant to sections 776(a)(1) and (a)(2)(A)-(B) of the Act.

With respect to the Jiangsu Fengtai Single Entity, the Department preliminarily finds that the use of facts available is warranted because necessary information is not available on the record, the Jiangsu Fengtai Single Entity withheld requested information, failed to provide information by the established deadlines, and significantly impeded this proceeding, as described below. Furthermore, in light of the Jiangsu Fengtai Single Entity's failure to provide responsive documents to our requests for information, we find the Jiangsu Fengtai Single Entity's databases unreliable.

In light of the issues surrounding the Jiangsu Fengtai Single Entity's control numbers reported in the prior administrative review,[50] the Department sought information to understand and support the reliability of the control numbers reported in this administrative review. Having noticed a difference between the control numbers reported in the prior review and the instant review, the Department requested information explaining why none of the control numbers reported in its sales and FOP databases for this review match the control numbers reported in its sales and FOP databases in the prior review. The Department asked for the Jiangsu Fengtai Single Entity to provide a list and worksheet of all product code-customer combinations sold to the United States and their corresponding control numbers for this POR, the last POR, and the POR before that, and supporting documentation which demonstrates that the changes to these products between PORs are accurately reflected in the control numbers reported in this POR. In response, the Jiangsu Fengtai Single Entity only stated that it has no idea how its previous Chinese counsel reported the control numbers reported in the prior review and the Jiangsu Fengtai Single Entity failed to provide the requested product list and documentation.[51]

In our second request for information, we asked the Jiangsu Fengtai Single Entity to provide a worksheet with a comprehensive list of all control numbers and corresponding "ERP Codes" and "Quality Codes" for the control numbers it reported in the prior review, and a list of all control numbers and corresponding "ERP Codes" and "Quality Codes" for each control number it reported in this review.[52] For each product with a similar internal product code in the prior review and this review, the Department asked that the Jiangsu Fengtai Single Entity also provide

[49] *See* the Department's second supplemental questionnaire to Chengdu Huifeng dated September 5, 2017

[50] *See 6$^{th}$ Review Final* and accompanying I&D Memo at Comment 1.

[51] *See* the Jiangsu Fengtai Single Entity's first supplemental response dated August 23, 2017, at 18-20.

[52] The Jiangsu Fengtai Single Entity stated that it created its internal product codes to identify unique products by combining for each product its "ERP Code," which identifies the appearance of a finished product, and its "Quality Code," which stipulates the production formula, and that the internal product codes serve as the basis to construct reported control numbers. *See* the Jiangsu Fengtai Single Entity's June 23, 2017, section C questionnaire response at C-5.

the bill of materials for the product reported in the prior review and the product reported in this review. In response to our second request for information, the Jiangsu Fengtai Single Entity failed to provide the requested comprehensive list of all control numbers and corresponding "ERP Codes" and "Quality Codes" for the control numbers it reported in the prior review and in this review. The Jiangsu Fengtai Single Entity also failed to provide, for products with similar internal product codes reported in this review and the prior review, supporting bills of materials for these products, which would enable the Department to confirm the accuracy of the control numbers it reported for this POR.[53] The Jiangsu Fengtai Single Entity also failed to explain why it was unable to provide the requested information, stating again that it has no idea how its previous Chinese counsel reported the control numbers reported in the prior review.[54] Although the Jiangsu Fengtai Single Entity responded to portions of the Department's questionnaires, the Jiangsu Fengtai Single Entity withheld certain requested information, failed to provide such information in a timely manner or in the form or manner requested by the Department, and, thereby, significantly impeded the proceeding.

The Jiangsu Fengtai Single Entity reported that products with similar internal product codes were sold during this review and the prior review with the only difference being the control numbers. Therefore, the Department twice requested information intended to substantiate the Jiangsu Fengtai Single Entity's control number methodology for this review. Each time, the Jiangsu Fengtai Single Entity failed to provide the requested information. Moreover, with respect to the missing information, no documents were filed indicating any difficulty providing the information requested, nor was there a request to allow the information to be submitted in an alternate form, pursuant to section 782(d) of the Act. The Jiangsu Fengtai Single Entity's failure to provide responsive documents to our requests for information calls into question the reliability of Jiangsu Fengtai's control number-reporting methodology in this review overall. The Department relies on reported control numbers to calculate a margin. The Department asks a respondent to identify the different "models" (*i.e.*, types) of its products by using the control numbers to specify the most relevant product characteristics. The Department then compares prices in the United States with normal values on a model-specific basis. Without reliable control numbers, the Department cannot reliably calculate a margin. Accordingly, the Department preliminarily determines that the use of facts available is warranted in determining the rate of the Jiangsu Fengtai Single Entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.[55]

B. Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that in selecting from among the facts otherwise available, the Department may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

Chengdu Huifeng failed to cooperate by not acting to the best of its ability to comply with

[53] *See* the Jiangsu Fengtai Single Entity's second supplemental response dated November 3, 2017, at 3.
[54] *Id.*
[55] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

requests for information by failing to provide requested information necessary to calculate a margin in a timely manner. Its failure to provide the requested information left a wide range of the information that it placed on the record of this review unreliable for our calculation of a preliminary margin.

Additionally, despite two requests by the Department, the Jiangsu Fengtai Single Entity failed to submit documents requested by the Department substantiating the control numbers it reported for products it sold during this POR. Therefore, we find that the Jiangsu Fengtai Single Entity failed to cooperate by not acting to the best of its ability to comply with requests for information necessary to calculate a margin. The Jiangsu Fengtai Single Entity's failure to provide this information calls into question the reliability of Jiangsu Fengtai's control number-reporting methodology in this review overall and warrants the preliminary application of an adverse inference.

Based on the above, we preliminarily find that: (1) the Chengdu Huifeng and the Jiangsu Fengtai Single Entity each failed to cooperate to the best of their ability to comply with our requests for information and therefore (2) an adverse inference is warranted in selecting from among the facts otherwise available with respect to Chengdu Huifeng and with respect to the Jiangsu Fengtai Single Entity in accordance with section 776(b) of the Act and 19 CFR 351.308(a).[56]

C. Selection of the AFA Rate

In applying an adverse inference, the Department may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.[57] In selecting an AFA rate, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[58] Under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding,[59] and the Department may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins.[60] The AFA rate we used in the last completed administrative review is the PRC-wide rate of 82.05 percent.[61] Accordingly, we preliminarily determine that the AFA rate is 82.05 percent for purposes of this review. Pursuant to the TPEA,[62] this rate does not need to be corroborated because it is from a previous segment of this proceeding.

[56] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).
[57] *See* section 776(b) of the Act.
[58] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (SAA) at 870.
[59] *See* section 776(c)(2) of the Act; TPEA, section 502.
[60] *See* section 776(d)(1)-(2) of the Act; TPEA, section 502(3).
[61] *See 6th Review Final*, 82 FR at 26913. This rate is the PRC-wide rate for the preliminary results of this review.
[62] *See* section 776(c)(2) of the Act; TPEA, section 502.

## VII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒ ☐

__________ __________

Agree Disagree

11/30/2017

X

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance