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International Trade Administration
Washington, D.C. 20230

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DATE: May 8, 2018

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
Associate Deputy Assistant Secretary
for Antidumping/Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary for
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Administrative Review: Drawn Stainless Steel Sinks from the People's Republic of China; 2016-2017

Summary

We analyzed the case and rebuttal briefs of interested parties in the 2016-2017 administrative review of the antidumping duty (AD) order covering drawn stainless steel sinks (drawn sinks) from the People's Republic of China (China). As a result of our analysis, we continue to find that Feidong Import and Export Co., Ltd. (Feidong), one of the mandatory respondents in this administrative review, is not eligible for a separate rate; therefore, we continue to treat Feidong as part of the China-wide entity. Further, because no party filed comments regarding any other aspects of the preliminary results, we have made no changes to them.

We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. The only issue in this review for which we received comments from parties is: Feidong's Separate Rate Status.

Background

On January 5, 2018, the Department of Commerce (Commerce) published the *Preliminary Results* of the 2016-2017 administrative review of the AD duty order on drawn sinks from China. The administrative review covers 12 exporters,[1] of which Commerce selected two as mandatory

[1] These companies are: B&R Industries Limited (B&R); Feidong; Foshan Zhaoshun Trade Co., Ltd (Zhaoshun); Guangdong New Shichu Import and Export Company Limited (New Shichu); Jiangmen Hongmao Trading Co., Ltd. (Hongmao); Jiangmen New Star Hi-Tech Enterprise Ltd. (New Star); KaiPing Dawn Plumbing Products, Inc.

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respondents for individual examination (*i.e.*, Feidong and Zhaoshun). The period of review (POR) is April 1, 2016, through March 31, 2017.

We invited parties to comment on the *Preliminary Results*. In February 2018, we received a case brief from Feidong and a rebuttal brief from Elkay Manufacturing Company (the petitioner). After analyzing the comments received, we continue to find that Feidong is not eligible for a separate rate in this administrative review.

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.[2] 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 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.

(KaiPing); Ningbo Afa Kitchen and Bath Co., Ltd. (Ningbo Afa); Xinhe Stainless Steel Products Co., Ltd. (Xinhe); Yuyao Afa Kitchenware Co., Ltd. (Yuyao); Zhongshan Superte Kitchenware Co., Ltd. (Superte); and Zhuhai KOHLER Kitchen & Bathroom Products Co., Ltd. (Zhuhai KOHLER). Commerce determines that four of these companies (*i.e.*, Feidong, Hongmao, Yuyao, and Zhaoshun) are not eligible for a separate rate. For further discussion related to Feidong, *see* Comments 1-4, below. For further discussion of Hongmao, Yuyao, and Zhaoshun, *see Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2016 – 2017*, dated concurrently with this memorandum.

[2] 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.

Discussion of the Issues

Comment 1: Feidong's Separate Rate Status

Feidong's Case Brief

- Feidong's business license, export license, and articles of association, as well as the Chinese Company Law, demonstrate Feidong's legal establishment and existence under the Chinese law and the role of Feidong's manager as the non-government shareholder.[3]
- Huang Yaming, the general manager, is the sole shareholder and manager of Feidong, and he completed the transition of Feidong from a state-owned to a private company through an individual capital contribution.[4]
- Mr. Huang independently manages the company and has exclusive rights in the distribution of Feidong's profits and losses.[5]
- Feidong has had only one legitimate shareholder since its establishment in 2000 (Mr. Huang), and Feidong County Foreign Economic and Trade Bureau (Trade Bureau) is an unqualified shareholder that has never been involved in Feidong's export sales.
- Mr. Huang is entitled to sign contracts on behalf of the company, manages all export activities, selects management, and has sole control over the distribution of the company's profits and losses. Mr. Huang is completely independent of the control of any government department.[6]
- The shares owned by the Trade Bureau never actually transferred to Feidong. While Mr. Huang transitioned Feidong to be a private company, Feidong is unable to alter its business registration because the Trade Bureau no longer exists.[7]
- The Feidong County Bureau of Commerce (Bureau of Commerce) and the Trade Bureau are different entities. Moreover, the Trade Bureau no longer exists and the Bureau of Commerce cannot control Feidong in the name of the Trade Bureau.[8]
- The declaration of the Bureau of Commerce shows that it did not participate in the management of Feidong in the past, will not do so in the future, and it can prove that any potential control will not happen.[9]
- Commerce should not have found that Feidong was ineligible for a separate rate because, in two prior administrative reviews, Commerce found that Feidong was eligible for a separate rate. Feidong has not undergone any changes since the time of those administrative reviews.[10]

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[3] *See* Feidong Case Brief, "Comments on the Preliminary Determination of Administrative Review on Drawn Stainless Steel Sinks from the People's Republic of China, A-570-983, 2016-2017," dated February 4, 2018 (Feidong Case Brief), at 2.
[4] *Id.*
[5] *Id.*
[6] *See* Feidong Case Brief at 2-3.
[7] *Id.* at 3.
[8] *Id.*
[9] *Id.*
[10] *See* Feidong Case Brief at 1 (citing *Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014-2015*, 81 FR 29528 (May 12, 2016), and accompanying Preliminary Decision Memorandum (PDM), unchanged in *Drawn Stainless Steel Sinks from the People's Republic of China; Final Results of Antidumping Duty*

- Commerce's failure to follow its previous determinations violates the legal principle of the World Trade Organization's (WTO's) AD rules, and Commerce's rebuttable presumption that companies in non-market economy (NME) countries are subject to government control is discrimination against Chinese respondents.[11]

Petitioner's Rebuttal Brief

- Feidong in its questionnaire responses did not provide any evidence that: 1) the Trade Bureau's ownership of Feidong did not pass to its successor entity, the Bureau of Commerce; 2) the government's ownership disappeared; or 3) the government ownership should be attributed to the individual shareholder, Huang Yaming.[12]
- Feidong's website states that it is a state-owned company.[13]
- Commerce's practice does not support accepting a self-serving declaration that the government shareholder did not and will not participate in the management of Feidong.[14]
- Each segment of an antidumping proceeding requires an independent determination based on the record of that segment.[15]
- The record of this administrative review is different from prior reviews because Feidong was selected as a mandatory respondent and Commerce required that it to respond to additional questionnaires.[16]

Commerce Position: We continue to find that Feidong has failed to rebut the presumption that it is subject to control by demonstrating an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports and, thus, is not entitled to a separate rate in this administrative review.

Administrative Review; Final Determination of No Shipments; 2014-2015, 81 FR 54042 (August 15, 2016) (*Sinks from China 2AR Final*); and *Drawn Stainless Steel Sinks from the People's Republic of China: Antidumping Duty Investigation*, 77 FR 60673 (October 4, 2012), and accompanying PDM, separate rate status unchanged in *Drawn Stainless Steel Sinks from the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013)).

[11] *See* Feidong Case Brief at 1.

[12] *See* Petitioner Rebuttal Brief, "Drawn Stainless Steel Sinks from the People's Republic of China: Elkay's Rebuttal Brief," dated February 12, 2018 (Petitioner Rebuttal Brief), at 3 (citing *Preliminary Results*, and accompanying PDM at 11; Feidong's September 5, 2017 Supplemental Section A Questionnaire Response (Feidong September 5, 2017 SAQR); and Feidong's October 18, 2017 Second Supplemental Section A Questionnaire Response (Feidong October 18, 2017 SSAQR)).

[13] *Id*. at 4 (citing Petitioner Letter, "Submission of Rebuttal Factual Information Regarding Feidong Import and Export Co., Ltd.," dated August 21, 2017).

[14] *See* Petitioner Rebuttal Brief at 4 (citing *Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 82 FR 24675 (May 30, 2017), and accompanying IDM at Comment 2; and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of New Shipper Review (2014-2015)*, 82 FR 4844 (January 17, 2017), and accompanying IDM at Comment 3).

[15] *See* Petitioner Rebuttal Brief at 2 (citing *Diamond Sawblades and Parts Thereof from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 78 FR 36524 (June 18, 2013) (*Diamond Sawblades from Korea*), and accompanying Issues and Decision Memorandum (IDM) at Comment 4; and *Stainless Steel Sheet and Strip in Coils from Taiwan: Final Results of Antidumping Duty Administrative Review*, 71 FR 7519 (February 3, 2006), and accompanying IDM at Comment 4).

[16] *Id*. at 3-4.

De Jure Control

As noted in the *Preliminary Results*, the evidence of an absence of *de jure* control submitted by Feidong includes government laws and regulations on corporate ownership and control (*i.e.*, the Company Law of the People's Republic of China (Company Law)), its individual business license, and narrative information regarding its operations and selection of management.[17]

As discussed further below, the Bureau of Commerce, a government entity, holds a majority-ownership share (*i.e.*, 92.2 percent) of Feidong,[18] and the Company Law submitted by Feidong indicates that the government has the ability to control the business activities of a company when the government is a controlling shareholder.[19] For example, Article 4 states that "{s}hareholders of a company shall be entitled to gains on assets, participation in major decision-making and selection of managers etc. in accordance with the law," and further, Article 42 provides that "{t}he voting rights exercisable by shareholders at a shareholders' meeting shall be based on the ratio of capital contribution, unless otherwise provided in the articles of association of the company."[20] Thus, the Feidong's Articles of Association and the Company Law make clear that the shareholders are the authority of the company, determine the company's operational guidelines and investment plans, and revise the bylaws of the company.[21]

Feidong has not pointed to any evidence to contradict these findings. Accordingly, Commerce cannot conclude that Feidong has rebutted the presumption that it is subject to *de jure* government control, and we have made no changes to our findings in the final results of this review.

De Facto Control

Feidong has failed to provide or point to evidence rebutting our presumption of *de facto* government control, and we continue to find that Feidong is part of the China-wide entity. Feidong claims that the Trade Bureau is an "unqualified" shareholder and Huang Yaming is the sole "effective" shareholder; however, despite our repeated questions and requests for additional documentation, Feidong failed to demonstrate that the Trade Bureau's investment in Feidong was not lawful or valid. Instead, as we noted in the *Preliminary Results*, the record evidence in this review contradicts Feidong's claims. The record shows that Feidong was established as a state-owned enterprise controlled by the Trade Bureau.[22] When Huang Yaming later invested in the company, the Trade Bureau retained, and continues to retain, a 92.2 percent ownership

[17] *See, e.g.*, Feidong's October 15, 2010 Separate Rate Certification at 5-6 and Exhibit 1; Feidong's August 6, 2017, Section A Questionnaire Response (Feidong August 6, 2017 AQR) at 5-7; and Feidong October 18, 2017 SSAQR at 3-4 and Exhibit 1.
[18] *See* Feidong August 6, 2017 AQR at Exhibit A-4, Article 9.
[19] *See* Feidong October 18, 2017 SSAQR at Exhibit 1.
[20] *Id*.
[21] *See, e.g.*, Feidong August 6, 2017 AQR at Exhibit A-4, Articles 13 and 20; Feidong October 18, 2017 SSAQR at Exhibit 1.
[22] *See* Feidong August 6, 2017 AQR at 2.

interest in the company.[23] In 2010, the Trade Bureau was incorporated into the newly formed Bureau of Commerce, which assumed the responsibilities of the Trade Bureau.[24]

Furthermore, according to Feidong's articles of association, shareholders have the right to "supervise the production, operation, and management of the company and the financial management,"[25] decide Feidong's operation and investment plans, and select management staff and remuneration.[26] These rights are exercised according to the ratio of contribution.[27] Thus, we continue to find that the vast size of the Trade Bureau's share of Feidong indicates that the government has the ability to control Feidong's operations and management.

Feidong continues to claim that the Trade Bureau's investment never actually transferred to Feidong, but Feidong fails to point to any record evidence that the Trade Bureau's ownership interest did not pass to its successor government entity, the Bureau of Commerce. Instead, the record indicates the investment did transfer to Feidong because the investment is reflected in Feidong's business license,[28] articles of association,[29] capital verification report,[30] and its 2015, 2016, and 2017 financial statements.[31]

Moreover, we continue to find that the Bureau of Commerce has the ability to control Feidong as the successor to the Trade Bureau. In several submissions, Feidong notes that the Bureau of Commerce is the successor to the Trade Bureau and provides documentation to demonstrate this.[32] Feidong provided nothing to demonstrate that the Trade Bureau's ownership interest in Feidong did not pass to the Bureau of Commerce during this reorganization. Rather, in response to our questions on this topic, Feidong merely pointed us to documentation regarding the reorganization showing that the Bureau of Commerce was taking on the responsibilities of the Trade Bureau.[33]

We also continue to find that the declaration from the Bureau of Commerce (stating that it will not exercise any shareholder rights towards Feidong and will not intervene in the management and operations of Feidong[34]) fails to show that the Bureau of Commerce does not have the potential to exercise control over Feidong's operations and management.[35] The statement does not say the Bureau of Commerce *cannot* exercise any shareholder rights toward Feidong, only

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[23] *Id.* at Exhibit A-4, Article 9.
[24] *Id.* at Exhibit A-1.
[25] *Id.* at Exhibit A-4, Article 13.
[26] *Id.* at Article 20.
[27] *Id.* at Articles 6 and 19.
[28] *Id.* at Exhibit A-3.
[29] *Id.* at Exhibit A-4, Article 9.
[30] *Id.* at Exhibit A-5.
[31] *Id.* at Exhibits A-7 and A-8.
[32] *See, e.g.*, Feidong August 6, 2017 AQR at 3, 15, and Exhibits A-1 and A-2; and Feidong September 5, 2017 SAQR at 1-2.
[33] *See, e.g.*, Feidong September 5, 2017 SAQR at 2.
[34] *See* Feidong September 5, 2017 SAQR at 2; *see also* Feidong August 6, 2017 AQR, at Exhibit A-2.
[35] *See Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination in the Less-Than-Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016), and accompanying IDM at Comment 8.

that it does not intend to do so. While we asked Feidong to explain whether the Bureau of Commerce has the ability to control Feidong, Feidong only replied that the Bureau of Commerce *would* not exercise any control of the company, not that it *could* not do so.[36]

The responsibility to create an adequate record lies with the respondent.[37] Feidong did not provide us with evidence that would support its contentions that: 1) the Trade Bureau's investment in Feidong did not pass to the Bureau of Commerce as part of the former's reorganization; or 2) the Bureau of Commerce does not have the potential to exercise control of Feidong. Accordingly, we continue to find that the Bureau of Commerce has the potential to exercise control over Feidong's operations and the selection of management, which precludes a finding that Feidong is not subject to *de facto* government control. Therefore, we find that the government, through its majority equity investment in Feidong, has the ability to control and an interest in controlling the operations of the company. As a result, we continue to determine that Feidong is not eligible for a separate rate in this administrative review.

Feidong's claim that Commerce should grant it a separate rate in this administrative review because Commerce did so in the prior two segments is without basis. It is Commerce's well-established practice, upheld by the Courts, that Commerce must base its decisions on the record of the administrative proceeding before it in each review.[38] In addition to Commerce having recently revised its practice to determine *de facto* control,[39] the record established in this segment does not support a finding that Feidong is entitled to a separate rate, as detailed above.

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[36] *See, e.g.*, Feidong October 18, 2017 SSAQR at 3; Feidong September 5, 2017 SAQR at 2; Feidong August 6, 2017 AQR at Exhibit A-2.

[37] *See Tianjin Mach*, 806 F. Supp. at 1015 (CIT 1992); and *NTN Bearing Corp.*, 997 F.2d at 1458–59 (Fed.Cir. 1993).

[38] *See Diamond Sawblades from Korea*, and accompanying IDM at Comment 4 (citing *Stainless Steel Sheet and Strip in Coils from Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 7519 (February 13, 2006), and accompanying IDM at Comment 4 ("each administrative review of the order represents a separate administrative proceeding and stands on its own."); and *Handong Huarong Mach. Co. v. United States*, 29 CIT 484, 491 (CIT 2005) ("As Commerce points out 'each administrative review is a separate segment of proceedings with its own unique facts. Indeed, if the facts remained the same from period to period, there would be no need for administrative reviews."').

[39] As noted in the *Preliminary Results*, Commerce recently revised its practice regarding whether a respondent is subject to *de facto* government control of its export functions. This revised practice, which was sustained by the U.S. Court of International Trade and subsequently affirmed by the U.S. Court of Appeals for the Federal Circuit, holds that "where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter. . ., such majority ownership holding in and of itself precludes a finding of *de facto* autonomy." *See Jiangsu Jiasheng Photovoltaic Technology Co. v. United States*, 121 F. Supp. 3d 1263, 1267 (CIT 2015) (citing *Advanced Tech. & Materials Co. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013) (*Advanced Tech.*), *aff'd*, 581 Fed. App'x. 900 (Fed. Cir. 2014) (internal quotations omitted)). The majority ownership means that the government exercises, or has the potential to exercise, control over the company's operations generally. *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 PDM at 6-7, unchanged in *final Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 79 FR 68860 (November 19, 2014); *see also Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 8510 (January 26, 2017), and accompanying IDM at 12.

Insofar as Feidong is correct that its ownership structure is the same as in prior reviews where it was granted a separate rate, our prior determinations that Feidong was entitled to a separate rate appear to be in error based upon our review of the facts and circumstances on the record of the instant review. Based on the information on the record of this segment of the proceeding, our analysis in this review does not support such a finding.

Finally, we note that the rebuttable presumption that companies are subject to government control in NME proceedings is consistent with Commerce's past practice, regulations, and the Tariff Act of 1930, as amended.[40] Moreover, U.S. law, as implemented through the Uruguay Round Agreements Act, is fully consistent with the United States' WTO obligations.

Recommendation

Based on our analysis of the comment received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final results of the administrative review and the final weighted-average dumping margin for the reviewed firms in the *Federal Register*.

☒ ☐

Agree Disagree

X

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

[40] *See, e.g.*, *Advanced Tech, aff'd*, 581 Fed. App'x. 900; *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); and *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).