UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

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Investigation
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DATE: July 2, 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: Wendy J. Frankel
Director, U.S. Customs and Border Protection Liaison Unit
Antidumping and Countervailing Duty Operations
Enforcement and Compliance

SUBJECT: Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that sodium gluconate, gluconic acid, and derivative products (GNA Products) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

II. BACKGROUND

On November 30, 2017, Commerce received an antidumping duty (AD) petition covering imports of GNA Products from China, filed in proper form on behalf of PMP Fermentation Products, Inc. (the petitioner).[1] Commerce initiated this investigation on December 20, 2017.[2] In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate rate status in non-market economy (NME) LTFV investigations. The process requires exporters to submit a separate rate application (SRA) and to

[1] *See* Petitioner's letter, "Petition for Antidumping and Countervailing Duties: Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China and France," dated November 30, 2017 (the Petitions).
[2] *See Sodium Gluconate, Gluconic Acid, and Derivative Products from France and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 83 FR 516 (January 4, 2018) (*Initiation Notice*).

demonstrate an absence of both *de jure* and *de facto* government control over their export activities.[3]

We stated in the *Initiation Notice* that, in the event that we conduct respondent selection, we intended to base our selection of mandatory respondents on responses to quantity and value (Q&V) questionnaires to be sent to each potential respondent named in the Petition and also posted on Commerce's website.[4] On December 21, 2017, Commerce issued Q&V questionnaires to the 78 companies that the petitioner identified as potential producers/exporters of GNA Products from China.[5] In addition, Commerce posted the Q&V questionnaire on its website and, in the *Initiation Notice*, invited parties who did not receive a Q&V questionnaire to file a response to the Q&V questionnaire by the applicable deadline. Commerce received timely filed Q&V questionnaire responses from five producers/exporters of subject merchandise.[6] On December 27, 2017, Xingzhou Medicine requested that Commerce investigate it as a voluntary respondent.[7] On January 9, 2018, the petitioner provided comments on Xingzhou Medicine's request for voluntary respondent status.[8] Between February 5, 2018, and February 6, 2018, Commerce received timely filed SRAs from Tianyi Food; Xingzhou Medicine; Dezhou Huiyang; and Fuyang Biotech.[9] Between February 27, 2018, and March 22, 2018, Commerce issued supplemental questionnaires to, and received timely responses from, the above-referenced Separate Rate Applicants.[10]

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[3] *Id.*, *Initiation Notice,* 83 FR at 520; *see also* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, April 5, 2005 (Policy Bulletin 05.1), available at http://enforcement.trade.gov/policy/bull05-1.pdf.

[4] In the *Initiation Notice*, we also stated that the presumption of NME status for China has not been revoked by Commerce and, therefore, remains in effect for purposes of the initiation of this investigation. *See Initiation Notice*, 83 FR at 519.

[5] *See* Commerce Letter regarding the quantity and value questionnaire in this antidumping investigation, issued on December 21, 2017 and Memorandum, "Fedex Delivery," dated December 22, 2017 (Q&V Delivery Confirmation); *see also* letter from the petitioner to Commerce, "PMP's Response to Commerce's Supplemental Questions on the Petition," dated December 7, 2017 (General Issues and AD Supplement), Volume I of the Petition, at 13 and Exhibit I-5A; and General Issues and AD Supplement, at 1 and Revised Exhibit 1-5A.

[6] On January 3, 2018, Zhejiang Tianyi Food Additives Co., Ltd. (Tianyi Food) submitted a response to the Q&V questionnaire. On January 4, 2018, Anhui Xingzhou Medicine Food Co., Ltd. (Xingzhou Medicine), Qingdao Dongxiao Enterprise Co., Ltd. (Qingdao Dongxiao), Shandong Fuyang Biotechnology Co., Ltd. (Fuyang Biotech)/ Shandong Fuyang Biology Starch Co., Ltd. (Fuyang Starch), (collectively Shandong Fuyang), and Dezhou Huiyang Biotechnology Co., Ltd. (Dezhou Huiyang) submitted responses to our Q&V questionnaires.

[7] *See* Letter from Xingzhou Medicine, "Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China - Request for Voluntary Status," dated December 27, 2017 (Xingzhou Medicine Voluntary Respondent Submission).

[8] *See* Petitioner's Letter, "Antidumping Duty Investigation of Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China: Petitioner's Comments on Xingzhou Medicine's Request for Voluntary Respondent Status," dated January 9, 2018 (Petitioner Voluntary Status Comments).

[9] *See* Tianyi Food's Letter, "Tianyi Separate Rate Application," dated February 5, 2018; Xingzhou Medicine's Letter, "Xingzhou Medicine Separate Rate Application," dated February 5, 2018; Dezhou Huiyang's Letter, "Separate Rate Application for Dezhou Huiyang Biotechnology Co., Ltd.," dated February 6, 2018; and Fuyang Biotech's Letter, "Separate Rate Application," dated February 6, 2018.

[10] *See, e.g.,* Commerce's Letter, "1st Supplemental Questionnaire regarding the Separate Rate Application for Dezhou Huiyang Biotechnology Co., Ltd.," dated February 27, 2018; Commerce's Letter, "1st Supplemental Questionnaire regarding the Separate Rate Application for Anhui Xingzhou Medicine Food Co., Ltd.," dated February 27, 2018; Commerce's Letter, "1st Supplemental Questionnaire regarding the Separate Rate Application for Zhejiang Tianyi Food Additives Co., Ltd.," dated February 28, 2018; Commerce's Letter, "1st Supplemental Section A Questionnaire for Shandong Fuyang Biotechnology Co., Ltd. (Fuyang Biotech)," dated March 15, 2018; and Commerce's Letter, "2nd Supplemental Questionnaire regarding the Separate Rate Application for Anhui

Additionally, in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of sodium gluconate, gluconic acid, and derivative products to be reported in response to Commerce's antidumping duty (AD) questionnaire.[11] Commerce requested that all comments concerning physical characteristics should be reported in Commerce's AD questionnaire and should be filed on the records of this and the corresponding France LTFV investigation.[12] Jungbunzlauer S.A. (JBL), a respondent in the companion investigation of GNA Products from France, and the petitioner filed comments on the scope of the investigation in response to Commerce's solicitation in the *Initiation Notice*. On January 9, 2018, the petitioner and JBL filed comments regarding physical characteristics.[13] On January 19, 2018, the petitioner filed a response to JBL's physical characteristics comments.[14] For further discussion, *see* the "Scope Comments" section, below.

On January 22, 2018, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of GNA Products from China.[15]

On January 17, 2018, based on parties' responses to the Q&V questionnaires, we selected Qingdao Dongxiao and Shandong Fuyang for individual examination as mandatory respondents and issued them our initial questionnaire.[16]

On February 14, 2018, Qingdao Dongxiao notified Commerce of its intention not to participate in this investigation.[17] Consequently, on March 5, 2018, we selected Tianyi Food as an additional mandatory respondent and issued it our initial questionnaire.[18] On March 8, 2018, Tianyi Food

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Xingzhou Medicine Food Co., Ltd.," dated March 22, 2018; *see also* Dezhou Huiyang's Letter, "Separate Rate Application Supplemental Questionnaire Response of Dezhou Huiyang Biotechnology Co., Ltd.," dated March 6, 2018; Xingzhou Medicine's Letter, "Supplemental SRA Questionnaire Response," dated March 6, 2018; and Xingzhou Medicine's Letter, "Second Supplemental SRA Questionnaire Response," dated March 29, 2018.

[11] *See Initiation Notice*, 83 FR at 517-18.

[12] *Id.* at 517.

[13] *See* Petitioner's Letter, "Antidumping Duty Investigations of Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China and France: PMP's Comments on Product Characteristics," dated January 9, 2018; see also JBL Letter, "Antidumping Duty Investigations of Sodium Gluconate, Gluconic Acid and Derivative Products from France and China —Jungbunzlauer's Comments regarding Product Characteristics for Purposes of Model Matching," dated January 9, 2018.

[14] *See* Petitioner's Letter, "Countervailing and Antidumping Duty Investigations of Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China: Petitioner's Rebuttal Comments on Scope Comments," dated January 19, 2018.

[15] *See Sodium Gluconate, Gluconic Acid and Derivative Products from China and France*, 83 FR 3021 (January 22, 2018).

[16] *See* Memorandum, "Less-Than-Fair-Value Investigation of Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China: Respondent Selection," dated January 17, 2018; *see also* Commerce antidumping questionnaire to Qingdao Dongxiao, dated January 18, 2018, and Commerce antidumping questionnaire to Shandong Fuyang, dated January 18, 2018.

[17] *See* Qingdao Dongxiao's Letter, "Sodium Gluconate, Gluconic Acid, and Derivative Products from the PRC: Withdrawal from Participation," dated February 14, 2018 (Qingdao Dongxiao Withdrawal).

[18] *See* Memorandum, "Antidumping Duty Investigation of Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China: Selection of Additional Respondent," dated March 5, 2018; *see also* Commerce questionnaire to Tianyi Food, dated March 6, 2018.

notified Commerce of its intention not to participate in this investigation.[19] Consequently, on March 9, 2018, we selected Dezhou Huiyang as an additional mandatory respondent and issued it our initial questionnaire.[20] On March 13, 2018, Dezhou Huiyang notified Commerce of its intention not to participate in this investigation.[21]

In February 2018, Shandong Fuyang submitted a timely response to section A of Commerce's AD questionnaire, *i.e.*, the section relating to general information.[22] In March 2018, Shandong Fuyang submitted a timely response to sections C&D of Commerce's AD questionnaire, *i.e.*, the sections relating to U.S. sales and factors of production (FOP)/normal value (NV), respectively.[23] From March 15, 2018, through May 11, 2018, Commerce issued supplemental questionnaires to Shandong Fuyang to which it timely responded during the same time period.[24] From March 6, 2018, through May 14, 2018, we received comments regarding Shandong Fuyang's questionnaire responses and supplemental questionnaire responses from the petitioner.[25] On May 29, 2018, we informed counsel for Shandong Fuyang that the FOP database, submitted to Commerce on May 25, 2018, contained certain outdated data that needed corrections, and that a revised FOP database should be filed with Commerce on May 30, 2018.[26] On May 30, 2018, Shandong Fuyang failed to correct its FOP database, as Commerce requested, and, instead, notified Commerce of its intention to no longer participate in this investigation.[27]

On January 23, 2018, Commerce tolled the deadline for the preliminary determination due to the closure of the Federal Government from January 20, 2018, through January 22, 2018.[28] On May

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[19] *See* Tianyi Food's Letter, "Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China - Withdrawal of Participation in Antidumping Duty Investigation," dated March 8, 2018 (Tianyi Food Withdrawal).

[20] *See* Memorandum, "Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China – Less-Than-Fair-Value Investigation: Selection of Additional Respondent," dated March 9, 2018.

[21] *See* Dezhou Huiyang Letter, "Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China: Dezhou Huiyang Biotechnology Co., Ltd. Withdrawal of Participation in Antidumping Duty Investigation," dated March 13, 2018 (Dezhou Huiyang Withdrawal).

[22] *See* Shandong Fuyang's February 20, 2018, response to Section A of Commerce's Questionnaire (Shandong Fuyang February 20, 2018 AQR).

[23] *See* Shandong Fuyang's March 12, 2018, response to Sections C&D of Commerce's Questionnaire (Shandong Fuyang's March 12, 2018 CDQR).

[24] *See Shandong Fuyang's March 29, 2018 1st Supplemental Section A Questionnaire Response (March 29, 2018 SQR); Shandong Fuyang's April 18, 2018 1st Supplemental Sections C&D Questionnaire Response (Part 1) (April 18, 2018 SQR); Shandong Fuyang's April 24, 2018 1st Supplemental Sections C&D Questionnaire Response (Part 2) (April 24, 2018 SQR);* Shandong Fuyang's May 3, 2018 2nd Supplemental Section A Questionnaire Response (May 3, 2018 SQR); and Shandong Fuyang's May 25, 2018 2nd Supplemental Sections C&D Questionnaire Response (May 25, 2018 SQR).

[25] *See* Petitioner's March 6, 2018 Comments on Shandong Fuyang's Section A Questionnaire Response; Petitioner's; March 27, 2018 Comments on Shandong Fuyang's Sections C&D Questionnaire Response; Petitioner's April 9, 2018 Comments on Shandong Fuyang's 1st Supplemental Section A Questionnaire Response; Petitioner's April 30, 2018 Comments on Shandong Fuyang's 1st Supplemental Sections C&D Questionnaire Response (Part 1); Petitioner's May 4, 2018 Comments on Shandong Fuyang's 1st Supplemental Sections C&D Questionnaire Response (Part 2); and Petitioner's May 14, 2018 Comments on Shandong Fuyang's 2nd Supplemental Section A Questionnaire Response.

[26] *See* Memorandum to the File, "Telephone Conversation with Respondent's Counsel," dated May 29, 2018.

[27] *See* Shandong Fuyang's Letter, "Notice of Non-Participation in Investigation," dated May 30, 2018 (Shandong Fuyang Withdrawal).

[28] *See* Memorandum, for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

1, 2018, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), Commerce published in the *Federal Register* a postponement of the preliminary determination by 50 days until no later than July 2, 2018.[29]

We are conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is April 1, 2017, through September 30, 2017. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition, which was November 2017.[30]

IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,[31] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.[32] In response, on January 9, 2018, Commerce received comments regarding domestic like product from JBL.[33] On January 19, 2018, Commerce received rebuttal comments from the petitioner.[34] As explained in the *Initiation Notice*, section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Because section 771(4)(A) of the Act defines "industry" as the producers as a whole of a domestic like product, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product.[35] Although Commerce evaluates domestic like product issues when determining the sufficiency of a petition, once an investigation is initiated, Commerce does not revisit the definition of domestic like product. Accordingly, we have not considered JBL's arguments. However, we note that subsequent to initiation, domestic like product issues may be examined by the ITC, which is responsible for determining whether "the domestic industry" has been injured and must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[36] they do so for different purposes and pursuant to a separate and distinct authority.[37] Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[38]

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[29] *See Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 83 FR 19050 (May 1, 2018).
[30] *See* 19 CFR 351.204(b)(1).
[31] *See Antidumping Duties: Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble).*
[32] *See Initiation Notice*, 83 FR at 517.
[33] *See* Letter from JBL, "*Investigations of Sodium Gluconate, Gluconic Acid, and Derivative Products from France and China—Junsbunzlauer's Comments regarding Scope*," dated January 9, 2018 (JBL Scope Comments).
[34] *See* PMP's Letter, "Countervailing and Antidumping Duty Investigations of Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China: Petitioner's Rebuttal Comments on Scope Comments," dated January 19, 2018 (PMP Rebuttal Scope Comments).
[35] *See Initiation Notice*, 83 FR at 518.
[36] *See* section 771(10) of the Act.
[37] *See Initiation Notice*, 83 FR at 518
[38] *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (*citing Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), aff'd 865 F.2d 240 (Fed. Cir. 1989)).

Additionally, in accordance with the preamble to Commerce's regulations, we set aside a period of time for interested parties to raise issues regarding product coverage.[39] Commerce specified that any such comments were due January 9, 2018, which was 20 calendar days from the signature date of the *Initiation Notice*, and any rebuttal comments were due by January 19, 2018.[40] On January 9, 2018, the petitioners and JBL, the mandatory respondent in the France GNA Products LTFV investigation, submitted comments to Commerce regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes.[41] On January 19, 2018, the petitioner filed rebuttal comments.[42] Based on the comments received, Commerce issued a memorandum to interested parties which contained the product characteristics for this investigation.[43]

V. SCOPE OF THE INVESTIGATION

For a full description of the scope of this investigation, see this memorandum's accompanying *Federal Register* notice at Appendix I.

VI. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy Country

Commerce considers China to be an NME country.[44] 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. Therefore, we continue to treat China as an NME country for purposes of this preliminary determination.

B. Surrogate Country and Surrogate Value Comments

When Commerce is investigating imports from an NME country, section 773(c)(1) of the Act directs us to base normal value (NV), in most circumstances, on the NME producer's FOPs, valued in a surrogate market economy (ME) country or countries considered to be appropriate by Commerce.

On February 1, 2018, Commerce identified Brazil, Bulgaria, Mexico, Romania, South Africa and Thailand, as countries that are at the same level of economic development as China based on per

[39] *See Initiation Notice*, 83 FR at 518.
[40] *Id.*
[41] *See* the petitioner's Letter, "Antidumping Duty Investigations of Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China and France: PMP's Comments on Product Characteristics," dated January 9, 2018, and JBL's Letter, "Antidumping Investigations of Sodium Gluconate, Gluconic Acid, and Derivative Products from France and China—Jungbunzlauer's Comments regarding Product Characteristics for Purposes of Model Matching," dated January 9, 2018.
[42] *See* the petitioner's Letter, "Countervailing and Antidumping Duty Investigations of Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China: Petitioner's Rebuttal Comments on Product Characteristics," dated January 19, 2018.
[43] *See* Commerce's Letter, "Product Characteristics for Use in Sections C and D Questionnaire Responses of sodium gluconate, gluconic acid, and derivative products from the People's Republic of China," dated February 1, 2018.
[44] *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), and accompanying decision memorandum.

capita 2017 Gross National Income (GNI) data.[45] On February 2, 2018, we solicited comments on the list of potential surrogate countries and the selection of the primary surrogate country, and provided deadlines for submission of surrogate value information for consideration in the preliminary determination.[46]

On February 23, 2018, we received timely comments on surrogate country selection from the petitioners and Shandong Fuyang.[47] On March 26, 2018, the petitioner and Shandong Fuyang submitted surrogate value (SV) data for valuing Shandong Fuyang's FOPs.[48] On April 12, 2018, the petitioner and Shandong Fuyang filed rebuttal surrogate value comments.[49]

We have preliminarily determined that all of the mandatory respondents (*i.e.*, Dezhou Huiyang, Qingdao Dongxiao, Shandong Fuyang, and Tianyi Food) should be treated as part of the China-wide entity, and is assigning an adverse facts available (AFA) rate to the China-wide entity, see the "Use of Facts Otherwise Available with an Adverse Inference" section below, and therefore, is not calculating a margin for any respondent. Therefore, we have not selected a primary surrogate country for purposes of this *Preliminary Determination*.

C. Separate Rates

In proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.[50] Commerce's policy is to assign all exporters of subject merchandise that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[51] Commerce analyzes whether each entity exporting the subject merchandise is sufficiently independent under a test established in *Sparklers*[52] and further developed in *Silicon Carbide*.[53] According to this separate rate test, Commerce will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If, however, Commerce determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

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[45] *See* Commerce Memorandum, "Request for a List of Surrogate Countries for an Antidumping Investigation on Sodium Gluconate, Gluconic Acid and Derivative Products (SG&GA) from the People's Republic of China (China)," dated February 1, 2018.
[46] *See* Commerce Letter to All Interested Parties, "Request for Surrogate Country and Surrogate Value Comments and Information," dated February 2, 2018.
[47] *See* Petitioners' Letter, "Petitioners' Comments on Surrogate Country Selection," dated February 23, 2018; Shandong Fuyang's Letter, "Surrogate Country Selection," dated February 23, 2018.
[48] *See* Petitioners' Letter, "Petitioner's Surrogate Value Data," dated March 26, 2018; Shandong Fuyang's Letter, "Surrogate Value Selection Comments," dated March 26, 2018.
[49] *See* Petitioners' Letter, "Petitioner's Rebuttal Surrogate Value Comments," dated April 12, 2018; Shandong Fuyang's "Rebuttal Surrogate Value Comments," dated April 12, 2018.
[50] *See*, *e.g.*, *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (September 24, 2008).
[51] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*).
[52] *Id.*
[53] *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*).

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China AD proceeding and its determinations therein.[54] In particular, in litigation involving the *Diamond Sawblades* proceeding, the Court of International Trade (CIT) found Commerce's separate rate analysis deficient in the circumstances of that case, in which a government-owned and controlled entity had significant ownership in the respondent exporter.[55] 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.[56] 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 profitability of the company.[57]

In the *Initiation Notice*, we stated that exporters and producers desiring a separate rate must submit an SRA and a Q&V response.[58] We also stated that the deadline for submission of SRAs would be 30 days after publication of the notice, *i.e.*, February 3, 2018.[59] On February 5 and 6, 2018, we received SRAs from Dezhou Huiyang, Shandong Fuyang, Tianyi Food, and Xingzhou Medicine.[60] Dezhou Huiyang, Shandong Fuyang, and Tianyi Food notified Commerce of their

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[54] *See* Final Results of Redetermination, *Advanced Tech. & Materials Co. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), available at http://enforcement.trade.gov/remands/12-147.pdf, *aff'd*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd*, 581 Fed. Appx. 900 (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 (PDM) at 6-7, 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 IDM at Comment 1 (*Diamond Sawblades*).

[55] *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 'management' of its 'state-owned assets' is restricted to the kind of passive-investor *de jure* 'separation' that Commerce concludes.") (footnote 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).

[56] *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.

[57] *Id.*

[58] *See Initiation Notice*, 83 FR at 520.

[59] *Id.*

[60] *See* Tianyi Food's Letter, "Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China – Tianyi Separate Rate Application" dated February 5, 2018; Xingzhou Medicine's Letter, "Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China – Xingzhou Medicine Separate Rate Application" dated February 5, 2018; Dezhou Huiyang's Letter, "Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China: Separate Rate Application for Dezhou

intent not to participate in the investigation after being selected as mandatory respondents, and did not to respond to Commerce's AD questionnaire.[61] As stated in the *Initiation Notice*, "{e}xporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they timely respond to all parts of Commerce's AD questionnaire as mandatory respondents."[62] Consequently, having not responded to Commerce's AD questionnaire, Dezhou Huiyang and Tianyi Food are not eligible for separate-rate status. Although Shandong Fuyang submitted responses to Commerce's questionnaire and supplemental letters,[63] it failed to correct errors in its FOP database, as Commerce requested,[64] and notified Commerce of its intention to no longer participate in this investigation, thereby, rendering its responses to Commerce's questionnaires unreliable and unverifiable.[65] Thus, Shandong Fuyang also failed to demonstrate its eligibility for a separate rate. Additonally, we considered the separate rate eligibility of the remaining separate-rate applicant, Xingzhou Medicine, for the preliminary determination. Based on the information that Xingzhou Medicine provided in its SRA, including information reflected in supplemental questionnaire respnses,[66] we preliminarily determine that it is eligible to receive a separate rate because it has demonstrated an absence of *de jure* and *de facto* government control over its export activities. Accordingly, we have assigned Xingzhou Medicine a separate rate, which is based on the petition rate because it is the only rate available in this investigation.

Separate Rate Determination for Xingzhou Medicine

1. Absence of *De Jure* Control

Commerce 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.[67]

Huiyang Biotechnology Co., Ltd.," dated February 6, 2018; and Shandong Fuyang's Letter, "Antidumping Duty Investigation on Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China: Separate Rate Application," dated February 6, 2018.

[61] *See* Commerce Letter, "Antidumping Duty Investigation of Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China: Selection of Additional Respondent," dated March 5, 2018 (Selection of Tianyi Food); Commerce Letter, "Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China – Less-Than-Fair-Value Investigation: Selection of Additional Respondent," dated March 9, 2018 (Selection of Dezhou Huiyang); Commerce Letter, "Less-Than-Fair-Value Investigation of Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China: Respondent Selection," dated January 17, 2018 (Selection of Shandong Fuyang); *see* Tianyi Food Withdrawal, Dezhou Huiyang Withdrawal, and Shandong Fuyang Withdrawal.

[62] *See Initiation Notice* at 42653.

[63] *See* Shandong Fuyang Letters of February 20, 2018 AQR; March 12, 2018 CDQR; March 29, 2018 SQR; April 18, 2018 SQR April 24, 2018 SQR; May 3, 2018 SQR; and May 25, 2018 SQR.

[64] *See* Memorandum to the File, "Telephone Conversation with Respondent's Counsel," dated May 29, 2018.

[65] *See* Shandong Fuyang Withdrawal.

[66] *See* Xinghui Medicine's March 6, 2018, First SRA Supplemental Response and March 29, 2018, Second SRA Supplemental Response.

[67] *See Fine Denier Polyester Staple Fiber from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 665 (January 5, 2018), and accompanying Preliminary Decision Memorandum at 14; *See also Sparklers*, 56 FN at 20589.

The evidence provided by Xinghui Medicine 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 exporter's business and export licenses; (2) the existence of applicable legislative enactments decentralizing control over export activities of companies; and (3) the implementation of formal measures by the government decentralizing control over export activities of companies.[68]

2. Absence of *De Facto* Control

Typically, Commerce considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (EPs) or constructed export prices (CEPs) 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 the disposition of profits or financing of losses.[69] Commerce has 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 which would preclude Commerce from assigning separate rates.

The separate rate information provided by Xingzhou Medicine also supports a preliminary finding of an absence of *de facto* government control, based on record statements and supporting documentation showing that Xingzhou Medicine: (1) sets its own EPs or CEPs independent of the government and without the approval of a government authority; (2) has the authority to negotiate and sign contracts and other agreements; (3) maintains autonomy from the government in making decisions regarding the selection of management; and (4) retains the proceeds of its export sales and make independent decisions regarding disposition of profits or financing of losses.[70]

Therefore, the evidence placed on the record of this investigation by Xingzhou Medicine preliminarily demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, as noted above, we are preliminarily granting a separate rate to Xingzhou Medicine.

[68] *See, e.g.,* Xinghui Medicine's Separate Rate Application at 6-10.
[69] *See Silicon Carbide*, 59 FR at 22586-87; *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).
[70] *See* Xinghui Medicine's Separate Rate Application at 10-18.

D. <u>China-Wide Entity</u>

The record indicates that there are China exporters and/or producers of the merchandise under consideration during the POI that did not respond to Commerce's request for information. Specifically, Commerce did not receive timely responses to its Q&V questionnaire from numerous Chinese exporters and/or producers of the merchandise under consideration that were named in the Petition and to whom Commerce issued Q&V Questionnaires.[71] Furthermore, Commerce did not receive SRAs from companies other than Tianyi Food, Xingzhou Medicine, Dezhou Huiyang, and Fuyang Biotech. However, as indicated above, Qingdao Dongxiao, Tianyi Food, and Dezhou Huiyang refused to participate as mandatory respondents and did not to respond to our AD questionnaire.[72] Because these companies did not respond to our requests for information, they have not demonstrated that they are eligible for a separate rate as provided in the *Initiation Notice*.[73] We therefore consider Dezhou Huiyang, Qingdao Dongxiao, Shandong Fuyang, and Tianyi Food to be part of the China-wide entity. Furthermore, as explained below, we preliminarily determine to assign the China-wide entity, which includes these companies, a rate based entirely on AFA.

E. <u>Use of Facts Otherwise Available With An Adverse Inference</u>

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 Commerce, (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 AD statute, or (D) provides such information but the information cannot be verified, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce 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, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act provides that Commerce 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, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about

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[71] *See* Q&V Delivery Confirmation, dated December 22, 2017. Of the 82 packages sent, 78 were delivered, and 4 could not be delivered because of incomplete addresses.

[72] *See* Qingdao Dongxiao Withdrawal, Tianyi Food Withdrawal, and Dezhou Huiyang Withdrawal; *see also* Commerce AD Duty Questionnaire to Qingdao Dongxiao, dated January 18, 2018 (issuing questionnaire to Qingdao Dongxiao), AD Duty Questionnaire to Tianyi Food, dated March 6, 2018 (issuing questionnaire to Tianyi Food), and AD Duty Questionnaire to Dezhou Huiyang, dated March 9, 2018 (issuing questionnaire to Dezhou Huiyang).

[73] *See Initiation Notice* at 42653 ("Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they timely respond to all parts of the Department's AD questionnaire as mandatory respondents").

information an interested party would have provided if the interested party had complied with the request for information.[74] 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 LTFV investigation, a previous administrative review, or other information placed on the record.[75]

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as the Petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, 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.[76] The SAA[77] clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value,[78] although under the Act. Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.[79] To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.[80]

Under section 776(d) of the Act, Commerce 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. Further, when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.[81]

1. *Application of Facts Available*

As noted above, Shandong Fuyang failed to fully respond to Commerce's request for information and eventually withdrew from participation in this investigation; Dezhou Huiyang, Qingdao Dongxiao, and Tianyi Food were also selected as mandatory respondents but withdrew from participation in this investigation and did not respond to Commerce's AD questionnaire. Moreover, certain producers/exporters that did not demonstrate eligibility for a separate rate

[74] *See* section 776(b)(1)(B) of the Act.
[75] *See also* 19 CFR 351.308(c).
[76] *See* SAA at 870.
[77] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. 103-316, at 870 (1994) (SAA).
[78] *Id.*; *see also* 19 CFR 351.308(d).
[79] *See* section 776(c)(2) of the Act.
[80] *See*, *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March, 13 1997).
[81] *See* section 776(d)(1)-(2) of the Act.

refused to respond to Commerce's requests for Q&V information.[82] Thus, these companies, which are part of the China-wide entity, failed to provide necessary information, withheld information requested by Commerce, and significantly impeded this proceeding by not submitting the requested information. Accordingly, Commerce preliminarily determines that the use of facts available is required in determining the rate of the China-wide entity, pursuant to sections 776(a)(1), (a)(2)(A)-(C) of the Act.[83]

2. *Application of Facts Available with an Adverse Inference*

Section 776(b) of the Act provides that Commerce, in selecting from among the facts otherwise available, 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. As noted above, having failed to establish their eligibility for separate rate status, Dezhou Huiyang, Qingdao Dongxiao, Shandong Fuyang, and Tianyi Food are part of the China-wide entity. These companies withdrew from participation in this investigation, thereby demonstrating a failure to cooperate with Commerce's request for information. Additionally, other companies which failed to demonstrate eligibility for separate rate status also failed to submit their Q&V information. Thus, we preliminarily determine that the China-wide entity has failed to cooperate by not acting to the best of its ability. Moreover, no party within the China-wide entity submitted documentation indicating that it was having difficulty providing the information, nor did it request to submit the information in an alternate form. Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available with respect to the China-wide entity in accordance with section 776(b) of the Act and 19 CFR 351.308(a).[84]

3. *Selection and Corroboration of the AFA Rate*

When using facts otherwise available, section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, 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.[85]

The Trade Preferences Extension Act of 2015 makes clear that, when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated. Commerce is also not required to

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[82] *See* Commerce's Q&V questionnaire to 78 companies that the petitioner identified as potential producers/exporters of GNA products from China, issued on December 21, 2017, the Q&V Delivery Confirmation.
[83] *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).
[84] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).
[85] *See* SAA at 870.

demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.[86]

In selecting a rate for the China-wide entity based on AFA, Commerce's practice is to select 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.[87] Specifically, it is Commerce's practice to select, as an AFA rate, the higher of: (a) the highest dumping margin alleged in the petition, or (b) the highest calculated dumping margin of any respondent in the investigation.[88] There are no calculated margins for any respondents in this investigation. Therefore, as AFA, Commerce has preliminarily assigned the China-wide entity the rate of 213.15 percent, which is the dumping margin alleged in the petition. Because the AFA rate that Commerce used is from the petition, it is secondary information subject to the requirement to corroborate the information, to the extent practicable. The petitioners' methodology for calculating the export price (EP) and NV in the petition is discussed in the *Initiation Notice* and the China AD Initiation Checklist.[89]

We determined that the petition margin of 213.15 percent is reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis.[90] To corroborate, to the extent practicable, the 213.15 percent petition rate for purposes of this preliminary determination, Commerce first revisited its pre-initiation analysis of the reliability of the information in the Petition. During our pre-initiation analysis, we examined: (1) the information used as the basis for EP and NV in the petition; (2) the calculations used to derive the alleged margin; and (3) information from various independent sources provided either in the petition or in supplements to the Petition.[91]

Based on our examination of the information, as discussed in detail in the China AD Initiation Checklist, we consider the petitioners' EP and NV calculations to be reliable.[92] In addition, we obtained no other information that would make us question the validity of the sources of information or the validity of information supporting the U.S. price or NV calculations provided in the petition. Because we confirmed the accuracy and validity of the information underlying the derivation of the margin in the petition by examining source documents, as well as publicly available information, we preliminarily determine that this petition rate is reliable for the purposes of an AFA rate in this investigation.

[86] *See* section 776(d)(3) of the Act.
[87] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose from Finland,* 69 FR 77216, 77218 (December 27, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from Finland*, 70 FR 28279 (May 17, 2005).
[88] *See, e.g., Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17436, 17438 (March 26, 2012); *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 34660 (May 31, 2000), and accompanying Issues and Decision Memorandum.
[89] *See Initiation Notice*; *See also* Antidumping Duty Investigation Initiation Checklist: Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China, dated December 20, 2017 (China AD Initiation Checklist).
[90] *Id.*
[91] *Id.*
[92] *Id.*

In making a determination as to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. The petition rate is relevant because it is based on a price quote for the merchandise under consideration and surrogate values that are contemporaneous with the POI. In addition, no information has been placed on the record that discredits this information. As such, we find the petition rate of 213.15 percent relevant. Furthermore, as there are no respondents in this investigation for which we are calculating a separate dumping margin, we note that the petition rate is the only rate available on the record of this proceeding.[93]

Accordingly, Commerce has corroborated the AFA rate of 213.15 percent to the extent practicable within the meaning of section 776(c) of the Act.

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

In applying section 777A(f) of the Act, Commerce examines: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.[94] For a subsidy meeting these criteria, the statute requires Commerce to reduce the antidumping duty by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.[95] Because there has been no demonstration on the record that an adjustment for domestic subsidies is warranted, Commerce is not making any such adjustment to the rate being assigned to the China-wide entity, which includes Dezhou Huiyang, Qingdao Dongxiao, Shandong Fuyang, and Tianyi Food.

VIII. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES

Pursuant to section 772(c)(1)(C) of the Act, Commerce normally makes adjustments for countervailable export subsidies. Commerce is making no adjustments to the cash deposit rate for the China-wide entity, which includes Dezhou Huiyang, Qingdao Dongxiao, Shandong Fuyang, and Tianyi Food in the instant investigation because Commerce has made no findings in the companion CVD investigation that any of the programs are export subsidies.[96] While certain

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[93] As described in the section of this memorandum entitled "China-wide Entity," Commerce is preliminarily finding that it cannot rely on data submitted for Shandong Fuyang for purposes of calculating an estimated weighted average dumping margin.
[94] *See* section 777A(f)(1)(A)-(C) of the Act.
[95] *See* section 777A(f)(1)-(2) of the Act.
[96] *See Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 83 FR 23888 (May 23, 2018) and accompanying Preliminary Determination Memorandum at 19 ("As AFA, pursuant to section 776(a) and (b), Commerce is finding all programs initiated upon in this proceeding to be countervailable—that is, they provide a financial contribution within the meaning of sections 771(5)(B)(i) and (D) of the Act, *confer a benefit within the meaning of section 771(5)(B) of the Act, and are specific within the meaning of section 771(5A) of the Act.* Accordingly, all programs are included in Commerce's calculation of an AFA rate for Fuyang, Hongyu Chemical, Kaison, and Qingdao Dongxiao.") (emphasis added).

programs in the companion CVD investigation were alleged to be export subsidies, as a result of non-cooperation by certain mandatory respondents, Commerce's preliminary determination that the alleged programs were countervailable subsidies was based on facts available with adverse inferences.[97]

In relying on facts available with adverse inferences, Commerce did not preliminarily determine that the subsidies in question were export subsidies. As such, Commerce finds that, without a determination in the companion CVD investigation that a program is an export subsidy, it is not appropriate to make an offset to the cash deposit rates in this AD investigation pursuant to section 772(c)(1)(C) of the Act.[98] Accordingly, consistent with our recent practice,[99] we will not apply the export subsidy offset to the cash deposit rate assigned to the China-wide entity.

IX. VERIFICATION

Because the mandatory respondents in this investigation did not provide necessary information requested by Commerce, verifications will not be conducted.

X. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☒	☐
____________	___________
Agree	Disagree

7/2/2018

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

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[97] *Id*.
[98] *See, e.g., Ammonium Sulfate from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 81 FR 78776 (November 9, 2016), and accompanying Preliminary Decision Memorandum at page 11, unchanged in *Ammonium Sulfate from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 8403 (January 25, 2017).
[99] *Id*.