A-570-066
Investigation
Public Document
AD/CVD I: TES/MR

DATE: September 19, 2018

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

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

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

---

I. SUMMARY

The Department of Commerce (Commerce) determines that imports of polytetrafluoroethylene (PTFE) resin from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is January 1, 2017, through June 30, 2017.

As a result of our analysis, we made changes in the margin calculations for the final determination. We recommend that you approve the positions described in the *Discussion of the Issues* section of this memorandum. Below is a complete list of the issues for which we have received comments from the interested parties:

a. Daikin Fluorochemicals (China) Co., Ltd.

Comment 1: Unreported U.S. Sales
Comment 2: Ocean Freight Expenses
Comment 3: Factor of Production of a Certain Input
Comment 4: Surrogate Value for R-22
Comment 5: Surrogate Financial Ratios

b. Separate Rate Eligibility

Comment 6: Zhejiang Jusheng Fluorochemical Co., Ltd.

II. BACKGROUND

On May 7, 2018, Commerce published its *Preliminary Determination* in the LTFV investigation of PTFE resin from China.[1] On June 5, 2018, we issued a memorandum describing our response to allegations of ministerial errors in the *Preliminary Determination* and stated that we would incorporate required changes in the final determination.[2] Commerce conducted the verification of U.S. sales and factors of production (FOPs) reported by Daikin Fluorochemicals (China) Co., Ltd. (Daikin), and Shandong Dongyue Polymer Material Co., Ltd. (Dongyue) in May 2018 and June 2018.[3] We received case[4] and rebuttal[5] briefs from various parties to this antidumping duty (AD) investigation.

Based on our analysis of the comments received, our verification findings, and consideration of the data on the record, for this final determination we have revised the dumping margins for the two individually investigated respondents, the non-selected separate rate respondents, and the China-wide entity.

III. SCOPE COMMENTS

We invited parties to comment on Commerce's Preliminary Scope Decision Memorandum.[6] No parties commented. As such, in the final determination in the concurrent countervailing duty investigation on PTFE resin from India, we adopted the preliminary scope decision and made no modifications to the scope language;[7] accordingly, we have adopted the preliminary scope decision and made no modifications to the scope language for this final determination.

---

[1] *See Polytetrafluoroethylene Resin 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 20039 (May 7, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

[2] *See* Commerce Memorandum, "Less-Than-Fair-Value Investigation of Polytetrafluoroethylene Resin from the People's Republic of China: Allegations of Ministerial Errors in the Preliminary Determination," dated June 5, 2018 (Ministerial Errors Memo) at 2. As described in the "Changes Since the Preliminary Determination" section, below, we have corrected these errors for this final determination.

[3] *See* the Reports, "Verification of the Questionnaire Responses of Daikin Fluorochemicals (China) Co., Ltd. in the Antidumping Investigation of Polytetrafluoroethylene Resin from the People's Republic of China" dated June 4, 2018 (Daikin CEP Report), "Verification of the Questionnaire Responses of Daikin Fluorochemicals (China) Co., Ltd. in the Antidumping Investigation of Polytetrafluoroethylene Resin from the People's Republic of China" dated July 10, 2018 (Daikin FOP Report) and "Verification of the Questionnaire Responses of Shandong Dongyue Polymer Material Co., Ltd. in the Antidumping Investigation of Polytetrafluorethylene Resin from the People's Republic of China" dated July 13, 2018 (Dongyue Report).

[4] *See* the case briefs filed by The Chemours Company FC LLC (the petitioner), Daikin, and Zhejiang Jusheng Fluorochemical Co., Ltd. (Jusheng) on July 23, 2018.

[5] *See* the rebuttal briefs filed by the petitioner and Daikin dated July 30, 2018.

[6] *See* Memorandum, "Polytetrafluoroethylene Resin from India and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations," (Preliminary Scope Decision Memorandum) dated February 28, 2018.

[7] *See Polytetrafluoroethylene Resin from India: Final Affirmative Countervailing Duty Determination*, 98 FR 23422 (May 21, 2018).

IV. SURROGATE COUNTRY

In the *Preliminary Determination*, we treated China as a non-market economy (NME) country and calculated normal value in accordance with section 773(c)(1) of the Act. We selected Mexico as the primary surrogate country, pursuant to section 773(c)(4) of the Act, because it is at the same level of economic development as China, because it is a significant producer of merchandise comparable to subject merchandise, and because of the availability and quality of Mexican data for valuing FOPs.[8] No parties commented on Commerce's selection of the primary surrogate country in this investigation. For the final determination of this investigation, we continue to treat China as an NME country and have continued to use Mexico as the primary surrogate country.

V. SEPARATE RATES

In proceedings involving NME countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single AD deposit rate.[9] It is Commerce's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent to be entitled to a separate rate.[10]

In the *Preliminary Determination*, we found that, in addition to the two individually investigated respondents, Hangzhou Fine Fluorotech Co., Ltd. and Shanghai Huayi 3f New Materials Sales Co., Ltd., demonstrated their eligibility for separate rate status by demonstrating that they operated free of *de jure* and *de facto* government control.[11] Based on the information on the record of this investigation, we continue to find that the respondents that received separate rates in the *Preliminary Determination* are eligible for separate rates. We preliminarily determined that Jusheng was not eligible for a separate rate.[12] As discussed in Comment 6, below, we continue to determine that Jusheng is not eligible for a separate rate.

Neither the statute nor Commerce's regulations address how we are to determine the dumping margin for separate rate companies not selected for individual examination. Our practice in this regard has been to assign to separate-rate companies that were not individually examined a dumping margin equal to the average of the margins calculated for the individually examined respondents, excluding margins that are zero, *de minimis*, or based entirely on facts available. If all dumping margins for the individually examined respondents are zero, *de minimis*, or based entirely on facts available, then we will use any reasonable method, including averaging the

[8] *See Preliminary Determination* and accompanying Preliminary Decision Memorandum at 5-9.
[9] *See*, *e.g.*, *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), and *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079 (September 8, 2006).
[10] *See Certain Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 15365 (April 10, 2018), and accompanying Issues and Decision Memorandum at 3.
[11] *See Preliminary Determination* and accompanying Preliminary Decision Memorandum at 9-12.
[12] *Id*. at 12-13.

dumping margins for the individually examined respondents. In the *Preliminary Determination*, we calculated margins for two individually investigated respondents. Consistent with the *Preliminary Determination*, we are assigning the weighted average of the two individually examined respondents' rates based on their publicly available, ranged U.S. sales values and dumping margins. The separate rate for the eligible non-selected respondents is 77.13 percent.

VI. CHINA-WIDE RATE

For the final determination, we continue to base the China-wide rate on adverse facts available (AFA). In the *Preliminary Determination*, Commerce used a dumping margin of 208.16 percent, which is the highest model-specific dumping margin for Daikin.[13] As a result of changes to Daikin's margin calculation to reflect verification corrections and as a result of comments received (*see* discussion of comments below), the highest model-specific dumping margin for Daikin is now 218.88 percent.[14] Commerce is not required to corroborate this rate because it was obtained in the course of this investigation and, therefore, is not secondary information.[15]

VII. CHANGES SINCE THE PRELIMINARY DETERMINATION

We calculated U.S. price and normal value using the same methodology stated in the *Preliminary Determination*, except as follows:

- We used the U.S. sales and FOP databases Daikin submitted after the verifications.
- We based the margin for Daikin's unreported U.S. sales on AFA, using the highest model-specific dumping margin for Daikin's other sales.
- We revised Daikin's reported U.S inland freight – port to warehouse expense in accordance with our verification finding.
- We revised Daikin's reported repacking expenses in accordance with our verification finding.
- We corrected a ministerial error we made in the *Preliminary Determination* for Daikin in order to use the correct variable for the distance between the factory and port, and we updated the distance to use the distance we verified.
- We corrected ministerial errors we made in the *Preliminary Determination* for Donguye to convert consumption of water and coal to the same units as the surrogate value, and to calculate marine insurance on the value basis upon which it was reported.[16]

---

[13] *Id*. at 16-17.
[14] *See* Memorandum to file, "Polytetrafluoroethylene Resin from the People's Republic of China: Final Analysis Memorandum for Daikin Fluorochemicals (China) Co., Ltd.," dated concurrently with this memorandum at Antidumping Duty Margin Output.
[15] *See* section 776(c) of the Act ("when {Commerce} relies on *secondary information rather than on information obtained in the course of an investigation* or review, {Commerce}, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal (emphasis added)."). *See also*, *e.g.*, *Steel Concrete Reinforcing Bar from Taiwan: Final Determination of Sales at Less Than Fair Value*, 82 FR 34925 (July 27, 2017), and accompanying Issues and Decision Memorandum at 5-6 and Comment 4.
[16] *See* Ministerial Errors Memo at 2-4.

- We adjusted relevant FOPs to reflect the minor correction submitted by Dongyue Fluo-Silicon Material Co., Ltd. (an affiliated producer of Dongyue's) at verification, and to reflect a small change in the consumption of a single auxiliary material.
- We adjusted relevant FOPs to reflect the consumption of packing materials consumed at Dongyue which were weighed at verification, for one type of product.
- We adjusted relevant FOPs for Dongyue, related to a small change in the POI production total of an intermediate input.

VIII. DISCUSSION OF THE ISSUES

A. Daikin Fluorochemicals (China) Co., Ltd.

Comment 1: Unreported U.S. Sales

The petitioner argues that Daikin failed to report certain U.S. sales of subject merchandise that the record establishes were subject to the scope of the investigation.

- Commerce should base the margin for these sales using AFA and use the highest antidumping margin found for any of Daikin's reported U.S. sales.

Daikin argues that it did not fail to report any sales of subject merchandise and that facts available is not warranted with respect to these sales.

- The scope of the investigation does not set a micron range such that it only excludes PTFE micropowder with a particle size of 1 to 25 microns.
- The scope language does not preclude micropowder from being excluded even if the particle size is greater than 25 microns.
- The products sold in the transactions at issue is micropowder and should be considered non-subject merchandise for purposes of this investigation, and the petitioner may request a scope ruling if an order is issued.
- Even if Commerce were to conclude that the product should be considered subject merchandise, the use of adverse inferences is unwarranted because Daikin has cooperated to the best of its ability throughout this investigation and should not be penalized due to the petitioner's confusing scope language.
    - Commerce has previously rejected the use of AFA where sales were unreported due to an ambiguous scope.[17]

Commerce's Position: We agree with the petitioner that the margin for Daikin's unreported sales should be based on AFA. At verification, "{w}e found two unreported sales which were Chinese-produced PTFE."[18] Daikin claimed that it did not report these sales because "these products were micropowder (the invoices indicated 'MPA', which Daikin America explained stands for 'Micro Powder Additive'), which was not subject to the scope of the investigation."[19]

---

[17] *See Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy*, 60 FR 31981, 31987 (June 19, 1995) (*Seamless Pipe from Italy*).
[18] *See* Daikin CEP Report at 5.
[19] *Id*.

The scope of the investigation states that "PTFE further processed into micropowder, having particle size typically ranging from 1 to 25 microns, and a melt-flow rate no less than 0.1 gram/10 minutes, is excluded from the scope of this investigation." When we examined the quality control reports for these sales, we discovered that these products had particle sizes that were well outside the 1 to 25 microns indicated in the scope of the investigation.[20]

Daikin argues that the scope only provides a typical particle size range for micropowder and does not preclude micropowder from being excluded even if the particle size is greater than 25 microns. Daikin also argues that the scope is ambiguous as a result of this. We disagree with Daikin. Although the scope does indeed say that the range indicated is "typical," the petition originally indicated an exclusion of "PTFE further processed into micropowder, having particle size ranging from 1 to 25 microns, is excluded from the scope of this investigation."[21] Prior to initiation of the investigation, the petitioner amended the scope to its current form.[22] In its letter amending the scope, the petitioner explained that "PTFE micropowder is produced to ASTM standard D5675-13," which it attached to its submission amending the scope language.[23] ASTM standard D5675-13 indicates average particle size ranges which vary depending on the grade of the PTFE and whether the micropowder is suspension based, dispersions based, directly polymerized, reground, or previously sintered.[24] Importantly, the sizes of the unreported sales were well outside of the bounds of any of the ranges indicated in ASTM standard D5675-13.[25]

Furthermore, when we initiated this investigation, we provided an opportunity for interested parties to comment on the scope of the investigation.[26] If Daikin had concerns about what constituted subject merchandise under the scope, it should have submitted comments to this effect, but it did not do so. Similarly, the questionnaire we sent to Daikin instructed that "{i}f you have questions, we urge you to consult with the official in charge named on the cover page."[27] Daikin did not request clarification with respect to these sales. Moreover, the Court of International Trade (CIT) has previously held that a respondent is responsible for seeking clarification from Commerce if the respondent is not clear on how it is to respond to Commerce's requests for information.[28]

Accordingly, we determine that these sales are subject to the investigation and that Daikin should have reported them. Because Daikin did not report these sales and they are necessary to

---

[20] *Id*.
[21] *See* Letter from the petitioner, "Polytetrafluoroethylene (PTFE) Resin from the People's Republic of China and India: Antidumping and Countervailing Duty Petitions," dated September 28, 2017, at 5.
[22] *See* Letter from the petitioner, "Polytetrafluoroethylene (PTFE) Resin from the People's Republic of China and India: Amendment to the Suggested Scope of the Antidumping and Countervailing Duty Petitions," dated October 13, 2017, at 2.
[23] *Id*.
[24] *Id*. at Attachment.
[25] The largest permissible particle size indicated in any of the ranges is 150 microns. *Id*.
[26] *See Polytetrafluoroethylene Resin from India and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 49587, 49587 (October 26, 2017).
[27] *See* questionnaire sent to Daikin dated November 27, 2017, at G-1.
[28] *See Persico Pizzamiglio, S.A. v. United States,* 18 CIT 299, 304 (1994) ("any ambiguity should have been resolved through consultation with Commerce before the time Persico's response was due").

accurately calculate the cash-deposit rate for Daikin, we determine that the use of facts available is necessary to calculate the margins for these sales under Section 776(a) of the Act. Moreover, because Daikin chose not to report them unilaterally without notifying us or requesting clarification, we determine that Daikin did not act to the best of its ability in responding to our request for information and, therefore, an adverse inference is warranted under Section 776(b) of the Act in selecting from among the facts available. As AFA, we have used the highest model-specific dumping margin we calculated for Daikin for these sales. Because we are relying on information obtained in the course of this investigation as the AFA rate, not on secondary information, it is not necessary to corroborate this rate.[29]

Comment 2: Ocean Freight Expenses

The petitioner argues that Daikin failed to report the actual per-unit U.S. dollar amounts of ocean-freight expense for certain U.S. sales.

- Daikin reported that it incurred the ocean-freight expense for these sales in Chinese renminbi but, at verification, Commerce found that Daikin paid all ocean freight in U.S. dollars.
- Commerce should revise the ocean freight expense for these sales using AFA and use the highest verified expense as AFA.

Daikin argues that it properly reported its ocean freight expenses as NME expenses.

- Commerce's regulations state that Commerce will only treat an expense as a market-economy expense if a factor is produced in one or more market economy countries, purchased from one or more market economy suppliers and paid for in market economy currency.
- Commerce's practice is to base the deduction of movement charges on surrogate values where the services are provided by an NME vendor or paid for using an NME currency.
- The record establishes that the ocean freight in question was performed by NME vendors.

Commerce's Position: We agree with Daikin and have continued to base the deduction of these movement charges on surrogate values for this final determination. Commerce's regulations provide that Commerce "normally will use publicly available information to value factors. However, where a factor is purchased from a market economy supplier that is produced in a market economy <u>and</u> paid for in a market economy currency, the Secretary normally will use the price paid to the market economy supplier. Similarly, we have previously stated that "{i}t is the Department's practice, where services are provided by an NME vendor <u>or</u> paid for using an NME currency, to base the deduction of these movement charges on surrogate values."[30]

[29] *See* section 776(c) of the Act; 19 CFR 351.308(d); *see also 1,1,1,2-Tetrafluroethane from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 62597 (October 20, 2014), and accompanying Issues and Decision Memorandum at 3.

[30] *See Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016) (*HFC Blends*) and accompanying Issues and Decision Memorandum at Comment 21 (emphasis added).

Daikin explained in its original response that, "during the POI, {it} used both NME and ME carriers. In Exhibit C-2 we are providing a chart that shows which shipments were NME carriers and which were ME carriers. For those batches that were NME carriers, we have reported 'YES' in this field. If the shipments were by ME carriers, we reported the actual cost of the shipments, per lb."[31] For the shipments in question, Daikin reported that they were transported by NME carriers. Accordingly, even though the charges were paid to the NME carriers in U.S. dollars, consistent with our stated practice, we have continued to base the deduction of these movement charges on surrogate values for this final determination.

Comment 3: Factor of Production of a Certain Input

The petitioner argues that Daikin did not provide sufficient information to accurately identify a certain input in order to be able to assign an accurate Harmonized Tariff Schedule (HTS) classification for surrogate value purposes.

- Commerce was not able to verify the chemical composition of the input.
- It is not plausible that Daikin would know certain details about the input yet be unable to provide the chemical composition of the input as requested by Commerce.
- As a result, it is unclear whether the surrogate value Commerce used in the *Preliminary Determination* is accurate.
- Given Daikin's failure to cooperate, this input should be valued using the highest surrogate value of any material input.

Daikin argues that it cooperated to the best of its ability with respect to this issue.

- It is plausible that Daikin would know certain details about the input yet be unable to provide the chemical composition of the input.
  - This is supported by Commerce's findings at verification.
  - Daikin knows the details identified by the petitioner because the documents in its possession contain that information, but the documents in its possession do not contain the information requested by Commerce.
- Because Commerce did not request this information in any of its supplemental questionnaires, the use of adverse inferences is not warranted.

Commerce's Position: Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from the facts otherwise available under section 776(a) of the Act when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

In this case, we did not request—either in our original questionnaire or in any of the supplemental questionnaires we sent to Daikin—that Daikin provide the chemical composition of the input in question. The petitioner did not identify this as an issue until its pre-verification comments, which it submitted one week prior to the start of verification, more than a month after the *Preliminary Determination*.[32] When we asked for additional details about the input at

---

[31] *See* Letter from Daikin, "Polytetrafluoroethylene (PTFE) Resin from the People's Republic of China: Sections C&D Questionnaire Response of Daikin Fluorochemicals (China) Co., Ltd.," dated January 10, 2018, at C-23.
[32] *See* Letter from the petitioner, "Polytetrafluoroethylene (PTFE) Resin from China: Chemours' Pre-Verification

verification, "Daikin provided a safety data sheet for the input from the manufacturer," but "this safety data sheet did not indicate the chemical composition of the input."[33]

The petitioner claims that it is not plausible that Daikin would know certain details about the input yet be unable to provide the information requested by Commerce; however, the details cited by the petitioner[34] are contained in the safety data sheet we examined at verification.[35] Thus, far from being implausible, we verified that it is possible that Daikin would know the details cited by the petitioner yet not be able to provide the information requested by Commerce. Thus, we have no basis for concluding that Daikin did not act to the best of its ability with respect to reporting this input. Moreover, as noted above, we did not request this information in any of the questionnaires we sent to Daikin. For these reasons, we determine that the use of adverse inferences is not warranted. Thus, to the extent facts available are warranted, we conclude that the best information on the record consists of the input data we used to value this input for the *Preliminary Determination*.

Comment 4: Surrogate Value for R-22

Daikin argues that Commerce should use Puerto Rico import data to value R-22 because the Mexican import data which Commerce used for the *Preliminary Determination* are distorted and aberrational.

- The record establishes that there are two different markets for R-22, one for refrigerant use and one for feedstock use.
    - The use of R-22 as a refrigerant is highly regulated and is being phased out altogether under the Montreal Protocol.
    - As a result of this regulation, the price for R-22 in the refrigerant market is significantly higher than the price in the feedstock market.
    - The record establishes that imports of R-22 into Mexico are for refrigerant use.
    - Additional record information shows that the Mexican import prices are much higher than feedstock prices in other markets.

- Daikin uses the R-22 it purchases as a feedstock.
    - Therefore, Commerce must use a surrogate value that reflects the price of R-22 used as a feedstock.
    - Because the record establishes that there are no feedstock uses for R-22 in Mexico, the Mexican import data cannot serve as an appropriate surrogate value for the R-22 used by Daikin in its production.

- Commerce's rationale for using Mexican import data is not reasonable, is based on a misreading of the record, and incomplete information.

Comments-Daikin Fluorochemicals (China) Co., Ltd.," dated June 12, 2018.

[33] *See* Daikin FOP Report at 8.

[34] *See* Letter from Daikin, "Polytetrafluoroethylene (PTFE) Resin from the People's Republic of China: Sections C&D Questionnaire Response of Daikin Fluorochemicals (China) Co., Ltd.," dated January 10, 2018, at Exhibit D-3.

[35] *See* Daikin FOP Report at Exhibit VE-6f, page 13.

- Contrary to Commerce's claims in the *Preliminary Determination*, the baseline for Mexico to freeze production and consumption of R-22 in 2016 is 2013, not 2015.
    - Moreover, the fact that imports did not decline significantly or that the quota did not change between 2015 and 2017 does not mean that overall available supply did not decline.
    - There was already a decline in available supply by 2015 and businesses had to prepare for future declines.
    - The record demonstrates the price of refrigerant R-22 was significantly higher than the price of feedstock R-22 during the POI and that the only explanation for this price difference for these chemically identical products is the phase-out.

- Daikin takes issue with Commerce's preliminary findings that a) the invoices submitted by Daikin showing the price difference between R-22 feedstock and refrigerant are not indicative of a broad market average and are not reliable public benchmarks for ascertaining whether the Mexican R-22 market is distorted, and b) there is no reason to believe that Mexican export prices would necessarily track Mexican import prices.
    - The fact that the invoices do not constitute a broad market average is irrelevant because Daikin has never suggested that Commerce use its confidential data as a surrogate value.
    - Daikin does not suggest that Commerce consider the invoice values or Mexican export prices in isolation; the invoices and Mexican export data were submitted as corroboration of the fact that prices for R-22 are lower in the feedstock market and as support for the fact that the Mexican data is aberrational and reflects prices for the refrigerant market.
    - Because there is no market for feedstock R-22 in Mexico, the Mexican import unit values would naturally be higher than the Mexican export unit values, since imports for consumption in Mexico would be only for refrigerant use.

- Commerce must look beyond the list of potential surrogate countries in order to properly value R-22.
    - In the list of potential surrogate countries identified by Commerce (Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand), the record shows that the only country that produces R-22 is Mexico and that there are no companies that use R-22 as feedstock in any of these countries.
    - Commerce has previously selected surrogate values from countries that were not identified as potential surrogate countries where the data from the potential surrogate countries were aberrational.[36]
    - The CIT has previously upheld Commerce's use of surrogate value information from developed countries, including the United States.[37]

---

[36] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal from the Russian Federation*, 68 FR 6885 (February 11, 2003) (*Silicon Metal from Russia*) and accompanying Issues and Decision Memorandum at Comment 2.
[37] *See Writing Instrument Mfrs. Association, Pencil Section v. U.S. Department of Commerce*, 984 F. Supp. 629, 639 (CIT 1997) (*Writing Instrument*), *aff d Writing Instrument Mfrs. Association v. Department of Commerce*, 178 F.3d 1311 (CAFC 1998).

- The use of Puerto Rico in the current case has two advantages.
  - First, the R-22 feedstock being imported into Puerto Rico is from the sole Mexican producer of R-22 in that country and thus closely reflects what feedstock R-22 would sell for if it were consumed in Mexico.
  - Second, Puerto Rico, while at a higher gross national product (GNP) than China, is substantially lower than the GNP of the mainland United States.
  - The record shows that there is a producer/user of feedstock R-22 in Puerto Rico which uses R-22 to produce anesthetics in a foreign trade zone in Puerto Rico.
  - Under the specific circumstances of this case, the use of the import statistics for Puerto Rico provides the best information available for the surrogate value for R-22.

The petitioner argues that Commerce's determination to use Mexican data as the surrogate for R-22 is correct.

- The fact that prices in the European Union, the United States, and Mexico are different does not establish that market prices for R-22 used as a refrigerant are necessarily different from the market prices for R-22 used as a feedstock.
  - Daikin itself is a manufacturer, seller, and end-user of refrigerants and that Daikin participates in the refrigerant market in the United States as well as in industries using R-22 as feedstock. Thus, the evidence regarding prices paid by Daikin for R-22 does not establish that higher prices are paid for R-22 in the refrigerant market than are paid in the feedstock market. As a result, the evidence submitted by Daikin reasonably supports the conclusion that Daikin itself paid the same price, whether or not the R-22 was used as a feedstock or was sold for refrigeration or air conditioning. Daikin did not submit any evidence to establish that there is in fact a distinction in prices within the same national market based on the end-use of the R-22.

- The Montreal Protocol is a red herring and Daikin fails to show that it is the Mexican prices, rather than U.S. or European Union prices, that are distorted.
  - The phase-out is a global phenomenon and the fact that national markets are different reflects the different policies of all countries implementing the Montreal Protocol.
  - Mexico limited consumption to 2015 levels, which is a relatively recent period that would not be expected to differ significantly from the POI.
  - Given that each national market will have different consumption patterns, it is important to use the values obtained in the primary surrogate country because any other value will defeat the purposes of identifying a single, primary surrogate.

- Daikin failed to show that Mexican R-22 values are aberrational versus values in other potential surrogate countries.
  - The average unit price of R-22 imports into Brazil, the only surrogate that is both economically comparable to China and that had a substantial commercial quantity of R-22 imports (excluding imports from China and India) during the POI, was not substantially different from the average unit price of R-22 imports into Mexico.
  - The fact that the market price for R-22 in Mexico is higher than the market price in the United States is not dispositive because the United States is not a potential surrogate country and is not economically comparable to China.

- The fact that U.S. prices for R-22 are lower than prices in Mexico does not detract from the evidence that Mexican import statistics reliably report the value of commercial quantities of R-22 sold in a comparable market.

- Commerce should not use surrogate data values from Puerto Rico.
    - Puerto Rico is at a higher GNP than China and is thus not economically comparable with China, nor is Puerto Rico on the surrogate country list.
    - With respect to Daikin's citation of *Writing Instrument*, the Court found that the use of U.S. values fell within Commerce's discretion but that, subsequent to this 1997 decision, Commerce has clearly indicated its preference for not using values from countries that are not economically comparable.
    - Although using Puerto Rico values may lie within Commerce's discretion, there is no reason to do so here: Puerto Rico is not on the surrogate country list, Puerto Rico and China are not economically comparable, there are publicly available data on the record from the primary surrogate country, Mexico, and Commerce has a regulatory preference to value all FOPs from one surrogate country.

Commerce's Position: We continue to determine that, based on record evidence, the Mexican import average unit value (AUV) for R-22 is the best available SV information on the record. We also, find that Daikin has not demonstrated that this AUV for R-22 is unreliable or distorted such that it is not usable as a surrogate value. Daikin claims that there are different price levels for refrigerant and feedstock R-22 and that the price levels for refrigerant R-22 are aberrational. To support its claim, Daikin compares the Mexican import AUV of R-22 to a) a proprietary cost build-up, b) intra-EU import AUVs of R-22, c) proprietary Daikin invoices of R-22 purchases, d) U.S. import AUVs of R-22, and e) Mexican export AUV of R-22.[38]

Section 773(c)(4)(A) of the Act requires that Commerce "shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are … at a level of economic development comparable to that of the nonmarket economy country." As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME, unless it is determined that none of the countries are viable options because they either: (a) are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV, or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.

Commerce evaluates SV information on a case-by-case basis, and, in accordance with section 773(c)(1) of the Act, selects the best available information from an appropriate surrogate country to value FOPs. When selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, it is Commerce's practice to select surrogate values which, to the extent practicable, are product-specific, representative of a broad-market average, publicly

[38] *See* Letter from Daikin, "Polytetrafluoroethylene (PTFE) Resin from the People's Republic of China: Case Brief," dated July 23, 2018, at 4.

available, contemporaneous with the POR, and exclusive of taxes and duties.[39] Moreover, it is Commerce's well-established practice to rely upon the primary surrogate country for all surrogate values, whenever possible, and to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable.[40]

With respect to the intra-EU import AUVs, all of the trade of R-22 involves countries at a significantly higher level of economic development than China. Of all the countries in the EU,[41] only two (Bulgaria and Romania) are at the same level of economic development as China with the remaining EU countries at a substantially higher level of economic development than China;[42] however, the record shows that neither Bulgaria nor Romania imported R-22.[43] Similarly, both the U.S. import AUVs[44] and the proprietary Daikin invoices[45] involve U.S. prices; the United States is also at a substantially higher level of economic development than China.[46]

With respect to the Mexican export data, the record shows that the AUV is largely based on exports to the United States; nearly 60 percent of Mexican exports of R-22 are to the United States, which is – as explained above - at a substantially higher level of economic development than China.[47] Over 90 percent of Mexican exports of R-22 are to the United States, Puerto Rico, and Saudi Arabia,[48] all of which are at substantially higher levels of economic development than China.[49] Mexico only exported R-22 to one country, Brazil, that is at the same level of economic

---

[39] *See*, *e.g.*, *Fuwei Films (Shandong) Co. v. United States*, 837 F. Supp. 2d 1347, 1350-51 (CIT 2012) (citing *Certain Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying IDM at Comment 10); *Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008) and accompanying IDM at Comment 2); *see also Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62088 (September 8, 2016) and accompanying Issues and Decision Memorandum at Comment 3.

[40] *See* 19 CFR 351.408(c)(2); *see also Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Second Antidumping Duty Administrative Review*, 76 FR 66903, 66910 (October 28, 2011); unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review*, 77 FR 12553 (March 1, 2012); *see also Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62088 (September 8, 2016) and accompanying Issues and Decision Memorandum at Comment 3.

[41] *See* Letter from Daikin, "Polytetrafluoroethylene (PTFE) Resin from the People's Republic of China: Submission of Factual Information," dated March 30, 2018 (Daikin R-22 Comments), at Exhibit 19.

[42] *See* Letter from Michael Rollin, "Request for a List of Surrogate Countries for an Antidumping Investigation on Polytetrafluoroethylene Resin ("PTFE") from the People's Republic of China ("China")," dated November 14, 2017 (Surrogate Country Memo), at 2.

[43] *See* Letter from the petitioner, "Polytetrafluoroethylene (PTFE) Resin from the People's Republic of China: Petitioner's Rebuttal Factual Information," dated April 9, 2018 (Petitioner R-22 Comments), at Exhibit 1.

[44] *See* Letter from Daikin, "Polytetrafluoroethylene (PTFE) Resin from the People's Republic of China: Surrogate Value Rebuttal Comments," dated February 12, 2018 (Daikin SV Rebuttal), at Exhibit 9.

[45] *Id.* at Exhibit 7.

[46] *See* Surrogate Country Memo at 2.

[47] *See* Daikin SV Rebuttal at Exhibit 10.

[48] *Id*.

[49] *See* Surrogate Country Memo at 2.

development as China, and those exports accounted for less than one-half of one percent of Mexico's total exports of R-22.[50]

Thus, none of the price comparisons cited by Daikin support its claim that the Mexican import AUV of R-22 is aberrational because none of them are appropriate comparisons. We also determine that the proprietary cost buildup Daikin submitted[51] is not reliable because it does not use the surrogate values that we selected for the various inputs indicated in the cost buildup.[52] Moreover, Daikin did not support its claims with any comparisons that demonstrate different prices for R-22 depending on end use within any individual national market. Thus, there are no price comparisons on the record that establish that the differences of Mexican import prices relative to the EU, the United States, or Mexican export prices are necessarily a result of the end use of the product rather than a result of differences in levels of economic development. The sole price comparison between countries at the same levels of economic development to China that exists on the record is between the Mexican import AUV and the Brazilian import AUV; the Brazilian import AUV, while lower than the Mexican import AUV, is much closer to the Mexican import AUV than it is to any of the EU import AUVs, the U.S. import AUVs, or the Mexican export AUV.[53]

Thus, although Daikin contends that the record demonstrates the price of refrigerant R-22 was significantly higher than the price of feedstock R-22 during the POI and that the only explanation for this price difference for these chemically identical products is the phase-out due to the Montreal Protocol, the record does not contain any price comparisons that support that the differences in prices involved were a result of the Montreal Protocol and not the result of other factors, such as differences in the economic comparability of the markets in which the prices were observed. Moreover, although Daikin contends that the fact that imports did not decline significantly or that the quota did not change between 2015 and 2017 does not mean that overall available supply did not decline and that there was already a decline in available supply by 2015 and businesses had to prepare for future declines, Daikin does not cite to any record evidence to support this contention.

We acknowledge that we mistakenly stated that the baseline was 2015 rather than 2013.[54] However, this does not impact our analysis because, for R-22, the consumption limit for Mexico has remained the same from 2015 through the POI.[55] Moreover, it is not clear that the 2015 consumption limit for R-22 represents a reduction of any amount from the 2013 baseline; although the calendar of elimination of hydrofluorocarbons (HCFCs) indicates a reduction of 10 percent by 2015 and a reduction of 30 percent by 2018,[56] the Licensing / Quota System for

---

[50] *See* Daikin SV Rebuttal at Exhibit 10.
[51] *Id*. at Exhibit 3.
[52] *See* Memorandum to file, "Polytetrafluoroethylene Resin from the People's Republic of China: Surrogate Values for the Preliminary Affirmative Determination of Sales at Less Than Fair Value," dated April 30, 2018, at Exhibit 2.
[53] *See* the petitioner's R-22 Comments at Exhibit 1.
[54] *See* Letter from Daikin, "Polytetrafluoroethylene (PTFE) Resin from the People's Republic of China: Submission of Factual Information," dated March 30, 2018, at Exhibit 9, page 8 of the translation (Table 2).
[55] *See* Letter from Daikin, "Polytetrafluoroethylene (PTFE) Resin from the People's Republic of China: Surrogate Value Rebuttal Comments," dated February 12, 2018, at Exhibit 4, pages 15-16 of the translation.
[56] *See* Letter from Daikin, "Polytetrafluoroethylene (PTFE) Resin from the People's Republic of China: Submission

HCFCs for Mexico shows that there is no change in the consumption limit for R-22 from 2015 until 2020.[57] Rather, it appears that Mexico is implementing the entire agreed-upon reduction of HCFCs scheduled for 2018 by reducing a different HCFC, namely NCFC-141B.[58] Moreover, because the Licensing / Quota System for HCFCs for Mexico does not indicate what the 2013 baseline is, we cannot ascertain whether the 2015 consumption limit for R-22 is different from the 2013 baseline.

For the foregoing reasons, we continue to determine that the Mexican AUV for R-22 is the best available SV information on the record. We also determine that the record does not support the conclusion that the Mexican import AUV of R-22 is aberrational. Moreover, Commerce normally values all FOPs in a single surrogate country.[59] Accordingly, we determine that it is not appropriate to depart from the use of the Mexican import price of R-22 in this investigation.

Comment 5: Surrogate Financial Ratios

Daikin argues that Commerce should use Mexichem's financial statements in the calculation of the surrogate financial ratios.

- Commerce used the financial statement of CYDSA S.A. de C.Y. (CYDSA) and declined to use Mexichem's financial statement on the grounds that Mexichem is a multi-national corporation and that the company's financial statements reflect world-wide operations.
- Commerce has never previously disqualified Mexichem's financial statements based on the fact that the company is a multi-national.
    - In *R-134a*[60] and *HFC Blends*,[61] Commerce averaged CYDSA's and Mexichem's financial statements.
    - There is no justification for Commerce's using Mexichem's financial statements in prior investigations but not in this one.

- Daikin argues that the reason provided by Commerce for using the CYDSA financial statements is because it is a Mexican producer of comparable merchandise.
    - Mexichem is also a producer of comparable products including major inputs in the production of PTFE.
- Commerce's preference is to use multiple financial statements to determine surrogate financial ratios because it allows Commerce to normalize any potential distortions that may arise from using those of a single producer.

The petitioner argues that Commerce should use CYDSA's financial statements alone to calculate surrogate financial ratios.

---

of Factual Information," dated March 30, 2018, at Exhibit 9, page 8 of the translation (Table 2).

[57] *See* Letter from Daikin, "Polytetrafluoroethylene (PTFE) Resin from the People's Republic of China: Surrogate Value Rebuttal Comments," dated February 12, 2018, at Exhibit 4, pages 15-16 of the translation.

[58] *Id*.

[59] *See* 19 CFR 351.408(c)(2).

[60] *See 1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part*, 82 FR 12192 (March 1, 2017) (*R-134a*) and accompanying Issues and Decision Memorandum at Comment 6.

[61] *See HFC Blends*, 81 FR 42314, and accompanying Issues and Decision Memorandum at Comment 30.

- CYDSA's financial statements are superior to Mexichem's financial statements for the purpose of calculating surrogate financial ratios.
- CYDSA manufactures refrigerant products in Mexico and its financial statements represent production costs in Mexico.
- In contrast, Mexichem produces neither PTFE nor any key input used in PTFE production.
- Moreover, the Mexichem financial statements reflect the revenues and expenses associated with production and operational facilities in 37 countries across the world, including Europe, Asia and Africa.
  - As such, Mexichem's financial ratios are less specific to the product under investigation and are unrepresentative of production experiences in Mexico.
- Neither Commerce practice nor the statute require that the financial statements be averaged.

Commerce's Position: While we agree that we have a preference for using multiple financial statements to determine surrogate financial ratios,[62] there is nothing in the statute or our regulations that require that multiple financial statements, when on the record, be averaged, nor does our practice impose such a requirement. In fact, this preference is dependent on the multiple financial statements being considered as more or less equally appropriate for use in calculating surrogate financial ratios and does not override our directive to use the best available information. In this investigation, the statements are not equal. CYDSA's financial statements were consolidated only with other Mexican companies[63] whereas Mexichem's financial statements were consolidated with its worldwide operations, which include subsidiaries in Europe, Asia, South America, and the United States.[64] Because of this, we determine that CYDSA's financial statements are more representative of the Mexican economy and production experiences than Mexichem's financial statements and, therefore, are superior for the purpose of calculating surrogate financial ratios.

Furthermore, Daikin's citations to *R-134a* and *HFC Blends* are unavailing. In those cases, we used the financial statements of both CYDSA and Mexichem; however, the issue before us in both of those cases was whether CYDSA's financial statements were sufficiently detailed for us to use as surrogate financial statements; in both cases, as in this investigation, we determined that they were.[65] The issue as to whether one company's financial statements were superior to the other company's financial statements for the purpose of calculating surrogate financial ratios because of the nature of the consolidated companies was not raised in either of those cases.

For the foregoing reasons, we have continued to use only CYDSA's financial statements to calculate surrogate financial ratios in this investigation.

---

[62] *See*, *e.g.*, *HFC Blends*, 81 FR at 42314, and accompanying Issues and Decision Memorandum at Comment 30.
[63] *See* Petitioner's SV Comments at Exhibit 10.
[64] *See* Daikin's SV Comments at Exhibit SV-9.
[65] *See R-134a*, 82 FR at 12192, and accompanying Issues and Decision Memorandum at Comment 6; *HFC Blends*, 81 FR at 42314, and accompanying Issues and Decision Memorandum at Comment 30.

B. Separate Rate Eligibility

Comment 6: Zhejiang Jusheng Fluorochemical Co., Ltd.

Respondent's Arguments

- Commerce should find that Jusheng is eligible for a separate rate.

- In NME proceedings, Commerce presumes that all companies within the NME are subject to governmental control and should be assigned a single AD rate unless an exporter demonstrates the absence of both *de jure* and *de facto* governmental control over its export activities. In its current form, the test consists of three *de jure*, and four *de facto* separate rate criteria and is used to determine control over export activities. The test was introduced in *Sparklers*,[66] revisited in *Silicon Carbide*,[67] and refined in the 2005 *Separate Rates Policy Bulletin*.[68]

- As recently as *Carbon Steel Flat Products* in 2001, Commerce's focus on control over export activities allowed Chinese companies with no private ownership, *i.e.*, those "owned by all the people," to receive separate rates in cases in which government ownership does not influence the company's export activities.[69]
  - Although it did not announce its changes, Commerce changed its separate rates practice in *Diamond Sawblades*, when, during 2013 and 2014, it denied a separate rate to a respondent which it determined was controlled by the State-owned Assets Supervision and Administration Commission (SASAC) (a government entity). SASAC controlled the China Iron and Steel Research Institute (CISRI), which was "wholly owned by the people" during the investigation (and was later reorganized into a wholly state-owned enterprise during the POR of the first administrative

---

[66] *See* Jusheng's Case Brief at 2 citing *Sparklers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 56 FR 20,588 (May 6, 1991) and the accompanying Issues and Decision Memorandum at Comment 1. (*Sparklers*) ("We have determined that exports in nonmarket economy countries are entitled to separate, company-specific margins when they can demonstrate an absence of central government control, both in law and in fact, with respect to export activities.)

[67] *See* Jusheng's Case Brief at 2 citing *Silicon Carbide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 59 FR 22,585 (May 2, 1994) (*Silicon Carbide*) (Companies for which the record of this investigation demonstrates a *de jure* and *de facto* absence of government control over export activities are eligible for separate rates.)

[68] *See* Jusheng's Case Brief at 4 citing *Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries*, 70 FR17233 (April 5, 2005) (*Separate Rates Policy Bulletin*).

[69] *See* Jusheng's Case Brief at 3 citing, *e.g.*, *Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 66 FR 49632 (September 28, 2001) (*Carbon Steel Flat Products*).

review). Commerce denied a separate rate to this respondent because CISRI exerted influence over the selection of the respondent's management.[70]

- Since the CIT affirmed the Diamond Sawblades Redetermination, Commerce has adopted a separate rates practice that presumes majority government ownership results in *de facto* government control without the support of any additional evidence, and Commerce has employed this practice in the instant situation.[71] Commerce has made no indication that it has changed its separate rates test from its longstanding practice established in *Sparkers* and *Silicon Carbide*, and therefore it should rely on its existing practice in the final determination.[72]

- Commerce should acknowledge the reverse of decades of administrative precedent. Before *Diamond Sawblades*, ownership alone was not considered dispositive in the determination of separate rates. *WelCom* supports this claim whereby, if Commerce "provides no reasonable explanation for changing a practice that it consistently followed, such a change is an unacceptable agency practice."[73]

- Under its new approach, Commerce continues to recognize, as in *Graphite Electrodes*, that it must still consider the "totality of circumstances" when considering the separate rates criteria.[74]

- In the *Preliminary Determination* Commerce found:
    - Jusheng is owned by Zhejiang Juhua Co., Ltd. (Zhejiang Juhua), a publicly traded company, listed on the Shanghai Stock Exchange.
    - Zhejiang Juhua is 51.91 percent owned by Juhua Group Corporation (Juhua Group). Juhua Group is a state-owned company supervised by Zhejiang SASAC.[75]

---

[70] *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 Tech I*), available at http://enforcement.trade.gov/remands/12-147.pdf at 8-9 (Diamond Sawblades Redetermination), *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013) (*Advanced Tech II*), *aff'd Advanced Technology &Materials Co., Ltd. v. United States*, Case No. 2014-1154 (CAFC 2014) (*Advanced Tech. III*). *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 (Dec. 20, 2013) (*Diamond Sawblades AR1112 Prelim)*, and the 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 Fed. Reg. 35,723 (June 24, 2014) (*Diamond Sawblades AR1112 Final*), and the accompanying Issues and Decision Memorandum at Comment 1.

[71] *See* Jusheng's Case Brief at 6, citing *Tetrafluoroethane* and the accompanying Issues and Decision Memorandum at Comment 1.

[72] *See* Jusheng's Case Brief at 24.

[73] *Id.* at 6 citing *WelCom Prods., Inc. v. United States*, 865 F. Supp. 2d 1340, 1344 (CIT 2012) (*WelCom*).

[74] *See* Jusheng's Case Brief at 6, citing *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62474 (September 9, 2016) (*Graphite Electrodes*) and the accompanying Issues and Decision Memorandum at Comment 1. (Liaoning SASAC owned a minority stake in Fushun Carbon (a producer). Fushun Carbon was owned by Fangda Carbon (a producer and the exporter of Fushun Carbon's subject merchandise), and Fangda Carbon received a separate rate).

[75] *See* Jusheng's Case Brief at 6, citing Jusheng SRA at 11-12.

- Zhejiang Juhua's Board of Directors and Board of Supervisors are elected democratically and lawfully through a meeting open to all shareholders.
- The *Company Law of the People's Republic of China* (*Company Law*), dated March 1, 2014, indicates that the government has the ability to control the business activities of a company when the government is the controlling shareholder.[76]

- The *Preliminary Determination* is flawed.
    - Commerce's decision to deny Jusheng a separate rate hinges on the finding that the Government of China merely "has the ability to control" Jusheng – as opposed to actual findings of government control.[77]
    - In *Jiangsu Jiasheng* the CIT recognized that ownership of a respondent is "not dispositive of the *de facto* autonomy inquiry, because it speaks solely to the possibility for government control…not whether such control was in fact reasonably likely to have been exercised."[78] Further, the CIT has found that "in an NME country, there will usually be state involvement and *authority* to intervene in commercial matters. But that fact alone does not necessarily lead to the conclusion that all NME producers and exporters should be categorically treated as in fact setting their prices according to some centralized strategy."[79]
    - The denial of Jusheng's separate rate explicitly retreats to a position Commerce disavowed in 1997 when it announced that "ownership…cannot be considered dispositive in establishing whether a company received a separate rate."[80]
    - By replacing consideration of the *de facto* criteria with a binary determination based on ownership, Commerce has failed to consider that its CIT-recognized separate rate analysis considers the "totality of circumstances,"[81] and has inexplicably departed from its agency practice. The *Preliminary Determination*'s truncated approach is the antithesis of considering a "totality" - defined as "an aggregate amount."[82]

- The CIT in *Rongxin* states that the *Advanced Tech II* Court did not find that where a respondent did not meet the burden of proof required by a single prong of the separate rate test, consideration of the other prongs was not necessary.[83] Commerce's exclusive focus on the ownership prong of the *de facto* criteria to deny Jusheng a separate rate is unsupported by substantial evidence.

---

[76] *See* Jusheng's Case Brief at 7, citing Commerce Memorandum "Polytetrafluoroethylene [sic] from the People's Republic of China: Preliminary Analysis Memorandum for Zhejiang Jusheng Fluorochemicals Co., Ltd.," dated April 30, 2018 (Jusheng Preliminary Determination Memo) at 1-2. *See also Company Law* at Articles 4 and 42.
[77] *See* Jusheng's Case Brief at 8, citing (Jusheng Preliminary Determination Memo at 1-2.
[78] *See* Jusheng's Case Brief at 8, citing *Jiangsu Jiasheng Photovoltaic Tech. Co. v. United States*, 28 F. Supp 3d 1317, 1348 (CIT 2015) (*Jiangsu Jiasheng I*).
[79] *Id*. at 1348-49 {emphasis in original}.
[80] *See* Jusheng's Case Brief at 9, citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from China: Final Results and Partial Termination of Antidumping Administrative Review*, 62 FR 6173 (February 11, 1997).
[81] *See* Jusheng's Case Brief at 9 citing *Graphite Electrodes* and accompanying issues and decision memorandum at Comment 1. *See also Jiangsu Jiasheng I* at note 60.
[82] *See* Jusheng's Case Brief at 9 citing https://www.merriam-webster.com/dictionary/totatlity.
[83] *See* Jusheng's Case Brief at 10 citing *Shandong Rongxin Imp. & Exp. Co. v. United States*, 203 F. Supp. 3d 1327, 1348 (CIT 2017) (*Rongxin*) (footnotes and citations omitted).

- To establish an absence of *de jure* government control, Jusheng cited several articles of both the *Company Law of the People's Republic of China* (*Company Law*), dated March 1, 2014, and the *Circular of the China Securities Regulatory Commission and the State Economic and Trade Commission on the Issuance of the Code of Corporate Governance for Listed Companies*, dated January 1, 2002 (*Corporate Code*).[84] Jusheng argues that referenced Articles from the *Company Law* and the *Corporate Code* demonstrate a lack of *de jure* control over Jusheng's export activities and that further, its business license and POI certificate of approval establish a lack of *de jure* government control.[85]

- Commerce previously made the purpose of analyzing the four *de facto* criteria of the separate rates test "extremely clear: to determine whether or not the China applicant's export activities are in fact subject to government control."[86]
  - The CIT has repeatedly stated that "it is {Commerce's} policy to assign all exporters of the merchandise subject to the review in an NME country a single {country-wide} 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 export activities, and thereby demonstrate its edibility for a separate rate."[87]
  - In *Jiangsu Jiasheng II* the CIT held that, in considering the "totality of circumstances," relevant *de facto* autonomy "can be established by evidence that {the} exporter sets its prices independently of the government and of other exporters, and that{the} exporter keeps the proceeds of its sales."[88]

- Jusheng argues that contrary to established practice, in the *Preliminary Determination* Commerce did not analyze all four of the factors or consider the totality of circumstances with respect to *de facto* government control, and that the facts do not support a finding of *de facto* government control of Jusheng's export activities.[89]

- Jusheng argues that the CAFC instructs that "a presumption is not merely rebuttable but completely vanishes upon introduction of evidence sufficient to support a finding of the

[84] *See* Jusheng's Case Brief at 10, cited items are available on the record of this segment in Separate Rate Application of Zhejiang Jusheng Fluorochemical Co., Ltd.: Antidumping Duty Investigation of Polytetrafluorethylene Resin from the People's Republic of China, A-570-066 {short cite removed} (Jusheng SRA Application) at exhibits 7A and 7B respectively. *See also* Jusheng Case Brief at 10-11 quoting Articles 3, 5, 37, 46, and 49 from the *Company Law* and Jusheng Case Brief at 11-13 quoting Articles 2, 19, and 20-27 from the *Corporate Code*.
[85] *See* Jusheng's Case Brief at 13, citing Jusheng SRA Application at Exhibits 4, and 5.
[86] *See* Jusheng's Case Brief at 14.
[87] *See* Jusheng Case Brief at 14, citing *Jiangsu Jiasheng Photovoltaic Technology Co., Ltd., v. United States*, 121 F. Supp. 3d 1263, 1339 (CIT 2015) (*Jiangsu Jiasheng II*); *Sigma Corp. v. United States*, 117 F.3d 1401, 1405 (CAFC 1997); *Tianjin Mach. Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1014 (CAFC 1992); *see also AMS Assocs. v. United States*, 719 F.3d 1376, 1379 (Fed. Cir. 2013); and, *Advanced Tech I* at 1347.
[88] *See* Jusheng's Case Brief at 14 citing *Jiangsu Jiasheng II* also, "the relevant *de jure* autonomy "can be demonstrated by reference to legislation and other government measures that decentralize control."
[89] *See* Jusheng's Case Brief at 15.

nonexistence of the presumed fact"[90] and that its evidence "satisfies this undemanding evidentiary threshold" such that Commerce is obligated to grant it a separate rate.[91]

- The SRA clearly established the absence of government control with respect to the four *de facto* criteria of the separate rates test.

(1) whether each exporter sets its own export prices independent of the government and without the approval of a government authority: Jusheng reported that it "independently operates its business and its intermediate and ultimate shareholder don't play a role more than a shareholder in a modern enterprises management system."[92] Jusheng provided Commerce with email correspondence with the U.S. customer regarding price and purchase orders signed by both parties.[93]

(2) whether the respondent has authority to negotiate and sign contracts and other agreements: Jusheng's contracts and other agreements are conducted and concluded without oversight by or consultation with any government authority, including {Zhejiang SASAC}."[94] There is no information calling into question these facts.

(3) whether each exporter has autonomy from the government regarding the selection of management:

a. Neither Juhua Group nor SASAC are involved in the activities or selection of the Board of Directors and Board of Supervisors of Jusheng. Nor is SASAC involved in the activities or selection of the Board of Directors and Board of Supervisors of Zhejiang Juhua;[95] Article 39 of Zhejiang Juhua's Articles of Association (which define the controlling shareholders responsibilities to the business, insofar as they are not allowed to take any action which would harm Zhejiang Juhua or its owners,) provides that Zhejiang Juhua's controlling shareholder (Juhua Group) is a "passive investor," and Zhejiang Juhua operates as if it were 100 percent owned by the public;[96] when selecting its board of directors and management, Zhejiang Juhua and Jusheng followed procedures in the *Company Law*, and the *Corporate Code*.

b. Zhejiang Juhua's Articles of Association at Article 40,[97] explain that the shareholders through a general meeting shall exercise the power of electing and changing the directors and supervisors who are not the employee representatives

---

[90] *See* Jusheng's Case Brief at 15, citing *Aukerman Co. v. R.L. Chaides Constr. Co.*, 960 F.2d 1020, 1037 (CAFC 1992).
[91] *See* Jusheng's Case Brief at 15.
[92] *Id*.
[93] *Id.* at 16.
[94] *Id*.
[95] *Id.* at 17, citing Jusheng SRA at 13.
[96] *See* Jusheng's Case Brief at 17, citing Jusheng SRA at 14, Exhibit 7C.
[97] *Id.*

and shall make decisions on the matters concerning their remuneration.[98] Article 42 calls for a general meeting of the company's shareholders, when a company is short the required number of directors.[99]

c. Under Article 119 the chairman and vice-chairman of the Board of Directors of Zhejiang Juhua shall be elected by the Board of Directors through affirmative votes by a majority of all the directors.[100]

d. Zhejiang Juhua's Board of Directors during the POI was elected at Zhejiang Juhua's shareholders' meeting. The chairman and vice chairmen of the board of directors and senior management of Zhejiang Juhua are selected by its own board members.[101]

e. Zhejiang Juhua's largest shareholder, Juhua Group, cannot appoint the board members of Zhejiang Juhua without violating corporate law. Article 20 of the *Corporate Code* provides that the controlling shareholder "shall nominate the candidates for directors and supervisors. The resolutions made through the shareholders' meetings electing personnel or the Board of Directors' resolutions appointing personnel are not subject to approval procedures by the controlling shareholders."[102] Further, Article 21 provides for the supremacy of the shareholders meeting in determining "important decisions" for the company, and that process should not be circumvented by the controlling shareholder.[103]

f. Articles 56 of Zhejiang Juhua's Articles of Association requires disclosure of any affiliations of candidates for directors and supervisors with controlling shareholders.[104] Article 86 provides for shareholder vote counting to "effectively guarantee a democratic election of the Board of Directors."

g. Article 82 of Zhejiang Juhua's Articles of Association adopts cumulative voting for the election of its directors ensuring that no one shareholder controls its directors and that minority shareholders are have recourse to attain representation.[105] Zhejiang Juhua has implemented internet voting for the election of its board of directors making voting more convenient for smaller shareholders.[106]

---

[98] *See* Jusheng's Case Brief at 19, citing SRA at Exhibit 7C and the *Company Law* at Article 37, Item 2, Paragraph 1, and Article 99 available on the record at SRA Exhibit 7A.
[99] *See* Jusheng's Case Brief at 19, citing SRA at Exhibit 7C.
[100] *Id.*
[101] *See* Jusheng's Case Brief at 18.
[102] *Id.* at 20, citing SRA at Exhibit 7B.
[103] *Id.*
[104] *See* Jusheng's Case Brief at 20, citing SRA at Exhibit 7C.
[105] *Id. See also* Jusheng's SRA at 15-16 and Exhibit 7D. (In an election to fill three vacancies on the board, a shareholder with 100 shares (i.e., 100 votes) could cast 300 votes for a single candidate rather than simply casting 100 votes for three separate candidates. In contrast, in "regular" or "statutory" voting, shareholders may not give more than one vote per share to any single nominee.)
[106] *See* Jusheng's Case Brief at 21, citing SRA at 16 and Exhibit 7D.

h. Articles 125 and 127 of Zhejiang Juhua's Articles of Association provides that a meeting of the Board of Directors may not be held unless attended by at least half of the directors. Each director has one vote. A resolution adopted by the board of directors requires affirmative votes by more than half of all the directors:[107] Article 137 of Zhejiang Juhua's Articles of Association states that persons who assume positions other than directors at the controlling shareholders or the actual controllers of the Company shall not assume a position of senior management of the Company;[108] and Zhejiang Juhua's senior management is selected by its own board members[109] therefore, Zhejiang Juhua's management is not subject to government control.

i. Jusheng's board members and general manager are appointed by its shareholders – not by SASAC or Juhua Group.[110]

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

a. Jusheng has demonstrated that it retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[111] During the POI, Jusheng did not make any disbursements to government accounts other than for tax or government-provided goods or services.[112] Jusheng provided as confirmation of the distribution of profits a complete list of its bank accounts, and its financial statement.[113]

b. Zhejiang Juhua's shareholders' meeting, including minority shareholders, decided on Zhejiang Juhua's profit distribution.[114]

c. Article 173 of Zhejiang Juhua's Articles of Association states that the Board of Directors including independent directors may communicate with shareholders (especially those with small and medium sized holdings) when discussing profit distribution. Jusheng's profit distribution is determined by its shareholders.[115]

- In general:
  a. Commerce did not cite a single instance in which SASAC or the Chinese government "influenced" Jusheng's decision making process, let alone its decisions related to

[107] *See* Jusheng's Case Brief at 22, citing SRA at Exhibit 7C.
[108] *Id*. {emphasis removed}
[109] *See* Jusheng's Case Brief at 22, citing SRA at Exhibit 7D.
[110] *See* Jusheng's Case Brief at 22, citing SRA at Exhibit 12.
[111] *See* Jusheng's Case Brief at 22-23 citing SRA at Exhibit 22.
[112] *Id.*
[113] *See* Jusheng's Case Brief at 23, citing SRA at Exhibit 9, and 14.
[114] *See* Jusheng's Case Brief at 23, citing SRA at Exhibit 13B.
[115] *See* Jusheng's Case Brief at 23, citing SRA at Exhibit 13A.

export activities.[116]

b. Being a publicly traded company is essentially a shield to prevent SASAC from interfering with the business operation of a listed company, such as Zhejiang Juhua, and this is the fundamental purpose of the *Company Law* and the *Corporate Code*.[117]
c. SASAC-supervised investor, Juhua Group, is no different from any other public investor in Zhejiang Juhua - it seeks profit from its ownership stake. SASAC's purpose is to make sure state assets do not get purloined, and that those assets maintain or increase in value. It is absurd to conclude that SASAC controls an invested company's subsidiaries' operationally, and that SASAC controls its export activities, and approves its sales contracts and agreements - it defeats the purpose of increasing the value of state assets.[118]
d. Commerce's "flow-through" control theory is untenable; it is unclear how SASAC can control Zhejiang Juhua's subsidiary.[119]

Petitioner's Comments

- Zhejiang SASAC's majority ownership of Jusheng's parent, Zhejiang Juhua, in and of itself, renders Jusheng ineligible for a separate rate.[120]

- Commerce stated: "{W}here 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 respondent is not eligible for a separate rate" in 2014, in the *Diamond Sawblades Review*.[121]

- It is not in dispute that Jusheng's controlling shareholder is Zhejiang Juhua, that Juhua Group owns 51.91 percent of Zhejiang Juhua, as of June 30, 2017, and that Juhua Group "is a state-owned company supervised by {Zhejiang SASAC}."[122]

- Jusheng ignores that Juhua Group controls Jusheng through its majority ownership of Zhejiang Juhua. Commerce stated in the Diamond Sawblades Redetermination and in the *HFC Blends Final* that, "the government could control the company through traditional corporate control."[123] Consequently, Jusheng is ineligible for separate rate status.

---

[116] *See* Jusheng's Case Brief at 24.
[117] *Id.* at 24-25.
[118] *Id.* at 25.
[119] *Id*.
[120] *See* Petitioner Rebuttal Brief at 13, citing Jusheng Preliminary Determination Memo at 2; *see also Preliminary Determination* at 13.
[121] *See* Petitioner Rebuttal Brief at 14, citing *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*; 2014-2015, 81 FR 89045 (Dec. 9, 2016), and the accompanying Preliminary Decision Memorandum at 5, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2014-2015, 82 FR 26912 (June 12, 2017) (*Diamond Sawblades Review*).
[122] *See* Petitioner Rebuttal Brief at 14, citing Jusheng's SRA at 12.
[123] *See* Petitioner Rebuttal Brief at 14, citing Diamond Sawblades Redetermination; *see also Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than*

- The instant situation and that in *Advanced Tech* line of cases share key facts: "(1) in both cases a wholly owned subsidiary of SASAC held a majority share in the Chinese applicant for a separate rate; and (2) the SASAC-owned company had authority to place individuals on the board of the Chinese applicant for a separate rate."[124]

- In *HFC Blends* and *Tetrafluoroethane* Commerce addressed virtually the same arguments as Jusheng's with respect to similar companies in light of similar factual records.[125] It would be arbitrary for Commerce to treat this case differently than *Advanced Tech I* without a factual basis for distinguishing these cases.[126]

- In similar cases, Commerce has denied separate rates because the respondent's prior questionnaire responses "failed to show an absence of *de facto* control" and that "no structural changes" were subsequently made to the respondents' ownership structure, such that the respondent must be assigned the NME-wide rate.[127]

- Commerce should continue to deny separate rate treatment to Jusheng because it is owned by Zhejiang SASAC. Nevertheless, the record does not support a finding of *de jure* and *de facto* independence for Jusheng.

- *De Jure* Control
  - Jusheng cites numerous articles of the *Company Law* and *Corporate Code* and argues that these documents "clearly demonstrate a lack of *de jure* control" over its export activities.[128] However, nothing in the *Company Law* indicates that the government cannot be a shareholder, director, or otherwise be involved in any role that would exercise control of a company.

Fair Value and Final Affirmative Determination of Critical Circumstances, 81 FR 42314 (June 29, 2016) (*HFC Blends Final*) and accompanying Issues and Decision Memorandum at comment 8.

[124] *See* Petitioner's Rebuttal Brief at 15, citing *Advanced Tech I*, 885 F. Supp. 2d at 1351-2; *see also Advanced Tech II*, 938 F. Supp. 2d at 1348 (the SASAC owned company "was active in the selection of ... management" of the Chinese applicant for a separate rate) {emphasis removed}.

[125] *See* Petitioner Rebuttal Brief at 15, citing *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 81 FR 5098 (February 1, 2016) and the accompanying Decision Memorandum at 23-24 (*HFC Blends Prelim*), unchanged in *HFC Blends Final* and the accompanying Issues and Decision Memorandum at Comment 8); *see also Tetrafluoroethane Final*.

[126] *See* Petitioner Rebuttal Brief at 15-16, citing *Pakfood Public Company Limited, et al. v. United States*, 753 F. Supp. 2d 1334, 1342 (CIT 2011) ("Commerce must comply with the basic principle of law that, absent a rational explanation for acting to the contrary, like cases should be decided alike") {citations omitted}; *SKF USA Inc. v. United States*, 263 F.3d 1369, 1382 (CAFC 2001) ("{I}t is well-established that 'an agency action is arbitrary when the agency offers insufficient reasons for treating similar situations differently'") (citing *Transactive Corp. v. United States*, 91 F.3d. 232, 237 (DC. Cir. 1996)).

[127] *See* Petitioner Rebuttal Brief at 16 citing *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review; 2014–2015*, 81 FR 64131 (Sept. 19, 2016), and the accompanying Decision memorandum at section entitled "Separate Rates"; *see also Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2013–2014*, 81 FR 17435 (March 29, 2106).

[128] *See* Petitioner Rebuttal Brief at 16 citing Jusheng Case Brief at 10{emphasis added}.

- o The *Company Law* suggests that companies must accept Chinese government supervision, insofar as Article 5 of the *Company Law* states explicitly that "{a} company shall, when engaging in business activities…accept the supervision of the Government."[129]
- o Commerce has explained that the *Company Law* is not incompatible with *de jure* control.[130] For example, in *Diamond Sawblades* the Court held that the *Company Law* 'appears neutral,' and that it was unclear how a company's corporate form could demonstrate the absence of government control because the government could control the company through traditional corporate control."[131]
- o The point of the Court's holding in *Advanced Tech I* is that PRC laws cannot be used to rebut the presumption of *de jure* control, unless they *explicitly* rebut the presence of PRC government control.[132]
- o Neither the *Company Law* or the *Corporate Code*, preclude or prevent SASAC from controlling companies in which it is a majority owner.[133]
- o Here there is affirmative evidence of actual corporate control by a Chinese state-owned enterprise – majority ownership.[134]

- *De Facto* Control: The facts here are similar to Commerce's prior determinations in *HFC Blends* and *Tetrafluoroethane Final*.[135] But the record includes additional evidence of *de facto* government control. Much of this information is business proprietary in nature.
  - o Record evidence suggests that Jusheng's prices are not set without the participation or approval of a government authority, and that a government entity is directly involved in its activities with respect to exports. Jusheng does not explain the inclusion of certain parties on its Export Declaration Forms.[136]
  - o An email exchange on the record demonstrates that Jusheng does not maintain independence in price negotiations.[137]
  - o Commerce found that the "government has the ability to control the business activities of a company when the government is the controlling shareholder." [138]
  - o Zhejiang Juhua's shareholders' general meeting for 2016, and accompanying legal opinion establishes the appointments of the Board of Directors and the Board of Supervisors, as well as, other key proposals related to the disposition of

---

[129] *See* Petitioner Rebuttal Brief at 16, citing Jusheng Case Brief at Exhibit 7A {emphasis removed}.
[130] *See* Petitioner Rebuttal Brief at 17, citing *HFC Blends* and the accompanying Issues and Decision Memorandum at Comment 8.
[131] *See* Petitioner Rebuttal Brief at 17, citing *HFC Blends* and the accompanying Issues and Decision Memorandum at Comment 8, referencing Diamond Sawblades Redetermination and *Advanced Tech I* at 1353.
[132] *See* Petitioner Rebuttal Brief at 17.
[133] *Id.* at 18.
[134] *Id.*
[135] *See* Petitioner Rebuttal Brief at 18, citing *1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part,* 82 FR 12192 (March 1, 2017) (*Tetrafluoroethane Final*) and accompanying Issues and Decision Memorandum at 12-16.
[136] *See* Petitioner Rebuttal Brief at 19, citing Jusheng SRA at Exhibit 3.
[137] *See* Petitioner Rebuttal Brief at 19, citing Jusheng SRA at Exhibit 11.
[138] *See* Petitioner Rebuttal Brief at 20, citing Jusheng SRA at Exhibit 7D.

capital.[139] These documents do not support the contention that Zhejiang Juhua controls appointments to its boards or controls how its profits are employed.
  - Juhua Group's ownership of 51.91 percent of Zhejiang Juhua provides Juhua Group with a majority of shares, and the same proportion of votes in the shareholders' meeting. Cumulative voting has no bearing on the control that being majority shareholder provides.[140]
  - Record evidence refutes Jusheng's claims to have autonomy with respect to their disposition of profits or financing of losses.[141]
  - Record evidence refutes Jusheng's claim that Juhua Group is "a passive investor," however Zhejiang Juhua's articles of association at Article 42 and other record evidence indicates otherwise.[142]

- Based on the foregoing and consistent with past practice and precedent, Commerce should conclude that Jusheng is ineligible for a separate rate in its Final Determination.

Commerce's Position: We continue to find that Jusheng is not eligible for a separate rate because it has not demonstrated an absence of *de facto* government control. In the *Preliminary Determination*, we determined that Jusheng did not demonstrate an absence of *de facto* government control because it is an entity that is majority-owned by the Chinese government. Our determination was based on our analysis of business proprietary information submitted on the record of this investigation. Therefore, we addressed this matter in a separate business proprietary memorandum.[143]

In the *Preliminary Determination*, we explained that, in AD proceedings involving NME countries such as China, Commerce has a rebuttable presumption that the export activities of all firms operating within the country are subject to government control and influence.[144] It is Commerce's policy to assign all exporters of the merchandise subject to review in a NME country a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish that a company is independent of government control and, therefore, entitled to a separate rate, Commerce analyzes each exporting entity in a NME country under the test established in *Sparklers*,[145] as further developed in *Silicon Carbide*.[146] Together, these tests require a respondent to demonstrate an absence of both *de jure* and *de facto* government control with respect to exports.[147] The consequences of failing to do so means the exporter will be assigned

---

[139] *Id.*
[140] *See* Petitioner Rebuttal Brief at 21, citing Jusheng SRA at 12.
[141] *Id.*
[142] *See* Petitioner Rebuttal Brief at 21 citing Jusheng SRA at Exhibit 13A.
[143] *See* Jusheng Preliminary Determination Memo at 1-2.
[144] *See Preliminary Determination* and the accompanying Preliminary Decision Memorandum at 9.
[145] *See Sparklers*, 56 FR at 20589.
[146] *See Silicon Carbide*, 59 FR at 22587.
[147] S*ee 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 Issues and Decision Memorandum at Comment 3.

the single rate given to the NME-wide entity.[148] In sum, Commerce determines whether an exporter has demonstrated an ability to control its own commercial decision making concerning exportation of the subject merchandise, *i.e.*, whether decisions at the firm level are separate and apart from decisions made at the central government level with respect to exports.

As we explained in the *Preliminary Determination*, Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China proceeding, and its determinations therein.[149] In recent proceedings, we have concluded that where a government entity holds a majority equity ownership, 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.[150] This may include control over, for example, the selection of board members and management, which are key factors in determining whether a company has sufficient independence in its export activities to merit a separate rate.[151] Consistent with our normal separate rate practice, any ability to

[148] The Federal Circuit has upheld the application of the "NME presumption," in *Sigma Corp. v. United States,* 117 F.3d 1401, 1405-06 (CAFC 1997). In setting forth its NME policy, "Commerce made clear the consequences to an exporter of not rebutting the presumption of state control and establishing its independence: the exporter would be assigned the single rate given to the NME entity. Shortly thereafter, the Court of International Trade acknowledged and sustained Commerce's NME policy." *Transcom Inc. v. United States,* 294 F.3d 1371, 1381-82 (Fed. Cir. 2002) (citation omitted).

[149] *See* Diamond Sawblades Redetermination in *Advanced Tech I*, 885 F. Supp. 2d at 1343, sustained in *Advanced Tech II*, 938 F. Supp. 2d at 1342, aff'd *Advanced Tech III*; *see also Diamond Sawblades AR1112 Prelim*, 78 FR at 77098, and accompanying Preliminary Decision Memorandum at 7, unchanged in *Diamond Sawblades AR1112 Final*, 79 FR at 35723, and accompanying Issues and Decision Memorandum at Comment 1.

[150] *See Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Rescission of Review, in Part; 2015–2016*, 83 FR 2137 (January 16, 2018), and the accompanying Decision Memorandum at 9, unchanged in *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission; 2015-2016*, 83 FR 35461 (July 26, 2018) (*Wood Flooring*) and the accompanying Issues and Decision Memorandum at Comment 2; *see* also *HFC Blends Prelim* and the accompanying Decision Memorandum at 23-24, unchanged in *HFC Blends Final* and the accompanying Issues and Decision Memorandum at Comment 8; *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 81 FR 75 (January 4, 2016) and accompanying Preliminary Decision Memorandum at 15; unchanged in *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, in Part,* 81 FR 35316 (June 2, 2016); *1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Preliminary Determination of Sales at Less-Than-Fair Value and Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination,* 81 FR 69786 (October 7, 2016) (*Tetrafluoroethane Prelim*) and accompanying Decision Memorandum at 17, unchanged in *Tetrafluoroethane Final* and accompanying Issues and Decision Memorandum at 12-16; *Truck and Bus Tires from the People's Republic of China: Preliminary Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances, and Postponement of Final Determination*, 81 FR 61186 (September 6, 2016) (*Truck and Bus Tires Prelim*) and accompanying Decision Memorandum at 13, unchanged in *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 8599 (January 27, 2017) (*Truck and Bus Tires Final*) and accompanying Issues and Decision Memorandum at Comment 2.

[151] *See*, *e.g., HFC Blends Final* and the accompanying Issues and Decision Memorandum at Comment 8 (citing *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 Decision Memorandum at 5-9, unchanged in *Carbon and Certain*

control, or possess an interest in controlling the operations of the company (including the selection of board members, management, and the profit distribution of the company) by a government entity is subject to Commerce's rebuttable presumption that all companies within the NME country are subject to government control.[152] As we did for the *Preliminary Determination*,[153] in assessing the degree of government control over Jusheng, we analyzed the level of its government ownership, by which we found a chain of majority ownership sufficient to determine that Jusheng has not rebutted the presumption of government control.[154]

The record supports that Jusheng is indirectly majority-owned by an SOE. In particular, Jusheng reported that during the POI it was owned by Zhejiang Juhua,[155] which was 51.91 percent owned by Juhua Group, "a state-owned company supervised by {Zhejiang SASAC}."[156] Given that Juhua Group holds a majority ownership share in Zhejiang Juhua,[157] which in turn holds a majority ownership share in Jusheng, Commerce finds that both Zhejiang Juhua and Jusheng are controlled by the Juhua Group. Generally, at the shareholders' meetings of these companies, shareholders elect boards of directors, which appoint the management.[158] 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.[159] Additional business proprietary information on the

---

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 Preliminary Determination* and accompanying Preliminary Decision Memorandum at 12 (discussing the four factors Commerce uses to evaluate whether a respondent is subject to *de facto* government control over its export functions).

[152] *See*, *e.g.*, *Tetrafluoroethane Prelim* and the accompanying Decision Memorandum at 14, unchanged in *Tetrafluoroethane Final*.

[153] *See Preliminary Determination* and the accompanying Preliminary Decision Memorandum at 10, 13.

[154] The CAFC has held that Commerce has the authority to place the burden on the exporter to establish an absence of government control. *See Sigma*, 117 F.3d at 1405-06.

[155] The actual ownership information constitutes business proprietary information but is however available on the record at Jusheng SRA at 11.

[156] *See* Jusheng SRA at 12.

[157] *See* Jusheng Case Brief at 17 citing Article 40 of Zhejiang Juhua's Articles of Association.

[158] Zhejiang Juhua's Articles of Association at Article 40 explain that "the shareholders through a general meeting shall exercise the power of electing and changing the directors and supervisors who are not the employee representatives, and shall make decisions on the matters concerning their remuneration." Juhua Group's majority ownership stake insures that it controls the selection of directors and supervisors and in turn controls the appointment of the management which transacts the day-to-day management of the company. Additionally, information concerning the election of boards and supervisors and the appointment of management can be found in Commerce Memorandum, "Polytetrafluorethylene from the People's Republic of China: Final Analysis Memorandum for Zhejiang Jusheng Fluorochemical Co., Ltd.," dated concurrently with this memorandum (Jusheng Final Determination Memo). *See* Jusheng SRA at Exhibits 7C and 10.

[159] *See Stainless Steel Sheet and Strip from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 81 FR 64135 (September 19, 2016) (*Stainless Steel Sheet and Strip Prelim*) and accompanying Decision Memorandum at 12-13, unchanged in *Antidumping Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 9716 (February 8, 2017) (*Stainless Steel Sheet and Strip Final*) and accompanying Issues and Decision Memorandum at 27-29. *See also Wood Flooring* and the accompanying Issues and Decision Memorandum at Comment 2.

record supports that expectation in this investigation.[160] Thus, we continue to conclude that the Zhejiang SASAC-owned entity (Juhua Group) exercises control, or has the potential to exercise, control over Jusheng's export operations *via* its ownership of Zhejiang Juhua, which holds a majority ownership interest in Jusheng. We find none of Jusheng's arguments regarding its purported autonomy from the government in selecting its management compelling, because these arguments do not alter our salient conclusion that Juhua Group has the ability to control the selection of management as a controlling shareholder in Zhejiang Juhua, and through its ownership in Zhejiang Juhua has the ability to control the selection of management as a controlling shareholder in Jusheng. In sum, we continue to find that Jusheng has failed to rebut the presumption of the management-selection factor of the *de facto* analysis.

Jusheng's insistence that Commerce has not provided explicit evidence tying the Chinese government to Jusheng's export activities is misplaced, considering that we have established a chain of control due to majority ownership from the Zhejiang SASAC-owned entity (the Juhua Group), through Zhejiang Juhua, to Jusheng. Further, in *Tetrafluoroethane* we determined that Juhua Group controlled Zhejiang Juhua, due to its 55.86 percent ownership stake (at that time), and we denied Zhejiang Juhua's wholly-owned subsidiary, Lianzhou, a separate rate. We found that Juhua Group controls the selection of Zhejiang Juhua's management and thus *de facto* control over Lianzhou exists."[161] Although Juhua Group controls less of Zhejiang Juhua during the POI here than it did in *Tetrafluoroethane*, it still controls a majority interest in it and maintains the ability to control it.

Contrary to Jusheng's contention, Commerce has reasonably explained our current separate rates practice with respect to direct or indirect control through equity ownership. This is evidenced by the extensive arguments in the Diamond Sawblades Redetermination, in which we responded to the CIT's requests to modify our practice with respect to the selection-of-management prong of the *de facto* criteria,[162] the additional cases cited above in which we have articulated and applied this recent separate rates practice,[163] and our *Preliminary Determination* in this investigation.[164]

Commerce "requires that exporters satisfy all four factors of the *de facto* control test in order to qualify for separate rate status."[165] As an exporter in a NME country that is directly or indirectly majority-owned by the government, Jusheng has the burden to show that it has such

[160] *See* Jusheng Final Determination Memo.
[161] *See Tetrafluoroethane Prelim* and the accompanying Decision Memorandum at 17, unchanged in *Tetrafluoroethane Final* and accompanying Issues and Decision Memorandum at 12-16.
[162] *See* Diamond Sawblades Redetermination at 3 ("ownership is relevant to the separate rates analysis to the extent that ownership, as well as the degree of ownership, affects *de facto* control.").
[163] *See, e.g., Tetrafluoroethane Prelim* and the accompanying Decision Memorandum at 17, unchanged in *Tetrafluoroethane Final* and accompanying Issues and Decision Memorandum at 12-16; *Truck and Bus Tires Prelim* and accompanying Decision Memorandum at 13, unchanged in *Truck and Bus Tires Final* and accompanying Issues and Decision Memorandum at Comment 2; and *HFC Blends Prelim* and the accompanying Decision Memorandum at 23-24, unchanged in *HFC Blends Final* and the accompanying Issues and Decision Memorandum at Comment 8.
[164] *See Preliminary Determination* and accompanying Preliminary Decision Memorandum at 10.
[165] *See Yantai*, 203 F. Supp. 3d at 1326; *see also Shandong Rongxin Imp. & Exp. Co., Ltd. v. United States*, Slip Op. 18-107, at 19, 23 (CIT August 29, 2018) ("a respondent must demonstrate that it meets each criterion of the analysis in order to be considered de facto independent of the government").

autonomy.[166] For this reason, given that Jusheng has not rebutted the presumption as to its autonomy from the government over the selection of management, we find it unnecessary to consider the other *de facto* prongs.

Jusheng nonetheless argues that we have not limited our examination to ownership and its ability to control the selection of management as a rule, because in *Graphite Electrodes* we continued to consider the "totality of circumstances," ***i.e.***, all four prongs of the *de facto* criteria and granted a separate rate to a company that had SASAC ownership.[167] In *Graphite Electrodes*, we granted Fangda Group a separate rate because the minor level of indirect regional SASAC ownership warranted consideration of the other *de facto* factors[168] That is a factually different scenario than the government control through ownership we have established with respect to Jusheng in this investigation. Here, control of Jusheng flows through levels of ownership starting with the SOE and ending with the respondent, in contrast to the situation in *Graphite Electrodes* in which the SOE owned less than a controlling interest in a subsidiary producer owned by the exporting member of the respondent group of companies.[169]

The Court in *Jiangsu Jiasheng I* stated that it is not the "possibility for government control over export activities" that is dispositive of the *de facto* autonomy inquiry, but whether "such control was in fact reasonably likely to have been exercised during the period of investigation."[170] Because Jusheng is ultimately owned by a SOE with majority control over its ownership chain, it is not only reasonably likely, but assured that the operations of the company is in and of itself, an exercise of the control of the SOE.

---

[166] *Id.*
[167] *See* Jusheng's Case Brief at 6 citing *Graphite Electrodes* and the accompanying Issues and Decision Memorandum at 1.
[168] *See Graphite Electrodes* and the accompanying Issues and Decision Memorandum at Comment 1.
[169] *Id*.
[170] *See Jiangsu Jiasheng I* at 1348.

B. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final determination of this investigation and the final dumping margins for all the investigated companies in the *Federal Register*.

☒	☐
Agree	Disagree

9/19/2018

X

Signed by: CHRISTIAN MARSH

Christian Marsh
Deputy Assistant Secretary
For Enforcement and Compliance