A-570-900
Admin. Rev.: 11/1/16-10/31/17
Public Document
AD/CVD I: YJC/JP

DATE: December 10, 2018

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

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

SUBJECT: Issues and Decision Memorandum for the Administrative Review of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the People's Republic of China, 2016-2017

I. Summary

We analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (China) covering the period of review (POR) November 1, 2016, through October 31, 2017. We did not make changes in the margins as a result of our analysis. We recommend that you approve the positions we have developed in the *Discussion of the Issues* section of this memorandum. Below is a complete list of the issues for which we have received comments and rebuttal comments from the interested parties:

Comment 1: Rate for Non-Selected Separate Rate Respondents
Comment 2: Respondent Identification in Liquidation Instructions

II. Background

On August 10, 2018, the Department of Commerce (Commerce) published the preliminary results of the administrative review of the antidumping duty order on diamond sawblades from

China.[1] We invited interested parties to comment on the *Preliminary Results*. We received case[2] and rebuttal[3] briefs for this administrative review.

III. Scope of the Order

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

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the order. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the order. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of the order. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the order. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the order.

Merchandise subject to the order is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. On October 11, 2011, Commerce included the 6804.21.00.00 HTSUS classification number to the customs case reference file, pursuant to a request by U.S. Customs and Border

[1] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 39673 (August 10, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

[2] *See* the case brief filed by Henan Huanghe Whirlwind International Co., Ltd. (Whirlwind) dated September 10, 2018, the case brief filed by Chengdu Huifeng New Material Technology Co., Ltd., Danyang Weiwang Tools Manufacturing Co., Ltd., Guilin Tebon Superhard Material Co., Ltd., Hangzhou Deer King Industrial and Trading Co., Ltd., Huzhou Gu's Import & Export Co., Ltd., the Jiangsu Fengtai Single Entity, Jiangsu Inter-China Group Corporation, Rizhao Hein Saw Co., Ltd., and Shanghai Jingquan Industrial Trade Co., Ltd. (collectively the nine separate rate respondents) dated September 10, 2018, and the case brief filed by the petitioner on September 10, 2018. Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd., Jiangsu Fengtai Tools Co., Ltd., and Jiangsu Fengtai Sawing Industry Co., Ltd., comprise the Jiangsu Fengtai Single Entity. *See Preliminary Results*, 83 FR at 39674 n.10, and accompanying Preliminary Decision Memorandum at 2, n.5. The petitioner is Diamond Sawblades Manufacturers' Coalition.

[3] *See* the petitioner's rebuttal brief dated September 17, 2018.

Protection.[4] Pursuant to requests by CBP, Commerce included to the customs case reference file the following HTSUS classification numbers: 8202.39.0040 and 8202.39.0070 on January 22, 2015, and 6804.21.0010 and 6804.21.0080 on January 26, 2015.[5]

The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

IV. Discussion of the Issues

Comment 1: Rate for Non-Selected Separate Rate Respondents

The nine separate rate respondents and Henan Huanghe Whirlwind International Co., Ltd. (Whirlwind) oppose Commerce's preliminary assignment of 82.05 percent to non-selected separate rate respondents in this administrative review. These respondents state that 82.05 percent is the China-wide rate assigned to two mandatory respondents as an adverse facts available (AFA) rate for their failure to respond to Commerce's requests for information in the last completed administrative review. Whirlwind argues that Commerce may not lawfully assign a China-wide, AFA rate to non-selected separate rate respondents that cooperated with Commerce's requests for information and rebutted the presumption of government control. The nine separate rate respondents claim that Commerce's assignment of 82.05 percent to non-selected separate rate respondents is unreasonable, punitive, and not supported by substantial evidence.

Whirlwind states that the *Preliminary Results* are contrary to the express language of the statute. Whirlwind contends that the statute only allows Commerce to use an adverse inference in selecting the facts otherwise available under limited circumstances, such as when an interested party has failed to cooperate by not acting to the best of its ability,[6] Whirlwind also states that Commerce under the explicit terms of the statute may only apply an adverse inference to the party that has not cooperated to the best of its ability.

Whirlwind states that the *Preliminary Results* are contrary to precedent, asserting that Commerce is theoretically allowed to average the *de minimis* rate and the AFA rate to determine the margin for cooperative non-mandatory respondents, even though the courts have consistently found the methodology unreasonable in practice.[7] Whirlwind argues that the assignment of the China-wide rate of 82.05 is undoubtedly punitive, contrary to law, and bears no relationship to the actual dumping rate of its company. Whirlwind contends that the courts have found it unreasonable to include an AFA rate in the averaged margin assigned to cooperative non-selected respondents.

Whirlwind argues that U.S. Court of International Trade (CIT) upheld Commerce's decision not to apply an AFA rate to cooperative non-selected separate rate respondents in *Shenzhen Xinboda*

---

[4] *See Diamond Sawblades and Parts Thereof from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 76128 (December 6, 2011).
[5] *See* the Memorandum, "Diamond Sawblades and Parts Therefore from the People's Republic of China: Placing Two Memoranda on the Record for Additional HTSUS Subheadings," dated November 28, 2018.
[6] *See* Whirlwind's case brief, dated September 10, 2018 at 4, n 8.
[7] *Id.* at page 6, n 12.

Industrial Co., Ltd. v. United States, 180 F. Supp. 3d 1305 (CIT 2016). Whirlwind also argues that the CIT rejected Commerce's application of an AFA rate in the averaged rate assigned to separate rate respondents in *Baroque Timber Industries (Zhongshan) Company Limited v. United States*, 971 F. Supp. 2d 1333, 1342 (CIT 2014).

Whirlwind argues that Commerce's only justification offered in the last completed administrative review was U.S. Court of Appeals for the Federal Circuit's (Federal Circuit) decision in *Albermarle Corp. v. United States,* 821 F.3d 1345 (Fed. Cir. 2016) (*Albemarle Corp.*).[8] Whirlwind asserts that *Albemarle Corp.* requires Commerce to calculate the antidumping margin as accurately as possible, assign cooperative respondents a margin that is not punitive and that bears some relationship to their actual dumping margin, and provide a reasonable explanation for the margin chosen.

Whirlwind states that Commerce unlawfully assigned separate rate respondents the China-wide rate despite the fact that Commerce acknowledged these companies rebutted the presumption of government control.[9] Whirlwind argues that if a party successfully rebuts the presumption of government control, it is entitled to an individual rate as in a market economy.[10] Whirlwind states that given the separate rate respondents in this administrative review both cooperated and rebutted the presumption of government control, it is unreasonable and unlawful for Commerce to assign these companies the China-wide rate.

Whirlwind believes that Commerce should assign separate rate respondents the separate rate margin from the most recent administrative review in which the margin was not based on AFA, which is the rate of 6.19 percent from the 2014-2015 administrative review.[11] Whirlwind argues that the courts have made it clear that Commerce is to use a margin for non-mandatory respondents that is as current as possible and not based on AFA. Whirlwind also states that the highest separate rate not fully or partially based on AFA was 29.76 percent which was from the 2013-2014 administrative review.[12] Whirlwind asserts that 6.19 percent is not only the most currently calculated separate rate margin but also consistent with previous margins assigned to sperate rate respondents in past administrative reviews of this order.

The nine separate rate respondents contend that Commerce neglected to articulate a rational connection between the record evidence and the China-wide rate applied to the separate rate respondents. They explain how Commerce made no such finding of non-cooperation by the non-selected separate rate respondents. The nine separate rate respondents state that, in assigning the non-selected separate rate respondents the punitive rate based entirely on AFA, Commerce neglected its responsibility to determine a separate rate that bears some relationship to the non-selected separate rate respondents' actual dumping margin.[13] The nine separate rate respondents explain further that Commerce has neglected to show how its decision bears a relationship to the

[8] *Id.* at page 8, n 24.
[9] *Id.* at page 11, n 29 and 30.
[10] *Id.* at page 11, n 32.
[11] *Id.* at page 12, n 35.
[12] *Id.* at page 13, n 39.
[13] *See* the nine separate rate respondents' case brief dated September 10, 2018 at page 5.

non-selected separate rate respondents' economic reality.[14] They state that the only, and insufficient, rationale provided by Commerce for its decision to assign the AFA rate to the separate rate respondents was that it was the only rate determined for the individually examined respondents.[15]

The nine separate rate respondents state that Commerce relies on the Federal Circuit's ruling in *Albermarle Corp.* to justify its calculations of the separate rate for the non-selected separate rate respondents. They state that the expected method of averaging the two China-wide rates of 82.05 percent assigned to the mandatory respondents and therefore assigning the China-wide rate of 82.05 percent to all the separate rate respondents is not "reasonably reflective of potential dumping margins" for the separate rate respondents.[16] The nine separate rate respondents claim that because the China-wide rate presumes government control, Commerce may not apply the China-wide rate where the respondent has established independence from government control and its entitlement to a rate separate from the China-wide rate.[17] Therefore, the nine separate rate respondents argue, Commerce has an obligation to select an alternative, reasonable method that is not punitive and more accurately reflects the non-selected separate rate respondents' commercial reality and estimated potential dumping margins.

The nine separate rate respondents contend that the assignment of the China-wide rate (that is equal to the AFA rate) to the fully cooperative separate respondents was contrary to law. The nine separate rate respondents state that Commerce made no findings in the *Preliminary Results* that any of these nine separate rate respondents withheld any requested information from Commerce or otherwise impeded Commerce's administrative review. They also explain that Commerce's *Preliminary Results* did not find that any of the separate rate companies failed to act to the best of their ability such as to warrant the application of AFA in calculating their estimated antidumping duty margins. They state that Commerce preliminarily determined that each of these nine separate rate respondents was eligible for a separate rate in this administrative review because either they were wholly-owned by a market economy company or they provided sufficient evidence to demonstrate a *de jure* and *de facto* absence of government control.[18]

The nine separate rate respondents state that Commerce has not justified the dumping margin assigned to the separate rate respondents and has wholly abrogated its duty to assign a margin for the non-selected separate rate respondents that is as accurate as possible.

The petitioner argues that Commerce should continue to apply the rate of 82.05 percent for the non-selected separate rate respondents, based on the margin calculated in the most recently completed administrative review. The petitioner states that the respondents do not argue that it was improper for Commerce to rely on the rate assigned in a prior review, *per se*; instead, they argue that is was improper for Commerce to assign this rate to the separate rate companies because it is the China-wide rate and is based on AFA.[19] The petitioner contends that as there

[14] *Id.*
[15] *Id.*
[16] *Id.* at page 6.
[17] *Id.* at page 7.
[18] *Id.* at page 9.
[19] *See* the petitioner's case brief dated September 17, 2018 at page 2, n. 9.

was no error with the separate rate assigned in the prior review, the respondents have provided no valid basis to refrain from using this rate. The petitioner argues that this administrative review is different from *Baroque Timber*, in which all mandatory respondents received a calculated margin of zero percent. The petitioner claims that *Shenzhen Xinboda* is distinguishable based on facts specific to that case and does not demonstrate that the expected method is unreasonable.

The petitioner claims that a deviation from the expected methodology simply because all individually-examined respondents received a rate based on AFA would be to read a distinction into the statute and legislative history that does not exist. Therefore, the petitioner states that the legislative history is clear that, if the margins for all examined entities are *de minimis* or are based on AFA, Commerce is expected to rely on those margins.

Commerce's Position: For the final results, we continue to assign to the non-selected separate rate respondents in this administrative review the separate rate assigned to the non-selected separate rate companies in the last completed administrative review. As explained in the *Preliminary Results*, the statute and Commerce's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act, but generally we have used section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in investigations, for guidance when calculating the rate for respondents we did not examine in an administrative review.[20] Section 735(c)(5)(B) of the Act provides that, where all rates are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the rate to all other respondents.[21] The Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) states that "{t}he expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available."[22]

Here, and as explained in the *Preliminary Results*, because the mandatory respondents failed to respond to our original questionnaire, they failed to rebut the presumption of government control, do not have separate rate status, and are part of the China-wide entity.[23] Therefore, in this administrative review, we have not calculated individual rates or assigned a rate based on facts available for any of the selected mandatory respondents.

As stated above, we determine to continue to assign to the non-selected separate rate respondents in this administrative review the separate rate assigned to the non-selected separate rate respondents in the last completed administrative review. Our assignment of the separate rate in this administrative review is not punitive because it is consistent with the rate applied to the non-selected separate rate respondents in the last completed administrative review. In the last completed administrative review, 12 of the 14 non-selected separate rate respondents in this

---

[20] *See Preliminary Results* and accompanying Preliminary Decision Memorandum at 8.
[21] *Id.*
[22] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (SAA) at 873.
[23] *See Preliminary Results* and accompanying Preliminary Decision Memorandum at 4-6.

administrative review received the same separate rate of 82.05 percent.[24] The rate we are assigning in this administrative review to the non-selected separate rate respondents is the rate we used in the last completed administrative review to the non-selected respondents that were fully cooperative in rebutting the presumption of government control.[25] The rate that those non-selected separate rate respondents received in that review was a rate consistent with the "expected method" of the SAA and *Albemarle Corp.*,[26] and it is not an indication that they failed to cooperate or rebut the presumption of government control.[27] In the last completed administrative review, we distinguished the non-selected separate rate respondents from the mandatory respondents that received an AFA rate due to their failure to cooperate.[28] In the last completed administrative review, we also identified the companies that failed to rebut the presumption of government control and thus were treated as part of the China-wide entity and received the China-wide rate.[29] Our treatment of the non-selected separate rate respondents in this administrative review is consistent with our treatment of the non-selected separate rate respondents in the last completed administrative review with respect to the rate assigned.

Furthermore, this approach is consistent with our practice in similar circumstances.[30] Because the non-selected separate rate respondents were not selected for individual examination, there are no dumping margins specifically calculated for these non-selected respondents on the record of this administrative review. In other words, we have no margin, whether calculated as above *de minimis*, *de minimis*, or zero, or determined based on facts available, on the record of this administrative review to assign to the non-selected separate rate respondents.[31] As explained in the last completed administrative review, our assignment of the separate rate to the non-selected separate rate respondents in that review was consistent with the statute, legislative history, court precedent (*e.g.*, *Albemarle Corp.*), and our practice.[32] Because we have no rate calculated or based on facts available in this administrative review,[33] and because the rate for the non-selected separate rate respondents in the last completed administrative review is the closest rate available in terms of the time of the determination of the rate, the rate assigned to the non-selected separate rate respondents in the last completed administrative review is the most reasonable rate that we may assign to the non-selected separate rate respondents. Because nearly all of the non-selected

---

[24] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015–2016*, 83 FR 17527, 17528 (April 20, 2018) (*Final Results 2015-2016*).
[25] *See Final Results 2015-2016* and accompanying Issues and Decision Memorandum (I&D Memo) at Comment 4.
[26] *See* SAA at 873; *Albemarle Corp.*, 821 F.3d at 1349-58.
[27] *See Final Results 2015-2016* and accompanying I&D Memo at Comment 4.
[28] *Id.* and accompanying I&D Memo at Comments 1, 2, and 4.
[29] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 57585, 57586 n.13 (December 6, 2017) and accompanying Preliminary Decision Memorandum at 9, unchanged in *Final Results 2015-2016*.
[30] *See*, *e.g.*, *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; 2015-2016*, 83 FR 1238, 1239 (January 10, 2018), and accompanying I&D Memo; *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2016-2017*, 83 FR 23424, 23426 (May 21, 2018) (*Steel Sinks*).
[31] *See Final Results 2015-2016* and accompanying I&D Memo at Comment 4.
[32] *Id.* for detailed explanation on our position.
[33] In this administrative review, the two mandatory respondents are part of the China-wide entity, which is not under review.

separate rate respondents in this administrative review received the same separate rate in the last completed administrative review, we find that the separate rate from the last completed administrative review reasonably reflects their margin for the period of this review. The margin of 6.19 percent is not the closest rate available in terms of the time of determination of the rate because the administrative review in which we calculated the margin of 6.19 percent is not the last completed administrative review.[34] Therefore, we find that the separate rate from the last completed administrative review is a reliable, non-punitive rate that Commerce can assign to the non-selected separate rate respondents in this administrative review.[35]

Comment 2: Respondent Identification in Liquidation Instructions

The petitioner requests that, to ensure the liquidation of subject merchandise exported by Chengdu Huifeng New Material Technology Co., Ltd. (Chengdu Huifeng) at the proper rate, Commerce should identify Chengdu Huifeng with its former name, Chengdu Huifeng Diamond Tools Co., Ltd., and the company-specific case numbers assigned to both company names in the final draft liquidation instructions. The petitioner states that Commerce's preliminary draft liquidation instructions did not identify that Chengdu Huifeng is the successor-in-interest to Chengdu Huifeng Diamond Tools Co., Ltd. No other parties rebutted the petitioner's request.

<u>Commerce's Position</u>: Shortly after the period of review, Commerce determined that Chengdu Huifeng is the successor-in-interest to Chengdu Huifeng Diamond Tools Co., Ltd.[36] For the final results of this review, we identified Chengdu Huifeng with the current and former names and their respective company-specific numbers in the final draft liquidation instructions message.[37] We also explained in the final draft liquidation instructions message that Chengdu Huifeng is the successor-in-interest to Chengdu Huifeng Diamond Tools Co., Ltd. We intend to identify Chengdu Huifeng in our liquidation instructions message to CBP in the same manner as we did in the final draft liquidation instructions message.

---

[34] *See 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).
[35] *See Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 658 (January 5, 2018), and accompanying Preliminary Decision Memorandum at 12, unchanged in *Steel Sinks.*
[36] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review*, 82 FR 60177 (December 19, 2017).
[37] *See* the final draft liquidation instructions message dated concurrently with this Issues and Decision Memorandum.

V. 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 results of the review and the final dumping margins for all of the reviewed companies in the *Federal Register*.

☒ ☐

Agree _________ Disagree _________

12/10/2018

X

Signed by: GARY TAVERMAN

____

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