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Administrative Review
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MEMORANDUM TO: 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

FROM: Melissa G. Skinner
Director, Office II
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of the Antidumping Duty Administrative Review: Drawn Stainless Steel Sinks from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on drawn stainless steel sinks (drawn sinks) from the People's Republic of China (China). The period of review (POR) is April 1, 2017, through March 31, 2018. We preliminarily find that respondents Feidong Import and Export Co., Ltd. (Feidong); Xinhe Stainless Steel Products Co., Ltd. (Xinhe); Jiangmen New Star Hi-Tech Enterprise Ltd. (New Star); and Ningbo Afa Kitchen and Bath Co., Ltd. (Ningbo Afa) have not established their eligibility for a separate rate; thus, they are part of China-wide entity. Additionally, we are preliminarily including three additional companies that failed to demonstrate their eligibility for a separate rate (*i.e.*, Guangdong G-Top Import & Export Co., Ltd. (Guangdong G-Top); Jiangmen Pioneer Import & Export Co., Ltd. (Jiangmen Pioneer); and Zhongshan Superte Kitchenware Co., Ltd. (Superte)) as part of the China-wide entity. We are also preliminarily granting separate rates to KaiPing Dawn Plumbing Products, Inc. (KaiPing); Guangdong New Shichu Import and Export Company Limited (New Shichu); Elkay (China) Kitchen Solutions Co., Ltd. (Elkay); and B&R Industries Limited (B&R) because these companies demonstrated their eligibility for separate rate status but were not selected for individual examination. The rates assigned to each of these companies can be found in the "Preliminary Results of Review" section of the accompanying preliminary *Federal Register* notice. Finally, we preliminarily find that Zhuhai Kohler Kitchen & Bathroom Products Co., Ltd. (Zhuhai Kohler) and Yuyao Afa Kitchenware Co., Ltd. (Yuyao Afa) made no shipments of subject merchandise during the POR.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess AD duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We intend to issue our final results no later than 120 days from the date of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), unless this deadline is extended.

II. BACKGROUND

In April 2013, Commerce published in the *Federal Register* an AD duty order on drawn sinks from China.[1] On April 12, 2018, Commerce published a notice of opportunity to request an administrative review of the AD duty order on drawn sinks from China for the period April 1, 2017, through March 31, 2018.[2] Pursuant to section 751(a)(1) of the Act and 19 CFR 351.213(b)(1), Commerce received timely requests for review from KaiPing and Xinhe,[3] as well as the petitioner, Elkay Manufacturing Company.[4] On June 7, 2018, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation with respect to 31 companies.[5]

In the *Initiation Notice*, Commerce notified parties of the application/certification process by which exporters and producers of merchandise subject to an administrative review in a non-market economy (NME) country may qualify for separate rate status.[6] Exporters and producers wishing to qualify for separate rate status in this administrative review were given 30 calendar days after publication of the *Initiation Notice* to complete, as appropriate, either a separate rate application or separate rate certification.[7] In July 2018, we received two separate rate applications and eight separate rate certifications from those Chinese companies requesting separate rate status.[8]

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[1] *See Drawn Stainless Steel Sinks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 78 FR 21592 (April 11, 2013) (*Drawn Sinks LTFV Final*).
[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 13949 (April 12, 2018).
[3] *See* KaiPing's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Request for Antidumping Administrative Review," dated April 16, 2018, and Xinhe's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Request for Antidumping Administrative Review," dated April 16, 2018.
[4] *See* Petitioner's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Request for Administrative Review," dated April 30, 2018.
[5] *See Initiation of Antidumping and Countervailing Duty Reviews*, 83 FR 26258, 26263-64 (June 6, 2018) (*Initiation Notice*).
[6] *Id.* at 26259-60.
[7] *Id.* at 26259.
[8] *See* B&R's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Separate Rate Application," dated July 6, 2018 (B&R SRA); Feidong's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Separate Rate Application," dated July 6, 2018 (Feidong SRA); Guangdong Dongyuan Kitchenware Industrial Co., Ltd.'s (Dongyuan's) Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Separate Rate Certification," dated July 3, 2018; Jiangmen New Star Hi-Tech Enterprise Ltd.'s (New Star's) Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Separate Rate Certification," dated July 3, 2018 (New Star SRC); Guangdong Yingao Kitchen Utensils Co., Ltd.'s (Yingao's) Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Separate Rate Certification," dated July 3, 2018; Ningbo Afa's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Separate Rate Certification," dated July 5, 2018 (Ningbo Afa SRC); Elkay's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Separate Rate Certification," dated July 6, 2018 (Elkay SRC); KaiPing's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Separate Rate Certification," dated July 6, 2018 (KaiPing SRC); New Shichu's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Separate Rate Certification," dated July 6, 2018

The *Initiation Notice* also indicated that, in the event that Commerce limits the number of respondents selected for individual examination, we would select mandatory respondents based on CBP data for U.S. imports during the POR.[9] In June 2018, Commerce released the CBP data to all interested parties under an administrative protective order (APO).[10] On July 5, 2018, pursuant to section 777A(c)(2)(B) of the Act, we selected Dongyuan and Yingao for individual examination in this administrative review and issued the NME AD questionnaire to them the following day.[11] Additionally, in June and July 2018, we received certifications of no shipments from Superte, Yuyao Afa, and Zhuhai Kohler.[12]

On August 2, 2018, the petitioner timely withdrew its requests for review for 18 companies, including Dongyuan and Yingao.[13] As a result, on August 10, 2018, we selected Feidong and Xinhe for individual examination in this administrative review and issued the NME AD questionnaire to them.[14] Neither Feidong nor Xinhe submitted a response to section A of Commerce's NME AD questionnaire by the established deadline. Therefore, on September 24, 2018, we selected New Star and Ningbo Afa for individual examination in this administrative review and issued the NME AD questionnaire to them.[15] On September 26 and September 27, 2018, respectively, New Star and Ningbo Afa notified us of their intent not to participate in this administrative review.[16]

(New Shichu SRC); and Xinhe's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Separate Rate Certification," dated July 6, 2018 (Xinhe SRC).

[9] *See Initiation Notice*, 83 FR at 26259.

[10] *See* Commerce's Letter re: 2017-2018 Antidumping Duty Administrative Review: Drawn Stainless Steel Sinks from the People's Republic of China, dated June 18, 2018.

[11] *See* Memorandum, "2017-2018 Antidumping Duty Administrative Review of Certain Drawn Stainless Steel Sinks from the People's Republic of China: Respondent Selection," dated July 5, 2018; and Commerce Letter re: Antidumping Duty Questionnaire, dated September July 6, 2018.

[12] *See* Superte's Letter, "Drawn Stainless Steel Sinks from China; No Shipment Certification," dated June25, 2018 (Superte NSC); Yuyao Afa's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: No Shipment Certification," dated July 5, 2018 (Yuyao Afa NSC); and Zhuhai Kohler's Letter, "Antidumping Duty Review of Drawn Stainless Steel Sinks from the People's Republic of China; Certification of No Shipments, Sales, or Entries," dated July 6, 2018 (Zhuhai Kohler NSC).

[13] *See* Petitioner's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Notice of Partial Withdrawal of Request for Administrative Review," dated August 2, 2018.

[14] *See* Memorandum, "2017-2018 Administrative Review of the Antidumping Duty Order on Drawn Stainless Steel Sinks from the People's Republic of China: Selection of New Respondents for Individual Review," dated August 10, 2018 (Second Respondent Selection Memo); Commerce Letter re: AD Questionnaire, dated August 10, 2018 (August 10, 2018 AD Questionnaire).

[15] *See* Memorandum, "2017-2018 Administrative Review of the Antidumping Duty Order on Drawn Stainless Steel Sinks from the People's Republic of China: Selection of New Respondents for Individual Review," dated September 24, 2018 (Third Respondent Selection Memo); Commerce Letter re: NME AD Questionnaire, dated September 24, 2018 (September 24, 2018 AD Questionnaire).

[16] *See* New Star's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Notice of Intent Not to Participate," dated September 26, 2018; and Ningbo Afa's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Notice of Intent Not to Participate," dated September 27, 2018.

In October 2018, we issued a supplemental questionnaire to B&R regarding its separate rate application, and we received its response in this same month.[17] On October 18, 2018, we rescinded this administrative review with respect to 18 companies.[18]

III. SCOPE OF THE ORDER

The merchandise covered by the order includes drawn stainless steel sinks with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel. Mounting clips, fasteners, seals, and sound-deadening pads are also covered by the scope of this order if they are included within the sales price of the drawn stainless steel sinks.[19] For purposes of this scope definition, the term "drawn" refers to a manufacturing process using metal forming technology to produce a smooth basin with seamless, smooth, and rounded corners. Drawn stainless steel sinks are available in various shapes and configurations and may be described in a number of ways including flush mount, top mount, or undermount (to indicate the attachment relative to the countertop). Stainless steel sinks with multiple drawn bowls that are joined through a welding operation to form one unit are covered by the scope of the order. Drawn stainless steel sinks are covered by the scope of the order whether or not they are sold in conjunction with non-subject accessories such as faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

Excluded from the scope of the order are stainless steel sinks with fabricated bowls. Fabricated bowls do not have seamless corners, but rather are made by notching and bending the stainless steel, and then welding and finishing the vertical corners to form the bowls. Stainless steel sinks with fabricated bowls may sometimes be referred to as "zero radius" or "near zero radius" sinks. The products covered by this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under statistical reporting number 7324.10.0000 and 7324.10.0010. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

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[17] *See* B&R's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Supplemental Questionnaire Response for Separate Rate Application," dated October 11, 2018 (B&R SSRA); and B&R's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Audit Report and Financial Statements," dated October 26, 2018 (B&R Audit Report).

[18] The review was rescinded with respect to: Foshan Shunde MingHao Kitchen Utensils Co., Ltd.; Foshan Zhaoshun Trade Co., Ltd.; Franke Asia Sourcing Ltd.; Grand Hill Work Company; Guangdong Dongyuan Kitchenware Industrial Co., Ltd.; Guangdong Yingao Kitchen Utensils Co., Ltd.; Hangzhou Heng's Industries Co., Ltd.; Hubei Foshan Success Imp & Exp Co., Ltd.; J&C Industries Enterprise Limited; Jiangmen Hongmao Trading Co., Ltd.; Jiangxi Zoje Kitchen & Bath Industry Co., Ltd.; Ningbo Oulin Kitchen Utensils Co., Ltd.; Primy Cooperation Limited; Shenzhen Kehuaxing Industrial Ltd.; Shunde Foodstuffs Import & Export Company Limited of Guangdong; Shunde Native Produce Import and Export Co., Ltd. of Guangdong; Zhongshan Newecan Enterprise Development Corporation; and Zhongshan Silk Imp. & Exp. Group Co., Ltd. of Guangdong. *See Drawn Stainless Steel Sinks from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review; 2017–2018*, 83 FR 52809 (October 18, 2018).

[19] Mounting clips, fasteners, seals, and sound-deadening pads are not covered by the scope of this order if they are not included within the sales price of the drawn stainless steel sinks, regardless of whether they are shipped with or entered with drawn stainless steel sinks.

IV. DISCUSSION OF METHODOLOGY

A. Preliminary Determination of No Shipments

In the *Initiation Notice*, we instructed producers or exporters named in the notice that had no exports, sales, or entries during the POR to notify Commerce within 30 days of publication of the notice of this fact.[20] In June and July 2018, Zhuhai Kohler, Yuyao Afa, and Superte filed no-shipment certifications indicating that they had no exports, sales, or entries of subject merchandise to the United States during the POR.[21] Upon receiving such claims from companies subject to an administrative review, it is Commerce's practice to send an inquiry message to CBP in which we request that CBP import officers alert Commerce if it had information contrary to the party's claim.[22] Accordingly, for Zhuhai Kohler, Yuyao Afa, and Superte, we sent inquiry messages to CBP.

We received no information from CBP contradicting the no-shipment claims of Yuyao Afa. However, CBP data suggested that there were imports of subject merchandise produced by Superte and Zhuhai Kohler during the POR. As such, we requested U.S. entry documents from CBP, which we subsequently placed on the record.[23] While we did not find any information in our examination of this entry documentation to contradict the no-shipment claim of Zhuhai Kohler, we did find information to contradict the no-shipment claim of Superte.

Thus, based on the no-shipment claims submitted by Yuyao Afa and Zhuhai Kohler and our analysis of the information on the record, we preliminarily determine that these companies had no shipments during the POR. In addition, we find that, consistent with our practice in NME cases,[24] it is appropriate not to rescind the review for these companies in these circumstances, but rather to complete the review. If Commerce determines that Yuyao Afa and Zhuhai Kohler had no shipments of the subject merchandise, any suspended entries from these companies will be liquidated at China-wide rate, in accordance with our practice.[25]

With respect to Superte, our examination of the entry documentation indicates that Superte had shipments during the POR, which, as noted above, contradicts its no shipment certification, and we preliminarily find that the company is properly under review.[26] Furthermore, Superte failed to submit either a separate rate application or certification to demonstrate that it is eligible to receive a separate rate. Thus, consistent with our practice in NME proceedings, we are treating Superte as part of the China-wide entity for the preliminary results of this review.

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[20] *See Initiation Notice*, 82 FR at 26444.
[21] *See* Superte NSC, Yuyao Afa NSC, and Zhuhai Kohler NSC.
[22] *See, e.g., Certain Steel Grating from the People's Republic of China: Preliminary Results of Antidumping Administrative Review and Preliminary Determination of No Shipments; 2014-2015*, 81 FR 21843 (April 13, 2016).
[23] *See* Memorandum, "Request for U.S. Entry Documents – Drawn Stainless Steel Sinks from the People's Republic of China A-570-983," dated August 1, 2018; Memorandum, "Release of Customs and Border Protection (CBP) Entry Documents," dated September 14, 2018; Memorandum, "Release of Customs and Border Protection (CBP) Entry Documents," dated October 29, 2018 (Superte CBP Entry Documents).
[24] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-95 (October 24, 2011) (*NME AD Assessment*).
[25] For a full discussion of this practice, *see NME AD Assessment*.
[26] *See* Superte CBP Entry Documents.

B. Non-Market Economy Country Status

Commerce considers China to be an NME country.[27] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of these preliminary results.

C. Separate Rates Determination

In NME proceedings, there is a rebuttable presumption that companies are subject to government control and, thus, should be assessed a single AD rate.[28] In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.[29] It is Commerce's policy to assign exporters of the subject merchandise from an 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 whether a company is sufficiently independent to be eligible for a separate, company-specific rate, Commerce analyzes each exporting entity in an NME country under the test established in *Sparklers*,[30] as amplified by *Silicon Carbide*.[31] However, if Commerce determines that a company is wholly foreign-owned, then consideration of the *de jure* and *de facto* criteria is not necessary to determine whether it is independent from government control.[32]

Under the separate rates test, Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.[33]

Further, Commerce typically considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (EPs) are

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[27] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017), and accompanying decision memorandum, *China's Status as a Non-Market Economy*.
[28] *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); *see also 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).
[29] *See Initiation Notice*, 81 FR at 36269.
[30] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).
[31] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).
[32] *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).
[33] *See Sparklers*, 56 FR at 20589.

set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.[34]

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China AD proceeding, and Commerce's determinations therein.[35] In particular, we note that in litigation involving the diamond sawblades proceeding, the U.S. Court of International Trade (CIT) found Commerce's existing separate rates analysis deficient in the circumstances of that case, in which a government-controlled entity had significant ownership in the respondent exporter.[36] Following the Court's reasoning, in recent proceedings, we have concluded that where a government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, this interest in and of itself means that the respondent is not eligible for a separate rate.[37] Otherwise, we will analyze the impact of government ownership within the context of the *de facto* criteria as established above. This may include control over, for example, the selection of board members and management, key factors in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with our normal separate rate practice, any ability to 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.

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[34] *See Silicon Carbide*, 59 FR at 22586-89; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

[35] *See* Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China (May 6, 2013) in *Advanced Tech. & Materials Co. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Tech.*), affirmed in *Advanced Tech. & Materials Co. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013). This remand redetermination is on the Enforcement and Compliance website at *http://enforcement.trade.gov/remands/12-147.pdf*. *See also Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013), and accompanying Preliminary Decision Memorandum (PDM) at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying Issues and Decision Memorandum at Comment 1.

[36] *See, e.g.*, *Advanced Tech.*, 885 F. Supp. 2d at 1349 ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); 1351 ("Further substantial evidence of record does not support the inference that SASAC's {state-owned assets supervision and administration commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor *de jure* 'separation' that Commerce concludes.") (footnotes omitted); 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); *and* 1357 ("AT&M *itself* identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control *over* nomination.") (footnotes omitted).

[37] *See Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying Preliminary Decision Memorandum at 5-9.

In this review, we preliminarily find no evidence of government ownership of the separate rate respondents B&R, Elkay, KaiPing, and New Shichu. In accordance with our practice, Commerce analyzed whether these respondents have demonstrated the absence of *de jure* and *de facto* government control over their respective export activities.

1. Absence of *De Jure* Control

The evidence provided by B&R,[38] Elkay,[39] KaiPing,[40] and New Shichu[41] supports a preliminary finding of an absence of *de jure* government control for each of these companies based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of the companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.

2. Absence of *De Facto* Control

The evidence provided by B&R,[42] Elkay,[43] KaiPing,[44] and New Shichu[45] supports a preliminary finding of an absence of *de facto* government control based on record statements and supporting documentation showing that the companies: (1) set their own EPs independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding the disposition of profits or financing of losses.

Therefore, the evidence placed on the record of this administrative review by B&R, Elkay, KaiPing, and New Shichu demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, Commerce preliminarily grants separate rates to B&R, Elkay, KaiPing, and New Shichu.[46]

3. Companies Not Eligible for a Separate Rate

As discussed above, Commerce preliminarily determines that Superte is properly considered part of the China-wide entity. Additionally, for the reasons detailed below, Commerce preliminarily determines Feidong, Guangdong G-Top, Jiangmen Pioneer, New Star, Ningbo Afa, and Xinhe to be properly considered part of China-wide entity.

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[38] *See* B&R SRA at 9-13.
[39] *See* Elkay SRC at 4.
[40] *See* KaiPing SRC at 5-6.
[41] *See* New Shichu SRC at 6-7.
[42] *See* B&R SRA at 13-22.
[43] *See* Elkay SRC at 4-5.
[44] *See* KaiPing SRC at 6-7.
[45] *See* New Shichu SRC at 7.
[46] *See* "Separate Rate for Eligible, Non-Selected Companies," *infra*.

Two companies, Guangdong G-Top and Jiangmen Pioneer, did not submit separate rate applications or certifications by the deadline established in the *Initiation Notice*. Furthermore, neither company made a claim that it had no exports, sales, or entries of subject merchandise during the POR. Given the foregoing, we preliminarily find that neither Guangdong G-Top nor Jiangmen Pioneer established its eligibility for separate rate status. Therefore, Commerce preliminarily determines these companies to be considered part of the China-wide entity.

Moreover, as noted above, Commerce received a request for review of Feidong, New Star, Ningbo Afa, and Xinhe. For the reasons detailed below, Commerce preliminarily determines Feidong, New Star, Ningbo Afa, and Xinhe to be properly considered part of the China-wide entity.

Pursuant to Commerce's practice, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity.[47] Because no party requested a review of China-wide entity in this review, the entity is not under review and the entity's rate is not subject to change. Therefore, if our determination is unchanged in the final results, entries from the aforementioned companies will be liquidated at the rate previously established for the China-wide entity (*i.e.*, 76.45 percent).[48]

Feidong, New Star, Ningbo Afa, and Xinhe

In our *Initiation Notice*, Commerce stated that: "{f}or exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents."[49] Feidong, New Star, Ningbo Afa, and Xinhe were selected for individual examination as mandatory respondents in this administrative review.[50] Although Feidong, New Star, Ningbo Afa, and Xinhe submitted separate rate certifications or applications,[51] as applicable, they did not respond to Commerce's questionnaire.[52] Accordingly, we preliminarily determine that Feidong, New Star, Ningbo Afa, and Xinhe do not qualify for separate rates and should be considered to be a part of the China-wide entity.

4. Separate Rate for Eligible, Non-Selected Companies

The statute and Commerce's regulations do not directly address the establishment of a rate to be applied to companies not selected for individual examination where Commerce limits its

[47] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).
[48] The China-wide rate determined in the investigation was 76.53 percent. *See Drawn Sinks LTFV Final*. This rate was adjusted for export subsidies and estimated domestic subsidy pass through to determine the cash deposit rate (76.45 percent) collected for companies in China-wide entity. *See* explanation in *Drawn Stainless Steel Sinks from the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013).
[49] *See Initiation Notice*, 82 FR at 26445.
[50] *See* Second Respondent Selection Memorandum and Third Respondent Selection Memorandum.
[51] *See* Feidong SRA; New Star SRC; Ningbo Afa SRC; and Xinhe SRC.
[52] *See* August 10 AD Questionnaire; and September 24, 2018 AD Questionnaire.

examination in an administrative review pursuant to section 777A(c)(2) of the Act. Commerce's practice in cases involving limited selection based on exporters or producers accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any rates that are zero, *de minimis*, or based entirely on facts available.

In accordance with the statute, Commerce will normally assign to separate rate entities that were not individually examined a rate equal to the weighted average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis*, or based entirely on facts available.[53] Where the rates for the individually examined companies are all zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act also provides that Commerce may use "any reasonable method" to establish the rate for separate rate entities, which may include averaging the dumping margins for individually examined respondents.[54] The SAA states that the "expected method under 'any reasonable method' is that we will weight-average the rates that are zero, *de minimis*, and based entirely on facts available."[55]

Commerce has determined that the mandatory respondents in this administrative review are part of the China-wide entity, which is not under review. Thus, there is no current calculated POR margin for Commerce to consider in assigning a margin for eligible, non-individually examined separate rate companies. In the absence of any calculated or assigned rates in this segment, including zero or *de minimis* rates or rates based on facts available, to determine an all-others rate for the separate rate respondents, we have reached back to the previously completed review to obtain a separate rate margin.[56] Three of the four non-individually examined companies eligible for a separate rate were previously assigned a separate rate in the most recent segment of this proceeding in which they participated.[57] In addition, the remaining company filed a separate rate application in proper order containing documentation supporting its eligibility to receive a separate rate.[58] Commerce finds that retaining the separate rate from the prior review represents a reliable rate which Commerce may assign to eligible, non-individually examined exporters.

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[53] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006), *unchanged in Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).
[54] *See* section 735(c)(5)(B) of the Act.
[55] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. I, (1994) at 873.
[56] We assigned this margin as the separate rate in the 2016-2017 administrative review. *See Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 23424 (May 21, 2018). *See also Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 82 FR 28639 (June 23, 2017), where we calculated this margin.
[57] *Id.*
[58] *See* B&R SRA, B&R SSRA, and B&R Audit Report.

Accordingly, consistent with our recent practice,[59] we are preliminarily assigning a rate of 1.78 percent to these four separate rate companies in these preliminary results.

V. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒	☐
Agree	Disagree

12/20/2018

X James Maeder

Signed by: JAMES MAEDER

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

[59] *See, e.g.*, *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 81 FR 62717 (September 12, 2016), and accompanying PDM at 10-11, *unchanged in Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 11431 (February 23, 2017).