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Washington, D.C. 20230

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June 25, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Polyester Textured Yarn from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that polyester textured yarn (yarn) from the People's Republic of China (China) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated dumping margins are shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

II. BACKGROUND

On October 18, 2018, Commerce received an antidumping duty (AD) petition concerning imports of yarn from China, filed in proper form on behalf of Unifi Manufacturing, Inc. and Nan Ya Plastics Corporation, America (the petitioners), domestic producers of yarn (collectively, the petitioners).[1] Commerce initiated this LTFV investigation on November 7, 2018.[2]

In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate rate status in non-market economy (NME) LTFV

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[1] *See* Letter to the Secretary of Commerce, "Polyester Textured Yarn from the People's Republic of China and India--Petition for the Imposition of Antidumping and Countervailing Duties," dated October 18, 2018 (Petition).
[2] *See Polyester Textured Yarn from India and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 83 FR 58223 (November 19, 2018) (*Initiation Notice*).

investigations. The process requires exporters to submit a separate rate application (SRA)[3] and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities.

In the "Respondent Selection" section of the *Initiation Notice*, Commerce stated that, in accordance with its standard practice for respondent selection in cases involving NME countries,[4] it intended to issue quantity and value (Q&V) questionnaires to each potential respondent and base respondent selection on the responses received.[5] In the Petition, the petitioners identified 51 producers/exporters of the subject merchandise.[6] Commerce issued Q&V questionnaires on November 8, 2018, to the 51 exporters/producers named in the Petition[7] and posted the Q&V questionnaire, along with filing instructions, on Enforcement and Compliance's website (http://trade.gov/enforcement/news.asp). Additionally, in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation.[8]

On December 10, 2018, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of yarn from China.[9] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[10] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the preliminary decision was May 6, 2019. On March 29, 2019, the petitioners requested that the date for the issuance of the preliminary determination in this investigation be extended by 50 days.[11] Based on the request, and pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), on April 23, 2019, Commerce published in the *Federal Register* a postponement of the preliminary determination by 50 days until no later than June 25, 2019.[12]

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[3] *See* Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, April 5, 2005 (Policy Bulletin 05.1), available at http://enforcement.trade.gov/policy/bull05-1.pdf.
[4] In the *Initiation Notice*, we stated that the presumption of NME status for China has not been revoked by Commerce and, therefore, remains in effect for purposes of the initiation of this investigation. *See Initiation Notice*, 83 FR at 58226.
[5] *Id*. at 58227.
[6] *See* Petitions at Volume IV, Exhibit GEN-5 and "Polyester Textured Yarn from India and People's Republic of China—Petitioners' Supplement to Volume I Relating to General Issues," dated October 31, 2018 (Second General Issues Supplement at Exhibit GEN–SUPP–5.).
[7] *See* Memorandum to the File re; "Quantity and Value Questionnaire," dated November 8, 2018.
[8] *See Initiation Notice*, 83 FR at 58224.
[9] *See Polyester Textured Yarn from China and India*, Investigation Nos. 701-TA-612-613 and 731-1429-1430 (Preliminary), 83 FR 63532 (December 10, 2018).
[10] *See* Memorandum to the Record from 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, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.
[11] *See* Letter from the petitioners, "Request to Extend the Preliminary Antidumping Duty Determinations," dated March 29, 2019.
[12] *See Polyester Textured Yarn from India and the People's Republic of China: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 84 FR 16843 (April 23, 2019).

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is April 1, 2018 through September 30, 2018. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition, which was October 2018.[13]

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

On June 14, 2019, pursuant to 19 CFR 351.210(b)(2)(ii), Fujian Billion requested that Commerce postpone its final determination and extend the application of the provisional measures prescribed under section 773(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a period not to exceed six months.[14] On June 18, 2019, the petitioners also filed a postponement request in the event of a negative preliminary determination, acknowledging Fujian Billion's postponement request in the event of an affirmative preliminary determination and the extension of the provisional measures.[15] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because: 1) our preliminary determination is affirmative, 2) the requesting exporter accounts for a significant portion of the exports of the subject merchandise, and 3) no compelling reasons for denial exist, we are granting Fujian Billion's request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*. In this regard, Fujian Billion submitted a request to extend the provisional measures, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

V. SELECTION OF RESPONDENTS

Section 777A(c)(l) of the Act directs Commerce to calculate an individual weighted-average dumping margin for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives Commerce discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted-average dumping margin determinations because of the large number of exporters and producers of subject merchandise during the POI. Pursuant to section 777A(c)(2) of the Act, Commerce may limit its examination to: (A) a sample of exporters, producers or types of products that Commerce determines is statistically valid based on the information available to Commerce at the time of selection; or (B) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that Commerce determines can reasonably be examined.

In the *Initiation Notice*, Commerce noted that it intended to select respondents based on responses to Q&V questionnaires.[16]

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[13] *See* 19 CFR 351.204(b)(1).
[14] *See* Letter from Fujian Billion, "Request for Extension of Final Determination and Provisional Measures," dated June 14, 2019.
[15] *See* Letter from the Petitioners, "Request to Extend the Antidumping Duty Final Determinations," dated June 18, 2019.
[16] *See Initiation Notice*, 83 FR at 58227.

As noted above, we issued Q&V questionnaires to the 51 companies that the petitioners identified as potential producers/exporters of yarn from China.[17] We also posted the Q&V questionnaire on our website and, in the *Initiation Notice*, invited parties that did not receive a Q&V questionnaire from Commerce to file a response to the Q&V questionnaire by the applicable deadline. Q&V questionnaires were successfully delivered to 31 of the 51 addressees in the Petition,[18] 11 packages were "undeliverable"[19] and eight were refused by the intended recipients.[20] One company that was reported by FedEx as "undeliverable" filed a timely Q&V response via counsel and one of the companies that refused the Q&V package filed a timely Q&V response via counsel. Of the 31 companies that received our Q&V questionnaire, six provided properly filed Q&V responses. Thus, Commerce received a total of eight properly- and timely-filed Q&V responses. Commerce rejected one Q&V response because it was deficient and not filed in the form and manner requested (*i.e.*, missing a cover letter and all required certifications).[21]

On December 10, 2018, consistent with section 777A(c)(2)(B) of the Act, Commerce limited the number of respondents selected for individual examination to the three exporters accounting for the largest volume of exports from China to the United States during the POI that could be reasonably examined. Specifically, based on responses to the eight Q&V questionnaire responses, we selected Fujian Billion Polymerization Fiber Technology Industrial Co., Ltd. (Fujian Billion), Fujian Zhengqi High Tech Fiber (Fujian Zhengqi), and Suzhou Shenghong Fiber Co., Ltd. (Suzhou Shenghong) for individual examination as mandatory respondents in this AD investigation.[22]

On December 11, 2018, Commerce issued its AD NME questionnaire to Fujian Billion, Fujian Zhengqi, and Suzhou Shenghong.[23] On February 6, 2019, Commerce issued additional questionnaires to all three mandatory respondents regarding a potential adjustment to AD duties to address any "double remedy" demonstrated to result from the concurrent application of AD and countervailing duties to imports from NME countries.[24]

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[17] *See* Petition at Volume IV, Exhibit GEN-5 and Second General Issues Supplement at Exhibit GEN–SUPP–5; *see also* Quantity and Value Questionnaire, dated November 8, 2018, under ACCESS Barcode: 3771011-01.

[18] *See* Memorandum to the File, "Quantity and Value Questionnaire Delivery Confirmation," dated November 20, 2018 (Q&V Delivery Confirmation Memo), at 1 and Attachment II.

[19] The following companies, not subject to an adverse inference, to whom Q&V questionnaires were issued but were undeliverable due to incorrect addresses or lost in transit by FedEx are: (1) Damco China Ltd. (Shanghai Branch); (2) Enturbo & Jingu Group Inc; (3) High Link Line. Inc.; (4) Jiangsu Bestart Trading Co., Ltd.; (5) Leopard Accessory Co., Ltd. (Hk); (6) Million Union Trading Co., Ltd.; (7) Xiamen Jin Xia Technology Co., Ltd.; (8) Hangzhou Xianglu Chemical Fiber Co., Ltd.; (9) Hengyi Petrochemicals Co., Ltd.; and (10) Wujiang Hengyu Textile Co., Ltd.

[20] *See* Memorandum to the File, "Quantity & Value Questionnaire Delivery Confirmation," dated November 20, 2018. While FedEx was unable to deliver the Q&V questionnaire packages to 11 companies, one of those companies (Fujian Zhengqi High Tech Fiber) filed a timely Q&V response via counsel. Further, while there were actually nine refusals of delivery, one of the companies that refused the Q&V package upon FedEx delivery (Jiangsu Guowang High Technique Fiber Co., Ltd.) filed a timely Q&V response via counsel.

[21] *See* Memorandum to the File, "Rejection of Improperly Filed Quantity and Value Questionnaire Response," dated November 21, 2018, with regard to Ningbo Kd Industries Co., Ltd. While we provided this company an opportunity to refile a correct and complete Q&V response, it did not do so.

[22] *See* Memorandum, "Respondent Selection," dated December 10, 2018 (Respondent Selection Memo).

[23] *See* Commerce Questionnaires, dated December 11, 2018.

[24] *See* Commerce Double Remedy Questionnaires, dated February 6, 2019.

Between February 2019 and June 2019, Fujian Billion and Suzhou Shenghong filed timely questionnaire responses. Fujian Zhengqi did not respond to any parts of the AD NME Questionnaire or the "double remedy" questionnaire, which we address in further detail below. Between March and April 2019, Commerce issued supplemental questionnaires to Fujian Billion and Suzhou Shenghong, and the petitioners submitted comments regarding Fujian Billion and Suzhou Shenghong's questionnaire responses. On May 6, 2019, Suzhou Shenghong filed a letter withdrawing its participation from the investigation and requesting removal of its business proprietary information (BPI) from the record.[25] On May 30, 2019, we granted Shenghong's request to return its BPI[26] and removed its BPI submissions from the official record.[27]

Additionally, in April 2019, Commerce issued supplemental questionnaires to the three non-individually examined companies that filed separate rate applications. Only one of the three separate-rate applicants responded to our supplemental questionnaires. Our treatment of the separate rate applicants is discussed below.

VI. PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES

On April 2, 2019, the petitioners filed an allegation that critical circumstances exist with respect to imports of subject merchandise from China.[28] On April 18, 2019, Commerce issued its preliminary critical circumstances determination.[29] Pursuant to this determination, Commerce determined that critical circumstances exist for imports from all producers and exporters of yarn from China.[30]

VII. DISCUSSION OF THE METHODOLOGY

A. <u>Non-Market Economy Country</u>

Commerce considers China to be an NME country.[31] 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. None of the parties to this proceeding have contested such treatment. Therefore, we continue to treat China as an NME country for purposes of this preliminary determination.

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[25] *See* Suzhou Shenghong's Letter, "Withdrawal from Participation," dated May 6, 2019.

[26] *See* Letter to Shenghong, "Request for Removal of Business Proprietary Information from the Record," dated May 30, 2019 (Shenghong BPI Removal Letter).

[27] *See* Memorandum, "Polyester Textured Yarn from People's Republic of China: Removal of Certain Business Proprietary Information from the Record," dated May 30, 2019 (Memo Removing BPI).

[28] *See* the Petitioners' Letter, "Polyester Textured Yarn from the People's Republic of China: Petitioners' Allegation of Critical Circumstances," dated April 2, 2019.

[29] *See Polyester Textured Yarn from the People's Republic of China: Preliminary Affirmative Determinations of Critical Circumstances in Antidumping and Countervailing Duty Investigations*, 84 FR 16840 (April 23, 2019).

[30] *See* Memorandum, "Antidumping and Countervailing Duty Investigations of Polyester Textured Yarn from the People's Republic of China: Critical Circumstances Analysis," dated April 19, 2019.

[31] *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 (citing Memorandum, "China's Status as a Non-Market Economy," dated October 26, 2017) (China NME Status Memo), unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018).

B. Affiliation and Single Entity

As stated above, Commerce selected Fujian Billion as one of the mandatory respondents in this investigation. In its responses to the NME AD questionnaire, Fujian Billion reported that "during the POI, Fujian Baikai Textile Chemical Fiber Industry Co., Ltd. was involved in the production and sales of merchandise under consideration in the home market. Fujian Baikai Textile Chemical Fiber Industry Co., Ltd. is affiliated with Fujian Billion."[32] Specifically, Fujian Billion reported that it is affiliated with Fujian Baikai Textile Chemical Fiber Co., Ltd. (Baikai Textile); thus, we should find them affiliated, because a single family has common control over both companies.[33]

Thus, pursuant to sections 771(33)(A) and (F) of the Act and based on the evidence on the record in this investigation, including information submitted by Fujian Billion in its questionnaire responses, Commerce preliminarily finds Fujian Billion affiliated with Baikai Textile, a producer and seller of in-scope merchandise.[34] Further, based on the evidence presented in Fujian Billion's questionnaire responses, we preliminarily find that Fujian Billion and Baikai Textile should be treated as a single entity for the purposes of this investigation, pursuant to 19 CFR 351.401(f), and assigned a single cash deposit rate.[35]

C. Separate Rates

In proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.[36] Commerce's policy is to assign all exporters of subject merchandise that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[37] Commerce analyzes whether each entity exporting the subject merchandise is sufficiently independent under a test established in *Sparklers*[38] and further developed in *Silicon Carbide*.[39] According to this separate rate test, Commerce will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If, however, Commerce determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

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[32] *See* Section A Questionnaire Response, dated February 25, 2019, at 18 and Exhibits A-14 and A-16.
[33] *Id.*, at Exhibits A-13 and A-16.
[34] *See* Memorandum, "Less-Than-Fair-Value Investigation of Polyester Textured Yarn from the People's Republic of China: Preliminary Affiliation and Single Entity Determination" (Affiliation and Single Entity Memo), dated concurrently with this memorandum.
[35] *Id*.
[36] *See, e.g.*, *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (September 24, 2008).
[37] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*).
[38] *Id.*
[39] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China AD proceeding, and its determinations therein.[40] In particular, in litigation involving the diamond sawblades from China 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-owned and controlled entity had significant ownership in the respondent exporter.[41] Following the Court's reasoning, in recent proceedings, we have concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally.[42] This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profit distribution of the company.

As noted above, Hengli provided a Separate Rate Application and responded to our supplemental questionnaire. We examined Hengli's SRA and supplemental questionnaire response to determine whether Hengli provided evidence of an absence of *de jure*[43] and *de facto*[44] government control and found that Hengli has supported its claims for separate-rate eligibility as discussed below.

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[40] *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 Technology I*), and available at: http://enforcement.trade.gov/remands/12-147.pdf, *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014) (*Advanced Technology II*); *see also Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013), and accompanying Preliminary Decision Memorandum (PDM) at 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 (IDM) at Comment 1.

[41] *See, e.g.*, *Advanced Technology I*, 885 F. Supp. 2d at 1349 (CIT 2012) ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *Id*. at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {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); *Id.* at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); *Id.* at 1357 ("AT&M itself identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.") (footnotes omitted).

[42] *See, e.g.*, *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 15181 (March 27, 2017) and accompanying IDM at Comment 1.

[43] *See* Hengli's Separate Rate Application, as submitted in its Supplemental Questionnaire Response (Revised SRA), dated May 13, 2019, at Exhibit S-9, pages 6-9. Hengli's original Separate Rate Application dated February 6, 2019, contained formatting issues which were resolved in the Revised SRA.

[44] *See* Revised SRA at Exhibit S-9, pages 10-17.

a) Absence of De Jure Control

Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.[45]

The evidence provided by Jiangsu Hengli Chemical Fiber Co. Ltd. (Hengli) supports a preliminary finding of an absence of *de jure* government control 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.

b) Absence of De Facto Control

Typically, Commerce considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.[46] Commerce has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control which would preclude Commerce from assigning separate rates.

The evidence provided by Hengli 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 disposition of profits or financing of losses.

Therefore, the evidence placed on the record of this investigation by Hengli, as discussed below, demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, we preliminarily granted a separate rate to Hengli.

Companies Not Eligible for a Separate Rate

Commerce notified parties of the application process by which exporters and producers may obtain separate-rate status in NME LTFV investigations. The process requires exporters to

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[45] *See Sparklers*, 56 FR at 20589.
[46] *See Silicon Carbide*, 59 FR at 22586-87; *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

submit a Separate Rate Application[47] and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities.

1) Companies Unresponsive to Q&V Questionnaires

As discussed, Commerce issued Q&V questionnaires to the 51 companies identified in the Petition. Of those 51 companies, 25 companies received the Q&V package but did not respond to the questionnaire. Additionally, of the 51 companies, eight companies refused the Q&V package upon delivery by FedEx. The record demonstrates that these 33 companies were unresponsive to our request for information.[48] Consequently, these 33 companies, as a matter of course, are ineligible for a separate rate, and are, thus, part of the China-wide entity and subject to the China-wide rate.

2) Companies That Did Not File Separate Rate Applications

Commerce received timely-filed Q&V questionnaire responses from eight companies.[49] Of these eight companies, Pujiang Fairy Home Textile Co., Ltd., (Pujiang Fairy) did not file a Separate Rate Application. The *Initiation Notice* stated that "Commerce requires that companies from China submit a response to both the Q&V questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status."[50] Consequently, Pujiang Fairy is ineligible for a separate rate and is, thus, part of the China-wide entity and subject to the China-wide rate.

A second company, Jiangsu Guowang High Technique Fiber Co., Ltd. (Jiangsu Guowang) submitted its own separate rate information as part of the Section A portion of the AD NME questionnaire filed by mandatory respondent Shenghong.[51] However, as noted above,

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[47] *See* Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, April 5, 2005 (Policy Bulletin 05.1), available at http://enforcement.trade.gov/policy/bull05-1.pdf.

[48] *See* Q&V Delivery Confirmation Memo. The 33 companies are: (1) Air Tiger Express (Asia) Inc.; (2) Guangdong Kaiping Chunhui Co., Ltd.; (3) Hangzhou Lanfa Textile Co., Ltd.; (4) Hangzhou Xiaoshan Donglong Chemical Fiber Co., Ltd.; (5) Hangzhou Zhongcai Chemical Fiber Co.; (6) Jiangdu Ao Jian Sports Apparatus; (7) Jiangsu Guotai International Group; (8) Jiangsu Heshili New Material Co., Ltd.; (9) Jiangsu Shenghong Science and Technology Co., Ltd.; (10) Longwell Textiles Limited; (11) Ningbo Kd Industries Co., Ltd.; (12) Ningbo Zhida Textile Co., Ltd.; (13) Ritime Group Inc. (SHA); (14) Rongsheng Petrochemical Co., Ltd.; (15) Shaoxing County Yifeng Textile Co., Ltd.; (16) Showtime Industries Group, Ltd.; (17) T.H.I. Group (Shanghai) Ltd. (T3EX Group); (18) Tongkun Group Co., Ltd.; (19) Tongxiang Hengii Chemical Fibre Co.; (20) Wuxi Autofibre Textile Co., Ltd.; (21) Xianglu Chemical Fiber Co. Ltd.; (22) Zhejiang Huaxin Advanced Materials Co., Ltd.; (23) Zhejiang Shengyuan Chemical Fibre Co., Ltd.; (24) Zhejiang Sunmarr International Transportation Co., Ltd.; (25) Zhejiang Xinghuali Fiber Co., Ltd.; (26) Hangzhou Changxiang Chemical Fiber; (27) Hangzhou Kings Chemical Fiber Sales; (28) Hangzhou Top Polyester Co., Ltd.; (29) Jiangsu Zhonglu Technology Development Co., Ltd.; (30) Jiangzi Shengxinglong Imp&Exp Co., Ltd.; (31) Zhejiang Hemei Leisure Products Co.; (32) Zhejiang Hengyi Petrochemicals Co.; and (33) Zhangjiagang Hengshuo Trading Co., Ltd.

[49] The Q&V respondents are: (1) Chori (China) Co., Ltd.; (2) Fujian Billion Polymerization Fiber Technology Industrial Co., Ltd.; (3) Fujian Zhengqi High Tech Fiber; (4) Jiangsu Guowang High Technique Fiber Co., Ltd.; (5) Jiangsu Hengli Chemical Fiber Co. Ltd.; (6) Jinjiang Jinfu Chemical Fiber and Polymer Co., Ltd.; (7) Pujiang Fairy Home Textile Co., Ltd.; and (8) Suzhou ShengHong Fiber Co., Ltd.

[50] *See Initiation Notice*, 83 FR at 58227.

[51] Shenghong had previously reported that Jiangsu Guowang High Technique Fiber Co., Ltd. is its parent company. *See* Shenghong Section A Questionnaire Response--Public Version, dated February 11, 2019 (ACCESS Barcode 3791278-01), at 13.

Shenghong withdrew its participation from the investigation and requested the removal of all of its BPI from the record, which includes all the information submitted for Jiangsu Guowang. As we granted Shenghong's request and removed its BPI, which contained Jiangsu Guowang's separate rate response, from the official record, there is no record information to support Jiangsu Guowang's eligibility for a separate rate.[52] Therefore, Jiangsu Guowang is ineligible for a separate rate and is, thus, part of the China-wide entity and subject to the China-wide rate.

3) Separate-Rate Applicants Unresponsive to Requests for Information

Four companies filed Separate Rate Applications by the established deadline: Hengli, Chori (China) Co., Ltd. (Chori), and Jinjiang Jinfu Chemical Fiber Co., Ltd. (Jinfu). Fujian Zhengqi, a company we subsequently selected as a mandatory respondent, also filed a timely Separate Rate Application; we discuss our treatment of mandatory Fujian Zhengqi below.

In April 2019, Commerce issued supplemental questionnaires to Chori, Hengli and Jinfu. Chori and Jinfu did not respond to our supplemental questionnaires. Because Chori and Jinfu did not respond to our requests for information regarding *de facto* absence of government control, they failed to rebut the presumption of government control over their export activities. Therefore, we find that Chori and Jinfu are ineligible for a separate rate and are, thus, part of the China-wide entity and subject to the China-wide rate.

4) Mandatory Respondents Ineligible for a Separate Rate

While Fujian Zhengqi filed a timely Q&V response and a Separate Rate Application, it did not respond to Commerce's AD NME Questionnaire as a mandatory respondent. In *the Initiation Notice*, Commerce stated that "exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will only be eligible for consideration for separate-rate status if they respond to all parts of Commerce's AD questionnaire as mandatory respondents."[53] Because Fujian Zhengqi failed to respond to the AD NME Questionnaire, it is, consequently, ineligible for a separate rate, and thus, is part of the China-wide entity and subject to the China-wide rate.

As noted above, Shenghong withdrew its participation from this investigation on May 6, 2019, and requested removal of its BPI from the official record, which we granted.[54] Because information regarding Shenghong's separate-rate eligibility is not on the record, at Shenghong's request, there is no record information to support Shenghong's eligibility for a separate rate. Therefore, we preliminarily find that Shenghong failed to demonstrate an absence of *de jure* and *de facto* government control, and, thus, is not eligible for a separate rate and is subject to the China-wide rate.

[52] *See* Shenghong BPI Removal Letter; and Memo Removing BPI.
[53] *See Initiation Notice*, 83 FR at 58227.
[54] *See* Shenghong BPI Removal Letter; and Memo Removing BPI.

Finally, consistent with our practice where we have denied a company a separate rate because it is majority owned by a government entity,[55] Commerce has preliminarily not granted a separate rate to the Fujian Billion single entity. Commerce's practice, which was sustained by the CIT and subsequently affirmed by the U.S. Court of Appeals for the Federal Circuit, holds that "where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter ..., such majority ownership holding in and of itself precludes a finding of de facto autonomy."[56] Fujian Billion provided information on the record that does not support a preliminary finding of an absence of *de facto* government control.[57] The totality of the information on the record, including financial documents as supplemented by the petitioners, demonstrates that Fujian Billion is majority owned by two discrete state-owned enterprises (SOEs): China Energy Conservation and Environment Protection Group (CECEP) and the Export Import Bank of China.[58] Further, the record indicates that Zeng Wu, the Non-Executive Director and Co-Chairman of the Board of Billion Industrial Holding Limited (Billion Parent) also simultaneously holds positions of authority at CECEP and CECEP's subsidiary companies.[59] Accordingly, based on this evidence and consistent with our practice, we find that the Chinese government, through its majority equity ownership, via CECEP and Export Import Bank of China, has the ability to control, and an interest in controlling, the operations of Fujian Billion. The majority ownership means that the government exercises, or has the potential to exercise, control over the company's operations generally. Thus, we preliminarily determine that Fujian Billion is not eligible for a separate rate. Furthermore, as we determined above that Fujian Billion and its affiliate Baikai Textile comprise a single entity, we are treating the single entity as part of the China-wide entity, subject to the China-wide rate.

Margin for the Separate Rate Companies

The statute and Commerce's regulations do not address the establishment of a separate rate to be applied to individual respondents not selected for individual examination when Commerce limits its examination pursuant to section 777A(c)(2) of the Act. Normally, Commerce's practice is to 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, using as guidance section

[55] *See, e.g.*, *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 PDM at Section IV.C.3, unchanged in *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2016-2017*, 83 FR 23424 (May 21, 2018); *Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 8510 (January 26, 2017), and accompanying IDM at 12; and *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying PDM at 6-7, unchanged in *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 79 FR 68860 (November 19, 2014).
[56] *See Jiangsu Jiasheng Photovoltaic Technology Co. v. United States*, 121 F. Supp. 3d 1263, 1267 (CIT 2015).
[57] *See, e.g.*, *Silicon Carbide*, 59 FR at 22586-87; *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).
[58] *See* Memorandum, "Preliminary Separate Rate Analysis for Fujian Billion Polymerization Fiber Technology Industrial Co., Ltd.," dated concurrently with this memorandum.
[59] *Id.* Billion Parent is the ultimate holding company of Fujian Billion and itself is ultimately owned by CECEP and the Export Import Bank of China.

735(c)(5)(A) of the Act.[60] However, pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis*, or determined based entirely under section 776 of the Act, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.[61]

As stated above, using section 735(c)(5)(A) of the Act as guidance, Commerce's practice is to 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. As discussed below, because we are not calculating any individual rates for the mandatory respondents and are determining the China-wide rate based on adverse facts available (AFA), we look to section 753(c)(5)(B) of the Act for guidance and "any reasonable method" to determine the rate for exporters that are not being individually examined and found to be entitled to a separate rate. As "any reasonable method," we find it appropriate to assign the simple average of the Petition rates[62] (***i.e.***, 76.07 percent) to Hengli, the separate-rate applicant not individually examined, consistent with our normal practice.[63]

D. <u>Combination Rates</u>

In the *Initiation Notice*, Commerce stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation.[64] This practice is described in Policy Bulletin 05.1.

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[60] *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).

[61] *See* Statement of Administrative Action, H.R. Rep. No. 103-316, Vol. 1 (1994) (SAA) at 870-873; *see also* section 735(c)(5)(B) of the Act.

[62] *See* the Petitioners' Letter, "Polyester Textured Yarn from the People's Republic of China and India – Petition for the Imposition of Antidumping and Countervailing Duties," dated October 18, 2018 (Petition); *see also* the Petitioners' Letter, "Polyester Textured Yarn from the People's Republic of China – Petitioners' Supplement for Volume II Regarding China Antidumping Duties," dated October 29, 2018, at 7 and Exhibit AD-PRC-Supp-5 (Petition Supplement); and Antidumping Duty Investigation Initiation Checklist: Polyester Textured Yarn from the People's Republic of China, dated November 7, 2018, at 12 (Initiation Checklist).

[63] *See Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Affirmative Determination of Critical Circumstances*, 84 FR 16643 (April 22, 2019) (*Steel Wheels 2019*) ("As 'any reasonable method,' we find it appropriate to assign the simple average of the Petition rates…to Chungang Machinery, the separate rate applicant not individually examined."); *Carton-Closing Staples from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 13236, 13238 (March 28, 2018); *Aluminum Extrusions from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 18524, 18525 (April 4, 2011); *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970 (June 5, 2008) and accompanying IDM at Comment 7; and *Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate from the People's Republic of China*, 73 FR 6479, 6480-81 (February 4, 2008).

[64] *See Initiation Notice* at 19355.

E. China-Wide Entity

The record indicates there are Chinese exporters and/or producers of the subject merchandise during the POI that did not rebut the presumption of government control over their export activities. Specifically, Commerce did not receive responses to its Q&V questionnaire from 33 Chinese exporters and/or producers of the subject merchandise that were named in the Petition and to whom Commerce issued Q&V questionnaires.[65] Thus, these 33 companies have not established their eligibility for a separate rate. Further, as noted above, Pujiang Fairy filed a timely Q&V response but did not subsequently file a separate rate application, the separate rate information for Jiangsu Guowang was removed from the record,[66] and two separate rate applicants, Chori and Jinfu, failed to respond to our requests for information. Thus, these 37 companies are part of the China-wide entity.

Furthermore, mandatory respondent Fujian Zhengqi did not respond to the NME AD Questionnaire and mandatory respondent Shenghong withdrew from the investigation, and requested removal of its BPI. Because these two mandatory respondents did not respond to our requests for information and/or ceased participation in the proceeding, they have not demonstrated that they are eligible for a separate rate as provided in the *Initiation Notice*.[67] Finally, as discussed, Commerce preliminarily found the single entity comprising Fujian Billion to be owned and controlled by SOEs, and thus ineligible for a separate rate. Consequently, because 40 Chinese producers and/or exporters have not demonstrated that they are eligible for separate rate status, Commerce considers them to be part of the China-wide entity.[68] As discussed below, we preliminarily determine to assign the China-wide entity a rate based entirely on AFA.

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[65] *See* Q&V Delivery Confirmation Memo. Commerce also posted a copy of the Q&V questionnaire to which it referred in the *Initiation Notice* on its website. The companies to which Q&V questionnaires were issued that did not respond or refused delivery are: (1) Air Tiger Express (Asia) Inc.; (2) Guangdong Kaiping Chunhui Co., Ltd.; (3) Hangzhou Lanfa Textile Co., Ltd.; (4) Hangzhou Xiaoshan Donglong Chemical Fiber Co., Ltd.; (5) Hangzhou Zhongcai Chemical Fiber Co.; (6) Jiangdu Ao Jian Sports Apparatus; (7) Jiangsu Guotai International Group; (8) Jiangsu Heshili New Material Co., Ltd.; (9) Jiangsu Shenghong Science and Technology Co., Ltd.; (10) Longwell Textiles Limited; (11) Ningbo Kd Industries Co., Ltd.; (12) Ningbo Zhida Textile Co., Ltd.; (13) Ritime Group Inc. SHA); (14) Rongsheng Petrochemical Co., Ltd.; (15) Shaoxing County Yifeng Textile Co., Ltd.; (16) Showtime Industries Group, Ltd.; (17) T.H.I. Group (Shanghai) Ltd. (T3EX Group); (18) Tongkun Group Co., Ltd.; (19) Tongxiang Hengii Chemical Fibre Co.; (20) Wuxi Autofibre Textile Co., Ltd.; (21) Xianglu Chemical Fiber Co. Ltd.; (22) Zhejiang Huaxin Advanced Materials Co., Ltd.; (23) Zhejiang Shengyuan Chemical Fibre Co., Ltd.; (24) Zhejiang Sunmarr International Transportation Co., Ltd.; (25) Zhejiang Xinghuali Fiber Co., Ltd.; (26) Hangzhou Changxiang Chemical Fiber; (27) Hangzhou Kings Chemical Fiber Sales; (28) Hangzhou Top Polyester Co., Ltd.; (29) Jiangsu Zhonglu Technology Development Co., Ltd.; (30) Jiangzi Shengxinglong Imp&Exp Co., Ltd.; (31) Zhejiang Hemei Leisure Products Co.; (32) Zhejiang Hengyi Petrochemicals Co.; and (33) Zhangjiagang Hengshuo Trading Co., Ltd.

[66] *See* Shenghong BPI Removal Letter; and Memo Removing BPI.

[67] *See Initiation Notice*, 83 FR at 58227 ("Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they timely respond to all parts of Commerce's AD questionnaire as mandatory respondents").

[68] *See, e.g., Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 75966 (December 7, 2015) and accompanying IDM at Comment 1.

F. Application of Facts Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that, if necessary information is missing from the record, or if an interested party: (A) withholds information that has been requested by Commerce, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[69] Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the Petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.[70]

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as the Petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the Petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[71] The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value,[72] although under the Act, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.[73] To corroborate secondary information, Commerce

[69] *See* section 776(b)(1)(B) of the Act.
[70] *See also* 19 CFR 351.308(c)
[71] *See* SAA at 870.
[72] *Id.*
[73] *See* section 776(c)(2) of the Act.

will, to the extent practicable, examine the reliability and relevance of the information to be used.[74]

When selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.[75]

1. *Application of Facts Available*

The record demonstrates that the 33 companies unresponsive to our Q&V questionnaire failed to submit the requested information and, further, did not provide documentation indicating that they were having difficulty providing the information and did not request to submit the information in an alternate form. Additionally, two separate-rate applicants did not respond to our request for information and, likewise, did not contact Commerce to indicate their difficulty in providing the requested information.

Further, one mandatory respondent, Fujian Zhengqi, failed to respond to the NME AD Questionnaire, as required of companies selected for individual examination. Fujian Zhengqi did not contact Commerce or otherwise indicate it was having difficulty providing the information or request any extensions of the deadlines to file its responses. Finally, another mandatory respondent, Shenghong, withdrew from the investigation.

Thus, we find that necessary information is missing from the record, and that the China-wide entity withheld information requested by Commerce, failed to provide information by the applicable deadlines, and significantly impeded this proceeding by not submitting the requested information. Accordingly, Commerce preliminarily determines that the use of facts available is required in determining the rate of the China-wide entity, pursuant to sections 776(a)(1) and 776(a)(2)(A)-(C) of the Act.

2. *Application of AFA*

As noted above, one mandatory respondent never responded to the NME AD questionnaire, another mandatory respondent withdrew from the investigation, and two separate-rate applicants and 33 companies identified in the Petition failed to respond to our requests for information. We find that these companies' failures, as part of the China-wide entity, to respond to our requests for information demonstrates that the China-wide entity has failed to cooperate by not acting to the best of its ability. Therefore, we preliminarily find that an adverse inference is warranted in

[74] *See, e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March, 13 1997).
[75] *See* section 776(d)(1)-(2) of the Act.

selecting from the facts otherwise available with respect to the China-wide entity, in accordance with section 776(b) of the Act and 19 CFR 351.308(a).[76]

3. *Selection and Corroboration of the AFA rate*

In selecting a rate for the China-wide entity based on AFA, Commerce's practice is to select a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[77] Specifically, it is Commerce's practice to select, as an AFA rate, the higher of: (a) the highest dumping margin alleged in the Petition; or (b) the highest calculated dumping margin of any respondent in the investigation.[78]

Section 776(d)(3) of the Act makes clear that when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated. Commerce is also not required to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.[79]

There are no calculated margins for any respondent in this investigation. Therefore, in applying AFA, Commerce's standard practice is to assign to the China-wide entity the highest dumping margin alleged in the Petition (77.15 percent, in this instance). Consequently, the dumping margin for the China-wide entity applies to all entries of the subject merchandise, except the entries from Hengli, the sole company found to be eligible for a separate rate, as discussed above. Because the AFA rate that Commerce used is from the Petition, it is secondary information subject to the corroboration requirement. The petitioners' methodology for calculating the export price and normal value (NV) in the Petition is discussed in the *Initiation Notice* and the Initiation Checklist.[80] We determined that the highest petition margin of 77.15 percent is reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis.[81]

To corroborate the 77.15 percent petition rate for purposes of this preliminary determination, Commerce first revisited its pre-initiation analysis of the reliability of the information in the Petition. During our pre-initiation analysis, we examined: (1) the information used as the basis for EP and NV in the Petition; (2) the calculations used to derive the alleged margin; and (3) information from various independent sources provided either in the Petition or in supplements to the Petition.[82] Based on our examination of the information, as discussed in detail in the

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[76] *See Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (*Nippon 2003*) (noting that Commerce need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (*i.e.*, information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.")).
[77] *See, e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose from Finland*, 69 FR 77216, 77218 (December 27, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from Finland*, 70 FR 28279 (May 17, 2005).
[78] *See, e.g.*, *Steel Wheels 2019* and accompanying PDM at 15.
[79] *See* section 776(d)(3) of the Act.
[80] *See Initiation Notice*; *see also* Petition Supplement; and Initiation Checklist.
[81] *See* Initiation Checklist at pages 7-12.
[82] *Id.*

Initiation Checklist, we consider the petitioners' EP and NV calculations to be reliable.[83] In addition, we obtained no other information that would make us question the validity of the sources of information or the validity of information supporting the U.S. price or NV calculations provided in the Petition. Because we confirmed the accuracy and validity of the information underlying the derivation of the margin in the Petition by examining source documents, as well as publicly available information, we preliminarily determine that this petition rate is reliable for the purposes of assigning an AFA rate as the China-wide rate in this investigation.

In making a determination as to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. The Petition rate is relevant because it is based on a lost sale of subject merchandise during the POI, the petitioners' actual consumption of materials, labor, and energy, adjusted for the known differences in usage between China and the United States,[84] and contemporaneous surrogate values. In addition, no information has been placed on the record that discredits this information. As such, we find the highest petition rate of 77.15 percent relevant to the China-wide entity. Furthermore, as there are no respondents in this investigation for which we are calculating a separate dumping margin, we relied upon the rates found in the Petition, which is the only information regarding the polyester textured yarn industry reasonably at Commerce's disposal. Accordingly, Commerce has corroborated the AFA rate of 77.15 percent to the extent practicable within the meaning of section 776(c) of the Act.

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

In applying section 777A(f) of the Act, Commerce examines (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.[85] For a subsidy meeting these criteria, the statute requires Commerce to reduce the antidumping duty by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.[86]

In conducting this analysis, Commerce has not concluded that concurrent application of NME dumping duties and countervailing duties necessarily and automatically results in overlapping remedies. Rather, a finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute.[87]

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[83] *Id.*
[84] *Id.*
[85] *See* section 777A(f)(1)(A)-(C) of the Act.
[86] *See* section 777A(f)(1)-(2) of the Act.
[87] *See, e.g.*, *Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 83 FR 33205 (July 17, 2018), and accompanying IDM at Comment 15.

To determine whether to grant a domestic pass-through adjustment, Commerce relies on the experience of the mandatory respondents examined, subject to section 777A(f)(2) of the Act. As noted above, Commerce preliminarily applied total AFA to two of three mandatory respondents in this preliminary determination because of their failure to cooperate by not acting to the best of their ability to comply with Commerce's requests for information. As such, these two mandatory respondents failed to establish eligibility for an adjustment pursuant to section 777A(f) of the Act for countervailable domestic subsidies. Consequently, Commerce examined the only remaining information on the record with regard to any evidence of countervailable domestic subsidies under section 777A(f) on the record, which is specific to the Fujian Billion single entity. Commerce examined whether Fujian Billion demonstrated: (1) a subsidies-to-cost link, *e.g.*, subsidy impact on cost of manufacturing (COM); and (2) a cost-to-price link, *e.g.*, respondent's prices changed due to changes in the COM.[88]

Fujian Billion identified three programs that might apply during this POI, (*i.e.*, Provision of Electricity for Less Than Adequate Remuneration (LTAR), Provision of Monoethylene Glycol (MEG) for LTAR, and Provision of Purified Terephthalic Acid (PTA) for LTAR).[89] However, Fujian Billion failed to demonstrate that the subsidies received resulted in a change to its COM during the relevant period. For all three programs, Fujian Billion only provided sample accounting vouchers that cover just one month of the POI to substantiate its claim that the programs impact Fujian Billion's COM.[90] However, no additional documents were provided, such as company accounting records, to demonstrate a connection between subsidies received by Fujian Billion and Fujian Billion's COM. Therefore, the subsidies-to-cost linkage was not satisfied. Additionally, because Fujian Billion failed to identify a subsidies-to-cost link, it also failed to identify a cost-to-price linkage, as no price fluctuations were tied directly to the change in cost associated with the subsidy identified in the relevant period. Even if we separately consider Fujian Billion's documents provided to substantiate the cost-to-price linkage, with respect to the provision of MEG and PTA for LTAR, Fujian Billion only provided a sample of Fujian Billion's price instruction chart, which does not demonstrate how Fujian Billion budgeted price in response to changes in cost items (*i.e.*, MEG and PTA).[91] With respect to the provision of electricity for LTAR, Fujian Billion stated that it would not adjust its sales prices due to only a change in the electricity cost, because the electricity cost only accounts for a small portion of the total cost of production, and its cost does not vary significantly.[92] Accordingly, Commerce is not making any such adjustment to the rate being assigned to the China-wide entity.

[88] *See, e.g.*, *Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 36876 (June 8, 2016), and accompanying PDM at 36, unchanged in *Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 75032 (October 28, 2016); and *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 PDM at 25-26, 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).
[89] *See* Fujian Billion Double Remedy Questionnaire Response dated March 1, 2019, at 5-6 and Exhibit DR-1.
[90] *Id.*
[91] *Id.* at Exhibit DR-2.
[92] *Id.*

IX. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES

In AD investigations where there is a concurrent countervailing duty (CVD) investigation, it is Commerce's normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent's weighted-average dumping margin to account for export subsidies found for each respective respondent in the concurrent CVD investigation. Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S. price "shall be increased by the amount of any countervailing duty imposed on the subject merchandise… to offset an export subsidy."[93] Commerce determined in the preliminary determination of the companion CVD investigation that Fujian Billion, and certain producers/exporters subject to the all-others rate, benefitted from certain subsidy programs contingent on exports totaling 10.68 percent.[94]

With respect to Hengli, we find that an export subsidy adjustment of 10.68 percent to the cash deposit rate is warranted because this is the export subsidy rate included in the countervailing duty "all others" rate to which Hengli is subject.[95] For the China-wide entity, which includes the mandatory respondents, and which preliminarily received an AFA margin, as an extension of the adverse inference found necessary pursuant to section 776(b) of the Act, Commerce has adjusted the China-wide entity's AD cash deposit rate by the lowest export subsidy rate determined for any party in the companion CVD proceeding, which is the 10.68 percent rate applicable to all companies previously discussed.[96] Therefore, consistent with our practice,[97] we will apply the export subsidy offset to the cash deposit rates, as reflected in the accompanying *Federal Register* notice.

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[93] *See Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 38076, 38077 (July 1, 2010), and accompanying IDM at Comment 1.

[94] *See Polyester Textured Yarn from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 19040 (May 3, 2019) and accompanying PDM at pages 25 and 38. The two export subsidies calculated for Fujian Billion are 0.14 percent and 10.54 percent, resulting in a total export subsidy rate of 10.68 percent.

[95] *Id.*

[96] *See, e.g.*, *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination*, 81 FR 76916 (November 4, 2016) and accompanying PDM, unchanged in *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 82 FR 14876 (March 23, 2017).

[97] *Id*.

X. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☒ ☐

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Agree Disagree

6/25/2019

X

Signed by: JEFFREY KESSLER

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Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance