A-570-084
POR: 11/20/2018 – 6/30/2020
Administrative Review
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August 2, 2021

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

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the 2018-2020 Administrative Review of Quartz Surface Products from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs of interested parties in the 2018-2020 administrative review of the antidumping duty (AD) order quartz surface products from the People's Republic of China (China). The period of review (POR) is November 20, 2018, through June 30, 2020.

After analyzing the comments submitted by interested parties, we have made no changes to the *Preliminary Results*.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a list of the issues in this investigation for which we received comments from interested parties:

Comment 1: Provisional Measures Cap
Comment 2: Assessment Rates for Importers

II. BACKGROUND

On April 6, 2021, Commerce published the *Preliminary Results* of this administrative review.[2] We invited interested parties to comment on the *Preliminary Results*. On May 5, 2021, we received a case brief from importers Unique Stone Concepts LLC, Cosmos Granite (West), and

[1] *See Quartz Surface Products from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Rescission of Administrative Review, in Part*, 86 FR 17772 (April 6, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).
[2] *Id*.

Cosmos Granite (South East) (collectively, Unique Stone and Cosmos Granite).[3] On May 10, 2021, we received a rebuttal brief from the petitioner, Cambria Company LLC.[4] No party requested that Commerce hold a hearing.

III. SCOPE OF THE ORDER

The scope of the order covers certain quartz surface products.[5] Quartz surface products consist of slabs and other surfaces created from a mixture of materials that includes predominately silica (*e.g.*, quartz, quartz powder, cristobalite) as well as a resin binder (*e.g.*, an unsaturated polyester). The incorporation of other materials, including, but not limited to, pigments, cement, or other additives does not remove the merchandise from the scope of the order. However, the scope of the order only includes products where the silica content is greater than any other single material, by actual weight. Quartz surface products are typically sold as rectangular slabs with a total surface area of approximately 45 to 60 square feet and a nominal thickness of one, two, or three centimeters. However, the scope of the order includes surface products of all other sizes, thicknesses, and shapes. In addition to slabs, the scope of the order includes, but is not limited to, other surfaces such as countertops, backsplashes, vanity tops, bar tops, work tops, tabletops, flooring, wall facing, shower surrounds, fire place surrounds, mantels, and tiles. Certain quartz surface products are covered by the order whether polished or unpolished, cut or uncut, fabricated or not fabricated, cured or uncured, edged or not edged, finished or unfinished, thermoformed or not thermoformed, packaged or unpackaged, and regardless of the type of surface finish.

In addition, quartz surface products are covered by the order whether or not they are imported attached to, or in conjunction with, non-subject merchandise such as sinks, sink bowls, vanities, cabinets, and furniture. If quartz surface products are imported attached to, or in conjunction with, such non-subject merchandise, only the quartz surface product is covered by the scope. Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise fabricated in a third country, including by cutting, polishing, curing, edging, thermoforming, attaching to, or packaging with another product, or any other finishing, packaging, or fabrication that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the quartz surface products.

The scope of the order does not cover quarried stone surface products, such as granite, marble, soapstone, or quartzite. Specifically excluded from the scope of the order are crushed glass surface products. Crushed glass surface products must meet each of the following criteria to qualify for this exclusion: (1) The crushed glass content is greater than any other single material, by actual weight; (2) there are pieces of crushed glass visible across the surface of the product; (3) at least some of the individual pieces of crushed glass that are visible across the surface are larger than one centimeter wide as measured at their widest cross-section (glass pieces); and (4)

[3] *See* Unique Stone and Cosmos Granite's Letter, "Administrative Case Brief," dated May 5, 2021 (Unique Stone and Cosmos Granite's Case Brief).

[4] *See* Petitioner's Letter, "Certain Quartz Surface Products from the People's Republic of China: Petitioners' Rebuttal Brief," dated May 10, 2021 (Petitioner Rebuttal Brief).

[5] Quartz surface products may also generally be referred to as engineered stone or quartz, artificial stone or quartz, agglomerated stone or quartz, synthetic stone or quartz, processed stone or quartz, manufactured stone or quartz, and Bretonstone®.

the distance between any single glass piece and the closest separate glass piece does not exceed three inches.

The products subject to the scope are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheading: 6810.99.0010. Subject merchandise may also enter under subheadings 6810.11.0010, 6810.11.0070, 6810.19.1200, 6810.19.1400, 6810.19.5000, 6810.91.0000, 6810.99.0080, 6815.99.4070, 2506.10.0010, 2506.10.0050, 2506.20.0010, 2506.20.0080, and 7016.90.10.50. The HTSUS subheadings set forth above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the order is dispositive.

IV. DISCUSSION OF THE ISSUES

Comment 1: Application of Provisional Measures Cap

Unique Stone and Cosmos Granite's Case Brief

- Commerce should ensure that the liquidation instructions issued with the final results reflect the provisional measures deposit cap pursuant to 19 CFR 351.212.

Commerce's Position:

We issued draft liquidation instructions to the record prior to Unique Stone and Cosmos Granite's Case Brief's placement on the record.[6] As reflected in those draft cash deposit and liquidation instructions, we will ensure that the liquidation instructions and the corresponding provisional measures deposit cap are issued pursuant 19 CFR 351.212.

Comment 2: Assessment Rates for Importers

Unique Stone and Cosmos Granite's Case Brief

- There is no statutory or factual basis for assigning the China-wide entity rate based on an adverse facts available (AFA) dumping margin of 326.15 percent to importers. Unique Stone and Cosmos Granite were not non-cooperative parties and should not be subject to a rate based on adverse facts that acts as a deterrent for non-compliance with Commerce.

- The Eighth Amendment prohibits the imposition of excessive fines, *i.e.*, "payment{s} to a sovereign as punishment for an offense."[7] The Supreme Court of the United States (Supreme Court) has held that payments that are at least partially penal in nature are subject to the Excessive Fines Clause of the Eighth Amendment.[8]

[6] *See* Memorandum, "Draft Customs Instructions for Consideration in the Final Results," dated April 30, 2021.
[7] *See* Unique Stone and Cosmos Granite's Case Brief at 4 (citing *Browning-Ferris Ind. of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257 (1989) (*Browning-Ferris*)).
[8] *Id.* at 4-5 (citing *United States v. Halper*, 490 U.S. 435, 448 (1989); and *Austin v. United States*, 509 U.S. 602, 621-22 (1993) (*Austin*)).

- It is settled that ordinary antidumping duties (*i.e.*, those not based on AFA) are remedial in nature.[9] Thus, "it is not the application of {AD} duties that triggers review under the {Eighth} Amendment, it is the application of {AD} duties based on adverse inferences."[10]

- The Supreme Court has ruled that, if the purpose of a fine is deterrence, then that fine is partially penal, as well as remedial.[11] As held by the courts, the application of AFA is based on many factors, including deterrence.[12] Thus, the purpose of the AFA provisions are, at least, partially penal, and Commerce must consider whether this penal relief is excessive.[13]

- The few cases construing the Excessive Fines Clause provide a clear standard to test whether a fine is reasonable: whether the amount of forfeiture bears "some relationship to the gravity of the offense it is designed to punish."[14]

- The application of the China-wide rate to Unique Stone and Cosmos Granite's imports is excessive and does not correspond with any wrongdoing by these importers. There is no evidence on the record that these importers failed to cooperate with Commerce. Consequently, no deterrence is necessary, and Commerce should not apply an AFA rate to these importers' entries.[15]

- While the Courts have not specifically addressed this issue, they have held that AFA may be appropriate if the cooperative entities have a relationship with the non-cooperative entities, but, if they do not have such a relationship, then the application of AFA is potentially unfair.[16] In addition, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) has held that applying AFA to a cooperative respondent is improper.[17]

- Unique Stone and Cosmos Granite do not have control over their unaffiliated suppliers' actions and, thus, based on the above arguments, should not be punished for the actions of companies outside of their control.

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[9] *Id.* at 6 (citing *NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1208 (Fed. Cir. 1995)) (*NTN Bearing*); *Chaparral Steel Co. v. United States*, 901 F.2d 1097 (Fed. Cir. 1990) (*Chaparral*)).
[10] *Id.* at 6.
[11] *Id.* (citing *United States v. Bajakajian*, 543 U.S. 321, 329 (1998) (*Bajakajian*)).
[12] *Id.* at 7-8 (citing *F. Lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (*De Cecco*); and *Mueller Comercial De Mexico, S. de R.L. de C.V. v. United States*, 753 F.3d 1227, 1233 (Fed. Cir. 2014) (*Mueller*)).
[13] *Id.* at 8.
[14] *Id.* (citing *Bajakajian*, 524 U.S. at 334).
[15] *Id.* at 8-9.
[16] *Id.* at 9-10 (citing *Mueller*, 753 F.3d at 1235; and *SKF USA Inc. v. United States*, 630 F.3d 1365, 1375 (Fed. Cir. 2011)).
[17] *Id.* at 10 (citing *Changzhou Wujin Fine Chemical Factory Co. v. United States*, 701 F.3d. 1367, 1378 (Fed. Cir. 2012)).

Petitioner's Rebuttal Brief

- Commerce should entirely reject Unique Stone and Cosmos Granite's request to calculate an assessment rate separate than the rate calculated for the uncooperative Chinese producers and exporters subject to this review.[18]

- The Federal Circuit has resoundingly rejected identical arguments. In *KYD*, KYD, Inc., (KYD) challenged the rate assigned to its exporter based on AFA.[19] As part of its appeal, KYD argued that the AFA rate was so high as to be punitive and contrary to the Supreme Court's decisions imposing limits on punitive damages. The Federal Circuit disagreed and found that antidumping duties are remedial; therefore, the limitations applicable to punitive damage assessments do not apply to duties based on lawfully derived margins.[20] Accordingly, the Eighth Amendment limitations on excessive fines are irrelevant.

- The fact that Unique Stone and Cosmos Granite cooperated in this proceeding is of no relevance. In *KYD*, the Federal Circuit rejected identical arguments that Commerce should only apply AFA rates against uncooperative parties and assign a different rate to cooperative importers because this approach would allow the foreign exporter to "avoid the adverse inferences permitted by the statute simply by selecting an unrelated importer."[21]

Commerce's Position:

We disagree with Unique Stone and Cosmos Granite and, as explained below, continue to find that assigning the China-wide rate to Unique Stone and Cosmos Granite's exporters is in accordance with the Tariff Act of 1930, as Amended (the Act), and the Eighth Amendment.

As an initial matter, we note that Unique Stone and Cosmos Granite imported merchandise from only three of the five producers/exporters subject to this review (*i.e.*, Dava Industry Co., Ltd. (Dava); Guangzhou Hercules Quartz Stone Co., Ltd. (Guangzhou Hercules); and Heshan City Nande Stone Co. (Nande Stone)).[22] Thus, we find Unique Stone and Cosmos Granite are not affected by our determination with respect to Xiamen Deyuan Panmin Trading Co., Ltd., (Xiamen Deyuan) and Deyuan Panmin International Limited (Deyuan Panmin). Accordingly, we find that Unique Stone and Cosmos Granite's arguments are moot with respect to Xiamen Deyuan and Deyuan Panmin, and we continue to find that Xiamen Deyuan and Deyuan Panmin are part of the China-wide entity.

We also note that Unique Stone and Cosmos Granite do not contest our determination that Dava, Guangzhou Hercules, and Nande Stone are part of the China-wide entity. In the *Preliminary*

[18] *See* Petitioner Rebuttal Brief at i.
[19] *Id.* at 2-3 (citing *KYD, Inc. v. United States*, 607 F.3d 760, 761 (Fed. Cir. 2010) (*KYD*)).
[20] *Id.* at 2-3 (citing *KYD*, 607 F.3d at 761); *NTN Bearing*, 74 F.3d at 1208; and *De Cecco*, 216 F.3d at 1032)).
[21] *Id.* at 3-4 (citing *KYD*, 607 F.3d at 767).
[22] *See* Unique Stone's Letter, "Quartz Surface Products from the PRC; A-570-084; Request for Administrative Review," dated July 31, 2020; *see also* Cosmos' Letter, "Quartz Surface Products from the PRC; A-570-084; Request for Administrative Review," dated July 31, 2020.

Results, we described the process by which Commerce calculates antidumping margins for individually examined exporters or producers, producers or exporters eligible for a separate rate, and the China-wide entity.[23] Commerce stated in the *Initiation Notice* of this administrative review that "all firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. … Entities that currently do not have a separate rate from a completed segment of the proceeding should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding."[24] The *Initiation Notice* also states that exporters and producers selected as mandatory respondents must respond to Commerce's antidumping questionnaire in order to be eligible for a separate rate.[25] Notably, all of the companies subject to this review failed to cooperate to the best of their ability by failing to submit a Separate Rate Application/Certification or failing to respond to Commerce's antidumping questionnaire.[26] Moreover, Nande Stone, one of Unique Stone and Cosmos Granite's exporters, also failed to respond to Commerce's antidumping questionnaire. As a result, Commerce found these companies to be part of the China-wide entity, as none of these companies demonstrated their eligibility for a separate rate.[27] Accordingly, we assigned these companies the China-wide rate of 326.15 percent from the investigation, which was a rate based on AFA.

We disagree with Unique Stone and Cosmos Granite's claims that AD duties based on AFA are subject to the Excessive Fines Clause of the Eighth Amendment. The Excessive Fines Clause applies only in the context of punishment,[28] and it is well-established that the antidumping and countervailing duty law, including the AFA provisions, is remedial and not punitive.[29] Indeed, the Courts have addressed Unique Stone and Cosmos Granite's arguments in the past and held that the Eighth Amendment is not applicable because "an AFA dumping margin determined in accordance with the statutory requirements is not a punitive measure, and the limitations applicable to punitive damages assessments therefore have no pertinence to duties imposed based on lawfully derived margins."[30] Moreover, in applying the AFA rate provision, it is well established that, when selecting the rate from among possible sources, Commerce seeks to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to incentivize respondents to cooperate (*i.e.*, to provide Commerce with complete and accurate

[23] *See Preliminary Results* PDM at 5-7.
[24] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 54983, 54984 (September 3, 2020).
[25] *See Initiation Notice*, 85 FR at 54984.
[26] *See Preliminary Results* PDM at 7-8.
[27] *Id*.
[28] *See Austin*, 509 U.S. at 609-10 ("The Excessive Fines Clause limits the government's power to extract payments, whether in cash or in kind, '*as punishment* for some offense.'") (quoting *Browning-Ferris*, 492 U.S. at 265)).
[29] *See, e.g.*, *Chapparal*, 901 F.2d at 1103-04 ; *KYD*, 607 F.3d at 767-68; and *GPX Intern. Tire Corp. v. United States*, 893 F. Supp. 2d 1296, 1310 (CIT 2013).
[30] *See KYD*, 607 F.3d at 768; *see also KYD, Inc. v. United States*, 836 F. Supp. 2d 1410, 1415 (CIT 2012) ("It follows that any {Eighth} Amendment issue has already been foreclosed because 'a statutorily proper AFA rate is remedial rather than punitive, and a punitive rate is statutorily improper." (quoting *KYD Inc. v. United States*, 779 F. Supp. 2d 1361, 1384 n.24 (CIT 2011)).

information in a timely manner),[31] and not to impose punitive, aberrational, or uncorroborated margins.[32]

Notably, Unique Stone and Cosmos Granite do not claim that the AFA rate applied in this review is statutorily improper, only that AFA rates, in general, are punitive in nature. In the *LTFV Final Determination*, Commerce explained how it calculated the AFA rate and assigned that rate to the China-wide entity.[33] As explained in the *LTFV Final Determination* IDM, we corroborated the AFA margin assigned to the China-wide entity to the extent practicable in accordance with section 776(c)(1) of the Act.[34] Thus, the AFA margin assigned to the China-wide entity in the less-than-fair-value (LTFV) investigation was "statutorily proper."

Commerce no longer considers a non-market economy (NME) entity (*i.e.*, the China-wide entity) as an exporter conditionally subject to an antidumping duty administrative review.[35] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity. In this administrative review, no party requested a review of the China-wide entity, and Commerce did not self-initiate a review of the China-wide entity. Because no review of the China-wide entity is being conducted, the China-wide entity's entries are not subject to the review, and the rate applicable to the China-wide entity is not subject to change as a result of this review. As we have established above, the AFA rate assigned to the China-wide entity in the LTFV investigation was "statutorily proper" and, thus, not punitive. In addition, section 776(c)(2) of the Act does not require Commerce to corroborate any dumping margin applied in a separate segment of the same proceeding. Because the rate assigned to the China-wide entity is not subject to change, it remains the same rate assigned to the China-wide entity in the LTFV investigation. Accordingly, the China-wide rate in this review is "statutorily proper" as it is in accordance with the Act and Commerce's practice.

Consequently, because Commerce assigned a statutorily proper AD rate based on AFA, this AFA rate is remedial, and Commerce does not need to perform the Eighth Amendment evaluation as Unique Stone and Cosmos Granite claim.

We also find that Unique Stone and Cosmos Granite's arguments that applying the AFA rate as the assessment rate for the reviewed companies' cooperative importers is punitive to be unfounded. The fact that Unique Stone and Cosmos Granite were cooperative in this segment of the proceeding is entirely irrelevant to the rates assessed upon them as determined by the uncooperative Chinese producers/exporters to which those rates were assigned. The Federal

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[31] *See Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1276 (Fed. Cir. 2012) (citing *De Cecco*, 216 F.3d at 1032 (finding that "{t}he purpose of the adverse facts statute is 'to provide respondents with an incentive to cooperate with Commerce's investigation, not to impose punitive damages.'")); *see also* SAA at 870.

[32] *See De Cecco*, 216 F.3d at 1032.

[33] *See Certain Quartz Surface Products from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23767 (May 23, 2019) (*LTFV Final Determination*), and accompanying Issues and Decision Memorandum (IDM) at "IV. Use of Adverse Facts Available."

[34] *Id.*

[35] *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, 65970 (November 3, 2013).

Circuit has addressed this exact situation in *KYD*. In *KYD*, as in the instant case, an importer argued that "Commerce should apply AFA rates only against uncooperative parties and that a cooperative, independent importer should not be required to pay an assessment based on an AFA dumping margin imposed on an uncooperative producer/exporter."[36] As the Court explained:

> Under the antidumping duty statutes, Commerce is directed to set the assessment rate based on the calculated dumping margin. By statute and regulation, the importer is legally responsible for paying the assessed duties associated with the goods it imports. KYD does not point to any statute or regulation that would entitle independent importers to a different assessment rate from the rate for importers that are affiliated with the foreign producer/exporters of the goods they import.
>
> Moreover, KYD's argument would allow an uncooperative foreign exporter to avoid the adverse inferences permitted by statute simply by selecting an unrelated importer, resulting in easy evasion of the means Congress intended for Commerce to use to induce cooperation with its antidumping investigations. The prospect that domestic importers will have to pay enhanced antidumping margins because of the uncooperativeness of the exporters from whom they purchase goods may, in some cases, result in the imposition of costs on an individual importer that the importer is unable to avoid. In the aggregate, however, the importers' exposure to enhanced antidumping duties seems likely to have the effect of either directly inducing cooperation from the exporters with whom the importers deal or doing so indirectly, by leaving uncooperative exporters without importing partners who are willing to deal in their products.[37]

Accordingly, we find that Unique Stone and Cosmos Granite's cooperation to be irrelevant to the matter at hand. Commerce is required to set the assessment rates based on the calculated dumping margin,[38] which in this case is the China-wide rate that is based on AFA. No statute or regulation allows Commerce to alter the assessment rate for an importer based on the fact that it cooperated.

We have not addressed any of Unique Stone and Cosmos Granite's remaining arguments, as they are predicated on the erroneous assertion that AD duties based, even in part, on AFA are penal in nature, when all AD duties calculated in accordance with the Act, even those based on AFA, are *solely* remedial. Moreover, as stated above, we continue to find all companies subject to this administrative review are part of the China-wide entity. Unique Stone and Cosmos Granite have not provided Commerce with a basis to break from binding precedent with respect to Eighth Amendment claims and assessment rates for importers. Thus, as a result of our findings, we will instruct U.S. Customs and Border Protection to apply an *ad valorem* assessment rate of 326.15 percent to all shipments of subject merchandise, entered, or withdrawn from warehouse, for consumption during the POR, that were exported by the companies subject to this review, including those entries that were imported by Unique Stone and Cosmos Granite.

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[36] *See KYD*, 607 F.3d at 768.
[37] *Id.* (citations omitted).
[38] *See* sections 736(c)(3) and 751(a)(2)(C) of the Act; and 19 CFR 351.212(b)(1).

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of the administrative review in the *Federal Register*.

☒	☐
Agree	Disagree

8/2/2021

X 

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance