



A-570-983  
Administrative Review  
POR: 4/1/2020 – 3/31/2021  
**Public Document**  
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August 25, 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:** Decision Memorandum for Preliminary Results of the 2020-2021  
Antidumping Duty Administrative Review: Drawn Stainless Steel  
Sinks from the People's Republic of China

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on drawn stainless steel sinks (drawn sinks) from the People's Republic of China (China). The period of review (POR) is April 1, 2020, through March 31, 2021. We preliminarily find that respondents Jiangmen New Star Hi-Tech Enterprise Ltd. (New Star) and KaiPing Dawn Plumbing Products, Inc. (KaiPing) have not established their eligibility for a separate rate; thus, they are part of the China-wide entity.

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

## II. BACKGROUND

In April 2013, Commerce published in the *Federal Register* an AD duty order on drawn sinks from China.<sup>1</sup> On April 1, 2021, Commerce published a notice of opportunity to request an administrative review of the AD duty order on drawn sinks from China for the POR.<sup>2</sup> Pursuant to section 751(a)(1) of the Act and 19 CFR 351.213(b)(1), Commerce received timely requests

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<sup>1</sup> See *Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 78 FR 21592 (April 11, 2013) (*Drawn Sinks LTFV Final*).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 86 FR 17137 (April 1, 2021).



for review from KaiPing and the petitioner, Elkay Manufacturing Company.<sup>3</sup> On June 11, 2021, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation with respect to 29 companies.<sup>4</sup>

In the *Initiation Notice*, Commerce notified parties of the application/certification process by which exporters and producers of merchandise subject to an administrative review in a non-market economy (NME) country may qualify for separate rate status.<sup>5</sup> Exporters and producers wishing to qualify for separate rate status in this administrative review were given 30 calendar days after publication of the *Initiation Notice* to complete, as appropriate, either a separate rate application or separate rate certification. In June and July 2021, we received one separate rate application and one separate rate certification from those Chinese companies requesting separate rate status.<sup>6</sup>

The *Initiation Notice* also indicated that, in the event that Commerce limits the number of respondents selected for individual examination, we would select mandatory respondents based on CBP data for U.S. imports during the POR.<sup>7</sup> In June 2021, Commerce released the CBP data to all interested parties under an administrative protective order (APO).<sup>8</sup> In June 2021, pursuant to section 777A(c)(2)(B) of the Act, we selected Guangdong Dongyuan Kitchenware Industrial Co., Ltd. (Dongyuan) and Guangdong Yingao Kitchen Utensils Co., Ltd (Yingao) for individual examination in this administrative review and subsequently issued the NME AD questionnaire to them.<sup>9</sup>

On July 13, 2021, the petitioner timely withdrew its requests for review of 27 companies, including Dongyuan and Yingao.<sup>10</sup> As a result, on July 23, 2021, we selected KaiPing and New Star for individual examination in this administrative review, and issued the NME AD questionnaire to them.<sup>11</sup> In August 2021, KaiPing and New Star notified Commerce of their intent not to participate in this administrative review.<sup>12</sup> Neither KaiPing nor New Star submitted a response to Commerce's NME AD questionnaire by the established deadline.

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<sup>3</sup> See KaiPing's Letter, "Request for Antidumping Administrative Review," dated April 20, 2021; *see also* Petitioner's Letter, "Request for Administrative Review," dated April 30, 2021.

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Reviews*, 86 FR 31282 (June 11, 2021) (*Initiation Notice*).

<sup>5</sup> *Id.*, 86 FR at 31283.

<sup>6</sup> See KaiPing's Letter, "Separate Rate Certification," dated June 4, 2021 (KaiPing SRC); and New Star's Letter, "Separate Rate Application," dated July 16, 2021 (New Star SRA).

<sup>7</sup> See *Initiation Notice*, 86 FR at 31283.

<sup>8</sup> See Memorandum, "Release of Customs Entry Data from U.S. Customs and Border Protection," dated June 21, 2021.

<sup>9</sup> See Memorandum, "Respondent Selection," dated June 30, 2021; and Commerce's Letters, "Antidumping Duty Questionnaire," dated July 1, 2021.

<sup>10</sup> See Petitioner's Letter, "Notice of Partial Withdrawal of Request for Administrative Review," dated July 13, 2021.

<sup>11</sup> See Memorandum, "Selection of New Respondents for Individual Review," dated July 23, 2021 (Second Respondent Selection Memorandum); and Commerce's Letters, "Antidumping Duty Questionnaire," dated July 23, 2021.

<sup>12</sup> See New Star's Letter, "New Star Notice of Intent Not to Participate," dated August 10, 2021 (New Star Notice); and KaiPing's Letter, "Inability to Participate as a Mandatory Respondent," dated August 12, 2021 (KaiPing Notice).

### **III. SCOPE OF THE ORDER**

The merchandise covered by the order includes drawn stainless steel sinks with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel. Mounting clips, fasteners, seals, and sound-deadening pads are also covered by the scope of this order if they are included within the sales price of the drawn stainless steel sinks.<sup>13</sup> For purposes of this scope definition, the term “drawn” refers to a manufacturing process using metal forming technology to produce a smooth basin with seamless, smooth, and rounded corners. Drawn stainless steel sinks are available in various shapes and configurations and may be described in a number of ways including flush mount, top mount, or undermount (to indicate the attachment relative to the countertop). Stainless steel sinks with multiple drawn bowls that are joined through a welding operation to form one unit are covered by the scope of the order. Drawn stainless steel sinks are covered by the scope of the order whether or not they are sold in conjunction with non-subject accessories such as faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

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

### **IV. DISCUSSION OF THE METHODOLOGY**

#### **A. Non-Market Economy Country Status**

Commerce considers China to be an NME country.<sup>14</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of these preliminary results.

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<sup>13</sup> Mounting clips, fasteners, seals, and sound-deadening pads are not covered by the scope of this order if they are not included within the sales price of the drawn stainless steel sinks, regardless of whether they are shipped with or entered with drawn stainless steel sinks.

<sup>14</sup> 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*.

## B. Separate Rates Determination

In NME proceedings, there is a rebuttable presumption that companies are subject to government control and, thus, should be assessed a single AD rate.<sup>15</sup> In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.<sup>16</sup> It is Commerce's policy to assign exporters of the subject merchandise from an NME country a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, Commerce analyzes each exporting entity in an NME country under the test established in *Sparklers*,<sup>17</sup> as amplified by *Silicon Carbide*.<sup>18</sup> However, if Commerce determines that a company is wholly foreign-owned, then consideration of the *de jure* and *de facto* criteria is not necessary to determine whether it is independent from government control.<sup>19</sup>

Under the separate rates test, Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.<sup>20</sup>

Further, Commerce typically considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices 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.<sup>21</sup>

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<sup>15</sup> See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); see also *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

<sup>16</sup> See *Initiation Notice*, 86 FR at 31283.

<sup>17</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).

<sup>18</sup> 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*).

<sup>19</sup> See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

<sup>20</sup> See *Sparklers*, 56 FR at 20589.

<sup>21</sup> See *Silicon Carbide*, 59 FR at 22586-89; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China AD proceeding, and Commerce's determinations therein.<sup>22</sup> In particular, we note that in litigation involving the diamond sawblades proceeding, the U.S. Court of International Trade (CIT) found Commerce's existing separate rates analysis deficient in the circumstances of that case, in which a government-controlled entity had significant ownership in the respondent exporter.<sup>23</sup> Following the Court's reasoning, in recent proceedings, we have concluded that where a government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, this interest in and of itself means that the respondent is not eligible for a separate rate.<sup>24</sup> Otherwise, we will analyze the impact of government ownership within the context of the *de facto* criteria as established above. This may include control over, for example, the selection of board members and management, key factors in determining whether a company has sufficient independence in its export activities to merit a separate rate.

#### KaiPing and New Star Not Eligible for a Separate Rate

For the reasons detailed below, Commerce preliminarily determines that KaiPing and New Star should be considered part of the China-wide entity.

Pursuant to Commerce's practice, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity.<sup>25</sup> Because no party requested a review of China-wide entity in this review, the entity is not under review and the entity's rate is not subject to change. Therefore, if our determination is unchanged in the final

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<sup>22</sup> See Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China (May 6, 2013) in *Advanced Tech. & Materials Co. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Tech.*), affirmed in *Advanced Tech. & Materials Co. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013). This remand redetermination is on the Enforcement and Compliance website at <http://enforcement.trade.gov/remands/12-147.pdf>. See also *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013), and accompanying Preliminary Decision Memorandum (PDM) at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>23</sup> See, e.g., *Advanced Tech.*, 885 F. Supp. 2d at 1349 ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); 1351 ("Further substantial evidence of record does not support the inference that SASAC's {state-owned assets supervision and administration commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor *de jure* 'separation' that Commerce concludes.") (footnotes omitted); 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); and 1357 ("AT&M itself identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.") (footnotes omitted).

<sup>24</sup> See *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying PDM at 5-9.

<sup>25</sup> See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

results, entries from KaiPing and New Star will be liquidated at the rate previously established for the China-wide entity (*i.e.*, 76.45 percent).<sup>26</sup>

In the *Initiation Notice*, Commerce stated that: “{f} or exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.”<sup>27</sup> KaiPing and New Star were selected for individual examination as mandatory respondents in this administrative review.<sup>28</sup> Although KaiPing submitted a separate rate certification and New Star submitted a separate rate application,<sup>29</sup> both companies notified Commerce they would not participate in this administrative review<sup>30</sup> and failed to respond to Commerce’s questionnaire by the established deadline. Accordingly, we preliminarily determine that KaiPing and New Star are not eligible for separate rate status and should be considered to be a part of the China-wide entity.<sup>31</sup>

## V. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

8/25/2021

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Signed by: CHRISTIAN MARSH

Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

<sup>26</sup> The China-wide rate determined in the investigation was 76.53 percent. *See Drawn Sinks LTFV Final*. This rate was adjusted for export subsidies and estimated domestic subsidy pass through to determine the cash deposit rate (76.45 percent) collected for companies in China-wide entity. *See explanation in Drawn Stainless Steel Sinks from the People’s Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013).

<sup>27</sup> *See Initiation Notice*, 86 FR at 31283.

<sup>28</sup> *See Second Respondent Selection Memorandum*.

<sup>29</sup> *See KaiPing SRC*; and *New Star SRA*.

<sup>30</sup> *See KaiPing Notice*; and *New Star Notice*.

<sup>31</sup> *See Preliminary Results of the Antidumping Duty Administrative Review; 2019 – 2020*, 86 FR 7363 (January 28, 2021), and accompanying PDM at 8, unchanged in *Final Results of Antidumping Duty Administrative Review; 2019 – 2020*, 86 FR 18511 (April 9, 2021).