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Investigation
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September 27, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
For Antidumping and Countervailing Duty Operations

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

SUMMARY

The Department of Commerce ("Department") preliminarily determines that drawn stainless steel sinks ("drawn sinks") from the People's Republic of China ("PRC") are being, or are 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 period of investigation ("POI") is July 1, 2011, through December 31, 2011. The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice.

BACKGROUND

Initiation

On March 1, 2012, the Department received an antidumping duty ("AD") petition concerning imports of drawn stainless steel sinks from PRC filed in proper form by Elkay Manufacturing Company ("Petitioner").¹ The Department initiated this investigation on March 21, 2012.² In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in nonmarket economy ("NME") investigations. The process requires exporters and producers to submit a separate-rate status

¹ See the Petitions for the Imposition of Antidumping and Countervailing Duties Against Drawn Stainless Steel Sinks from The People's Republic of China ("Petition"), filed on March 1, 2012.

² See *Drawn Stainless Steel Sinks from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 77 FR 18207 (March 27, 2012) ("*Initiation Notice*").



application (“SRA”)³ and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities. The SRA for this investigation was posted on the Department’s website at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on March 22, 2012. In the *Initiation Notice* we stated that the SRA will be due 60 days after publication of the notice, which was May 26, 2012. However, since May 26, 2012, fell on a Saturday, a non-business day, the due date for filing an SRA was May 28, 2012, the next business day.

On April 23, 2012, the International Trade Commission (“ITC”) determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of drawn sinks from the PRC.⁴

Period of Investigation

The POI is July 1, 2011, through December 31, 2011. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was March 2012.⁵

Postponement of Preliminary Determination

On June 29, 2012, Petitioner made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e) for a 50-day postponement of the preliminary determination. On July 16, 2012, the Department published a postponement of the preliminary AD determination on drawn sinks from the PRC.⁶

Scope of the Investigation

The products covered by the scope of this investigation are 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 these investigations if they are included within the sales price of the drawn stainless steel sinks.⁷ 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

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://ia.ita.doc.gov/policy/bull05-1.pdf>.

⁴ See *Investigation Nos. 701–TA–489 and 731–TA–1201 (Preliminary): Drawn Stainless Steel Sinks from China*, 77 FR 23752 (April 20, 2012).

⁵ See 19 CFR 351.204(b)(1).

⁶ See *Drawn Stainless Steel Sinks From the People’s Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 77 FR 41754 (July 16, 2012).

⁷ Mounting clips, fasteners, seals, and sound-deadening pads are not covered by the scope of these investigations 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.

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 investigations. Drawn stainless steel sinks are covered by the scope of the investigations 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 investigations 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 these investigations are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under statistical reporting number 7324.10.0000 and 7324.10.00.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Scope Comments

As discussed in the preamble to the regulations, we set aside a period for interested parties to raise issues regarding product coverage.⁸ The Department encouraged all interested parties to submit such comments within 20 calendar days of signature of the *Initiation Notice*.⁹ On April, 10, 2012, Blanco America, Inc. (“Blanco”), a U.S. importer, submitted a request that the Department clarify the fabricated bowls scope exclusion which states that “{s}tainless steel sinks with fabricated bowls may sometimes be referred to as “zero radius” or “near zero radius” sinks.” Blanco suggests that the addition of this language may have created an unintended ambiguity regarding the exclusion in the scope language because not all fabricated sinks have a zero or near zero radius. Petitioner did not comment on this issue.

The language of the scope with respect to the fabricated bowl sink exclusion clearly states that fabricated bowl sinks “may” sometimes be referred to as “zero radius” or “near zero radius” sinks, thus the Department preliminarily determines that that this language does not impart a requirement that fabricated bowl sinks must have a zero or near zero radius to meet the exclusion requirements. Accordingly, we have determined not to change the scope language as presented above and in the *Initiation Notice*.

⁸ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁹ See *Initiation Notice*, 77 FR at 18207.

DISCUSSION OF THE METHODOLOGY

Nonmarket Economy Country

For purposes of initiation, Petitioner submitted an LTFV analysis for the PRC as an NME.¹⁰ In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country.¹¹ 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 the administering authority.¹² As such, the Department continues to treat the PRC as an NME in this proceeding. Accordingly, the Department has calculated normal value (“NV”) in accordance with section 773(c) of the Act, which applies to NME countries.

Selection of Respondents

On or before April 11, 2012, the Department received timely filed quantity and value (“Q&V”) questionnaire responses from 29 exporters/producers. The Department rejected a number of Q&V questionnaire responses because of untimely filings or filing deficiencies.¹³ Specifically, on April 20, 2012, the Department rejected Artisan Manufacturing Corporation/ Shenzen Kehuaxing Industrial Ltd. (“Kehuaxing”)’s untimely filed Q&V questionnaire response and removed it from the record.¹⁴ Additionally, on April 20, 2012, the also Department rejected Sani-Plumb Kitchenware & Sanitaryware Co., Ltd./Zhongshan Jinke Import & Export Trade Co.,

¹⁰ *Initiation Notice*, 77 FR at 18208-10.

¹¹ *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People’s Republic of China*, 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People’s Republic of China*, 72 FR 60632 (October 25, 2007).

¹² *See, e.g., High Pressure Steel Cylinders From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 26739, May 7, 2012 (“*HP Steel Cylinders*”) and *Certain Stilbenic Optical Brightening Agents from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17436 (March 26, 2012) unchanged in *Certain Stilbenic Optical Brightening Agents From the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 77 FR 27423 (May 10, 2012).

¹³ With regards to filing deficiencies, the Department provided companies an opportunity to correct and refile those submissions. Only one of the 29 Q&V questionnaire responses received by the Department was improperly filed. The Department has rejected the improperly filed Q&V questionnaire response and requested that the company refile its Q&V questionnaire response after correcting the filing deficiencies. *See* the Department’s memo to the file, “Investigation of Drawn Stainless Steel Sinks from the People’s Republic of China: Rejecting Incorrectly Filed Quantity & Value Questionnaire Responses,” dated April 26, 2012.

¹⁴ *See* the Department’s rejection letter to Kehuaxing titled, “Investigation of Drawn Stainless Steel Sinks from the People’s Republic of China: Rejection of Submission,” dated April 20, 2012.

Ltd. (“Sani-Plumb/Jinke”) untimely filed Q&V questionnaire response and removed it from the record.¹⁵

In accordance with section 777A(c)(2) of the Act, the Department selected the two largest exporters of drawn sinks (*i.e.*, Zhaoshun Trade Co., Ltd. (“Zhaoshun”) and Guangdong Dongyuan Kitchenware Industrial Co., Ltd. (“Dongyuan”)) by volume as the mandatory respondents in this investigation based on the Q&V information from exporters/producers that were identified in the Petition, of which 29 firms filed timely Q&V questionnaire responses.¹⁶

The Department issued its AD questionnaire to Zhaoshun and Dongyuan on May 15, 2012. Between June 12, 2012, and August 22, 2012, Zhaoshun and Dongyuan timely responded to the Department’s original and supplemental questionnaires. On June 27, 2012, the Department issued its AD questionnaire to Superte Kitchenware Co., Ltd. (“Superte”), an exporter/producer of drawn sinks, because the record indicates that Superte may be the correct respondent for the sales reported by Zhaoshun. Specifically, Zhaoshun reported that Superte, not Zhaoshun, was the actual seller of the merchandise (*i.e.*, the party that negotiates the terms of sale with the customer, arranges shipment, and ultimately collects payment for the sale). Between July 18, 2012, and September 4, 2012, Superte timely responded to the Department’s original and supplemental questionnaires. Superte also timely submitted a Q&V questionnaire and an SRA.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on September 21, 2012, Petitioner and Dongyuan requested that the Department postpone the final determination. In accordance with section 733(d) of the Act and 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the requests and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*. Suspension of liquidation will be extended accordingly.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV, in most cases, on the NME producer’s factors of production (“FOP”) valued in a surrogate market-economy (“ME”) country or countries considered appropriate by the Department. The Department will value FOPs, in accordance with section 773(c)(4) of the Act, by using “to the extent possible, the prices or costs of factors of production in one or more market economy countries that are: (A) at a level of economic development comparable to that of the nonmarket economy country, and (B)

¹⁵ See the Department’s rejection letter to Sani-Plumb/Jinke titled, “Investigation of Drawn Stainless Steel Sinks from the People’s Republic of China: Rejection of Submission,” dated April 20, 2012.

¹⁶ See the Department’s memorandum entitled, “Antidumping Duty Investigation of Drawn Stainless Steel Sinks From the People’s Republic of China: Respondent Selection,” dated May 14, 2012 (“Respondent Selection Memo”).

significant producers of comparable merchandise.”¹⁷ Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOPs in a single surrogate country.

A. Economic Comparability

The Department identified Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine as countries equally comparable to the PRC in terms of economic development as reported in the most current annual issue of *World Development Report* (The World Bank).¹⁸ Consistent with its practice, as reflected in the Policy Bulletin 04.1, the Department found that Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine are countries that are at a level of economic development comparable to that of the PRC and, therefore, satisfy the first criterion of section 773(c)(4) of the Act.¹⁹ On May 30, 2012, the Department invited all interested parties to submit comments on the surrogate country selection.²⁰ On August 13, 2012, the Department received timely comments from Petitioner, Zhaoshun and Superte.²¹

B. Significant Producer of Comparable Merchandise

In order to identify which countries export merchandise comparable to the merchandise under consideration, the Department obtained export data for the six-digit tariff sub-headings listed in the description of the scope of this investigation (*i.e.*, 7324.10) for each of the seven potential surrogate countries listed above. After reviewing this export data, the Department preliminarily determined that (1) Colombia, Indonesia, Peru, South Africa, Thailand, and Ukraine are significant producers of merchandise comparable to the merchandise under consideration and (2) the Philippines is not.²²

¹⁷ See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (“Policy Bulletin 04.1”) available on the Department’s website at <http://ia.ita.doc.gov/policy/bull04-1.html>.

¹⁸ See Memorandum from Carole Showers, Director, Office of Policy, Import Administration, to Eugene Degnan, Program Manager, Office 8, Import Administration, “Request for a List of Surrogate Countries for an Antidumping Duty Investigation of Drawn Stainless Steel Sinks (“Drawn Sinks”) from the People’s Republic of China (“China”)” (May 29, 2012).

¹⁹ See *id.*

²⁰ See the Department’s letter regarding, “Antidumping Duty Investigation of Drawn Stainless Steel Sinks from the People’s Republic of China “ requesting all interested parties to provide comments on surrogate-country selection and provide surrogate FOP values from the potential surrogate countries (*i.e.*, Colombia, Indonesia, Peru, Philippines, South Africa, Thailand, and Ukraine), dated May 30, 2012.

²¹ See Petitioner’s submission titled, “Drawn Stainless Steel Sinks From The People’s Republic of China: Comments Regarding Surrogate Country Selection” and Zhaoshun’s and Superte’s combined submission titled, “Drawn Stainless Steel Sinks from China: Surrogate Country Comments,” dated August 13, 2012.

²² See the Department’s Memorandum titled, “Factor Valuation Memorandum for Preliminary Determination in the Antidumping Duty Investigation of Drawn Stainless Steel Sinks from the People’s Republic of China,” dated concurrently with this memorandum. (“Preliminary Factor Valuation Memorandum”).

C. Data Availability

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, the Department selects the primary surrogate country based on data availability and reliability.²³ When evaluating surrogate value data, the Department considers several factors, including whether the surrogate values are publicly available, contemporaneous with the POI, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.²⁴ Petitioner and Superte/Zhaoshun contend that the Department should select Thailand as the primary surrogate country because Thailand surrogate values, including financial statements for Thai producers of merchandise comparable to drawn sinks, are available for all FOPs.²⁵

The record of this investigation contains publicly-available Thai surrogate value data for FOPs. Moreover, after reviewing the surrogate value data on the record, the Department has found that Thailand provides the most specific information to value each respondent's most significant input (*i.e.*, stainless steel). Accordingly, the Department can more accurately value each company's stainless steel FOP by using the more specific Thai surrogate value information than by using basket categories from the Philippines or Indonesia as proposed by Superte.²⁶ Therefore, the Department has preliminarily determined that Thailand offers the best available surrogate value data.

For the reasons stated above, the Department has preliminarily determined, pursuant to section 773(c)(4) of the Act, that it is appropriate to use Thailand as the primary surrogate country because Thailand is (1) at a level of economic development comparable to the PRC and (2) a significant producer of merchandise comparable to the merchandise under consideration. Moreover, the Department has reliable, POI-contemporaneous Thai data that are more specific to the respondents' FOPs, as compared to the data on the record from alternative countries. Therefore, the Department has calculated NV using Thai import prices when available and appropriate to value the FOPs of Superte and Dongyuan.

²³ *See Id.*

²⁴ *See Id.*

²⁵ *See* Letter from Petitioner titled, "Drawn Stainless Steel Sinks From The People's Republic of China: Comments Regarding Surrogate Country Selection," and Zhaoshun's and Superte's combined letter titled, "Drawn Stainless Steel Sinks from China: Surrogate Country Comments," both dated August 13, 2012.

²⁶ *See* Superte/Zhaoshun's letter to the Department titled, "Drawn Stainless Steel Sinks from China: Rebuttal Comments on Surrogate Values," dated August 20, 2012.

For the final determination in this investigation interested parties may submit publicly available information to value the FOPs within 40 days after the publication of this preliminary determination.²⁷

Surrogate Value Comments

On July 30, 2012, Superte provided surrogate value information (*i.e.*, harmonized tariff codes in its section D response at Exhibit 5) with which to value its FOPs. Surrogate factor valuation comments and surrogate value information with which to value the FOPs in this proceeding were filed on August 13, 2012, by Petitioner and Dongyuan. On August 20, 2012, Petitioner, Dongyuan, and Superte filed rebuttal surrogate factor valuation comments. For a detailed discussion of the surrogate values used in this LTFV proceeding, *see* the “Factor Valuation” section below and the Preliminary Factor Valuation Memorandum.

Separate Rates

In proceedings involving NME countries, the Department 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.²⁸ The Department’s policy is to assign all exporters of merchandise under consideration 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.²⁹ The Department analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*³⁰ and further developed in *Silicon Carbide*.³¹ According to this separate rate test, the Department 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, the Department

²⁷ *See* 19 CFR 351.301(c)(3)(i). In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information. *See Glycine from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2. Additionally, for each piece of factual information submitted with surrogate value rebuttal comments, the interested party must provide a written explanation of what information that is already on the record of the ongoing proceeding the factual information is rebutting, clarifying, or correcting.

²⁸ *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) (“PET Film”).

²⁹ *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”).

³⁰ *Id.*

³¹ *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People’s Republic of China*, 59 FR 22585 (May 2, 1994) (“Silicon Carbide”).

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.

A. Separate Rate Recipients

1. Joint Ventures between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

Twelve separate rate applicants that are receiving a separate rate (*i.e.*, 1) Feidong I&E, 2) G-Top I&E, 3) Yingao, 4) J&C Industries, 5) New Star, 6) Pioneer I&E, 7) Zoje, 8) Newecan, 9) Hongmao, 10) Oulin, 11) Foodstuffs I&E, 12) Primy)³² and the mandatory respondents (*i.e.*, Superte and Dongyuan) provided evidence that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies. The Department has analyzed whether each of these companies have demonstrated an absence of *de jure* and *de facto* government control over their respective export activities.

a. Absence of *De Jure* Control

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

The evidence provided by Feidong I&E, G-Top I&E, Yingao, J&C Industries, New Star, Pioneer I&E, Zoje, Newecan, Hongmao, Oulin, Foodstuffs I&E, Primy, and the mandatory respondents supports a preliminary finding of an absence of *de jure* government control for each of these companies based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of the companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.

b. Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices ("EP") 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

³² See Attachment I for the full names of these companies.

³³ See *Sparklers*, 56 FR at 20589.

decisions regarding the disposition of profits or financing of losses.³⁴ The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The evidence provided by Feidong I&E, G-Top I&E, Yingao, J&C Industries, New Star, Pioneer I&E, Zoje, Newecan, Hongmao, Oulin, Foodstuffs I&E, Primy, and the mandatory respondents 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 Feidong I&E, G-Top I&E, Yingao, J&C Industries, New Star, Pioneer I&E, Zoje, Newecan, Hongmao, Oulin, Foodstuffs I&E, Primy, and the mandatory respondents demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, the Department has preliminarily granted separate rates to Feidong I&E, G-Top I&E, Yingao, J&C Industries, New Star, Pioneer I&E, Zoje, Newecan, Hongmao, Oulin, Foodstuffs I&E, Primy, and the mandatory respondents.³⁵

2. Wholly Foreign-Owned

Seven separate rate applicants in this investigation (*i.e.*, 1) B&R Industries, 2) Elkay, 3) Shunde, 4) Franke, 5) Grand Hill, 6) Heng's, and 7) Kohler),³⁶ provided evidence in their SRAs that they are wholly owned by individuals and companies located in ME countries. Moreover, the Department has no record evidence indicating that these companies are under the control of the PRC government. For these reasons, it is not necessary for the Department to conduct a separate rate analysis to determine whether B&R Industries, Elkay, Shunde, Franke, Grand Hill, Heng's, and Kohler are independent from government control.³⁷ Therefore, the Department has preliminarily granted a separate rate to B&R Industries, Elkay, Shunde, Franke, Grand Hill, Heng's, and Kohler.

³⁴ 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).

³⁵ See "Preliminary Determination" section below.

³⁶ See Attachment I for the full names of these companies.

³⁷ See, *e.g.*, *Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 26716, 26720 (May 12, 2010), unchanged in *Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 60725 (October 1, 2010).

B. Companies Not Receiving a Separate Rate

The Department has not granted a separate rate to Jiangmen Liantai Kitchen Equipment Co., Ltd.'s ("Liantai"), Xinhe Stainless Steel Products Co., Ltd.'s ("Xinhe"), Kele Kitchenware Co., Ltd.'s ("Kele Kitchenware"), Capstone International Development Corporation ("Capstone"), FoShan Fancome Trading Co., Ltd. ("Fancome") and Kehuaxing for the following reasons:

- a. Liantai,³⁸ Xinhe,³⁹ and Kele Kitchenware,⁴⁰ PRC producers of drawn sinks, did not export merchandise subject to the investigation to the United States under their own name during the POI. However, each of these companies did export the merchandise through unrelated PRC exporters, Feidong I&E (Liantai and Xinhe), and Shunde Native Produce Import & Export Company Limited of Guangdong (Kele Kitchen).
- b. Notwithstanding multiple supplemental questionnaires directing Capstone to correct its business proprietary information ("BPI") bracketing, Capstone continues to double bracket information that should be releasable under Administrative Protective Order ("APO"). We are unable to rely on Capstone's SRA information in this investigation because Capstone continues to double bracket information that should be releasable under an APO.⁴¹ The Department provided Capstone multiple opportunities to correct its double bracketing of its business proprietary information,⁴² however, Capstone has not corrected its over bracketing of releasable information under APO and has since retracted the double bracketed information. As a result, we do not have sufficient usable information to make a separate rate determination for Capstone.
- c. Fancome failed to submit a response to the Department's supplemental separate rate questionnaire.⁴³
- d. The Department stated in the *Initiation Notice* that respondents are required to "submit a response to both the quantity and value questionnaire and the separate rate application by

³⁸ See Liantai's Q&V questionnaire response, filed with the Department on April 11, 2012, at 4.

³⁹ See Xinhe's Q&V questionnaire response, filed with the Department on April 11, 2012, at 4.

⁴⁰ See Kele Kitchenware's SRA submission filed with the Department on May 23, 2012 under bar code 3076821-02 at 5.

⁴¹ See Capstone's letter to the Department regarding, "Separate Rate Application for drawn Stainless Steel Sink from the People's Republic of China-A-570-983," dated May 21, 2012.

⁴² See the Department's letter to Capstone regarding: Investigation of Drawn Stainless Steel Sinks from the People's Republic of China: Improperly Filed Separate Rate Application, dated June 4, 2012; see also the Department's letter to Capstone regarding: Antidumping Duty Investigation of Drawn Stainless Steel Sinks from the People's Republic of China: Separate Rate Application Supplemental Questionnaire, dated August 16, 2012.

⁴³ See the Department's Memorandum to the File regarding delivery confirmation of the Department's supplemental questionnaire to Fancome, dated September 19, 2012.

the respective deadlines in order to receive consideration for separate-rate status.”⁴⁴ On June 6, 2012, the Department rejected Kehuaxing’s SRA and removed it from the record because Kehuaxing had not filed a timely Q&V questionnaire response.⁴⁵

Margin for the Separate Rate Companies

Normally, the Department’s practice is to assign to separate rate entities that were not individually examined a rate equal to the average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis*, or based entirely on adverse facts available (“AFA”).⁴⁶ Consistent with this practice, the Department has assigned J&C Industries, B&R Industries, Elkay, Feidong I&E, Shunde, Franke, Grand Hill, G-Top I&E, Yingao, Heng’s, Hongmao, New Star, Pioneer I&E, Zoje, Oulin, Foodstuffs I&E, Newecan, Kohler, and Primy a rate of 59.06 percent, which is equal to an average of the rates calculated for the mandatory respondents.⁴⁷

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation.⁴⁸ This practice is described in Policy Bulletin 05.1.

The PRC-wide Entity

The record indicates that, in addition to Capstone, Fancome, and Kehuaxing, there are other PRC exporters and/or producers of the merchandise under consideration during the POI that did not respond to the Department’s requests for information. Specifically, the Department did not receive responses to its Q&V questionnaire from over 79 PRC exporters and/or producers of merchandise under consideration that were named in the petition and to whom the Department issued the questionnaire.⁴⁹ Because Capstone, Fancome, Kehuaxing, and these non-responsive

⁴⁴ See *Initiation Notice*, 77 FR at 18210.

⁴⁵ See 19 CFR 351.302(d) and 19 CFR 351.104(a)(2); see also the Department’s memorandum dated June 6, 2012.

⁴⁶ 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).

⁴⁷ See the Department’s Memorandum to the File titled, “Drawn Stainless Steel Sinks from the People’s Republic of China: Calculation of the Preliminary Margin for Separate Rate Recipients,” (September 27, 2012).

⁴⁸ See *Initiation Notice*, 77 FR at 18210.

⁴⁹ See Respondent Selection Memorandum at 1-2. The Department also posted a copy of the Q&V questionnaire on its website.

PRC companies have not demonstrated that they are eligible for separate rate status, the Department considers them part of the PRC-wide entity.

Application of Facts Available and Adverse Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (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, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

The Department has preliminarily found that the PRC-wide entity withheld information requested by the Department, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. The PRC-wide entity neither filed documents indicating it was having difficulty providing the information nor requested that it be allowed to submit the information in an alternate form. As a result, the Department has preliminarily determined, pursuant to sections 776(a)(2)(A)-(C) of the Act, that it may use facts otherwise available to determine the rate for the PRC-wide entity.⁵⁰

Section 776(b) of the Act provides that the Department, in selecting from among the facts otherwise available, may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The Department has found that the PRC-wide entity's failure to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown.⁵¹ Therefore, the Department has preliminarily found that the PRC-wide entity has failed to cooperate to the best of its ability to comply with requests for information and, consequently, the Department may employ an inference that is adverse to the PRC-wide entity in selecting from among the facts otherwise available.

Section 776(b) of the Act states that the Department, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate based on AFA, the Department selects 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. The Department's practice is to select, as an AFA rate,

⁵⁰ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

⁵¹ See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that the Department 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"))).

the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated dumping margin of any respondent in the investigation.⁵² In this investigation, the highest petition dumping margin is 76.53 percent.⁵³ This rate is higher than any of the weighted-average dumping margins calculated for the companies individually examined.

Corroboration of Information

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. 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.”⁵⁴

The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.⁵⁵ The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.⁵⁶ To corroborate secondary information, the Department will, to the extent practicable, determine whether the information used has probative value by examining the reliability and relevance of the information.

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this preliminary determination, we compared the petition margins to the margins we calculated for the individually examined respondents. We determined that the petition margin of 76.53 percent is reliable and relevant because it is within the range of the control number specific margins on the record for the individually examined exporters of subject merchandise.⁵⁷ Thus, the highest petition margin has probative value. Accordingly, we have corroborated the petition margin to the extent practicable within the meaning of section 776(c) of the Act.⁵⁸

⁵² See *Certain Stilbenic Optical Brightening Agents From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17436, 17438 (March 26, 2012).

⁵³ See *Initiation Notice*, 77 FR at 18210.

⁵⁴ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (“SAA”), H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ See the Department’s Memorandum titled, “LTFV Investigation of Drawn Stainless Steel Sinks from the People’s Republic of China: Superte/Zhaoshun’s Preliminary Analysis Memorandum,” (September 27, 2012) at Attachment 1, SAS Margin Output.

⁵⁸ See section 776(c) of the Act and 19 CFR 351.308(c) and (d); *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People’s Republic of China*, 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

Date of Sale

In identifying the date of sale of the merchandise under consideration, the Department will normally, in accordance with 19 CFR 351.401(i), “use the date of invoice, as recorded in the exporter or producer’s records kept in the normal course of business.” The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms.⁵⁹ Because Superte and Dongyuan demonstrated that the substantive terms of sale were agreed upon on the invoice date, the Department has preliminarily determined to use invoice date as the date of sale.

Fair Value Comparisons

In accordance with section 777A(d)(1) of the Act, the Department compared the weighted-average price of the U.S. sales of the merchandise under consideration to the weighted-average NV to determine whether the mandatory respondents sold merchandise under consideration to the United States at LTFV during the POI.⁶⁰

Export Price

In accordance with section 772(a) of the Act, the Department defined the U.S. price of merchandise under consideration based on the EP of the U.S. sales reported by Superte and Dongyuan. The Department calculated the EP based on the prices at which merchandise under consideration was sold to unaffiliated purchasers in the United States.

The Department made deductions, as appropriate, from the reported U.S. price for movement expenses (*i.e.*, domestic and foreign inland freight, domestic and foreign brokerage and handling, marine insurance and international freight).⁶¹ The Department based movement expenses on surrogate values where the service was purchased from a PRC company.⁶²

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using the FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on FOPs because the presence of

⁵⁹ See, e.g., *Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Comment 1.

⁶⁰ See “Export Price” and “Normal Value” sections below.

⁶¹ See section 772(c)(2)(A) of the Act.

⁶² See “Factor Valuation Methodology” section below.

government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.⁶³ Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), the Department calculated NV based on FOPs. Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.⁶⁴

Factor Valuation Methodology

In accordance with section 773(c) of the Act, the Department calculated NV based on FOP data reported by the individually examined respondents. To calculate NV, the Department multiplied the reported per-unit factor-consumption rates by publicly available surrogate values. When selecting the surrogate values, the Department considered, among other factors, the quality, specificity, and contemporaneity of the data.⁶⁵ As appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. Specifically, the Department added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory.⁶⁶ A detailed description of all surrogate values used for Superte and Dongyuan can be found in the Preliminary Factor Valuation Memorandum.

For this preliminary determination, the Department used Thai import data, as reported by the Thai Customs Department and published by Global Trade Atlas ("GTA"), and other publicly available sources from Thailand to calculate surrogate values for Superte's and Dongyuan's FOPs and certain movement expenses. In accordance with section 773(c)(1) of the Act, the Department applied the best available information for valuing FOPs by selecting, to the extent practicable, surrogate values which are (1) non-export average values, (2) contemporaneous with, or closest in time to, the POI, (3) product-specific, and (4) tax-exclusive.⁶⁷ The record shows that Thai import data obtained through GTA, as well as data from other Thai sources, are

⁶³ See, e.g., *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19703 (April 17, 2006), unchanged in *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 (September 8, 2006).

⁶⁴ See section 773(c)(3)(A)-(D) of the Act.

⁶⁵ See, e.g., *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying Issues and Decision Memorandum at Comment 9.

⁶⁶ See *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).

⁶⁷ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

product-specific, tax-exclusive, and generally contemporaneous with the POI.⁶⁸ In those instances where the Department could not obtain information contemporaneous with the POI with which to value FOPs, the Department adjusted the surrogate values using, where appropriate, Thailand's producer price index as published in the International Monetary Fund's ("IMF") International Financial Statistics.

When calculating Thai import-based, per-unit surrogate values, the Department disregarded import prices that it has reason to believe or suspect may be dumped or subsidized. It is the Department's practice, guided by the legislative history, not to conduct a formal investigation to ensure that such prices are not dumped or subsidized; rather, the Department bases its decision on information that is available to it at the time it makes its determination.⁶⁹ In this case, the Department has reason to believe or suspect that prices of exports from India, Indonesia, and South Korea may have been subsidized. The Department has found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, consequently, it is reasonable to infer that all exports from these countries to all markets may be subsidized.⁷⁰ Therefore, the Department has not used data from these countries in calculating Thailand's import-based surrogate values. Further, evidence on the record indicates that Thailand has an AD order on stainless steel imports from Japan, South Korea, and Taiwan.⁷¹ Therefore, the Department has not used data from these countries in calculating Thailand's import-based surrogate value for stainless steel.

Additionally, the Department disregarded data from NME countries when calculating Thailand's import-based per-unit surrogate values. The Department also excluded from the calculation of Thailand's import-based per-unit surrogate values imports that were labeled as originating from

⁶⁸ See Preliminary Factor Valuation Memorandum.

⁶⁹ See Omnibus Trade and Competitiveness Act of 1988, Conference Report, H.R. Rep. 100-576 at 590 (1988); *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30763 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007); *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552, 24559 (May 5, 2008), unchanged in *PET Film*, 73 FR at 55039.

⁷⁰ See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7; *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; and *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20.

⁷¹ See Superte's surrogate values rebuttal comments dated August 20, 2012.

an “unidentified” country because the Department could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.⁷²

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME AD proceedings.⁷³ In *Labor Methodologies*, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing from the International Labor Organization (“ILO”) Yearbook of Labor Statistics (“Yearbook”).

It is the Department’s preference to use data reported under the most recent revision. In this case, we found that Thailand’s most recent reported revision is ISIC-Rev.3-D. Within ISIC-Rev. 3-D standard, the Department identified the two-digit series most specific to drawn stainless steel sinks as Sub-Classification 28, which is described as “Manufacture of Fabricated Metal Products, except Machinery and Equipment.” However, Thailand had not reported wage data under this two-digit series since 2000. Therefore, we have determined to rely on the data reported by Thailand under the “total” category, most recently in 2005.⁷⁴ Thus, the Department calculated the labor value using total labor data reported by Thailand to the ILO in 2005, in accordance with section 773(c)(4) of the Act.

The ILO data from Chapter 6A of the Yearbook, which was used to value labor, reflects all costs related to labor, including wages, benefits, housing, training, *etc.* Pursuant to *Labor Methodologies*, the Department's practice is to consider whether financial ratios reflect labor expenses that are included in other elements of the respondent's factors of production (*e.g.*, general and administrative expenses).⁷⁵ The financial statements used to calculate financial ratios in this review were sufficiently detailed to allow the Department to isolate labor expenses from other expenses such as selling, general and administrative expenses. Therefore, the Department revised its calculation of surrogate financial ratios consistent with *Labor Methodologies* to exclude items incorporated in the labor wage rate data in Chapter 6A of the ILO data. As a result, bonuses and other forms of compensation included in the ILO’s calculation of wages are now excluded from our calculation of labor in our surrogate financial ratios.⁷⁶

⁷² See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People’s Republic of China*, 69 FR 75294, 75301 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People’s Republic of China*, 70 FR 24502 (May 10, 2005).

⁷³ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*Labor Methodologies*”).

⁷⁴ See, *e.g.*, *Folding Metal Tables and Chairs From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 39680 (July 5, 2012), and accompanying Issues and Decision Memorandum at Comment 5.

⁷⁵ See *id.*, 77 FR at 36094.

⁷⁶ See Preliminary Factor Valuation Memorandum.

The Department valued electricity using large general service tariff rates from the Metropolitan Electricity Authority (“MEA”), Energy Regulatory Commission of Thailand.

The Department valued water using the average tariff rate for “Type 2” (“Commerce, government agency, state enterprise, industry and others”) consumers, as reported by the Thailand Board of Investment’s, “Cost of Doing Business in Thailand” website, available at http://www.boi.go.th/index.php?page=utility_costs (last accessed August, 2012). The Department did not adjust this value for inflation because these water rates were in effect during the POI.

The Department valued truck freight expenses by averaging the rates charged by DX Innovation Co., Ltd., a Thai freight logistics marketplace, as quoted at www.dxplace.com/price/list, (last accessed August, 2012) and the distances to 74 destinations within Thailand. We inflated the rates to the POI by applying the Thai producer price index as published in the IMF’s International Financial Statistics because these prices were effective June 2010, before the POI.

The Department valued international ocean freight from the PRC to the United States using data obtained from the Descartes Carrier Rate Retrieval Database (“Descartes”), available at www.descartes.com (last accessed August, 2012).

The Department valued marine insurance using a December 14, 2010 price quote obtained from RJG Consultants. RJG Consultants is an ME provider of marine insurance. We inflated the rates to the POI by applying the Thai producer price index as published in the IMF’s International Financial Statistics.

The Department valued brokerage and handling using a price list for export procedures necessary to export a standardized cargo of goods from Thailand in a 20-foot container. The price list was published in the World Bank publication, *Doing Business 2012: Thailand*. The Department adjusted this rate by the ratio of the capacity of a 40-foot high flat rack relative to the cargo weight of a 20-foot container in order to derive the per-unit brokerage and handling cost for a 40-foot high flat rack. The Department did not inflate this rate since it is contemporaneous with the POI.

The Department valued factory overhead, selling, general, and administrative expenses, and profit, by averaging the audited financial statements of Advanced Stainless Steel Co., Ltd. (“Advanced Stainless”), Diamond Brand Co., Ltd. (“Diamond Brand”), and Stainless Steel Home Equipment Manufacturing Co., Ltd. (“SS Home Equipment”), covering the 12 month period ending December 31, 2011. Advanced Stainless, Diamond Brand and SS Home Equipment all produce stainless steel sinks and other products. The Department may consider other publicly available financial statements for the final determination, as appropriate.

Determination to Apply an Alternative Methodology

The statute allows the Department to employ an alternative dumping margin calculation methodology in an AD investigation under the following circumstances: (1) there is a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or

periods of time; and (2) the Department explains why such differences cannot be taken into account using the standard average-to-average or transaction-to-transaction methodology.⁷⁷ On August 13, 2012, Petitioner alleged targeted dumping with respect to Superte⁷⁸ and Dongyuan's⁷⁹ sales to certain U.S. customers and regions, and in certain time periods. In order to determine whether the respondents engaged in targeted dumping, the Department conducted the targeted dumping analysis established in *Steel Nails*.⁸⁰ The methodology employed involves a two-stage test; the first stage addresses the pattern requirement and the second stage addresses the significant-difference requirement.⁸¹ We made all price comparisons in the test using prices for comparable merchandise (*i.e.*, by control number or CONNUM). The test procedures are the same for targeted-dumping allegations involving customers, regions, and time periods. We based all of our targeted-dumping calculations on the net U.S. price that we determined for U.S. sales by Superte and Dongyuan in our margin calculations.

As a result of our analysis, we preliminarily determine that for Superte there is a pattern of prices for U.S. sales of comparable merchandise that differ significantly among certain purchasers, but not by regions, or time periods, in accordance with section 777A(d)(1)(B)(i) of the Act and our practice, as discussed in *Steel Nails* and as modified in *Wood Flooring*. With regard to Donguan, we preliminarily determine that there is a pattern of prices for U.S. sales of comparable merchandise that differ significantly among certain purchasers and regions, but not by time periods, in accordance with section 777A(d)(1)(B)(i) of the Act and our practice, as discussed in *Steel Nails* and as modified in *Wood Flooring*.

We find, however, that the pattern of price differences for both respondents can be taken into account using the standard average-to-average methodology because, based on the data before us, the average-to-average methodology does not mask differences in the patterns of prices between the targeted and non-targeted groups. Here, we determine that the standard average-to-average methodology takes into account the price differences because the alternative average-to-transaction methodology yields a difference in the margin that is not meaningful relative to the size of the resulting margin.⁸² Accordingly, for this preliminary determination we have applied the standard average-to-average methodology to all of Superte's and Dongyuan's U.S. sales.⁸³

⁷⁷ See section 777A (d)(1)(B) of the Act.

⁷⁸ Letter from Petitioner to the Department, regarding "Drawn Stainless Steel Sinks From The People's Republic of China: Targeted Dumping Allegation For Superte," dated August 13, 2012; *see also* Letter from Petitioner to the Department, regarding "Drawn Stainless Steel Sinks From The People's Republic of China: Targeted Dumping Allegation For Zhaoshun," dated August 13, 2012. Because Zhaoshan is not qualified to be a separate rate applicant, we disregard the targeted dumping allegation regarding Zhaoshan.

⁷⁹ Letter from Petitioner to the Department, regarding Drawn Stainless Steel Sinks From The People's Republic of China: Updated Targeted Dumping Allegation For Dongyuan," dated August 31, 2012.

⁸⁰ See *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008) ("*Steel Nails*") and accompanying Issues and Decision Memorandum at Comments 1-9.

⁸¹ See section 777A(d)(1)(B)(i) of the Act and *Steel Nails*, and accompanying Issues and Decision Memorandum at Comment 2.

⁸² See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) at 843 ("SAA").

⁸³ See *e.g.*, *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 24885, 24888 (May 6, 2010) unchanged in *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 59223

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information from Superte/Zhaoshun and Dongyuan upon which we will rely in making our final determination.

Adjustment Under Section 777A(f) of the Act

In applying section 777A(f) of the Act for the first time in an AD investigation, the Department has examined (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 the Department 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.⁸⁴ For a subsidy meeting these criteria, the statute requires the Department to reduce the antidumping duty by the estimated amount of the increase in the weighted average dumping margin subject to a specified cap.⁸⁵ As a result of our analysis, the Department is preliminarily making adjustments to the AD cash deposit rate found for each respondent in this investigation, pursuant to section 777A(f) of the Act, in the manner described below.⁸⁶ In making this adjustment, the Department has not concluded that concurrent application of NME ADs and countervailing duties (“CVDs”) 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. Because of the timelines in an LTFV investigation, and the fact that this is only the second time that the Department is applying section 777A(f) of the Act,⁸⁷ the Department is continuing to refine its practice in applying the new law. The Department’s preliminary determination is based

(September 27, 2010) and *Polyethylene Retail Carrier Bags From Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 16431 (April 1, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

⁸⁴ See section 777A(f)(1)(A)-(C) of the Act.

⁸⁵ See section 777A(f)(1)-(2) of the Act.

⁸⁶ See Attachment II to this memorandum.

⁸⁷ See *Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People’s Republic of China*, 77 FR 52683, 52686 (August 30, 2012).

on information on the administrative record provided by the mandatory respondents in this investigation.

Specifically, both Superte and Dongyuan identified that electricity and stainless steel coil subsidies impacted their cost of manufacturing (“COM”), and that the other subsidy programs under investigation (*e.g.*, grant programs, tax programs, policy lending, *etc.*) did not.⁸⁸ Superte additionally noted that land-use right depreciation impacted its COM.⁸⁹ With respect to cost-linked price changes, both Superte and Dongyuan provided information indicating that they adjust prices only in response to significant changes in stainless steel coil cost, but not to changes in other factor costs that impact COM. As presented in their submissions, but subject to verification and further evaluation, Superte and Dongyuan’s questionnaire responses indicate a cost-to-price linkage for certain subsidy programs (*i.e.*, stainless steel subsidies) that impact COM. However, respondents did not provide sufficient information to calculate company-specific estimates of the extent of subsidy pass-through for purposes of the preliminary determination. Therefore, the Department is applying, instead, a documented ratio of cost-price changes for the Chinese manufacturing sector as a whole as the estimate of the extent of subsidy pass-through.⁹⁰ The Department continues to develop and refine its methodological approach to addressing double remedies and intends for purposes of the final determination to issue follow-up requests for information from the interested parties after the publication of this preliminary determination to supplement and clarify certain record information.

In the companion CVD investigation, the Department determined program-specific rates for subsidized inputs for each mandatory respondent.⁹¹ From its calculations for individually examined respondents in the CVD case, the Department can additionally derive program-specific rates for subsidized inputs for those companies subject to the all-others CVD rate.⁹² Thus, the Department has the necessary information from the companion CVD case to make the adjustment in this proceeding in the manner described above for purposes of this preliminary determination. Additionally, for purposes of this preliminary determination, the Department found that subsidized stainless steel coil inputs for the drawn stainless steel industry impacted EPs during the POI. Specifically, the Department preliminarily estimates that 61.01 percent of

⁸⁸ See Superte’s Letter to the Department titled, “Drawn Stainless Steel Sinks from China: Double Remedies Supplemental Questionnaire Response,” (August 30, 2012) at 6 (“Superte DR Response”); and see Dongyuan’s Letter to the Department titled, “Drawn Stainless Steel Sinks from the People’s Republic of China: Supplemental Section D Questionnaire Response,” (September 4, 2012) at 8.

⁸⁹ See Superte DR Response at 6.

⁹⁰ See the Department’s memorandums to the File regarding, “Preliminary Determination Analysis Memorandum for Zhongshan Superte Kitchenware Co., Ltd. (“Superte”),” (September 27, 2012) (“Superte’s Preliminary Analysis Memo”) and “Preliminary Determination Analysis Memorandum for Guangdong Dongyuan Kitchenware Industrial Co., Ltd. (“Dongyuan”),” (September 27, 2012) (“Dongyuan’s Preliminary Analysis Memo”).

⁹¹ The mandatory respondents in the CVD investigation are Superte and Guangdong Yingao Kitchen Utensils Co., Ltd. See *Drawn Stainless Steel Sinks From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 77 FR 46717 (August 6, 2012) (“*Drawn Sinks CVD Preliminary Determination*”).

⁹² See *Drawn Sinks CVD Preliminary Determination*.

the value of the input subsidies that impacted cost of manufacturing were “passed through” to EPs for this industry during the POI.⁹³

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of drawn sinks, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of our final determination.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

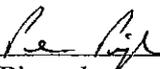
Conclusion

We recommend applying the above methodology for this preliminary determination.

✓

Agree

Disagree



Paul Piquado
Assistant Secretary
for Import Administration

27 SEPTEMBER 2012
(Date)

⁹³ See Superte’s Preliminary Analysis Memo and Dongyuan’s Preliminary Analysis Memo.

ATTACHMENT I

Companies Receiving a Separate Rate

<u>Exporter</u>	<u>Short Cite</u>
Zhongshan Superte Kitchenware Co., Ltd.	Superte
Guangdong Dongyuan Kitchenware Industrial Co., Ltd.	Dongyuan
J&C Industries Enterprise Limited	J&C Industries
B&R Industries Limited	B&R Industries
Elkay (China) Kitchen Solutions, Co., Ltd.	Elkay
Feidong Import and Export Co., Ltd	Feidong I&E
Foshan Shunde MingHao Kitchen Utensils Co., Ltd.	Shunde
Franke Asia Sourcing Ltd.	Franke
Grand Hill Work Company	Grand Hill
Guangdong G-Top Imp. And Exp. Co., Ltd	G-Top I&E
Guangdong Yingao Kitchen Utensils Co., Ltd.	Yingao
Hangzhou Heng's Industries Co., Ltd.	Heng's
Jiangmen Hongmao Trading Co., Ltd	Hongmao
Jiangmen New Star Hi-Tech Enterprise Ltd.	New Star
Jiangmen Pioneer Import & Export Co., Ltd	Pioneer I&E.
Jiangxi Zoje Kitchen & Bath Industry Co., Ltd.	Zoje
Ningbo Oulin Kitchen Utensils Co., Ltd.	Oulin
Shunde Foodstuffs Import & Export Company Limited of Guangdong	Foodstuffs I&E
Zhongshan Newecan Enterprise Development Corporation	Newecan
Zhuhai Kohler Kitchen & Bathroom Products Co., Ltd.	Kohler
Primy Cooperation Limited	Primy

Attachment II

Export Subsidy Offset							
Company	AD Mandatory, Sep Rate, Voluntary or Countrywide	AD Margin Source	Export Subsidy Contained in AD Margin	CVD Mandatory or CVD All Others	CVD Rate Source	CVD Export Subsidy Rate Found for Respondent	Exp Sub Adj to AD Cash Deposit Rate
Superte	AD Mandatory	own calculated rate	0.100%	CVD Mandatory	own calculated rate	0.100%	0.100%
Dongyuan	AD Mandatory	own calculated rate	0.090%	CVD All Others	simple avg. of mandatories	0.090%	0.090%
Yingao (Sep. Rate Co.)	AD Sep Rate	simple avg. of Superte's and Dongyuan's rate	0.095%	CVD Mandatory	own calculated rate	0.080%	0.080%
Sep. Rate Cos.	AD Sep Rate	simple avg. of Superte's and Dongyuan's rate	0.095%	CVD All Others	simple avg. of mandatories	0.090%	0.090%
PRC-wide	AD PRC-wide	AFA Petition, non-public companies	unknown	CVD All Others	simple avg. of mandatories	0.090%	0.080%

Domestic Subsidy Pass-Through Rates								
Company	AD Mandatory, Sep Rate, Voluntary or Countrywide	AD Margin Source	Pass-Through amount Contained in AD Margin	CVD Mandatory or CVD All Others	CVD Rate Source	Input Price Subsidy Rate Found for Respondent	Estimated Pass-Through of Input Price Subsidy	Input Price Subsidy Adj to AD Cash Deposit Rate
							61.010%	
Superte	AD Mandatory	own calculated rate	7.46%	CVD Mandatory	own calculated rate	12.23%	7.46%	7.46%
Dongyuan	AD Mandatory	calculated	3.88%	CVD All Others	simple avg. of mandatories	6.36%	3.88%	3.88%
Yingao(Sep. Rate Co.)	AD Sep Rate	simple avg. of mandatories	5.67%	CVD Mandatory	own calculated rate	0.49%	0.30%	0.49%
Separate Rate Co.s	AD Sep Rate	simple avg. of mandatories	5.67%	CVD All Others	simple avg. of mandatories	6.36%	3.88%	5.67%
PRC-Wide Entity	AD PRC-wide	AFA Petition, non-public companies	unknown	CVD All Others	simple avg. of mandatories	6.36%	3.88%	0.30%

Cash Deposit Rates Adjusted for Export Subsidy and Estimated Domestic Subsidy Pass-Through Offsets			
Exporter	Producer	AD Percent Margin	Cash Deposit Rate Adjusted for Subsidies
Zhongshan Superte Kitchenware Co., Ltd. / Zhongshan Superte Kitchenware Co., Ltd. DBA Foshan Zhaoshun Trade Co., Ltd	Zhongshan Superte Kitchenware Co., Ltd.	63.87%	56.31%
Guangdong Dongyuan Kitchenware Industrial Co., Ltd.	Guangdong Dongyuan Kitchenware Industrial Co., Ltd.	54.25%	50.28%
J&C Industries Enterprise Limited	Zhongshan Superte Kitchenware Co., Ltd.	59.06%	53.30%
B&R Industries Limited	Xinhe Stainless Steel Products Co., Ltd and Jiamen XHHL Stainless Steel Manufacturing co., Ltd.	59.06%	53.30%
Elkay (China) Kitchen Solutions, Co., Ltd.	Elkay (China) Kitchen Solutions, Co., Ltd.	59.06%	53.30%
Feidong Import and Export Co., Ltd	Jiangmen Liantai Kitchen Equipment Co.; Jiangmen Xinhe Stainless Steel Product Co., Ltd.	59.06%	53.30%
Foshan Shunde MingHao Kitchen Utensils Co., Ltd.	Foshan Shunde MingHao Kitchen Utensils Co., Ltd.	59.06%	53.30%
Franke Asia Sourcing Ltd.	Guangdong YingAo Kitchen Utensils Co., Ltd.; Franke (China) Kitchen System Co., Ltd.	59.06%	53.30%
Grand Hill Work Company	Zhongshan Xintian Hardware Co., Ltd.	59.06%	53.30%
Guangdong G-Top Import and Export Co., Ltd	Jiangmen Jin Ke Ying Stainless Steel Wares Co., Ltd.	59.06%	53.30%
Guangdong Yingao Kitchen Utensils Co., Ltd.	Guangdong Yingao Kitchen Utensils Co. Ltd.	59.06%	58.49%
Hangzhou Heng's Industries Co., Ltd.	Hangzhou Heng's Industries Co., Ltd.	59.06%	53.30%

Cash Deposit Rates Adjusted for Export Subsidy and Estimated Domestic Subsidy Pass-Through Offsets			
Exporter	Producer	AD Percent Margin	Cash Deposit Rate Adjusted for Subsidies
Jiangmen Hongmao Trading Co., Ltd	Xinhe Stainless Steel Products Co., Ltd.	59.06%	53.30%
Jiangmen New Star Hi-Tech Enterprise Ltd.	Jiangmen New Star Hi-Tech Enterprise Ltd.	59.06%	53.30%
Jiangmen Pioneer Import & Export Co., Ltd	Jiangmen Ouert Kitchen Appliance Manufacturing Co., Ltd.; Jiangmen XHHL Stainless Steel Manufacturing Co., Ltd.	59.06%	53.30%
Jiangxi Zoje Kitchen & Bath Industry Co., Ltd.	Jiangxi Offidun Industry Co. Ltd.	59.06%	53.30%
Ningbo Oulin Kitchen Utensils Co., Ltd.	Ningbo Oulin Kitchen Utensils Co., Ltd.	59.06%	53.30%
Shunde Foodstuffs Import & Export Company Limited of Guangdong	Bonke Kitchen & Sanitary Industrial Co., Ltd.	59.06%	53.30%
Zhongshan Newecan Enterprise Development Corporation	Zhongshan Xintian Hardware Co., Ltd.	59.06%	53.30%
Zhuhai Kohler Kitchen & Bathroom Products Co., Ltd.	Zhuhai Kohler Kitchen & Bathroom Products Co., Ltd.	59.06%	53.30%
Primy Cooperation Limited	Primy Cooperation Limited	59.06%	53.30%
PRC-Wide Rate*		76.53%	76.15%

* This rate also applies to Jiangmen Liantai Kitchen Equipment Co., Jiangmen Xinhe Stainless Steel Product Co., Ltd., Kele Kitchenware Co., Ltd., Capstone International Development Corporation, and Foshan Fancome Trading Co., Ltd.