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December 29, 2014

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

**SUBJECT:** Decision Memorandum for Preliminary Results of Antidumping  
Duty Administrative Review: Honey from the People's Republic  
of China

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## I. SUMMARY

In response to requests from interested parties, the Department of Commerce ("Department") is conducting the administrative review of the antidumping duty order on honey from the People's Republic of China ("PRC") for the period of review ("POR") December 1, 2012, through November 30, 2013. The Department preliminarily finds that Kunshan Xinlong Food Co., Ltd. ("Kunshan Xinlong"), the single exporter of the subject merchandise under review, has not established its entitlement to separate rate status, and, therefore, is being treated as part of the PRC-wide entity.

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

## II. BACKGROUND

### 1. Initiation

On December 17, 2013, Kunshan Xinglong filed a timely request for administrative review. On December 30, 2013, Petitioners<sup>1</sup> filed a timely request for administrative review of three PRC companies: Kunshan Xinlong, Fuzhou Shenglinmark Trade Co., Ltd., and Dongtai Peak Honey Industry Co., Ltd. ("Dongtai Peak"). On February 3, 2014, the Department initiated an administrative review of the antidumping ("AD") duty order on honey from the PRC covering

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<sup>1</sup> American Honey Producers Association and Sioux Honey Association.

those three companies.<sup>2</sup> On February 28, 2014, Petitioners withdrew their request for an administrative review for all companies under review except Kunshan Xinlong.<sup>3</sup>

2. Period of Review

The period of review (“POR”) is December 1, 2012, through November 30, 2013.

3. Scope of the Order

The products covered by the order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to the order is currently classifiable under subheadings 0409.00.00, 1702.90.90, 2106.90.99, 0409.00.0010, 0409.00.0035, 0409.00.0005, 0409.00.0045, 0409.00.0056, and 0409.00.0065 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department’s written description of the merchandise under the order is dispositive.

Also included in the scope are blends of honey and rice syrup, regardless of the percentage of honey contained in the blend.

### **III. DISCUSSION OF THE METHODOLOGY**

1. Non-Market Economy Country

The Department considers the PRC to be an NME country.<sup>4</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 the administering authority. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

2. 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

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<sup>2</sup> See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 79 FR 6147 (February 3, 2014) (“Initiation”).

<sup>3</sup> See Letter from Petitioners re: “Partial Withdrawal of Request for 12<sup>th</sup> Administrative Review,” dated February 28, 2014.

<sup>4</sup> See Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 77 FR 21734 (April 11, 2012).

assessed a single weighted-average dumping margin.<sup>5</sup> The Department's policy is to assign all exporters of subject merchandise that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.<sup>6</sup> The Department analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in Sparklers<sup>7</sup> and further developed in Silicon Carbide.<sup>8</sup> 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.

As explained below, and consistent with our practice, the Department preliminarily determines that Kunshan Xinlong, which was not eligible for separate-rate status at the initiation of the review, is ineligible for a separate rate based on its failure to provide requested information in a timely manner, and because it impeded the proceeding and failed to cooperate by not acting to the best of its ability to respond to the Department's request for information.<sup>9</sup> Therefore, the Department preliminarily determines that there were exports of subject merchandise from a PRC exporter (Kunshan Xinlong) that did not demonstrate eligibility for separate rate status. As a result, the Department is treating Kunshan Xinlong as part of the PRC-wide entity. Therefore, the PRC-wide entity, including Kunshan Xinlong, is under review and, as discussed below, subject to a rate based on adverse facts available ("AFA").

### 3. Withdrawal of Requests for Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if all parties who requested the review withdraw their requests within 90 days of the date of publication of notice of initiation of the requested review. However, because Fuzhou Shenglinmark Trade Co., Ltd. and Dongtai Peak were not eligible for separate-rate status at the initiation of the review, the Department's practice is to refrain from rescinding the review with respect to these two companies at this time.<sup>10</sup> While the request for review of these companies was timely withdrawn, we preliminarily determine that the companies remain part of the PRC-wide entity, which is under review for these preliminary results. Thus, we are not rescinding this

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<sup>5</sup> 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, 55040-41 (September 24, 2008).

<sup>6</sup> 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").

<sup>7</sup> Id.

<sup>8</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>9</sup> See, e.g., Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 20891 (April 8, 2013) and accompanying Issues and Decision Memorandum at Comment 2. See also Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011, 78 FR 8493 (February 6, 2013) and accompanying Preliminary Decision Memorandum unchanged in Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011, 78 FR 35249 (June 12, 2013) ("Furniture 2013").

<sup>10</sup> See, e.g., Narrow Woven Ribbons With Woven Selvedge from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 77 FR 47363, 47365 (August 8, 2012), unchanged in Narrow Woven Ribbons With Woven Selvedge from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010- 2011, 78 FR 10130 (February 13, 2013).

review with respect to these two companies, but the Department will make a determination with respect to the PRC-wide entity at the conclusion of this review.

#### 4. Use of Facts Available and AFA

##### A. Background and Basis for Use of Facts Available

On May 22, 2014, Kunshan Xinlong submitted rebuttal comments to Petitioners' surrogate country comments, three days past the un-extended May 19, 2014, deadline for rebuttal comments. On June 9, 2014, the Department determined to accept the untimely submission but reminded Kunshan Xinlong "to adhere to deadlines set by the Department for all future submissions in this proceeding."<sup>11</sup>

On July 1, 2014, the Department issued to Kunshan Xinlong, via IA-ACCESS<sup>12</sup> upload, a supplemental Section C questionnaire with a response deadline of July 8, 2014.<sup>13</sup> As evidenced by the Department's July 29, 2014, memorandum to the file, we did not receive the response or an extension request by the established deadline despite the upload to IA-ACCESS and subsequent dissemination of the supplemental questionnaire to interested parties.<sup>14</sup>

Notwithstanding our June 9, 2014, reminder to Kunshan Xinlong with respect to timely submission of responses and extension requests, Kunshan Xinlong continued not to adhere to our deadlines, particularly with respect to filing its response to the supplemental Section C questionnaire. The supplemental Section C questionnaire issued to Kunshan Xinlong stated that a response or extension request must be received by close of business on the day of the deadline or the Department may resort to the use of facts available.<sup>15</sup> Kunshan Xinlong failed to respond to the supplemental Section C questionnaire by the established deadline of July 1, 2014. Furthermore, Kunshan Xinlong did not request a timely extension of that deadline. Additionally, while Kunshan Xinlong provided post-deadline explanations for their failure to respond, we find the explanations unconvincing, as discussed in greater detail below.<sup>16</sup>

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<sup>11</sup> See Memorandum to the File from Kabir Archuletta, Senior International Trade Analyst, re: "Petitioner Request for Rejection of Comments by Kunshan Xinlong Food Co., Ltd.," dated June 9, 2014.

<sup>12</sup> On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance's AD and CVD Centralized Electronic Service System ("IA ACCESS") to AD and CVD Centralized Electronic Service System ("ACCESS"). The website location was changed from <http://iaaccess.trade.gov> to <http://access.trade.gov>. The Final Rule changing the references to the Regulations can be found at 79 FR 69046 (November 20, 2014).

<sup>13</sup> The Department's upload of the supplemental Section C questionnaire was memorialized in "Memorandum to the File, re: Placing IA ACCESS Digest, Document Access Sheets, and APO Service List on Record," dated July 23, 2014 ("July 23 IA ACCESS Memo"). This memorandum to the file included emails to Kunshan Xinlong demonstrating that the IA-ACCESS upload and transmittal of the supplemental Section C questionnaire occurred without incident or rejection by the IA-ACCESS system.

<sup>14</sup> See "Memorandum to the File, re: Placing Document Access Sheet on the Record," dated July 29, 2014 ("July 29 IA ACCESS Memo"). This memorandum to the file included the digest of the interested parties that gained access to the supplemental Section C questionnaire, via the associated document barcode number. This digest demonstrates that Kunshan Xinlong did not access the supplemental Section C questionnaire despite notification sent by IA-Access that the Department issued a supplemental questionnaire to the respondent. The digest also demonstrates that the other interested parties on the APO service list did gain access to the document.

<sup>15</sup> See Supplemental Section C Questionnaire, dated July 1, 2014, at 2.

<sup>16</sup> See Letters from Kunshan Xinlong dated July 25, 2014, and August 2, 2014.

The Department has the discretion to “establish its own rules governing administrative procedures, including the establishment and enforcement of time limits.”<sup>17</sup> Parties requesting extensions are required to submit a written request “before the time limit specified” by the Department, and must “state the reasons for the request.”<sup>18</sup> Kunshan Xinlong provided no timely request for an extension of the deadline and has failed to submit any response to the supplemental Section C questionnaire. The record shows that Kunshan Xinlong filed untimely extension requests and, ultimately, failed to file a response by the established deadline. While the Department may extend deadlines, it does so “for good cause,” in accordance with 19 CFR 351.302(b). An untimely-filed extension request may be granted in the event of an “extraordinary circumstance.”<sup>19</sup> However, Kunshan Xinlong did not provide a sufficient explanation of an extraordinary circumstance for its failure to file its response or an extension request in a timely manner.

As part of this administrative review, the Department examined Kunshan Xinlong’s POR sales and whether such sales reconcile to financial statements. The supplemental Section C questionnaire that we issued, for which we did not receive a response, included detailed questions regarding Kunshan Xinlong’s sales invoice number(s), dates of shipment, dates of receipt of payment, inland freight expenses, credit expenses, VAT tax, entered value and gross product weight. Without this information, the Department is unable to determine whether all U.S. sales were reported, and whether expenses were reported completely and accurately. Furthermore, we are unable to fully analyze whether the sales are bona fide.

The Department requires a significant amount of time and effort to gather the necessary information, consider the facts on the record, and provide interested parties with a period for comments and rebuttal comments. The establishment of deadlines for submission of factual information in an antidumping duty review is specifically designed to allow a respondent time to prepare responses to detailed requests for information, and to allow the Department to analyze and potentially verify that information, within the statutorily-mandated timeframe for completing the review. The Department recognizes that respondents may encounter difficulties in meeting certain deadlines in the course of a segment; indeed, the Department’s regulations specifically address the requirements governing requests for extensions of specific time limits (i.e., 19 CFR 351.302(c)). However, in this case, Kunshan Xinlong did not avail itself of the opportunity to request a deadline extension prior to the established deadline. Nor did it access the supplemental Section C questionnaire at all, based on the IA-ACCESS digest.

Kunshan Xinlong provided untimely filings requesting, alternatively, an untimely extension due to “extraordinary circumstances” under 19 CFR 351.302(c), or the re-issuance of the supplemental questionnaire. Kunshan Xinlong provided inconsistent explanations regarding the failure to access the Department’s supplemental C questionnaire from IA-ACCESS.<sup>20</sup> Specifically, the first explanation was that, in using a different email access program “for an

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<sup>17</sup> See Yantai Timken Co., Ltd. v. U.S., 521 F.Supp.2d 1356, 1371 (CIT 2007) (citations omitted).

<sup>18</sup> See 19 CFR 351.302(c). See also Glycine from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 64746 (October 31, 2014) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>19</sup> See Extension of Time Limits, 78 FR 57790, 57792 (September 20, 2013) (“Extension of Time Limits”).

<sup>20</sup> See Letters from Kunshan Xinlong, dated July 25, 2014, and August 2, 2014.

the Section C SQ {Supplemental Section C questionnaire} notice did not appear” and “{w}hen she {Kunshan Xinlong’s attorney} got to her office, she continued to work and did not go back to the earlier email messages that she had checked earlier. She was not aware of the issuance of Sect {sic} C SQ and never forwarded it to her client.”<sup>21</sup> The second explanation from Kunshan Xinlong was that “Respondent did not receive the Department’s email notice relating to Sect {sic} C SQ on the day of the issuance.”<sup>22</sup> Kunshan Xinlong argued that under 19 CFR 351.302(c), these occurrences were an “extraordinary circumstance” that prevented it from accessing the document or filing a timely extension request.

However, neither scenario described by Kunshan Xinlong is convincing in light of the Department’s transmittal of the notification of the issuance of the supplemental Section C questionnaire to parties with APO access, and the digest of the interested parties that accessed the supplemental Section C questionnaire response on IA-ACCESS.<sup>23</sup> Kunshan Xinlong cannot declare that the IA-ACCESS notification system failed, especially since Kunshan Xinlong had been accessing the system since the start of the administrative review<sup>24</sup> and the digest shows that other interested parties managed to access the document in the system following the notification email.<sup>25</sup>

The Department’s regulations also do not support the claim that these were “extraordinary circumstances” under 19 CFR 351.302(c). Under 19 CFR 351.302(c), an “extraordinary circumstance” is defined as an “unexpected event” that “could not have been prevented if reasonable measures had been taken” and “precludes a party or its representative from timely filing an extension request through all reasonable means.”<sup>26</sup> The Department has noted that “insufficient resources, inattentiveness, or the inability of a party’s representative to access the Internet on the day on which the submission was due” are examples of circumstances that are unlikely to be considered “extraordinary circumstances.”<sup>27</sup>

In light of the above, we find that Kunshan Xinlong has not provided a plausible explanation for its failure to access the supplemental Section C questionnaire and then respond to it by the established deadline. Kunshan Xinlong’s inconsistent explanations and justifications also do not meet the standards for an untimely extension request provided for in the Department’s regulations.

As noted above, Kunshan Xinlong, had, early in the review, filed an untimely extension request to submit rebuttal comments on Petitioner’s surrogate country comments. The Department cautioned Kunshan Xinlong, at that time, that extension requests must be made before the

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<sup>21</sup> See Letter from Kunshan Xinlong, dated July 25, 2014.

<sup>22</sup> See Letter from Kunshan Xinlong, dated August 2, 2014.

<sup>23</sup> See July 23 IA ACCESS Memo and July 29 IA ACCESS Memo.

<sup>24</sup> See Letter from Kunshan Xinlong, dated July 25, 2014 where the respondent stated “If email notifications reached to Respondent, it would have opened the document and responded to the questions, as it has been doing for the other five supplemental questionnaires.”

<sup>25</sup> See the Department’s July 29, 2014, memorandum to the file, containing the digest of the interested parties that gained access to the supplemental Section C questionnaire, via the associated document barcode number.

<sup>26</sup> See 19 CFR 351.302(c).

<sup>27</sup> See Extension of Time Limits, 78 FR at 57793.

applicable deadline.<sup>28</sup> Subsequently, after close-of-business on July 7, 2014, Kunshan Xinlong filed a request for the Department to not reject untimely filed documents which were due prior to close of business on that day, which we did not grant.<sup>29</sup> The record demonstrates a repeated disregard for established deadlines and failures to request timely extensions of deadlines.

The Department establishes deadlines to ensure its ability to complete the proceeding. We note that the Court of International Trade (“CIT”) has long recognized the need to establish, and enforce, time limits for filing questionnaire responses, the purpose of which is to aid the Department in the administration of the dumping laws.<sup>30</sup>

B. Application of Facts Available and Selection Based Upon Adverse Inferences for the PRC-Wide Entity

Section 776(a) of the Act provides that the Department shall use facts otherwise available if necessary information is not otherwise available on the record of the antidumping proceeding or where an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide requested information by the requested date or in the form and manner requested; (C) significantly impedes an antidumping proceeding; or (D) provides such information but the information cannot be verified, the Department shall use facts otherwise available in reaching its determination.

Section 776(b) of the Act provides that the Department, in selecting from the facts otherwise available, may use an inference that is adverse to the interests of the party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>31</sup> The “best of its ability” standard requires a party to “do the maximum it is able to do.”<sup>32</sup> Evidence of “bad faith, or wilfulness” on the part of the respondent is not required for the Department to make an adverse inference.<sup>33</sup>

As noted above, the Department has preliminarily determined that Kunshan Xinlong is not eligible for separate rate status and, consequently, we are treating it as part of the PRC-wide entity; thus, the PRC-wide entity is under review. As detailed above, the PRC-wide entity, including Kunshan Xinlong, withheld information requested by the Department and failed to respond within the established deadlines in accordance with sections 776(a)(2)(A) and (B) of the Act, as detailed below. Further, because the PRC-wide entity was unresponsive to our requests

<sup>28</sup> See the Department’s memorandum to the file, dated June 9, 2014.

<sup>29</sup> See Letter from Kunshan Xinlong re: “Request for Acceptance of Untimely Filed Document,” dated July 7, 2014, at 10:30 pm, which was after the close-of-business deadline of 5:00 pm Eastern Standard Time. See also “Memorandum to the File re: Rejection of certain Kunshan Xinlong Surrogate Value Submissions,” dated July 11, 2014, which we rejected due to the untimely filing of those documents.

<sup>30</sup> See, e.g., Nippon Steel Corp. v. United States, 118 F. Supp. 2d 1366, 1377 (CIT 2000); and Seattle Marine Fishing Supply, et al. v. United States, 679 F. Supp. 1119, 1128 (CIT 1998) (it was not unreasonable for the Department to refuse to accept untimely filed responses, where “the record displays the ITA followed statutory procedure” and the respondent “was afforded its chance to respond to the questionnaires, which it failed to do.”)

<sup>31</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 103-316, at 870 (1994) (“SAA”).

<sup>32</sup> See Nippon Steel Corporation v. United States, 337 F.3d 1373, 1382-3 (Fed. Cir. 2003) (“Nippon Steel”).

<sup>33</sup> See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997).

for information, we determine that the PRC-wide entity significantly impeded the proceeding in accordance with section 776(a)(2)(C) of the Act.

Because the PRC-wide entity, including Kunshan Xinlong, (A) withheld information requested by the Department; (B) failed to provide requested information by the requested date; and (C) significantly impeded an antidumping proceeding, the Department finds that it must rely on the facts otherwise available to determine a margin for the PRC-wide entity in accordance with section 776(a) of the Act.<sup>34</sup>

The Department determines that by failing to respond to the Department's supplemental Section C questionnaire the PRC-wide entity, which includes Kunshan Xinlong, has failed to cooperate by not acting to the best of its ability in providing the requested information. Accordingly, pursuant to sections 776(a)(2)(A), (B), and (C) and section 776(b) of the Act, we find it appropriate to apply a margin to the PRC-wide entity based entirely on the facts available, and to apply an adverse inference.<sup>35</sup> Adverse inferences are appropriate to "ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>36</sup> In selecting an adverse inference, the Department may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.<sup>37</sup>

The Department's practice is to select an AFA rate that is sufficiently adverse as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner and that ensures that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.<sup>38</sup> Specifically, the Department's practice in reviews, when selecting a rate as total AFA, is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated.<sup>39</sup> The CIT and the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") have affirmed decisions to select the highest margin from any prior segment of the

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<sup>34</sup> See Furniture 2013, 78 FR at 8494. See also Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 69546 (December 1, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>35</sup> See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review, 72 FR 10689, 10692 (March 9, 2007) (decision to apply total AFA to the NME-wide entity), unchanged in Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Administrative Review and First New Shipper Review, 72 FR 52052 (September 12, 2007).

<sup>36</sup> Id.

<sup>37</sup> See section 776(b) of the Act.

<sup>38</sup> See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan, 63 FR 8909, 8911 (February 23, 1998); see also Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review, 70 FR 69937, 69939 (November 18, 2005), and SAA at 870.

<sup>39</sup> See Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 15930, 15934 (April 8, 2009), unchanged in Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 41121 (August 14, 2009); see also Fujian Lianfu Forestry Co., Ltd. v. United States, 638 F. Supp. 2d 1325, 1336 (CIT August 10, 2009) ("Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.").

proceeding as the AFA rate on numerous occasions.<sup>40</sup> Therefore, we are assigning the PRC-wide entity, which includes Kunshan Xinlong, a rate of \$2.63 per kilogram, which is the highest rate on the record of this proceeding and which was the AFA rate assigned to the PRC-wide entity in the tenth administrative review of this proceeding.<sup>41</sup>

## 5. Corroboration of AFA Rate

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. To be considered corroborated, the Department must find the information has probative value, meaning that the information must be both reliable and relevant.<sup>42</sup> Secondary information is “{i}nformation 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.”<sup>43</sup> Unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated margins. Thus, in an administrative review, if the Department chooses, as AFA, a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin.<sup>44</sup>

The Department considers the AFA rate of \$2.63 per kilogram for the current review as both reliable and relevant. On the issue of reliability, the adverse rate selected was calculated for another respondent, Anhui Native Produce Import & Export Corporation, during the sixth administrative review<sup>45</sup> and subsequently assigned, as AFA, to a respondent in PRC Honey AR10.<sup>46</sup> No information has been presented in the current review that calls into question the reliability of this information. With respect to the relevance, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in Fresh Cut Flowers from Mexico, the Department disregarded the highest margin in that case as

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<sup>40</sup> See, e.g., KYD, Inc. v United States, 607 F.3d 760, 766-767 (Fed. Cir. 2010) (“KYD”); see also NSK Ltd. v. United States, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (affirming a 73.55 percent total AFA rate, the highest available dumping margin calculated for a different respondent in the investigation).

<sup>41</sup> See PRC Honey AR10 at Comment 5.

<sup>42</sup> See SAA at 870; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996) unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

<sup>43</sup> See SAA, H.R. Doc. No. 103-316 at 870 (1994) and 19 CFR 351.308 (d).

<sup>44</sup> See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People’s Republic of China: Final Results of Antidumping Duty Administrative Reviews, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Part, 69 FR 55581 (September 15, 2004), and accompanying Issues and Decision Memorandum at Comment 18.

<sup>45</sup> See Honey from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 796 (January 8, 2009) (“PRC Honey AR6”).

<sup>46</sup> See Honey from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 70417 (November 26, 2012) and accompanying Issues and Decision Memorandum at Comment 5 (“PRC Honey AR10”).

best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin.<sup>47</sup> This rate was assigned to the PRC-wide entity in a prior review which demonstrates its relevance to the PRC-wide entity. Furthermore, the selected AFA margin is based upon the calculated rate for another respondent in sixth administrative review of this proceeding, and thus reflects the commercial reality of a competitor in the same industry.<sup>48</sup> There is no information on the record to indicate that this rate is not relevant, as was the case in Fresh Cut Flowers from Mexico. For all these reasons, the Department finds that this rate is also relevant.

Given that the PRC-wide entity, which includes Kunshan Xinlong, failed to cooperate to the best of its ability in this administrative review, it is appropriate to select an AFA rate that serves as an adequate deterrent in order to induce cooperation in the proceeding. The Federal Circuit held in KYD that selecting the highest prior margin reflects "a common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer knowing of the rule, would have produced *current* information showing the margin to be less."<sup>49</sup> Here, Kunshan Xinlong did not provide required information in a timely manner, as noted above. On this basis, we find that selecting the highest calculated rate in this proceeding is sufficiently relevant to the commercial reality for the PRC-wide entity, which includes Kunshan Xinlong. Furthermore, there is no information on the record of this review that demonstrates that this rate is uncharacteristic of the industry, or otherwise inappropriate for use as AFA. Based upon the foregoing, we determine this rate to be relevant.

As the \$2.63 per kilogram AFA rate is both reliable and relevant, we determine that it has probative value and is corroborated to the extent practicable, in accordance with section 776(c) of the Act. Therefore, we have assigned this rate as AFA to exports of the subject merchandise by the PRC-wide entity, which includes Kunshan Xinlong.

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<sup>47</sup> See Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review, 61 FR 6812, 6814 (February 22, 1996) ("Fresh Cut Flowers from Mexico") cited in Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 77 FR 21734, 21737 (April 11, 2012).

<sup>48</sup> See PRC Honey AR6. See also PRC Honey AR10 at Comment 5.

<sup>49</sup> See KYD, Inc. v. United States, 607 F.3d 760, 766 (Fed. Cir. 2010) (emphasis in original) (citing Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190 (Fed. Cir. 1990)).

**V. CONCLUSION**

We recommend applying the above methodology for these preliminary results.

✓  
Agree

\_\_\_\_\_  
Disagree

*Paul Piquado*  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

29 DECEMBER 2014  
(Date)