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December 29, 2017

**MEMORANDUM TO:** Christian Marsh  
Deputy Assistant Secretary  
for Enforcement and Compliance

**FROM:** Edward Yang  
Senior Director, Office VII  
Antidumping and Countervailing Duty Operations

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

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on drawn stainless steel sinks (drawn sinks) from the People's Republic of China (China). The period of review (POR) is April 1, 2016, through March 31, 2017. We preliminarily find that respondents Feidong Import and Export Co., Ltd. (Feidong) and Foshan Zhaoshun Trade Co., Ltd (Zhaoshun) have not established their entitlement to a separate rate, and, thus, they are part of the China-wide entity. Additionally, we are preliminarily including two companies that failed to demonstrate their entitlement to a separate rate (*i.e.*, Jiangmen Hongmao Trading Co., Ltd. (Hongmao) and Yuyao Afa Kitchenware Co., Ltd. (Yuyao)) as part of the China-wide entity. We also preliminarily grant separate rates to Guangdong New Shichu Import and Export Company Limited (New Shichu); Jiangmen New Star Hi-Tech Enterprise Ltd. (New Star); KaiPing Dawn Plumbing Products, Inc. (KaiPing); and Ningbo Afa Kitchen and Bath Co., Ltd. (Ningbo Afa) because these companies demonstrated their eligibility for separate rate status, but were not selected for individual examination. The rates assigned to each of these companies can be found in the "Preliminary Results of Review" section of the accompanying preliminary *Federal Register* notice. Finally, we preliminarily find that B&R Industries Limited (B&R); Xinhe Stainless Steel Products Co., Ltd. (Xinhe); Zhongshan Superte Kitchenware Co., Ltd. (Superte); and Zhuhai KOHLER Kitchen & Bathroom Products Co., Ltd. (Zhuhai KOHLER) made no shipments of subject merchandise during the POR.

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



## II. BACKGROUND

In April 2013, Commerce published in the *Federal Register* an AD duty order on drawn sinks from China.<sup>1</sup> On April 3, 2017, Commerce published a notice of opportunity to request an administrative review of the AD duty order on drawn sinks from China for the period April 1, 2016, through March 31, 2017.<sup>2</sup> Pursuant to section 751(a)(1) of the Act and 19 CFR 351.213(b)(1), Commerce received timely requests for review from Guangdong Dongyuan Kitchenware Industrial Co., Ltd. (Dongyuan); Guandong Yingao Kitchen Utensils Co., Ltd. (Yingao); KaiPing; New Shichu; New Star; and Superte,<sup>3</sup> as well as Elkay Manufacturing Company (the petitioner).<sup>4</sup> On June 7, 2017, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation with respect to 31 companies.<sup>5</sup>

In the *Initiation Notice*, Commerce notified parties of the application/certification process by which exporters and producers of merchandise subject to an administrative review in a non-market economy (NME) country may qualify for separate rate status.<sup>6</sup> Exporters and producers wishing to qualify for separate rate status in this administrative review were given 30 calendar days after publication of the *Initiation Notice* to complete, as appropriate, either a separate rate application (SRA) or separate rate certification (SRC).<sup>7</sup> In July 2017, we received six SRCs<sup>8</sup> from those China companies requesting separate rate status.

The *Initiation Notice* also indicated that, in the event that Commerce limits the number of respondents selected for individual examination, we would select mandatory respondents based

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<sup>1</sup> See *Drawn Stainless Steel Sinks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 78 FR 21592 (April 11, 2013) (*Drawn Sinks LTFV Final*).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 82 FR 16163 (April 3, 2017).

<sup>3</sup> See Dongyuan's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Request for Antidumping Administrative Review," dated April 28, 2017; KaiPing's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Request for Antidumping Administrative Review," dated April 27, 2017; New Shichu's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Request for Administrative Review," dated May 1, 2017; New Star's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Request for Administrative Review," dated April 28, 2017; Superte's Letter, "Drawn Stainless Steel Sinks from China: Administrative Review Request," dated April 28, 2017; New Star's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Request for Antidumping Administrative Review," dated April 28, 2017; and Yingao's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Request for Administrative Review," dated April 28, 2017.

<sup>4</sup> See Petitioner's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Request for Administrative Review," dated May 1, 2017.

<sup>5</sup> See *Initiation of Antidumping and Countervailing Duty Reviews*, 82 FR 26444, 36274 (June 7, 2017) (*Initiation Notice*).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*, 82 FR at 26445.

<sup>8</sup> See Ningbo Afa's July 7, 2017, Separate Rate Certification (Ningbo Afa SRC); Dongyuan's July 5, 2016, Separate Rate Certification; New Star's July 7, 2017, Separate Rate Certification (New Star SRC); New Shichu's July 7, 2017, Separate Rate Certification (New Shichu SRC); KaiPing's July 7, 2017, Separate Rate Certification (KaiPing SRC); Zhaoshun's July 5, 2017, Separate Rate Certification (Zhaoshun SRC); and Feidong's July 7, 2017, Separate Rate Certification.

on CBP data for U.S. imports during the POR.<sup>9</sup> In June 2017, Commerce released the CBP data to all interested parties under an administrative protective order (APO).<sup>10</sup> On June 23, 2017, pursuant to section 777A(c)(2)(B) of the Act, we selected Dongyuan and Yingao for individual examination in this administrative review and issued the NME AD questionnaire to them on this same date.<sup>11</sup> Additionally, in June and July 2017, we received certifications of no export sales from B&R, Superte, Xinhe, and Zhuhai KOHLER.<sup>12</sup>

On June 29, 2017, Dongyuan and Yingao timely withdrew their requests for review, and on July 3, 2017, the petitioner timely withdrew its requests for review for 19 companies, including Dongyuan and Yingao.<sup>13</sup> Accordingly, as the review would be rescinded for these companies, including the mandatory respondents,<sup>14</sup> on July 10, 2017, we selected Feidong and Zhaoshun for individual examination in this administrative review and issued the NME AD questionnaire to them.<sup>15</sup>

In August and September 2017, Feidong submitted its response to the initial NME AD questionnaire,<sup>16</sup> and the petitioner submitted comments on respondent selection and Feidong's

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<sup>9</sup> See *Initiation Notice*, 82 FR at 26444.

<sup>10</sup> See Memorandum, "Release of Customs Entry Data from U.S. Customs and Border Protection," dated June 9, 2017.

<sup>11</sup> See Memorandum, "2016-2017 Administrative Review of the Antidumping Duty Order on Drawn Stainless Steel Sinks from the People's Republic of China: Respondent Selection," dated June 23, 2017; and Department Letter re: NME AD Questionnaire, dated September June 23, 2017.

<sup>12</sup> See B&R's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China – No Sales Certification," July 5, 2017 (B&R NSC); Superte's Letter, "Drawn Stainless Steel Sinks from China; Notice of Appearance, Withdrawal of Review Request, and No Shipment Certification," July 6, 2017 (Superte NSC); Xinhe's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Notice of No Sales," dated July 7, 2017 (Xinhe NSC); and Zhuhai KOHLER's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: No Shipment Certification," dated June 13, 2017 (Zhuhai KOHLER NSC).

<sup>13</sup> See Petitioner's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Notice of Partial Withdrawal of Request for Administrative Review," dated July 3, 2017.

<sup>14</sup> The review was rescinded with respect to: Elkay (China) Kitchen Solutions, Co., Ltd.; Foshan Shunde MingHao Kitchen Utensils Co., Ltd.; Franke Asia Sourcing Ltd.; Grand Hill Work Company; Guangdong Dongyuan Kitchenware Industrial Co., Ltd.; Guangdong G-Top Import & Export Co., Ltd.; Guangdong Yingao Kitchen Utensils Co., Ltd.; Hangzhou Heng's Industries Co., Ltd.; Hubei Foshan Success Imp & Exp Co. Ltd.; J&C Industries Enterprise Limited; Jiangmen Pioneer Import & Export Co., Ltd.; Jiangxi Zoje Kitchen & Bath Industry Co., Ltd.; Ningbo Oulin Kitchen Utensils Co., Ltd.; Primy Cooperation Limited; Shenzhen Kehuaxing Industrial Ltd.; Shunde Foodstuffs Import & Export Company Limited of Guangdong; Shunde Native Produce Import and Export Co., Ltd. of Guangdong; Zhongshan Newecan Enterprise Development Corporation; and Zhongshan Silk Imp. & Exp. Group Co., Ltd. of Guangdong. See *Drawn Stainless Steel Sinks from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review; 2016–2017*, 82 FR 43328 (September 15, 2017) (*Partial Rescission Notice*).

<sup>15</sup> See Memorandum, "2016-2017 Administrative Review of the Antidumping Duty Order on Drawn Stainless Steel Sinks from the People's Republic of China: Selection of New Respondents for Individual Review," dated July 10, 2017 (Second Respondent Selection Memo); Department Letter re: NME AD Questionnaire, dated July 10, 2017 (July 10, 2017 NME AD Questionnaire).

<sup>16</sup> See Feidong's August 6, 2017, Section A Questionnaire Response (Feidong August 6, 2017 AQR); Feidong's August 30, 2017, Section C Questionnaire Response; Feidong's September 7, 2017, Section D Questionnaire Response.

separate rate status.<sup>17</sup> On September 15, 2017, we rescinded this administrative review with respect to 19 companies.<sup>18</sup>

In September and October 2017, we issued supplemental questionnaires to Feidong,<sup>19</sup> and Feidong submitted its responses during the same period.<sup>20</sup>

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

The merchandise covered by the order includes drawn stainless steel sinks with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel. Mounting clips, fasteners, seals, and sound-deadening pads are also covered by the scope of this order if they are included within the sales price of the drawn stainless steel sinks.<sup>21</sup> For purposes of this scope definition, the term “drawn” refers to a manufacturing process using metal forming technology to produce a smooth basin with seamless, smooth, and rounded corners. Drawn stainless steel sinks are available in various shapes and configurations and may be described in a number of ways including flush mount, top mount, or undermount (to indicate the attachment relative to the countertop). Stainless steel sinks with multiple drawn bowls that are joined through a welding operation to form one unit are covered by the scope of the order. Drawn stainless steel sinks are covered by the scope of the order whether or not they are sold in conjunction with non-subject accessories such as faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

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

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<sup>17</sup> See Petitioner’s Letter, “Drawn Stainless Steel Sinks from the People’s Republic of China: Comments on Factors of Production Reporting and Mandatory Respondent Selection,” dated August 17, 2017; and Petitioner’s Letter, “Drawn Stainless Steel Sinks from the People’s Republic of China: Comments Regarding Feidong’s Separate Rate Status and Request for Additional Information,” dated September 15, 2017.

<sup>18</sup> See *Partial Rescission Notice*.

<sup>19</sup> See Department Letter re: Administrative Review of the Antidumping Duty Order on Drawn Stainless Steel Sinks from the People’s Republic of China for Feidong, dated August 28, 2017; and Department Letter re: Administrative Review of the Antidumping Duty Order on Drawn Stainless Steel Sinks from the People’s Republic of China for Feidong, dated October 4, 2017.

<sup>20</sup> See Feidong’s September 5, 2017 Supplemental Questionnaire Response (Feidong September 5, 2017 SQR); and Feidong’s October 18, 2017 Supplemental Questionnaire Response.

<sup>21</sup> Mounting clips, fasteners, seals, and sound-deadening pads are not covered by the scope of this order if they are not included within the sales price of the drawn stainless steel sinks, regardless of whether they are shipped with or entered with drawn stainless steel sinks.

## IV. DISCUSSION OF METHODOLOGY

### A. Preliminary Determination of No Shipments

In the *Initiation Notice*, we instructed producers or exporters named in the notice that had no exports, sales, or entries during the POR to notify Commerce within 30 days of publication of the notice of this fact.<sup>22</sup> In June and July 2017, B&R, Superte, Xinhe, and Zhuhai KOHLER filed no-shipment certifications indicating that they had no exports, sales, or entries of subject merchandise to the United States during the POR.<sup>23</sup> Upon receiving such claims from companies subject to an administrative review, it is Commerce's practice to send an inquiry message to CBP in which we request that CBP import officers alert Commerce if it had information contrary to the party's claim.<sup>24</sup> Accordingly, for B&R, Superte, and Zhuhai KOHLER, we sent inquiry messages to CBP. We received no information from CBP contradicting the no-shipment claims of B&R, Superte, or Zhuhai KOHLER. However, certain CBP data on the record of this proceeding suggested that there were imports of subject merchandise produced by Xinhe during the POR. As such, we requested U.S. entry documents from CBP.<sup>25</sup> Upon further inspection of the entry documentation, we did not find any information contradicting the no-shipment claim of Xinhe.

Thus, based on the no-shipment claims submitted by B&R, Superte, Xinhe, and Zhuhai KOHLER and our analysis of the information on the record, we preliminarily determine that B&R, Superte, Xinhe, and Zhuhai KOHLER had no shipments during the POR. In addition, we find that, consistent with our practice in NME cases,<sup>26</sup> it is appropriate not to rescind the review for these companies in these circumstances, but rather to complete the review. In accordance with Commerce's practice, if Commerce determines that B&R, Superte, Xinhe, and Zhuhai KOHLER had no shipments of the subject merchandise, any suspended entries from B&R, Superte, Xinhe, or Zhuhai KOHLER will be liquidated at the China-wide rate.<sup>27</sup>

### B. Non-Market Economy Country Status

Commerce considers China to be an NME country.<sup>28</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

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<sup>22</sup> See *Initiation Notice*, 82 FR at 26444.

<sup>23</sup> See B&R NSC, Superte NSC, Xinhe NSC, and Zhuhai KOHLER NSC.

<sup>24</sup> See, e.g., *Certain Steel Grating from the People's Republic of China: Preliminary Results of Antidumping Administrative Review and Preliminary Determination of No Shipments; 2014-2015*, 81 FR 21843 (April 13, 2016).

<sup>25</sup> See Memorandum, "Request for U.S. Entry Documents – Drawn Stainless Steel Sinks from the People's Republic of China (A-570-983)," dated August 31, 2017; and Memorandum, "Release of Customs and Border Protection (CBP) Entry Documents," dated November 14, 2017.

<sup>26</sup> See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-95 (October 24, 2011) (*NME AD Assessment*).

<sup>27</sup> For a full discussion of this practice, see *NME AD Assessment*.

<sup>28</sup> See *Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017), and accompanying decision memorandum, *China's Status as a Non-Market Economy*.

until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of this preliminary determination.

### C. Separate Rates Determination

In NME proceedings, there is a rebuttable presumption that companies are subject to government control and, thus, should be assessed a single AD rate.<sup>29</sup> In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.<sup>30</sup> It is Commerce's policy to assign exporters of the subject merchandise from an NME country a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, Commerce analyzes each exporting entity in an NME country under the test established in *Sparklers*,<sup>31</sup> as amplified by *Silicon Carbide*.<sup>32</sup> However, if Commerce determines that a company is wholly foreign-owned, then consideration of the *de jure* and *de facto* criteria is not necessary to determine whether it is independent from government control.<sup>33</sup>

Under the separate rates test, Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.<sup>34</sup>

Further, Commerce typically considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (EPs) are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and, (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.<sup>35</sup>

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<sup>29</sup> See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); see also *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

<sup>30</sup> See *Initiation Notice*, 81 FR at 36269.

<sup>31</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).

<sup>32</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>33</sup> See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

<sup>34</sup> See *Sparklers*, 56 FR at 20589.

<sup>35</sup> See *Silicon Carbide*, 59 FR at 22586-89; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China AD proceeding, and Commerce's determinations therein.<sup>36</sup> In particular, we note that in litigation involving the diamond sawblades proceeding, the U.S. Court of International Trade (CIT) found Commerce's existing separate rates analysis deficient in the circumstances of that case, in which a government-controlled entity had significant ownership in the respondent exporter.<sup>37</sup> Following the court's reasoning, in recent proceedings, we have concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally.<sup>38</sup> This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profit distribution of the company.

In this review, we preliminarily find no evidence of government ownership of the separate rate respondents KaiPing, New Shichu, New Star, and Ningbo Afa, all of which are limited liability companies. In accordance with our practice, Commerce analyzed whether these respondents have demonstrated the absence of *de jure* and *de facto* government control over their respective export activities.

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<sup>36</sup> See Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China (May 6, 2013) in *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012), affirmed in *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013). This remand redetermination is on the Enforcement and Compliance website at <http://enforcement.trade.gov/remands/12-147.pdf>. See also *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013), and accompanying Preliminary Decision Memorandum (PDM) at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

<sup>37</sup> See, e.g., *Advanced Technology & Materials Co., Ltd. v. United States*, 885 F. Supp. 2d 1343, 1349 (CIT 2012) ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *Id.* at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {state-owned assets supervision and administration commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor *de jure* 'separation' that Commerce concludes.") (footnotes omitted); *Id.* at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); and *Id.* at 1357 ("AT&M *itself* identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control *over* nomination.") (footnotes omitted).

<sup>38</sup> See *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying PDM at 5-9.

### 1. Absence of *De Jure* Control

The evidence provided by KaiPing,<sup>39</sup> New Shichu,<sup>40</sup> New Star,<sup>41</sup> and Ningbo Afa<sup>42</sup> 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.

### 2. Absence of *De Facto* Control

The evidence provided by KaiPing,<sup>43</sup> New Shichu,<sup>44</sup> New Star,<sup>45</sup> and Ningbo Afa<sup>46</sup> 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 the disposition of profits or financing of losses.

Therefore, the evidence placed on the record of this administrative review by KaiPing, New Shichu, New Star, and Ningbo Afa demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, Commerce preliminarily grants separate rates to KaiPing, New Shichu, New Star, and Ningbo Afa.<sup>47</sup>

### 3. Companies Not Eligible for a Separate Rate

Two companies, Hongmao and Yuyao, did not submit a separate rate application or certification by the deadline established in the *Initiation Notice*. Furthermore, neither company made a claim that it had no exports, sales, or entries of subject merchandise during the POR. Given the foregoing, we preliminarily find that neither Hongmao or Yuyao established its eligibility for separate rate status. Therefore, Commerce preliminarily determines these companies to be considered part of the China-wide entity.

Moreover, as noted above, Commerce selected Feidong and Zhaoshun as mandatory respondents to this proceeding.<sup>48</sup> For the reasons detailed below, Commerce preliminarily determines Feidong and Zhaoshun to be properly considered part of the China-wide entity.

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<sup>39</sup> See KaiPing SRC, at 6-7.

<sup>40</sup> See New Shichu SRC, at 5-6.

<sup>41</sup> See New Star SRC, at 5-6.

<sup>42</sup> See Ningbo Afa SRC, at 9-10.

<sup>43</sup> See KaiPing SRC, at 7-8.

<sup>44</sup> See New Shichu SRC.

<sup>45</sup> See New Star SRC, at 6-7.

<sup>46</sup> See Ningbo Afa SRC.

<sup>47</sup> See "Separate Rate for Eligible, Non-Selected Companies," *infra*.

<sup>48</sup> See Second Respondent Selection Memo at 3.

Pursuant to Commerce’s practice, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity.<sup>49</sup> Because no party requested a review of the China-wide entity in this review, the entity is not under review and the entity’s rate is not subject to change. Therefore, if our determination is unchanged in the final results, entries from the aforementioned companies will be liquidated at the rate previously established for the China-wide entity (*i.e.*, 76.45 percent).<sup>50</sup>

### *Zhaoshun*

In our *Initiation Notice*, Commerce stated that: “[f]or exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.”<sup>51</sup> Zhaoshun was selected for individual examination as a mandatory respondent in this administrative review.<sup>52</sup> Although Zhaoshun submitted a separate rate certification,<sup>53</sup> it did not respond to Commerce’s questionnaire.<sup>54</sup> Accordingly, we preliminarily determine that Zhaoshun does not qualify for a separate rate and should be considered to be a part of the China-wide entity.

### *Feidong*

#### a. Absence of *De Jure* Control

The evidence submitted by Feidong includes government laws and regulations on corporate ownership and control (*i.e.*, the Company Law of the People’s Republic of China), its individual business license, and narrative information regarding its operations and selection of management.<sup>55</sup>

The “Company Law of China” submitted by Feidong indicates that the government has the ability to control the business activities of a company when the government is a controlling shareholder.<sup>56</sup> For example, Article 4 states that “[T]he shareholders of a company shall be entitled to enjoy the capital proceeds, participate in making important decisions, choose

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<sup>49</sup> See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

<sup>50</sup> The China-wide rate determined in the investigation was 76.53 percent. See *Drawn Sinks LTFV Final*. This rate was adjusted for export subsidies and estimated domestic subsidy pass through to determine the cash deposit rate (76.45 percent) collected for companies in the China-wide entity. See explanation in *Drawn Stainless Steel Sinks from the People’s Republic of China: Investigation, Final Determination*, 78 FR at 13024 (February 26, 2013).

<sup>51</sup> See *Initiation Notice*, 82 FR at 26445.

<sup>52</sup> See Second Respondent Selection Memo at 3.

<sup>53</sup> See Zhaoshun SRC.

<sup>54</sup> See July 10, 2017 NME AD Questionnaire; and Memorandum, “2016-2017 Antidumping Duty Administrative Review of Drawn Stainless Steel Sinks from the People’s Republic of China: Confirmation of Delivery of Antidumping Duty Questionnaires,” dated July 18, 2017.

<sup>55</sup> See, *e.g.*, Feidong SRC, at 5-6, and Feidong August 6, 2017 AQR, at 5-7.

<sup>56</sup> *Id.*

managers, and enjoy other rights,” and further, Article 42 provides that “the shareholders shall exercise their voting rights at the shareholders’ meetings based on their respective percentage of capital contributions unless it is otherwise prescribed by the bylaw.”<sup>57</sup> Thus, the company’s Articles of Association and the Company Law of China make clear that the shareholders are the “authority of the company{,}... determin{e} the company’s operational guidelines and investment plans...” and “revis{e} the bylaws of the company.”<sup>58</sup>

b. Failure to Demonstrate Absence of *De Facto* Control

Commerce preliminarily determines that Feidong has not demonstrated an absence of *de facto* government control and that Feidong is not eligible for a separate rate.

As noted above, Commerce typically considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions.<sup>59</sup> However, Commerce’s revised practice, which was sustained by the CIT and subsequently affirmed by the U.S. Court of Appeals for the Federal Circuit, holds that “where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter . . ., such majority ownership holding in and of itself precludes a finding of *de facto* autonomy.”<sup>60</sup> The majority ownership means that the government exercises, or has the potential to exercise, control over the company’s operations generally.<sup>61</sup>

Feidong was established as a state-owned enterprise controlled by the Feidong County Foreign Economic and Trade Bureau (Trade Bureau).<sup>62</sup> Huang Yaming later invested RMB 85,600.00 in the company, and the Trade Bureau retained an investment of RMB 1,014,300 (*i.e.*, 92.2 percent ownership), in the company.<sup>63</sup> In 2010, the Trade Bureau was incorporated into the newly formed Feidong County Bureau of Commerce (Bureau of Commerce), which assumed the responsibilities of the Trade Bureau.<sup>64</sup>

According to Feidong’s articles of association, shareholders have the right to “supervise the production, operation, and management of the company and the financial management,”<sup>65</sup> decide

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *See, supra*, at “Absence of *De Facto* Control.”

<sup>60</sup> *Jiangsu Jiasheng Photovoltaic Technology Co. v. United States*, 121 F. Supp. 3d 1263, 1267 (CIT 2015)(citing *Advanced Tech. & Materials Co.*, 938 F.Supp. 2d 1342, *aff’d*, 581 Fed. App’x. 900 (Fed. Cir. 2014)(internal quotations omitted)).

<sup>61</sup> *See Carbon and Certain Alloy Steel Wire Rod from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying PDM at 6-7, *unchanged in final Carbon and Certain Alloy Steel Wire Rod From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 79 FR 68860 (November 19, 2014); *see also Certain Carbon and Alloy Steel Cut-to-Length Plate from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 8510 (January 26, 2017), and accompanying IDM at 12.

<sup>62</sup> *See* Feidong August 6, 2017 AQR, at 2.

<sup>63</sup> *Id.* at Exhibit A-4, Article 9.

<sup>64</sup> *Id.* at Exhibit A-1.

<sup>65</sup> *Id.* at Exhibit A-4, Article 13.

Feidong's operation and investment plans, and select management staff and remuneration.<sup>66</sup> These rights are exercised according to the ratio of contribution.<sup>67</sup> The vast size of the Feidong County government's share of Feidong indicates that the government has the ability to control, or the potential to control, Feidong's operations and management.

Feidong claims the Trade Bureau's investment never actually transferred to Feidong; however, the investment is reflected in Feidong's business license,<sup>68</sup> articles of association,<sup>69</sup> capital verification report,<sup>70</sup> and its 2015, 2016, and 2017 financial statements.<sup>71</sup> Feidong did not provide any evidence that the Trade Bureau's ownership interest did not pass to its successor government entity, the Bureau of Commerce. Feidong also provided a declaration stating that the Bureau of Commerce will not exercise any shareholder rights towards Feidong and will not intervene in the management and operations of Feidong;<sup>72</sup> however, this statement does not demonstrate that the Bureau of Commerce does not have the *potential* to exercise control over the company's operations and management.<sup>73</sup> Because Feidong has not provided any evidence to the contrary, we preliminarily determine that the Bureau of Commerce has the potential to exercise control over Feidong's operations and the selection of management, which precludes finding that Feidong is not subject to *de facto* government control.

Therefore, we find that it is the government, through its majority equity ownership, that has the ability to control, and an interest in controlling, the operations of the company. Thus, we preliminarily determine that Feidong is not eligible for a separate rate.

#### 4. Separate Rate for Eligible, Non-Selected Companies

The statute and Commerce's regulations do not directly address the establishment of a rate to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Commerce's practice in cases involving limited selection based on exporters or producers accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any rates that are zero, *de minimis* or based entirely on facts available.

In accordance with the statute, Commerce will normally assign to separate rate entities that were not individually examined a rate equal to the weighted average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis*, or based

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<sup>66</sup> *Id.* at Article 20.

<sup>67</sup> *Id.* at Articles 6 and 19.

<sup>68</sup> *Id.* at Exhibit A-3.

<sup>69</sup> *Id.* at Exhibit A-4, Article 9.

<sup>70</sup> *Id.* at Exhibit A-5.

<sup>71</sup> *Id.* at Exhibits A-7 and A-8.

<sup>72</sup> See Feidong September 5, 2017 SQR at 2; see also Feidong August 6, 2017 AQR, at Exhibit A-2.

<sup>73</sup> See *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination in the Less-Than-Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016), and accompanying IDM at Comment 8.

entirely on facts available.<sup>74</sup> Where the rates for the individually examined companies are all zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act also provides that Commerce may use “any reasonable method” to establish the rate for separate rate entities, which may include averaging the dumping margins for individually examined respondents.<sup>75</sup> The Statement of Administrative Action states that the “expected method under ‘any reasonable method’ is that we will weight-average the rates that are zero, *de minimis*, and based entirely on facts available.”<sup>76</sup>

However, Commerce has determined that the mandatory respondents are part of the China-wide entity, which is not under review in this segment. Thus, there is no POR margin information available for Commerce to consider in assigning a margin for eligible, non-individually examined separate rate companies. In the absence of any calculated or assigned rates in this segment, including zero or *de minimis* rates or rates based on facts available, to determine an all-others rate for the separate rate respondents, we have reached back to the previously completed review to obtain a non-punitive separate rate margin.<sup>77</sup> Out of the four non-individually examined companies eligible for a separate rate, three were previously provided the same separate rate in the most recently published review.<sup>78</sup> Further, one additional company, which we determined made no shipments in the prior review, filed a separate rate certification in proper order containing documentation supporting its eligibility to receive a separate rate.<sup>79</sup> Commerce finds that retaining the separate rate from the prior review is non-punitive and represents a reliable rate which Commerce can assign to eligible, non-individually examined exporters. Accordingly, consistent with our recent practice,<sup>80</sup> we are preliminarily assigning a rate of 1.78 percent to the four separate rate companies in these preliminary results.

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<sup>74</sup> 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).

<sup>75</sup> See section 735(c)(5)(B) of the Act.

<sup>76</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. I 03-316, vol. I, 873, reprinted in 1994 U.S.C.C.A.N. 3773, 4172).

<sup>77</sup> This margin is from the 2015-2016 administrative review. See *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 82 FR 28639 (June 23, 2017).

<sup>78</sup> *Id.*

<sup>79</sup> See New Shichu SRC.

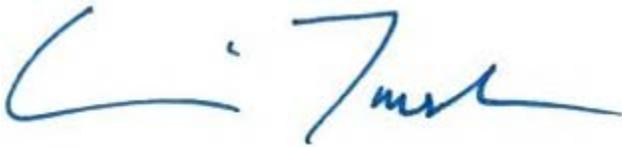
<sup>80</sup> See, e.g., *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 81 FR 62717 (September 12, 2016), and accompanying PDM at 10-11, unchanged in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 11431 (February 23, 2017).

**V. RECOMMENDATION**

We recommend applying the above methodology for these preliminary results.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

A handwritten signature in blue ink, appearing to read 'C. Marsh', is written over the 'Agree' line.

Christian Marsh  
Deputy Assistant Secretary  
for Enforcement and Compliance

December 29, 2017  
(Date)