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MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary for
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Stainless Steel Flanges
from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that stainless steel flanges from the People's Republic of China (China) 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 estimated weighted-average dumping margins are shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

II. BACKGROUND

On August 16, 2017, Commerce received an antidumping duty (AD) petition covering imports of stainless steel flanges from China, filed in proper form on behalf of the Coalition of American Flange Producers and its individual members, Core Pipe Products, Inc. and Maass Flange Corporation (the petitioners).¹ Commerce initiated this investigation on September 5, 2017.² In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate rate status in non-market economy (NME) LTFV investigations. The process requires exporters to submit a separate rate application (SRA) and to

¹ See *Stainless Steel Flanges from the People's Republic of China and India: Petition for the Imposition of Antidumping and Countervailing Duties*, dated August 16, 2017 (Petition).

² See *Stainless Steel Flanges from India and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 42649 (September 11, 2017) (*Initiation Notice*).



demonstrate an absence of both *de jure* and *de facto* government control over their export activities.³

We stated in the *Initiation Notice* that, in the event that we conduct respondent selection, we intended to base our selection of mandatory respondents on responses to quantity and value (Q&V) questionnaires to be sent to each potential respondent named in the Petition and also posted on Commerce's website.⁴ On September 6, 2017, Commerce issued Q&V questionnaires to the 80 companies that the petitioners identified as potential producers/exporters of stainless steel flanges from China.⁵ In addition, Commerce posted the Q&V questionnaire on its website and, in the *Initiation Notice*, invited parties who did not receive a Q&V questionnaire to file a response to the Q&V questionnaire by the applicable deadline. Commerce received timely filed Q&V questionnaire responses from five producers/exporters of subject merchandise.

Additionally, in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of stainless steel flanges to be reported in response to Commerce's AD questionnaire.⁶ Commerce requested that all comments concerning physical characteristics to be reported in Commerce's AD questionnaire be filed on the records of this and the concurrent India LTFV investigations.⁷ On September 25, 2017, the petitioners filed comments regarding physical characteristics.⁸ On October 5, 2017, Bebitz Flanges Works Private Limited (Bebitz), a respondent in the companion investigation of stainless steel flanges from India, filed a response to the petitioners' comments.⁹ No party filed comments on the scope of the investigation in response to Commerce's solicitation in the *Initiation Notice*. For further discussion, see the "Scope Comments" section, below.

On October 2, 2017, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of stainless steel flanges from the China.¹⁰

On October 3, 2017, based on responses to the Q&V questionnaires, we selected Hydro-Fluids Controls Limited (HFC) and Songhai Flange Manufacturing Co., Ltd (Songhai) for individual

³ *Id.*, 82 FR at 42652-53; see also 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://enforcement.trade.gov/policy/bull05-1.pdf>.

⁴ In the *Initiation Notice*, we also stated that the presumption of NME status for China has not been revoked by Commerce and, therefore, remains in effect for purposes of the initiation of this investigation. See *Initiation Notice*, 82 FR at 42651.

⁵ See Commerce Letter, re: Quantity and Value Questionnaire for the Antidumping Duty Investigation of Stainless Steel Flanges from People's Republic of China, dated September 6, 2017; Memorandum, "Quantity and Value Questionnaires Delivery Confirmation," dated September 20, 2017 (Q&V Delivery Confirmation); see also Petitioners' Letter, "Response to the Department's Supplemental Questions, Volume I Relating to Common Issues and Injury," dated August 22, 2017 at Exhibit I-Supp-2.

⁶ See *Initiation Notice*, 82 FR at 42649-50.

⁷ *Id.* at 42650.

⁸ See Petitioners' Letter, "Petitioners' Comments on Product Characteristics," dated September 25, 2017.

⁹ See Bebitz's Letter, "Stainless Steel Flanges from India and India – Product Matching," dated October 5, 2017.

¹⁰ See *Stainless Steel Flanges from China and India*, 82 FR 46831 (October 6, 2017).

examination as mandatory respondents and issued them the initial questionnaire.¹¹ On October 12, 2017, HFC notified Commerce of its intention not to participate in this investigation.¹² On October 13, 2017, Songhai notified Commerce of its intention not to participate in this investigation.¹³ Consequently, on October 24, 2017, we selected Dongtai QB Stainless Steel Co., Ltd (Dongtai) and Shanxi Guanjiaying Flange Forging Group Co., Ltd (GJY), as additional companies for individual examination and issued them the initial questionnaire.¹⁴ On November 28, 2017, Dongtai notified Commerce of its intention not to participate in this investigation.¹⁵

In October 2017, GJY submitted a timely response to section A of Commerce's AD questionnaire, *i.e.*, the section relating to general information.¹⁶ In December 2017, GJY submitted a timely response to sections C and D of Commerce's AD questionnaire, *i.e.*, the sections relating to U.S. sales and factors of production (FOP)/ normal value (NV), respectively.¹⁷ From November 2017 through January 2018, Commerce issued supplemental questionnaires to GJY which it timely responded to during the same time period.¹⁸ From October 2017 through February 2018, we received comments regarding GJY's questionnaire and supplemental questionnaire responses from the petitioners.¹⁹

On January 9, 2018, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), Commerce published in the *Federal Register* a postponement of the preliminary determination by 50 days until no later than March 14, 2018.²⁰ On January 23, 2018, Commerce tolled the deadline for the preliminary determination until March 19, 2018, due to the closure of the Federal Government

¹¹ See Memorandum, "Respondent Selection," dated October 3, 2017; *see also* Commerce Letter, "Antidumping Duty Questionnaire," dated October 3, 2017 (issuing questionnaire to HFC) and Commerce Letter, "Antidumping Duty Questionnaire," dated October 3, 2017 (issuing questionnaire to Songhai).

¹² See HFC's Letter, "Participation by Hydro-Fluid Controls Limited," dated October 12, 2017 (HFC Withdrawal).

¹³ See Songhai's Letter, "Participation by Songhai Flange Manufacturing Co., Ltd." dated October 13, 2017 (Songhai Withdrawal).

¹⁴ See Memorandum, "Additional Mandatory Respondent Selection," October 24, 2017; *see also, e.g.*, Commerce Letter, "Antidumping Duty Questionnaire," dated October 25, 2017 (issuing questionnaire to Dongtai).

¹⁵ See Dongtai's Letter, "Participation by Dongtai QB Stainless Steel Co., Ltd.," dated November 28, 2017 (Dongtai Withdrawal).

¹⁶ See GJY's October 25, 2017 Section A Questionnaire Response (GJY October 25, 2017 AQR).

¹⁷ See GJY's December 11, 2017 Section C Questionnaire Response (GJY December 11, 2017 CQR); GJY's December 12, 2017 Section D Questionnaire Response (GJY December 12, 2017 DQR).

¹⁸ See GJY's November 29, 2017 Supplemental Questionnaire Response (GJY November 29, 2017 SQR); GJY's January 29, 2018 Supplemental Questionnaire Response (GJY January 29, 2018 SQR).

¹⁹ See Petitioners' Letter, "Petitioners' Comments on GJY's Separate Rate Application," dated October 27, 2017; Petitioners' Letter, "Petitioners' Comments on GJY's Section A Initial Questionnaire Response," dated November 7, 2017; Petitioners' Letter, "Petitioners' Additional Comments on GJY's Section A Initial Questionnaire Response," dated November 9, 2017; Petitioners' Letter, "Petitioners' Comments on GJY's Section A Supplemental Questionnaire Response," dated December 13, 2017; Petitioners' Letter, "Petitioners' Comments on GJY's Section C Initial Questionnaire Response," dated December 19, 2017; Petitioners' Letter, "Petitioners' Comments on GJY's Section D Initial Questionnaire Response," dated January 23, 2018; Petitioners' Letter, "Petitioners' Comments on GJY's Section C Sales Reconciliation," dated February 12, 2018.

²⁰ See *Stainless Steel Flanges from India and the People's Republic of China: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigation*, 83 FR 1025 (January 9, 2018).

from January 20, 2018, through January 22, 2018.²¹ In March 2018, we received comments for the preliminary determination from the petitioners and GJY.²²

We are conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2017, through June 30, 2017. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition, which was August 2017.²³

IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,²⁴ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.²⁵ No interested party suggested alternative scope language, within the allotted time frame, that would alter the existing framework for coverage or exclusion of products.

V. SCOPE OF THE INVESTIGATION

For a full description of the scope of this investigation, see this memorandum's accompanying *Federal Register* notice at Appendix I.

VI. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy Country

Commerce considers China to be an NME country.²⁶ 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 China as an NME country for purposes of this preliminary determination.

B. Surrogate Country and Surrogate Value Comments

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs us to base normal value (NV), in most circumstances, on the NME producer's factors

²¹ See Memorandum, for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

²² See Petitioners' Letter, "Petitioners' Pre-Preliminary Comments," dated March 5, 2018; GJY's letter, "Pre-Preliminary Comments," dated March 9, 2018.

²³ See 19 CFR 351.204(b)(1).

²⁴ See *Antidumping Duties: Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

²⁵ See *Initiation Notice*, 82 FR at 42649.

²⁶ 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.

of production (FOP), valued in a surrogate market economy (ME) country or countries considered to be appropriate by Commerce.

On October 5, 2017, Commerce identified Romania, Mexico, Brazil, Bulgaria, Thailand, and South Africa, as countries that are at the same level of economic development as China based on per capita 2016 GNI data.²⁷ On November 21, 2017, we solicited comments on the list of potential surrogate countries and the selection of the primary surrogate country, and provided deadlines for submission of SV information for consideration in the preliminary determination.²⁸

On December 18, 2017, we received timely comments on surrogate country selection from the petitioners and GJY.²⁹ On December 22, 2017, the petitioners and GJY filed rebuttal comments on surrogate country selection.³⁰ On January 18, 2018, the petitioners and GJY submitted Surrogate Value (SV) data for valuing GJY's FOPs.³¹ On January 25, 2018, Commerce requested that the petitioners revise and resubmit its SV submission so that the SV information is public in its entirety.³² The petitioners complied with Commerce's request on January 26, 2018.³³ Between February 5, 2018, and March 5, 2018, the petitioners and GJY filed additional comments, new factual information, and rebuttal regarding SV selection.³⁴

Because Commerce preliminarily applied facts otherwise available with an adverse inference (AFA) to GJY, see the "Use of Facts Otherwise Available with an Adverse Inference" section below, and is therefore, not calculating a rate, Commerce has not selected a primary surrogate country for purposes of this *Preliminary Determination*.

C. Separate Rates

In proceedings involving NME countries, Commerce 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.³⁵ Commerce's policy is to assign all exporters of subject merchandise that are in an NME country this single rate unless an exporter

²⁷ See Commerce Letter, re: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information, dated November 21, 2017, at Attachment I.

²⁸ *Id.*

²⁹ See Petitioners' Letter, "Petitioners' Comments on Surrogate Country Selection," dated December 18, 2017; GJY's letter, "Comments on Surrogate Country Selection," dated December 18, 2017.

³⁰ See Petitioners' Letter, "Petitioners' Rebuttal Comments on Surrogate Country Selection," dated December 22, 2017; GJY's Letter, "Rebuttal Comments on Surrogate Country Selection," dated December 22, 2017.

³¹ See Petitioners' Letter, "Submission of Surrogate Values," dated January 18, 2018; GJY's Letter, "Comments on Surrogate Values," dated January 18, 2018.

³² See Memorandum, "Bracketing of Factors of Production Information and Surrogate Values," dated January 25, 2018.

³³ See Petitioners' Letter, "Resubmission of Initial Surrogate Value Submission, dated January 26, 2018.

³⁴ See GJY's Letter, "Rebuttal Comments on Surrogate Values," dated February 5, 2018; GJY's Letter, "Additional Comments on Surrogate Values," dated February 6, 2018; see Petitioners' Letter, "Rebuttal Comments and Information on GJY's Additional Surrogate Value Submission," dated February 16, 2018; Petitioners' Letter, "New Factual Information and Surrogate Values Submission," dated February 20, 2018; GJY's Letter, "Rebuttal Comments on Petitioners' New Factual Information and Surrogate Values Submission," dated March 5, 2018.

³⁵ 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).

can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.³⁶ Commerce analyzes whether each entity exporting the subject merchandise is sufficiently independent under a test established in *Sparklers*³⁷ and further developed in *Silicon Carbide*.³⁸ According to this separate rate test, Commerce 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, Commerce 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.

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China AD proceeding and its determinations therein.³⁹ In particular, in litigation involving the *Diamond Sawblades* proceeding, the Court of International Trade (CIT) found Commerce's separate rate analysis deficient in the circumstances of that case, in which a government-owned and controlled entity had significant ownership in the respondent exporter.⁴⁰ 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.⁴¹ 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

³⁶ 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*).

³⁷ *Id.*

³⁸ 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*).

³⁹ See *Final Results of Redetermination, Advanced Tech. & Materials Co. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), available at <http://enforcement.trade.gov/remands/12-147.pdf>, *aff'd*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd*, 581 Fed. Appx. 900 (Fed. Cir. 2014) (*Advanced Technology II*). 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 6-7, 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 IDM at Comment 1 (*Diamond Sawblades*).

⁴⁰ See, e.g., *Advanced Technology I*, 885 F. Supp. 2d at 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 'management' of its 'state-owned assets' is restricted to the kind of passive-investor *de jure* 'separation' that Commerce concludes.") (footnote 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."); *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).

⁴¹ See, e.g., *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 Preliminary Decision Memorandum at 5-9.

ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company.⁴²

From October 11, 2017, through October 16, 2017, we received SRAs from HFC, Dongtai, Songhai, and GJY.⁴³ All of these companies, except GJY, notified Commerce of their intent not to participate in the investigation after being selected as mandatory respondents, and accordingly refused to respond to the Department's AD questionnaire.⁴⁴ As stated in the *Initiation Notice*, “{e}xporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they timely respond to all parts of the Department's AD questionnaire as mandatory respondents.”⁴⁵ Consequently, having not responded to Commerce's AD questionnaire, HFC, Dongtai, and Songhai are not eligible for separate-rate status. Thus, Commerce considered the separate rate eligibility of the remaining separate-rate applicant, GJY, for the preliminary determination. Based on the information that GJY provided in its SRA, Commerce preliminarily determines that it is eligible to receive a separate rate because it has demonstrated an absence of *de jure* and *de facto* government control over its export activities.

Separate Rate Determination for GJY

1. Absence of *De Jure* Control

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.⁴⁶ Evidence provided by GJY supports a preliminary finding of an absence of *de jure* government control.⁴⁷

2. Absence of *De Facto* Control

Typically, Commerce 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) or constructed export prices (CEPs) 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

⁴² *Id.*

⁴³ HFC's Letter, "Separate Rate Application of Hydro-Fluid Controls Limited," dated October 11, 2017; Dongtai's Letter, "Separate Rate Application of Dongtai QB Stainless Steel Co., Ltd.," dated October 11, 2017; Songhai's Letter, "Separate Rate Application of Songhai Flange Manufacturing Co., Ltd.," dated October 11, 2017; GJY's Letter, "Separate Rate Application of Shanxi Guanjiaying Flange Forging Group Co., Ltd.," dated October 16, 2017 (GJY's Separate Rate Application).

⁴⁴ See HFC Withdrawal; Dongtai Withdrawal; Songhai Withdrawal; see also Commerce Letter, "Antidumping Duty Questionnaire," dated October 3, 2017 (issuing questionnaire to Songhai); Commerce Letter, "Antidumping Duty Questionnaire," dated October 3, 2017 (issuing questionnaire to HFC); Commerce Letter, "Antidumping Duty Questionnaire," dated October 25, 2017 (issuing questionnaire to Dongtai).

⁴⁵ See *Initiation Notice* at 42653.

⁴⁶ See *Fine Denier Polyester Staple Fiber from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 665 (January 5, 2018), and accompanying Preliminary Decision Memorandum at 14; See also *Sparklers*, 56 FN at 20589.

⁴⁷ See, e.g., GJY's Separate Rate Application at 9-12.

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.⁴⁸ Commerce has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control which would preclude Commerce from assigning separate rates.

The separate rate information provided by GJY also supports a preliminary finding of an absence of *de facto* government control, based on record statements and supporting documentation showing that GJY: (1) sets its own EPs or CEPs independent of the government and without the approval of a government authority; (2) has the authority to negotiate and sign contracts and other agreements; (3) maintains autonomy from the government in making decisions regarding the selection of management; and (4) retains the proceeds of its export sales and make independent decisions regarding disposition of profits or financing of losses.⁴⁹

Therefore, the evidence placed on the record of this investigation by this company demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, Commerce is preliminarily granting a separate rate to GJY.

D. GJY

GJY failed to provide a reliable U.S. sales reconciliation in response to Commerce's questionnaire and supplemental questionnaire, and as such, Commerce cannot establish that GJY properly reported its entire universe of sales during the POI.

Commerce's questionnaire instructs respondents to provide a sales reconciliation as well as supporting documentation (*e.g.*, general ledger, sub-ledger, *etc.*) for each step in the reconciliation (*i.e.*, tying financial statements to their accounting ledgers and sales revenue accounts, and tying accounting ledgers and sales revenue accounts to the U.S. sales database submitted with their response).⁵⁰ As explained above, GJY timely filed a section C questionnaire response. However, GJY failed to provide a U.S. sales reconciliation, as requested.⁵¹ Commerce notified GJY of the deficiency, repeated its request for the sales reconciliation and supporting

⁴⁸ 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).

⁴⁹ GJY's Separate Rate Application at 12-20.

⁵⁰ See Commerce Letter, "Antidumping Duty Questionnaire," dated October 25, 2017 (issuing questionnaire to GJY) at Appendix V, Reconciliations ("Please provide a reconciliation of the sales reported in your U.S. sales database to the total sales listed in your financial statements. Provide supporting documentation (*e.g.*, general ledger, subledger, *etc.*) for each step in the reconciliation. The reconciliation should include the following: (1) A demonstration of how the POI financial statements' sales totals tie to the general ledger sales revenue accounts. (2) A worksheet demonstrating how the general ledgers' sales revenue accounts in step one, above, tie to the sales reported in the U.S. sales database. The worksheet should identify the total quantity and value of all sales in the fiscal years overlapped by the POI and identify the quantity and value of each category of non-subject merchandise sales that are excluded from your reported sales of subject merchandise (*e.g.*, domestic sales, sales outside the POI, sales to foreign markets other than the United States, *etc.*). (3) A detailed narrative explaining how all worksheets and supporting documentation tie together. (4) An explanation of the means used to identify and exclude all these non-subject merchandise sales (*e.g.*, internal country code, product description, *etc.*). (5) A product list, with product codes and descriptions, of all products excluded from the reported sales of subject merchandise.")

⁵¹ See GJY December 11, 2017 CQR.

documentation in its supplemental questionnaire, and provided GJY with an opportunity to submit the missing sales reconciliation.⁵² GJY timely filed a response.⁵³

In its January 29, 2018 SQR, GJY filed what it claimed to be a U.S. sales reconciliation, but failed to fully respond to Commerce's request to provide supporting documentation in conjunction with its U.S. sales reconciliation. GJY did not provide any ledgers, subledgers, or other source documentation from GJY's accounting records, as instructed, to support the U.S. sales reconciliation it submitted; the only documentation provided were sales invoices supporting the invoices reported in GJY's sales database and bank statements demonstrating payment of those invoices.⁵⁴

A complete U.S. sales reconciliation builds from individual invoices which show the accuracy of the quantity and value of certain specific sales reported to the Department in the U.S. sales database. Those individual invoices should then tie to the respondent's accounting ledger and subledgers which record the entirety of the respondent's sales revenue and expenses, thereby demonstrating the accuracy of the quantity and value of subject merchandise reported in the respondent's U.S. sales database. A respondent's general ledger also informs the Department as to the accuracy of the respondent's internal record keeping since a general ledger should provide a complete record of the respondent's financial transactions during the POI. Finally, a company's general ledger and sub-ledgers should tie to their financial statements which provide a full and formal record of the respondent's financial activities and position for a fiscal period, thereby further ensuring that the respondent has properly reported the universe of subject merchandise from its U.S. sales database. Each portion of the reconciliation demonstrates a particular point of accuracy which, when considered together, can give Commerce confidence that a respondent accurately and completely reported its U.S. sales of subject merchandise during the POI. As such, invoices supporting individual reported sales, on their own, are of minimal utility because they are merely one step in the process to ensure that there were not additional, unreported sales of subject merchandise, which is the purpose of the reconciliation.⁵⁵

Additionally, the quality and content of GJY's U.S. sales reconciliation, the majority of which consists of a January 2017 to June 2017 financial assessment document prepared by an accounting firm is inconsistent with the record and further calls into question the reliability of the sales reconciliation.⁵⁶

Further, GJY inconsistently reported the basis of its exports to the U.S., at times reporting them as CEP sales and other times reporting them as EP sales.⁵⁷ A reliable sales reconciliation is critical for Commerce to understand whether GJY's sales to the United States are CEP or EP sales and whether Commerce can rely on the sales data reported. Therefore, if GJY's sales were EP sales rather than CEP sales, its Section C reconciliation should reconcile to its accounting

⁵² See Memorandum, "Section C Sales Reconciliation," dated January 25, 2018.

⁵³ See GJY January 29, 2018 SQR.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*; GJY's financial assessment contains business proprietary information, thus, for a full discussion regarding the reliability of GJY's financial assessment, see Memorandum, "Analysis of GJY's Financial Assessment," dated concurrently with and hereby adopted by this memorandum.

⁵⁷ See, e.g., GJY's Letter, "Quantity and Value Questionnaire Response," dated September 19, 2017; GJY October 25, 2017 AQR; GJY November 29, 2017 SQR; GJY December 11, 2017 CQR.

system. Here, however, GJY's reconciliation purports to reconcile to the accounts of its U.S. affiliate, which would only be appropriate if the sales in question were reported as CEP sales.⁵⁸ Yet, if GJY's sales should have been reported as CEP sales, then GJY failed to respond to fields 31 through 42 of the Section C questionnaire.⁵⁹

Pursuant to section 773(a) of the Act, to determine whether a respondents' sales of the subject merchandise to the United States are made at less than NV, Commerce generally compares the EP or CEP, as appropriate, to the NV. Without a reliable sales reconciliation from GJY, Commerce can neither ensure that it appropriately makes this comparison of EP or CEP to NV (because Commerce cannot be sure whether it is appropriate to use EP or CEP), nor can Commerce rely on the sales data reported to calculate a margin because it is not possible to determine that all relevant sales were reported. A reliable U.S. sales reconciliation is, therefore, fundamental to Commerce's ability to calculate a reliable margin.

In light of the above, and as further explained below, we are preliminarily applying facts available and total AFA to GJY for this preliminary determination.

E. China-Wide Entity

The record indicates there are China exporters and/or producers of the merchandise under consideration during the POI that did not respond to Commerce's requests for information. Specifically, Commerce did not receive timely responses to its Q&V questionnaire from numerous PRC exporters and/or producers of the merchandise under consideration that were named in the Petition and to whom Commerce issued Q&V questionnaires.⁶⁰ Furthermore, Commerce did not receive SRAs from companies other than HFC, Dongtai, Songhai, and GJY. However, HFC, Dongtai, and Songhai, refused to participate as mandatory respondents and refused to respond to our AD questionnaire.⁶¹ Because these companies did not respond to our requests for information, they have not demonstrated that they are eligible for a separate rate as provided in the *Initiation Notice*.⁶² Commerce, therefore, considers them to be part of the China-wide entity. Furthermore, as explained below, we preliminarily determine to assign to the China-wide entity a rate based entirely on AFA.

F. Use of Facts Otherwise Available With An Adverse Inference

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party: (A) withholds information that has been requested by Commerce, (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

⁵⁸ *Id.*

⁵⁹ See GJY December 11, 2017 CQR.

⁶⁰ See Q&V Delivery Confirmation. Of the 80 packages sent, 67 were delivered, 13 were unable to be delivered because of incorrect addresses or refusal.

⁶¹ See HFC Withdrawal; Dongtai Withdrawal; Songhai Withdrawal; see also Commerce Letter, "Antidumping Duty Questionnaire," dated October 3, 2017 (issuing questionnaire to Songhai); Commerce Letter, "Antidumping Duty Questionnaire," dated October 3, 2017 (issuing questionnaire to HFC); Commerce Letter, "Antidumping Duty Questionnaire," dated October 25, 2017 (issuing questionnaire to Dongtai).

⁶² See *Initiation Notice* at 42653 ("Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they timely respond to all parts of the Department's AD questionnaire as mandatory respondents").

proceeding under the AD statute, or (D) provides such information but the information cannot be verified, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Under the Trade Preferences Extension Act of 2015 (TPEA), numerous amendments to the AD and CVD laws were made, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.⁶³ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.⁶⁴

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.⁶⁵ Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.⁶⁶

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as the Petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. 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.⁶⁷ The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value,⁶⁸ although under the TPEA, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.⁶⁹ To corroborate secondary information,

⁶³ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (“TPEA”). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

⁶⁴ *Id.*, 80 FR at 46794-95.

⁶⁵ See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

⁶⁶ See also 19 CFR 351.308(c).

⁶⁷ See SAA at 870.

⁶⁸ *Id.*; see also 19 CFR 351.308(d).

⁶⁹ See section 776(c)(2) of the Act; TPEA, section 502(2).

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.⁷⁰

Under section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.⁷¹

1. Application of Facts Available

As noted above, GJY failed to provide a reliable U.S. sales reconciliation, certain producers/exporters that did not demonstrate eligibility for a separate rate refused to respond to Commerce’s requests for Q&V information, and HFC, Dongtai, and Songhai were selected as mandatory respondents but withdrew from participation in this investigation and refused to respond to Commerce’s AD questionnaire. Thus, these companies failed to provide necessary information, withheld information requested by Commerce, and significantly impeded this proceeding by not submitting the requested information. Accordingly, Commerce preliminarily determines that the use of facts available is required in determining the rate of GJY and the China-wide entity, pursuant to sections 776(a)(1), (a)(2)(A)-(C) of the Act.⁷²

2. Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that Commerce, 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. Commerce finds that GJY’s failure to provide a reliable U.S. sales reconciliation and supporting documentation, information which would be in GJY’s possession, to constitute circumstances under which it is reasonable to conclude that GJY has failed to cooperate by not acting to the best of its ability to comply with Commerce’s request for information.⁷³ Additionally, the China-wide entity’s failure to respond to Commerce’s Q&V questionnaire and AD questionnaire constitute circumstances under which it is reasonable to conclude that the China-wide entity have failed to cooperate by not acting to

⁷⁰ See, e.g., *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).

⁷¹ See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

⁷² 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).

⁷³ *Id.*

the best of their ability to comply with Commerce’s request for information.⁷⁴ With respect to the China-wide entity, HFC, Dongtai, and Songhai, which are part of the China-wide entity, withdrew from participation in this investigation, thereby demonstrating a failure to cooperate with Commerce’s request for information. Additionally, the failure of other companies which form part of the China-wide entity to submit their Q&V information as requested, is further evidence of the failure of the China-wide entity to cooperate to the best of its ability.

The CAFC in *Mukand* stated that “{i}n general, use of partial facts available is not appropriate when the missing information is core to the antidumping analysis and leaves little room for the substitution of partial facts without undue difficulty.”⁷⁵ A U.S. sales reconciliation is core to our analysis because without it Commerce cannot be certain that GJY has properly and accurately reported its complete universe of U.S. sales during the POI. If we cannot be certain that the sales database represents GJY’s complete universe of sales during the POI, we cannot rely on it for calculating an accurate AD margin. Therefore, we preliminarily find that the application of total facts otherwise available with an adverse inference is warranted with respect to GJY, in accordance with section 776(b) of the Act and 19 CFR 351.308(a).

Moreover, the China-wide entity failed to submit documentation indicating that it was having difficulty providing the information, nor did it request to submit the information in an alternate form. Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available with respect to the China-wide entity in accordance with section 776(b) of the Act and 19 CFR 351.308(a).⁷⁶

3. *Selection and Corroboration of the AFA Rate*

When using facts otherwise available, section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. 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.⁷⁷

The TPEA makes clear that, when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated. Commerce is also not required to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.⁷⁸

In selecting a rate for GJY and the China-wide entity based on AFA, Commerce’s practice is to select a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a

⁷⁴ *Id.*

⁷⁵ See *Mukand, Ltd. v. United States*, 767 F.3d 1300 (Fed. Cir. 2014).

⁷⁶ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

⁷⁷ See SAA at 870.

⁷⁸ See section 776(d)(3) of the Act; TPEA, section 502(3).

more favorable result by failing to cooperate than if it had fully cooperated.⁷⁹ Specifically, it is Commerce's practice to select, as an AFA rate, the higher of: (a) the highest dumping margin alleged in the petition, or (b) the highest calculated dumping margin of any respondent in the investigation.⁸⁰ There are no calculated margins for any respondents in this investigation. Therefore, as AFA, Commerce has preliminarily assigned to GJY and the China-wide entity the rate of 257.11 percent, which is the highest dumping margin alleged in the petition. Because the AFA rate that Commerce used is from the petition, it is secondary information subject to the requirement to corroborate the information, to the extent practicable. The petitioners' methodology for calculating the EP and normal value (NV) in the petition is discussed in the *Initiation Notice* and the China AD Initiation Checklist.⁸¹

We determined that the highest petition margin of 257.11 percent is reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis.⁸² To corroborate, to the extent practicable, the 257.11 percent petition rate for purposes of this preliminary determination, Commerce first revisited its pre-initiation analysis of the reliability of the information in the Petition. During our pre-initiation analysis, we examined: (1) the information used as the basis for EP and NV in the petition; (2) the calculations used to derive the alleged margin; and (3) information from various independent sources provided either in the petition or in supplements to the Petition.⁸³

Based on our examination of the information, as discussed in detail in the China AD Initiation Checklist, we consider the petitioners' EP and NV calculations to be reliable.⁸⁴ In addition, we obtained no other information that would make us question the validity of the sources of information or the validity of information supporting the U.S. price or NV calculations provided in the petition. Because we confirmed the accuracy and validity of the information underlying the derivation of the margin in the petition by examining source documents, as well as publicly available information, we preliminarily determine that this petition rate is reliable for the purposes of an AFA rate in this investigation.

In making a determination as to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. The petition rate is relevant because it is based on a price quote for the merchandise under consideration and surrogate values that are contemporaneous with the POI. In addition, no information has been placed on the record that discredits this information. As

⁷⁹ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose from Finland*, 69 FR 77216, 77218 (December 27, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from Finland*, 70 FR 28279 (May 17, 2005).

⁸⁰ See, e.g., *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); *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 34660 (May 31, 2000), and accompanying Issues and Decision Memorandum.

⁸¹ See *Initiation Notice*; See also Antidumping Duty Investigation Initiation Checklist: Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China, dated September 5, 2017 (PRC AD Initiation Checklist).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

such, we find the highest petition rate of 257.11 percent relevant. Furthermore, as there are no respondents in this investigation for which we are calculating a separate dumping margin, we relied upon the rates found in the Petition, which is the only useable information regarding the stainless steel flanges reasonably at Commerce's disposal.⁸⁵

Accordingly, the Department has corroborated the AFA rate of 257.11 percent to the extent practicable within the meaning of section 776(c) of the Act.

VII. ADJUSTMENT UNDER SECTION 777A(f) OF THE ACT

In applying section 777A(f) of the Act, Commerce examines: (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 Commerce 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.⁸⁶ For a subsidy meeting these criteria, the statute requires Commerce to reduce the antidumping duty by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.⁸⁷ Because there has been no demonstration on the record that an adjustment for domestic subsidies is warranted, Commerce is not making any such adjustment to the rate being assigned to GJY or the China-wide entity.

VIII. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES

Pursuant to section 772(c)(1)(C) of the Act, Commerce normally makes adjustments for countervailable export subsidies. Commerce is making no adjustments to GJY's or the China-wide entity's antidumping cash deposit rate in the instant investigation because Commerce has made no findings in the companion CVD investigation that any of the programs are export subsidies.⁸⁸ While certain programs in the companion CVD investigation were alleged to be export subsidies, as a result of non-cooperation by certain mandatory respondents, Commerce's preliminary determination that the alleged programs were countervailable subsidies was based on facts available with adverse inferences.⁸⁹

In relying on facts available with adverse inferences, Commerce did not preliminarily determine that the subsidies in question were export subsidies. As such, Commerce finds that, without a determination in the companion CVD investigation that a program is an export subsidy, it is not appropriate to make an offset to the cash deposit rates in this AD investigation pursuant to

⁸⁵ As described in the section of this memorandum entitled "GJY," Commerce is preliminarily finding that it cannot rely on data submitted for GJY for purposes of calculating an estimated weighted average dumping margin.

⁸⁶ See section 777A(f)(1)(A)-(C) of the Act.

⁸⁷ See section 777A(f)(1)-(2) of the Act.

⁸⁸ See *Countervailing Duty Investigation of Stainless Steel Flanges from the People's Republic of China: Preliminary Affirmative Determination*, 83 FR 3124 (January 23, 2018), and accompanying Preliminary Decision Memorandum.

⁸⁹ *Id.*

section 772(c)(1)(C) of the Act.⁹⁰ Accordingly, consistent with our recent practice,⁹¹ we will not apply the export subsidy offset to the cash deposit rates assigned to GJY or the China-wide entity, as reflected in the accompanying *Federal Register* notice.

IX. VERIFICATION

Because the mandatory respondents in this investigation did not provide necessary information requested by Commerce, verifications will not be conducted.

X. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

Agree

Disagree

3/19/2018

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

⁹⁰ See, e.g., *Circular Welded Carbon-Quality Steel Pipe from Pakistan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures*, 81 FR 36867 (June 8, 2016) and accompanying Preliminary Decision Memorandum at page 13, unchanged in *Circular Welded Carbon-Quality Steel Pipe from Pakistan: Final Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 75028 (October 28, 2016).

⁹¹ *Id.*