



A-570-983
Administrative Review
POR: 04/01/2017 – 03/31/2018
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July 30, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Administrative Review: Drawn Stainless Steel Sinks from the
People's Republic of China; 2017-2018

I. SUMMARY

We analyzed the case brief of Elkay Manufacturing Company (the petitioner) in the 2017-2018 administrative review of the antidumping duty (AD) order covering drawn stainless steel sinks (drawn sinks) from the People's Republic of China (China). As a result of our analysis, we continue to find that all exporters to whom we preliminarily granted separate rates demonstrated their eligibility for separate rates for the final results. Further, because no party filed comments regarding any other aspects of the preliminary results, we have made no changes to them.

We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

II. BACKGROUND

On December 28, 2018, the Department of Commerce (Commerce) published the *Preliminary Results* of the 2017-2018 administrative review of the AD duty order on drawn sinks from China.¹ The administrative review covers 13 exporters,² of which Commerce selected four as

¹ See *Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017–2018*, 83 FR 67226 (December 28, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

² These companies are Feidong Import and Export Co., Ltd. (Feidong); Xinhe Stainless Steel Products Co., Ltd. (Xinhe); Jiangmen New Star Hi-Tech Enterprise Ltd. (New Star); and Ningbo Afa Kitchen and Bath Co., Ltd. (Ningbo Afa); Guangdong G-Top Import & Export Co., Ltd. (Guangdong G-Top); Jiangmen Pioneer Import & Export Co., Ltd. (Jiangmen Pioneer); and Zhongshan Superte Kitchenware Co., Ltd. (Superte); KaiPing Dawn Plumbing Products, Inc. (KaiPing); Guangdong New Shichu Import and Export Company Limited (New Shichu); Elkay (China) Kitchen Solutions Co., Ltd. (Elkay); and B&R Industries Limited (B&R); Zhuhai Kohler Kitchen & Bathroom Products Co., Ltd. (Zhuhai Kohler) and Yuyao Afa Kitchenware Co., Ltd. (Yuyao Afa). Commerce

mandatory respondents for individual examination (*i.e.*, Feidong, New Star, Ningbo Afa, and Xinhe). The period of review (POR) is April 1, 2017 through March 31, 2018.

We invited parties to comment on the *Preliminary Results*. On March 8, 2019, we received a case brief from the petitioner.³ No other parties submitted case or rebuttal briefs.

On January 28, 2019, Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from December 22, 2018 through January 29, 2019.⁴ In May 2019, Commerce extended the final results of this review by 60 days until July 30, 2019.

III. DISCUSSION OF THE ISSUES

Comment 1: Liquidation Rate for Exporter A's Shipments of Xinhe-Produced Subject Merchandise

Petitioner's Case Brief

- Commerce has a long-standing practice of assigning the China-wide rate to non-participating mandatory respondents.⁵ If Commerce fails to ensure that all sinks manufactured by Xinhe are liquidated at the China-wide rate, Commerce will inappropriately allow a mandatory respondent to benefit from its non-participation. Xinhe's non-participation prevented Commerce from determining the appropriate dumping margin that should be assigned to its sales through Exporter A.⁶
- Xinhe's failure to participate also prevented Commerce from determining Exporter A's role in exports of subject merchandise produced by Xinhe.⁷ If Exporter A's role was merely that of an agent for Xinhe and Xinhe was the price discriminator, then those sales should be liquidated at Xinhe's rate.
- When parties participate in administrative reviews, Commerce can identify the price discriminator. In past cases where the respondents participated in administrative reviews, Commerce has found the producer should have been identified as the exporter based on

determines that seven of these companies (*i.e.*, Feidong, Xinhe, New Star, Ningbo Afa, Guangdong G-Top, Jiangmen Pioneer, and Superte) are not eligible for a separate rate.

³ See Petitioner's Case Brief, "Drawn Stainless Steel Sinks from the People's Republic of China: Petitioner's Case Brief," dated March 8, 2019 (Petitioner's Case Brief).

⁴ See Memorandum to the Record from 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, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. Because the *Preliminary Results* published on December 28, 2018, six days into the partial government closure, the deadline for these final results has been extended by 34 days.

⁵ See Petitioner's Case Brief at 4 (citing *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 23424 (May 21, 2018) (*Sinks 2016-2017 AR Final*)).

⁶ The identity of Exporter A is business proprietary information that cannot be discussed here. See Petitioner's Case Brief at 1-2.

⁷ See Petitioner's Case Brief at 4-5 (citing *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954, 23960 (May 6, 2003)).

the evidence produced by the participating parties.⁸ In such cases, Commerce assigns a cash deposit and assessment rate to these entries at the China-wide rate.

- Commerce should not reward Xinhe’s non-participation by applying a lower dumping margin to its shipments through Exporter A; instead, Commerce should liquidate all of Xinhe’s shipments through Exporter A at the China-wide rate.

No other party commented on this issue.

Commerce’s Position:

When conducting reviews of imports from non-market economy (NME) countries,

Commerce assigns rates to exporters In those cases, if sales to the United States are made through an NME trading company, we assign a noncombination rate to the trading company regardless of whether the NME producer supplying the trading company has knowledge of the destination of the merchandise.⁹

Accordingly, to assign the appropriate rate to a company in an NME proceeding, we focus on the activities of the exporter.

Our separate rates test “focuses on controls over the decision-making process on export-related investment, pricing, and output decisions at the individual firm level.”¹⁰ We have found that Xinhe has failed to demonstrate that it is free from government control in its export activities; however, we have not made the same finding with respect to Exporter A’s export activities. Rather, we find that Exporter A has sufficiently demonstrated that it is independent in its export activities, and there is no evidence on the record showing that Xinhe has influence over Exporter A such that Exporter A’s independence is negated with respect to Exporter A’s exports of Xinhe’s product.

The petitioner hypothesizes that Exporter A’s role was merely that of an agent for Xinhe and that Xinhe was the price discriminator; thus, the petitioner claims, those sales should be liquidated at the China-wide rate, which we are applying to Xinhe for these final results. However, there is no evidence on our record to support the petitioner’s claims. The petitioner cites *Xanthan Gum I*,

⁸ See Petitioner’s Case Brief at 5-6 (citing *Xanthan Gum from the People’s Republic of China: Final Results of the Third Administrative Review*, 83 FR 6513 (February 14, 2018) (*Xanthan Gum III*), and accompanying Issues and Decision Memorandum (IDM) at Comment 3; and *Xanthan Gum from the People’s Republic of China: Final Results of the Second Antidumping Duty Administrative Review; 2014-2015*, 82 FR 11434 (February 23, 2017) (*Xanthan Gum II*), and accompanying IDM at Comment 1), (*aff’d Deosen Biochemical Ltd. v. United States*, 307 F. Supp. 3d 1364 (CIT 2018), *aff’d Deosen Biochemical Ltd. v. United States*, 767 Fed. App’x 1008 (Fed. Cir. 2019) (*Deosen CAFC*)); *Xanthan Gum from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review: 2013-2014*, 82 FR 11428 (February 23, 2017) (*Xanthan Gum I*), and accompanying IDM at Comment 1 (*aff’d Deosen Biochemical Ltd. v. United States*, 301 F. Supp. 3d 1372 (CIT 2018), *aff’d Deosen CAFC*); and *Certain Preserved Mushrooms from the People’s Republic of China: Final Results of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003) (*Mushrooms*), and accompanying IDM at Comment 1 (*rev’d and remanded in relevant part*)).

⁹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27303 (May 19, 1997).

¹⁰ See Memorandum, “Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,” dated April 5, 2005, at 1.

Xanthan Gum II, and *Xanthan Gum III* as support for liquidating Exporter A’s entries at the China-wide rate applied to Xinhe; however, in those reviews, we had record evidence that the parties were working together to disguise the identity of the price setter.¹¹ We have no such evidence on our record, and, as noted by the courts, such “[s]peculation is not support for a finding.”¹² The petitioner also cites *Mushrooms* as support for assigning the China-wide rate to both the exporter and the producer; however, the rationale cited by the petitioner was overturned by the Court of International Trade, which found that, despite an export services agreement, Commerce could not assign the China-wide rate to respondents that were found to be free from government control.¹³

Instead, the record of this review is more similar to that of *OTR Tires*, where the petitioner argued that: 1) an exporter was merely acting as a middleman for a producer who was denied a separate rate and included in the China-wide entity in the prior review; and 2) the exporter should be denied a separate rate.¹⁴ We disagreed with this reasoning because the exporter timely submitted a complete separate rate application and, based on our review of the application and evidence on the record, we found that the exporter was free of government control and responsible for setting its own prices. Furthermore, there was no record evidence of any agency relationship between the exporter and the producer.¹⁵

Similarly, in this case, Exporter A timely submitted its separate rate information; the information on the record supports that Exporter A is acting in its own interest; and there is no information on the record to support the existence of an agent relationship between Exporter A and Xinhe. Furthermore, the history of this proceeding gives little if any motivation for Xinhe to require a middleman arrangement. At the time of the entries covered by this review, both Xinhe and

¹¹ See *Xanthan Gum III* IDM at Comment 3 (“In the present review, Deosen USA reported that . . . it sold out of its inventory merchandise that was shipped through AHA in the prior POR, a scheme Deosen acknowledged in the previous review that it set up to obtain a lower cash deposit rate. Our verification findings confirmed this POR3 reporting.”); *Xanthan Gum II* IDM at Comment 1 (“Deosen and AHA acknowledged that, following the . . . preliminary determination in the less-than-fair-value (LTFV) investigation of this proceeding, Deosen and AHA reached an agreement for Deosen to sell subject merchandise through AHA to Deosens U.S. customers. . . . {T}he record shows that Deosen was the price setter for the sales of subject merchandise which entered under the AHA cash deposit rate.”); *Xanthan Gum I* IDM at Comment 1 (same); and *Mushrooms*, and accompanying IDM at Comment 1 (“The facts of the record show that Green Fresh never acted as an exporter for Gerber, but merely transferred some of its invoices to Gerber for payment. . . . “{T}he record evidence shows that Gerber evaded the payment of cash deposits during the POR, and Green Fresh aided in that evasion, both through incorrect answers to the Department’s questionnaires and the underlying sale of invoices.”).

¹² See *Asociacion Colombiana De Exportadores v. United States*, 40 F. Supp. 2d 466 (CIT 1999) (quoting *Asociacion Colombiana de Exportadores de Flores v. United States*, 13 CIT 13, 15, 704 F. Supp. 1114, 1117 (1989), *aff’d*, 901 F.2d 1089 (Fed.Cir.1990)). The U.S. Court of International Trade also noted that “[t]his type of conjecture is exactly the type of reasoning the substantial evidence standard aims to prevent, and is totally unsupported by substantial evidence.” *Id.* (quoting *China National Arts and Crafts Import and Export Corp. v. United States*, 15 CIT 417, 422, 771 F. Supp. 407, 412 (1991)).

¹³ See *Gerber Food (Yunnan) Co. v. United States*, 387 F. Supp. 2d 1270 (CIT 2005) (“On remand, Commerce must calculate individual antidumping duty assessment rates for Gerber and Green Fresh in accordance with applicable statutory requirements. These individual assessment rates must be consistent with the findings of fact made by Commerce that each of the two plaintiffs is free of government control.”) (footnote omitted).

¹⁴ See *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18733 (April 21, 2017) (*OTR Tires*), and accompanying IDM at Comment 1.C.

¹⁵ *Id.*

Exporter A had the same cash deposit rate.¹⁶ Xinhe has never been selected as a mandatory respondent or found to be part of the China-wide entity in any prior segment of this proceeding.¹⁷ Even in the current proceeding, Xinhe was not selected as a mandatory respondent until our second selection of respondents.¹⁸ Accordingly, we do not find it appropriate to find that Exporter A is ineligible for a separate rate because it exported merchandise produced by Xinhe or that the entries at issue otherwise should be liquidated at the China-wide rate.

Importantly, we note that because these issues were raised only in the petitioner's case brief and not earlier, we were unable to seek additional information from Exporter A to investigate these claims prior to the briefing stage. Thus, although this record does not contain information to support a finding that Exporter A and Xinhe were cooperating to avoid Xinhe's exports being subject to the China-wide rate, we intend to examine this and related issues in future administrative reviews.

Comment 2: Exporter A's Separate Rate Status

Petitioner's Case Brief

- In its separate rate application, Exporter A identified a shipment that it claimed was produced by a party other than Xinhe; however, this shipment has the same volume and entry date as an entry identified as manufactured by Xinhe in the CBP data on the record.¹⁹
- Neither Xinhe nor Exporter A attempted to claim that Exporter A's transaction should be treated differently than Xinhe's aggregated shipments that were identified by Commerce. Exporter A had numerous opportunities to address Commerce's aggregation of its exports with Xinhe, but it failed to do so.²⁰
- Consistent with Commerce's practice regarding non-participating mandatory respondents and its finding that Xinhe is ineligible for a separate rate, Commerce should also find that Exporter A is not eligible for a separate rate.²¹

No other party commented on this issue.

¹⁶ 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, 28639-40 (June 23, 2017) (*Sinks 2015-2016 AR Final*).

¹⁷ See *Sinks 2016-2017 AR Final*, 83 FR at 23425 (finding that Xinhe had no shipments during the POR); *Sinks 2015-2016 AR Final*, 82 FR at 28640 (finding Xinhe eligible for a separate rate); *Drawn Stainless Steel Sinks from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review; 2014–2015*, 80 FR 78790 (December 17, 2015) (rescinding review with respect to Xinhe); *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 79 FR 30809, 30814 (May 29, 2014) (no review initiated for Xinhe); *Drawn Stainless Steel Sinks From the People's Republic of China: Antidumping Duty Investigation*, 77 FR 60673 (October 4, 2012), and accompanying IDM at 11 (denying Xinhe a separate rate because it had no exports during the period of investigation), unchanged in relevant part in *Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013).

¹⁸ See Memorandum, "2017-2018 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 August 10, 2018.

¹⁹ See Petitioner's Case Brief at 7.

²⁰ *Id.* at 8.

²¹ *Id.*

Commerce's Position:

In accordance with the separate rates test, Commerce assigns separate rates to respondents in NME proceedings if a respondent demonstrates the absence of both *de jure* and *de facto* government control over its export activities.²² Our separate rates analysis focuses on export activities and pertains only to the exporter covered by a separate rate application or certification.²³ Our focus is on the activities of the exporter, rather than those of the manufacturer.²⁴

As noted in Comment 1, after reviewing the information provided by Exporter A during the course of this review, we find that Exporter A has sufficiently demonstrated that it is independent in its export activities, and there is no evidence on the record to support that Xinhe has influence over Exporter A such that Exporter A's independence is negated with respect to its exports of Xinhe's product. Because we have no evidence on the record that Exporter A is subject to government control, or that it is affiliated or had any agreement with Xinhe regarding exports of subject merchandise, we find no basis to deny a separate rate to Exporter A.

While Commerce generally finds that a non-participating respondent has failed to demonstrate its eligibility for a separate rate and assigns that respondent the China-wide rate, we disagree that it is appropriate to extend this finding to an unrelated, participating exporter. Exporter A responded to Commerce's inquiries, and we have no basis to find that Exporter A failed to participate in this proceeding. Furthermore, we determine the appropriate dumping margin for sales through Exporter A based on an analysis of Exporter A's selling activities.

We disagree with the petitioner's request that we should rely on adverse facts available against Exporter A and find the exporter ineligible for a separate rate in this administrative review. Besides the fact that there is no basis for resorting to facts available under section 776(a) of the Act because, for example, no information is missing from the record regarding Exporter A's separate rate status within the meaning of section 776(a)(1) of the Act, section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability *to comply with a*

²² 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); *Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001), unchanged in *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001); and *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104 (December 20, 1999).

²³ See *Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12*, 79 FR 96 (January 2, 2014), and accompanying IDM at Comment 13.

²⁴ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam*, 80 FR 55328 (September 15, 2015), and accompanying IDM at Comment 12 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China*, 60 FR 56045 (November 6, 1995)); see also Commerce's Separate Rate Application, available at: <http://enforcement.trade.gov/nme/sep-rate-files/app-20150323/srv-sr-app-20150416.pdf>).

request for information. We find that Exporter A complied with all requests for information in this review.

While the petitioner claims that the discrepancy between Exporter A's separate rate application and the CBP data shows a potential affiliation between Exporter A and Xinhe, we disagree that the CBP information is dispositive. There is no other information on the record that casts any doubt on Exporter A's separate rate application, and the petitioner does not cite any case law or precedent to support its suggestion that this purported inconsistency is sufficient to assume a relationship between Exporter A and Xinhe that would support applying the China-wide rate to Exporter A.

Finally, the petitioner further claims that Exporter A had numerous opportunities to address this discrepancy but failed to do so. Thus, according to the petitioner, Exporter A's lack of action prevented Commerce from understanding the relationship between it and Xinhe and, as a result, we should find Exporter A ineligible for a separate rate. Given that Exporter A was granted a separate rate in our *Preliminary Results* and our normal practice is to examine the activities of the exporter, not the producer, we disagree that Exporter A was required to make an affirmative argument regarding its exports of an unaffiliated producer's merchandise. Moreover, under our regulations, Exporter A could not supply Commerce with additional factual information regarding its exports or relationship with Xinhe unless we requested that information, which we did not.²⁵ Accordingly, we find that Exporter A did not fail to act. Consequently, we continue determine that, based on its separate rate application and the absence of both *de jure* and *de facto* government control over its export activities, Exporter A is entitled to a separate rate.

IV. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final results of the administrative review and the final weighted-average dumping margins for the reviewed firms in the *Federal Register*.

Agree

Disagree

7/30/2019

X



Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

²⁵ See 19 CFR 351.301(c)(1) and (5).