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Administrative Review
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December 18, 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: Decision Memorandum for Preliminary Results of the
Antidumping Duty Administrative Review: Drawn Stainless Steel
Sinks from the People's Republic of China

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, 2018 through March 31, 2019. We preliminarily find that respondents Guangdong New Shichu Import and Export Company Limited (New Shichu) and KaiPing Dawn Plumbing Products, Inc. (KaiPing) have not established their eligibility for a separate rate; thus, they are part of the China-wide entity. Additionally, we preliminarily find that the following nine additional companies failed to demonstrate their eligibility for a separate rate and are, therefore, part of the China-wide entity: B&R Industries Limited (B&R); Feidong Import and Export Co. Ltd (Feidong); Guangdong G-Top Import & Export Co., Ltd. (G-Top); Jiangmen Pioneer Import & Export Co., Ltd. (Pioneer); Ningbo Afa Kitchen and Bath Co., Ltd. (Ningbo Afa); Xinhe Stainless Steel Products Co., Ltd. (Xinhe); Yuyao Afa Kitchenware Co., Ltd. (Yuyao Afa); Zhongshan Superte Kitchenware Co., Ltd. (Superte); and Zhuhai Kohler Kitchen & Bathroom Products Co., Ltd. (Kohler). We are also preliminarily granting a separate rate to Jiangmen New Star Hi-Tech Enterprise Ltd. (New Star) because it demonstrated its eligibility for separate rate status but was not selected for individual examination. The rate preliminarily assigned to New Star can be found in the "Preliminary Results of Review" section of the accompanying preliminary *Federal Register* notice.

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.¹ On April 1, 2019, Commerce published a notice of opportunity to request an administrative review of the AD duty order on drawn sinks from China for the POR.² Pursuant to section 751(a)(1) of the Act and 19 CFR 351.213(b)(1), Commerce received timely requests for review from KaiPing³ and the petitioner, Elkay Manufacturing Company.⁴ On June 13, 2019, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation with respect to 30 companies.⁵

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.⁶ 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 or separate rate certification.⁷ In July 2019, we received one separate rate application and five separate rate certifications from those Chinese companies requesting separate rate status.⁸

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 on CBP data for U.S. imports during the POR.⁹ In June 2019, Commerce released the CBP data to all interested parties under an administrative protective order (APO).¹⁰ In July 2019, pursuant

¹ 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*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 12207 (April 1, 2019).

³ See KaiPing's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Request for Antidumping Administrative Review," dated April 30, 2019.

⁴ See Petitioner's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Request for Administrative Review," dated April 30, 2019.

⁵ See *Initiation of Antidumping and Countervailing Duty Reviews*, 84 FR 27587, 27593 (June 13, 2019) (*Initiation Notice*).

⁶ *Id.*, at 27588.

⁷ *Id.*

⁸ See Guangdong Dongyuan Kitchenware Industrial Co., Ltd.'s (Dongyuan's) Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Separate Rate Certification," dated July 15, 2019; New Star's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Separate Rate Application," dated July 15, 2019 (New Star SRA); Guangdong Yingao Kitchen Utensils Co., Ltd.'s (Yingao's) Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Separate Rate Certification," dated July 15, 2019; KaiPing's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Separate Rate Certification," dated July 9, 2019 (KaiPing SRC); New Shichu's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Separate Rate Certification," dated July 12, 2019 (New Shichu SRC); and Kohler's Letter, "Antidumping Duty Administrative Review of Drawn Stainless Steel Sinks from the People's Republic of China; Separate Rate Certification," dated July 15, 2019 (Kohler SRC).

⁹ See *Initiation Notice*, 84 FR at 27587.

¹⁰ See Commerce's Letter re: 2018-2019 Antidumping Duty Administrative Review: Drawn Stainless Steel Sinks from the People's Republic of China, dated June 18, 2019.

to section 777A(c)(2)(B) of the Act, we selected Dongyuan and Yingao for individual examination in this administrative review and subsequently issued the NME AD questionnaire to them.¹¹

On August 12, 2019, the petitioner timely withdrew its requests for review for 18 companies, including Dongyuan and Yingao.¹² As a result, on August 19, 2019, we selected KaiPing and New Shichu for individual examination in this administrative review, and issued the NME AD questionnaire to them the following day.¹³ On August 21, 2019, we rescinded this administrative review with respect to 18 companies.¹⁴ On September 6 and September 16, 2019, respectively, KaiPing and New Shichu notified us of their intent not to participate in this administrative review.¹⁵ Neither KaiPing nor New Shichu submitted a response to Commerce's NME AD questionnaire by the established deadline.

On September 24, 2019, we issued a supplemental questionnaire to New Star regarding its separate rate application, and we received New Star's response on October 8, 2019.¹⁶ Also, on September 24, 2019, we issued a supplemental questionnaire to Kohler regarding its separate rate certification.¹⁷ Kohler did not submit a response to the supplemental questionnaire by the established deadline.

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

¹¹ See Memorandum, "2018-2019 Antidumping Duty Administrative Review of Certain Drawn Stainless Steel Sinks from the People's Republic of China: Respondent Selection," dated July 17, 2019; see also Commerce's Letters, "Antidumping Duty Questionnaire," dated July 19, 2019.

¹² 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 August 12, 2019.

¹³ See Memorandum, "2018-2019 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 19, 2019 (Second Respondent Selection Memo); see also Commerce Letter's, "AD Questionnaire," dated August 20, 2019 (August 10, 2019 AD Questionnaire).

¹⁴ The review was rescinded with respect to: Foshan Shunde MingHao Kitchen Utensils Co., Ltd.; Foshan Zhaoshun Trade Co., Ltd.; Franke Asia Sourcing Ltd.; Grand Hill Work Company; Dongyuan; Hangzhou Heng's Industries Co., Ltd.; Hubei Foshan Success Imp & Exp Co. Ltd.; J&C Industries Enterprise Limited; Jiangmen Hongmao Trading 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; Yingao; 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; 2018–2019*, 84 FR 44847 (August 27, 2019).

¹⁵ See KaiPing's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: Notification of Inability to Respond to Standard Questionnaire," dated September 6, 2019 (KaiPing Notice); and New Shichu's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: New Shichu Notice of Intent Not to Participate," dated September 16, 2019 (New Shichu Notice).

¹⁶ See Commerce's Letter, "Supplemental SRA Questionnaire," dated September 24, 2019; see also New Star's Letter, "Drawn Stainless Steel Sinks from the People's Republic of China: SRA Supplemental Questionnaire Response," dated October 8, 2019 (New Star SSRA).

¹⁷ See Commerce Letter, "Supplemental SRC Questionnaire," dated September 24, 2019 (Kohler SSRQ).

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.¹⁸ 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.

IV. DISCUSSION OF METHODOLOGY

A. Non-Market Economy Country Status

Commerce considers China to be an NME country.¹⁹ 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 Commerce. Therefore, we continue to treat China as an NME country for purposes of these preliminary results.

B. 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.²⁰ In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate

¹⁸ 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.

¹⁹ 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 Preliminary Decision Memorandum, at 8.

²⁰ 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).

rate status in NME proceedings.²¹ 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*,²² as amplified by *Silicon Carbide*.²³ 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.²⁴

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.²⁵

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.²⁶

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.²⁷ 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

²¹ See *Initiation Notice*, 81 FR at 36269.

²² 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*).

²³ 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*).

²⁴ 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).

²⁵ See *Sparklers*, 56 FR at 20589.

²⁶ 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).

²⁷ 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 Tech. & Materials Co. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Tech.*), affirmed in *Advanced Tech. & Materials Co. 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 at Comment 1.

in the circumstances of that case, in which a government-controlled entity had significant ownership in the respondent exporter.²⁸ Following the CIT’s reasoning, in recent proceedings, we have concluded that where a government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, this interest in and of itself means that the respondent is not eligible for a separate rate.²⁹ Otherwise, we will analyze the impact of government ownership within the context of the *de facto* criteria as established above. This may include control over, for example, the selection of board members and management, key factors in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with our normal separate rate practice, any ability to control, or possess an interest in controlling, the operations of the company (including the selection of board members, management, and the profit distribution of the company) by a government entity is subject to Commerce’s rebuttable presumption that all companies within the NME country are subject to government control.

In this review, we preliminarily find no evidence of government ownership of the separate rate respondent New Star, which is a limited liability company. In accordance with our practice, Commerce analyzed whether the respondent has demonstrated the absence of *de jure* and *de facto* government control over its export activities.

1. Absence of *De Jure* Control

The evidence provided by New Star³⁰ supports a preliminary finding of an absence of *de jure* government control for this company based on the following: (1) an absence of restrictive stipulations associated with the individual exporter’s business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of the company; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.

²⁸ See *Advanced Tech.*, 885 F. Supp. 2d at 1349 (“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.”); 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); 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 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).

²⁹ 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 PDM at 5-9.

³⁰ See New Star SRA at 8-11; see also New Star SSRA at 1-2.

2. Absence of *De Facto* Control

The evidence provided by New Star³¹ supports a preliminary finding of an absence of *de facto* government control based on record statements and supporting documentation showing that the company: (1) sets its own EPs 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 makes independent decisions regarding the disposition of profits or financing of losses.

Therefore, the evidence placed on the record of this administrative review by New Star demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, Commerce preliminarily grants a separate rate to New Star.³²

3. Companies Not Eligible for a Separate Rate

For the reasons detailed below, Commerce preliminarily determines that the following companies are part of China-wide entity: B&R; Feidong; G-Top; Pioneer; KaiPing; Kohler; New Shichu; Ningbo Afa; Superte; Xinhe; and Yuyao Afa.

Eight of these companies (*i.e.*, B&R; Feidong; G-Top; Pioneer; Ningbo Afa; Xinhe; Yuyao Afa; and Superte) did not submit separate rate applications or certifications by the deadline established in the *Initiation Notice*. Furthermore, none of these companies made a claim that it had no exports, sales, or entries of subject merchandise during the POR. Given the foregoing, we preliminarily find that these eight companies failed to establish their eligibility for separate rate status. Therefore, Commerce preliminarily determines that these companies should be part of the China-wide entity.

Moreover, as noted above, Commerce received a request for review of KaiPing, Kohler, and New Shichu. For the reasons detailed below, Commerce preliminary determines that KaiPing, Kohler, and New Shichu are part of the China-wide entity.

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.³³ Because no party requested a review of 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).³⁴

³¹ See New Star SRA at 11-14; *see also* New Star SSRA at 2-3.

³² See "Separate Rate for Eligible, Non-Selected Companies," *infra*.

³³ 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).

³⁴ 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

KaiPing and New Shichu

In the *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.”³⁵ KaiPing and New Shichu were selected for individual examination as mandatory respondents in this administrative review.³⁶ Although KaiPing and New Shichu submitted separate rate certifications,³⁷ both companies notified Commerce they would not participate in this administrative review³⁸ and failed to respond to Commerce’s questionnaire by the established deadline. Accordingly, we preliminarily determine that KaiPing and New Shichu are not eligible for separate rate status and should be part of the China-wide entity.

Kohler

Kohler submitted a separate rate certification in this review;³⁹ however, Kohler failed to respond to Commerce’s supplemental separate rate questionnaire by the established deadline.⁴⁰ Accordingly, we preliminarily find that Kohler failed to rebut the presumption that it is subject to government control and, thus, failed to establish its eligibility for separate rate status. Therefore, we preliminarily determine that Kohler should be part of the China-wide entity.

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 entirely on facts available.⁴¹ Where the rates for the individually examined companies are all

(76.45 percent) collected for companies in China-wide entity. *See Drawn Stainless Steel Sinks from the People’s Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013).

³⁵ *See Initiation Notice*, 82 FR at 26445.

³⁶ *See Second Respondent Selection Memorandum*.

³⁷ *See KaiPing SRC; see also New Shichu SRC*.

³⁸ *See KaiPing Notice; see also New Shichu Notice*.

³⁹ *See Kohler SRC*.

⁴⁰ *See Kohler SSRQ*.

⁴¹ *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

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.⁴² The SAA 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.”⁴³

Commerce has determined that the mandatory respondents in this administrative review are part of the China-wide entity, which is not under review. Thus, there is no POR margin information available for Commerce to consider in assigning a margin for the eligible, non-individually examined separate rate company. 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 New Star, the separate rate respondent, we have reached back to a previously completed review to obtain a non-punitive separate rate margin.⁴⁴ New Star filed a separate rate application and supplemental questionnaire response in proper order containing documentation supporting its eligibility to receive a separate rate.⁴⁵ Accordingly, consistent with our practice,⁴⁶ we are preliminarily assigning a rate of 1.78 percent to New Star in these preliminary results.

(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).

⁴² See section 735(c)(5)(B) of the Act.

⁴³ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (1994) (SAA), at 873.

⁴⁴ We assigned this margin as the separate rate in both the 2016-2017 and the 2017-2018 administrative reviews. See *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 38211 (August 6, 2019); see also *Drawn Stainless Steel Sinks From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2016–2017*, 83 FR 23424 (May 21, 2018); and *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), where we calculated this margin.

⁴⁵ See New Star SRA; see also New Star SSRA.

⁴⁶ See, e.g., *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 81 FR 78789 (November 9, 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

12/18/2019

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance