



A-570-131
Investigation
POI: 10/1/2019 – 3/31/2020
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DATE: December 3, 2020

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 the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Twist Ties from the
People’s Republic of China

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that twist ties 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 June 26, 2020, Commerce received antidumping duty (AD) and countervailing duty (CVD) petitions concerning twist ties from China, filed in proper form, on behalf of Bedford Industries, Inc. (the petitioner).¹ We describe the supplements² to the Petitions in the *Initiation Notice* and

¹ See Petitioner’s Letter, “Petition for the Imposition of Antidumping and Countervailing Duties on Twist Ties from China,” dated June 26, 2020 (the Petitions).

² See Commerce’s Letters, “Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Twist Ties from the People’s Republic of China: Supplemental Questions,” and “Petition for the Imposition of Antidumping Duties on Imports of Twist Ties from the People’s Republic of China: Supplemental Questions Concerning Volume II,” dated June 30, 2020; and Memorandum, “Phone Call with Counsel to the Petitioner,” dated July 7, 2020; see also Petitioner’s Letters, “Petition for the Imposition of Antidumping Duties on Twist Ties from China: Response to Supplemental Questions from the Department of Commerce,” dated July 2, 2020 (Volume II Supplemental Response); “Twist Ties from the People’s Republic of China,” dated July 6, 2020; and “Twist Ties from the People’s Republic of China,” dated July 9, 2020.

accompanying AD Initiation Checklist.³ On July 27, 2020, we published the notice of initiation of the AD investigation of twist ties from China.⁴

In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate rate status in a non-market economy (NME) proceeding.⁵ The process requires exporters to submit a separate rate application (SRA).⁶ In the *Initiation Notice*, we stated that SRAs would be due 30 days after publication of the notice, which fell on August 26, 2020.⁷ On August 24, 2020, we extended the deadline for submission of SRAs to September 2, 2020.⁸ Commerce received timely-filed SRAs from the following non-examined companies: (1) Tianjin Kyoei Packaging Supplies Co., Ltd. (Kyoei); and (2) Rongfa Plastic Products Co., Ltd. (also known as Zhenjiang Rongfa Plastic Co., Ltd) (Rongfa).⁹

We stated in the *Initiation Notice* that, in the event 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.¹⁰ On July 20, 2020, Commerce issued Q&V questionnaires to six companies that the petitioner identified as potential producers/exporters of twist ties from China.¹¹ 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 four producers/exporters of subject merchandise.¹²

On August 10, 2020, the U.S. International Trade Commission (ITC) preliminarily determined that there was a reasonable indication that an industry in the United States is materially injured by reason of imports of twist ties from China.¹³

³ See *Twist Ties from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 85 FR 45161 (July 27, 2020) (*Initiation Notice*), and accompanying AD Initiation Checklist.

⁴ See *Initiation Notice*.

⁵ *Id.*, 85 FR at 45164

⁶ See 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>.

⁷ See *Initiation Notice*, 85 FR at 45164.

⁸ See Memorandum, "Less-Than-Fair-Value Investigation of Twist Ties from the People's Republic of China: Extension of Deadline to Submit Separate Rate Applications," dated August 24, 2020.

⁹ See Kyoei's Letter, "Twist Ties from the People's Republic of China: Separate Rate Application," dated September 2, 2020 (Kyoei SRA); and Rongfa's Letter, "Rongfa Separate Rate Application: Antidumping Duty Investigation of Twist Ties from the People's Republic of China (A-570-131)," dated September 2, 2020 (Rongfa SRA).

¹⁰ 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*, 85 FR at 45163.

¹¹ See Commerce's Letter, "Quantity and Value Questionnaire," dated July 20, 2020; and Memorandum, "Less-Than-Fair-Value Investigation of Twist Ties from the People's Republic of China: Confirmation of Delivery of Quantity and Value Questionnaires," dated July 31, 2020 (Q&V Delivery Confirmation); see also Volume I of the Petitions at 14-15 and Exhibit Gen-6.

¹² On August 3, 2020, Rongfa; Kyoei; Zhenjiang Hongda Commodity Co., Ltd. (Zhenjiang Hongda); and Zhenjiang Zhonglian I/E Co., Ltd. (Zhenjiang Zhonglian) submitted responses to the Q&V questionnaire.

¹³ See *Twist Ties from China*, 85 FR 49681 (August 14, 2020).

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 twist ties to be reported in response to Commerce’s AD questionnaire.¹⁴ On August 5, 2020, Greenbrier International Inc. (Greenbrier), a U.S. importer of twist ties, filed comments on the scope of the investigation in response to Commerce’s solicitation in the *Initiation Notice*.¹⁵ On August 12, 2020, the petitioner filed a response to Greenbrier’s scope comments.¹⁶ On August 18, 2020, we issued proposed physical characteristics.¹⁷ On October 14, 2020, the petitioner filed a revised response to Greenbrier’s scope comments.¹⁸ On October 19, 2020, Greenbrier filed a response to the petitioner’s supplemental scope comments.¹⁹ We received no comments on physical characteristics. For further discussion, *see* the “Scope Comments” section, below.

On August 17, 2020, based on parties’ responses to the Q&V questionnaires, we selected Zhenjiang Hongda and Zhenjiang Zhonglian for individual examination as mandatory respondents and issued our initial questionnaire to them.²⁰

On August 24, 2020, Zhenjiang Hongda and Zhenjiang Zhonglian notified Commerce of their intention not to participate in this investigation.²¹

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

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is October 1, 2019 through March 31, 2020. This period corresponds to the two most recently completed fiscal quarters prior to the month of the filing of the Petition, which was June 2020.²²

¹⁴ *See Initiation Notice*, 85 FR at 45161-45162.

¹⁵ *See* Greenbrier’s Letter, “Twist Ties from the People’s Republic of China: Scope Comments,” dated August 5, 2020 (Greenbrier Scope Comments).

¹⁶ *See* Petitioner’s Letter, “Twist Ties from the People’s Republic of China: Scope Issues,” dated August 12, 2020 (Petitioner Scope Comments).

¹⁷ *See* Memorandum, “Twist Ties from the People’s Republic of China: Proposed Product Characteristics and Deadline for Comments,” dated August 18, 2020.

¹⁸ *See* Petitioner’s Letter, “Twist Ties from the People’s Republic of China: Supplement to Bedford Industries, Inc. Response to Scope Comments of August 12, 2020,” dated October 14, 2020 (Petitioner Supplemental Scope Comments).

¹⁹ *See* Greenbrier’s Letter, “Twist Ties from the People’s Republic of China: Response to Petitioner’s Supplemental Scope Comments,” dated October 19, 2020 (Greenbrier Supplemental Scope Comments).

²⁰ *See* Memorandum, “Less-Than-Fair-Value Investigation of Twist Ties from the People’s Republic of China: Respondent Selection,” dated August 17, 2020 (Respondent Selection Memorandum); *see also* Commerce’s Letters, “Antidumping Duty Questionnaire,” dated August 18, 2020.

²¹ *See* Zhenjiang Hongda and Zhenjiang Zhonglian’s Letter, “Twist Ties from the People’s Republic of China: Withdrawal of Zhenjiang Hongda and Zhenjiang Zhonglian from the Antidumping Duty Investigation and Counsel’s Certification of Compliance with the Terms of the APO,” dated August 24, 2020 (Zhenjiang Hongda and Zhenjiang Zhonglian Withdrawal).

²² *See* 19 CFR 351.204(b)(1).

IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,²³ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, the scope) of twist ties.²⁴

Commerce received comments regarding exclusion of twist ties included with trash and loot bags from Greenbrier and the petitioner.²⁵ Commerce addressed these comments in its Preliminary Scope Determination Memorandum.²⁶ Commerce preliminarily modified the scope of the investigation to exclude twist ties packaged and sold with bags, as well as twist ties used in the packaging of the imported products (*e.g.*, merchandise anchored/secured to a backing with twist ties in the retail package).

V. SCOPE OF THE INVESTIGATION

For a full description of the scope of this investigation, *see* the 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.²⁷ 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. Further, as part of this investigation, Commerce has received no request to reconsider its determination that China is an NME country. Therefore, we continue to treat China as an NME country for purposes of this preliminary determination.

B. Surrogate Country

When Commerce 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 of production (FOP), valued in a surrogate market economy (ME) country or countries considered to be appropriate by Commerce. Specifically, in accordance with section 773(c)(4) of the Act, in

²³ See *Antidumping Duties: Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

²⁴ See *Initiation Notice*, 85 FR at 45161.

²⁵ See Greenbrier Scope Comments; Petitioner Scope Comments; Petitioner Supplemental Scope Comments; and Greenbrier Supplemental Scope Comments.

²⁶ See Memorandum, "Antidumping and Countervailing Duty Investigations of Twist Ties from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations," dated November 23, 2020 (Preliminary Scope Determination Memorandum).

²⁷ 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 (PDM) (citing Memorandum, "China's Status as a Non-Market Economy," dated October 26, 2017), unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018)).

valuing the FOPs, Commerce “shall utilize, to the extent possible, the prices or costs of FOPs in one or more {ME} countries that are: (A) at a level of economic development comparable to that of the NME country; and (B) significant producers of comparable merchandise.”²⁸ As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME country unless it is determined that none of the potential surrogate countries are viable options because they either: (1) are not significant producers of comparable merchandise; (2) do not provide sufficient reliable sources of publicly-available surrogate value (SV) data; or (3) are not suitable for use based on other reasons. Countries that are not at the same level of economic development as the NME country, but that are still at a level of economic development comparable to the NME country, are selected as the surrogate country only if data considerations outweigh the difference in levels of economic development.²⁹ To determine which countries are at the same level of economic development as the NME country, Commerce generally relies solely upon per capita gross national income (GNI) data from the World Bank’s *World Development Report*. In addition, if more than one country satisfies the two criteria noted above, Commerce narrows the field of potential surrogate countries to a single country (pursuant to 19 CFR 351.408(c)(2), Commerce will normally value FOPs in a single surrogate country) based on data availability and quality.

We have preliminarily determined that all of the mandatory respondents (*i.e.*, Zhenjiang Hongda and Zhenjian Zhonglian) should be treated as part of the China-wide entity and are assigning an adverse facts available (AFA) rate to the China-wide entity. See the “Use of Facts Otherwise Available with an Adverse Inference” section below. Therefore, we are not calculating a margin for any respondent. Accordingly, we have not selected a 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.³⁰ It is Commerce’s policy to assign all exporters of subject merchandise in an NME country a single rate unless an exporter can demonstrate an absence of government control over their export activities, both in law (*de jure*) and in fact (*de facto*).³¹ Commerce analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*³² and further developed in *Silicon Carbide*.³³ 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 Commerce determines that

²⁸ See Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on Commerce’s website at <http://enforcement.trade.gov/policy/bull04-1.html>.

²⁹ *Id.*

³⁰ 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).

³¹ 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*).

³² *Id.*

³³ 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*).

a company is wholly foreign-owned, the separate rate analysis is not necessary to determine whether that company is independent from government control.

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the *Diamond Sawblades* proceeding and its determinations therein.³⁴ In particular, in litigation involving the *Diamond Sawblades* from China AD proceeding, the CIT found Commerce's existing 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.³⁵ Following the CIT's reasoning, in recent proceedings, we have concluded that where a government holds a majority ownership share, directly or indirectly, in the respondent exporter, the majority holding *per se* means that the government exercises, or has the potential to exercise, control over the company's operations generally.³⁶ This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company. Accordingly, we have considered the level of government ownership, where necessary.

As mentioned above, Commerce received timely filed SRAs from Kyoei and Rongfa.³⁷ The mandatory respondents, Zhenjiang Hongda and Zhenjiang Zhonglian, notified Commerce of their intent not to participate in the investigation after being selected as mandatory respondents,

³⁴ 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) (*Diamond Sawblades*), in *Advanced Technology & Materials Co. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), *aff'd* *Advanced Technology & Materials Co. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd* Case No. 2014-1154 (Fed. Cir. 2014) (*Advanced Technology II*). 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 PDM at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

³⁵ See, e.g., *Advanced Technology I*, 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.”); and at 1351 (“Further substantial evidence of record does not support the inference that SASAC’s {state-owned assets supervision and administration commission} ‘management’ of its ‘state-owned assets’ is restricted to the kind of passive-investor de jure ‘separation’ that Commerce concludes.”) (footnotes omitted); and at 1355 (“The point here is that ‘governmental control’ in the context of the separate rate test appears to be a fuzzy concept at least to this court, since a ‘degree’ of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to ‘day-to-day decisions of export operations, ‘ including terms, financing, and inputs into finished product for export.’”); and 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).

³⁶ See *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying PDM at 5-9; unchanged in *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 79 FR 68860 (November 19, 2014).

³⁷ See Kyoei SRA and Rongfa SRA.

and did not respond to Commerce's AD questionnaire or submit an SRA.³⁸ As stated in the *Initiation Notice*, "{p}roducers/exporters 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 respond to all parts of Commerce's AD questionnaire as mandatory respondents."³⁹ Consequently, having not responded to Commerce's AD questionnaire, Zhenjiang Hongda and Zhenjiang Zhonglian are not eligible for separate-rate status.

For all separate rate applicants, we consider the *de jure* and *de facto* criteria below.

D. Separate Rate Recipients

As noted above, we received timely SRAs from Kyoei and Rongfa.⁴⁰ Our analysis of both companies claiming separate rate status is below.

1. Wholly Foreign-Owned Applicant

One company, Kyoei, reported that it is wholly foreign-owned. As there is no Chinese ownership in this company, and because Commerce has no evidence indicating that this company is under the control of the Chinese government, further analyses of the *de jure* and *de facto* criteria are not necessary to determine whether it is independent from government control of its export activities.⁴¹ Therefore, we preliminary determine that Kyoei is eligible for a separate rate.

2. 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 companies; and (3) other formal measures by the government decentralizing control over export activities of companies.⁴²

The evidence provided by Rongfa supports a preliminary finding of an absence of *de jure* government control for Rongfa 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 over export activities of companies; and

³⁸ See Respondent Selection Memorandum and Zhenjiang Hongda and Zhenjiang Zhonglian Withdrawal.

³⁹ See *Initiation Notice*, 85 FR at 45164.

⁴⁰ See Kyoei SRA and Rongfa SRA.

⁴¹ See, e.g., *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); see also *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71104-05 (December 20, 1999).

⁴² See *Sparklers*, 56 FR at 20589.

(3) the implementation of formal measures by the government decentralizing control over export activities of companies.⁴³

3. 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 prices 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.⁴⁴ Commerce has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude Commerce from assigning separate rates.

The evidence provided by Rongfa supports a preliminary finding of an absence of *de facto* government control based on record statements and supporting documentation showing that Rongfa: (1) set its own prices 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 their respective export sales and makes independent decisions regarding the disposition of profits or financing of losses.⁴⁵

Based on the foregoing, we preliminarily determine that the evidence placed on the record of this investigation by Rongfa demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*.⁴⁶ Accordingly, Commerce preliminarily grants a separate rate to Rongfa.

E. Margin for the Separate Rate Companies

Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for separate rate respondents that we did not individually examine in an NME investigation. Section 735(c)(5)(A) of the Act articulates a preference that we are not to calculate an all-others rate using rates which are zero, *de minimis*, or based entirely on adverse facts available.⁴⁷ Accordingly, Commerce's usual practice is to average the weighted-average dumping margins for the individually-examined companies, excluding rates that are zero, *de*

⁴³ See Rongfa SRA.

⁴⁴ See *Silicon Carbide*, 59 FR at 22586-87; and *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR at 22545 (May 8, 1995).

⁴⁵ See Rongfa SRA.

⁴⁶ See *Sparklers*, 56 FR at 20589; see also *Silicon Carbide*, 59 FR at 22586-89.

⁴⁷ See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).

minimis, or based entirely on adverse facts available, in calculating the separate rate.⁴⁸ Section 735(c)(5)(B) of the Act also provides that, where all rates determined for individually examined exporters or producers are zero, *de minimis*, or based entirely on facts available, we may use “any reasonable method” for assigning the all-others rate, including “averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.”

In this investigation, we did not calculate rates for any respondents. Therefore, we have assigned Kyoei and Rongfa a separate rate that is based on the petition rate relied upon for the purposes of initiation because it is the only rate available in this investigation.⁴⁹

F. Combination Rates

Consistent with the *Initiation Notice*, Commerce has determined combination rates for respondents that are eligible for a separate rate in this investigation.⁵⁰ This practice is described in Policy Bulletin 05.1.⁵¹

G. The China-wide Entity

For the reasons discussed below, we have preliminarily based the dumping margin for the China-wide entity, which includes Zhenjiang Hongda and Zhenjiang Zhonglian, on AFA. 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*.⁵² We therefore consider Zhenjiang Hongda and Zhenjiang Zhonglian to be part of the China-wide entity. Furthermore, as explained below, we preliminarily determine to assign the China-wide entity, which includes these companies, a rate based entirely on AFA.

1. Statutory Framework

Sections 776(a)(1) and (2) of the Act provide 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 proceeding under the AD statute, or (D) provides such information but the information cannot be

⁴⁸ See *Ball Bearings from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying IDM at Comment 16.

⁴⁹ See *Initiation Notice*, 85 FR 45163; see also, e.g., *Sodium Gluconate, Gluconic Acid, and Derivative Products from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 83 FR 31949 (July 10, 2018) (*Sodium Gluconate from China Preliminary Determination*), and accompanying PDM, unchanged in *Sodium Gluconate, Gluconic Acid, and Derivative Products from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 47876 (September 21, 2018) (*Sodium Gluconate from China Final Determination*), and accompanying IDM.

⁵⁰ See *Initiation Notice*, 85 FR at 8813.

⁵¹ See Policy Bulletin No. 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 on Commerce’s website at <https://enforcement.trade.gov/policy/bull05-1.pdf>.

⁵² See *Initiation Notice*, 85 FR 45164.

verified, Commerce shall, subject to section 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 with 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 from that party, as appropriate. 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, 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. Further, section 776(b)(2) of the Act 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.

2. Use of Facts Available

Commerce issued Q&V questionnaires to six exporters/producers of twist ties in China but only received responses to the Q&V questionnaire from four companies.⁵³ We confirmed that six companies received our Q&V questionnaire. Dongguan Quanqiao Industrial Co., Ltd., Foshan Shunde Ronggui Yingli Industrial Co., Ltd., and Yiwu Kurui Handicraft Co. Ltd., the companies that received a Q&V questionnaire but did not respond, are not eligible for separate rate status, and are part of the China-wide entity. As noted above, Zhenjiang Hongda and Zhenjiang Zhonglian failed to respond to Commerce's request for information and withdrew from participation in this investigation. Thus, the China-wide entity withheld information requested by Commerce, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested Q&V information. Moreover, necessary Q&V information is not available on the record because each of these non-responsive companies did not provide it. Accordingly, we preliminarily determine that use of facts available is warranted in determining the dumping margin of the China-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.⁵⁴

3. Use of Adverse Inferences

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. Given

⁵³ See Q&V Delivery Confirmation.

⁵⁴ 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).

the China-wide entity's failure to provide the requested information, it is reasonable to conclude that the China-wide entity was not cooperative.⁵⁵ As noted above, having failed to establish their eligibility for separate rate status, Zhenjiang Hongda and Zhenjiang Zhonglian are part of the China-wide entity. These companies withdrew from participation in this investigation, thereby demonstrating a failure to cooperate with Commerce's request for information. Additionally, the companies that did not respond to the Q&V questionnaire did not indicate they were having difficulty providing the requested information, nor did they request to submit the information in an alternate form. Therefore, we preliminarily find that the China-wide entity failed to cooperate to the best of its ability, and that an adverse inference is warranted in selecting from among 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).⁵⁶

4. Selection and Corroboration of the AFA Rate

As noted above, relying on an adverse inference in selecting from the facts available 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. Section 776(c) of the Act provides that when Commerce relies on secondary information (such as the Petition) in resorting to AFA, rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, 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.⁵⁷ The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information used has probative value.⁵⁸ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information upon which it is basing the AFA dumping margin, although Commerce is not required to estimate what the dumping margin of an uncooperative interested party would have been if the interested party failing to cooperate had cooperated or to demonstrate that the AFA dumping margin used for the uncooperative party reflects an "alleged commercial reality" of the party.⁵⁹ Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of an antidumping proceeding when applying an adverse

⁵⁵ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that Commerce need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (*i.e.*, information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.")).

⁵⁶ *Id.*, 337 F.3d at 1382-83.

⁵⁷ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 870.

⁵⁸ *Id.*; see also 19 CFR 351.308(d).

⁵⁹ See section 776(d)(3) of the Act; see also, *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).

inference, including the highest of such margins.⁶⁰ If Commerce is unable to corroborate the highest petition margin using individual-transaction specific margins; Commerce may use the component approach.⁶¹

In selecting a rate for 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 more favorable result by failing to cooperate than if it had fully cooperated.⁶² 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.⁶³ There are no calculated margins for any respondents in this investigation. Therefore, as AFA, Commerce has preliminarily assigned the China-wide entity the rate of 72.96 percent, which is the 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 export price (EP) and NV in the Petition is discussed in the *Initiation Notice* and the AD Initiation Checklist.⁶⁴

We determined that the petition margin of 72.96 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.⁶⁵ To corroborate, to the extent practicable, the 72.96 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.⁶⁶

Based on our examination of the information, as discussed in detail in the AD Initiation Checklist, we consider the petitioners' EP and NV calculations to be reliable.⁶⁷ 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

⁶⁰ See section 776(d)(1)-(2) of the Act.

⁶¹ See *Polyester Textured Yarn from India: Final Determination of Sales at Less Than Fair Value*, 84 FR 63843 (November 19, 2019), and accompanying IDM at Comment 7.

⁶² 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).

⁶³ 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 IDM.

⁶⁴ See *Initiation Notice*; see also AD Initiation Checklist.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

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 obtained by the petitioner for the merchandise under consideration and surrogate values that are contemporaneous with the POI.⁶⁸ In addition, no information has been placed on the record that discredits this information. As such, we find the petition rate of 72.96 percent relevant. Furthermore, as there are no respondents in this investigation for which we are calculating a separate dumping margin, we note that the petition rate is the only rate available on the record of this proceeding.⁶⁹

Accordingly, Commerce has corroborated the AFA rate of 72.96 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.⁷⁰ For a subsidy meeting these criteria, the statute requires Commerce to reduce the dumping margin by the estimated amount of the increase in the weighted-average dumping margin due to a countervailable subsidy, subject to a specified cap.⁷¹ 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 the China-wide entity, which includes Zhenjiang Hongda and Zhenjian Zhonglian.

VIII. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES

In an AD investigation with a companion CVD investigation, it is Commerce's practice to adjust the AD cash deposit rates for any related export subsidies found in the companion CVD investigation. Doing so is in accordance with section 772(c)(1)(C) of the Act, which provides that the U.S. price "shall be increased by the amount of any countervailing duty imposed on the subject merchandise ... to offset an export subsidy."⁷²

⁶⁸ See Volume II of the Petitions at 1, 4, and Exhibits AD-CH-1 and AD-CH-3; see also Volume II Supplemental Response at 3-4 and Exhibit AD-CN-S3.

⁶⁹ See, e.g., *Sodium Gluconate from China Preliminary Determination* and accompanying PDM, unchanged in *Sodium Gluconate from China Final Determination* and accompanying IDM.

⁷⁰ See section 777A(f)(1)(A)-(C) of the Act.

⁷¹ See section 777A(f)(1)-(2) of the Act.

⁷² See *Certain Collated Steel Staples from the People's Republic of China: Preliminary Affirmative Determination*

Commerce determined in the preliminary determination of the companion CVD investigation that all companies subject to the investigation benefitted from a subsidy program contingent on export totaling 10.54 percent.⁷³ With respect to Kyoei and Rongfa, the separate rate companies, we find that the export subsidy adjustment of 10.54 is warranted because this is the export subsidy rate included in the CVD all-others rate, to which these companies are subject in the companion CVD proceeding. For the China-wide entity, Commerce has adjusted the China-wide entity's AD cash deposit rate by the only export subsidy rate determined for any party in the companion CVD proceeding, which is 10.54 percent.

IX. VERIFICATION

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

X. ITC NOTIFICATION

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance. In accordance with section 735(b)(2) of the Act, the ITC will make its final determination before the later of 120 days after the date of this preliminary determination or 45 days after Commerce makes its final affirmative determination.

of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination and Extension of Provisional Measures, 85 FR 882 (January 8, 2020), and accompanying PDM, unchanged in *Certain Collated Steel Staples from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination*, 85 FR 33623 (June 2, 2020), and accompanying IDM.

⁷³ See *Twist Ties from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 85 FR 77167 (December 1, 2020), and accompanying PDM.

XI. RECOMMENDATION

We recommend that you approve the preliminary findings described above.

Agree

Disagree

12/3/2020

X 

Signed by: JEFFREY KESSLER