



A-570-131  
Investigation  
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February 16, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting 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 Final Affirmative  
Determination in the Less-Than-Fair-Value Investigation of Twist  
Ties from the People's Republic of China

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## I. SUMMARY

The Department of Commerce (Commerce) finds 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 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is October 1, 2019, through March 31, 2020.

After analyzing the comments submitted by interested parties, we have made no changes to the *Preliminary Determination*.<sup>1</sup> We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a list of the issues in this investigation for which we received comments from interested parties:

- Comment 1: Determining the Separate Rate
- Comment 2: Respondent Selection

## II. BACKGROUND

On December 10, 2020, Commerce published the *Preliminary Determination* of this investigation.<sup>2</sup> We invited interested parties to comment on the *Preliminary Determination*. On January 11, 2021, we received a case brief from a separate rate company, Tianjin Kyoei

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<sup>1</sup> See *Twist Ties from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 79468 (December 10, 2020) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> *Id.*

Packaging Supplies Co., Ltd. (Kyoei).<sup>3</sup> On January 19, 2021, we received a rebuttal brief from Bedford Industries, Inc. (petitioner).<sup>4</sup>

### III. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation consists of twist ties, which are thin, bendable ties for closing containers, such as bags, bundle items, or identifying objects. A twist tie in most circumstances is comprised of one or more metal wires encased in a covering material, which allows the tie to retain its shape and bind against itself. However, it is possible to make a twist tie with plastic and no metal wires. The metal wire that is generally used in a twist tie is stainless or galvanized steel and typically measures between the gauges of 19 (.0410" diameter) and 31 (.0132") (American Standard Wire Gauge). A twist tie usually has a width between .075" and 1" in the cross-machine direction (width of the tie – measurement perpendicular with the wire); a thickness between .015" and .045" over the wire; and a thickness between .002" and .020" in areas without wire. The scope includes an all-plastic twist tie containing a plastic core as well as a plastic covering (the wing) over the core, just like paper and/or plastic in a metal tie. An all-plastic twist tie (without metal wire) would be of the same measurements as a twist tie containing one or more metal wires. Twist ties are commonly available individually in pre-cut lengths ("singles"), wound in large spools to be cut later by machine or hand, or in perforated sheets of spooled or single twist ties that are later slit by machine or by hand ("gangs").

The covering material of a twist tie may be paper (metallic or plain), or plastic, and can be dyed in a variety of colors with or without printing. A twist tie may have the same covering material on both sides or one side of paper and one side of plastic. When comprised of two sides of paper, the paper material is bound together with an adhesive or plastic. A twist tie may also have a tag or label attached to it or a pre-applied adhesive attached to it.

Excluded from the scope of the investigation are twist ties packaged with bags for sale together where the quantity of twist ties does not exceed twice the number of bags in each package. Also excluded are twist ties that constitute part of the packaging of the imported product, for example, merchandise anchored/secured to a backing with twist ties in the retail package or a bag of bread that is closed with a twist tie.

Twist ties are imported into the United States under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8309.90.0000 and 5609.00.3000. Subject merchandise may also enter under HTSUS subheadings 3920.51.5000, 3923.90.0080, 3926.90.9990, 4811.59.6000, 4821.10.2000, 4821.10.4000, 4821.90.2000, 4821.90.4000, and 4823.90.8600. These HTSUS subheadings are provided for reference only. The written description of the scope of the investigation is dispositive.

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<sup>3</sup> See Kyoei's Letter, "Twist Ties from the People's Republic of China: Kyoei's Case Brief," dated January 11, 2021 (Kyoei's Case Brief).

<sup>4</sup> See Petitioner's Letter, "Antidumping Duty Investigation of Twist Ties from China; Preliminary Determination - Petitioner's Rebuttal Case Brief," dated January 19, 2021 (Petitioner's Rebuttal Brief).

## IV. DISCUSSION OF THE ISSUES

### Comment 1: Determining the Separate Rate

#### *Kyoei's Case Brief*

- There is no statutory or factual basis for assigning the adverse facts available (AFA) dumping margin of 72.96 percent to Kyoei. Kyoei cooperated and provided information to the best of its ability and, further, it is a wholly market-economy owned firm.
- None of the provisions in sections 776(a) or 776(b) of the Act related to the application of AFA apply to Kyoei as it did not withhold information, fail to provide information by established deadlines, impede a proceeding, and because the information it provided is verifiable. Kyoei timely provided its quantity and value (Q&V) response and its separate rate application and, therefore, the AFA rate of 72.96 percent should not be assigned to Kyoei.
- Kyoei is a wholly market-economy owned firm which sold twist ties to its Japanese parent company, which then resold the subject merchandise to the United States. Kyoei states that unaffiliated U.S. customers order twist ties from the Japanese company which, in turn, purchases twist ties from Kyoei, who ultimately ships the subject merchandise to the unaffiliated U.S. customers directly. Given the nature of Kyoei's sales channel, the dumping margin assigned to Kyoei should be different from the China-wide entity rate.
- Section 735(c)(5)(A) of the Act articulates a preference that Commerce calculate an all-others rate without zero, *de minimis*, or rates based entirely on AFA. Further, section 735(c)(5)(B) of the Act states that where all rates for individually examined exporters or producers are zero, *de minimis*, or based entirely on AFA, Commerce may use "any reasonable method" for assigning the all-others rate including averaging the margins for the individually examined respondents. However, the 72.96 percent margin Commerce assigned to Kyoei is based entirely on AFA, not on individually examined respondents. Such a margin is contrary to section 735(c)(5)(A) of the Act. The dumping margin assigned to Kyoei, a fully cooperating respondent, should be different from the dumping margin assigned to non-participating respondents in this proceeding.

#### *Petitioner's Rebuttal Brief*

- Commerce correctly applied AFA based on the mandatory respondents' failure to participate in this investigation, since the AFA statute is meant to encourage future compliance with Commerce's request for information, not to punish.<sup>5</sup>
- Commerce should reject Kyoei's argument that assigning the petition rate to separate rate companies is contrary to the statutory preference for a calculated all-others rate that does not involve zero, *de minimis* or AFA margins and that a "fully cooperative" respondent should be assigned a different rate.
- When faced with a margin of record based entirely on AFA, section 735(c)(5)(B) of the Act permits Commerce to "use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and

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<sup>5</sup> See Petitioner's Rebuttal Brief at 2 (citing *Bio-Lab, Inc. v. United States*, 435 F. Supp. 3d 1361, 1368 (CIT 2020)).

producers individually investigated.”<sup>6</sup> Therefore, Commerce has broad discretion to use an AFA rate as the applicable rate for separate rate respondents when no other rate is available.<sup>7</sup>

- The language of the Act, “any reasonable method” includes the decision to not calculate special rates for any respondents.
- There have been numerous proceedings where the dumping margins established for individually examined producers or exporters were based entirely on AFA and the petition rates satisfied the criteria of “any reasonable method” in section 735(c)(5)(B) of the Act.<sup>8</sup>
- Kyoei has not provided a different rate to use and it has not provided supporting case precedent that separate rate recipients should be assigned a different rate when the China-wide entity is based on AFA and no mandatory respondents received a rate that was not based entirely on AFA. Therefore, Commerce should continue its practice of using the petition rate as the rate for eligible separate rate applicants as a reasonable method to establish the separate rate.

### Commerce’s Position:

We disagree with Kyoei. In the *Preliminary Determination*, we described the process by which Commerce calculates antidumping margins for individually examined exporters or producers, producers or exporters eligible for a separate rate, and the China-wide entity.<sup>9</sup> Commerce’s selection of the petition rate as AFA does not turn the petition rate into AFA in all contexts. The determination of a rate based on AFA is distinguished from the determination of a separate rate where section 735(c)(5)(A) of the Act is not applicable. Based on the information that Kyoei provided in its separate rate application,<sup>10</sup> we continue to find that Kyoei is eligible to receive a separate rate because it demonstrated an absence of *de jure* and *de facto* government control over its export activities. Further, Kyoei’s submissions did not warrant determinations based on facts available or AFA as prescribed in sections 776(a) and 776(b) of the Act and Commerce did not include Kyoei in its AFA analysis in the *Preliminary Determination*.<sup>11</sup> Instead, because Kyoei is eligible for a separate rate, but the rates established for the mandatory respondents do not meet the criteria in section 735(c)(5)(A), we look to section 735(c)(5)(B) of the Act, which states that

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<sup>6</sup> *Id.* at 3 (citing *Albemarle Corp. & Subsidiaries v. United States*, 821 F.3d 1345 (Fed. Cir. 2016)).

<sup>7</sup> *Id.* (citing *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 (September 11, 2008), and accompanying Issues and Decisions Memorandum (IDM) at Comment 16).

<sup>8</sup> *Id.* at 4 (citing *Welded Stainless Pressure Pipe from Malaysia: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part; 2012-2013*, 79 FR 31090 (May 30, 2014), and accompanying IDM at Comment 1; *Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate from the People’s Republic of China*, 73 FR 6479-81 (February 4, 2008); *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan*, 72 FR 67271, 67272 (November 28, 2007); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Canada*, 64 FR 15457 (March 31, 1999); and *Ceramic Tile from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Partial Affirmative Critical Circumstances Determination*, 85 FR 19425 (April 7, 2020) (*Ceramic Tile*) and accompanying IDM at Comment 3).

<sup>9</sup> See *Preliminary Determination PDM* at 8-13.

<sup>10</sup> See Kyoei’s September 2, 2020 Separate Rate Application (Kyoei SRA).

<sup>11</sup> See *Preliminary Determination PDM* at 9-13.

Commerce may then use any reasonable method to establish the estimated all-others rate. In this case, based on the facts and circumstances, we find that establishing the rate provided in the petition as the all-others rate is the only reasonable method by which to establish an all-others rate because it is the only rate on the record of this investigation.

Kyoei's argument that Commerce's selection of the petition rate as the all-others rate constitutes an application of AFA is inapposite with the analysis presented at the *Preliminary Determination* and prior case precedent. As detailed in the *Preliminary Determination* and above, the petition rate is the only rate available in this investigation. In investigations where we are applying AFA, it is Commerce's practice to select the higher of: (a) the highest dumping margin alleged in the petition; or (b) the highest calculated dumping margin of any respondent.<sup>12</sup> Here, we have relied on the only information available on the record, which is the margin presented in the petition, because it is based on actual transaction information that was corroborated at the initiation stage of this proceeding.<sup>13</sup> Selecting the only available rate as the AFA rate does not disqualify it for use with respect to separate rate companies, no more than selecting the rate for use with respect to separate rate companies would disqualify the rate for use as an AFA rate. To be clear, rates are labeled based on the context in which they are applied. For example, if Commerce were to calculate a rate for company A, based upon the company's actual data, this would be considered a calculated rate and not an AFA rate in that context. If that same rate were also the highest rate calculated, it might also qualify as an AFA rate but only when applied to company B that failed to cooperate to the best of its ability. In the example, company A did not receive an AFA rate notwithstanding that the same rate also qualifies as AFA in another context. Kyoei's concern is that it received the AFA rate, however, Commerce is not applying AFA to the separate rate companies. An application of the only petition rate on the record to non-cooperating companies does not turn that rate into an AFA rate for purposes of the separate rate companies. To the contrary, Commerce is applying the only rate available in this investigation to the separate rate companies, which is a reasonable rate in light of the facts and circumstances of this case.

Therefore, the petition rate is the only rate that meets the criteria for serving as the separate rate for eligible producers or exporters. This approach is consistent with our practice.<sup>14</sup>

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<sup>12</sup> *Id.* at 12.

<sup>13</sup> See Antidumping Duty Investigation Initiation Checklist: Twist Ties from the People's Republic of China, dated July 16, 2020, at 6-9.

<sup>14</sup> See *Preliminary Determination PDM* at 8-9; see also *Ceramic Tile IDM* at Comment 3, *Galvanized Steel Wire from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17430, 17432 (March 26, 2012); *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970 (June 5, 2008), and accompanying *IDM* at Comment 7, *Carton Closing Staples from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 13236, 13238 (March 28, 2018), and accompanying *IDM* at Comment 3, and *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), and accompanying *IDM* at Comment 2.

## Comment 2: Respondent Selection

### *Kyoei's Case Brief*

- On August 12, 2020, the petitioner submitted comments on the selection of respondents requesting that Commerce collapse the affiliated entities of Zhenjiang Hongda Commodity Co. Ltd. (Zhenjiang Hongda) and Zhenjiang Zhonglian I/E Co., Ltd. (Zhenjiang Zhonglian) and name a separate, unaffiliated exporter as the second mandatory respondent.
- On August 17, 2020, Commerce selected Zhenjiang Hongda and Zhenjiang Zhonglian as mandatory respondents and, on August 18, 2020, it issued the antidumping duty questionnaire to these companies. Both Zhenjiang Hongda and Zhenjiang Zhonglian withdrew from participating in this investigation on August 24, 2020. The questionnaire established September 8, 2020, as the due date for the responses to section A of the questionnaire. At the time the questionnaire was issued, Commerce did not establish deadlines for responses to sections C and D of the questionnaire.
- Commerce significantly impeded the proceeding by not selecting other mandatory respondents in the more than 100 days that passed between Zhenjiang Hongda and Zhenjiang Zhonglian's withdrawal and the *Preliminary Determination*.
- Given that Kyoei is a wholly market-economy firm and, due to the specialty of Kyoei's enterprise nature and sales channel, the dumping margin calculated and assigned to Kyoei should be different from that assigned to the China-wide entity.

### *Petitioner's Rebuttal Brief*

- Kyoei's assertion that Commerce impeded the investigation by not selecting another mandatory respondent should be rejected, as it is not supported by administrative or legal precedent.
- Kyoei argues that Commerce had sufficient time to select other mandatory respondents; however, Kyoei did not offer to provide the same information that was requested from the Hongda entities, and, therefore is not entitled to an individual antidumping duty margin.
- Contrary to Kyoei's argument, Commerce is not obligated to select additional mandatory respondents. Further, Commerce has broad discretion in determining the applicable rate for SRA respondents in the absence of calculated rates for one or more mandatory respondents.
- Kyoei failed to provide the questionnaire information asked of the mandatory respondents and, therefore, is not entitled to a rate different from the China-wide rate.<sup>15</sup>

### **Commerce's Position:**

We disagree with Kyoei and find that Commerce was justified in not selecting an additional mandatory respondent.

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<sup>15</sup> See Petitioner's Rebuttal Brief at 5-6 (citing *Schaeffler Italia S.R.L. v. United States*, 781 F.Supp.2d 1358, 1364 (CIT 2011), “{w}here, as here, a respondent ‘did not pursue the remedy available to it for obtaining its own rate,’ such a respondent cannot be said to have exhausted its administrative remedies on the ‘respondent selection’ issue.”).

Section 777A(c)(1) of the Act directs Commerce to determine an individual weighted-average dumping margin for each known exporter and producer of the subject merchandise. However, section 777A(c)(2)(B) of the Act and 19 CFR 351.204(c)(2) state that Commerce may limit its examination to exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined. As discussed in our Respondent Selection Memorandum, after a careful examination of our available resources, we determined that it was not practicable to examine all known producers or exporters of subject merchandise.<sup>16</sup> Therefore, in accordance with section 777A(c)(2)(B) of the Act and our normal practice, we selected the maximum number of mandatory respondents that we could reasonably investigate, which in this case was two.

As discussed in the Respondent Selection Memorandum, Commerce selected Zhenjiang Hongda and Zhenjiang Zhonglian as mandatory respondents because they accounted for the largest volume of imports of subject merchandise.<sup>17</sup> While the petitioner had requested that Commerce collapse Zhenjiang Hongda and Zhenjiang Zhonglian,<sup>18</sup> we stated in the Respondent Selection Memorandum that Commerce does not normally collapse entities at the respondent selection stage because of the significant information required to make a determination to collapse producers or exporters and their affiliates.<sup>19</sup> Further, we noted in the Respondent Selection Memorandum that no interested party had requested voluntary treatment.<sup>20</sup>

On August 24, 2020, Zhenjiang Hongda and Zhenjiang Zhonglian withdrew their participation from this investigation.<sup>21</sup> Although the mandatory respondents notified Commerce on the record that they would not be participating in this investigation, neither Kyoei nor any other interested party requested that Commerce select another mandatory respondent. Further, Kyoei did not at any time request voluntary treatment. Had Kyoei requested voluntary treatment, we note that Commerce would have reviewed Kyoei's request pursuant to 19 CFR 351.204(d)(2) to determine whether or not to accept a voluntary respondent. Moreover, Kyoei did not raise the issue of selecting additional mandatory respondents until its case brief, which is too late in the proceeding to revisit the issue and provide initial questionnaires. We note that the analysis of an initial questionnaire response makes up only a limited portion of the work performed with respect to any given respondent. Rather, Commerce frequently issues multiple supplemental questionnaires, and it also must collect surrogate value data for the factors of production used by each respondent, identify and resolve any issues with respect to such data, verify the data, and address any issues raised in case and rebuttal briefs. Further, Kyoei did not provide a response to

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<sup>16</sup> 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), at 3-4.

<sup>17</sup> See Respondent Selection Memorandum at 5 and Attachment.

<sup>18</sup> See Petitioner's Letter, "Twist Ties from the People's Republic of China: Mandatory Respondent Selection," dated August 12, 2020.

<sup>19</sup> See Respondent Selection Memorandum at 3-5. Specifically, we noted that, "Commerce normally does not conduct affiliation or collapsing analyses at the respondent selection phase, as the determination as to affiliation and collapsing requires information regarding ownership, management, production facilities, potential for manipulation of price or production, and operations, which is not yet on the record of this investigation. Accordingly, we are not able to make any decisions regarding the affiliation or collapsing of companies at this time."

<sup>20</sup> *Id.* at 2.

<sup>21</sup> 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.

the initial questionnaire issued, which would have been required if it were seeking voluntary treatment. To the contrary, Kyoei took no action to obtain individual examination during the proceeding, except to raise the issue for the first time in its case brief.

We note that the Act is silent as to whether Commerce must select additional mandatory respondents. Kyoei did not provide precedent to support its allegation that Commerce impeded the investigation by not selecting additional mandatory respondents. Moreover, this case is rendered even more complicated by the fact that it is an investigation, rather than an administrative review; thus, not only are the companies and the product unfamiliar, but this is also the first time that any of the exporters named in the Respondent Selection Memorandum have participated in an antidumping proceeding. In such a situation, it is important to recognize that there is a learning curve for both Commerce and the respondents. As a consequence, the analysis of each company's response, the collection and analysis of surrogate value data for each unique part used by each respondent, and performing the margin calculations require an enormous expenditure of resources. Therefore, due to the increasing constraint on Commerce's resources throughout this proceeding with the administrative burden of the continually growing number of investigations, administrative reviews, concurrent segments throughout Commerce, and the high coverage of imports with the initially selected mandatory respondents, we lacked the resources to select and analyze additional mandatory respondents in the allotted time.

## V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of the investigation and the final dumping margins in the *Federal Register*.

Agree

Disagree

2/16/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance