

is the development and testing, in controlled settings, of a variety of artificial floating marsh system designs along with testing and optimization of plant growth and establishment. The second phase consists of field testing advanced designs of artificial floating marsh systems in selected marsh settings.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data collected during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

**Donald W. Gohmert,**

*State Conservationist.*

[FR Doc. E5-8005 Filed 12-28-05; 8:45 am]

**BILLING CODE 3410-16-P**

## ANTITRUST MODERNIZATION COMMISSION

### Notice of Public Hearings

**AGENCY:** Antitrust Modernization Commission.

**ACTION:** Notice of public hearings.

**SUMMARY:** The Antitrust Modernization Commission will hold a public hearing on January 19, 2006. The topic of the hearing is an Economists' Roundtable on U.S. Merger Enforcement.

**DATES:** January 19, 2006, 1 p.m. to 4 p.m. Interested members of the public may attend. Registration is not required.

**ADDRESSES:** Federal Trade Commission, Conference Center, 601 New Jersey Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Andrew J. Heimert, Executive Director & General Counsel, Antitrust Modernization Commission: telephone: (202) 233-0701; e-mail: [info@amc.gov](mailto:info@amc.gov). Mr. Heimert is also the Designated Federal Officer (DFO) for the Antitrust Modernization Commission.

**SUPPLEMENTARY INFORMATION:** The purpose of these hearings is for the Antitrust Modernization Commission to take testimony and receive evidence regarding Merger Enforcement. The hearing will be in the format of a moderated roundtable discussion of economists. Materials relating to the hearing, including a list of witnesses

and the prepared statements of the witnesses, will be made available on the Commission's Web site ([www.amc.gov](http://www.amc.gov)) in advance of the hearings.

Interested members of the public may submit written testimony on the subject of the hearing in the form of comments, pursuant to the Commission's request for comments. See 70 FR 28902 (May 19, 2005). Members of the public will not be provided with an opportunity to make oral remarks at the hearing.

The AMC is holding this hearing pursuant to its authorizing statute. Antitrust Modernization Commission Act of 2002, Public Law No. 107-273, section 11057(a), 116 Stat. 1758, 1858.

Dated: December 22, 2005.

By direction of the Antitrust Modernization Commission.

**Andrew J. Heimert,**

*Executive Director & General Counsel,  
Antitrust Modernization Commission.*

[FR Doc. 05-24566 Filed 12-28-05; 8:45 am]

**BILLING CODE 6820-YH-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-570-900)

#### Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** December 29, 2005.

**SUMMARY:** We preliminarily determine that diamond sawblades and parts thereof ("diamond sawblades") from the People's Republic of China ("PRC") 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 margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Catherine Bertrand or Anya Naschak, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202)482-3207 or 482-6375, respectively.

**SUPPLEMENTARY INFORMATION:**

### Case History

On May 3, 2005, the Department of Commerce ("Department") received a petition on imports of diamond sawblades from the People's Republic of China ("PRC") and the Republic of Korea ("Korea") from the Diamond Sawblade Manufacturers' Coalition ("Petitioner") on behalf of the domestic industry and workers producing diamond sawblades. This investigation was initiated on June 21, 2005. See *Initiation of Antidumping Duty Investigations: Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea*, 70 FR 35625 (June 21, 2005) ("Initiation Notice"). Additionally, in the *Initiation Notice*, the Department notified parties that it would apply a new process by which exporters and producers may obtain separate-rate status in non-market economy ("NME") investigations. The new process requires exporters and producers to submit a separate-rate status application. 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://ia.ita.doc.gov>. However, the standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* governmental control over its export activities) has not changed. Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. Between September 16, 2005, and November 23, 2005, Petitioner, Ehwa Diamond Industrial Co., Ltd. ("Ehwa"), and Diamax Industries, Inc., filed comments and rebuttal comments proposing clarifications to the scope of this investigation.

On June 21, 2005, the Department requested quantity and value ("Q&V") information from a total of twenty-three companies that Petitioner identified as potential producers and/or exporters of diamond sawblades from the PRC. Also on June 21, 2005, the Department sent a letter requesting Q&V information to the China Bureau of Fair Trade for Imports & Exports ("BOFT") of the Ministry of Commerce ("MOFCOM") requesting that BOFT transmit the letter to all companies who manufacture and export subject merchandise to the United States, or produce the subject merchandise for the companies who were engaged in exporting the subject merchandise to the United States during

the POI. For a complete list of all parties from which the Department requested Q&V information, *see* Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9, from Carrie Blozy, Program Manager, AD/CVD Operations, Office 9: Selection of Respondents for the Antidumping Investigation of Diamond Sawblades and Parts Thereof from the People's Republic of China, dated July 19, 2005 ("Respondent Selection Memo"). Between July 5, 2005, and July 15, 2005, the Department received Q&V responses from twenty-five interested parties. For a list of the parties that responded to the Department's Q&V letter, *see* Respondent Selection Memo. The Department did not receive any type of communication from BOFT regarding its request for Q&V information. *See* Respondent Selection Memo.

On July 18, 2005, the United States International Trade Commission ("ITC") issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from the PRC of diamond sawblades. The ITC's determination was published in the **Federal Register** on July 29, 2005. *See Investigation Nos. 731-TA-1093 (Preliminary), Diamond Sawblades and Parts Thereof from China and Korea*, 70 FR 43903 (July 29, 2005).

On July 19, 2005, the Department selected Bosun Tools Group Co., Ltd. ("Bosun"), Beijing Gang Yan Diamond Product Company ("BGY"), Hebei Jikai Industrial Group Co. Ltd. ("Hebei Jikai"), and Saint-Gobain Abrasives (Shanghai) Co., Ltd. ("Saint Gobain") as mandatory respondents in this investigation. *See* Respondent Selection Memo.

On July 21, 2005, the Department determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See* Memorandum from Ron Lorentzen, Acting Director, Office of Policy, to Carrie Blozy, Program Manager, China/NME Group, Office 9: Antidumping Investigation of Diamond Sawblades and Parts Thereof from the People's Republic of China (PRC): Request for a List of Surrogate Countries, dated July 21, 2005 ("Office of Policy Surrogate Countries Memorandum").

On July 14, 2005, the Department requested comments from all interested parties on proposed product characteristics and model match criteria to be used in the designation of control numbers ("CONNUMs") to be assigned to the subject merchandise. The

Department received comments from BGY, Bosun, Hebei Jikai, Petitioner, Shinhan Diamond Industrial Co., Ltd and SH Trading Inc. (collectively "Shinhan"), and Ehwa Diamond Industrial Co., Ltd. ("Ehwa"). On August 5, 2005, the Department released the product characteristics and model match criteria to be used in the designation of CONNUMs to be assigned to the subject merchandise.

On August 8, 2005, the Department informed parties of an error in one of the model match fields, and corrected the mistake.

On July 26, 2005, the Department invited interested parties to comment on the Department's surrogate country selection and/or significant production in the potential surrogate countries and to submit publicly available information to value the factors of production. On August 16, 2005, we received comments regarding the selection of a surrogate country from Petitioner. No other interested parties commented on the selection of a surrogate country. For a detailed discussion of the selection of the surrogate country, *see* "Surrogate Country" section below, and the Memorandum to the File through James C. Doyle, Director, AD/CVD Operations, Office 9, from Carrie Blozy, Program Manager, AD/CVD Operations, Office 9: Antidumping Duty Investigation of Diamond Sawblades and Parts Thereof from the People's Republic of China: Selection of a Surrogate Country dated December 20, 2005 ("Surrogate Country Memo").

On November 15, 2005, Petitioner, BGY, Bosun, and Hebei Jikai submitted comments on surrogate information with which to value the factors of production in this proceeding. Petitioner filed additional comments on December 1, 2005, and December 2, 2005, December 5, 2005, December 14, 2005, and December 16, 2005. Bosun filed additional comments on December 1, 2005, and December 6, 2005. The Department was unable to take into account the comments submitted by Petitioner on December 14, 2005, and December 16, 2005, because they were filed less than one week before the preliminary determination.

On July 21, 2005, we received separate rate applications from sixteen companies, including one mandatory respondent, Hebei Jikai. On August 12, 2005, the Department notified these firms that their applications were incomplete or otherwise deficient. Four additional companies received notification on August 12, 2005, that, as their applications were not filed by the thirty-day deadline set forth in the application, they would not receive a

full deficiency letter, though these applicants received general guidelines upon which the Department would review their applications. On August 22, 2005, the Department received re-filings from the twenty applicants to which the Department sent either deficiency or guidelines letters, and an additional four applications. For a complete list of all applications received, *see* Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9, from Carrie Blozy, Program Manager, AD/CVD Operations, Office 9: Antidumping Investigation of Diamond Sawblades and Parts Thereof from the People's Republic of China: Deficient Separate Rate Applications, dated October 12, 2005 ("Deficient Applications Memo"), at Attachment 1. On September 22, 2005 and September 23, 2005, the Department informed the seventeen applicants whose applications were considered complete by the sixty-day deadline established by the application ("Separate Rate Applicants"), that they would be considered for a separate rate,<sup>1</sup> and requested that they file the addendum required by the application. *See* Letter to All Interested Parties from James C. Doyle, Director, AD/CVD Operations, Office 9, dated September 22, 2005 ("Addendum Letter"); Memorandum to the File from Candice Weck, Case Analyst: Investigation of Diamond Sawblades and Parts Thereof from the People's Republic of China: Separate Rate Applications, dated September 23, 2005. On October 12, 2005, the Department informed six companies that submitted applications of the reasons their applications were considered incomplete for purposes of a separate rates analysis. *See* Deficient Applications Memo.

On July 28, 2005, the Department issued its Sections A, C, D, and E, questionnaire to Bosun, BGY, Hebei Jikai, and Saint Gobain. On September 1, 2005, the Department received a letter from Saint Gobain, informing the Department that Saint Gobain would not be responding to the Department's request for information in this investigation, and accordingly would

<sup>1</sup> Danyang NYCL Tools Manufacturing Co., Ltd., Danyang Youhe Manufacturing Co. Ltd., Fujian Quanzhou Wanlong Stone Co. Ltd., Guilin Tebon Superhard Material Co. Ltd., Huzhou Gu Import & Export Co., Ltd., Jiangsu Fengtai Diamond Tools Manufacturing Co. Ltd., Jiangyin LIKN Industry Co. Ltd., Quanzhou Zhongzhi Diamond Tool Co., Ltd., Rizhao Hein Saw Co. Ltd., Shanghai Deda Industry & Trading Co. Ltd., Sichuan Huili Tools Co., Weihai Xiangguang Mechanical Industrial Co., Ltd., Wuhan Wanbang Laser Diamond Tools Company, Ltd., Xiamen ZL Diamond Tools Co. Ltd., Zhejiang Tea Import & Export Co. Ltd., Zhejiang Wanli Tools Group Co., Ltd. ("Wanli"), and Zhenjiang Inter-China Import & Export Co., Ltd.

not be filing questionnaire responses. The Department issued supplemental questionnaires to Bosun, BGY, and Hebei Jikai between September and December 2005, and received responses between September and December 2005.

On September 2, 2005, and September 8, 2005, Petitioner requested that the Department select additional mandatory respondents in this investigation. The Department informed Petitioner on September 14, 2005, that no additional companies would be selected as mandatory respondents. See Letter from Carrie Blozy, Program Manager, AD/CVD Operations, Office 9, to Daniel Pickard of Wiley Rein and Fielding, counsel for Petitioner, dated September 14, 2005.

On September 26, 2005, Petitioner made a timely request pursuant to 19 CFR § 351.205(e) for a fifty-day postponement of the preliminary determination, until December 20, 2005. On October 13, 2005, the Department published a postponement of the preliminary antidumping duty determination on diamond sawblades from the PRC. See *Notice of Postponement of Preliminary Determinations of Antidumping Duty Investigations: Diamond Sawblades and Parts Thereof from the People's Republic of China (A-570-900) and the Republic of Korea (A-580-855)*, 70 FR 59719 (October 13, 2005).

On November 21, 2005, Petitioner alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigation of diamond sawblades from the PRC. On November 22, 2005, the Department issued questionnaires requesting data for monthly exports to the United States from January 2002 through October 2005 from Bosun, BGY, and Hebei Jikai, and received responses on November 30, and December 2, 2005, from Bosun, BGY, and Hebei Jikai. See Critical Circumstances section, below.

#### **Postponement of Final Determination**

Section 735(a) of the Act provides that a final determination may be postponed until no later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise or, in the event of a negative preliminary determination, a request for such postponement is made by the Petitioners. The Department's regulations at 19 CFR 351.210(e)(2) require that requests by respondents for

postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months.

On December 19, 2005, Bosun requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days until 135 days after the publication of the preliminary determination. Additionally, Bosun requested that the Department extend the provisional measures under Section 733(d) of the Act. Accordingly, because we have made an affirmative preliminary determination and the requesting parties account for a significant proportion of the exports of the subject merchandise, pursuant to 735(a)(2) of the Act, we have postponed the final determination until no later than 135 days after the date of publication of the preliminary determination and are extending the provisional measures accordingly.

#### **Period of Investigation**

The POI is October 1, 2004, through March 31, 2005. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (May 3, 2005). See 19 CFR 351.204(b)(1).

#### **Scope of Investigation**

The products covered by this investigation are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of this investigation are semifinished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the investigation. Diamond sawblades and/or sawblade cores with a thickness of

less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the investigation. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of this investigation. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the investigation. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the investigation.

Merchandise subject to this investigation is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. The tariff classifications are provided for convenience and U.S. Customs and Border Protection purposes; however, the written description of the scope of this investigation is dispositive.

#### **Scope Comments**

As described in the preamble to our regulations (see *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*.

The Department received numerous scope comments from a variety of interested parties. As part of this process, the Department has fully summarized and addressed all of the comments received to date in a memorandum to the file. See Memorandum to Stephen J. Claeys from Thomas F. Futtner, Acting Office Director: Antidumping Investigation of Certain Diamond Sawblades and Parts Thereof from the Republic of Korea and the People's Republic of China: Consideration of Scope Exclusion and Clarification Requests, dated December 20, 2005 ("Scope Memorandum").

For this preliminary determination, the Department has determined not to revise the scope of the investigation.

#### **Selection of Respondents**

Section 777A(c)(1) of the Act directs the Department to calculate individual weighted-average dumping margins for

each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either (A) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the Department at the time of selection or (B) exporters/producers accounting for the largest volume of the merchandise under investigation that can reasonably be examined. After consideration of the complexities expected to arise in this proceeding and the resources available to it, the Department determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. Instead, we limited our examination to the four exporters accounting for the largest volume of shipments of the subject merchandise to the United States during the POI pursuant to section 777A(c)(2)(B) of the Act. Bosun, BGY, Hebei Jikai, and Saint Gobain, the exporters accounting for the largest volume of exports to the United States, account for a significant percentage of all exports of the subject merchandise from the PRC during the POI and were selected as mandatory respondents. *See* Respondent Selection Memo at 3.

#### Critical Circumstances

On November 21, 2005, Petitioner alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigations of diamond sawblades and parts thereof from the PRC. On November 30, 2005, and December 2, 2005, Bosun, BGY, and Hebei Jikai submitted information on their exports from January 2002 through October 2005 as requested by the Department. In accordance with 19 C.F.R. 351.206(c)(2)(i), because Petitioner submitted critical circumstances allegations more than 20 days before the scheduled date of the preliminary determination, the Department must issue preliminary critical circumstances determinations not later than the date of the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a

history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive." Section 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

As discussed in detail in the Critical Circumstances Memo, the Department preliminarily finds that there is a reasonable basis to believe or suspect that the importer knew or should have known that there was likely to be material injury by means of sales at LTFV of subject merchandise from the PRC exported by Bosun and the PRC-wide entity. *See* Memorandum to Stephen Claeys, Deputy Assistant Secretary, AD/CVD Operations from James C. Doyle, Director, AD/CVD Operations, Office 9: Antidumping Duty Investigation of Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances ("Critical Circumstance Memo"). The Department has found preliminary margins of more than 25% for export price sales and more than 15% for constructed export price sales for Bosun and the PRC-wide entity. *See* Critical Circumstances Memo at Attachment at II.

For the reasons set forth in the Critical Circumstances Memo, we also find that

there have been massive imports of the subject merchandise over a relatively short period for the respondents, the Separate Rate Applicants, and the PRC-wide entity. *See* Critical Circumstance Memo at Attachment I. We find that importers, exporters, or producers knew or should have known an antidumping case was pending on diamond sawblades imports from the PRC by the date of the filing of the petition in May 2005 and relied on a period of six months as the period for comparison in preliminarily determining whether imports of the subject merchandise have been massive.

Therefore, given the analysis summarized above, and described in more detail in the Critical Circumstances Memo, we preliminarily determine that critical circumstances exist for imports of diamond sawblades from Bosun and the PRC-wide entity. However, we do not find that critical circumstances exist for the Separate Rates Applicants, BGY, or Hebei Jikai.

We will make a final determination concerning critical circumstances for all producers/exporters of subject merchandise from the PRC when we make our final dumping determinations in this investigation, which will be 135 days after the date of the publication of the preliminary determination.

#### Non-Market-Economy Country

For purposes of initiation, Petitioner submitted LTFV analyses for the PRC as a non-market economy. *See Initiation Notice* 70 FR at 35627. In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. 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. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, ("TRBs") From the People's Republic of China: Preliminary Results 2001-2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *Final Results of 2001-2002 Administrative Review: TRBs from the People's Republic of China*, 68 FR 70488 (December 18, 2003). No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, we have treated the PRC as an NME country for purposes of this preliminary determination.

#### Surrogate Country

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs it to base normal value, in most circumstances, on the

NME producer's factors of production valued in a surrogate market–economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market–economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the normal value section below.

On August 16, 2005, the Department received comments from Petitioner on the appropriate surrogate country for valuing the factors of production (“FOP”). Petitioner argued that India is the most appropriate surrogate country in this investigation because India is at a comparable level of economic development with the PRC based on the Department's repeated use of India as a surrogate. Petitioner also provided evidence demonstrating that India is a significant producer of identical and comparable merchandise. Additionally, Petitioner contends that India provides publicly available information on which to base surrogate values. *See* Surrogate Country Memo for a complete description of Petitioner's surrogate country arguments.

As detailed in the Surrogate Country Memo, the Department has preliminarily selected India as the surrogate country on the basis that: (1) it is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to 773(c)(4) of the Act; and (3) we have reliable data from India that we can use to value the FOP. *See* Surrogate Country Memo. Thus, we have calculated normal value using Indian prices when available and appropriate to value the FOP of the diamond sawblade producers. We have obtained and relied upon publicly available information wherever possible. *See* Memorandum to the File from Catherine Bertrand, through Carrie Blozy, Program Manager, AD/CVD Operations, Office 9, and James C. Doyle, Director, AD/CVD Operations, Office 9: Diamond Sawblades and Parts Thereof from the People's Republic of China: Surrogate Values for the Preliminary Determination, dated December 20, 2005 (“Factor Value Memo”).

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to

value the FOP within 40 days after the date of publication of the preliminary determination.

#### Affiliation

Based on the evidence on the record in this investigation, we preliminarily find that BGY is affiliated with Advanced Technology & Materials Co., Ltd. (“AT&M”), and Yichang HXF Circular Saw Industrial Co., Ltd (“HXF”) (collectively with respondent, the “AT&M Group”) pursuant to sections 771(33)(E), (F), and (G) of the Act. For a detailed discussion of our analysis, *see* Memorandum to the File from Anya Naschak through Carrie Blozy, Program Manager, AD/CVD Operations, Office 9, to James C. Doyle, Office Director, AD/CVD Operations, Office 9: Affiliation and Treatment as a Single Entity of Beijing Gang Yan Diamond Product Company, Advanced Technology & Materials Co., Ltd., and Yichang HXF Circular Saw Industrial Co., Ltd.; Affiliation of Gang Yan Diamond Products, Inc. and Beijing Gang Yan Diamond Product Company; and Affiliation of Gang Yan Diamond Products, Inc., SANC Materials, Inc., and Cliff (Tianjin) International, Ltd., dated December 20, 2005 (“BGY Affiliation Memo”). In addition, based on the evidence presented in BGY's questionnaire responses, we preliminarily find that the AT&M Group should be treated as a single entity for the purposes of the antidumping duty investigation of diamond sawblades from the PRC. This finding is based on the determination that BGY, HXF, and AT&M are affiliated, that BGY and HXF are both producers of “identical products,” and no retooling would be necessary in order to “restructure manufacturing priorities,” and there is significant potential for manipulation of price or production between the parties. *See* 19 C.F.R. Sec. 351.401(f)(1); *see also* BGY Affiliation Memo for a discussion of the proprietary aspects of this relationship. With respect to the criterion of significant potential for manipulation of price or production, we note that the Department normally considers three criteria: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. *See* 19 C.F.R. Sec. 351.401(f)(2). Based on the information on the record of this proceeding, we

preliminarily find that BGY, HXF, and AT&M meet these criteria. Nothing in this determination conflicts with the language of section 773(c) of the Act. Accordingly, the Department should include all of the AT&M Group's sales to the first U.S. unaffiliated customer and factors of production in its margin calculation analysis. However, the Department does not currently have this information on the record of the proceeding. Therefore, the Department will request this information from the AT&M Group after the issuance of this preliminary determination. Due to the proprietary nature of the information with respect to these affiliations, this information cannot be discussed herein. *See* BGY Affiliation Memo for a further discussion of this issue.

In addition, we preliminarily find that Gang Yan Diamond Products, Inc. (“GYDP”), is affiliated with BGY, pursuant to section 771(33)(E) of the Act. In addition, the Department preliminarily finds that GYDP, SANC Materials, Inc. (“SANC”), and Cliff (Tianjin) International, Ltd. (“Cliff”) are affiliated with each other pursuant to sections 771(33)(B), (E), and (F) of the Act. Due to the proprietary nature of the information with respect to these affiliations, this information cannot be discussed herein. *See* BGY Affiliation Memo for a further discussion of this issue.

#### Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Bosun, BGY, Hebei Jikai, and the Separate Rate Applicants have provided company-specific information to demonstrate that they operate independently of *de jure* and *de facto* government control, and therefore satisfy the standards for the assignment of a separate rate. One mandatory respondent, Saint Gobain, has not responded to the Department's requests for information nor requested a separate rate in this investigation.

Six companies that filed applications that were incomplete by the sixty-day deadline have not been considered for a separate rate. The separate rate application for this investigation (*see* <http://ia.ita.doc.gov/>) explains that all applications are due sixty calendar days

after publication of the initiation notice, and the Department will not consider applications that remain incomplete by the deadline, which in this case was August 22, 2005.<sup>2</sup> The Department's separate rates application also states, "applicants must individually complete and submit this form with all the required supporting documentation by sixty calendar days after the date of publication of the initiation notice of this investigation and applies equally to NME-owned and wholly market-economy owned firms for completing the applicable provisions of the application and for submitting the required supporting documentation {and} the Department will not consider applications that remain incomplete by the deadline." See Separate Rate Application at 3. The application further instructs, "the Department only accepts applications that are completed in full and submitted with all the required supporting documentation filed timely and in proper form."<sup>3</sup> See Separate Rate Application at 4. Therefore, the six applications that were not completed in full by the sixty-day deadline have not been considered for a separate rate. See Deficient Applications Memo.

We have considered whether each PRC company that submitted a complete application is eligible for a separate rate. The Department's separate-rate test is not concerned, in general, with macroeconomic/border-type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See *Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

<sup>2</sup> This was the first business day after August 20, 2005. See section 351.303(b) of the Department's regulations.

<sup>3</sup> We note that the separate rate application requires wholly market-economy owned companies to provide information marked with an asterisk, pertaining to the firm's eligibility for separate rates consideration based on having sold subject merchandise during the POI and support the firm's claim that it is in fact wholly owned by a market-economy entity. Firms claiming to be wholly market-economy owned companies that submit applications without these required elements have also been considered incomplete. See Separate Rates Application at 3.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by *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*"). In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

#### 1. Absence of *De Jure* Control

The Department 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) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589.

The evidence provided by Bosun, BGY, Hebei Jikai, and the separate rate applicants supports a preliminary finding of *de jure* absence of governmental control based on the following: 1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; 2) the applicable legislative enactments decentralizing control of the companies; and 3) any other formal measures by the government decentralizing control of companies. See Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9, through Carrie Blozy, Program Manager, AD/CVD Operations, Office 9: Antidumping Duty Investigation of Diamond Sawblades and Parts Thereof from the People's Republic of China: Separate Rates Memorandum, dated December 20, 2005 ("*Separate Rates Memo*").

#### 2. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental 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 disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22586-87; 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). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

With respect to BGY, Petitioner argues that BGY should not be granted a separate rate because it is owned and controlled by the PRC government. Specifically, Petitioner argues in its September 2, 2005, submission that BGY is controlled by its parent company, Advanced Technology and Materials Co., Ltd. ("*AT&M*"), which in turn is owned and controlled by the PRC government. Petitioner argues that AT&M's controlling stockholder, the Central Iron & Steel Research Institute ("*CISRI*"), is wholly owned and controlled by the State-Owned Assets Supervision and Administration Commission of the State Council ("*SASAC*"), and that both BGY and AT&M have significant ties to CISRI (including common board and management between AT&M and CISRI), and thus a *de facto* control relationship between SASAC, CISRI, AT&M, and BGY exists. Petitioner has placed on the record AT&M's financial statements, which it argues further supports the conclusion that AT&M is *de facto* controlled by SASAC. See Petitioner's September 2, 2005, submission at 6-7 and Exhibit 7. Petitioner further argues that SASAC has authority to appoint and remove top management of companies that it supervises, including CISRI. Citing Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers v. United States, 318 F. Supp. 2d 1305, 1312 (CIT 2004), Petitioner argues that BGY's ultimate ownership by the PRC government is sufficient grounds to deny BGY a separate rate. Additionally, Petitioner argues that the PRC government has *de facto* control over BGY. Petitioner notes that BGY's management is appointed by its

president of the board, who is also the president of AT&M, and that these appointments were made in effect by AT&M. Further, Petitioner argues that AT&M controls BGY's export activities and income from BGY's export sales. See Petitioner's September 2, 2005, letter at 8–9. Petitioner asserts that because AT&M is controlled by the PRC government (which Petitioner argues includes SASAC and CISRI), and because AT&M controls BGY, BGY should be deemed controlled by the PRC government and ineligible for a separate rate by reason of *de facto* control.

BGY argues that if the Department were to find that BGY should not be granted a separate rate it would be a departure from past practice, as AT&M is a publicly-held company, whose majority owner, CISRI, is a corporate entity owned by "all the people," a designation consistently found by the Department to be eligible for a separate rate.

BGY argues in its Supplemental Section A response dated September 20, 2005, submission ("BGY's Supp A") that in *Silicon Carbide* the Department determined that ownership "by all the people" is not sufficient in and of itself to a determination that a company should not receive a separate rate, and that the Department has found companies owned by "all the people" were not subject to *de jure* or *de facto* government control in numerous cases. In support, BGY cites *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order*, 62 FR 6189 (February 11, 1997), *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 22183 (May 3, 2001). BGY argues that in *Notice of Preliminary Determination of Sales at Less Than Fair Value: Foundry Coke From the People's Republic of China*, 66 FR 13885 (March 8, 2001), the Department found that the companies at issue should be granted a separate rate, even though the government owned three of the companies. BGY further argues that the Department has found companies subject to export controls to be eligible for a separate rate, and that BGY is not subject to the decision in *Brake Drums and Brake Rotors from the PRC*, 62 FR 9160 (February 28, 2005), as BGY has independent management control and has made a claim of independence from government control. See BGY's Supp A submission at 3–5.

In its November 30, 2005, submission, Petitioner reiterates its arguments of September 2, 2005, and argues that BGY has provided incomplete responses to the Department to obscure the control exercised by the PRC government. Petitioner further argues that BGY has not appropriately demonstrated the *de facto* absence of government control, and that ownership by "all the people" in and of itself is not sufficient grounds on which to grant BGY a separate rate. Petitioner further argues that the Department's determinations to grant a separate rate to companies owned by "all the people" have been predicated upon these companies establishing *de facto* independence (*i.e.*, ability to set their own export prices, negotiate contracts, distribute profit, etc.), which Petitioner argues BGY has failed to do. See Petitioner's November 30, 2005, submission at 6–11. Petitioner argues that the record evidence shows that BGY is owned and controlled by SASAC, which has the authority to hire and fire management and order asset sales and acquisitions, and that SASAC is an agency of the PRC central government. Petitioner maintains that SASAC maintains full control over 200 Chinese companies, including CISRI, under the direct supervision of the State Council. Petitioner placed a number of documents on the record, which it argues demonstrates the power of SASAC over the companies under its jurisdiction. Petitioner argues that AT&M is a state-owned company and that BGY conceded that it is ultimately controlled by SASAC through CISRI and AT&M, and therefore BGY should be denied a separate rate based on both a *de jure* and *de facto* control by a state entity, SASAC.

Both BGY and Petitioner submitted additional comments on this issue on December 13, 2005, and December 14, 2005, respectively. However, the Department did not have sufficient time to analyze this information for this preliminary determination. Therefore, the Department will further analyze the additional information for the final determination.

As noted above, the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental 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 disposition of profits or financing of losses. In the instant case, BGY has certified in its response to Section A of the Department's questionnaire, dated

August 25, 2005 ("BGY's Section A"), at 9 that its export prices are neither set by nor subject to the approval of a government agency. Further, BGY has placed on the record a number of documents that demonstrate a *de facto* absence of government control, including emails between its general manager and unaffiliated U.S. customers regarding price negotiation on U.S. sales, and documents demonstrating independent negotiation of contracts for purchases of raw materials (see BGY's Supp A at Exhibit SA-7). In addition, BGY also placed on the record, in BGY's Section A and BGY's Supp A, documentation that both BGY and AT&M select their own management and boards of directors, demonstrating that BGY and AT&M have autonomy over the selection of management. See BGY Section A at Exhibits A-8 and A-9 and BGY Supp A at Exhibit SA-6. BGY has also provided financial statements and board resolution minutes regarding the distribution of profit by both BGY and AT&M. See BGY Supp A at Exhibits SA-5 and SA-8. Although Petitioner has stated that SASAC has the authority to hire and fire management and order asset sales and acquisitions at CISRI, it has provided no evidence on the record of this proceeding that SASAC had the ability to exercise such control over AT&M and BGY during the POI. Specifically, we note that the documentation on the record in this review demonstrates that BGY has independence with respect to the setting of export prices and negotiation of contracts. Therefore, the Department preliminarily finds that BGY has both *de jure* and *de facto* control over its export activities. However, the Department will carefully examine the issue of BGY's and AT&M's independence with respect to its export activities at verification. In addition, the Department intends to collect additional information with respect to these issues after the issuance of this preliminary determination.

We determine that, for Bosun, BGY, Hebei Jikai, and the Separate Rate Applicants, the evidence on the record supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing the following: 1) each exporter sets its own export prices independent of the government and without the approval of a government authority; 2) each exporter

retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; 3) each exporter has the authority to negotiate and sign contracts and other agreements; and 4) each exporter has autonomy from the government regarding the selection of management.

Therefore, the evidence placed on the record of this investigation by Bosun, BGY, Hebei Jikai, and the Separate Rate Applicants demonstrate an absence of *de jure* and *de facto* government control with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers and Silicon Carbide*. As a result, for the purposes of this preliminary determination, we have granted separate, company-specific rates to Bosun, BGY, and Hebei Jikai, and granted the Separate Rate Applicants a weight-averaged margin. For a full discussion of this issue, see Separate Rates Memo.

The Department has, as discussed above in the "Affiliation" section, determined that BGY, AT&M, and HXF, shall be treated as a single entity, the AT&M Group. With respect to the AT&M Group, as discussed above, the Department has determined that BGY has demonstrated *de jure* and *de facto* absence of government control with respect to its export activities and will preliminarily be granted a separate rate. HXF submitted a separate rate application, though the Department found HXF's application as submitted, contained substantial deficiencies and did not consider HXF for a separate rate in this investigation. See Deficient Applications Memo. As a result, the Department is not able to make a determination with respect to HXF's export activities at this time. However, because the Department has found that HXF should be properly considered part of a single entity with BGY, which has been preliminarily granted a separate rate, and because the Department has knowledge that HXF may have exported or caused to be exported subject merchandise during the POI (see HXF's Application), the Department has preliminarily determined to request additional and clarifying information with respect to HXF's *de jure* and *de facto* independence from government control with respect to its export activities, after the issuance of this preliminary determination.

#### The PRC-Wide Rate

The Department has data that indicate there were more exporters of diamond sawblades from the PRC during the POI

than those indicated in the response to our request for Q&V information. See Respondent Selection Memorandum. We issued our request for Q&V information to twenty-three known Chinese exporters of the subject merchandise and BOFT and MOFCOM,<sup>4</sup> and received twenty-five Q&V responses. We did not receive Q&V responses from thirteen of the companies to which we sent our request for Q&V information (see Respondent Selection Memo). We also received seventeen unsolicited Q&V questionnaires.<sup>5</sup> Information on the record of this investigation indicates that there are numerous producers/exporters of diamond sawblades in the PRC. Based upon our knowledge of the volume of imports of subject merchandise from the PRC (see *Initiation Notice*), information on the record indicates that the companies which responded to the Q&V questionnaire, the Separate Rates Applicants, Bosun, BGY, and Hebei Jikai do not account for all imports into the United States from the PRC. Although all exporters, including the mandatory respondent Saint Gobain, were given an opportunity to provide Q&V information, not all exporters provided a response to the Department's Q&V letter or, in the case of Saint Gobain, to the Department's antidumping duty questionnaire. Further, the Government of the PRC did not respond to the Department's questionnaire. Therefore, the Department determines preliminarily that there were PRC exporters of the subject merchandise during the POI from PRC producers/exporters that did not respond to the Department's request for information. We have treated these PRC producers/exporters as part of the PRC-wide entity because they did not qualify for a separate rate.

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (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 antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

<sup>4</sup> For a list of companies to which the Department sent its request for Q&V information, see Respondent Selection Memo at 1.

<sup>5</sup> For a list of companies from which the Department received Q&V information, see Respondent Selection Memo at Attachment 1.

Information on the record of this investigation indicates that the PRC-wide entity was non-responsive. Certain companies did not respond to our request for Q&V information and Saint Gobain, one of the largest exporters of the merchandise under investigation,<sup>6</sup> did not respond to the Department's questionnaire. As a result, pursuant to section 776(a)(2)(A) of the Act, we find that the use of facts available is appropriate to determine the PRC-wide rate. See *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 (January 31, 2003), unchanged in *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).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). See also "Statement of Administrative Action" accompanying the URAA, H.R. Rep. No. 103-316, 870 (1994) ("SAA"). We find that, because the PRC-wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

Further, section 776(b) of the Act authorizes the Department to use as adverse facts available ("AFA") information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for adverse facts available, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See *Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998). It is the

<sup>6</sup> See Respondent Selection Memo.

Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China, 65 FR 34660 (May 21, 2000) and accompanying Issues and Decision Memorandum, at "Facts Available." In the instant investigation, as AFA, we have assigned to the PRC-wide entity a margin based on information in the petition, because the margin derived from the petition is higher than the calculated margins for the selected respondents. In this case, we have applied the petition rate of 164.09 percent.

### Corroboration

Section 776(c) of the Act requires that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal.<sup>7</sup> The SAA also states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. See *id.*

The SAA also clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. As noted 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; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Final Results of Antidumping Duty Administrative Reviews and Termination in Part: 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*, 62 FR 11825 (March 13, 2005), to corroborate secondary information, the Department will, to the extent

practicable, examine the reliability and relevance of the information used.

Petitioner's methodology for calculating the export price and normal value in the petition is discussed in the initiation notice. See *Initiation Notice*, 70 FR at 35627-35628. To corroborate the AFA margin selected, we compared that margin to the margins we found for the respondents.

As discussed in the Memorandum to the File regarding the corroboration of the AFA rate, dated December 20, 2005, we found that the margin of 164.09 percent has probative value. See Memorandum to the File through Carrie Blozy, Program Manager, AD/CVD Operations, Office 9: Corroboration of the PRC-Wide Facts Available Rate for the Preliminary Determination in the Antidumping Duty Investigation of Diamond Sawblades and parts thereof from the People's Republic of China, dated December 20, 2005, ("Corroboration Memo"). Accordingly, we find that the rate of 164.09 percent is corroborated within the meaning of section 776(c) of the Act.

Consequently, we are applying 164.09 as the single antidumping rate to the PRC-wide entity, including Saint Gobain and the companies that submitted incomplete separate rate applications. The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from Bosun, BGY, Hebei Jikai, and the Separate Rate Applicants.

The Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate AFA rate for the PRC-wide entity. See *Preliminary Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 67 FR 79049, 79054 (December 27, 2002), unchanged in *Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 68 FR 27530 (May 20, 2003).

### Margin for the Separate Rate Applicants

The Department received timely and complete separate rates applications from the Separate Rates Applicants, who are all exporters of diamond sawblades from the PRC, which were not selected as mandatory respondents in this investigation. Through the evidence in their applications, these companies have demonstrated their eligibility for a separate rate, as discussed above in the "Separate Rates" section and in the Separate Rates Memo. Consistent with the Department's practice, as the separate rate, we have established a weight-averaged margin

for the Separate Rates Applicants based on the rates we calculated for Bosun and Hebei Jikai, the companies for which the Department calculated an antidumping duty margin for this preliminary determination, excluding any rates that are zero, *de minimis*, or based entirely on AFA. Companies receiving this rate are identified by name in the "Suspension of Liquidation" section of this notice.

### Date of Sale

Section 351.401(i) of the Department's regulations state that, "in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. See 19 CFR 351.401(i); See also *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1093 (CIT 2001) ("*Allied Tube*"). The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms. In order to simplify the determination of date of sale for both the respondent and the Department and in accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, unless satisfactory evidence is presented that the exporter or producer establishes the material terms of sale on some other date. In other words, the date of the invoice is the presumptive date of sale, although this presumption may be overcome. For instance, in *Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan*, 61 FR 14067 (March 29, 1996), the Department used the date of the purchase order as the date of sale because the terms of sale were established at that point.

After examining the questionnaire responses and the sales documentation that Bosun, BGY, and Hebei Jikai placed on the record, we preliminarily determine that invoice date is the most appropriate date of sale for Bosun, BGY, and Hebei Jikai. BGY and Hebei Jikai do not dispute that invoice date is the appropriate date of sale, and the information on the record supports this contention. Bosun, however, claims that the purchase order date is the most appropriate date of sale. Bosun has

<sup>7</sup> Secondary information is described in the SAA as "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise." See SAA at 870.

requested that the Department use the purchase order date, because it argues that the terms of sale do not change after the purchase order is issued. The Department finds that based on the information on the record, Bosun has not rebutted the presumption that invoice date is the appropriate date of sale. See *Preliminary Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 67 FR 79054 (December 27, 2005). This conclusion is based on the following four reasons.

First, in its Supplemental Section C Response dated November 1, 2005 ("Bosun Supp C"), Bosun states "in cases in which any of the sales terms change after the initial date of the purchase order, the date of the purchase order does not change to the date of the change in the sales term." See Bosun Supp C at 15. The purchase order date therefore does not reflect the date upon which the material terms of sale are ultimately established. Second, Bosun also notes "during the POI, there were a few instances" in which the per-unit purchase price changed after the purchase order was issued by the U.S. customer. *Ibid.* at 15–16. Third, Bosun has explained that for some purchases by some customers, an actual purchase order is not actually issued. There is consequently no documentary evidence from the U.S. customer, other than the invoice date, to indicate the date upon which the terms of sale were ultimately established. See Bosun Supp C at 10.

Finally, Bosun has also explained, "the purchase order date is the date that the U.S. customers' purchase {orders were} entered into Bosun's computerized sales order tracking system." See Bosun's Section C Response dated September 20, 2005 ("Bosun C") at 1. While Bosun has also explained that the terms of sale are typically entered into its computerized sales order tracking system on the day that the purchase order is received, there is no evidence that the receipt date and the entry date are the same. Moreover, Bosun has also noted that in some instances, the date can differ by at least one business day.

The Department therefore preliminarily finds that there were changes in the essential terms of sale after the issuance of the purchase order. Further, we also find that there were instances where Bosun did not have actual purchase orders for certain customers. See Bosun Supplemental Section C Response dated November 1, 2005 at 10.

In *Allied Tube* the Court of International Trade ("CIT") held that the existence of one sale beyond

contractual tolerance levels "suggested sufficient possibility of changes in material terms of sale so as to render Commerce's date of sale determination supported by substantial evidence." *Allied Tube* 132 F. Supp. 2d at 1092. Further, the CIT found that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'" See *id.* Therefore, the Department finds that Bosun has not rebutted the regulatory presumption that the more appropriate date of sale for Bosun is the sales invoice date.

#### Fair Value Comparisons

To determine whether sales of diamond sawblades to the United States by Bosun, BGY, and Hebei Jikai were made at less than fair value, we compared export price ("EP") or constructed export price ("CEP") to normal value ("NV"), as described in the "U.S. Price," and "Normal Value" sections of this notice. We compared NV to weighted-average EPs and CEPs in accordance with section 777A(d)(1) of the Act.

As noted above, with respect to BGY, the Department has, as discussed above in the "Affiliation" section, determined that BGY, AT&M, and HXF shall be treated as a single entity, the AT&M Group. The Department has received and analyzed information from BGY with respect to its U.S. sales and FOPs. The Department has also received and analyzed FOPs for BGY's affiliated core supplier. Based on HXF's Application, the Department has knowledge that HXF may also have acted as the exporter on sales of subject merchandise to the United States. Because HXF is part of the single entity, the AT&M Group, any exports to the United States that HXF may have exported, or caused to be exported, are subject merchandise. Therefore, the Department will request that HXF provide U.S. sales information following the issuance of this preliminary determination.

#### U.S. Price

##### Export Price

For Hebei Jikai, and certain sales by BGY, we based U.S. price on EP in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and CEP was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the

first unaffiliated customer in the United States. Where applicable, we deducted foreign movement expenses, foreign brokerage and handling expenses, and international freight expenses from the starting price (gross unit price), in accordance with section 772(c) of the Act. In addition, for certain sales by BGY where BGY demonstrated that its U.S. customer reimbursed it for portions of airfreight expenses, the Department added these revenue amounts to U.S. price. Further, the Department found that BGY incorrectly reported its movement expenses on certain EP sales. For those sales where BGY incorrectly reported in its database movement expenses, the Department adjusted the reported amounts to comport with BGY's narrative explanation.

Where foreign movement, international ocean freight, or international airfreight, was provided by PRC service providers or paid for in Renminbi ("RMB"), we valued these services using surrogate values (see "Factors of Production" section below for further discussion).

#### Constructed Export Price

BGY states in BGY's Section A at 13 and in BGY's Supp A at 1 that it does not act as the exporter of record on U.S. sales transactions through its affiliated company, GYDP, and that on these sales Cliff acts as the exporter of record. BGY also states that Cliff has no role in the transaction other than as an export facilitator for GYDP and does not make sales, negotiate terms, or have any commercial role in the sales of subject merchandise. See BGY's Supp A at 1.

As an initial matter, the Department is concerned with information placed on the record by BGY in its supplemental questionnaire dated December 5, 2005, which indicates that, contrary to BGY's statements in its prior submissions, GYDP issues purchase orders to Cliff, rather than to BGY, and BGY issues invoices and is paid by Cliff, which in turn issues invoices and receives payment from GYDP. However, because BGY has placed on the record documentation indicating that BGY negotiates the practical terms of sale with GYDP (see BGY's Supp A at Exhibit SA-7), the Department has preliminarily finds that BGY sold merchandise to its affiliated company GYDP, and these sales are classifiable as CEP sales. Therefore, for these sales, we calculated CEP in accordance with section 772(b) of the Act, because we preliminarily find these sales were made on behalf of the PRC-based company by its U.S. affiliate to unaffiliated purchasers. However, the Department will closely examine this

issue at verification to determine if BGY was in fact acting as the seller of merchandise sold by GYDP during the POI, or if in fact these sales should be more properly classified as sales made by Cliff to GYDP.

The Department notes that Cliff has not applied for a separate rate. In the Department's September 6, 2005, Supplemental Section A Questionnaire ("DOC Supp A"), the Department noted that "the Department has determined that it will assign specific exporter-producer "combination rates" to both mandatory respondents and non-investigated NME exporters that meet the Department's criteria for separate rate status in investigations." See Policy Bulletin 5.1 (<http://ia.ita.doc.gov/>). The Department's separate rate application specifically states, "Each applicant must submit a separate individual application regardless of any common ownership or affiliation between firms and regardless of foreign ownership." See Separate Rate Application for Diamond Sawblades and Parts Thereof from the People's Republic of China (<http://ia.ita.doc.gov/>). Cliff has not placed on the record any documentation that would cause the Department to find that it qualifies for a separate rate. Therefore, the Department preliminarily finds that Cliff is appropriately considered part of the PRC-wide entity, and finds that exports of subject merchandise made by Cliff should be considered as made by the PRC-wide entity, and will apply the PRC-wide rate for merchandise exported by Cliff. See Separate Rates section above for a discussion of the PRC-wide entity and the PRC-wide rate.

For sales by Bosun, we calculated CEP in accordance with section 772(b) of the Act, because certain sales were made on behalf of the PRC-based company by its U.S. affiliate to unaffiliated purchasers.

For BGY's and Bosun's sales classified as CEP sales, we based CEP on packed, delivered or ex-warehouse prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, and U.S. movement expenses, in accordance with section 772(c)(2)(A) of the Act.

Bosun reported that it grants early payment, quantity, and other discounts on a case-by-case basis. Accordingly, the Department has subtracted these discounts from the gross unit price, where appropriate.

BGY reported that it is reimbursed on certain terms of sale by its customers for the full amount of inland freight expenses from the warehouse to the

customer, and has reported no such freight for these observations due to the burden associated with allocating these expenses. Therefore, for this preliminary determination the Department has not assessed this freight expense for those observations. Further, the Department finds that BGY incorrectly reported its movement expenses on certain CEP sales, based on the reported terms of sale. For those sales where BGY incorrectly reported in its database movement expenses, the Department adjusted the reported amounts to comport with BGY's narrative explanation of the terms of sale. BGY reported that it grants billing adjustments and other discounts on a case-by-case basis. Accordingly, the Department has subtracted these discounts from the gross unit price, where appropriate.

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States. For Bosun, we deducted commissions, inventory carrying costs, credit expenses, warranty expenses, and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act. For BGY we deducted commissions, inventory carrying costs, credit expenses, interest revenue, warranty expenses, and indirect selling expenses, and made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by PRC service providers or paid for in Renminbi, we valued these services using surrogate values (see "Factors of Production" section below for further discussion). For those expenses that were provided by a market-economy provider and paid for in market-economy currency, we used the reported expense.

Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for each company, see Memorandum to the File from John D. A. LaRose, Case Analyst: Program Analysis for the Final Results of Antidumping Duty Investigation of Diamond Sawblades and Parts Thereof from the People's Republic of China: Bosun Tools Group Co., Ltd. ("Bosun"), dated December 20, 2005 ("Bosun Analysis Memo"); Memorandum to the File from Anya Naschak, Senior Case Analyst: Program Analysis for the Final Results of Antidumping Duty Investigation of Diamond Sawblades and Parts Thereof from the People's

Republic of China: Beijing Gang Yan Diamond Product Company ("BGY"), dated December 20, 2005 ("BGY Analysis Memo"); and Memorandum to The File from Candice Kenney Weck, Case Analyst: Program Analysis for the Final Results of Antidumping Duty Investigation of Diamond Sawblades and Parts Thereof from the People's Republic of China: Hebei Jikai Industrial Group Co. Ltd. ("Hebei Jikai"), dated December 20, 2005 ("Hebei Jikai Analysis Memo").

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOP because the presence of government controls on various aspects of non-market economies renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

#### Factor Methodology

Respondents Bosun and BGY reported that they purchased a small quantity of cores from PRC suppliers that were used in the production of the finished diamond sawblades exported to the United States. In their original questionnaire responses, where the core was purchased, Bosun and BGY reported the usage of the intermediate input. In our supplemental questionnaires, we requested that Bosun and BGY report their suppliers' inputs into producing the purchased cores. Bosun provided this information for certain of its core suppliers and BGY provided the core factors from its single core supplier.<sup>8</sup> Bosun has argued that the Department should rely on the suppliers' cores factors whereas BGY has argued that it is inappropriate for the Department to use such data as a matter of law and practice.

Respondents have reported that the purchased cores are utilized in the production of the finished diamond sawblades (*i.e.*, not sold as is to the United States). Therefore, in this instance we find that the purchased core is properly treated as an input into the finished product rather than as subject merchandise itself. The Department's normal practice is to apply a surrogate

<sup>8</sup> Other of Bosun's core suppliers are affiliated with Bosun through stock ownership of Bosun's owners. For information on BGY's core supplier, see BGY Affiliation Memo.

value to a purchased factor unless it finds that the supplier is the same entity as the respondent. In such a case, the Department will rely on the factors of the supplier.<sup>9</sup>

Bosun has reported it is affiliated with certain of its core suppliers. However, the percentage of cores purchased from the affiliated supplier(s) to total cores consumed by Bosun is insignificant. As recently articulated in an administrative review of *Polyvinyl Alcohol*, one of the Department's exceptions to relying on the reported factors of production for an input is where the percentage of the self-produced input accounts for a small or insignificant share of the total output and the Department recognizes that the increased accuracy in its overall calculations that would result from valuing (separately) each of those factors may be so small so as to not justify the burden of doing so. Accordingly, in such a case the Department will value the intermediate input. See *Polyvinyl Alcohol*, 70 FR at 67438 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China*, 68 FR 47358 (August 11, 2003)). We find that this exception also applies where the level of purchases is small or insignificant, as in this case where the level of purchases from Bosun's affiliated supplier(s) is insignificant when compared to the additional burden on the Department and parties associated with analyzing the factors of production from this supplier, and where limited accuracy is gained. Therefore, we find that it is appropriate to value the purchased core from affiliated supplier(s) as an intermediate input. Accordingly, for purposes of this preliminary determination we are valuing all of Bosun's purchased cores using a surrogate value.

With respect to BGY, the Department is unable to discuss issues related to its core supplier in this notice due to the proprietary nature of this information. Therefore, for a discussion of this issue, see BGY Analysis Memo.

During the POI, Bosun did not have production of all types of merchandise for which it had POI sales. Consequently, the FOP databases filed by Bosun that cover the six-month POI do not contain factors of production for a number of CONNUMs sold by Bosun during the POI. Bosun, therefore, also

filed FOP databases covering a fifteen-month period inclusive of the POI. These fifteen-month FOP databases provide factors of production data for the vast majority of the CONNUMs sold by Bosun during the POI. For the valuation of the factors of production, the Department has therefore determined to use the fifteen-month FOP database provided by Bosun. For the CONNUMs for which FOPs are not included in the fifteen-month FOP database, the Department has assigned FOPs for similar subject merchandise that was produced by Bosun in the fifteen-month FOP, as neutral facts available.<sup>10</sup> In assigning FOPs, the Department relied on the first three product characteristics of the CONNUM (physical form of the product as sold, the diameter of the finished sawblade, and the type of attachment used to attach segments to the core) to identify unique product groupings. The Department determined that the first three product groupings were most appropriate because 1) the first characteristics are the most important, and 2) three characteristics are the greatest number of distinct characteristics which would provide FOPs for 100 percent of the CONNUMs which had missing FOPs. The Department then calculated a weighted-average of the FOPs for each product grouping and assigned the product-group weighted-average FOPs to CONNUMs where no FOPs were reported by Bosun. See Bosun Analysis Memo.

#### Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by respondents for the POI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997).

For this preliminary determination, in accordance with the Department's

practice, we used data from the Indian Import Statistics in order to calculate surrogate values for the mandatory respondents' material inputs. In selecting the best available information for valuing FOP in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive. See e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). The record shows that data in the Indian Import Statistics represents import data that is contemporaneous with the POI, product-specific, and tax-exclusive. Where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index ("WPI") as published in the *International Financial Statistics* of the International Monetary Fund.

Furthermore, with regard to the Indian import-based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. See *Amended Final Determination of Sales at Less than Fair Value: Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 11670 (March 15, 2002); see also *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) ("CTVs from the PRC"). We are also directed by the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized. See

<sup>9</sup> See e.g., *Certain Preserved Mushrooms From the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 70 FR 54361 (September 14, 2005) and accompanying Issues and Decision Memorandum at Comment 9 (where the Department determined to treat the Jiufa Group as a single entity).

<sup>10</sup> See section 776(a)(1) of the Act.

H.R. Rep. 100–576 at 590 (1988). Rather, Congress directed the Department to base its decision on information that is available to it at the time it makes its determination. Therefore, we have not used prices from these countries in calculating the Indian import–based surrogate values.

Certain of BGY's inputs into the production of the merchandise under investigation were purchased from market economy suppliers and paid for in market economy currencies. For two inputs all purchases were made from a market economy supplier and paid in a market economy currency, and the Department has therefore used the weight–averaged POI price experienced by BGY for these inputs. We used the market economy prices experienced by BGY when the inputs were obtained from a market economy, paid for in a market economy currency, and were a significant portion of the total purchases of that input.

The Department used the Indian Import Statistics to value the raw material and packing material inputs that Bosun, BGY, and Hebei Jikai used to produce the subject merchandise during the POI, except where listed below. For a detailed description of all surrogate values used for respondents, see Factor Value Memo.

To value electricity, the Department used rates from *Key World Energy Statistics 2003*, published by the International Energy Agency. Because these data were not contemporaneous to the POI, we adjusted for inflation using WPI. See Factor Value Memo.

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression–based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in November 2005, <http://ia.ita.doc.gov/wages/index.html>. The source of these wage–rate data on the Import Administration's web site is the Yearbook of Labour Statistics 2002, ILO (Geneva: 2002), Chapter 5B: Wages in Manufacturing. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent. See Factor Value Memo.

The Department valued water using data from the Maharashtra Industrial Development Corporation ([www.midcindia.org](http://www.midcindia.org)) since it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003: 193 for the

“inside industrial areas” usage category and 193 for the “outside industrial areas” usage category. Because the value was not contemporaneous with the POI, we adjusted the rate for inflation. See Factor Value Memo.

We used Indian transport information in order to value the freight–in cost of the raw materials. The Department determined the best available information for valuing truck freight to be from [www.infreight.com](http://www.infreight.com). This source provides daily rates from six major points of origin to five destinations in India during the POI. The Department obtained a price quote on the first day of each month of the POI from each point of origin to each destination and averaged the data accordingly. See Factor Value Memo. To value rail freight, the Department used an average of rail freight prices based on the publicly available freight rates reported by the official website of the Indian Ministry of Railways at

[www.indianrailways.gov.in/railway/freightrates/freight\\_charges.htm](http://www.indianrailways.gov.in/railway/freightrates/freight_charges.htm). The Department used an average of the price–per-kilogram rates for classes 190 and 200 based on the freight distances between cities. As the prices were denoted in quintals, the Department divided the price by 100 to derive a value in Rupees per kilogram.

Consistent with the calculation of inland truck freight, the Department used the same freight distances used in the calculation of inland truck freight, as reported by [www.infreight.com](http://www.infreight.com) to derive a value in Rupees per kilogram per kilometer. See Factor Value Memo.

The Department used two sources to calculate a surrogate value for domestic brokerage expenses. The Department averaged December 2003–November 2004 data contained in Essar Steel's February 28, 2005, public version response submitted in the AD administrative review of Hot–Rolled Carbon Steel Flat Products from India with October 2002–September 2003 data contained in Pidilite Industries' March 9, 2004, public version response submitted in the AD investigation of Carbazole Violet Pigment 23 from India (see *Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India*, 69 FR 67306 (November 17, 2004)). The brokerage expense data reported by Essar Steel and Pidilite Industries in their public versions is ranged data. The Department first derived an average per–unit amount from each source. Then the Department adjusted each average rate for inflation. Finally, the Department averaged the two per–unit amounts to derive an

overall average rate for the POI. See Factor Value Memo.

To value marine insurance, the Department obtained a price quote from <http://www.rjgconsultants.com/insurance.html>, a market–economy provider of marine insurance. See Factor Value Memo. To value international seafreight, the Department obtained price quotes from <http://www.maersksealand.com/HomePage/appmanager/>, a market–economy provider of international freight services. See Factor Value Memo. To value international airfreight, the Department obtained price quotes from Hong Kong to the United States from DHL. See Factor Value Memo. To value factory overhead, selling, general, and administrative expenses, and profit, we used the Reserve Bank of India publication *Reserve Bank of India Bulletin*, August 2005. See Factor Value Memo for a full discussion of the calculation of the ratios from these data.

#### Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

#### Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

#### Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. See *Initiation Notice*, 70 FR 35625, 35629. This change in practice is described in *Policy Bulletin 05.1*, available at <http://ia.ita.doc.gov/>. The *Policy Bulletin 05.1*, states:

“[w]hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non–investigated firms receiving the

weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one

or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during

the period of investigation." See *Policy Bulletin 05.1*, at page 6.

**Preliminary Determination**

The weighted-average dumping margins are as follows:

**DIAMOND SAWBLADES FROM THE PRC - WEIGHTED-AVERAGE DUMPING MARGINS**

Exporter	Producer	Weighted-Average Deposit Rate
Beijing Gang Yan Diamond Products Company	Beijing Gang Yan Diamond Products Company	0.11 %
Bosun Tools Group Co., Ltd.	Bosun Tools Group Co., Ltd.	16.34%
Hebei Jikai Industrial Group Co., Ltd.	Hebei Jikai Industrial Group Co., Ltd.	10.07%
Danyang NYCL Tools Manufacturing Co., Ltd.	Danyang NYCL Tools Manufacturing Co., Ltd.	14.96%
Danyang Youhe Manufacturing Co. Ltd.	Danyang Youhe Manufacturing Co. Ltd.	14.96%
Fujian Quanzhou Wanlong Stone Co., Ltd.	Fujian Quanzhou Wanlong Stone Co., Ltd.	14.96%
Guilin Tebon Superhard Material Co., Ltd.	Guilin Tebon Superhard Material Co., Ltd.	14.96%
Huzhou Gu's Import & Export Co., Ltd.	Danyang Aurui Hardware Products Co., Ltd.	14.96%
Jiangsu Fengtai Diamond Tool Manufacture Co. Ltd.	Jiangsu Fengtai Diamond Tool Manufacture Co. Ltd.	14.96%
Jiangyin LIKN Industry Co., Ltd.	Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd.	14.96%
Jiangyin LIKN Industry Co., Ltd.	Wuhan Wanbang Laser Diamond Tools Co.	14.96%
Quanzhou Zhongzhi Diamond Tool Co., Ltd.	Quanzhou Zhongzhi Diamond Tool Co., Ltd.	14.96%
Rizhao Hein Saw Co., Ltd.	Rizhao Hein Saw Co., Ltd.	14.96%
Shanghai Deda Industry & Trading Co. Ltd.	Hua Da Superabrasive Tools Technology Co., Ltd.	14.96%
Sichuan Huili Tools Co.	Chengdu Huifeng Diamond Tools Co., Ltd.	14.96%
Sichuan Huili Tools Co.	Sichuan Huili Tools Co.	14.96%
Weihai Xiangguang Mechanical Industrial Co., Ltd.	Weihai Xiangguang Mechanical Industrial Co., Ltd.	14.96%
Wuhan Wanbang Laser Diamond Tools Company, Ltd.	Wuhan Wanbang Laser Diamond Tools Company, Ltd.	14.96%
Xiamen ZL Diamond Tools Co., Ltd.	Xiamen ZL Diamond Tools Co., Ltd.	14.96%
Zhenjiang Inter-	China Import & Export Co., Ltd. Danyang Weiwang Tools Manufacturing Co., Ltd.	14.96%
Zhejiang Tea Import & Export Co., Ltd.	Danyang Dida Diamond Tools Manufacturing Co., Ltd.	14.96%
Zhejiang Tea Import & Export Co., Ltd.	Danyang Tsunda Diamond Tools Co., Ltd.	14.96%
Zhejiang Tea Import & Export Co., Ltd.	Wuxi Lianhua Superhard Material Tools Co., Ltd.	14.96%
Zhejiang Wanli Tools Group Co., Ltd.	Zhejiang Wanli Super-hard Materials Co., Ltd.	14.96%
PRC-Wide Rate		164.09%

**Disclosure**

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

**Suspension of Liquidation**

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of diamond sawblades from the PRC from Bosun and the PRC-wide entity that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication in the **Federal Register** of our preliminary determination of sales at LTFV. The Department does not require any cash deposit or posting of a bond for this preliminary determination for BGY. Accordingly, we will not direct CBP to suspend liquidation of any entries of diamond sawblades from the PRC that are exported by BGY and entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will also instruct CBP to suspend liquidation of entries of

diamond sawblades that are entered, or withdrawn from warehouse, for consumption that are exported by the Separate Rates Applicants and Hebei Jikai, on or after the date of publication of this preliminary determination in the **Federal Register**. CBP shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, where applicable, as published in the **Federal Register**. This suspension of liquidation will remain in effect until further notice.

**International Trade Commission Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at less than fair value. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of diamond sawblades, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

**Public Comment**

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date of the final verification report is issued in this proceeding and rebuttal briefs limited to issues raised in case briefs no later than five days after the deadline date for case briefs. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. See 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: December 20, 2005.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 05-24627 Filed 12-28-05; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-580-855]

#### **Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Preliminary Critical Circumstances Determination: Diamond Sawblades and Parts Thereof from the Republic of Korea**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** We preliminarily determine that diamond sawblades and parts thereof (DSB) from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). In addition, we preliminarily determine that there is not a reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise exported from Korea.

Interested parties are invited to comment on this preliminary determination. Because we are postponing the final determination, we will make our final determination not

later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

**EFFECTIVE DATE:** December 29, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mark Manning or Maisha Cryor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5253 or (202) 482-5831, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Preliminary Determination**

We preliminarily determine that DSB from Korea are being, or are likely to be, sold in the United States at LTFV, as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice. In addition, we preliminarily determine that there is not a reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise exported from Korea. The critical circumstances analysis for the preliminary determination is discussed below under the section "Critical Circumstances."

##### **Background**

Since the initiation of this investigation (*see Initiation of Antidumping Duty Investigations: Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea*, 70 FR 35625 (June 21, 2005) (*Initiation Notice*)), the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage of the scope of the investigation. *See Initiation Notice*, at 70 FR 35626. On September 16, 2005, and October 6, 2005, Ehwa Diamond Industrial Co., Ltd. (Ehwa) submitted comments on product coverage. The petitioner<sup>1</sup> submitted rebuttal comments in September 2005, October 2005, and November 2005. On November 23, 2005, Diamax Industries Inc. (Diamax) also submitted comments on product coverage. *See* "Scope Comments" section below.

On June 23, 2005, and June 29, 2005, respectively, the Department requested quantity and value (Q&V) information from a total of thirteen producers of DSB in Korea. The Korean DSB producers from which Q&V information was requested were identified in the Petition, as well as other sources. *See* Memorandum to the File, from Maisha

Cryor, Import Compliance Specialist, through Mark Manning, Acting Program Manager, Regarding "Investigation of Diamond Sawblades and Parts Thereof from the Republic of Korea; Release of Mini-section A Questionnaires," dated June 23, 2005. On June 30, 2005, and July 6, 2005, respectively, the Department received timely Q&V responses from seven Korean producers/exporters of DSB. *See* Memorandum to the File, from Maisha Cryor, Import Compliance Specialist, through Mark Manning, Acting Program Manager, Regarding "Investigation of Diamond Sawblades and Parts Thereof from the Republic of Korea; Mini-section A Questionnaire Response Status," dated July 15, 2005.

On July 14, 2005, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of DSB imported from Korea that are alleged to be sold in the United States at LTFV. *See* ITC Investigation No. 731-TA-1093.

On July 14, 2005, the Department issued its proposed draft product characteristics and model match criteria to the seven Korean producers/exporters of DSB who submitted timely Q&V information. *See* "Letter to All Interested Parties, Regarding Product Characteristics and Model Match Criteria for the Antidumping Investigation of Diamond Sawblades and Parts Thereof from the Republic of Korea," dated July 14, 2005. After setting aside a period of time for all interested parties to provide comments on the proposed product characteristics and model match criteria, the Department received comments from Ehwa, Shinhan Diamond Industrial Co., Ltd. (Shinhan) and the petitioner on July 22, 2005. On July 29, 2005, Ehwa, Shinhan and the petitioner submitted rebuttal comments.

On July 20, 2005, the Department selected Ehwa, Shinhan and BK Diamond Products (BK Diamond) (collectively, the respondents), as mandatory respondents in this investigation. *See* Memorandum from Maisha Cryor, Analyst, to Holly A. Kuga, Senior Office Director, "Selection of Respondents for the Antidumping Duty Investigation of Diamond Sawblades and Parts Thereof from the Republic of Korea," dated July 20, 2005 (Respondent Selection Memorandum), on file in the Central Records Unit (CRU), Room B-099 of the main Commerce building.

On July 20, 2005, the Department issued sections A-E of its antidumping

<sup>1</sup> The petitioner in this investigation is the Diamond Sawblade Manufacturers' Coalition.