

4 May 2018

Mr Tim King
Investigations 3
Anti-Dumping Commission
Level 35
55 Collins Street
Melbourne Victoria 3000

Email: investigations3@adcommission.gov.au

Public File

Dear Mr King

Investigation No. 442 – Aluminium Extrusions exported from P R China and Thailand – Guangdong Zhongya Aluminium Co., Ltd – Associated parties

I. Background

Capral Limited (“Capral”) would like to draw to the attention of the Anti-Dumping Commission (“the Commission”) the determinations made by the U.S. Department of Commerce (“USDOC”) concerning the Chinese exporter of aluminium extrusions Guangdong Zhongya Aluminium Co., Ltd (“Zhongya”), and its affiliated companies the Guang Ya Group of companies (Guangya Aluminium Industrial Co., Ltd and Foshan Guangcheng Aluminium Co., Ltd) and Foshan Nanhai Xinya (“Xinya”).

The USDOC confirmed in an Administrative Review Inquiry in 2013 (A-570-967) that Zhongya was related to its affiliated companies Guang Ya Group and Xinya and, for the purposes of the review, collapsed the companies into a single entity.

For the purposes of this investigation into exports of aluminium extrusions to Australia by Zhongya, Capral is requesting the Commission to be satisfied that in the event dumping margins greater than negligible levels are determined for Zhongya that any measures imposed are not circumvented by Zhongya and its associated companies.

II. Zhongya affiliations

Capral notes that Zhongya is 75 per cent owned by Karlton Aluminium Company Limited (“Karlton”) and 25 per cent by Zhongya Shaped Aluminium (HK) Holding Limited, both Hong Kong-based companies. The USDOC determined that the parent has a shareholder Mr Kwong Wing Wah that has siblings that own shares in Guang Ya Group companies. The USDOC also identified the parent shareholder’s former family relationship with the general manager of Xinya¹.

The identified affiliations raise the potential for entities associated with Zhongya to export aluminium extrusions to Australia at a rate (that may be deemed as beneficial for Zhongya’s affiliated) or for Zhongya to export at lower rates of interim dumping duties via affiliates where a lower rate is determined.

¹ Guangdong Zhongya Aluminium Co Limited Questionnaire Response to USDOC dated 5 March 2013.

The USDOC's decision on affiliations and related parties affecting the Zhongya affiliated companies is contained in US DOC Memorandum of 18 June 2014 (See attached at Non-Confidential Attachment 1). Capral acknowledges that the related party provisions to be considered by the Commission (as contained in sub-section 269TAA(4) of the *Customs Act* as defined for arms-length sales) are not the same as those which appear in the U.S. Regulations. However, it should be recognised that the USDOC-determined affiliations exist and the Commission must consider whether the affiliated companies (i.e. the Guang Ya Group and Xinya) may operate as potential lower-margin exporters of aluminium extrusions to Australia should measures be applied to exports to Australia by Zhongya.

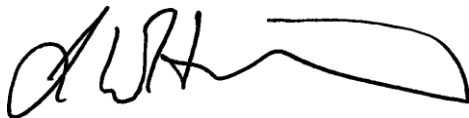
III. Circumvention activities

The Commission is well apprised on the circumvention activities that have followed the imposition of anti-dumping and countervailing measures to Chinese exports of aluminium extrusions since 2010. Capral is seeking to ensure that anti-dumping measures imposed in this investigation into exports by Guangdong Jiangsheng Aluminium Co., Ltd ("Jiangsheng") and Zhongya are not circumvented by the supply of goods via affiliated companies in China.

Exports to Australia of the goods by Jiangsheng and Zhongya account for a significant proportion of total Chinese aluminium extrusions exported to Australia. The exports are by the manufacturers themselves, or via affiliated parties. The USDOC administrative review highlights the affiliated companies linked to Zhongya and it is, in Capral's view, important for the affiliations to be highlighted with the Commission for the purposes of the current investigation.

If you have any questions concerning this submission, please do not hesitate to contact me on (02) 8222 0113 or Capral's representative Mr John O'Connor on (07) 3342 1921.

Yours sincerely



Luke Hawkins
General Manager – Supply and Industrial Solutions



A-570-967

POR: 5/1/2012-4/30/2013

~~Business Proprietary Document~~

E&C AD/CVD OIII: PS

PUBLIC VERSION

DATE: June 18, 2014

MEMORANDUM TO: Melissa G. Skinner
Director, Office III
Antidumping and Countervailing Duty Operations

THROUGH: Erin Begnal *ECB*
Program Manager, Office III
Antidumping and Countervailing Duty Operations

FROM: Paul Stolz *ps*
Senior International Trade Compliance Analyst, Office III
Antidumping and Countervailing Duty Operations

SUBJECT 2012/2013 Administrative Review of Aluminum Extrusions from the People's Republic of China: Preliminary Determination Regarding Affiliation and Collapsing of Guang Ya Aluminum Industrial Co., Ltd., Foshan Guangcheng Aluminum Co., Ltd., Kong Ah International Co., Ltd., Guang Ya Aluminum Industries (Hong Kong) Ltd., Guangdong Zhongya Aluminum Co., Ltd., Zhongya Shaped Aluminum (HK) Holding Ltd., Karlton Aluminum Co., Ltd., and Foshan Nanhai Xinya Aluminum & Stainless Steel Product Co., Ltd.

I. SUMMARY

We preliminarily find that Guang Ya Aluminum Industrial Co., Ltd. ("Guang Ya"), Foshan Guangcheng Aluminum Co., Ltd. ("Guangcheng"), Kong Ah International Co., Ltd. ("Kong Ah"), and Guang Ya Aluminum Industries (Hong Kong) Ltd. ("Guang Ya HK") (collectively "Guang Ya Group") are affiliated and should be treated as a single entity for purposes of the Department of Commerce's ("Department") analysis in the above referenced administrative review. In addition, we preliminarily find that Guangdong Zhongya Aluminum Co., Ltd. ("Zhongya Co"), Zhongya Shaped Aluminum (HK) Holding Ltd. ("Shaped Aluminum"), and Karlton Aluminum Co., Ltd. ("Karlton") (collectively "Zhongya") are affiliated and should also be treated as a single entity for purposes of this administrative review. Furthermore, we preliminarily find that the Guang Ya Group, Zhongya, and Foshan Nanhai Xinya Aluminum & Stainless Steel Product Co., Ltd. ("Xinya") (collectively "Guang Ya Group/Zhongya/Xinya") are all affiliated with each other and should be treated as a single entity for the purposes of the Department's analysis in this administrative review.

II. BACKGROUND

In the final determination of the investigation in this proceeding, and in the first administrative review, the Department found that Guang Ya, Guangcheng, Kong Ah and Guang Ya HK were affiliated and should be treated as a single entity (known as the Guang Ya Group in the investigation) for the purposes of the Department's analysis in the investigation.¹

The Department also found that Zhongya Co.,² Shaped Aluminum, and Karlton ("Zhongya") were affiliated (known as New Zhongya in the investigation) for purposes of the investigation and the first administrative review.³ Furthermore, the Department found that the Guang Ya Group, Zhongya, and Xinya were all affiliated through common ownership by members of the Kwong⁴ family, and were treated as a single entity for the purposes of the Department's analysis in the investigation and the first administrative review.⁵

The Department explained in the initiation notice for this review that it would not conduct collapsing analyses at the respondent selection phase of this review and would not collapse companies at the respondent selection phase "unless there has been a determination to collapse certain companies in a previously completed segment of this antidumping proceeding (*i.e.*, investigation, administrative review, new shipper review or changed circumstances review)."⁶ The Department also explained that if it had determined, or continued to treat any company subject to this review as collapsed with others, then it would "assume that such companies

¹ See *Aluminum Extrusions from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 18524, 18527-28 (April 4, 2011). See also Attachment I, Memorandum dated March 28, 2011: "Investigation of Aluminum Extrusions from the People's Republic of China: Final Determination Regarding Affiliation and Collapsing of Guang Ya Aluminum Industries Co., Ltd., Foshan Guangcheng Aluminium Co., Ltd., Kong Ah International Co., Ltd., and Guang Ya Aluminium Industries (Hong Kong) Ltd.; Zhaoqing New Zhongya Aluminum Co., Ltd., Zhongya Shaped Aluminium (HK) Holding Ltd., Karlton Aluminum Co., Ltd.; and Xinya Aluminum & Stainless Steel Product Co., Ltd. ("Investigation Collapsing Memo") at 1-2; See also *Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12*, 79 FR 96 (January 2, 2014) ("AR1 Final"). See also Attachment II, Memorandum dated June 3, 2012: 2010/2012 Administrative Review of Aluminum Extrusions from the People's Republic of China: Preliminary Determination Regarding Affiliation and Collapsing of Guang Ya Aluminum Industrial Co., Ltd., Foshan Guangcheng Aluminum Co., Ltd., Kong Ah International Co., Ltd., Guang Ya Aluminum Industries (Hong Kong) Ltd., Guang Ya, Guangdong Zhongya Aluminum Co., Ltd., Zhongya Shaped Aluminum (HK) Holding Ltd., Karlton Aluminum Co., Ltd., and Foshan Nanhai Xinya Aluminum & Stainless Steel Product Co., Ltd. ("POR 1 Collapsing Memo") at 1-2. The Investigation Collapsing Memo and the POR 1 Collapsing Memo are attached to this memorandum as Attachments 1 and 2, respectively.

² Subsequent to the investigation, the Department determined that Guangdong Zhongya Aluminum Company Limited is the successor-in-interest to Zhaoqing New Zhongya Aluminum Co., Ltd (known as ZNZ in the investigation). See *Aluminum Extrusions From the People's Republic of China: Final Results of Changed Circumstances Review*, 77 FR 54900 (September 6, 2012).

³ See Investigation Collapsing Memo, at 8 and POR 1 Collapsing Memo at 6-7.

⁴ The name "Kwong" is also sometimes spelled "Kuang" in submissions on the record.

⁵ See Investigation Collapsing Memo, at 10-11 and POR 1 Collapsing Memo, at 7-8.

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 38924 (June 28, 2013) ("Initiation Notice").

continue to operate in the same manner and will collapse them for respondent selection purposes.”⁷

Therefore, on September 25, 2013, the Department issued an antidumping duty questionnaire (“Questionnaire”) to the those companies comprising the Guang Ya Group/Zhongya/Xinya entity in the investigation and the first administrative review, that are subject to this administrative review. The Questionnaire was addressed to the individual entities comprising the Guang Ya Group, Zhongya and Xinya: *i.e.*, Foshan Guancheng Aluminum Co., Ltd., Guang Ya Aluminium Industries (Hong Kong) Ltd., Guang Ya Aluminum Industries Co., Ltd., Kong Ah International Company Limited, Guangdong Zhongya Aluminum Company Limited, Karlton Aluminum Company Ltd., Zhongya Shaped Aluminum (HK) Holding Limited, and Xinya Aluminum & Stainless Steel Product Co., Ltd.. Zhongya, the Guang Ya Group, and Xinya did not respond to the Questionnaire, either collectively or individually. The Guang Ya Group informed the Department by letter dated October 31, 2013, that it was “unable to participate further” in this segment of the proceeding.

Ownership Structure of the Guangya Group, Zhongya, and Xinya

In the first administrative review, evidence on the record of that segment of the proceeding demonstrated that Kwong family members owned [] percent of companies comprising the Guang Ya Group and [] percent of Zhongya.⁸

The Guang Ya Group did not submit ownership information for the period covered by this review. Zhongya and its parent, Shaped Aluminum submitted separate rate applications that show that Kwong family members continue to own at least [] percent of Zhongya.⁹

With respect to Xinya, Shaped Aluminum and Zhongya claim, as they did in the first administrative review, that Xinya was fully owned by Mr. Chen Zhi Guang during this period of review and that there are no blood or family ties between Mr. Chen Zhi Guang and Kwong Wing Wah.¹⁰ In addition, Zhongya submitted certifications purportedly made by a Xinya company official stating that Xinya made no shipments of subject merchandise during the POR and that Xinya had no ownership or familial ties with the “family of Kwong Wing Wah.”¹¹ Zhongya made these very same assertions in the investigation and in the first administrative review. We found at verification in the investigation that such claims were unsupported.¹² There is no evidence on the record of this administrative review to support Zhongya’s claim other than these two statements.

⁷ *Id.*

⁸ See POR 1 Collapsing Memo.

⁹ See Shaped Aluminum and Zhongya’s separate rate applications (“Separate Rate Applications”), under the same cover, dated August 27, 2013, at page 16 and Exhibit 7, “Affiliation Chart,” and at page 17 and Exhibit 11, “Affiliation Chart,” respectively.

¹⁰ See *id.* at page 16 (Shaped Aluminum) and at page 17 (Zhongya).

¹¹ See Zhongya’s letter to the Department dated November 18, 2013 (“Zhongya’s November 18, 2013 letter”).

¹² See Investigation Collapsing Memo, at page 10 pages 3 – 4.

III. AFFILIATION

Legal Standard

Section 771(33) of the Tariff Act of 1930, as amended (the “Act”) provides that:

The following persons shall be considered to be “affiliated” or “affiliated persons”:

- (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
- (B) Any officer or director of an organization and such organization.
- (C) Partners.
- (D) Employer and employee.
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
- (G) Any person who controls any other person and such other person.

Section 771(33) of the Act further states that “a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.” “Person” is defined to include “any interested party as well as any other individual, enterprise, or entity, as appropriate.”¹³

The Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreement Act states the following:

The traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm “operationally in a position to exercise restraint or direction” over another in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchise or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.¹⁴

19 CFR 351.102(b)(3) defines affiliated persons and affiliated parties as having the same meaning as in section 771(33) of the Act. This regulatory provision provides a non-exhaustive list of factors to consider in determining whether or not “control over another person exists” for purposes of designated parties “affiliated” that includes, *inter alia*, “corporate or family

¹³ See 19 CFR 351.102(b).

¹⁴ See SAA, H.R. Doc. No. 316, 103rd Congress, 2d Session (1994), at 838.

groupings.” The Secretary will not find that control exists on the basis of a family grouping alone for purposes of affiliation unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. The Secretary will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

Analysis

We preliminarily find that the entities comprising the Guang Ya Group are affiliated, and the entities comprising Zhongya are affiliated pursuant to sections 771(33)(A) and (F) of the Act.¹⁵ We likewise preliminarily determine to treat the entities comprising the Guang Ya Group as a single entity, and to treat the entities comprising Zhongya as a single entity, pursuant to 19 CRF 351.401(f). No party challenges these determinations or has provided information that would cause us to change from our determinations in this respect in the investigation and first review period. Furthermore, we preliminarily determine that the Guang Ya Group, Zhongya and Xinya are affiliated pursuant to sections 771 (33)(A) and (F) of the Act, as we found in the investigation.

In the investigation, the Department concluded that the owners of the Guang Ya Group, Zhongya and Xinya were members of a family grouping, based on its finding that the Guang Ya Group, Zhongya and Xinya were each owned by a member of the Kwong family, in accordance with section 771(33)(A) of the Act.¹⁶ Furthermore, the Department found that the ownership by the family grouping satisfied the requirement of affiliation pursuant to section 771(33)(F) of the Act, because all of the companies within the Guang Ya Group, Zhongya and Xinya were under the common control of the family grouping.¹⁷

In the first administrative review, the Department investigated this issue further in a section A supplemental questionnaire, where the Department requested that Zhongya review the Investigation Collapsing Memo, attached to the supplemental questionnaire. The Department requested that Zhongya describe any changes during the POR in ownership, management, operations, and changes in merchandise produced. Zhongya replied that the Guang Ya Group did not cooperate or reply to any of its requests for this information, and that Xinya merely provided signed statements regarding its management and ownership information, as described above by Zhongya. Neither the Guang Ya Group nor Xinya responded to the Department’s requests for information.¹⁸

In the instant administrative review, Zhongya, the Guang Ya Group, and Xinya did not respond, either individually or collectively, to any part of the Department’s antidumping questionnaire. Furthermore, no interested party has put any new factual information on the record refuting the information the Department relied on to find that Zhongya, the Guang Ya Group, and Xinya were affiliated in the periods covered by the investigation and the first administrative review.

¹⁵ See also Investigation Collapsing Memo and POR 1 Collapsing Memo.

¹⁶ See Investigation Collapsing Memo at 8.

¹⁷ See *id.* at 5-6.

¹⁸ See the POR 1 Collapsing Memo at page 7.

Therefore, we find that the record continues to support a determination that the Guang Ya Group, Zhongya and Xinya are affiliated pursuant to section 771(33)(A) and (F) of the Act, through the Kwong family grouping.

Regarding Xinya, though Zhongya and Xinya claim that there is no longer Kwong family ownership of Xinya, Zhongya/Xinya has put forth no evidence to support these contentions other than signed statements that purport to have been signed by company officials representing Xinya.¹⁹ Xinya made these very same assertions in the investigation and the first administrative review, and we found at verification that such claims were unsupported.²⁰ There is no evidence on the record of this administrative review to support Zhongya's claim other than these two statements. We have accorded such evidence less weight than verified evidence indicating that the Kwong family grouping continues to have near total ownership over the Guang Ya Group, Zhongya and Xinya.²¹

Recommendation

We recommend finding that the Guang Ya Group, Zhongya, and Xinya are affiliated parties in accordance with sections 771(33)(A) and (F) of the Act.

Agree

Disagree

IV. COLLAPSING

Legal Standard

To the extent that section 771(33) of the Act does not conflict with the Department's application of separate rates and the enforcement of the NME provision of section 773(c) of the Act, the Department will determine that affiliated exporters and/or producers are a single entity if the facts of the case support such a finding.²²

19 CFR 351.401(f) outlines the criteria for determining the appropriate treatment of affiliated producers for purposes of antidumping proceedings –

¹⁹ See Zhongya's letter to the Department dated November 18, 2013..

²⁰ See Investigation Collapsing Memo, at page 10 and POR 1 Collapsing Memo at page 7.

²¹ See Investigation Collapsing Memo, at 5-6, 10.

²² See *Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review*, 69 FR 10410, 10413 (March 5, 2004) ("Mushrooms"), unchanged in *Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 70 FR 54361 (September 14, 2005). See also *Hontex Enterprises v. United States*, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004) ("*Hontex II*") (upholding the Department's practice of collapsing based on whether or not there exists significant potential for manipulation of prices and/or export decisions).

- (1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
- (2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:
 - (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 CFR 351.401(f).

In the *Preamble* to the Department's regulations, Commerce explained that it "retained the word 'significant' with respect to the potential for manipulation," because collapsing "upon finding any potential for price manipulation would lead to collapsing in all circumstances in which the Department finds producers to be affiliated. This is neither the Department's current nor intended practice. As indicated in paragraph (f), collapsing requires a finding of more than mere affiliation."²³ The Department stated that it would not give examples, because "in our view, these determinations are very much fact-specific in nature, requiring a case-by-case analysis, as reflected in the Department's determinations in actual cases which are published in the Federal Register." The Department agreed with commentators that "not all of the factors identified in paragraph (f) need be present in order to collapse affiliated producers." The Department also referred to the list as "non-exhaustive," and that it "must consider future manipulation," which was the reason it did not use the term "possible manipulation," but instead the "potential for manipulation."

The CIT has recognized that when determining whether there is a significant potential for manipulation, all three factors listed in 19 CFR 351.401(f) are considered by the Department in light of the totality of the circumstances; no one factor is dispositive in determining whether to collapse the producers.²⁴ Additionally, the Department looks for "relatively unusual situations, where the type and degree of relationship is so significant that {it} finds that there is a strong

²³ *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27345-346 (May 19, 1997) ("*Preamble*").

²⁴ See *Koyo Seiko Co., Ltd. v. United States*, 516 F. Supp. 2d 1323, 1346 (CIT 2007) ("*Koyo Seiko*"), citing *Light Walled Rectangular Pipe and Tube from Turkey; Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53675 (September 2, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

possibility of price manipulation.”²⁵ Moreover, in examining these factors as they pertain to a significant potential for manipulation, the Department considers both actual manipulation in the past and the possibility of future manipulation.²⁶ We have, therefore, examined all three factors with respect to the potential for future manipulation.

Analysis

In the investigation, the Department found the Guang Ya Group, New Zhongya and Xinya, were all producers and/or exporters of merchandise under consideration in the investigation.²⁷ Additionally, by virtue of the nearly 100 percent common ownership of Zhongya, the Guang Ya Group, and Xinya by the family grouping, family members on the boards of directors of at least two of the companies, and evidence of financial transactions between two of the entities, the Department found that there existed a significant potential for manipulation such that the Guang Ya Group, Zhongya and Xinya should be treated as a single entity in accordance with 19 CFR 351.401(f).²⁸

Subsequently, in the first administrative review we found that the record continued to support treating the Guang Ya Group, Zhongya, and Xinya as a single entity. Specifically, we found that with respect to the level of common ownership, the record indicated that the Kwong family grouping continued to hold nearly 100 percent common ownership of the Guang Ya Group, Zhongya, and Xinya.²⁹ Regarding the extent to which managerial employees or board members of one firm sat on the board of directors of an affiliated firm, we found that the record indicated that the Kwong family members continue to sit on the boards and have management positions at the Guang Ya Group and Zhongya.³⁰ Finally, regarding the presence of intertwined operations, we stated that the Department’s evidence was limited as a result of the Guang Ya Group’s and Xinya’s failure to cooperate in that review and that information from the investigation indicated that Xinya had previously made payments to the owner of Zhongya.³¹

In this administrative review, due to the failure of the Guang Ya Group and Xinya to respond to any section of the Department’s antidumping questionnaire, either individually or collectively, these parties have not submitted evidence relevant to the Department’s collapsing analysis. Although Zhongya submitted its November 18, 2013 letter in opposition to collapsing, its (and Shaped Aluminum’s) Separate Rate Applications, and an excerpt from a supplemental

²⁵ See *Koyo Seiko*, 516 F. Supp. 2d at 1346, citing *Nihon Cement Co. v. United States*, 17 C.I.T. 400, 426 (CIT 1993) (quoting *Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*, 54 FR 18992, 19089 (May 3, 1989)).

²⁶ See *Preamble*, 62 FR at 27346.

²⁷ See Investigation Collapsing Memo at 10.

²⁸ See Investigation Collapsing Memo, at 5-6, 10.

²⁹ See POR 1 Collapsing Memo at page 7; 19 CFR 351.401(f)(2)(i). In this context, the Kwong family is the “person” jointly owning and controlling the Guang Ya Group, Zhongya, and Xinya. See, e.g., *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of June 2008 Through November 2008 Semi-Annual New Shipper Review*, 74 FR 68575 (December 28, 2009), and accompanying Issues and Decision Memorandum at Comment 3.

³⁰ See POR 1 Collapsing Memo at 7; 19 CFR 351.401(f)(2)(ii).

³¹ See POR 1 Collapsing Memo, at 7-8; 19 CFR 351.401(f)(2)(iii).

questionnaire response in the first administrative review,³² no interested party has placed any new evidence on the record of this administrative review refuting the facts on the records of the investigation and the first administrative review regarding the potential for manipulation of price or production of subject merchandise.

Accordingly, the Department preliminarily finds that the potential for manipulation of price or production of subject merchandise remains, as in the investigation and first review period, and preliminarily finds that the Kwong family grouping continues to be in a position to have significant influence over the production and sales decisions of the Guang Ya Group, Zhongya, and Xinya. Therefore, we preliminarily find, in accordance with 19 CFR 351.401(f), that we should continue to treat the Guang Ya Group, Zhongya, and Xinya as a single entity for the purposes of the Department's analysis for the preliminary results.

V. ZHONGYA'S COMMENTS IN OPPOSITION TO COLLAPSING

In its comments regarding the Department's prior decisions to collapse the Guang Ya Group, Zhongya, and Xinya, submitted on the record of this review, Zhongya argued the following³³:

- Zhongya no longer has a familial relationship with Xinya; and there is no substantial evidence of intertwined operations between the companies on the record of this review.
- The statute only authorizes collapsing where producers and exporters are jointly involved in the production and sale of the same subject merchandise.
- The statute does not provide for collapsing affiliates purely on the basis of countering a future potential to manipulate. The statute provides other remedies that address manipulation, including certifications of accuracy, administrative reviews, and adjustments to transactions between affiliates.
- There is no "common control" or "common ownership" among Zhongya, the Guang Ya Group, and Xinya. A sibling relationship, in and of itself, does not constitute control, or potential control. Furthermore, the Department erred in finding that "a family grouping" is "a person" to reach its affiliation and collapsing findings.
- The statute provides remedies that address manipulation and does not provide for collapsing to address manipulation.
- Commerce does not demonstrate that collapsing is needed here to accurately calculate the current weighted-average dumping margin of Zhongya.
- The Department may not collapse a company with other companies that have not responded to the Department's questionnaires.

With respect to Zhongya's argument that companies must be jointly involved in the production or sale of the same subject merchandise in order for the Department to collapse them, we disagree. The Department's regulation at 19 CFR 351.401(f) contains no such requirement, and states that the Department will collapse companies where, *inter alia*, they have "production facilities for *similar or identical products* that would not require substantial retooling" to restructure manufacturing priorities. 19 CFR 351.401(f) (emphasis added). As support for its

³² See Zhongya's letter to the Department dated November 18, 2013 "regarding the collapsing record."

³³ See Zhongya's letter to the Department dated November 18, 2013.

contention that the statute permits collapsing only where producers and exporters are jointly involved in the production and sale of the same subject merchandise, Zhongya relies on section 771(28) of the Act, the SAA, a United States House of Representatives Report and a United States Senate Report.³⁴

As we stated in the prior review,³⁵ such reliance is misplaced. These references indicate that the term “exporter or producer” includes both the exporter of the subject merchandise and the producer of the subject merchandise to the extent necessary to calculate the total amount incurred and realized for costs, expenses, and profits in connection with production and sale of that merchandise. The language contained in section 771(28) of the Act is not intended to address collapsing issues; rather, the purpose of this provision is to clarify that the Department has the authority to require unaffiliated suppliers of exporters of subject merchandise to provide, for example, cost and factors of production data to calculate cost of production, constructed value, or normal value. The SAA explains that “the purpose of section 771(28), . . . is to clarify that where different firms perform the production and selling functions, Commerce may include the costs, expenses, and profits of each firm *in calculating cost of production and constructed value*.”³⁶ Thus, the intent of this section is to ensure that the Department had the authority to capture all costs in situations where various companies were engaged in the production and sale of the merchandise under consideration.³⁷

Next, we disagree with Zhongya’s argument that the statute does not provide for collapsing affiliates purely on the basis of countering a future potential to manipulate. As we stated in the prior review,³⁸ the Department’s authority to collapse affiliated producers into a single entity has been affirmed by the Court of International Trade (“CIT”) as a reasonable interpretation of the statute.³⁹ Indeed, the CIT has recognized that the Department “treats closely related parties as a single entity in order to ‘ensure that {the Department} reviews the entire producer or reseller, not merely a part of it.’”⁴⁰ In addition, the CIT has recognized that the Department’s “discretion to group or define companies arises out of the ‘basic purposes of the statute—determining current margins as accurately as possible.’”⁴¹ The Department has therefore preliminarily exercised its authority to fill a gap and treat as a single entity two or more affiliated producers with production facilities for similar or identical products that would not require substantial retooling of either

³⁴ Zhongya cites 19 U.S.C. § 1677(28); SAA at 835; H.R. Rep. No. 103-826 at 77 (1994), *reprinted in* 1994 U.S.C.C.A.N. 3773; Sen. Rep. No. 103-412 at 61 (1994).

³⁵ See *ARI Final* and accompanying Issues and Decision Memorandum at Comment 4.

³⁶ See SAA at 835 (1994) (emphasis added). See also *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823 (September 11, 2008) and accompanying Issues and Decision Memorandum at Comment 15.

³⁷ *Id.*

³⁸ See *ARI Final* and accompanying Issues and Decision Memorandum at Comment 4.

³⁹ See *Mid Continent Nail Corp. v. United States*, No. 08-224, slip op. 2010-47 (CIT May 4, 2010) at *26-*29; *Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1338 (CIT 2003); *Queen’s Flowers de Colombia v. United States*, 981 F. Supp. 617, 622 (CIT 1997) (“*Queen’s Flowers*”); *Koenig Bauer-Albert Ag. v. United States*, 90 F. Supp. 2d 1284, 1287-88 (CIT 2000).

⁴⁰ *Queen’s Flowers*, 981 F. Supp. at 622 (quoting *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42853 (August 19, 1996)).

⁴¹ *Fischer S.A. Comercio, Industria, and Agricultura v. United States* (“*Fischer*”), No. 10-281, slip op. 2012-59 at *11 (CIT Apr. 30, 2012).

facility in order to restructure manufacturing priorities, and where there is a significant potential for manipulation of price or production.⁴² In considering the “potential” for manipulation, the Department “. . . considers both actual manipulation in the past and the possibility of future manipulation, which does not require evidence of actual manipulation during the period of review.”⁴³ In addition, the Department makes no presumption about whether the companies manipulated prices in the past, but rather, considers future manipulation.⁴⁴ The Department’s “standard {is} based on the potential for manipulation focuses on what may transpire in the future.”⁴⁵

Additionally, we disagree with Zhonya’s argument that the Department erred in finding a “family grouping” to be a “person,” and that there is no “common control” or “common ownership” among the Guang Ya Group, Zhongya, and Xinya. Because there is no new evidence on the record of this review to refute the facts from the investigation and the prior review,⁴⁶ we preliminarily continue to find that the Kwong family grouping constitutes a person and that such person controls the collapsed Guang Ya Group/Zhongya/Xinya entity by virtue of majority ownership of the Guang Ya Group, Zhongya, and Xinya by Kwong family members.⁴⁷ While no single individual may be directing the activities of the Guang Ya Group, Zhongya, and Xinya, as each is owned by an individual Kwong sibling, consistent with its practice, the Department considers the Kwong family to be “a person” for purposes of section 771(33)(F) of the Act and preliminarily determines that this person has the ability and financial incentive to coordinate its actions to direct the Guang Ya Group, Zhongya, and Xinya to act in concert or out of common interest.⁴⁸

Because this family grouping has the potential to control the Guang Ya Group, Zhongya, and Xinya concerning pricing or production of the subject merchandise, we preliminarily determine that we should continue to treat the Guang Ya Group, Zhongya, and Xinya as a single entity. Further, the CIT has held that “the intent of {section 771(33) of the Act} was to identify control

⁴² See 19 CFR 351.401(f).

⁴³ See *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review*, 74 FR 65518, 65518 (December 10, 2009) and accompanying Issues and Decision Memorandum at Comment 1; *Freshwater Crawfish Tail Meat From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Review in Part*, 73 FR 58115, 58120 (October 6, 2008); and *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 71 FR 40064 (July 14, 2006) and accompanying Issues and Decision Memorandum at Comment 18.

⁴⁴ See *Preamble*, 62 FR at 27346 (“. . . the Department must consider future manipulation. . . . In this regard, we selected the standard of ‘significant potential’ to deal with precisely this point. . . . {A} standard based on the potential for manipulation focuses on what may transpire in the future. *FAG Kugelfischer Georg Schafer KGaA v. United States*, slip op. 96-108 at 23 (July 10, 1996).”). See also *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of New Shipper Review*, 74 FR 68575 (December 28, 2009), and accompanying Issues and Decision Memorandum at Comment 3 (“*Chlorinated Isocyanurates*”).

⁴⁵ See *Preamble*, 62 FR at 27346.

⁴⁶ See Investigation Collapsing Memo and POR 1 Collapsing Memo.

⁴⁷ See POR 1 Collapsing Memo.

⁴⁸ See Investigation Collapsing Memo at 11, and POR 1 Collapsing Memo at 6 – 8. See also *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results and Rescission in Part of Antidumping Duty Administrative Review (“Steel Plate from Korea”)*, 69 FR 26361 (May 12, 2004) and accompanying Issues and Decision Memorandum at Comment 1; *Chlorinated Isocyanurates*, Issues and Decision Memorandum at Comment 3.

exercised through ‘corporate or family groupings,’” and that the Department was giving effect to this intent by interpreting “family” as a control person.⁴⁹ Where there is a family grouping at issue, the Department considers the control factors of individual members of the group (e.g., stock ownership, management positions, board membership) in the aggregate.⁵⁰

Finally, Zhongya claims in its comments that information on the record of this administrative review demonstrates that the Department should not collapse the Guang Ya Group, Zhongya, and Xinya. Specifically, Zhongya states that “Xinya is no longer managed or owned by the spouse of a Kuang family sibling;”⁵¹ therefore, the Department no longer has a basis for collapsing Xinya with Zhongya and the Guang Ya Group. Though Zhongya may have asserted that there is information on the record of this review demonstrating that the Department should no longer collapse these entities, we find that there is no factual information on the record to support this claim. The Guang Ya Group stated that it would not participate in this review;⁵² and Zhongya did not respond to the Department’s antidumping questionnaire. Zhongya provided the Department only with a quantity and value response,⁵³ a separate rate application⁵⁴ and the certifications purportedly made by a Xinya company official stating that Xinya made no shipments of subject merchandise during the POR and that Xinya had no ownership or familial ties with the “family of Kwong Wing Wah.”⁵⁵

As we stated above, at the outset of this segment of the proceeding, in the *Initiation Notice*, the Department stated that the Department “. . . will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (i.e., investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes.”⁵⁶ In addition, the Department stated in its questionnaire to the Guang Ya Group, Zhongya, and Xinya that it “will assume for purposes of respondent selection that the Guang Ya Group, the Zhongya Group, and Xinya (collectively, the “Guang Ya/Zhangya/Xingya Aluminum Group” {sic}) are affiliated and should continue to be treated as a single entity, and requests that the “Guang Ya/Zhangya/Xingya Aluminum Group” {sic} submit consolidated factors of production and U.S. sales data in response to this questionnaire.”⁵⁷ As we stated in the *ARI Final*, once a collapsing determination is made, the Department does not “remove” parties from the single entity and treat them as part of the PRC-

⁴⁹ *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1325 (CIT 1999) (citing SAA at 838).

⁵⁰ See *Steel Plate from Korea*, Issues and Decision Memorandum at Comment 1.

⁵¹ See Zhongya’s letter to the Department dated November 18, 2013, at 2 and 10.

⁵² See Guang Ya’s October 31, 2013 letter.

⁵³ See Zhongya’s quantity and value submission dated August 27, 2013.

⁵⁴ See Zhongya’s letter, “Aluminum Extrusions from China,” dated August 27, 2013. (“Separate Rate Application”).

⁵⁵ See Zhongya’s letter to the Department dated November 18, 2013.

⁵⁶ See *Initiation Notice*, 78 FR at 38924

⁵⁷ See Letter to the Guang Ya Group/Zhongya/Xinya, regarding “Aluminum Extrusions from the People’s Republic of China,” dated September 25, 2013.

wide entity due to those parties' respective failure to participate.⁵⁸ Allowing parties to exit the collapsed entity as a consequence of their refusing to participate would allow manipulation by the parties to obtain a different rate than the one for the collapsed entity. Because we have no information on the record of this review to contradict the Department's prior collapsing determinations, the Department has preliminarily continued to collapse the Guang Ya Group, Zhongya, and Xinya and to treat them as a single entity.

Recommendation

We recommend continuing to collapse the Guang Ya Group, Zhongya, and Xinya and to treat them as a single entity for purposes of these preliminary results.

Agree √

Disagree _____



Melissa G. Skinner
Director, Office III
Antidumping and Countervailing Duty Operations

June 18, 2014

Date

⁵⁸ See *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19035-19036 (April 30, 1996) and *Light-Walled Rectangular Pipe and Tube From Turkey: Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53675 (September 2, 2004) and accompanying Issues and Decision Memorandum at Comment 11.

ATTACHMENT I

A-570-967
Inv: 7/01/2009 - 12/31/2009
Final Proprietary Document
China/NME 8: ED
PUBLIC VERSION

DATE: March 28, 2011

MEMORANDUM TO: Christian Marsh <S>
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

THROUGH: Wendy J. Frankel <S>
Director, Office 8
Antidumping and Countervailing Duty Operations

FROM: Eugene Degnan
Program Manager
Antidumping and Countervailing Duty Operations

SUBJECT: Investigation of Aluminum Extrusions from the People's Republic of China: Final Determination Regarding Affiliation and Collapsing of Guang Ya Aluminium Industries Co., Ltd., Foshan Guangcheng Aluminium Co., Ltd., Kong Ah International Co., Ltd., and Guang Ya Aluminium Industries (Hong Kong) Ltd.; Zhaoqing New Zhongya Aluminum Co., Ltd., Zhongya Shaped Aluminium (HK) Holding Ltd., Karlton Aluminum Co., Ltd.; and Xinya Aluminum & Stainless Steel Product Co., Ltd.

SUMMARY

Based on record evidence, we continue to find that Guang Ya Aluminium Industries Co., Ltd. ("Guang Ya"), Foshan Guangcheng Aluminium Co., Ltd. ("Guangcheng"), Kong Ah International Co., Ltd. ("Kong Ah"), and Guang Ya Aluminium Industries (Hong Kong) Ltd. ("Guang Ya HK") (collectively the "Guang Ya Group") are affiliated and should be treated as a single entity for the purposes of the Department of Commerce's (the "Department") analysis in the above-referenced investigation. In addition, we find that Zhaoqing New Zhongya Aluminum Co., Ltd. ("ZNZ"), Zhongya Shaped Aluminium (HK) Holding Ltd. ("Shaped Aluminium") and Karlton Aluminum Co., Ltd. ("Karlton") (collectively "New Zhongya") are affiliated and should also be treated as a single entity for purposes of this investigation. Furthermore, we find that the Guang Ya Group, New Zhongya, and Xinya Aluminum & Stainless Steel Product Co., Ltd. ("Xinya") are all affiliated with each other and should be treated as a single entity for the purposes of the Department's analysis in the above-referenced investigation.

BACKGROUND

Preliminary Determination

In the *Preliminary Determination*, we found the companies within the Guang Ya Group to be affiliated pursuant to section 771(33)(A) of the Tariff Act of 1930 as amended (“the Act”), because Kuang¹ family members own [] percent of the Guang Ya Group companies. Similarly, we found the companies comprising New Zhongya to also be affiliated pursuant to section 771(33)(A) of the Act because Kuang family members own virtually [] percent of these companies. Further, we found the Guang Ya Group and New Zhongya to be affiliated with each other pursuant to section 771(33)(A) of the Act because Kuang family members own Guang Ya Group and New Zhongya. Furthermore, although neither the Guang Ya Group nor New Zhongya provided the full ownership information of their affiliate Xinya, the Guang Ya Group stated on the antidumping duty (“AD”) record that a Kuang sibling was a “shareholder” of Xinya, and New Zhongya stated on the public countervailing duty (“CVD”) record that the same Kuang sibling was “owner” of Xinya.² Accordingly, we found it reasonable to infer, as facts available, that the Kuang family member identified in the AD record as “shareholder” of Xinya, and the “owner” of Xinya, holds full ownership of the company. Finally, we found that the ownership by the family grouping satisfies the requirement of affiliation pursuant to section 771(33)(F) of the Act, because all of the companies within the Guang Ya Group, New Zhongya and Xinya are under the common control of the family grouping.

Based upon these assertions, the Department sought further information regarding the ownership and operations of Xinya, but was unable to obtain any further information from the respondents. Because the Guang Ya Group and New Zhongya, each of which initially described Xinya as owned by a sibling, provided no further information either affirming or denying that Xinya was owned by a Kuang sibling, the Department interpreted the record evidence to indicate Kuang family ownership of Xinya. Based on this interpretation, we determined that it was reasonable to collapse the entities based on the Kuang family grouping for purposes of the *Preliminary Determination*.

We further found in the *Preliminary Determination* that, by virtue of the common ownership of the three entities, family members on the boards of each of the companies, and the fact that all entities produce and/or export merchandise under consideration, that there exists the significant potential for manipulation such that the Guang Ya Group, New Zhongya and Xinya should be treated as a single entity.

Post- Preliminary Determination

After collapsing the Guang Ya Group, New Zhongya and Xinya in the *Preliminary Determination*, on October 29, 2010, subsequent to the *Preliminary Determination*, we sent the standard dumping questionnaire to Xinya. Xinya did not respond to our questionnaire, but on November 12, 2010, submitted a letter stating that it has “no blood or family tie with Mr.

¹ In this proceeding, parties identified as Kuang or Kwong have been identified to be members of the same family who simply spell their surnames differently depending upon whether they use the Chinese or Hong Kong English spelling.

² See October 27, 2010, memorandum to the file: Reclassification of Business Proprietary Information.

Kwong's family involved with New Zhongya and Guang Ya Group."³ It did not acknowledge in this November 12, 2010, letter that its general manager is married to a sibling of the Kuang owners of the Guang Ya Group and New Zhongya. Xinya further claimed that it has been 100 percent owned by Xinya Holding Limited ("Xinya Holding") since 1997 and that Xinya Holding is owned by Mr. Chen Zhi Guang and []. The company provided limited documentation purporting to support this claim: 1) a 1997 "Supplementary Articles of Association" of Xinya and 2) a Business License for Xinya (containing the 2008 and 2009 renewal stamps from the provincial government). In addition, Xinya provided documentation for Xinya Holding's alleged ultimate owners, in the form of tax records and share transfer documents.

Xinya did not respond to the questionnaire, but did submit ownership information. However, the Department acknowledged that it first requested the data from Xinya at a late stage in this proceeding and, accordingly, determined to conduct verification limited to New Zhongya's ownership information and claim of no affiliation. Furthermore, we offered Xinya the opportunity to identify the appropriate location for verification and we offered to conduct verification at multiple sites if that better served the company. We released a verification outline to Xinya that specified that Xinya should:

Please advise via email as soon as possible after receipt of this letter at what location **Xinya maintains ownership and corporate documents for Xinya Holdings Limited** {allegedly the owner of Xinya} and for Xinya so that we may determine whether verification will be conducted at Xinya's offices at ... People's Republic of China and/or at Xinya Holdings Limited's offices in Hong Kong or somewhere else. (Emphasis added.)⁴

Additionally, while in the People's Republic of China ("PRC"), we contacted Xinya by telephone to confirm the date of verification. During that phone conversation we reminded Mr. Zhong Jian Qiu ("Mr. Zhong"), the general manager of Xinya, that we would need documentation relating to Xinya's direct and ultimate ownership, and that we would need to speak with someone who was knowledgeable about the ownership structure of Xinya and its parent companies.⁵ Mr. Zhong assented.

1. Verification of Xinya

At the Xinya verification, the only person made available to us was Mr. Zhong, and there was no documentation regarding the ownership of Xinya Holdings or [], the purported owners of Xinya. While Mr. Zhong stated that he runs the day to day operations of Xinya, he also stated he is not knowledgeable regarding the ownership of Xinya Holdings, or much of the Xinya and Xinya Holdings history. We informed Mr. Zhong that the Department could not complete verification without the ownership documents requested and that we would be willing to continue verification in Hong Kong if that is where the relevant documentation is maintained. Mr. Zhong replied that he (meaning Xinya) had done all that he intended to do regarding

³ See November 12, 2010, letter from Xinya to the Department.

⁴ See December 12, 2010, Xinya Verification Outline.

⁵ See Xinya Verification Report at page 5, footnote 3.

verification and made no further attempt to provide documentation that would substantiate the claimed ultimate ownership of the company.

While at the verification of New Zhongya in Hong Kong we went to the offices of a company called Asia Aluminum Holdings, located in same building as New Zhongya, and at the same address found for [].⁶ We asked if Kuang Hui Zhen, the Kuang sibling that formerly had an ownership interest in another aluminum company, Asia Aluminum Co., Ltd., worked there. The office manager said that Kuang Hui Zhen worked there as an employee. The office manager later said Kuang Hui Zhen was a consultant.⁷

Because Xinya did not demonstrate the reliability or accuracy of the ownership documentation it submitted to the record of this proceeding, we are unable to rely on that documentation for purposes of the final determination.⁸

2. *Verification of New Zhongya*

At the verification of New Zhongya, we found in a Kwong family trust account in the company's general ledger, several line items identified as payments from [

]). We examined the associated vouchers, and they had only bank advices attached to them: one for [], an aluminum trading company, and another for []. We asked a New Zhongya official (also a minority owner) if he knows Mr. Zhong, and what these payments are for. He stated that Mr. Zhong is a relative of Kwong Wing Wah (the owner of New Zhongya), and that this money was given to [] to invest in futures. Later, Kwong Wing Wah stated that the payments were personal. It is not clear what the nature of these payments are, as New Zhongya's accounting books, the explanation from the minority owner of New Zhongya, and the explanation from the majority owner of New Zhongya were not consistent.⁹

3. *Verification of Guang Ya Group*

At the verification of the Guang Ya Group, we asked the majority owner, Kuang¹⁰ Zhuo Zhen whether his sibling(s) owned Xinya. He stated that his brother Kwong Wui Chun owned Xinya. Later, when we asked whether his sister also owned Xinya he stated he was not certain of the current ownership situation.

⁶ See Xinya's November 29, 2010, submission to the Department at Exhibit 2.

⁷ See Xinya Verification Report at page 6

⁸ See Memorandum regarding: Application of Total Adverse Facts Available for the Guang Ya Group/New Zhongya/Xinya in the Antidumping Duty Investigation of Aluminum Extrusions from the People's Republic of China, dated March 28, 2011 ("AFA Memo").

⁹ See New Zhongya Verification Report at 10.

¹⁰ In this proceeding certain parties identified as [] or [] have been identified to be members of the same family who simply spell their surnames differently depending upon whether they use the Chinese or Hong Kong spelling.

- Directors and Managers of Shaped Aluminum:¹⁹
 - Kwong Wing Wah, President
 - Chan Yin Yin, Director
 - Kuang Xieguang, Director
 - Kuang Shune, Director

Xinya

- New Zhongya stated that Kuang Shun Fen is the “owner” of Xinya.²⁰
- Guang Ya Group stated that Kuang Shun Fen is “the shareholder” of Xinya.²¹
- Managers: Zhong Jian Qiu general manager of Xinya.²²
- Xinya is a producer and/or exporter of subject merchandise.²³

The documentation provided by Xinya after the *Preliminary Determination*, on its face, purports to establish that Xinya is not owned by a member of the Kuang family. Our attempt to verify this information, however, was unsuccessful due to the fact that Xinya provided no ownership documentation of Xinya Holdings or [], and provided no access to anyone who could answer our questions about its ultimate ownership. Specifically, Xinya made absolutely no attempt to provide documentation that would support its claim or substantiate the legitimacy of the ownership documents it had provided. In fact, Xinya made it clear that it would not provide the documents and insisted that the parties made available for verification did not have any information regarding the company’s ultimate owners. Therefore, we have determined that Xinya failed verification and that we are unable to rely on its submitted ownership data for purposes of this final determination.²⁴ Accordingly, we do not accord any weight to the unverifiable ownership claims made by Xinya.

AFFILIATION

Statutory and Regulatory Provisions

Section 771(33) of the the Act provides that:

The following persons shall be considered to be ‘affiliated’ or ‘affiliated persons’:

- (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
- (B) Any officer or director of an organization and such organization.
- (C) Partners.
- (D) Employer and employee.
- (E) Any person directly or indirectly owning, controlling, or holding with power to

¹⁹ *Id.*

²⁰ See October 27, 2010, memorandum to the file: Reclassification of Business Proprietary Information.

²¹ See Guang Ya Group’s Section A Questionnaire Response, dated August 16, 2010, at 14.

²² See New Asia (aka “Xinya”) Verification Report dated January 28, 2011.

²³ See the Guang Ya Group’s section A questionnaire response dated August 16, 2010, at pages 13 and 14.

²⁴ See AFA Memo.

- vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
 - (G) Any person who controls any other person and such other person.

The Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreement Act states the following:

The traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm “operationally in a position to exercise restraint or direction” over another in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchise or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.²⁵

Section 351.102(b)(3) of the Department’s regulations defines affiliated persons and affiliated parties as having the same meaning as in section 771(33) of the Act. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Secretary will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretary will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. The Secretary will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

Section 351.401(f) of the Department’s regulations outlines the criteria for determining the appropriate treatment of affiliated producers for purposes of antidumping proceedings –

- (1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
- (2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:
 - (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

²⁵ See SAA, H.R. Doc. No. 316, 103rd Congress, 2d Session (1994) at 838.

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. 351.401(f).

ANALYSIS

AFFILIATION

For the reasons set forth in our Preliminary Affiliation and Collapsing Memo, we continue to find the entities comprising the Guang Ya Group, and the entities comprising New Zhongya, affiliated pursuant to section 771(33)(A) and (F) of the Act. Further, we continue to find the Guang Ya Group/New Zhongya and Xinya affiliated pursuant to section 771(33)(A) and (F) of the Act. With regard to Xinya, the Guang Ya Group and New Zhongya each stated on the record that a Kuang sibling was a “shareholder” of Xinya and “owner” of Xinya, respectively.²⁶ Although the Guang Ya Group later stated that it was not sure of the ownership structure of Xinya,²⁷ we note that neither respondent has recanted previous statements regarding Xinya ownership with any record evidence stating or demonstrating that Xinya is not owned by a Kuang family member as originally claimed. It is undisputed on the record that Xinya’s general manager is the brother-in-law to the Kuang sibling owners of Guang Ya Group and New Zhongya. Further, because the information provided by Xinya could not be verified, we do not accord any weight to its ownership claims. Accordingly, we find it reasonable to infer, based on the record of this proceeding, that the Kuang family member identified in the Guang Ya Group’s and New Zhongya’s questionnaire responses as “shareholder” and as the “owner” of Xinya, holds full ownership of the company. Therefore, because Xinya is owned by a member of the Kuang family, we find that Xinya is owned by the Kuang family grouping. Thus, we also recommend that we find Xinya to be affiliated with Guang Ya Group/New Zhongya, based on common ownership by the Kuang family, pursuant to section 771(33)(A) of the Act.

Moreover, because each entity is owned by a member of the Kuang family, we conclude that the owners of Guang Ya Group, New Zhongya and Xinya are members of a family grouping. Further, we find that the ownership by the family grouping satisfies the requirement of affiliation pursuant to section 771(33)(F) of the Act, because all of the companies within the Guang Ya Group, New Zhongya and Xinya are under the common control of the family grouping.

COLLAPSING AFFILIATED ENTITIES

To the extent that section 771(33) of the Act does not conflict with the Department’s application of separate rates and enforcement of the non-market economy (“NME”) provision or section 773(c) of the Act, the Department will determine that affiliated exporters and/or producers are a

²⁶ *See* October 27, 2010, memorandum to the file: Reclassification of Business Proprietary Information, and . Guang Ya Group’s Section A Questionnaire Response, dated August 16, 2010, at 14.

²⁷ *See, e.g.*, Guang Ya Verification Report at 5..

single entity if the facts of the case support such a finding.²⁸ The Court of International Trade (“CIT”) has upheld the Department’s practice of determining whether to treat two or more companies as a single entity for antidumping purposes based on a consideration of whether there exists a significant potential for manipulation of prices and/or export decisions.²⁹

Furthermore, the Department notes that the factors listed in 19 CFR 351.401(f)(2) are not exhaustive, and in the context of an NME investigation other factors unique to the relationship of business entities in the NME may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case.³⁰ Further, in *Hontex II*, the CIT affirmed the Department’s ability to expand the market-economy inquiry into the potential for manipulation to include NME exporters’ export decisions, rather than simply relying on whether or not the companies share production facilities.³¹

The court has recognized that when determining whether there is a significant potential for manipulation 19 CFR 351.401(f)(2)(i), (ii), and (iii) are considered by the Department in light of the totality of the circumstances; no one factor is dispositive in determining whether to collapse the producers.³²

Additionally, Commerce looks for “relatively unusual situations, where the type and degree of relationship is so significant that {it} finds that there is a strong possibility of price manipulation.”³³ Moreover, in examining these factors as they pertain to a significant potential for manipulation, the Department considers both actual manipulation in the past and the possibility of future manipulation.³⁴ The preamble underscores the importance of considering the possibility of future manipulation: “a standard based on the potential for manipulation focuses on what may transpire in the future.”³⁵ We have, therefore, examined all three factors with respect to the potential for future manipulation.

²⁸ See *Certain Preserved Mushrooms From the People’s Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review*, 69 FR 10410, 10413 (March 5, 2004) (“*Mushrooms*”), unchanged in *Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People’s Republic of China*, 70 FR 54361 (September 14, 2005).

²⁹ See *Hontex Enterprises v. United States*, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004) (“*Hontex I*”).

³⁰ See *Mushrooms* 69 FR at 10413, 10414 (citing *Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1342-43 (CIT 2003) (“*Hontex I*”) (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation)).

³¹ See *Hontex II* at 1233-1234.

³² See *Koyo Seiko Co., Ltd. v. United States*, 516 F. Supp. 2d 1323, 1346 (Ct. Int’l Trade 2007) (“*Koyo Seiko*”), citing *Light Walled Rectangular Pipe and Tube from Turkey; Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53675 (September 2, 2004) and accompanying Issues and Decision Memorandum at Comment 10 (“*Turkish Pipe*”).

³³ See *Koyo Seiko* citing *Nihon Cement Co. v. United States*, 17 C.I.T. 400, 426 (Ct. Int’l Trade 1993) (“*Nihon Cement*”) (quoting *Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*, 54 FR 18992, 19089 (May 3, 1989)).

³⁴ See *Preamble*, 62 FR at 27346.

³⁵ *Id.*

Guang Ya Group, New Zhongya, and Xinya

In determining to treat the Guang Ya Group, New Zhongya, and Xinya as a single entity, we reiterate that we have found that the family grouping holds essentially full ownership of the Guang Ya Group, New Zhongya and Xinya, all of which are producers and/or exporters of merchandise under consideration in this investigation. Therefore, in considering the level of common ownership pursuant to 19 CFR 351.401(f)(2)(i), we find nearly 100-percent common ownership of the Guang Ya Group, New Zhongya and Xinya by the family grouping. In this context, the family in question is the “person” jointly owning and controlling Guang Ya Group, New Zhongya and Xinya.³⁶

In regards to 19 CFR 351.401(f)(2)(ii), the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, the record of this proceeding shows that Kuang family members sit on the boards and have management positions at Guang Ya Group, and New Zhongya, as described above. While we have been provided information regarding the directors and managers of Xinya, we do not consider that information verified and so do not know whether a Kuang family member is involved in management or is a board member at Xinya.

With respect to the third criterion for finding significant potential for manipulation, 19 CFR 351.401(f)(2)(iii), the presence of intertwined operations, the only information on the record to indicate that the operation of these entities are directly intertwined are the payments from the [] of Xinya to the owner of New Zhongya, found on New Zhongya’s accounting records at verification. It is not clear what the nature of these payments are, as New Zhongya’s accounting books, the explanation from the minority owner of New Zhongya, and the explanation from the majority owner of New Zhongya were not consistent.³⁷

As an initial matter, verification is a spot check, not an exhaustive examination of the respondent's business.³⁸ Therefore, it does not provide Department verifiers an opportunity to inspect every line item in the company’s books and records in extensive detail. Moreover, at Xinya, the Department saw limited Xinya documentation and was precluded from viewing any financial or corporate documentation related to Xinya’s parent entities and operations, notwithstanding having provided Xinya with a verification agenda outlining the specific types of documentation required for verification.³⁹ Thus, the fact that the Department did not uncover additional evidence of intertwined transactions during the course of these verifications is not telling. Accordingly, notwithstanding the absence of further evidence of intertwined operations, pursuant to 19 CFR 351.401(f)(2)(iii), we find that the relationship between the Guang Ya Group, New Zhongya and Xinya poses a significant potential for the manipulation of price or production.

³⁶ See, e.g., *Chlorinated Isocyanurates from the People’s Republic of China*, 74 Fed. Reg. 68575 (December 28, 2009) (“*Isos from the PRC*”) and accompanying Issues and Decision Memorandum at comment 3.

³⁷ See New Zhongya Verification Report at 10.

³⁸ See *Micron Tech., Inc. vs. United States*, 117 F.3d 1386, 1396 (Fed. Cir. 1997)

³⁹ See December 2, 2010, Letter to Xinya regarding Less-Than-Fair Value Investigation of Aluminum Extrusions from the People’s Republic of China, with enclosed Verification Agenda.

The fact that the family grouping is the owner of all three entities and sits on the boards of at least two of the companies demonstrates that the family has the ability and financial incentive to coordinate their actions to direct the Guang Ya Group, New Zhongya and Xinya to act in concert with each other. As mentioned above, the Department is not required to find that the parties in question have acted in concert before it can collapse affiliated entities. Rather, it is sufficient that the Department determine that there is the potential for the companies to act in concert or out of common interests.⁴⁰ Given that the family grouping enjoys near total ownership over the Guang Ya Group, New Zhongya and Xinya, and because each entity produces merchandise under consideration in this investigation, we find that the family grouping is in a position to have significant influence over the production and sales decisions of these entities. We find that these factors support a finding of significant potential for manipulation such that the Guang Ya Group, New Zhongya and Xinya should be treated as a single entity for purposes of margin calculation and assessment.

Thus, by virtue of the common ownership of the three entities, family members on the boards of at least two of the companies, evidence of financial transactions between two of these entities, and the fact that all entities produce and/or export merchandise under consideration, we find that there exists the significant potential for manipulation such that the Guang Ya Group, New Zhongya and Xinya should be treated as a single entity.⁴¹

RECOMMENDATION

Based on the forgoing discussion, we recommend finding the Guang Ya Group, New Zhongya and Xinya affiliated and, further, that Guang Ya Group, New Zhongya and Xinya should be collapsed and treated as a single entity for purposes of calculating a dumping margin in this investigation.

<S>

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

March 28, 2011

Date

⁴⁰ See *Turkish Pipe*.

⁴¹ *Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review*, 74 FR 47198 (September 15, 2009), and accompanying Issues and Decision Memorandum at Comment 1; *Isos from the PRC* and accompanying Issues and Decision Memorandum at comment 3.

ATTACHMENT II

A-570-967
POR: 11/12/10-4/30/12
~~Business Proprietary Document~~
China/NME 8: PS/ED
PUBLIC VERSION

DATE: June 3, 2012

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

THROUGH: Melissa Skinner
Director, Office 8
Antidumping and Countervailing Duty Operations

FROM: Eugene Degnan
Program Manager, Office 8
Antidumping and Countervailing Duty Operations

SUBJECT 2010/2012 Administrative Review of Aluminum Extrusions from the People's Republic of China: Preliminary Determination Regarding Affiliation and Collapsing of Guang Ya Aluminum Industrial Co., Ltd., Foshan Guangcheng Aluminum Co., Ltd., Kong Ah International Co., Ltd., Guang Ya Aluminum Industries (Hong Kong) Ltd., Guang Ya, Guangdong Zhongya Aluminum Co., Ltd., Zhongya Shaped Aluminum (HK) Holding Ltd., Karlton Aluminum Co., Ltd., and Foshan Nanhai Xinya Aluminum & Stainless Steel Product Co., Ltd.

SUMMARY

Based on record evidence, we preliminarily find that Guang Ya Aluminum Industrial Co., Ltd. ("Guang Ya"), Foshan Guangcheng Aluminum Co., Ltd. ("Guangcheng"), Kong Ah International Co., Ltd. ("Kong Ah"), and Guang Ya Aluminum Industries (Hong Kong) Ltd. ("Guang Ya HK") (collectively "Guang Ya Group") are affiliated and should be treated as a single entity for purposes of the Department of Commerce's (the "Department's") analysis in the above referenced administrative review. In addition, we preliminarily find that Guangdong Zhongya Aluminum Co., Ltd. ("Zhongya"), Zhongya Shaped Aluminum (HK) Holding Ltd. ("Shaped Aluminum"), and Karlton Aluminum Co., Ltd. ("Karlton") (collectively "Zhongya") are affiliated and should also be treated as a single entity for purposes of this administrative review. Furthermore, we preliminarily find that the Guang Ya Group, Zhongya, and Foshan Nanhai Xinya Aluminum & Stainless Steel Product Co., Ltd. ("Xinya") (collectively "Guang Ya Group/Zhongya/Xinya") are all affiliated with each other and should be treated as a single entity for the purposes of the Department's analysis in this administrative review.

BACKGROUND

In the final determination of the investigation of this proceeding, the Department found that Guang Ya, Guangcheng, Kong Ah and Guang Ya HK were affiliated and should be treated as a single entity (known as the Guang Ya Group in the investigation) for the purposes of the Department's analysis in the investigation.¹

The Department also found that Zhongya,² Shaped Aluminum, and Karlton were affiliated (known as New Zhongya in the investigation) for purposes of the investigation.³ Furthermore, the Department found that the Guang Ya Group, New Zhongya, and Xinya were all affiliated through common ownership by members of the Kwong⁴ family, and should be treated as a single entity for the purposes of the Department's analysis in the investigation.⁵

The Department explained in the initiation notice for this review that it would not conduct collapsing analyses at the respondent selection phase of this review and would not collapse companies at the respondent selection phase "unless there has been a determination to collapse certain companies in a previously completed segment of this antidumping proceeding (*i.e.*, investigation, administrative review, new shipper review or changed circumstances review)."⁶ However, the Department also explained that if it had determined, or continued to treat any company subject to this review as collapsed with others, then it would "assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes."⁷

Therefore, on January 28, 2013, the Department issued an antidumping duty questionnaire ("Questionnaire") to the those companies comprising the Guang Ya Group/New Zhongya/Xinya entity in the investigation that are subject to this administrative review. The Questionnaire was addressed to Guang Ya, Zhongya and Xinya collectively. Zhongya responded in part to all relevant sections of the Questionnaire and to all supplemental questionnaires. Xinya did not

¹ See *Aluminum Extrusions from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 18524, 18527-28 (April 4, 2011); see also Attachment I, the memorandum dated March 28, 2011: "Investigation of Aluminum Extrusions from the People's Republic of China: Final Determination Regarding Affiliation and Collapsing of Guang Ya Aluminum Industries Co., Ltd., Foshan Guangcheng Aluminium Co., Ltd., Kong Ah International Co., Ltd., and Guang Ya Aluminium Industries (Hong Kong) Ltd.; Zhaoqing New Zhongya Aluminum Co., Ltd., Zhongya Shaped Aluminium (HK) Holding Ltd., Karlton Aluminum Co., Ltd.; and Xinya Aluminum & Stainless Steel Product Co., Ltd. ("Investigation Collapsing Memo") at 1-2.

² Subsequent to the investigation, the Department determined that Guangdong Zhongya Aluminum Company Limited ("Zhongya") is the successor-in-interest to Zhaoqing New Zhongya Aluminum Co., Ltd (known as ZNZ in the investigation). See *Aluminum Extrusions From the People's Republic of China: Final Results of Changed Circumstances Review*, 77 FR 54900 (September 6, 2012).

³ See Investigation Collapsing Memo, at 8.

⁴ The name "Kwong" is also sometimes spelled "Kuang" in submissions on the record.

⁵ See Investigation Collapsing Memo, at 10-11.

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 40565, 40566 (July 10, 2012).

⁷ *Id.*

respond to the questionnaire.⁸ The Guang Ya Group informed the Department by letter on March 4, 2013, that it declined to participate in this segment of the proceeding as a mandatory respondent.

STATUTORY AND REGULATORY PROVISIONS

Affiliation

Section 771(33) of the Tariff Act of 1930, as amended (the “Act”) provides that:

The following persons shall be considered to be “affiliated” or “affiliated persons”:

- (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
- (B) Any officer or director of an organization and such organization.
- (C) Partners.
- (D) Employer and employee.
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
- (G) Any person who controls any other person and such other person.

The Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreement Act states the following:

The traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm “operationally in a position to exercise restraint or direction” over another in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchise or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.⁹

19 CFR 351.102(b)(3) defines affiliated persons and affiliated parties as having the same meaning as in section 771(33) of the Act. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Secretary will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretary will not find that control exists on the basis of these factors unless the relationship has the potential to impact

⁸ Xinya did submit a quantity and value questionnaire response, however, in which it stated that it had no shipments of subject merchandise during the period of review. See Xinya quantity and value questionnaire response, dated December 30, 2012.

⁹ See SAA, H.R. Doc. No. 316, 103rd Congress, 2d Session (1994), at 838.

decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. The Secretary will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

Collapsing

19 CFR 351.401(f) outlines the criteria for determining the appropriate treatment of affiliated producers for purposes of antidumping proceedings –

- (1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
- (2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:
 - (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 CFR 351.401(f).

To the extent that section 771(33) of the Act does not conflict with the Department's application of separate rates and enforcement of the non-market economy ("NME") provision or section 773(c) of the Act, the Department will determine that affiliated exporters and/or producers are a single entity if the facts of the case support such a finding.¹⁰ The Court of International Trade ("CIT") has upheld the Department's practice of determining whether to treat two or more companies as a single entity for antidumping purposes based on a consideration of whether there exists a significant potential for manipulation of prices and/or export decisions.¹¹

¹⁰ See *Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review*, 69 FR 10410, 10413 (March 5, 2004) ("*Mushrooms*"), unchanged in *Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 70 FR 54361 (September 14, 2005).

¹¹ See *Hontex Enterprises v. United States*, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004) ("*Hontex II*").

Furthermore, the Department notes that the factors listed in 19 CFR 351.401(f)(2) are not exhaustive, and in the context of an NME investigation or review, other factors unique to the relationship of business entities in the NME country may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case.¹² Further, in *Hontex II*, the CIT affirmed the Department's ability to expand the market-economy inquiry into the potential for manipulation to include NME exporters' export decisions, rather than simply relying on whether or not the companies share production facilities.¹³

The court has recognized that when determining whether there is a significant potential for manipulation, 19 CFR 351.401(f)(2)(i), (ii), and (iii) are considered by the Department in light of the totality of the circumstances; no one factor is dispositive in determining whether to collapse the producers.¹⁴

Additionally, the Department looks for "relatively unusual situations, where the type and degree of relationship is so significant that {it} finds that there is a strong possibility of price manipulation."¹⁵ Moreover, in examining these factors as they pertain to a significant potential for manipulation, the Department considers both actual manipulation in the past and the possibility of future manipulation.¹⁶ The *Preamble* underscores the importance of considering the possibility of future manipulation: "a standard based on the potential for manipulation focuses on what may transpire in the future."¹⁷ We have, therefore, examined all three factors with respect to the potential for future manipulation.

ARGUMENTS

Zhongya argues that in this segment of the proceeding the Department should not treat Zhongya as part of the single entity and that it should be reviewed as an individual voluntary respondent. Zhongya argues that the fact pattern in the current segment of the proceeding warrants a different determination from that of the investigation.

Zhongya notes that in the investigation, the Department found that Da Yang Aluminum Co., Ltd., a company also owned by a Kwong sibling, was part of the PRC-wide entity and, therefore, could not be collapsed with the other Kwong-owned companies. Zhongya argues that because the Guang Ya Group and Xinya have not participated in the present review, they should be found to be part of the PRC-wide entity as well, and the Department should decline to collapse them

¹² See *Mushrooms*, 69 FR at 10413, 10414 (citing *Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1342-43 (CIT 2003) ("*Hontex I*") (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation)).

¹³ See *Hontex II*, 248 F. Supp. 2d at 1233-1234.

¹⁴ See *Koyo Seiko Co., Ltd. v. United States*, 516 F. Supp. 2d 1323, 1346 (CIT 2007), citing *Light Walled Rectangular Pipe and Tube from Turkey; Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53675 (September 2, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

¹⁵ See *Koyo Seiko* citing *Nihon Cement Co. v. United States*, 17 C.I.T. 400, 426 (CIT 1993) (quoting *Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*, 54 FR 18992, 19089 (May 3, 1989)).

¹⁶ See *See Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27346 (May 19, 1997). ("*Preamble*")

¹⁷ *Id.*

with Zhongya. Further, with regard to Guang Ya, Zhongya argues that, although one of its owners, Kwong Wing Wah,¹⁸ has siblings who own Guang Ya, which is also involved in the production and sale of aluminum extrusions, Zhongya operates completely separately from Guang Ya and had no sales transactions, no exchanges of capital, no business discussions, or any other business ties with Guang Ya during the POR. Furthermore, Zhongya claims that there were “no non-business ties between the companies, of a personal nature (e.g., flows of funds through personal company accounts of Mr. Kwong Wing Wah or the owner/s of the Guang Ya Group. . . .”¹⁹ Thus, although the two companies may be affiliated through family ownership, they are not collapsible because there is no potential for manipulation of pricing or production.

With respect to Xinya, also an aluminum extrusions producer and exporter, Zhongya argues that Xinya was fully owned by Chen Zhi Guang during the POR and that he has no blood or family ties with Kwong Wing Wah. Furthermore, Zhongya argues that Zhong Jian Qiu, a brother-in-law of Kwong Wing Wah who was general manager of Xinya during the investigation, was no longer the general manager of Xinya during the POR. Thus, because there is neither Kwong family ownership nor intertwined operations during the POR, the Department should not find that Zhongya and Xinya are affiliated or a single entity.

Guang Ya and Xinya have not responded to the Department’s questionnaires; nor have they submitted arguments concerning affiliation or collapsing.

Petitioners have not commented on this issue.

ANALYSIS

In the investigation, the Department found that the entities comprising the Guang Ya Group, and the entities comprising New Zhongya, were affiliated pursuant to sections 771(33)(A) and (F) of the Act, and that the Guang Ya Group/New Zhongya and Xinya were affiliated pursuant to sections 771 (33)(A) and (F) of the Act.²⁰ In addition, based on its finding that the Guang Ya Group, New Zhongya and Xinya were each owned by a member of the Kwong family, the Department concluded in the investigation that the owners of the Guang Ya Group, New Zhongya and Xinya were members of a family grouping.²¹ Further, the Department found that the ownership by the family grouping satisfied the requirement of affiliation pursuant to section 771(33)(F) of the Act, because all of the companies within the Guang Ya Group, New Zhongya and Xinya were under the common control of the family grouping.²² Moreover, by virtue of the nearly 100 percent common ownership of the three entities by the family grouping, family members on the boards of directors of at least two of the companies, evidence of financial transactions between two of the entities, and the fact that all entities produced and/or exported merchandise under consideration, the Department found that there existed a significant potential

¹⁸ Kwong Wing Wah owns [] percent of Zhongya Shaped Aluminum (HK) Holding Ltd., which owns [] percent of Zhongya. Other Kwong family members, together with Kwong Wing Wah, own 100 percent of Zhongya. *See* Investigation Collapsing Memo, at 5.

¹⁹ *See* Zhongya’s section A questionnaire response (“Section A Response”) dated March 5, 2013, at page 17.

²⁰ *See* Investigation Collapsing Memo, at 5-6, 8.

²¹ *See id.*, at 8.

²² *See id.*

for manipulation such that the Guang Ya Group, New Zhongya and Xinya should be treated as a single entity in accordance with to 19 CFR 351.401(f).²³

In the current review, the Department investigated this issue further in a section A supplemental questionnaire, where the Department requested that Zhongya review the Investigation Collapsing Memo, attached to the supplemental questionnaire. The Department requested that Zhongya describe any changes during the POR in ownership, management, operations, and changes in merchandise produced.²⁴ Zhongya replied that the Guang Ya Group did not cooperate or reply to any of its requests for this information, and that Xinya merely provided signed statements regarding its management and ownership information, as described above by Zhongya.²⁵ Neither the Guang Ya Group nor Xinya responded to the Department's requests for information.²⁶

We find that the record continues to support a determination that Guang Ya Group, Zhongya and Xinya are affiliated pursuant to section 771(33)(A) and (F) of the Act, through the Kwong family grouping, and should be collapsed into a single entity in accordance with 19 CFR 351.401(f). It is uncontested on the record that the ownership and directors of the Guang Ya Group and Zhongya remain the same as in the investigation, and that members of the Kwong family continue to own the Guang Ya Group and Zhongya and members of the Kwong family continue to sit on the board of directors of each company.²⁷ Specifically, Kwong family members own [] percent of companies comprising the Guang Ya Group²⁸ and [] percent of Zhongya.²⁹

Regarding Xinya, though Zhongya has claimed that there is no longer Kwong family ownership of Xinya, Zhongya has put forth no evidence to support these contentions other than signed statements that purport to have been signed by company officials representing Xinya.³⁰ Xinya made these very same assertions in the investigation, and we found at verification that such claims were unsupported.³¹ There is no evidence on the record of this administrative review to support Zhongya's claim other than these two statements. We have accorded such evidence less weight than verified evidence indicating that the Kwong family grouping continues to have near total ownership over the Guang Ya Group, Zhongya and Xinya,³² and that each entity produces merchandise under consideration in this investigation.³³

²³ See *id.*, at 5-6, 10.

²⁴ See the Department's section A supplemental questionnaire dated, April 1, 2013, ("A Supplemental"), at page 5, item 16.

²⁵ See Zhongya's Section A Supplemental Response, dated April 22, 2013, at Exhibit SA-16.

²⁶ See the Questionnaire.

²⁷ See Zhongya's Section A Response at 17; see also Investigation Collapsing Memo, at 5-8.

²⁸ See Guang Ya's separate rate application dated September 10, 2012, at Exhibit 10.

²⁹ See Zhongya's Section A Response dated March 5, 2013, at Exhibit A-7.

³⁰ See Zhongya's Section A Supplemental Response, at pages 168-9.

³¹ See Collapsing Memo, at page 10.

³² See Investigation Collapsing Memo, at 5-6, 10.

³³ See Zhongya's Section A response, at pages 17 and 18; see also Guang Ya's separate rate application dated September 10, 2013, at page 7, item 6; Guangcheng's separate rate application at Exhibit 3 (Certificate of Approval, business scope) and Exhibit 7, Articles of Association at articles 7 and 8.

We also find that the record continues to support treating the Guang Ya Group, Zhongya, and Xinya as a single entity, in accordance with 19 CFR 351.401(f), based on the significant potential for manipulation. Regarding the level of common ownership, *see* 19 CFR 351.401(f)(2)(i), the record indicates that the Kwong family grouping continues to hold nearly 100 percent common ownership of the Guang Ya Group, Zhongya, and Xinya.³⁴ Regarding the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, *see* 19 CFR 351.401(f)(2)(ii), the record indicates that the Kwong family members continue to sit on the boards and have management positions at the Guang Ya Group and Zhongya.³⁵ Regarding the presence of intertwined operations, *see* 19 CFR 351.401(f)(2)(iii), the Department's evidence is limited as a result of the Guang Ya Group's and Xinya's failure to cooperate in this review and information from the investigation indicates that Xinya has previously made payments to the owner of Zhongya.³⁶

Accordingly, because the facts on this record regarding the potential for manipulation of price or production of subject merchandise remain the same as in the investigation, the Department preliminarily finds that the Kwong family grouping continues to be in a position to have significant influence over the production and sales decisions of the Guang Ya Group, Zhongya, and Xinya. Therefore, we continue to find that the Guang Ya Group, Zhongya, and Xinya should be treated as a single entity for the purposes of the Department's analysis for the preliminary results.

RECOMMENDATION

Based on the forgoing discussion, we recommend finding that Guang Ya, Zhongya and Xinya are affiliated and, further, that Guang Ya Group, New Zhongya and Xinya should be collapsed and treated as a single entity for purposes of this administrative review.

<s>
Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

May 31, 2013
Date

³⁴ *See* Guang Ya's separate rate application dated September 10, 2012, at Exhibit 10; Zhongya's Section A Response dated March 5, 2013, at Exhibit A-7. In this context, the Kwong family is the "person" jointly owning and controlling the Guang Ya Group, Zhongya, and Xinya. *See, e.g., Chlorinated Isocyanurates from the People's Republic of China: Final Results of June 2008 Through November 2008 Semi-Annual New Shipper Review*, 74 FR 68575 (December 28, 2009), and accompanying Issues and Decision Memorandum at comment 3.

³⁵ *See* Investigation Collapsing Memo, at 5-6, 10; *see also* Zhongya's Section A Response, at page 209. In addition, *see* Guangcheng's separate rate application dated September 10, 2012, at 16 and Guangya's separate rate application dated September 10, 2012, at 15.

³⁶ *See* Investigation Collapsing Memo, at 10.