

frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

**CONTACT PERSON FOR MORE INFORMATION:**

Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 203-4545.

Dated: November 1, 2005.

**Carol Booker,**

*Legal Counsel.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

A-570-899

#### Preliminary Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China

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

**EFFECTIVE DATE:** November 7, 2005.

**SUMMARY:** We preliminarily determine that artist canvas from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Jon Freed or Michael Holton, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-3818 or 482-1324, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Case History

On March 31, 2005, the Department of Commerce ("Department") received a Petition on imports of certain artist canvas from the PRC ("Petition") filed in proper form by Tara Materials Inc. ("Tara" or "Petitioner") on behalf of the domestic industry and workers producing certain artist canvas. On April 7, 2005, the Department clarified that the official filing date for the Petition was April 1, 2005, and that the proper period of investigation ("POI") is

July 1, 2004, through December 31, 2004. *See Memorandum from Edward Yang to Barbara Tillman: Decision Memo Concerning Petition Filing Date and Period of Investigation*, April 7, 2005. On April 7, 2005, and April 14, 2005, the Department requested clarification of certain areas of the Petition and received responses to those requests on April 12, 2005, April 15, 2005, and April 18, 2005. This investigation was initiated on April 28, 2005. *See Initiation of Antidumping Duty Investigation: Certain Artist Canvas from the People's Republic of China*, 70 FR 21996 (April 28, 2005) ("Notice of Initiation"). Additionally, in the *Notice of Initiation*, the Department applied the modified process by which exporters and producers may obtain separate-rate status in NME investigations. The new process requires exporters and producers to submit a separate-rate status application. *See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries*, (April 5, 2005), ("Policy Bulletin 05.1") available at <http://ia.ita.doc.gov/policy/bull05-1.pdf>. However, the standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* governmental control over its export activities) has not changed.

On April 28, 2005, the Department requested quantity and value ("Q&V") information from a total of six producers of artist canvas in the PRC which were identified in the petition and for which the Department was able to locate contact information. On April 28, 2005, the Department also sent the Government of the PRC a letter requesting assistance in locating all known Chinese producers/exporters of artist canvas who exported artist canvas to the United States during the POI, July 1, 2004, through December 31, 2004. In addition, on May 11, 2005, in response to a request from ColArt Americas Inc. ("ColArt"), the Department requested Q&V information from ColArt.

On May 16, 2005, the Department received Q&V responses from four Chinese producers/exporters of artist canvas: Hangzhou Haili Electronic Equipment Co., Ltd. ("Haili"); ColArt; Ningbo Conda Import & Export Co., Ltd. ("Ningbo Conda"); and Wuxi Phoenix Artist Materials Co., Ltd. ("Phoenix Materials"). On May 16, 2005, the Department also received a Q&V response from Textus Industries stating that it is a U.S. importer and it is not a producer or exporter of subject merchandise. The Government of the

PRC did not respond to the Department's April 28, 2005, letter requesting assistance in identifying producers and exporters of the subject merchandise in the PRC. On June 2, 2005, the Department requested clarifying Q&V information from Haili, ColArt, Ningbo Conda and Phoenix Materials. On June 6, 2005, we received responses from Haili, ColArt, Ningbo Conda and Phoenix Materials clarifying their Q&V information.

On May 13, 2005, the Department requested comments from all interested parties on proposed control numbers ("CONNUMs") to be assigned the subject merchandise. On May 23, 2005, we received comments from: Michaels Stores, Inc., Aaron Brothers, Macpherson's ColArt Americas Inc., Crafts, Etc!, Ltd./Hobby Lobby Stores, Inc., and Jerry's Artarama, Inc. (collectively, "Importers"); Petitioner; and Phoenix Materials.

On May 24, 2005, the United States International Trade Commission ("ITC") issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the PRC of certain artist canvas. The ITC's determination was published in the **Federal Register** on May 24, 2005. *See Investigation Nos. 731-TA-1091 (Preliminary), Artists' Canvas from China*, 70 FR 29781 (May 24, 2005).

On May 25, 2005, the Department determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See Memorandum from Ron Lorentzen, Acting Director, Office of Policy to Robert Bolling, Program Manager, China/NME Group, Office 8: Antidumping Duty Investigation of Certain Artist Canvas from the People's Republic of China (PRC): Request for a List of Surrogate Countries*, dated May 25, 2005 ("Office of Policy Surrogate Countries Memorandum").

On May 27, 2005, the Department requested that the parties submit comments on surrogate country selection. On June 24, 2005, we received comments regarding the selection of a surrogate country from the Petitioner and from the Importers. Both the Petitioner and Importers argued that India is the appropriate surrogate country.

On May 27, 2005, we received separate rate applications from Hangzhou Foreign Relation & Trade Service Co. Ltd. ("HFERTS") and Jiangsu Animal By-products Import & Export Group Corp. ("Jiangsu By-products"). On June 16, 2005, we

requested additional information from HFERTS regarding its separate rate application.

On June 9, 2005, the Department issued its respondent-selection memorandum, selecting the following two companies as mandatory respondents in this investigation: Ningbo Conda and Phoenix Materials. *See Memorandum from Wendy J. Frankel, Director, AD/CVD Enforcement, Office 8, to Edward Yang, Senior Enforcement Coordinator, China/NME Group, Selection of Respondents for the Antidumping Duty Investigation of Artist Canvas from the People's Republic of China ("Respondent Selection Memo")*, dated June 9, 2005.

On June 13, 2005, the Department issued its Sections A, C, D, and E, questionnaire to Ningbo Conda and Phoenix Materials. On June 13, 2005, we also issued a Sections A, C, D, and E questionnaire to the Chinese Government (*i.e.*, Ministry of Commerce).

On June 27, 2005, Phoenix Materials requested that it be excused from submitting the factors of production spreadsheet contained in Appendix VI to the Department's original questionnaire. On July 14, 2005, we informed Ningbo Conda and Phoenix Materials that we had revised the factors of production spreadsheet, and created a spreadsheet for this investigation that both respondents are required to complete.

On July 1, 2005, we provided a one-week extension until July 11, 2005, to Ningbo Conda for its response to our Section A questionnaire. Additionally, on July 5, 2005, we provided a two-business day extension until July 7, 2005, to Phoenix Materials for its response to our Section A questionnaire. Further, on July 13, 2005, we provided an extension until July 25, 2005, to all mandatory respondents to respond to Sections C, D, and E of the questionnaire. For a detailed discussion on specific mandatory respondent extensions, please see the company-specific section for each mandatory respondent below.

On July 29, 2005, the Department determined that India was the appropriate surrogate country to use in this investigation. *See Memorandum to Wendy J. Frankel, Director, AD/CVD Enforcement, Office 8, from Michael Holton, Case Analyst, through Robert Bolling, Program Manager: Antidumping Duty Investigation on Certain Artist Canvas from the People's Republic of China ("Surrogate-Country Memorandum")*, dated July 29, 2005. We received comments from interested parties regarding our selection of India

as the surrogate country. For a detailed discussion of the comments regarding the surrogate country, please see the "Surrogate Country" section below. Additionally, on July 13, 2005, we extended the time period for interested parties to provide surrogate values for the factors of production until August 1, 2005. On July 29, 2005, we received a request from the Importers to further extend the deadline for supplying surrogate-value information. On August 1, 2005, we informed all interested parties that we were again extending the time period to provide surrogate-value information until August 5, 2005.

On August 5, 2005, Petitioner, Ningbo Conda, and Phoenix Materials submitted surrogate-value information. On September 2, 2005, Petitioner submitted comments on respondents' surrogate-value information.

On August 11, 2005, Petitioner made a timely request pursuant to 19 CFR §351.205(e) for a twenty-nine day postponement of the preliminary determination, until October 7, 2005. On August 19, 2005, the Department published a postponement of the preliminary antidumping duty determination on artist canvas from the PRC. *See Notice of Postponement of the Preliminary Determination of Certain Artist Canvas from the People's Republic of China Antidumping Duty Investigation*, 70 FR 48667 (August 19, 2005). Additionally, on September 29, 2005, Petitioner made another timely request pursuant to 19 CFR §351.205(e) for an additional twenty-one day postponement of the preliminary determination, until October 28, 2005. On October 13, 2005, the Department published a postponement of the preliminary antidumping duty determination on artist canvas from the PRC. *See Notice of Postponement of the Preliminary Determination of Certain Artist Canvas from the People's Republic of China Antidumping Duty Investigation*, 70 FR 59718 (October 13, 2005).

#### Company-Specific Chronology

As described above, the Department staggered its issuance of sections of the antidumping questionnaire to the mandatory respondents. Upon receipt of the various responses, the Petitioners provided comments and the Department issued supplemental questionnaires. The chronology of this stage of the investigation varies by respondent. Therefore, the Department has separated by company the following discussion of its information-gathering process after issuance of the questionnaire.

#### Ningbo Conda

On May 27, 2005, Ningbo Conda submitted a separate rate application. On July 11, 2005, Ningbo Conda submitted its response to Section A of the questionnaire. On July 25, 2005, Ningbo Conda submitted its response to Sections C and D of the questionnaire. On August 3, 2005, the Department issued a Supplemental Section A questionnaire covering Ningbo Conda's July 11, 2005, Section A response. On July 28, 2005, Petitioners submitted deficiency comments on the Section A response of Ningbo Conda. On August 19, 2005, Ningbo Conda submitted its response to the Supplemental Section A questionnaire. On August 15, 2005, Petitioners submitted deficiency comments on the Sections C and D responses of Ningbo Conda. On August 18, 2005, the Department issued a Supplemental Sections C and D questionnaire covering Ningbo Conda's July 25, 2005, Sections C and D response. On September 9, 2005, Ningbo Conda submitted its response to the Department's August 18, 2005, Supplemental Sections C and D questionnaire. On September 14, 2005, the Department issued a Supplemental Sections A and C questionnaire requesting financial information and a new U.S. sales database. On September 21, 2005, Ningbo Conda submitted its response to the Department's September 14, 2005, Supplemental Sections A and C questionnaire. On September 21, 2005, the Department issued a Supplemental Sections A, C, and D questionnaire covering Ningbo Conda's responses. On September 28, 2005, Ningbo Conda submitted its response to the Department's Supplemental Sections A, C, and D questionnaire. On October 3, 2005, Petitioners submitted comments regarding Ningbo Conda's September 28, 2005, response. On October 3, 2005, the Department issued a Supplemental Sections A, C, and D questionnaire covering Ningbo Conda's responses. On October 7, 2005, the Department issued a Supplemental Sections C questionnaire covering Ningbo Conda's responses. On October 4, 2005, Ningbo Conda's U.S. affiliate submitted a response to the Department's September 21, 2005, Supplemental Sections A, C, and D questionnaire. On October 19, 2005, Ningbo Conda submitted a response to the Department's October 3, 2005, Supplemental Sections A, C, and D questionnaire. On October 19, 2005, Ningbo Conda submitted a response to the Department's Supplemental Sections C questionnaire.

### Phoenix Materials

On July 7, 2005, Phoenix Materials submitted its response to Section A of the questionnaire. On July 25, 2005, Phoenix Materials submitted its response to Sections C and D of the questionnaire. On July 25, 2005, the Department issued a Supplemental Section A questionnaire covering Phoenix Materials' July 7, 2005, Section A response. On July 28, 2005, Petitioners submitted deficiency comments on the Section A responses of Phoenix Materials. On August 10, 2005, Phoenix Materials submitted its response to the Supplemental Section A questionnaire. On August 15, 2005, Petitioners submitted deficiency comments on the Sections C and D responses of Phoenix Materials. On August 19, 2005, the Department issued a Supplemental Section A–D questionnaire covering Phoenix Materials' July 28, 2005, Sections C and D response and its August 10, 2005, response to the Supplemental Section A questionnaire. On September 9, 2005, Phoenix Materials submitted its response to the Supplemental Sections A–D questionnaire issued on August 19, 2005. On September 20, 2005, the Department issued a Second Supplemental A–D questionnaire to Phoenix Materials. On September 30, 2005, Phoenix Materials submitted its response to the Second Supplemental A–D questionnaire.

### Postponement of Final Determination

Section 735(a) of the Act provides that a final determination may be postponed until no later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise or, in the event of a negative preliminary determination, a request for such postponement is made by the Petitioners. The Department's regulations at 19 CFR 351.210(e)(2) require that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months.

On October 5, 2005, Ningbo Conda requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days until 135 days after the publication of the preliminary determination. As well, on October 26, 2005, Phoenix

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

### Period of Investigation

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

### Scope of Investigation

The products covered by this investigation are artist canvases regardless of dimension and/or size, whether assembled or unassembled, that have been primed/coated, whether or not made from cotton, whether or not archival, whether bleached or unbleached, and whether or not containing an ink receptive top coat. Priming/coating includes the application of a solution, designed to promote the adherence of artist materials, such as paint or ink, to the fabric. Artist canvases (*i.e.*, pre-stretched canvases, canvas panels, canvas pads, canvas rolls (including bulk rolls that have been primed), printable canvases, floor cloths, and placemats) are tightly woven prepared painting and/or printing surfaces. Artist canvas and stretcher strips (whether or not made of wood and whether or not assembled) included within a kit or set are covered by this proceeding.

Artist canvases subject to this investigation are currently classifiable under subheadings 5901.90.20.00 and 5901.90.40.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of this investigation are tracing cloths, "paint-by-number" or "paint-it-yourself" artist canvases with a copyrighted preprinted outline, pattern, or design, whether or not included in a

painting set or kit.<sup>1</sup> Also excluded are stretcher strips, whether or not made from wood, so long as they are not incorporated into artist canvases or sold as part of an artist canvas kit or set. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

### Scope Comments

In accordance with the preamble to our regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Notice of Initiation* (*see* 70 FR at 21996).

The Department received numerous scope comments from a variety of interested parties. On May 18, 2005, the Importers provided scope comments concerning three product categories that they believe should be excluded from the scope of the investigation: (1) kits; (2) bleached canvas; and (3) splined canvas. Additionally, on May 18, 2005, Phoenix Materials requested confirmation that two products were outside the scope of the investigation: (1) artist canvas panels that are pre-printed with copyrighted "paint-by-number" outlines; and (2) artist canvas panels that are pre-printed with copyrighted "paint-by-number" outlines that are sold within a boxed "painting set."

On May 26, 2005, Petitioner responded to the above-mentioned comments stating that the Department should reject the exclusion requests of the Importers and Phoenix Materials. Additionally, on May 18, 2005, Design Ideas, Ltd. ("Design Ideas") (a U.S. Importer) provided scope comments arguing that the artist canvas it imports from the PRC produced by Hangzhou Haili is outside the scope of the investigation because India, not the PRC is the country of origin of the product. On June 2, 2005, Petitioner provided a rebuttal to Design Ideas' May 18th submission wherein Petitioner stated that the Department should deny Design Ideas' exclusion request for artist canvas produced by Hangzhou Haili. On July 1, 2005, Design Ideas responded to Petitioners' June 2nd submission, stating that it is clear from the record that India is the country of origin of its imported artist canvas. On July 25,

<sup>1</sup> Artist canvases with a non-copyrighted preprinted outline, pattern, or design are included in the scope, whether or not included in a painting set or kit.

2005, Petitioner responded to Design Ideas' July 1st submission stating that this submission provided no support or citation for granting Design Ideas' exclusion request and Petitioner stated that the Department should deny Hangzhou Haili's exclusion request. On August 10, 2005, Design Ideas responded to Petitioners' July 25th submission, stating that it is clear from the record that the artist canvases produced by Hangzhou Haili in the PRC using gesso primed canvas from India and imported into the United States are not within the scope of the investigation. On August 17, 2005, the Importers responded to both Design Ideas and Petitioner comments stating that it supports Design Ideas' request that artist canvases produced by Hangzhou Haili from gesso primed canvas produced in India should be excluded from the scope of the investigation. On September 2, 2005, Petitioner responded to both the August 10th and 17th submissions, wherein Petitioner stated that it continues to believe there is no basis to grant Design Ideas' request.

Further, as part of this process, the Department has fully summarized and addresses all of the comments received to date in a memorandum to the file. See *Memorandum to the File from Michael Holton, Case Analyst, to Wendy Frankel, Office Director, Antidumping Duty Investigation of Certain Artist Canvas from the People's Republic of China: Summary on Comments to the Scope*, dated October 28, 2005 ("Scope Memorandum").

For this preliminary determination, the Department has made determinations with respect to artist canvas kits, paint-by-number artist canvas, bleached canvas, and splined canvas in the *Scope Memorandum*. However, the Department has not yet determined whether artist canvas primed in India but processed and exported from the PRC is within the scope of this investigation. Nonetheless, the Department intends to issue a preliminary finding on whether artist canvas primed in India but processed and exported from the PRC is within the scope of this investigation. We will afford interested parties an opportunity to provide comments on our preliminary finding on this issue in their pre-hearing briefs.

#### Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual weighted-average dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act gives the

Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the Department at the time of selection or (2) exporters/producers accounting for the largest volume of the merchandise under investigation that can reasonably be examined. After consideration of the complexities expected to arise in this proceeding and the resources available to it, the Department determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. Instead, we limited our examination to the two exporters and producers accounting for the largest volume of the subject merchandise pursuant to section 777A(c)(2)(B) of the Act. Ningbo Conda and Phoenix Materials, the exporters accounting for the largest volume of exports to the United States, account for a significant percentage of all exports of the subject merchandise from the PRC during the POI and were selected as mandatory respondents. See *Respondent Selection Memo* at 4.

#### Non-Market-Economy Country

For purposes of initiation, the Petitioners submitted LTFV analyses for the PRC as a non-market economy. See *Notice of Initiation* 70 FR at 21997. In every case conducted by the Department involving the PRC, the PRC has been treated as an Non-Market Economy ("NME") country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. See also *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, ("TRBs") From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *Final Results of 2001–2002 Administrative Review: TRBs from the People's Republic of China*, 68 FR 70488 (December 18, 2003). Therefore, we have treated the PRC as an NME country for purposes of this preliminary determination.

#### Surrogate Country

When the Department is investigating imports from an NME, section 773(c)(1)

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

The Department determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. See *Office of Policy Surrogate Countries Memorandum*. Once the countries that are economically comparable to the PRC have been identified, we select an appropriate surrogate country by determining whether an economically comparable country is a significant producer of subject merchandise and whether the data for valuing factors of production is both available and reliable.

On June 24, 2005, the Department received arguments from interested parties on the surrogate country. Petitioner argues that India is the appropriate surrogate country for this investigation because India is at a comparable level of economic development with the PRC based on the Department's repeated use of India as a surrogate. Petitioner argues that India is a significant producer of identical and comparable merchandise. Additionally, Petitioner contends that India provides publicly available information on which to base surrogate values.

Also, on June 24, 2005, the Importers argue that India is the only country that appears to meet the Department's criteria for a surrogate country based on economic comparability, significant production of comparable merchandise, and the availability of factor data. See the *Selection of a Surrogate Country Memorandum* dated August 3, 2004, for a complete description of the interested parties surrogate country arguments.

Consequently, we have made the following determination about the use of India as a surrogate country: (1) it is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to 773(c)(4) of the Act; and (3) we have reliable data from India that we can use

to value the factors of production. *See Selection of a Surrogate Country Memorandum*. Thus, we have calculated normal value using Indian prices when available and appropriate to value the factors of production of the artist canvas producers. We have obtained and relied upon publicly available information wherever possible. *See Memorandum to the File from Jon Freed, Case Analyst, through Robert Bolling, Program Manager, and Wendy Frankel, Office Director: Certain Artist Canvas from the People's Republic of China: Factors Valuation Memorandum for the Preliminary Determination*, dated October 7, 2005 ("Factor-Valuation Memorandum").

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value the factors of production within 40 days after the date of publication of the preliminary determination.

#### Affiliation

Section 771(33) of the Act states that the Department considers the following entities to be affiliated: (A) Members of a family, including brothers and sisters (whether by 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; and (G) Any person who controls any other person and such other person.

For purposes of affiliation, section 771(33) of the Act 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. In order to find affiliation between companies, the Department must find that at least one of the criteria listed above is applicable to the respondents.

The Statement of Administrative Action accompanying the Uruguay Round Agreements Act ("SAA"), H.R. Doc. 103-316 (1994), indicates that stock ownership is not the only evidentiary factor that the Department may consider to determine whether a person is in a position to exercise restraint or direction over another person, e.g., control may be established

through corporate or family groupings, or joint ventures and other means as well. *See SAA* at 838. *See also Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Review*, 61 FR 42833, 42853 (August 19, 1996); and *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53810 (October 16, 1997).

To the extent that the affiliation provisions in section 771(33) of the Act do not conflict with the Department's application of separate rates and the statutory NME provisions in section 773(c) of the Act, the Department will determine that exporters and/or producers are affiliated if the facts of the case support such a finding. *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).

#### Ningbo Conda

Following these guidelines, we preliminarily determine that members of the Ningbo Conda Group (i.e., Ningbo Conda and Conda (Ningbo) Painting Material Mfg. ("Conda Painting")) are affiliated pursuant to Section 771(33) of the Act. We also preliminarily determine that the Ningbo Conda Group should be treated as a single entity for the purposes of the antidumping investigation of certain artist canvas from the PRC.

Further, based on our examination of the evidence presented in Ningbo Conda's questionnaire responses, we preliminarily find that Jinhua Universal Canvas Manufacturing Co., Ltd. ("Jinhua Universal") is affiliated with the Ningbo Conda Group pursuant to sections 771(33)(B), (E), (F) and (G) of the Act and should be treated as a single entity with the Ningbo Conda Group for purposes of calculating a dumping margin in this investigation. *See Mushrooms*, 69 FR 10410, 10413 (March 5, 2004), *see also, Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1339-1345 (CIT 2003). We made this determination based on record evidence from Ningbo Conda's questionnaire responses that stated that Ningbo Conda, Conda Painting, and Jinhua Universal share the same director

and the same director directly or indirectly owns and controls more than five percent of outstanding stock of each of these companies.

Further, evidence presented in Ningbo Conda's questionnaire responses indicates that during the POI the Ningbo Conda Group sold subject merchandise to a U.S. reseller. The Department preliminary determines that under sections 771(33)(E), (F), and (G) of the Act, this reseller is affiliated with several other entities all owned and controlled by the parent corporation. These entities are referred to as Group A in the affiliation memorandum. For the purposes of this analysis, we have treated Group A as a single entity.

Additionally, we have determined that Group A and Jinhua Universal are affiliated parties, consistent with record evidence, the Department's practice and sections 771(33)(E) and (F) of the Act. We made this determination based on record evidence from Ningbo Conda's questionnaire responses that stated that Group A's parent corporation directly or indirectly owns and controls more than five percent of outstanding stock of Jinhua Universal.

Furthermore, we have determined that the Ningbo Conda Group and Group A are affiliated under sections 771(33)(F) of the Act. We made this determination based on record evidence from Ningbo Conda's questionnaire responses that stated that Ningbo Conda's and Group A's ownership of Jinhua Universal result in Ningbo Conda's and Group A's direct or indirect control of Jinhua Universal. Accordingly, we are using Group A's U.S. downstream sales to the first U.S. unaffiliated customer in our margin calculation. *See Memorandum to Wendy Frankel, Director, Office 8, NME/China Group, through Robert Bolling, Program Manager, From Michael Holton, Case Analyst, Antidumping Duty Investigation of Certain Artist Canvas from the People's Republic of China: Affiliation of Ningbo Conda*, dated October 28, 2005 ("Affiliation Memorandum").

#### Phoenix Materials

Following these guidelines, we preliminarily determine that Phoenix Materials, Wuxi Phoenix Stationary Co. Ltd ("Phoenix Stationary"), and Shuyang Phoenix Artist Materials Co. Ltd. ("Shuyang Phoenix"), collectively, ("Phoenix Group") are affiliated pursuant to sections 771(33)(E) and (G) of the Act and that these companies should be treated as a single entity for the purposes of the antidumping investigation of artist canvas from the PRC. Based on our examination of the

evidence presented in Phoenix Materials' questionnaire responses, we have determined that: (1) Phoenix Materials controls a majority of Phoenix Stationary based on stock-ownership, and Phoenix Materials controls Shuyang Phoenix; (2) Phoenix Materials, Phoenix Stationary, and Shuyang Phoenix have overlapping managers and directors; and (3) Phoenix Materials and Phoenix Stationary share production facilities and production records. See *Memorandum to Wendy Frankel, Director, Office 8, NME/China Group, through Robert Bolling, Program Manager, From Jon Freed, Case Analyst, Antidumping Duty Investigation of Certain Artist Canvas from the People's Republic of China: Phoenix Affiliation and Treatment as a Single Entity of Phoenix Materials and its Members*, dated October 28, 2005 ("Affiliation/Single Entity Treatment Memorandum").

### Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The two mandatory respondents and the two Separate Rate Applicants have provided company-specific information and each has stated that it meets the standards for the assignment of a separate rate.

We have considered whether each of the four companies referenced above is eligible for a separate rate. The Department's separate-rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border-type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See *Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61758 (November 19, 1997); and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty*

*Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"). In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

#### 1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589.

Our analysis shows that the evidence on the record supports a preliminary finding of the absence of *de jure* governmental control for Ningbo Conda Group (Ningbo Conda and its affiliated exporters, Conda Painting and Jinhua Universal), Phoenix Materials (and its affiliated exporter Phoenix Stationary), HFERTS, and Jiangsu By-products based on the criteria listed above. See *Memorandum to Wendy Frankel, Office Director, China/NME Group, through Robert Bolling, Program Manager, from Jon Freed and Michael Holton, Case Analysts, Certain Artist Canvas from the People's Republic of China: Separate Rates Memorandum* ("Separate-Rates Memorandum"), dated October 7, 2005.

#### 2. Absence of De Facto Control

Typically the Department considers the following four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4)

whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22586-87; see also *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

We preliminarily determine that, for Ningbo Conda (and its affiliated exporters, Conda Painting and Jinhua Universal), Phoenix Materials (and its affiliated exporter Phoenix Stationary), HFERTS, and Jiangsu By-products, the evidence on the record supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing the following: (1) each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each exporter has the authority to negotiate and sign contracts and other agreements; and (4) each exporter has autonomy from the government regarding the selection of management.

Therefore, the evidence placed on the record of this investigation by Ningbo Conda (and its affiliated exporters, Conda Painting and Jinhua Universal), Phoenix Materials (and its affiliated exporter Phoenix Stationary), HFERTS, and Jiangsu By-products demonstrates an absence of government control, both in law and in fact, with respect to each of the exporter's exports of the merchandise under investigation in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. However, although HFERTS has demonstrated an absence of government control, both in law and in fact, with respect to its exports of artist canvas, the Department has not determined the country of origin of the merchandise exported by HFERTS. Until the Department determines that HFERTS had exports of subject merchandise, HFERTS is not entitled to a separate rate. As a result, for the purposes of this preliminary determination, we have granted separate, company-specific rates to the mandatory respondents and their affiliates and to one of the separate rate applicants (Jiangsu By-products)



which shipped subject artist canvas to the United States during the POI. For a full discussion of this issue, please see the *Separate-Rates Memorandum*. If the Department determines that the merchandise exported by HFERTS is artist canvas from the PRC, the Department intends to assign HFERTS a separate rate.

#### PRC-Wide Rate

The Department has data that indicate there were more exporters of artist canvas from the PRC during the POI than those which responded to the Q&V questionnaire. See *Respondent Selection Memorandum* at 1. Although we issued the Q&V questionnaire to six known Chinese exporters of the subject merchandise, from these six we received four Q&V questionnaire responses, and one unsolicited Q&V questionnaire. Also, on June 13, 2005, we issued our complete questionnaire to the Chinese Government (i.e., Ministry of Commerce). Although all exporters were given an opportunity to provide information showing they qualify for separate rates, not all of these other exporters provided a response to either the Department's Q&V questionnaire or its separate rate application. Therefore, the Department determines preliminarily that there were exports of the merchandise under investigation from PRC producers/exporters that did not respond to the Department's questionnaire. We treated these PRC producers/exporters as part of the countrywide entity. Further, the Government of the PRC did not respond to the Department's questionnaire.

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5)

the information can be used without undue difficulties.

Information on the record of this investigation indicates that there are numerous producers/exporters of artist canvas in the PRC. As described above, all exporters were given the opportunity to respond to the Department's questionnaire. Based upon our knowledge of the volume of imports of subject merchandise from the PRC and the fact that information indicates that the responding companies did not account for all imports into the United States from the PRC, we preliminarily determine that certain PRC exporters of artist canvas failed to respond to our questionnaires. Additionally, in this case, the Government of the PRC did not respond to the Department's questionnaire. As a result, use of facts available pursuant to section 776(a)(2)(A) of the Act is appropriate. See *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may employ adverse inferences. See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). See also SAA at 870. We find that, because the PRC-wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

In selecting from among the facts available, Section 776(b) of the Act authorizes the Department to use adverse-facts-available ("AFA") information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. As AFA, we have assigned to the PRC-wide entity a margin based on information in the petition, because the margins derived from the petition are higher than the calculated margins for the selected

respondents. In this case, we have applied a rate of 264.09 percent.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA as "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise." See SAA at 870. The SAA provides that to "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. See *id.* The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. See *id.* As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Final Results of Antidumping Duty Administrative Reviews and Termination in Part: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan*, 62 FR 11825 (March 13, 2005), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

The Petitioners' methodology for calculating the export price and normal value in the petition is discussed in the initiation notice. See *Notice of Initiation*, 70 FR at 21996-21997. To corroborate the AFA margin we have selected, we compared that margin to the margins we found for the respondents.

As discussed in the Memorandum to the File regarding the corroboration of the AFA rate, dated October 28, 2005, we found that the margin of 264.09 percent has probative value. See *Memorandum to The File Through Robert Bolling, Program Manager*,

*China/NME Group, Corroboration for the Preliminary Determination of Certain Artist Canvas from the People's Republic of China*, dated October 28, 2005, ("Corroboration Memo").

Accordingly, we find that the rate of 264.09 percent is corroborated within the meaning of section 776(c) of the Act.

Consequently, we are applying a single antidumping rate the PRC-wide rate to producers/exporters that failed to respond to the Q&V questionnaire or the separate rate application. This rate will also apply to exporters which did not demonstrate entitlement to a separate rate. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706, 25707 (May 3, 2000). The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from the two mandatory respondents and one of the separate rate applicants. In addition, for the preliminary determination, the PRC-wide rate does not apply to artist canvas that is produced from bulk roll canvas coated in a third country and exported from the PRC.

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

#### Margin for the Separate Rate Applicants

HFERTS and Jiangsu By-products, both exporters of artist canvas from the PRC, were not selected as mandatory respondents in this investigation but have applied for a separate rate and provided information to the Department for this purpose. However, as stated above, the Department has not yet determined whether HFERTS had exports of subject merchandise and, therefore, we are not assigning HFERTS a separate rate. We have established a weighted-average margin for Jiangsu By-products based on the rates we calculated for the two mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on adverse facts available. That rate is 70.28 percent. Jiangsu By-products is identified by name in the "Preliminary Determination" section of this notice.

#### Date of Sale

Section 351.401(i) of the Department's regulations state that, "in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale." 19 CFR 351.401(i); *See also Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090–1093 (CIT 2001).

After examining the questionnaire responses and the sales documentation that Ningbo Conda and the Phoenix Group placed on the record, we preliminarily determine that invoice date is the most appropriate date of sale for Ningbo Conda and the Phoenix Group. We made this determination based on record evidence which demonstrates that Ningbo Conda and the Phoenix Group invoices establish the material terms of sale to the extent required by our regulations. Thus, the record evidence does not rebut the presumption that invoice date is the proper date of sale. *See Preliminary Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 67 FR 79054 (December 27, 2002).

#### Fair Value Comparisons

To determine whether sales of artist canvas to the United States by the two mandatory respondents were made at less than fair value, we compared export price ("EP") or constructed export price ("CEP") to normal value ("NV"), as described in the "U.S. Price," and "Normal Value" sections of this notice.

#### U.S. Price

In accordance with section 772(a) of the Act, we used EP for both Ningbo Conda and the Phoenix Group, as appropriate, because the subject merchandise was first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States and because the use of CEP was not otherwise indicated. In accordance with section 772(b) of the Act, we used CEP for certain of Ningbo Conda's sales because the subject merchandise was sold in the United States after the date of importation by a U.S. reseller

affiliated with the Ningbo Conda Group and Jinhua Universal.

We calculated EP and CEP based on the packed F.O.B., C.I.F., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (*e.g.*, foreign inland freight from the plant to the port of exportation, domestic brokerage, ocean freight, marine insurance, U.S. brokerage, and inland freight from warehouse to unaffiliated U.S. customer) in accordance with section 772(c)(2)(A) of the Act. For a detailed description of all adjustments, *see Memorandum to The File Through Robert Bolling, Program Manager, China/NME Group, from Michael Holton, Case Analyst, Analysis for the Preliminary Determination of Certain Artist Canvas from the People's Republic of China: ColArt, Ningbo Conda Import & Export Co., Ltd.*, dated October 28, 2005, and *Memorandum to the File Through Robert Bolling, Program Manager, China/NME Group, From Jon Freed, Case Analyst, Analysis for the Preliminary Determination of Certain Artist Canvas from the People's Republic of China: Wuxi Phoenix Artist Materials Co., Ltd.*, dated October 28, 2005.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States for Ningbo Conda.

We compared NV to weighted-average EPs and CEPs in accordance with section 777A(d)(1) of the Act. Where appropriate, for Ningbo Conda, in accordance with sections 772(d)(3) and 772(f) of the Act, we deducted CEP profit. For a detailed description of all adjustments, *see the Company-Specific Analysis Memoranda* dated October 28, 2005.

#### Normal Value

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

The Department's questionnaire requires that the respondent provide



information regarding the weighted-average factors of production across all of the company's plants that produce the subject merchandise, not just the factors of production from a single plant. This methodology ensures that the Department's calculations are as accurate as possible. *See e.g., Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 68 FR 61395 (Oct. 28, 2003); Issues and Decision Memorandum, Comment 19 (Oct. 20, 2003). Therefore, for the Phoenix Group, the Department calculated the factors of production using the weighted-average factor values for all of the facilities involved in producing the subject merchandise. For Ningbo Conda, the Department calculated normal values for each CONNUM based on the factors of production reported from each of Ningbo Conda's suppliers and then averaged the supplier-specific normal values together weighted by production quantity to derive a single, weighted-average normal value for each CONNUM exported by Ningbo Conda.

#### Factor Valuations

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

For this preliminary determination, in accordance with past practice, we used data from the Indian Import Statistics or *Chemical Weekly* in order to calculate surrogate values for the mandatory respondents' material inputs. In selecting the best available information for valuing factors of production in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous

with the POI, product-specific, and tax-exclusive. *See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). The record shows that data in the Indian Import Statistics and *Chemical Weekly* represents import data that is, contemporaneous with the POI, product-specific, and tax-exclusive. Where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index as published in the *International Financial Statistics* of the International Monetary Fund.

Furthermore, with regard to the Indian import-based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries are subsidized. *See Amended Final Determination of Sales at Less than Fair Value: Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 11670 (March 15, 2002), *see also Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) ("CTVs from the PRC"). We are also directed by the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized. *See H.R. Rep. 100–576 at 590 (1988)*. Rather, Congress directed the Department to base its decision on information that is available to it at the time it makes its determination. Therefore, we have not used prices from these countries in calculating the Indian import-based surrogate values. In instances where a market-economy input was obtained solely from suppliers located in these countries, we used Indian import-based

surrogate values to value the input. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China*, 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum at Comment 1.

The Department used the Indian Import Statistics to value the following raw material inputs, energy, and packing materials that Ningbo Conda and the Phoenix Group used to produce the subject merchandise during the POI: Linen Canvas, Cotton Canvas (bleached), Cotton Canvas (unbleached), Paulownia, Pine, Beech, Foam board, Three-ply board, Carton Roll, Fiberboard, Paint, Glue, Staple, Nail, Plastic, Paper, Sand Paper, Acrylic Polymer Resin, Amine PH Adjuster, Cellulose, Cinnamene (monomer of polystyrene), Lithopone, Octyl Phenol emulsifying agent, Paraffin, Polyvinyl Alcohol, Polyvinyl chloride (PVC), Talcum Powder, Thickening Agent, Tributyl phosphate (TBP), VAE Latex (Vinyl acetate ethylene), Zinc Sulfide, Paper Label, Plastic sheet (shrink wrap), Wooden Peg, Plastic Peg, Labor, Electricity, Coal, Water, Box, Cardboard, Plastic Strap, Rubber band, and Tape. For a detailed description of all surrogate values used for respondents, *see Factor-Valuation Memorandum*.

The Department used *Chemical Weekly* to value the following material inputs used by Ningbo Conda and the Phoenix Group: Calcium Carbonate, Crylic acid, Dispersant, Isobutyl Methacrylate, Methacryl acid methyl, Polyethylene Resin, Propylene Glycol, Sodium Benzoate, Sodium Hydroxide/Caustic Soda, Stearic Acid, and Titanium Dioxide/Titanium Pigment, *see Factor-Valuation Memorandum*.

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

To value electricity, we used data from the International Energy Agency *Key World Energy Statistics* (2003

edition). Because the value was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor-Valuation Memorandum.*

The Department valued water using data from the Maharashtra Industrial Development Corporation ([www.midcindia.org](http://www.midcindia.org)) since it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003: 193 for the “inside industrial areas” usage category and 193 for the “outside industrial areas” usage category. Because the value was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor-Valuation Memorandum.*

The Department valued steam coal using the 2003/2004 Tata Energy Research Institute's Energy Data Directory & Yearbook (“TERI Data”). The Department was able to determine, through its examination of the 2003/2004 TERI Data, that a) the annual TERI Data publication is complete and comprehensive because it covers all sales of all types of coal made by Coal India Limited and its subsidiaries, and b) the annual TERI Data publication prices are exclusive of duties and taxes. Because the value was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor-Valuation Memorandum.*

We used Indian transport information in order to value the freight-in cost of the raw materials. The Department determined the best available information for valuing truck freight to be from [www.infreight.com](http://www.infreight.com). This source provides daily rates from six major points of origin to five destinations in India during the POI. The Department obtained a price quote on the first day of each month of the POI from each point of origin to each destination and averaged the data accordingly. *See Factor-Valuation Memorandum.*

The Department used two sources to calculate a surrogate value for domestic brokerage expenses. The Department averaged December 2003–November 2004 data contained in Essar Steel's February 28, 2005, public version

response submitted in the AD administrative review of Hot-Rolled Carbon Steel Flat Products from India with October 2002–September 2003 data contained in Pidilite Industries' March 9, 2004, public version response submitted in the AD investigation of Carbazole Violet Pigment 23 from India. The brokerage expense data reported by Essar Steel and Pidilite Industries in their public versions is ranged data. The Department first derived an average per-unit amount from each source. Then the Department adjusted each average rate for inflation. Finally, the Department averaged the two per-unit amounts to derive an overall average rate for the POI. *See Factor-Valuation Memorandum.*

To value marine insurance, the Department obtained a price quote from <http://www.rjgconsultants.com/insurance.html>, a market-economy provider of marine insurance. *See Factor-Valuation Memorandum.*

To value international freight, the Department obtained price quotes from <http://www.maersksealand.com/HomePage/appmanager/>, a market-economy provider of international freight services. *See Factor-Valuation Memorandum.*

To value factory overhead, selling, general, and administrative expenses, and profit, we used the audited financial statements for the fiscal year ending March 31, 2005, from Camlin Ltd., an Indian producer of artist canvas from India. *See Factor-Valuation Memorandum* for a full discussion of the calculation of the ratios from this financial statement.

#### Currency Conversion

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

#### Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information

upon which we will rely in making our final determination.

#### Combination Rates

In the *Notice of Initiation*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. *See Notice of Initiation*, 70 FR 21996, 21999. This change in practice is described in *Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries*, (April 5, 2005), (“*Policy Bulletin 05.1*”) available at <http://ia.ita.doc.gov/>. The *Policy Bulletin 05.1*, states:

“[w]hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of “combination rates” because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.”

*Policy Bulletin 05.1*, at page 6.

#### Preliminary Determination

The weighted-average dumping margins are as follows:

#### ARTIST CANVAS FROM THE PRC - WEIGHTED-AVERAGE DUMPING MARGINS

Exporter	Producer	Weighted-Average Deposit Rate
NingboConda .....	Jinhua Universal	55.78
Ningbo Conda .....	Wuxi Silver Eagle Cultural Goods Co. Ltd.	55.78
Conda Painting .....	Wuxi Pegasus Cultural Goods Co. Ltd.	55.78
Jinhua Universal .....	Jinhua Universal	55.78
Phoenix Materials .....	Phoenix Materials	73.66
Phoenix Materials .....	Phoenix Stationary	73.66
Phoenix Materials .....	Shuyang Phoenix	73.66
Pheonix Stationary .....	Phoenix Materials	73.66
Pheonix Stationary .....	Phoenix Stationary	73.66
Pheonix Stationary .....	Shuyang Phoenix	73.66

## ARTIST CANVAS FROM THE PRC - WEIGHTED-AVERAGE DUMPING MARGINS—Continued

Exporter	Producer	Weighted-Average Deposit Rate
Jiangsu By-products .....	Jiangsu By-products	70.28
China-Wide Rate .....		264.09

**Disclosure**

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

**Suspension of Liquidation**

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as indicated above. The suspension of liquidation will remain in effect until further notice.

**International Trade Commission Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at less than fair value. Because we have postponed the deadline for our final determination to 135 days from the date of publication of this preliminary determination, section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of artist canvas, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

**Public Comment**

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

In accordance with section 774 of the Act, we will hold a public hearing, if

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

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

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

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

Dated: October 28, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

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**DEPARTMENT OF COMMERCE****International Trade Administration**

**A-201-830**

**Preliminary Results of Antidumping Duty Administrative Review: Carbon and Alloy Steel Wire Rod from Mexico**

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

**SUMMARY:** In response to requests by interested parties, the Department of

Commerce ("the Department") is conducting an administrative review of the antidumping duty order on carbon and alloy steel wire rod ("wire rod") from Mexico for the period of review ("POR") October 1, 2003, through September 30, 2004.

We preliminarily determine that during the POR, Hylsa Puebla, S.A. de C.V. ("Hylsa Puebla") and Siderurgica Lazaro Cardenas Las Truchas S.A. de C.V., and its affiliate, CCC Steel GmbH, collectively ("SICARTSA") sold subject merchandise at less than normal value ("NV"). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties equal to the difference between the export price ("EP") and NV.

**EFFECTIVE DATE:** November 7, 2005.

**FOR FURTHER INFORMATION CONTACT:** Tipten Troidl or Jolanta Lawska at (202) 482-1767 or (202) 482-8362, respectively, AD/CVD Operations, Office 3, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:****Background**

On October 29, 2002, the Department published in the **Federal Register** the antidumping duty order on wire rod from Mexico; see *Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 65945 (October 29, 2002). On October 1, 2004, we published in the **Federal Register** the notice of *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review*, 69 FR 58889 (October 1, 2004).

On October 18, 2004, we received a request for review from SICARTSA: On October 27, 2004, we received a request for review from petitioners,<sup>1</sup> with respect to Hylsa Puebla and Sicartsa: On October 29, 2004, Hylsa Puebla and its

<sup>1</sup> The petitioners are ISG Georgetown (formerly Georgetown Steel Company), Gerdau Ameristeel U.S., Inc., (formerly Co-Steel Raritan), Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.