

Preliminary Results of the Review

As a result of this review, we preliminarily determine that a dumping margin of 20.92 percent exists for EuroChem for the period July 1, 2008, through June 30, 2009.

Disclosure and Public Hearing

We will disclose the calculations used in our analysis to parties to this review within five days of the date of publication of this notice. See 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. See 19 CFR 351.310(c). If a hearing is requested, the Department will notify interested parties of the hearing schedule.

Interested parties are invited to comment on the preliminary results of this review. Interested parties may submit case briefs within 30 days of the date of publication of this notice. See 19 CFR 351.309(c). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. See 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised in the case briefs, within 120 days after the date on which the preliminary results are published. See 19 CFR 351.213(h)(1).

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212, we have calculated an importer/customer-specific assessment rate for these preliminary results of review. We divided total dumping margins for the reviewed sales by the entered value of the single suspended entry for this POR. For detailed explanation of our method for assessing duties, see "2008–2009 Administrative Review of the Antidumping Duty Order on Solid Urea from Russia – Preliminary Results Analysis Memorandum for EuroChem" on file in the CRU of the main Commerce building, room 1117. We will instruct CBP to assess the importer/customer-specific rate on the suspended entry of subject merchandise made by the importer during the POR.

The Department clarified its "automatic assessment" regulation on

May 6, 2003. This clarification applies to entries of subject merchandise during the POR produced by EuroChem where EuroChem did not know that its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries EuroChem-produced merchandise at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

The Department intends to issue assessment instructions directly to CBP 15 days after the date of publication of the final results of this administrative review.

Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash-deposit rate for EuroChem will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash-deposit rate will be 64.93 percent, the all-others rate established in *Urea From the Union of Soviet Socialist Republics; Final Determination of Sales at Less Than Fair Value*, 52 FR 19557 (May 26, 1987). These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importer

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties

occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 9, 2010.

Ronald K. Lorentzen,
Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–908]

First Administrative Review of Sodium Hexametaphosphate from the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce ("Department") is conducting the first administrative review of the antidumping duty order on sodium hexametaphosphate ("sodium hex") from the People's Republic of China ("PRC") for the period of review ("POR") September 14, 2007, through February 28, 2009. The Department has preliminarily determined that sales have been made below normal value ("NV") by the respondent. If these preliminary results are adopted in our final results of this review, the Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 15, 2010.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0413.

SUPPLEMENTARY INFORMATION:

Case Timeline

On April 27, 2009, the Department published in the **Federal Register** a notice of initiation of an administrative review of sodium hex from the PRC, covering the POR, for one company, Hubei Xingfa Chemical Group Co., Ltd. ("Xingfa"). See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for*

Revocation in Part, 74 FR 19042 (April 27, 2009) ("Initiation").

On November 25, 2009, the Department published a notice extending the time period for issuing the preliminary results by 60 days to January 30, 2010. *See First Antidumping Duty Administrative Review of Sodium Hexametaphosphate from the People's Republic of China: Extension of Time Limit for the Preliminary Results*, 74 FR 61656 (November 25, 2009). On February 5, 2010, the Department published a notice extending the time period for issuing the preliminary results by 41 days to March 12, 2010. *See First Antidumping Duty Administrative Review of Sodium Hexametaphosphate from the People's Republic of China: Extension of Time Limit for the Preliminary Results*, 75 FR 5946 (February 5, 2010).

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. *See Memorandum to the Record regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm,"* dated February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days, and the revised deadline for the preliminary results of this review became March 19, 2010.

On March 26, 2010, the Department published a notice extending the time period for issuing the preliminary results by 17 days to April 5, 2010. *See First Antidumping Duty Administrative Review of Sodium Hexametaphosphate from the People's Republic of China: Extension of Time Limit for the Preliminary Results*, 75 FR 14568 (March 26, 2010).

Submissions by Interest Parties

As noted above, on April 27, 2009, this administrative review was initiated on one company, Hubei Xingfa. On May 4, 2009, the Department issued Hubei Xingfa the antidumping duty questionnaire. From May 26, 2009 to October 28, 2009, Hubei Xingfa submitted responses to the Department's antidumping duty questionnaires.

On July 6, 2009, the Department sent interested parties a letter inviting comments on surrogate country selection and surrogate value data. On November 6, 2009, Hubei Xingfa and the Petitioners¹ submitted comments on

surrogate country and information to value factors of production ("FOP").

Verification

Pursuant to 19 CFR 351.307(b)(iv), from November 19–23, 2009, the Department conducted verification of Hubei Xingfa's questionnaire responses. *See Memorandum to the File* through Scot T. Fullerton, Program Manager, Office 9, from Paul Walker, Senior Case Analyst, "First Administrative Review of Sodium Hexametaphosphate from the People's Republic of China: Verification of Hubei Xingfa Chemical Group Co., Ltd.," dated concurrently with this notice ("Hubei Xingfa Verification Report").

Scope of the Order

The merchandise subject to this review is sodium hexametaphosphate. Sodium hexametaphosphate is a water-soluble polyphosphate glass that consists of a distribution of polyphosphate chain lengths. It is a collection of sodium polyphosphate polymers built on repeating NaPO_3 units. SHMP has a P_2O_5 content from 60 to 71 percent. Alternate names for sodium hexametaphosphate include the following: Calgon; Calgon S; Glassy Sodium Phosphate; Sodium Polyphosphate; Glassy; Metaphosphoric Acid; Sodium Salt; Sodium Acid Metaphosphate; Graham's Salt; Sodium Hex; Polyphosphoric Acid, Sodium Salt; Glass H; Hexaphos; Sodaphos; Vitrafos; and BAC-N-FOS. Sodium hexametaphosphate is typically sold as a white powder or granule (crushed) and may also be sold in the form of sheets (glass) or as a liquid solution. It is imported under heading 2835.39.5000, HTSUS. It may also be imported as a blend or mixture under heading 3824.90.3900, HTSUS. The American Chemical Society, Chemical Abstract Service ("CAS") has assigned the name "Polyphosphoric Acid, Sodium Salt" to SHMP. The CAS registry number is 68915–31–1. However, sodium hexametaphosphate is commonly identified by CAS No. 10124–56–8 in the market. For purposes of the review, the narrative description is dispositive, not the tariff heading, CAS registry number or CAS name.

The product covered by this review includes sodium hexametaphosphate in all grades, whether food grade or technical grade. The product covered by this review includes sodium hexametaphosphate without regard to chain length *i.e.*, whether regular or long chain. The product covered by this review includes sodium hexametaphosphate without regard to physical form, whether glass, sheet,

crushed, granule, powder, fines, or other form, and whether or not in solution.

However, the product covered by this review does not include sodium hexametaphosphate when imported in a blend with other materials in which the sodium hexametaphosphate accounts for less than 50 percent by volume of the finished product.

Non-Market Economy ("NME") Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination made that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006). None of the parties to this proceeding have contested such treatment. Accordingly, the Department calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department reviews imports from an NME country and the available information does not permit the Department to determine NV, pursuant to section 773(a) of the Act, then, pursuant to section 773(c)(4) of the Act, the Department bases NV on an NME producer's FOPs, to the extent possible, in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department determined India, Philippines, Indonesia, Columbia, Thailand, and Peru are countries comparable to the PRC in terms of economic development. *See July 6, 2009, Letter to All Interested Parties, regarding "Antidumping Duty Administrative Review of Sodium Hexametaphosphate from the People's Republic of China,"* attaching July 2, 2009, Memorandum to Scot T. Fullerton, Program Manager, Office 9, AD/CVD Operations, from Kelly Parkhill, Acting Director, Office for Policy, regarding "Request for List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Sodium Hexametaphosphate from the People's Republic of China" ("Surrogate Country List").

¹ ICL Performance Products and Innophos, Inc. (collectively, the "Petitioners").

Based on publicly available information placed on the record, the Department determines India to be a reliable source for surrogate values because India is at a comparable level of economic development, pursuant to section 773(c)(4) of the Act, is a significant producer of subject merchandise, and has publicly available and reliable data. Furthermore, all the surrogate values placed on the record by the parties were obtained from sources in India. Accordingly, the Department selected India as the surrogate country for purposes of valuing the FOPs because it meets the Department's criteria for surrogate country selection.

Separate Rates

In 2005, the Department notified parties of a new application and certification process by which exporters and producers may obtain separate rate status in an NME review. The process requires exporters and producers to submit a separate rate status certification and/or 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"), available at: <http://ia.ita.doc.gov>. However, the standard eligibility criteria for determining whether a firm is eligible for a separate rate (i.e., a demonstration of an absence of both *de jure* and *de facto* government control over export activities), has not changed.

A designation of a country as an NME remains in effect until it is revoked by the Department. See section 771(18)(c)(i) of the Act. In proceedings involving NME countries, it is the Department's practice to begin with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. See *Policy Bulletin*; see also *Notice of Final Determination of Sales at Less Than Fair Value*, and *Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006) ("Diamond Sawblades"). It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can affirmatively demonstrate that it is sufficiently

independent so as to be entitled to a separate rate. See, e.g., *Diamond Sawblades*, 71 FR at 29307. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. *Id.* The Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) ("Sparklers"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–87 (May 2, 1994) ("Silicon Carbide"). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control. See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

a. 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) any other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589. The evidence provided by Hubei Xingfa supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies. See Hubei Xingfa's May 26, 2009 submission at 2–11; see also Hubei Xingfa's August 21, 2009 submission at 6–16.

b. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate

and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22587; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The evidence provided by Hubei Xingfa supports a preliminary finding of *de facto* absence of government control based on the following: (1) the companies set their own export prices independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the company's use of export revenue. See Hubei Xingfa's May 26, 2009 submission at 2–11; see also Hubei Xingfa's August 21, 2009 submission at 6–16. Therefore, the Department preliminarily finds that Hubei Xingfa has established that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

Date of Sale

The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms. See *Carbon and Alloy Steel Wire Rod from Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007) and accompanying Issues and Decision Memorandum at Comment 1; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000) and accompanying Issues and Decision Memorandum at Comment 2.

Section 351.401(i) of the Department's regulations state that, "[i]n identifying the date of sale of the merchandise

under consideration 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." The Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. See 19 CFR 351.401(i); see also *Allied Tube*, 132 F. Supp. 2d at 1090–1092. However, as noted by the Court of International Trade ("CIT") in *Allied Tube*, a party seeking to establish a date of sale other than invoice date bears the burden of establishing that "a different date better reflects the date on which the exporter or producer establishes the material terms of sale." See *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d at 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) ("*Allied Tube*").

Hubei Xingfa reported that the date of sale was determined by the invoice issued by the affiliated importer to the unaffiliated United States customer. In this case, as the Department found no evidence contrary to Hubei Xingfa's claims that invoice date was the appropriate date of sale, the Department used invoice date as the date of sale for these preliminary results. See, e.g., Hubei Xingfa's August 21, 2009 submission at 4.

Fair Value Comparisons

To determine whether sales of sodium hex to the United States by Hubei Xingfa were made at less than fair value, the Department compared the export price ("EP") to NV, as described in the "U.S. Price," and "Normal Value" sections below.

U.S. Price

In accordance with section 772(a) of the Act, we calculated the EP for sales to the United States for Hubei Xingfa. We calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight, foreign brokerage and handling, customs duties, domestic brokerage and handling and other movement expenses incurred. For the services provided by an NME vendor or paid for using an NME currency we based the deduction of these movement charges on surrogate values. See Surrogate Values Memo for details regarding the surrogate values for movement expenses.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a FOP 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 FOPs because the presence of government controls on various aspects of non-market economies renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

In its questionnaire responses, Hubei Xingfa claimed to self-produce a portion of the electricity used to produce sodium hex, stating that it owned several hydroelectric power stations which provided a portion of the electricity used to produce sodium hex. In addition, in response to the Department's request for all valid business licenses held by Hubei Xingfa during the POR, Hubei Xingfa did not provide separate licenses for the hydroelectric power stations. See Hubei Xingfa's August 21, 2009 submission at 14–15 and Exhibit 13. In addition, because, Hubei Xingfa claimed to self-produce its own electricity, it reported the labor consumed at its hydroelectric power stations *in lieu* of reporting the electricity, or intermediate input, these stations generated. However, at verification the Department discovered that that each of Hubei Xingfa's hydroelectric power stations has its own business license, and thus are separate legal entities that operate apart from Hubei Xingfa. See Hubei Xingfa Verification Report at 2.

We do not find that the record evidence sufficiently supports the claim that Hubei Xingfa produced its own electricity because its electricity suppliers operate as distinct legal entities. Pursuant to 19 CFR 351.401(f), the Department will collapse producers and treat them as a single entity where (1) those producers are affiliated, (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production. In *Fish Fillets*, for example, the Department did not collapse a respondent with an affiliated input producer when the affiliate did not have the ability to produce or export similar or identical products, and could not produce such products without substantial retooling. See *Certain Frozen*

Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission, 73 FR 15479 (March 24, 2008) ("*Fish Fillets*") and accompanying Issues and Decision Memorandum at Comment 5C. As a consequence, when valuing the intermediate input to the subject merchandise in its calculation of the NV in *Fish Fillets*, the Department employed a surrogate value, rather than the FOPs used to produce the intermediate input. *Id.* Similarly, because Hubei Xingfa's electricity suppliers represent distinct legal entities that are not involved in the production of the subject merchandise at issue, for these preliminary results, we are applying a surrogate value to the amount of electricity self-produced by Hubei Xingfa. See the Hubei Xingfa Verification Report at Exhibits 14 and 16. In addition, because Hubei Xingfa reported labor as the FOP input into self-produced electricity, we have deducted the labor usage rate for self-produced electricity from Hubei Xingfa's overall reported labor. Because these calculations are proprietary, see Memorandum to the File, through Scot T. Fullerton, Program Manager, Office 9, from Paul Walker, Senior Analyst, "First Administrative Review of Sodium Hexametaphosphate from the People's Republic of China: Hubei Xingfa Chemical Group Co., Ltd.," dated concurrently with this notice ("Hubei Xingfa Analysis Memo"), for further details.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by Hubei Xingfa. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. See, e.g., *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002) and accompanying Issues and Decision Memorandum at Comment 6; see also *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China*, 66 FR 31204 (June 11, 2001) and accompanying Issues and Decision Memorandum at Comment 5. 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, 1407–08 (Fed. Cir. 1997). For a detailed description of all surrogate values used for Hubei Xingfa, see Memorandum to the File through Scot Fullerton, Program Manager, Office 9, from Paul Walker, Senior Case Analyst, "First Administrative Review of Sodium Hexametaphosphate from the People's Republic of China: Surrogate Factor Valuations for the Preliminary Results," dated concurrently with this notice ("Surrogate Values Memo").

For these preliminary results, in accordance with the Department's practice, we used data from Indian Import Statistics and other publicly available Indian sources in order to calculate surrogate values for Hubei Xingfa's raw materials, packing, by-products, and energy. In selecting the best available information for valuing FOPs, 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 POR, 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, as well as those from the other Indian sources, are contemporaneous with the POR, product-specific, and tax-exclusive. See *Surrogate Values Memo*. In those instances where we could not obtain publicly available information contemporaneous to the POR with which to value factors, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index ("WPI") as published in the *International Financial Statistics* of the International Monetary Fund. See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical*

Circumstances: Certain Polyester Staple Fiber from the People's Republic of China, 71 FR 77373, 77380 (December 26, 2006) ("PSF").

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. See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 54007, 54011 (September 13, 2005), results unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review*, 71 FR 14170 (March 21, 2006); and *China Nat'l Machinery Import & Export Corp. v. United States*, 293 F. Supp. 2d 1334, 1336 (Ct. Int'l. Trade 2003), *aff'd* 104 Fed. Appx. 183 (Fed. Cir. 2004). In determining whether to disregard inputs the Department believes may be subsidized, the Department, guided by the legislative history, does not conduct a formal investigation to ensure that such prices are not subsidized. See Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100–576 at 590 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24. Rather, the Department bases its decision on information that is available to it at the time it makes its determination. See *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008) ("PET Film").

In this instance, we have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized because we found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies. See, e.g., *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 60238 (November 20, 2009). It is thus reasonable to infer that all exports to all markets from these countries may be subsidized. Therefore, we have not used prices from these countries in calculating the Indian import-based surrogate values. Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded

from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. See, e.g., *PET Film*.

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 October 2009. See *2009 Calculation of Expected Non-Market Economy Wages*, 74 FR 65092 (December 9, 2009), and <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 2005*, ILO (Geneva: 2007), 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 Hubei Xingfa.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated March 2008. These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to industries in India. As the rates listed in this source became effective on a variety of different dates, we are not adjusting the average value for inflation.

We valued truck freight expenses using a per-unit average rate calculated from data on the Infobanc Web site: <http://www.infobanc.com/logistics/logtruck.htm>. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. Since this value is contemporaneous with the POR, we did not adjust it for inflation.

We continued our recent practice to value brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Navneet Publications (India) Ltd. in the 2007–2008 administrative review of certain lined paper products from India, Essar Steel Limited in the 2006–2007 antidumping duty administrative review of hot-rolled carbon steel flat products from India, and Himalaya International Ltd. in the 2005–2006 administrative review of

certain preserved mushrooms from India. *See* Surrogate Values Memo. Since the Essar and Navneet brokerage and handling expense are contemporaneous with the POR, we did not adjust them for inflation. However, because the Himalaya brokerage and handling expense is not contemporaneous with the POR, we inflated it using the WPI.

To value factory overhead, selling, general, and administrative (“SG&A”) expenses, and profit, the Department used the audited financial statement of Tata Chemicals, as it is the only financial statement on the record of this review.

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.

We are preliminarily granting a by-product offset to Hubei Xingfa for ferro-phosphorous and slag because Hubei Xingfa provided evidence that these by-products were produced and sold during the POR.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist:

Manufacturer/Exporter	Weighted Average Margin (Percent)
Hubei Xingfa	118.79

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it

rebutts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the deadline for filing case briefs. *See* 19 CFR 351.309(d). The Department urges interested parties to provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review excluding any reported sales that entered during the gap period. In accordance with 19 CFR 351.212(b)(1), we calculated exporter/importer (or customer)-specific assessment rates for the merchandise subject to this review. Because we do not have entered values for all U.S. sales, we calculated an *ad valorem* assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). *See* 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* ratios based on the estimated entered value. Where an importer (or customer)-specific *ad valorem* rate is zero or *de*

minimis, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the exporter listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 188.05 percent; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

April 5, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

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