

rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette. In accordance with section 774 of the Act, the Department will hold a public hearing, if timely requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a timely request for a hearing is made in this investigation, we intend to hold the hearing two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing 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 of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: October 15, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-934]

#### **1-Hydroxyethylidene-1,1-Diphosphonic Acid From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination**

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

**DATES:** *Effective Date:* October 21, 2008.

**SUMMARY:** The Department of Commerce (the "Department") preliminarily determines that 1-hydroxyethylidene-1, 1-diphosphonic acid ("HEDP") 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 dumping margins are shown in the "Preliminary Determination Margins" section of this notice.

#### **FOR FURTHER INFORMATION CONTACT:**

Maisha Cryor or Shawn Higgins, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-5831 and (202) 482-0679, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On March 19, 2008, the Department received a petition concerning imports of HEDP from the PRC filed in proper form by Compass Chemical International LLC ("Petitioner"). See "Request for the Imposition of Antidumping Duties on Imports of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China and Republic of India," dated March 19, 2008 ("Petition"). The Department initiated an antidumping duty investigation of HEDP from the PRC on April 8, 2008. See *1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the Republic of India and the People's Republic of China: Initiation of Antidumping Duty Investigations*, 73 FR 20023 (April 14, 2008) ("Initiation Notice").

On April 9, 2008, the Department requested quantity and value ("Q&V") information from the 10 companies that are identified in the Petition as potential producers or exporters of HEDP from the PRC. See Exhibit AD-3 of the Petition. The Department received timely responses to its Q&V questionnaire from the following companies: Changzhou Wujin Fine Chemical Factory Co., Ltd. ("Wujin Fine Chemical"), Changzhou Kewei Fine Chemical Factory ("Kewei"), BWA Water Additives U.S. LLC ("BWA"), Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory Ltd. ("Wujin Water"), and Jiangsu Jianghai Chemical Group Co., Ltd. ("Jiangsu Jianghai").<sup>1</sup> Six companies to which the Department sent the Q&V questionnaire received the questionnaire but did not respond. These non-responsive companies were Kelien Chemical Co., Ltd., Cathay Pigments/Advanced Chemical Ltd.,

Jiangyin Boxin Chemical Co., Ltd., Changzhou Kejia Chemical Co., Ltd., Shandong Taihe Water Treatment Co., Ltd., and Hebei Fuhui Water Treatment Co., Ltd. ("Non-Responsive Companies").

On May 2, 2008, the International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of HEDP from the PRC. See *1-Hydroxyethylidene-1, 1-Diphosphonic Acid From China and India, Investigation Nos. 731-TA-1146 and 731-TA-1147 (Preliminary)*, 73 FR 28507 (May 16, 2008).

On May 30, 2008, the Department selected Wujin Water and Kewei as mandatory respondents and issued antidumping questionnaires to the companies. See Memorandum regarding "Selection of Respondents in the Antidumping Investigation of 1-Hydroxyethylidene, 1-Diphosphonic Acid from the People's Republic of China," dated May 30, 2008 ("Respondent Selection Memorandum"). See also letter regarding "Public Treatment of BWA's Supplier," dated April 14, 2008. Wujin Water submitted timely responses to the Department's antidumping questionnaire on June 23, 2008, and July 25, 2008. On June 10, 2008, the Department received separate-rate applications from Jiangsu Jianghai, Wujin Fine Chemical, and Kewei. On June 25, 2008, Kewei notified the Department that it decided to no longer participate in this investigation, and did not intend to submit responses to the Department's antidumping questionnaire. See memorandum regarding "Phone Conversation with Counsel to Changzhou Kewei Fine Chemical Factory Co., Ltd.," dated June 30, 2008 ("Kewei Withdrawal Memorandum").

The Department issued supplemental questionnaires to, and received responses from, Wujin Water, Wujin Fine Chemical, and Jiangsu Jianghai from June through October 2008. Petitioner submitted comments to the Department regarding Wujin Water's responses to sections C and D of the antidumping questionnaire in August and September 2008.

On June 17, 2008, the Department released a memorandum to interested parties which listed potential surrogate countries and invited interested parties to comment on surrogate country and surrogate value selection. From June through September 2008, Petitioner and Wujin Water submitted comments on the appropriate surrogate country and surrogate values.

<sup>1</sup> Because Jiangsu Jianghai was not identified in the Petition as a potential producer or exporter of HEDP from the PRC, the Department did not send Jiangsu a Q&V questionnaire publicly available on our Web site for producers and exporters of HEDP from the PRC that were not named in the Petition.

On July 30, 2008, the Petitioner made a request for a 50-day postponement of the preliminary determination. On August 22, 2008, the Department extended this preliminary determination by fifty days. *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the Republic of India and the People's Republic of China: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 73 FR 49646 (August 22, 2008).

#### Period of Investigation

The period of investigation ("POI") is July 1, 2007, through December 31, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, *i.e.*, March 2008. *See* 19 CFR 351.204(b)(1).

#### Scope of the Investigation

The merchandise covered by each of these investigations includes all grades of aqueous, acidic (non-neutralized) concentrations of 1-hydroxyethylidene-1, 1-diphosphonic acid,<sup>2</sup> also referred to as hydroxyethylidenediphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The CAS (Chemical Abstract Service) registry number for HEDP is 2809-21-4. The merchandise subject to these investigations is currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 2931.00.9043. It may also enter under HTSUS subheading 2811.19.6090. While HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of these investigations is dispositive.

#### Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice. *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) and *Initiation Notice*. We received no comments regarding the scope of this investigation.

#### Non-Market Economy Treatment

The Department considers the PRC to be a non-market economy ("NME") country. In accordance with section 771(18)(c)(i) of the Act, any

determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof (TRBs), Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *TRBs, Finished and Unfinished, From the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003). The Department has not revoked the PRC's status as an NME country. Therefore, in this preliminary determination, we have treated the PRC as an NME country and applied our current NME methodology.

#### Selection of a Surrogate Country

In antidumping proceedings involving NME countries, the Department, pursuant to section 773(c)(1) of the Act, will generally base normal value ("NV") on the value of the NME producer's factors of production. 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 merchandise comparable to the subject merchandise. The Department has determined that India, Indonesia, the Philippines, Colombia, and Thailand are countries that are at a level of economic development comparable to that of the PRC. *See memorandum regarding "Antidumping Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Request for a List of Surrogate Countries," dated June 10, 2008 ("Policy Memorandum").*

As noted above, during June through September, Petitioner and the respondent, Wujin Water, submitted comments on the appropriate surrogate country. Petitioner argues that India is the most appropriate surrogate country because the PRC and India share comparable levels of economic development and that India is a significant producer of merchandise comparable to HEDP. *See Petitioner's July 15, 2008, submission at 2.*

The respondent agreed that India satisfies the statutory criteria for surrogate country selection because it is at a comparable level of economic development with the PRC and it is a significant producer of HEDP. *See the*

respondent's July 15, 2008, submission at 2. However, the respondent asserts that there are also several potential flaws in using India as the surrogate country in this investigation. Specifically, the respondent states that there are complications associated with deriving surrogate values from an industry subject to an ongoing companion antidumping duty investigation, *i.e.*, the antidumping duty investigation of HEDP from India. *Id.* at 2–3. In addition, the respondent contends that India imports highly specialized chemicals that are not representative of the overall prices of phosphate-based chemicals in India.<sup>3</sup> *Id.* at 3. Further, the respondent argues that the Indian electricity surrogate value obtained from the International Energy Agency, which is based upon data from the year 2000, used by the Department in PRC antidumping cases should not be used in this investigation because it is outdated and based on a single examination of the Indian market prior to a restructuring of the sale and distribution of electricity in India. *Id.* The respondent states that because of the issues discussed above, the Department should review alternate surrogate countries to determine if they present fewer problems. *Id.* Regarding Indonesia, the Philippines, Colombia, and Thailand, the respondent states that these countries do not satisfy the statutory criteria because, although they are at a comparable level of economic development with the PRC, they are not significant producers of HEDP. *Id.* at 3–5. However, the respondent contends that these countries do possess other large and/or developing chemical industries. *Id.* Therefore, the respondent asserts that if India were to be precluded, the use of Indonesia, the Philippines, Colombia, or Thailand, and a similar, but not identical, chemical production industry, would satisfy section 773(c)(4) of the Act. *Id.*

After evaluating interested parties' comments, the Department selected India as the surrogate country for this investigation. *See Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to Abdelali Elouaradia, Office Director, "Antidumping Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Selection of a Surrogate Country," dated August 22, 2008.* The Department determined that: (1) India is at a level of economic development comparable to that of the PRC; and (2)

<sup>3</sup> Phosphate-based chemicals are a major component of the chemical make-up of HEDP. *See Petition at 12.*

<sup>2</sup> C<sub>2</sub>H<sub>8</sub>O<sub>7</sub>P<sub>2</sub> or C(CH<sub>3</sub>)(OH)(PO<sub>3</sub>H<sub>2</sub>)<sub>2</sub>.

India is a significant producer of merchandise comparable to subject merchandise. Furthermore, on numerous occasions and without complication, the Department has selected India as the surrogate country when there have been companion antidumping duty investigations from the PRC and India. *See, e.g., 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); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China*, 69 FR 70997, 71001 (December 8, 2004). Additionally, the respondent neither identified nor provided: (1) Evidence to demonstrate any complications that would arise from selecting India as the surrogate country in this investigation; and (2) an alternative Indian electricity source or a more suitable electricity source from Indonesia, the Philippines, Colombia, or Thailand. Moreover, the record indicates that India has readily-available and sufficient data which will allow the Department to use contemporaneous publicly-available data to value the factors of production.

### Separate Rates

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in NME investigations. *See Initiation Notice*, 73 FR at 20026. The 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>.<sup>4</sup>

<sup>4</sup> *Policy Bulletin 05.1* states: “While 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 applied 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

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.

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 assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. 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 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 (May 2, 1994) (“*Silicon Carbide*”). In accordance with the separate-rate 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.

In this case, Kewei submitted a separate rate response on June 10, 2008. However, as noted above, on June 25, 2008, Kewei notified the Department that it would no longer participate in the investigation. Since Kewei's withdrawal prevented the Department from asking additional supplemental questions on its separate rate status, and prevents the Department from verifying its response, the Department has no basis upon which to grant Kewei a separate rate. Although Kewei remains a mandatory respondent, the Department considers Kewei part of the PRC-wide entity because it failed to demonstrate that it qualifies for a separate rate.

The other mandatory respondent, Wujin Water, and both separate rate applicants, Jiangsu Jianghai and Wujin Fine Chemical, stated that they are wholly Chinese-owned companies. Therefore, the Department must analyze whether the respondent and separate rate applicants can demonstrate the absence of both *de jure* and *de facto*

exporter during the period of investigation.” *See Policy Bulletin 05.1* at 6.

governmental control over export activities. Each company provided company-specific information to demonstrate that it operates free from *de jure* and *de facto* government control, and therefore, is entitled to a separate rate.

### Absence of De Jure Control

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

The evidence provided by Wujin Water, Jiangsu Jianghai, and Wujin Fine Chemical indicates that there are no restrictive stipulations associated with their exporter and/or business licenses and that there are legislative enactments decentralizing control of the companies. The Department's analysis of the record evidence supports a preliminary finding of absence of *de jure* control. *See* “Separate Rate Application from Jiangsu Jianghai Chemical Group Co., Ltd.,” dated June 10, 2008 (“*Jiangsu Jianghai SRA*”); “Separate Rate Application from Changzhou Wujin Fine Chemical Factory Co., Ltd.,” dated June 10, 2008 (“*Wujin Fine Chemical SRA*”); and “Response to Section A by Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory,” dated June 21, 2008 (“*Wujin Water Section A*”).

### Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an

analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

In this case, we determine that the evidence on the record supports a preliminary finding of *de facto* absence of governmental control with respect to Wujin Water, Jiangsu Jianghai, and Wujin Fine Chemical based on record statements and supporting documentation showing that the companies: (1) Set their own export prices independent of the government and without the approval of a government authority; (2) retain their proceeds from sales and make independent decisions regarding disposition of profits or financing of losses; (3) have the authority to negotiate and sign contracts and other agreements; and (4) have autonomy from the government regarding the selection of management. *See* Jiangsu Jianghai SRA; Wujin Fine Chemical SRA; and Wujin Water Section A.

The evidence placed on the record of this investigation by Wujin Water, Jiangsu Jianghai, and Wujin Fine Chemical demonstrates an absence of *de jure* and *de facto* government control with respect to these exporters' exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers and Silicon Carbide*. Therefore, we have granted a separate rate to all three exporters. Specifically, Wujin Water will receive its own calculated weighted-average margin. For Jiangsu Jianghai and Wujin Fine Chemical, we have granted these exporters a weighted-average margin based on the experience of mandatory respondents and excluding any *de minimis* or zero rates or rates based on total adverse facts available ("AFA") for the purposes of this preliminary determination. Since Wujin Water is receiving a calculated margin above *de minimis*, and Kewei is receiving a margin based upon total AFA, *see* "Adverse Facts Available" section below, we have assigned Wujin Water's margin to the separate rate companies. Therefore, we have assigned 24.30 percent as the rate applicable to Jiangsu Jianghai and Wujin Fine Chemical.

#### Adverse Facts Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party: (A) Withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the

form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. 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.

On June 25, 2008, Kewei informed the Department that it would no longer participate in the instant investigation. *See* Kewei Withdrawal Memorandum. Because Kewei failed to submit a response to sections A, C, and D of the Department's antidumping duty questionnaire, it failed to provide information requested by the Department. Furthermore, by ending its participation, Kewei denied the Department the ability to ask supplemental questions and conduct its verification of responses. Verification is integral to the Department's analysis because it allows the Department to validate that it is relying upon accurate and complete information, and calculating dumping margins as accurately as possible. By refusing to provide requested information and withdrawing from the investigation, Kewei significantly impeded the proceeding. Moreover, by not allowing verification, Kewei failed to demonstrate that it operates free of government control and that it is entitled to a separate rate. Therefore, we find that Kewei has not demonstrated its entitlement to a separate rate, and consequently, we are treating it as part of the PRC-wide entity. Moreover, because Kewei, which is part of the PRC-wide entity, failed to respond to our questionnaire, we find that the use

of facts available, pursuant to sections 776(a)(2)(A), (C), and (D), is appropriate in determining the applicable dumping margin for the PRC-wide entity.

Although PRC exporters of subject merchandise to the United States were given an opportunity to provide Q&V information to the Department, not all exporters responded to the Department's request for Q&V information.<sup>5</sup> Based upon our knowledge of the volume of imports of subject merchandise from the PRC, we have concluded that the companies that responded to the Q&V questionnaire do not account for all U.S. imports of subject merchandise from the PRC made during the POI. We have treated the non-responsive PRC producers/exporters as part of the PRC-wide entity because they did not qualify for a separate rate.

As noted above, the PRC-wide entity, including Kewei and the Non-Responsive Companies, withheld information requested by the Department. As a result, pursuant to section 776(a)(2)(A) of the Act, we find it appropriate to base the PRC-wide dumping margin on facts available. *See Notice of 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 *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000); *see also Statement of Administrative Action*, accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. I at 843 (1994) ("SAA"), reprinted in 1994 U.S.C.C.A.N. 4040 at 870. Because the PRC-wide entity did not respond to the Department's request

<sup>5</sup> Of the 10 Q&V questionnaires the Department sent to potential exporters identified in the petition, the Department received only four timely responses. The record indicates the questionnaires were received by the Non-Responsive Companies. *See* Respondent Selection Memorandum and "Background" section above.

for information, the Department has concluded that the PRC-wide entity, including Kewei and the Non-Responsive Companies, 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.

Section 776(b) of the Act authorizes the Department to use, as adverse facts available: (1) Information derived from the petition; (2) the final determination from the LTFV investigation; (3) a previous administrative review; or (4) any other information placed on the record. In selecting a rate for AFA, the Department selects one that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909 (February 23, 1998). It is the Department's practice to select, as AFA, the higher of: (a) The highest margin alleged in the petition or (b) the highest calculated rate for any respondent in the investigation. See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From the People's Republic of China*, 65 FR 34660 (May 31, 2000) and accompanying Issues and Decisions Memorandum at "Facts Available." In this case, the dumping margin alleged in the petition, as adjusted by the Department for initiation, is 72.42 percent. Since the dumping margin derived from the Petition, as revised by the Department, is higher than the calculated weighted-average margin for mandatory respondent Wujin Water, we examined whether it was appropriate to base the PRC-wide dumping margin on the secondary information in the Petition.

When the Department relies on secondary information, rather than information obtained in the course of an investigation, section 776(c) of the Act requires it to, to the extent practicable, corroborate that information from independent sources reasonably at its disposal.<sup>6</sup> The SAA also states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested

parties during the particular investigation. See SAA at 870.

The SAA also clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. See *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 *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: Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

To corroborate the Petition margin, we compared the U.S. prices and normal values calculated for Wujin Water to the U.S. prices and normal values alleged in the Petition. Based on this comparison, we have preliminarily corroborated the 72.42 percent dumping margin derived from information contained in the Petition. See Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to the File, "Corroboration of the PRC-Wide Facts Available Rate for the Preliminary Determination in the Antidumping Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China," dated concurrently with this notice. The dumping margin for the PRC-wide entity applies to all entries of the merchandise under investigation except for entries of subject merchandise from Wujin Water, Jiangsu Jianghai, and Wujin Fine Chemical.

#### Fair Value Comparisons

To determine whether Wujin Water sold HEDP to the United States at LTFV, we compared the weighted-average export price ("EP") of the HEDP to the NV of the HEDP, 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 based the U.S. price of sales on EP because the first sale to unaffiliated purchasers was made prior

to importation and the use of constructed export price methodology was not otherwise warranted.

In accordance with section 772(c) of the Act, we calculated EP by deducting, where applicable, the following expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States: Foreign movement expenses, marine insurance, international freight, and foreign brokerage and handling expenses. For details regarding our EP calculation, see Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to the File, "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China—Preliminary Analysis Memorandum for Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory Ltd.," dated concurrently with this notice.

We based these movement expenses on surrogate values where a PRC company provided the service and was paid in Renminbi ("RMB").<sup>7</sup> We valued foreign inland truck freight expenses using a per-unit average rate calculated from data on the following 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 from a time period after the POI, we deflated the rate using the Indian Wholesale Price Index ("WPI").<sup>8</sup> See Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to the File, "Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Surrogate Values Selected for Wujin Water," dated concurrently with this notice ("Surrogate Value Memorandum").

We valued brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in the antidumping duty investigation of HEDP from India. Specifically, we averaged the public brokerage and handling expenses reported by Aquapharm Chemicals Pvt. Ltd. ("Aquapharm") on September 19, 2008. See Surrogate Value Memorandum at 7–8, containing the public summary of Aquapharm's September 19, 2008, response at 1. Since the resulting value is contemporaneous with the POI, we did not inflate the rate using the WPI.

<sup>7</sup> Wujin Water reported that it purchased no transportation or movement services from market economy suppliers during the POI.

<sup>8</sup> WPI Web site available at <http://eaindustry.nic.in>.

<sup>6</sup> Secondary information is described in the SAA as "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise." See SAA at 870.

Similarly, we valued international freight and marine insurance using a simple average of these costs as reported by Aquapharm. *Id.* We used Aquapharm's data for surrogate value purposes in this case given that Aquapharm is a respondent in the contemporaneous companion HEDP from India antidumping investigation and sold identical merchandise.

#### Normal Value

In accordance with section 773(c) of the Act, we constructed NV from the factors of production employed by Wujin Water to manufacture subject merchandise during the POI. Specifically, we calculated NV by adding together the value of the factors of production, general expenses, profit, and packing costs, as well as an adjustment for byproducts. We valued the factors of production using prices and financial statements from India, the surrogate country selected for this investigation.<sup>9</sup> In selecting surrogate values, we followed, to the extent practicable, the Department's practice of choosing values which are non-export average values, product-specific, tax-exclusive, and contemporaneous with, or closest in time to, the POI. *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). We also considered the quality of the source of surrogate information in selecting surrogate values.

We valued material inputs and packing materials by multiplying the amount of the factor consumed in producing subject merchandise by the average unit value of the factor. In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as 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 (Fed. Cir. 1997). Where we could only obtain surrogate values that were not contemporaneous with the POI, we inflated (or deflated) the surrogate values using the WPI.

Further, in calculating surrogate values from Indian imports, we disregarded imports from Indonesia, South Korea, and Thailand because in other proceedings the Department found that these countries maintain broadly available, non-industry-specific export subsidies. Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *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; *see also 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).<sup>10</sup> Thus, we have not used prices from these countries in calculating the Indian import-based surrogate values.

We valued raw materials and packing materials using Indian import statistics. *See* Surrogate Value Memorandum. We valued water using data from the Maharashtra Industrial Development Corporation<sup>11</sup> because it includes a wide range of industrial water tariffs. This source provides 378 industrial water rates within the Maharashtra province from July 2007: 189 for the "inside industrial areas" usage category, and 189 for the "outside industrial areas" usage category. *See* Surrogate Value Memorandum.

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 July 2006. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to industries in India. Since the rates are not contemporaneous

with the POI, we inflated the values using the WPI. *See* Surrogate Value Memorandum.

The Department valued steam using a surrogate value for natural gas obtained from the Web site of the Gas Authority of India Ltd., a supplier of natural gas in India. We used natural gas because there is no surrogate value for steam on the record of this investigation. The Department has used natural gas to value steam in past cases. *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485, 40486 (July 15, 2008), and accompanying Issues and Decision Memorandum at Comment 11; *see also 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). The natural gas value relates to the period February 2005. Therefore, we inflated the value using the WPI. *See* Surrogate Value Memorandum.

For direct labor, indirect labor, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the most recently calculated regression-based wage rate, which relies on 2005 data. This wage rate can be found on the Import Administration's home page. *See* "Expected Wages of Selected NME Countries," available at <http://ia.ita.doc.gov/wages/index.html> (revised May 2008). The source of these wage rate data on the Import Administration's Web site is the International Labour Organization, Geneva, Labour Statistics Database Chapter 5B: Wages in Manufacturing. Since 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 Wujin Water. *See* Surrogate Value Memorandum.

As noted above, we valued inland truck freight expenses using a deflated per-unit average rate calculated from data on the following Web site: <http://www.infobanc.com/logistics/logtruck.htm>. *See* Surrogate Value Memorandum.

We valued factory overhead, selling, general, and administrative ("SG&A") expenses, and profit, using a simple average of the financial ratios calculated from the 2007–2008 audited financial statements of two Indian producers of HEDP: Excel Industries Limited and United Phosphorus Limited. *See* Surrogate Value Memorandum.

<sup>9</sup> Wujin Water reported that it purchased no factors of production from market economy suppliers during the POI.

<sup>10</sup> In addition, we note that legislative history explains that the Department is not required to conduct a formal investigation to ensure that such prices are not subsidized. *See Omnibus Trade and Competitiveness Act of 1988*, Conference Report to Accompanying H.R. Rep. 100–576 at 590 (1988). As such, it is the Department's practice to base its decision on information that is available to it at the time it makes its determination.

<sup>11</sup> Web site available at <http://www.midcindia.org>.



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

#### Currency Conversion

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

#### Verification

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

upon which we will rely in making our final determination.

#### Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation. *See Initiation Notice*. This change in practice is described in *Policy Bulletin 05.1*, which states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which

supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

*See Policy Bulletin 05.1.*

#### Preliminary Determination Margins

The Department has determined that the following weighted-average dumping margins exist for the POI:

Manufacturer/Exporter	Weighted-Average margin (percent)
Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory Ltd. <sup>12</sup> .....	24.30
Changzhou Wujin Fine Chemical Factory Co., Ltd. <sup>13</sup> .....	24.30
Jiangsu Jianghai Chemical Group Co., Ltd. <sup>14</sup> .....	24.30
PRC-wide Entity (including Kewei) .....	72.42

#### 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 CBP to suspend liquidation of all entries of HEDP from the PRC as described in the "Scope of Investigation" section, 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 follows: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate we have determined in this preliminary determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the PRC-wide rate; 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 exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions 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 LTFV. 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 HEDP, 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 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 for submitting case briefs. *See* 19 CFR 351.309(c)(1)(i) and 19 CFR 351.309(d)(1). 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 that 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.

<sup>12</sup> Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory Ltd. manufactures and exports subject merchandise.

<sup>13</sup> Changzhou Wujin Fine Chemical Factory Co., Ltd. manufactures and exports subject merchandise.

<sup>14</sup> Jiangsu Jianghai Chemical Group Co., Ltd. manufactures and exports subject merchandise.

**Postponement of Final Determination**

Pursuant to section 735(a)(2) of the Act, on September 23, 2008, Wujin Water requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days.<sup>15</sup> At the same time, Wujin Water agreed that the Department may extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a 4-month period to a 6-month period. In accordance with section 733(d) of the Act and 19 CFR 351.210(b), we are granting the request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register** because: (1) Our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist. Suspension of liquidation will be extended accordingly.

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

Dated: October 15, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8-25032 Filed 10-20-08; 8:45 am]

**BILLING CODE 3510-DS-P**

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

**A-580-836**

**Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review**

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

**EFFECTIVE DATE:** October 21, 2008.

**FOR FURTHER INFORMATION CONTACT:** Lyn Johnson or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5287 or (202) 482-1690, respectively.

**SUPPLEMENTARY INFORMATION:**

<sup>15</sup> On October 6, 2008, Petitioner requested that in the event that the Department issues a negative preliminary determination in this investigation, it postpone the final determination until no later than 135 days after the publication of the preliminary determination in the **Federal Register**.

**Background**

At the request of interested parties, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products from the Republic of Korea for the period February 1, 2007, through January 31, 2008. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review*, 73 FR 16837 (March 31, 2008). The preliminary results of this administrative review are currently due no later than October 31, 2008.

**Extension of Time Limit for Preliminary Results**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month. See also 19 CFR 351.213(h).

We determine that it is not practicable to complete the preliminary results of this review by the current deadline of October 31, 2008, for several reasons. Specifically, the Department has granted the respondent, Dongkuk Steel Mill Co., Ltd. (DSM), several extensions to respond to the original and supplemental questionnaires.<sup>1</sup> Thus, the Department requires additional time to review and analyze the sales and cost responses submitted by DSM. Further, the Department requires additional time to review issues such as corporate affiliations and to analyze the changes in DSM's product-coding system as it will affect the Department's matching methodology in this case. Therefore, we are extending the time period for issuing the preliminary results of this review by 45 days until December 15, 2008.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act and 19 CFR 351.213(h)(2).

<sup>1</sup> See, e.g., letter to Dongkuk Steel Mill Co., Ltd., from Laurie Parkhill, dated August 28, 2008.

Dated: October 14, 2008.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration*

[FR Doc. E8-25033 Filed 10-20-08; 8:45 am]

**BILLING CODE 3510-DS-S**

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

**[A-583-833]**

**Certain Polyester Staple Fiber From Taiwan: Final Results of Antidumping Duty Administrative Review**

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

**SUMMARY:** On April 17, 2008, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain polyester staple fiber from Taiwan. The period of review is May 1, 2006, through April 30, 2007. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and an examination of our calculations, we have made certain changes for the final results. The final weighted-average dumping margin for Far Eastern Textile Limited is listed below in the "Final Results of the Review" section of this notice.

**DATES:** *Effective Date:* October 21, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Thomas Schauer or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482-0410 and (202) 482-4477, respectively.

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

On April 17, 2008, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on certain polyester staple fiber (PSF) from Taiwan for the period May 1, 2006, through April 30, 2007. See *Certain Polyester Staple Fiber from Taiwan: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 20907 (April 17, 2008).

On June 2, 2008, we extended the deadline for the final results of review. See *Polyester Staple Fiber from Taiwan: Extension of Time Limit for the Final Results of Antidumping Duty*