

injury from the dumped merchandise, consistent with 19 CFR 351.206. See *ITC Preliminary Notice*, 72 FR at 60388.

Finally, with respect to massive imports, we are unable to base our determination on our findings for Delta because our determination for Delta was based on AFA. We have not inferred, as AFA, that massive imports exist for companies under the all-others category, because, unlike the uncooperative company in question, the all-others companies have not failed to cooperate in this investigation. Therefore, an adverse inference with respect to finding a massive surge in imports by the all-others companies is not appropriate. In addition, the record indicates that the only producer of EMD from Australia is Delta. See “Antidumping Duty Investigation on Electrolytic Manganese Dioxide from Australia Respondent Identification,” October 25, 2007. Thus, we determine that there were no massive imports from companies in the all-others category.

Consequently, the criteria necessary for determining affirmative critical circumstances with respect to the all-others category have not been met. Therefore, we have preliminarily determined that critical circumstances do not exist for imports of EMD from Australia for companies in the all-others category, as there were no shipments of the foreign like product from any other companies during the relevant period.

Preliminary Determination

We preliminarily determine that the following dumping margins exist for the period July 1, 2006, through June 30, 2007:

Manufacturer or Exporter	Margin (percent)
Delta	120.59
All Others	120.59

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of EMD from Australia that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Additionally, for Delta we will instruct CBP to suspend liquidation of entries made on or after 90 days prior to the publication of this notice in accordance with section 733(e)(2) of the Act. We will instruct CBP to require a cash deposit or the posting of a bond equal to the margins, as indicated in the chart above, as follows: (1) the rate for Delta will be 120.59 percent; (2) if the

exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 120.59 percent. 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 determination of sales at less than fair value. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threatening material injury to, the U.S. industry. The deadline for the Commission’s determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination, pursuant to section 735(b)(2) of the Act.

Public Comment

Case briefs for this investigation must be submitted no later than 50 days after the publication of this notice, pursuant to 19 CFR 351.309(c)(1)(i). Rebuttal briefs must be filed within five days after the deadline for submission of case briefs, consistent with 19 CFR 351.309(d)(1). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing 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 request for a hearing is made in an investigation, the hearing normally will be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. See 19 CFR 351.310(d)(1). Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. See 19 CFR 351.310(c). Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will not be conducting a verification of Delta’s responses because it has failed to file responses to all of our questionnaires, as discussed above in the Use of Adverse Facts Available section of this notice. Therefore, the deadline for submission of factual information in 19 CFR 351.301(b)(1) is not applicable. Thus, the deadline for submission of factual information in this investigation will be seven days after the date of publication of this notice.

We will make our final determination within 75 days after the date of this preliminary determination, pursuant to section 735(a)(1) of the Act.

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

Dated: March 19, 2008.

David M. Spooner,
Assistant Secretary for Import Administration.

[FR Doc. E8-6167 Filed 3-25-08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

A-570-919

Electrolytic Manganese Dioxide 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.

EFFECTIVE DATE: March 26, 2008.

SUMMARY: We preliminarily determine that electrolytic manganese dioxide (“EMD”) from the People’s Republic of China (“PRC”) is being, or is likely to be, sold in the United States at less than fair value (“LTFV”), as provided in section 733 of the Tariff Act of 1930, as amended (“the Act”). The estimated margins of sales at LTFV are shown in the “Preliminary Determination” section of this notice. Pursuant to a request from an interested party, we are postponing the final determination and extending the provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan or Robert Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue, NW, Washington, DC, 20230; telephone: (202) 482-0414 or 482-3434, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On August 22, 2007, Tronox LLC (“Tronox” or “Petitioner”), filed a petition in proper form on behalf of the domestic industry, concerning imports of EMD from the PRC (“Petition”). The Department of Commerce (“the Department”) initiated this investigation on September 11, 2007.¹ In the *Notice of Initiation*, the Department applied a process by which exporters and producers may obtain separate-rate status in non-market economy (“NME”) investigations. The process requires exporters and producers to submit a separate-rate status application (“SRA”).² 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* government control over its export activities) has not changed. The SRA for this investigation was posted on the Department’s website <http://ia.ita.doc.gov/ia-highlights-and-news.html> on September 19, 2007. The due date for filing an SRA was November 9, 2007. No party filed an SRA in this investigation.

On September 25, 2007, we sent a letter to interested parties requesting comments regarding the physical characteristics to be used in our questionnaire. On October 9, 2007, Petitioner submitted comments. No other party submitted comments.

On October 18, 2007, the United States International Trade Commission (“ITC”) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of EMD from the PRC.³

On October 16, 2007, the Department issued its respondent selection memorandum, selecting Guizhou Redstar Developing Import and Export Company, Ltd. (“Redstar”) and Xiangtan Electrochemical Scientific Ltd. (“Xiangtan”) as mandatory respondents

in this investigation.⁴ On November 6, 2007, the Department issued an antidumping duty questionnaire to the two above-named mandatory respondents. On November 27, 2007, Xiangtan submitted a letter to the Department stating that it would not participate in the investigation.

On November 28, 2007, the Department requested that the Office of Policy provide a list of surrogate countries for this investigation.⁵ On December 5, 2007, Redstar submitted its Section A response. On December 20, 2007, the Office of Policy issued its list of surrogate countries.⁶ On December 28, 2007, Redstar submitted its Sections C and D responses. On January 15, 2008, subsequent to a request from Petitioner submitted on December 31, 2007, the Department extended the time period for issuing the preliminary determination by 50 days.⁷ On January 23, 2008, the Department released a letter to interested parties requesting comments on the appropriate surrogate country to use in this investigation and for publicly available information to value factors of production (“FOP”). On February 6, 2008, Petitioner submitted comments on surrogate country selection. On February 20, 2008, both Petitioner and Redstar submitted publicly available information to value FOPs.

Period of Investigation

The period of investigation (“POI”) is January 1, 2007, through June 30, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was September 2007.⁸

Scope of Investigation

The merchandise covered by this investigation includes all manganese dioxide (MnO₂) that has been

manufactured in an electrolysis process, whether in powder, chip, or plate form. Excluded from the scope are natural manganese dioxide (NMD) and chemical manganese dioxide (CMD). The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) at subheading 2820.10.00.00. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations,⁹ in our initiation notice, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the initiation notice. No party submitted comments on the scope of this investigation.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual weighted-average dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the Department at the time of selection or (2) exporters/producers accounting for the largest volume of the merchandise under investigation that can reasonably be examined. After consideration of the complexities expected to arise in this proceeding and the resources available to it, the Department determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. We determined we had the resources to examine two exporters. We further determined to limit our examination to the two exporters accounting for the largest volume of the subject merchandise pursuant to section 777A(c)(2)(B) of the Act. Our analysis indicates that Redstar and Xiangtan are the two largest PRC exporters of subject

¹ See *Notice of Initiation of Antidumping Duty Investigations: Electrolytic Manganese Dioxide from Australia and the People’s Republic of China*, 72 FR 52850 (September 17, 2007) (“*Notice of Initiation*”).

² See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries (April 5, 2005) (“*Policy Bulletin 05.1*”), available at <http://ia.ita.doc.gov/policy/bullo5-1.pdf>.

³ See *Investigation Nos. 731-TA-1124 and 1125 (Preliminary): Electrolytic Manganese Dioxide from Australia and China*, 72 FR 60388 (October 24, 2007).

⁴ See Memorandum to Wendy Frankel, “Respondent Selection Memorandum: Antidumping Duty Investigation of Electrolytic Manganese Dioxide from the People’s Republic of China” (October 16, 2007) (“Respondent Selection Memorandum”). See also “Selection of Respondents” section below.

⁵ See Memorandum to Ron Lorentzen, Director, Office of Policy, “Less-Than-Fair-Value Investigation of Electrolytic Manganese Dioxide from the People’s Republic of China (‘PRC’), Surrogate Country Selection List” (November 28, 2007).

⁶ See Memorandum from Ron Lorentzen, Director, Office of Policy, “Antidumping Duty Investigation of Electrolytic Manganese Dioxide from the People’s Republic of China (‘PRC’): Request for a List of Surrogate Countries” (December 20, 2007) (“Surrogate Countries Memorandum”).

⁷ See *Postponement of Preliminary Determinations of Antidumping Duty Investigations: Electrolytic Manganese Dioxide from Australia and the People’s Republic of China*, 73 FR 2445 (January 15, 2008).

⁸ See 19 CFR 351.204(b)(1).

⁹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

merchandise by weight, and account for a significant percentage of all exports of the subject merchandise from the PRC during the POI. As a result, we selected these entities as the mandatory respondents in this investigation.¹⁰

Non-Market Economy Country

For purposes of initiation, Petitioner submitted an LTFV analysis for the PRC as an NME.¹¹ The Department considers the PRC an NME.¹² In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the administering authority.¹³ No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value (“NV”) on the NME producer’s FOPs. The Act further instructs the Department to value FOPs based on the best available information in a surrogate market economy country or countries considered to be appropriate by the Department.¹⁴ When valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.¹⁵ Further, the Department normally values all FOPs in a single surrogate country.¹⁶ The sources of the surrogate values (“SV”) are discussed under the “Normal Value” section below and in the Memorandum to the File, Surrogate Value Memorandum, dated March 19, 2008, which is on file in the Central Records Unit, Room 1117 of the main Department building.

The Department determined that India, Indonesia, the Philippines, Colombia and Thailand are countries

comparable to the PRC in terms of economic development.¹⁷ Once the economically comparable countries have been identified, we select an appropriate surrogate country by determining whether one of these countries is a significant producer of comparable merchandise and whether the data for valuing FOPs is both available and reliable.

We have determined it appropriate to use India as a surrogate country pursuant to section 773(c)(4) of the Act based on the following: (A) India is at a level of economic development comparable to that of the PRC, and (B) India is a significant producer of comparable merchandise. Furthermore, we have reliable data from India that we can use to value the FOPs.¹⁸ Thus, we have calculated NV using Indian prices when available and appropriate to value Redstar’s FOPs. We have obtained and relied upon publicly available information wherever possible.¹⁹

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit within 40 days after the date of publication of the preliminary determination publicly available information to value the FOPs.²⁰

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department’s policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be

entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government 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 the *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*”).²¹ 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. No companies in this investigation reported that they are wholly owned by individuals or companies located in a market-economy country and no companies reported that they are located outside the PRC.

The sole participating company in this investigation, Redstar, stated that it is a wholly PRC-owned company. Therefore, the Department must analyze whether Redstar can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

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) other formal measures by the government decentralizing control of companies.²²

²¹ See also *Policy Bulletin 05.1* at 6, 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.”

²² See *Sparklers*, 56 FR at 20589.

¹⁰ See Respondent Selection Memorandum.

¹¹ See *Notice of Initiation*, 72 FR at 52853.

¹² See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People’s Republic of China*, 72 FR 30758, 30760 (June 4, 2007), unchanged in the *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People’s Republic of China*, 72 FR 60632 (October 25, 2007).

¹³ See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People’s Republic of China*, 71 FR 16116 (March 30, 2006) (“*Artist Canvas*”).

¹⁴ See Section 773(c)(1) of the Act.

¹⁵ See Section 773(c)(4) of the Act.

¹⁶ See 19 CFR 351.408(c)(2).

¹⁷ See Surrogate Countries Memorandum.

¹⁸ *Id.* at 2.

¹⁹ See Memorandum to Wendy J. Frankel, “Electrolytic Manganese Dioxide from the People’s Republic of China: Surrogate Value Memorandum” (March 19, 2008) (“*Surrogate Value Memorandum*”).

²⁰ In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, 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 rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative SV 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.

The evidence provided by Redstar 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 exporters' 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.²³

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.²⁴ 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. We determine for Redstar that the evidence on the record supports a preliminary finding of *de facto* absence of government control based on record statements and supporting documentation showing the following: (1) Redstar sets its own export prices independent of the government and without the approval of a government authority; (2) Redstar retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) Redstar has the authority to negotiate and sign contracts and other agreements; and (4) Redstar has autonomy from the government regarding the selection of management.²⁵

The evidence placed on the record of this investigation by Redstar demonstrates an absence of *de jure* and *de facto* government control with

respect to each its exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*.

Application of Facts Available

Section 776(a)(1) and (2) of the Act provides that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782, (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. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.²⁶

Application of Total Adverse Facts Available

The PRC-Wide Entity

On October 16, 2007, we selected Xiangtan as one of the mandatory respondents. On November 6, 2007, we issued our questionnaire to Xiangtan. On November 27, 2007, Xiangtan 1) stated it will not participate in this investigation through the submission of questionnaire responses, 2) stated that it had shredded and/or erased all submissions containing business proprietary information, and 3) requested to be removed from the APO service list. Thus, there is no information on the record of this investigation with respect to Xiangtan. Because Xiangtan was selected as a mandatory respondent and failed to demonstrate its eligibility for separate-rate status, it remains subject to this investigation as part of the PRC-wide entity.

Pursuant to section 776(a) of the Act, we further find that because the PRC-wide entity (including Xiangtan) failed to respond to the Department's questionnaires, withheld or failed to provide information in a timely manner or in the form or manner requested by the Department, and otherwise impeded the proceeding, it is appropriate to apply a dumping margin for the PRC-wide entity using the facts otherwise available on the record. Additionally, because this party failed to cooperate by refusing to respond to our requests for information, we find an adverse inference is appropriate pursuant to section 776(b) of the Act for the PRC-wide entity.

Selection of the Adverse Facts Available Rate

In sum, because the PRC-wide entity failed to respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate pursuant to section 776(b) of the Act for the PRC-wide entity.

Further, section 776(b) of the Act authorizes the Department to use as adverse facts available ("AFA") information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate

²³ See Redstar's Section A Questionnaire Response, dated December 5, 2007.

²⁴ 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).

²⁵ See Redstar's Section A Questionnaire Response, dated December 5, 2007.

²⁶ See 19 CFR 351.308(c).

information in a timely manner.”²⁷ Moreover, the Department will select a rate that ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²⁸

It is the Department’s practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.²⁹ In the instant investigation, as AFA, we have assigned to the PRC-wide entity a margin of 236.81 percent, the highest calculated rate on the record of this proceeding, which is the calculated rate assigned to Redstar. The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA.

Consequently, we are applying a single antidumping rate – the PRC-wide rate – to all exporters which did not demonstrate entitlement to a separate rate, *i.e.*, all exporters other than Redstar. The Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final PRC-wide margin.³⁰

Fair Value Comparisons

To determine whether sales of EMD to the United States by Redstar were made at LTFV, we compared Export Price (“EP”) to NV, as described in the “Export Price” and “Normal Value” sections of this notice.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under

²⁷ See *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

²⁸ See *Statement of Administrative Action* at 870. See also, *Brake Rotors From the People’s Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005).

²⁹ See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People’s Republic of China*, 65 FR 34660 (May 21, 2000), and accompanying Issues and Decision Memorandum at “Facts Available.”

³⁰ See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin from the People’s Republic of China*, 67 FR 79049, 79054 (December 27, 2002).

section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EP for Red Star because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation and because constructed export price was not otherwise warranted.

We calculated EP based on the packed cost and freight or delivered prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (foreign inland freight from the plant to the warehouse, domestic brokerage, and international freight) and a discount in accordance with section 772(c)(2)(A) of the Act.³¹

Normal Value

We compared NV to weighted-average EPs in accordance with section 777A(d)(1) of the Act. Further, 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 NMEs renders price comparisons and the calculation of production costs invalid under its normal methodologies. The Department’s questionnaire requires that the respondent provide information regarding the weighted-average FOPs across all of the company’s plants that produce the subject merchandise, not just the FOPs from a single plant. This methodology ensures that the Department’s calculations are as accurate as possible.³² The Department calculated the FOPs using the weighted-average factor values for all of the facilities involved in producing the subject merchandise for the exporter. The Department calculated NV for each matching control number (“CONNUM”) based on the FOPs reported from the exporter’s supplier.

³¹ For a detailed description of all adjustments, see Memorandum to the File, “Electrolytic Manganese Dioxide from the People’s Republic of China: Analysis Memorandum for the Preliminary Determination: Guizhou Redstar Developing Import and Export Company Ltd. (March 19, 2008) (“Redstar’s Preliminary Analysis Memorandum”).

³² See, *e.g.*, *Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People’s Republic of China*, 68 FR 61395 (October 28, 2003), and accompanying Issues and Decision Memorandum at Comment 19.

Factor Valuations

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

For this preliminary determination, in accordance with the Department’s practice, we used import values from the World Trade Atlas® online (“Indian Import Statistics”), which were published by the Directorate General of Commercial Intelligence and Statistics, Ministry of Commerce of India, which were reported in rupees and are contemporaneous with the POI to calculate SVs for the mandatory respondent’s material inputs. Where we found Indian Import Statistics to be unavailable or unreliable, we used information from *Chemical Weekly*, an Indian trade publication. 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, SVs which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive.³³

Redstar reported that its supplier of EMD owns its own manganese carbonite mine, and therefore we should value manganese carbonite using the FOPs consumed to mine the ore. Our analysis of the relationship between Redstar’s producer and the mine, however,

³³ 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 the final determination (*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)).

indicates that the producer's and the mine's production are not vertically integrated. Therefore, we are valuing manganese carbonite using SV methodology.³⁴

In those instances where we could not obtain publicly available information contemporaneous with the POI with which to value FOPs, we adjusted the SVs using, where appropriate, the Indian Wholesale Price Index, as published in the *International Financial Statistics* of the International Monetary Fund.

Furthermore, with regard to the Indian import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.³⁵ We are also guided by the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized.³⁶ The Department bases its decision on information that is available to it at the time it makes its determination. Therefore, we have not used prices from these countries in calculating the Indian import-based SVs. In addition, we excluded Indian import data from NME countries from our SV calculations.³⁷

We used Indian transport information to value the inland freight cost of the raw materials. The Department determined the best available information for valuing truck freight to be from *www.infreight.com*. This source provides daily rates from six major points of origin to five destinations in India. The Department obtained a price quote on the first day of each month from June 2005 to May 2006 from each point of origin to each destination and averaged the data accordingly. We adjusted these rates for inflation. We determined the best available information for valuing rail freight to be

from *www.indianrailways.gov.in*. Consistent with the Department's practice, we used two sources to calculate an SV for domestic brokerage expenses.³⁸ These data were averaged with the February 2004–January 2005 data contained in the May 24, 2005, public version of Agro Dutch Industries Limited's ("Agro Dutch") response submitted in the administrative review of the antidumping duty order on certain preserved mushrooms from India.³⁹ The brokerage expense data reported by Essar Steel and Agro Dutch in their public versions are ranged data. The Department first derived an average per-unit amount from each source, then adjusted each average rate for inflation. Finally, the Department averaged the two per-unit amounts to derive an overall average rate for the POI.

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 January 2007, available at <http://ia.ita.doc.gov/wages/index.html>. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent.⁴⁰ If the NME wage rates are updated by the Department prior to issuance of the final determination, we will use the updated wage rate in the final LTFV determination.

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

edition). Because the value was not contemporaneous with the POI, we adjusted the rate for inflation.

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

To value factory overhead, selling, general, and administrative expenses, and profit, we used audited financial statements of Eveready Industries India Limited ("Eveready India"), producers of the subject merchandise from India, for fiscal year 2006 - 2007.⁴¹ For purposes of initiation, we used the audited financial statements of Manganese Ore (India) Ltd. ("MOIL"), a producer of the merchandise under consideration that has a fully integrated mining operation. We stated at the initiation of this investigation that we would not use the financial statements of Eveready India because its financial statements reflect a zero profit and it is the Department's practice to disregard financial statements that do not demonstrate a profit, where other surrogate financial data exist on the record.⁴² In the instant investigation, however, we find that because the respondent is a producer of EMD, and does not maintain a mining facility, it is inappropriate to use the financial statements of MOIL to calculate the surrogate financial ratios. Analysis of MOIL's financial statements indicates that, due to its integrated mining operations, MOIL's overall production is very capital intensive, requiring extensive overhead not experienced by enterprises that do not maintain their own mining facility, such as Redstar. Notwithstanding Redstar's claim to have an integrated mining operation, our analysis of Redstar's questionnaire responses, including its financial statements, indicates that Redstar's

⁴¹ See Surrogate Value Memorandum.

⁴² See *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 71355 (December 17, 2007), and accompanying Issues and Decision Memorandum at Comment 1; see also *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Administrative Review and First New Shipper Review*, 72 FR 52052 (Sept. 12, 2007), and accompanying Issues and Decision Memorandum at Comment 2), and *Notice of Initiation*.

³⁴ See Surrogate Value Memorandum.

³⁵ See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

³⁶ See *Omnibus Trade and Competitiveness Act of 1988, Conference Report to Accompanying H.R. 3, H.R. Rep. 100-576 at 590* (1988).

³⁷ For a detailed description of all SVs used for each respondent, see Surrogate Value Memorandum.

³⁸ See, e.g., *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19704 (April 17, 2006) (utilizing these same two sources), unchanged in the final determination (*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 (September 8, 2006)). The Department averaged December 2003–November 2004 data contained in the February 28, 2005, public version of Essar Steel's response submitted in the antidumping duty administrative review of hot-rolled carbon steel flat products from India. See also *Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018 (January 12, 2006), unchanged in the final results (*Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 40694 (July 18, 2006)).

³⁹ See *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005). See also Surrogate Value Memorandum.

⁴⁰ See Surrogate Value Memorandum.

operations do not involve the equipment or facilities required for mining and consequently do not reflect the costs associated with a mining operation, such as those incurred by MOIL. Therefore, because the production experience of MOIL is so different from Redstar's, we have determined, in accordance with past practice,⁴³ that it is not appropriate to utilize the MOIL financial statements for this preliminary determination. However, the only financial statements currently on the record of this proceeding are those of MOIL and Eveready India. Therefore, despite the fact that it is the Department's practice not to use a financial statement without a realized profit, for this preliminary determination we have determined to use the financial statements of Eveready India to calculate surrogate financial ratios, as they represent the best available record information for this preliminary determination. We encourage interested parties to submit alternate publicly available financial statements on the record in this proceeding for use in the final determination. Moreover, the Department will also attempt to identify additional publicly available data for use in determining the surrogate financial ratios for purposes of the final determination of this investigation.

Post-Preliminary Determination Supplemental Questionnaire

In reviewing Redstar's original and supplemental questionnaire responses, we have determined that certain reported items require additional supplemental information. We will issue a post-preliminary determination supplemental questionnaire to Redstar to address these and other deficiencies. For example, Redstar has not provided complete sales and cost reconciliations. Should Redstar not provide complete and adequate sales and cost reconciliations, the Department may not be able to conduct verification for this respondent and may have to resort to the use of AFA.

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.

⁴³ See *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005), and accompanying Issues and Decision Memorandum at Comment 5.

Verification

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

Combination Rates

In the *Notice of Initiation*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation.⁴⁴ This practice is described in *Policy Bulletin 05.1*.⁴⁵

Preliminary Determination

The weighted-average dumping margins are as follows:

Exporter	Producer	Margin
Guizhou Redstar Developing Import and Export Company, Ltd.	Guizhou Redstar Developing Dalong Manganese Industrial Co., Ltd.	236.81%
PRC-Wide Entity*.	236.81%

*The PRC-wide entity includes Xiangtan.

Disclosure

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

Suspension of Liquidation

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

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at 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

⁴⁴ See *Notice of Initiation*, 72 FR at 52852.

⁴⁵ See footnote 19, *supra*.

EMD, 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 on which the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs. See 19 CFR 351.309. A table of contents, 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.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice.⁴⁶ Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we intend to hold the hearing three days after the deadline for 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. See 19 CFR 351.310. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

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

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2)(A) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of

⁴⁶ See 19 CFR 351.310(c).

the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. We received a request to postpone the final determination from Redstar on March 11, 2008. In addition, Redstar requested the extension of provisional measures from a four-month period to not longer than six months. Because this preliminary determination is affirmative, the request for postponement was made by the exporter accounting for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and have extended provisional measures to not longer than six months.

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

Dated: March 19, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG57

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit (EFP) application submitted by the University

of Maryland Eastern Shore (UMES) contains all of the required information and warrants further consideration. The Assistant Regional Administrator has made a preliminary determination that the activities authorized under this EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies and Monkfish Fishery Management Plans (FMPs). However, further review and consultation may be necessary before a final determination is made to issue an EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow one commercial fishing vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. This EFP, which would enable researchers to study the effects of climate on the distribution and catch rates of monkfish, would grant exemptions from the NE multispecies regulations as follows: Gulf of Maine (GOM) Rolling Closure Area III and NE multispecies effort control measures.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before April 10, 2008.

ADDRESSES: You may submit written comments by any of the following methods:

- Email: DA8-055@noaa.gov. Include in the subject line "Comments on UMES Monkfish EFP."

- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on UMES monkfish EFP, DA8-055."

- Fax: (978) 281-9135.

FOR FURTHER INFORMATION CONTACT: Emily Bryant, Fishery Management Specialist, 978-281-9244.

SUPPLEMENTARY INFORMATION: An application for an EFP was submitted on February 20, 2008, by Andrea K. Johnson, Ph.D., Research Assistant Professor at UMES, for a project funded under the New England and Mid-Atlantic Fishery Management Councils' Monkfish Research Set-Aside (RSA) Program. The primary goal of this study is to investigate the influence of temperature on monkfish distribution and abundance, as well as determine age and growth patterns, spawning frequency, feeding rates, and cannibalism. This information will

provide information on the biology of monkfish that could be used to enhance the management of this species. This is the first year this project has been funded under the Monkfish RSA Program.

The project is scheduled to be conducted for 1 year, from May 2008 through April 2009. Four fishing industry collaborators using 95 Monkfish days-at-sea (DAS) that will be awarded to the project through the monkfish RSA Program would collect a total of 640 monkfish from three size categories. Three monkfish gillnet vessels fishing in the Southern Fishery Management Area will collect monkfish as part of otherwise normal fishing activities, and do not require an EFP. One vessel fishing in the Northern Fishery Management Area would collect monkfish from a location inside Rolling Closure Area III. This activity would require an exemption from the restrictions of Rolling Closure Area III at 50 CFR 648.81(f) that will be in effect during May 2008. It is expected that this location would provide access to large monkfish and would avoid gear interactions between the research gillnet gear and the trawl gear. Due to the high economic value associated with the NE multispecies DAS, the applicant is also requesting exemption from the NE multispecies effort control measures at § 648.80(a)(3)(vi) in order to create sufficient incentive for a commercial vessel to participate in this experiment in the NFMA. This would exempt the vessel from the need to use a NE Multispecies DAS when fishing in the GOM for these research trips. The vessel would be using a large (12-inch) (30-cm) mesh, so the bycatch of NE multispecies is expected to be minimal.

The vessel would make up to 40 trips (25 DAS) using gillnets that are 12-inch (30-cm) stretch mesh with a 3.5-inch (8.9-cm) diameter gauge web that is 12 meshes deep. Each net is 300 ft (91 m) long, and 100 nets would be hauled every 5 days in the spring, summer, and fall, with an average soak time of 120 hours. Five fish per week would be donated to UMES between May-December 2008, and February-April 2009. The smallest samples would measure 17 inches (44 cm) in length. Additional catch, within applicable size and possession limits, would be sold to help offset the costs of the research. As a consequence of the exemption from the need to use a NE Multispecies DAS, the vessel would not keep any regulated NE multispecies. Since these trips would be using gillnets with very large mesh, the bycatch of regulated NE multispecies is expected to be minimal.