

parties an opportunity to comment on arguments raised in case and rebuttal briefs. If a request for a hearing is made in this investigation, the hearing will tentatively be held three days after the deadline for submitting rebuttal briefs 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. 19 CFR 351.310(c). 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. *Id.*

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

Dated: April 16, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8-8832 Filed 4-22-08; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

A-428-841

#### Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany

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

**SUMMARY:** The U.S. Department of Commerce (the Department) preliminarily determines that sodium nitrite from the Federal Republic of Germany (Germany) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the "Preliminary Determination" section of this notice. Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 75 days after the date of the preliminary determination.

**EFFECTIVE DATE:** April 23, 2008.

**FOR FURTHER INFORMATION CONTACT:** Brian C. Smith or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482 1766 or (202) 482 3773, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On November 28, 2007, the Department initiated the antidumping duty investigation of sodium nitrite from Germany. *See Sodium Nitrite from the Federal Republic of Germany and the People's Republic of China: Initiation of Antidumping Duty Investigations*, 72 FR 68563 (December 5, 2007) (*Initiation Notice*). The petitioner in this investigation is General Chemical LLC.

The Department 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*. *See Initiation Notice*, 72 FR at 68564. No parties submitted comments on the scope.

The Department also set aside a period of time for parties to raise issues regarding product characteristics and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. *See Initiation Notice*, 72 FR at 68564. Interested parties submitted comments on this issue.

On December 21, 2007, we selected BASF AG (BASF), the largest producer/exporter of sodium nitrite from Germany during the period of investigation (POI), as the mandatory respondent in this proceeding. *See Memorandum to James Maeder, Director Office 2, from the Team, regarding "Antidumping Duty Investigation of Sodium Nitrite from the Federal Republic of Germany - Selection of Respondents for Individual Review,"* dated December 21, 2007.

On January 3, 2008, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of sodium nitrite from Germany and the People's Republic of China are materially injuring the U.S. industry and the ITC notified the Department of its findings. *See Sodium Nitrite From China and Germany, Case Numbers: 701-TA-453 (Preliminary) and 731-TA-1136-1137 (Preliminary)*, 72 FR 2278 (January 14, 2008).

We subsequently issued the antidumping questionnaire to BASF on

January 14, 2008. On January 28, 2008, BASF informed the Department that it would not respond to the Department's antidumping duty questionnaire.

#### Period of Investigation

The POI is October 1, 2006, through September 30, 2007.

#### Scope of the Investigation

The merchandise covered by this investigation is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by this investigation may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is NaNO<sub>2</sub> and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name "sodium nitrite" to sodium nitrite. The CAS registry number is 7632-00-0.

While the HTSUS subheading, CAS registry number, and CAS name are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

#### Use of Facts Otherwise Available

For the reasons discussed below, we determine that the use of adverse facts available (AFA) is appropriate for the preliminary determination with respect to the sole respondent in this investigation, BASF.

As noted in the "Supplementary Information" section above, BASF informed the Department that it would not respond to the Department's antidumping duty questionnaire. *See BASF's January 28, 2008, letter to the Department.* Section 776(a)(2) of the Act provides that, (1) if an interested party withholds information requested by the administering authority, (2) fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782, (3) significantly impedes a proceeding under this title, or (4) provides such information but the information cannot be verified as provided in 782(i), the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that, if the administering authority determines that a response to a request for information does not comply with the request, the

administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act states further that 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.

In this case, BASF failed to respond to the Department's antidumping duty questionnaire and, as such, it withheld information that we requested for purposes of determining its antidumping duty margin, thereby significantly impeding this proceeding. Because this company did not provide any information, sections 782(d) and 782(e) of the Act are not applicable. Thus, in reaching our preliminary determination for BASF, pursuant to sections 776(a)(2)(A) and (C) of the Act, we have based its dumping margin on facts otherwise available.

#### **Application of Adverse Inferences for Facts Available**

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002). It is the Department's practice to apply adverse inferences to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. *See* the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. 1 (1994) at 870 (SAA), reprinted in 1994 U.S.C.A.N. 4040, 4198–4199. Furthermore, “affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.” *See Antidumping Duties; Countervailing*

*Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (Nippon); and *Certain Polyester Staple Fiber from Korea: Final Results of the 2005–2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

BASF's failure to respond to the Department's questionnaire constitutes a failure on its part to cooperate to the best of its ability to comply with a request for information by the Department within the meaning of section 776(b) of the Act. Based on the above, the Department has preliminarily determined that BASF failed to cooperate to the best of its ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

#### **Selection and Corroboration of Information Used as Facts Available**

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See* SAA at 870 and 19 CFR 351.308(c). It is the Department's practice to use the highest rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information and there are no other respondents. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216, 77218 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland*, 70 FR 28279 (May 17, 2005)). Therefore, because an adverse inference is warranted in this case, we have assigned to BASF the highest margin alleged in the petition, as referenced in the *Initiation Notice*, of 237.00 percent. (*See Initiation Notice*, 72 FR at 68567; and November 28, 2007, *Initiation Checklist* at page 9.)

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably available at its disposal. To “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 examine, to the extent practicable, 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, 11843 (March 13, 1997)). The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* 19 CFR 351.308(d); *see also* SAA at 870.

To the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis. *See* *Initiation Checklist* at page 9. We also examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as AFA in this preliminary determination. During our pre-initiation analysis, we examined the key elements of the export-price (EP) and normal-value (NV) calculations used in the petition to derive margins. *See* *Initiation Checklist* at pages 5–9. During our pre-initiation analysis, we also examined information from various independent sources provided either in the petition or in supplements to the petition that corroborates key elements of the EP and

NV calculations used in the petition to derive estimated margins. *See id.* Specifically, the petitioners calculated three constructed export prices (CEPs) using POI price quotes for sodium nitrite produced by BASF in Germany and sold (or offered for sale) by BASF's affiliate in the United States. *See* Initiation Checklist at page 5. These price quotes identify the price that the first U.S. customer unaffiliated with BASF paid for the subject merchandise. *See id.* The petitioners also calculated an export price (EP) using the average unit values (AUVs) of sodium nitrite from Germany imported into the United States during the POI, classified under HTSUS 2834.10.1000, as reported in the Bureau of the Census IM145 import statistics. *See* Volume 2 of the November 8, 2007, petition at Exhibit II-6 (the petition). We compared the U.S. price quotes to the AUVs for this period and confirmed that the U.S. price quotes were consistent with the AUVs. *See* Initiation Checklist at Attachment V, Volume 2 of the petition at Exhibit II-6, and the November 20, 2007, supplement to the petition at Exhibit 5. The petitioners adjusted CEPs, where applicable, for discounts, foreign inland freight, ocean freight, marine insurance, U.S. inland freight and transloading fees, U.S. customs and port fees, warehousing expenses, and CEP profit. *See* Initiation Checklist at page 5. For EP based on customs value, the petitioner made an adjustment only for foreign inland freight, as the AUV is based on an FOB foreign port price. *See* Initiation Checklist at pages 5-6. Based on our review of the information contained in the petition, we recalculated CEP to correct certain errors in the petitioner's calculation. *See id.* Based on an examination of the aforementioned information, we considered the petitioner's calculation of net U.S. prices to be corroborated. Further, we obtained no other information that would make us question the reliability of the pricing information provided in the petition.

With respect to NV, the petitioner stated that neither home-market prices nor third-country prices of German-produced sodium nitrite were reasonably available. According to the petitioner, it was unsuccessful in obtaining such pricing information, despite its best efforts. Therefore, the petitioner based NV on constructed value (CV). *See* Initiation Checklist at pages 7-8.

Pursuant to section 773(e) of the Act, CV consists of the cost of manufacture (COM); selling, general and administrative (SG&A) expenses; packing expenses; and profit. In

calculating COM and packing, the petitioner based the quantity of each of the inputs used to manufacture and pack sodium nitrite in Germany on its own production experience during the POI. The petitioner then multiplied the usage quantities by the value of the inputs used to manufacture and pack sodium nitrite in Germany based on publicly available data (e.g., ammonia, caustic soda), data obtained from market research (e.g., silicon dioxide), or its own costs (e.g., packing materials). *See* Initiation Checklist at pages 7-8.

The petitioner determined labor costs using the labor inputs derived from its own experience which it valued using an industrial German wage rate obtained from the International Labour Organization's "Laborsta" database at <http://laborsta.ilo.org>. The petitioner determined energy costs (i.e., electricity, natural gas, steam, cooling water, and city water) using German price data obtained from market research. To calculate factory overhead, the petitioner relied on its own experience (for factory overhead exclusive of depreciation) and on BASF's parent company's consolidated financial data (for depreciation). To calculate SG&A expenses and profit, the petitioner relied on BASF's parent company's consolidated financial data, for the fiscal year ending December 31, 2006, the period most contemporaneous with the POI for which the petitioner was able to obtain such information. *See* Initiation Checklist at page 8.

Based on our examination of the aforementioned information, we consider the petitioner's calculation of CV to be corroborated. Because the petitioner demonstrated, and we confirmed, the validity of the input-usage quantities it used in its CV build-up, used public sources of information that we confirmed were accurate to value inputs of production, and used financial documents of the type accepted by the Department in prior cases that we consider to be accurate (e.g., a financial statement) to compute factory overhead, SG&A, financial expense, and profit, we consider the petitioner's calculation of NV corroborated. Further, we consider the petitioner's calculation of NV corroborated because several parts of that calculation relied on publicly available information which does not require further corroboration. Therefore, because we confirmed the accuracy and validity of the information underlying the derivation of margins in the petition by examining source documents as well as publicly available information, we preliminarily determine that the

margins in the petition are reliable for purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin as "best information available" (the predecessor to "facts available") because the margin was based on another company's uncharacteristic business expense that resulted in an unusually high dumping margin. In *Am. Silicon Techs. v. United States*, 273 F. Supp. 2d 1342, 1346 (CIT 2003), the court found that the AFA rate bore a "rational relationship" to the respondent's "commercial practices" and was, therefore, relevant.

In the pre-initiation stage of this investigation, we confirmed that the calculation of the margins in the petition reflected the commercial practices of the sodium nitrite industry during the POI. Further, no information has been presented in the investigation that calls into question the relevance of this information. As such, we preliminarily find that the highest margin in the petition, which we determined during our pre-initiation analysis was based on adequate and accurate information and which we have corroborated for purposes of this preliminary determination, is relevant as the AFA rate for BASF in this investigation.

Similar to our position in *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405 (September 11, 2006) (unchanged in *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982 (January 17, 2007)), because this is the first proceeding involving BASF, there are no probative alternatives. Accordingly, by using information that was corroborated in the pre-initiation stage of this investigation and preliminarily determined to be relevant to BASF in this investigation, we have corroborated the AFA rate "to the extent practicable." *See* section 776(c) of the Act, 19 CFR 351.308(d), and *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating that, "pursuant

to the to the extent practicable' language the corroboration requirement itself is not mandatory when not feasible.”). Therefore, we find that the estimated margin of 237.00 percent in the *Initiation Notice* has probative value. Consequently, in selecting a rate to apply as AFA with respect to BASF, we have applied the margin rate of 237.00 percent, the highest estimated dumping margin set forth in the *Initiation Notice*.

**All-Others Rate**

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted–averaged dumping margins established for all exporters and producers individually investigated are zero or de minimis or are determined entirely under section 776 of the Tariff Act, the Department may use any reasonable method to establish the estimated all–others rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign as the all–others rate the simple average of the margins in the petition. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan*, 72 FR 67271, 67272 (November 28, 2007). *See also Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Malaysia*, 69 FR 34128, 34129 (June 18, 2004). Consistent with our practice, we used the rates in the petition that were considered in the Department’s initiation to calculate a simple average to be assigned as the all–others rate. That simple average, 150.82 percent, is derived from the following petition rates: 237.00 percent, 151.98 percent, 148.73 percent, and 65.58 percent. *See* Initiation Checklist at page 9.

**Preliminary Determination**

The weighted–average dumping margins are as follows:

Manufacturer/exporter	Margin (percent)
BASF AG .....	237.00
All Others .....	150.82

**Suspension of Liquidation**

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of sodium nitrite from Germany, that are 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

dumping margin, as indicated in the chart above, as follows: (1) the rate for the firm listed above will be the rate we have determined in this preliminary determination; (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 237.00 percent. These suspension–of–liquidation instructions will remain in effect until further notice.

**ITC Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of the Department’s preliminary affirmative determination. If the Department’s final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of sodium nitrite from Germany are materially injuring, or threaten material injury to, the U.S. industry.

**Disclosure**

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

**Public Comment**

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than 30 days after the date of publication of the preliminary determination. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d)(1) and (2). 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. Further, we request that parties submitting briefs and 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 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 request for a hearing is made in this investigation, the hearing will tentatively be held 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.

We will not be conducting verification in this case because BASF failed to respond to the Department’s questionnaire, as discussed above in the “Use of Facts Otherwise 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.

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

Dated: April 16, 2008.  
**David M. Spooner**,  
*Assistant Secretary for Import Administration.*  
 [FR Doc. E8–8836 Filed 4–22–08; 8:45 am]  
**BILLING CODE 3510–DS–S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648–XH05**

**U.S. Climate Change Science Program Synthesis and Assessment Product Draft Report 5.2 “Best Practice Approaches for Characterizing, Communicating, and Incorporating Scientific Uncertainty in Decisionmaking”**

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice of availability and request for public comments.

**SUMMARY:** The National Oceanic and Atmospheric Administration publishes this notice to announce a 45-day public comment period for the draft report