

Division; Telephone: 202-482-2440; e-mail: [semme@bis.doc.gov](mailto:semme@bis.doc.gov).

*Status:* This meeting will be open to the public. A limited number of seats will be available for the meeting. Reservations are not accepted. The meeting will be accessible via teleconference to 20 participants on a first come, first served basis. To join the meeting, submit inquiries to Yvette Springer at [yspringer@bis.doc.gov](mailto:yspringer@bis.doc.gov) no later than October 23, 2008.

#### SUPPLEMENTARY INFORMATION:

##### Background

On January 22, 2008, the President announced a package of directives to ensure that the export control policies and practices of the United States support the National Security Strategy of 2006, while facilitating the United States' continued international economic and technological leadership. In addition, the Deemed Export Advisory Committee (DEAC) recently undertook a comprehensive examination of the national security, technology, and competitiveness aspects of the deemed export rule and presented its findings to the Secretary of Commerce in December 2007. The DEAC concluded that the deemed export rule, "no longer effectively serves its intended purpose and should be replaced with an approach that better reflects the realities of today's national security needs and global economy." Among its recommendations, the DEAC proposed that BIS create a category of "Trusted Entities" that voluntarily elect to qualify for streamlined treatment after meeting certain criteria. Further, the DEAC recommended that these "Trusted Entities" include subsidiaries located abroad so that individuals and ideas could move within the company structure without the need for separate deemed export licenses.

In response to the President's directives on U.S. export control reforms and the DEAC's recommendations on deemed export controls, BIS published a proposed rule that would create a license exception for intra-company transfers.

The proposed rule would amend the Export Administration Regulations (EAR) to establish a new license exception entitled "Intra-Company Transfer (ICT)." Pursuant to ICT, an approved parent company and its approved wholly-owned or controlled in fact entities to export, reexport, or transfer (in-country) many items on the Commerce Control List among themselves for internal company use. Prior authorization from BIS would be required to use the license exception, and certain terms and conditions would

apply. The proposed rule describes the criteria pursuant to which entities would be eligible to use License Exception ICT and the procedure by which they must apply for ICT authorization.

The purpose of the public meeting is for U.S. Government officials to explain the amendments to the EAR proposed in the rule and answer questions from the public. This effort is intended to assist the public submit helpful comments on the rule to BIS by the November 17, 2008 deadline.

Dated: October 16, 2008.

**Christopher R. Wall,**

*Assistant Secretary for Export Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**A-570-933**

#### **Frontseating Service Valves from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, and Postponement of Final Determination**

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

**EFFECTIVE DATE:** October 22, 2008.

**SUMMARY:** We preliminarily determine that frontseating service valves ("FSVs") from the People's Republic of China ("PRC") are being, or are 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. See the "Postponement of the Final Determination" section below.

**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:

##### Initiation

On March 19, 2008, Parker-Hannifin Corporation ("Petitioner") filed an antidumping petition in proper form on behalf of the domestic industry concerning imports of FSVs from the PRC ("Petition"). The Department of Commerce ("the Department") initiated this investigation on April 15, 2008.<sup>1</sup> In the *Initiation Notice*, the Department notified parties of the application 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").<sup>2</sup> 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 on April 10, 2008, at <http://ia.ita.doc.gov/ia-highlights-and-news.html>. The due date for filing an SRA was June 16, 2008. No party beyond the mandatory respondents filed an SRA.

On May 12, 2008, the International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of FSVs from the PRC.<sup>3</sup>

##### 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, which was March 19, 2008.<sup>4</sup>

##### Postponement of Preliminary Determination

On July 30, 2008, Petitioner made a timely request, pursuant to section

<sup>1</sup> See *Frontseating Service Valves from the People's Republic of China: Notice of Initiation of Antidumping Duty Investigation*, 73 FR 20250 (April 15, 2008) ("Initiation Notice").

<sup>2</sup> See *Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries* (April 5, 2005) ("Policy Bulletin 05.1"), available at <http://ia.ita.doc.gov/policy/bull05-1.pdf>.

<sup>3</sup> See *Investigation Nos. 731-TA-1148 (Preliminary): Frontseating Service Valves from China*, 73 FR 28507 (May 16, 2008) ("ITC Preliminary Determination").

<sup>4</sup> See 19 CFR 351.204(b)(1).

733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e), for a 50-day postponement of the preliminary determination. On August 11, 2008, the Department published a postponement of the preliminary antidumping duty determination on FSVs from the PRC.<sup>5</sup>

### Postponement of Final Determination and Extension of Provisional Measures

On October 7 2008, Zhejiang Sanhua Co., Ltd. ("Sanhua") made a timely request pursuant to section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) that the Department postpone the final determination and extend the provisional measures from a four-month period to not more than six months in duration. We are granting Sanhua's request in accordance with section 733(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii).

### Scope of Investigation

The merchandise covered by this investigation is frontseating service valves, assembled or unassembled, complete or incomplete, and certain parts thereof. Frontseating service valves contain a sealing surface on the front side of the valve stem that allows the indoor unit or outdoor unit to be isolated from the refrigerant stream when the air conditioning or refrigeration unit is being serviced. Frontseating service valves rely on an elastomer seal when the stem cap is removed for servicing and the stem cap metal to metal seat to create this seal to the atmosphere during normal operation.<sup>6</sup>

For purposes of the scope, the term "unassembled" frontseating service valve means a brazed subassembly requiring any one or more of the following processes: the insertion of a valve core pin, the insertion of a valve stem and/or O ring, the application or installation of a stem cap, charge port cap or tube dust cap. The term "complete" frontseating service valve means a product sold ready for installation into an air conditioning or refrigeration unit. The term "incomplete" frontseating service valve means a product that when sold is in

multiple pieces, sections, subassemblies or components and is incapable of being installed into an air conditioning or refrigeration unit as a single, unified valve without further assembly.

The major parts or components of frontseating service valves intended to be covered by the scope under the term "certain parts thereof" are any brazed subassembly consisting of any two or more of the following components: a valve body, field connection tube, factory connection tube or valve charge port. The valve body is a rectangular block, or brass forging, machined to be hollow in the interior, with a generally square shaped seat (bottom of body). The field connection tube and factory connection tube consist of copper or other metallic tubing, cut to length, shaped and brazed to the valve body in order to create two ports, the factory connection tube and the field connection tube, each on opposite sides of the valve assembly body. The valve charge port is a service port via which a hose connection can be used to charge or evacuate the refrigerant medium or to monitor the system pressure for diagnostic purposes.

The scope includes frontseating service valves of any size, configuration, material composition or connection type. Frontseating service valves are classified under subheading 8481.80.1095, and also have been classified under subheading 8415.90.80.85, of the Harmonized Tariff Schedule of the United States ("HTSUS"). It is possible for frontseating service valves to be manufactured out of primary materials other than copper and brass, in which case they would be classified under HTSUS subheadings 8481.80.3040, 8481.80.3090, or 8481.80.5090. In addition, if unassembled or incomplete frontseating service valves are imported, the various parts or components would be classified under HTSUS subheadings 8481.90.1000, 8481.90.3000, or 8481.90.5000. The HTSUS subheadings are provided for convenience and customs purposes, but the written description of the scope is dispositive.

### Scope Comments

We set aside a period for interested parties to raise issues regarding product coverage. See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). In our *Initiation Notice*, we encouraged parties to submit such comments regarding the scope of the merchandise under investigation by April 28, 2008. On April 28, 2008, Sanhua submitted scope comments. No other party submitted scope comments. On May 8, 2008,

Petitioner submitted rebuttal scope comments. No other party submitted rebuttal comments. Sanhua requested that the Department limit the scope to FSVs made of brass or copper and not include forged products with integrated feet because the scope as written covers too broad a range of service valves. Sanhua argues that service valves may erroneously be classified as FSVs when they enter the United States under the current scope description. Specifically, Sanhua contends that the scope as written currently suggests that FSVs are made of any material. Sanhua argues that, in fact, FSVs must stand up to certain operating conditions and brass FSVs are the only product that meet those conditions and demands. Petitioner argues that the Department should not consider any changes that would limit the scope to specific material composition, mounting type or that would attempt to remove all forged valve bodies from the scope.

In the *Initiation Notice*,<sup>7</sup> we stated that the scope of merchandise includes FSVs of any size, configuration, material composition or connection type. FSVs are classified under subheading 8481.80.1095, and also have been classified under subheading 8415.90.80.85 of the HTSUS. Additionally, we stated that it is possible for FSVs to be manufactured out of primary materials other than copper and brass, in which case they would be classified under HTSUS subheadings 8481.80.3040, 8481.80.3090, or 8481.80.5090. Based upon the above, we have preliminarily determined that the scope of the merchandise under consideration as it is currently written clearly describes the scope of the merchandise under consideration.

### Non-Market Economy Country

For purposes of initiation, Petitioner submitted an LTFV analysis for the PRC as an NME.<sup>8</sup> Recently, the Department examined the PRC's market status and determined that NME status should continue for the PRC.<sup>9</sup> Additionally, in recent investigations, the Department also treated the PRC as an NME country.<sup>10</sup> In accordance with section

<sup>7</sup> See *Initiation Notice*, 73 FR at 20251.

<sup>8</sup> See *Initiation Notice*, 73 FR at 20253.

<sup>9</sup> See the Department's memorandum entitled, "Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China ("China")-China's status as a non-market economy ("NME")." dated August 30, 2006. This document is available online at: <http://ia.ita.doc.gov/download/prc-nmestatus/prc-lined-paper-memo-08302006.pdf>.

<sup>10</sup> See *Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of*

<sup>5</sup> See *Postponement of Preliminary Determination of Antidumping Duty Investigation: Frontseating Service Valves from the People's Republic of China*, 73 FR 46586 (August 11, 2008).

<sup>6</sup> The frontseating service valve differs from a backseating service valve in that a backseating service valve has two sealing surfaces on the valve stem. This difference typically incorporates a valve stem on a backseating service valve to be machined of steel, where an frontseating service valve has a brass stem. The backseating service valve dual stem seal (on the back side of the stem), creates a metal to metal seal when the valve is in the open position, thus, sealing the stem from the atmosphere.

771(18)(C)(i) of the Act, the NME status remains in effect until revoked by the Department. The presumption of the NME status of the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of this investigation.

### Selection of Respondents

The Department issued its Quantity and Value ("Q&V") questionnaire to Zhejiang DunAnn Hetian Metal Co., Ltd. ("DunAn"), Sanhua, and Anhui Tianda Group, Ltd. ("Tianda"), exporters of FSVs from the PRC. In its Q&V questionnaire the Department requested that the firms provide a response on May 8, 2008. On May 8, 2008, DunAn and Sanhua each submitted a Q&V questionnaire response. Both DunAn and Sanhua stated that they exported FSV's to the United States during the POI. The Department did not receive a Q&V response from Tianda. On June 30, 2008, the Department selected DunAn and Sanhua as mandatory respondents and issued an antidumping duty questionnaire to both companies.

### Surrogate Country

Section 773(c)(1) of the Act directs the Department to base normal value ("NV") on the NME producer's factors of production ("FOPs"), valued in a surrogate market economy ("ME") country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Factor Valuations" section below. See also Factor Valuation Memorandum.<sup>11</sup>

On September 10, 2008, the Department determined that India, Indonesia, Thailand, the Philippines, and Colombia are countries comparable to the PRC in terms of economic development.<sup>12</sup> On September 11, 2008,

*Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008).

<sup>11</sup> See the Department's memorandum entitled, "Antidumping Duty Investigation of Frontseating Service Valves from the People's Republic of China: Factor Valuations for the Preliminary Determination," dated concurrently with this notice ("Factor Valuation Memorandum").

<sup>12</sup> See the Department's memorandum entitled, "Antidumping Duty Investigation of Frontseating Service Valves ("FSVs") from the People's Republic of China ("PRC"): Request for a List of Surrogate Countries" from the office of Policy, dated September 10, 2008 (identifying the list of potential

the Department requested comments on the selection of a surrogate country from the interested parties in this investigation. Petitioner and DunAn submitted comments on September 22, 2008. Both Petitioner and DunAn stated the Department should select India as the surrogate country.

The Department's practice is to select an appropriate surrogate country from the Policy Memorandum based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. In this case, we found that India is at a level of economic development comparable to that of the PRC, is a significant producer of comparable merchandise (*i.e.*, FSVs) and has publicly available and reliable data. Accordingly, we selected India as the primary surrogate country for purposes of valuing the FOPs in the calculation of NV because it meets the Department's criteria for surrogate country selection.<sup>13</sup> We obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in antidumping investigations, interested parties may submit publicly available information to value FOPs under 19 CFR 351.408(c) within 40 days after the date of publication of this preliminary determination.<sup>14</sup>

### Separate Rates

In the *Initiation Notice*, the Department notified parties of the recent application process by which exporters and producers may obtain separate-rate status in NME investigations. See *Initiation Notice* at 20254. The process requires exporters and producers to submit an SRA. See also *Policy Bulletin 05.1*.<sup>15</sup> However, the standard for

surrogate countries comparable to the PRC in terms of economic comparability) ("Policy Memorandum").

<sup>13</sup> See *Id.*

<sup>14</sup> 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 surrogate value information pursuant to 19 CFR 351.301(c)(1). See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>15</sup> *Policy Bulletin 05.1* states: "while continuing the practice of assigning separate rates only to

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.

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 this 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. See *Policy Bulletin 05.1*. 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 merchandise subject to this investigation under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (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*"). However, if the Department determines that a company is wholly foreign-owned or located in an ME, then a separate-rate analysis is not necessary to determine whether it is independent from government control.

#### A. Separate-Rate Recipients

In this investigation, no company reported that it is wholly owned by individuals or companies located in an ME or that it is located outside the PRC. Therefore, we are not addressing these ownership structures in this preliminary determination.

##### 1. Joint Ventures between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

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

In this investigation no company reported that its ownership structure is that of a wholly Chinese-owned company. However, both respondents examined (*i.e.*, DunAn and Sanhua) reported that they are joint ventures between Chinese and foreign companies. Therefore, the Department must analyze whether DunAn and Sanhua can demonstrate the absence of both *de jure* and *de facto* government control over their 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. See *Sparklers*, 56 FR at 20589.

The evidence provided by DunAn and Sanhua 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. See, *e.g.*, DunAn's and Sanhua's SRA submissions dated June 17, 2008, and June 13, 2008, respectively.

b. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 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 government control which would

preclude the Department from assigning separate rates.

The evidence placed on the record of this investigation by DunAn and Sanhua demonstrate an absence of *de jure* and *de facto* government control with respect to their respective exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*.<sup>16</sup>

B. Companies Not Receiving a Separate Rate

The Department has determined that all parties applying for a separate rate in this segment of the proceeding have demonstrated an absence of government control both in law and in fact (see discussion above), and is, therefore, not denying separate-rate status to any respondent that has applied (*i.e.*, DunAn and Sanhua).

Facts Available and the PRC-wide Entity

Section 776(a)(1) and (2) of the Act provides that the Department shall apply "facts otherwise available" if 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 of the Act, (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, 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 April 19, 2008, the Department sent Tianda a Q&V questionnaire requesting information on the quantity and U.S. dollar sales value of all exports of FSVs to the United States.<sup>17</sup> A response was due by close of business on May 8, 2008. The Department did not receive a response from Tianda.

We find that because Tianda failed to respond to the Department's requests for information, it failed to demonstrate that it operates free of government control and that it is entitled to a separate rate. Therefore, we are treating Tianda as part of the PRC-wide entity. Based on the above facts, the Department preliminarily determines that there were exports of the merchandise subject to this investigation from a PRC exporter/producer that did not respond to the Department's Q&V questionnaire, and 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 Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, 870 (1994) ("SAA"). By failing to respond to the Department's Q&V questionnaire, we preliminarily determine that the PRC-wide entity did not cooperate to the best of its ability. Accordingly, we find that an adverse inference is warranted for the PRC-wide entity, which includes Tianda.

Selection of the Adverse Facts Available Rate

In deciding which facts to use as adverse facts available ("AFA"), section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) provide that the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse so "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."<sup>18</sup> It is also the

<sup>17</sup> See the Department's letter to all interested parties, dated April 19, 2008.

<sup>18</sup> See *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access*

<sup>16</sup> See DunAn's and Sanhua's SRAs, dated June 13, 2008.

Department's practice to 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."<sup>19</sup>

Generally, the Department finds selecting the highest rate in any segment of the proceeding as AFA to be appropriate.<sup>20</sup> 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.<sup>21</sup> In the instant investigation, as AFA, we have preliminarily assigned to the PRC-wide entity, including Tianda, the highest rate on the record of this proceeding, which in this case is the 55.62 percent margin from the petition.<sup>22</sup> The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA.

The Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate AFA rate for the PRC-wide entity including Tianda.<sup>23</sup>

### Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described as "information derived from the petition

that gave rise to the investigation or review, the final determination concerning merchandise subject to this investigation, or any previous review under section 751 concerning the merchandise subject to this investigation."<sup>24</sup> To "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value.<sup>25</sup> Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.<sup>26</sup> To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.<sup>27</sup>

The AFA rate that the Department used is from the petition.<sup>28</sup> Petitioners' methodology for calculating the United States price and NV in the petition is discussed in the initiation notice.<sup>29</sup> To corroborate the AFA margin we have selected, we compared that margin to the margins we found for the respondents. We found that the margin of 55.62 percent has probative value because it is in the range of margins we found for the mandatory respondents. Accordingly, we find that the rate of 55.62 percent is corroborated within the meaning of section 776(c) of the Act.

Consequently, we are applying a single antidumping rate--the PRC-wide rate--to producers/exporters that failed to respond to the Department's antidumping questionnaires, or requests for shipment information, or did not apply for a separate rate, as applicable. The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from respondents, DunAn and Sanhua. These companies and their corresponding antidumping duty cash deposit rates are listed below

<sup>24</sup> See *Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China*, 73 FR 6479, 6481 (February 4, 2008), quoting SAA at 870.

<sup>25</sup> See *Id.*

<sup>26</sup> See *Id.*

<sup>27</sup> 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).

<sup>28</sup> See *Initiation Notice*.

<sup>29</sup> See *Initiation Notice*.

in the "Preliminary Determination" section of this notice.

### Fair Value Comparisons

To determine whether sales of FSVs to the United States by the respondents were made at LTFV, we compared constructed export price ("CEP") to NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice.

### Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. In accordance with section 772(b) of the Act, we used CEP for DunAn's and Sanhua's sales because the sales were made by the U.S. affiliate in the United States.

We calculated CEP based on delivered prices to unaffiliated purchasers in the United States.<sup>30</sup> In accordance with section 772(d)(1) of the Act, we made deductions from the starting price for billing adjustments, movement expenses, discounts and rebates. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included, where applicable, foreign inland freight from the plant to the port of exportation, ocean freight, U.S. customs duty, U.S. brokerage and handling, U.S. inland freight from port to the warehouse, and warehousing expense. In accordance with section 772(d)(1) of the Act, the Department deducted, where applicable, commissions, credit expenses, inventory carrying costs and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. In addition, we deducted CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 773(a) of the

<sup>30</sup> On October 7, 2008, DunAn submitted an unsolicited revised Section C questionnaire response, stating that it was reporting revised standard and actual weights for its sales of FSVs and that, in accordance with these revised weights, it had also revised all reported U.S. selling expenses that had been calculated based on allocations relying on those weights. Due to the timing of this unsolicited submission, and the magnitude of the changes, we are unable to review this submission for purposes of the preliminary determination. However, we will review this submission after issuance of the preliminary determination and will address any issues attendant to this submission at that time.

*Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>19</sup> See *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), quoting SAA at 870.

<sup>20</sup> See, e.g., *Certain Cased Pencils from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part*, 70 FR 76755, 76761 (December 28, 2005), unchanged in *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 38366, (July 6, 2006), and accompanying Issues and Decision Memorandum at Comment 10.

<sup>21</sup> 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."

<sup>22</sup> See *Initiation Notice*.

<sup>23</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 67 FR 79049, 79053-54 (December 27, 2002), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 68 FR 27530 (May 20, 2003).

Act, we calculated DunAn's and Sanhua's credit expenses and inventory carrying costs based on the Federal Reserve short-term rate.

### Normal Value

We compared NV to weighted-average CEPs 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 an 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.<sup>31</sup>

### Sanhua

Sanhua reported a quantity of brass bar consumed for the production of self-produced semi-finished valve bodies, a quantity for its claimed brass and copper scrap by-product offsets and quantities for the remaining FOPs used in the production of subject merchandise. We have determined not to grant Sanhua's requested by-product offsets for brass scrap and copper waste because Sanhua did not properly report actual scrap generated and consumed, despite the Department's request in a supplemental questionnaire. See Sanhua's Supplemental Response, dated September 29, 2008. For the subject merchandise produced by Sanhua that does not incorporate a semi-finished valve body from a toller, we have calculated NV using the reported FOPs, except for the by-product offsets for brass scrap and copper waste.

With respect to the semi-finished valve bodies produced by the toller, Sanhua only reported the FOPs of the brass bar consumed in production. Sanhua did not report the remaining FOPs used by its toller for the

production of semi-finished brass valve bodies. Therefore, valuing only the brass bar would not capture costs associated with the processing of the semi-finished valve body. For the calculation of NV for subject merchandise using a semi-finished valve body from a toller, we applied a surrogate value ("SV") for semi-finished brass valve bodies directly to the reported standard weight of the brass body. Finally, we determined not to value the reported semi-finished valve body because the reported weights for that input are not sufficient to make the merchandise. See Sanhua's Preliminary Determination Analysis Memorandum, dated concurrently with this notice.

### DunAn

In its September 22, 2008, Section D, FOP database, DunAn reported FOPs and a by-product offset for brass scrap. However, its net FOPs (*i.e.*, the reported FOPs less the claimed brass scrap by-product offset) were insufficient to account for the reported weight of its finished products. In response to a request from the Department, DunAn reviewed its reporting methodology and submitted a revised FOP database to the Department on October 7, 2008, claiming to have addressed this issue. In the narrative portion of this submission, DunAn stated that it had revised only its claimed brass scrap offset. However, upon reviewing the October 7, 2008, FOP database, we found that DunAn had also revised its reported brass inputs. Due to the timing of this submission, we are unable to address these unidentified data changes with DunAn prior to the preliminary determination. Therefore, for purposes of the preliminary determination, as facts available, we used the FOP data from DunAn's September 22, 2008, submission, but did not grant DunAn's requested by-product offset for brass scrap. We will address this issue further after issuance of the preliminary determination. For further discussion of this issue, please see DunAn's Preliminary Determination Analysis Memorandum.

### 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 U.S. Court of Appeals for 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 Factor Valuation 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 respondents' material inputs. 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.<sup>32</sup>

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 ("WPI"), 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.<sup>33</sup> We are

<sup>32</sup> 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).

<sup>33</sup> See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final*

<sup>31</sup> 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.

also guided by the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized.<sup>34</sup> 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.<sup>35</sup>

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 the following website: <http://www.infobanc.com/logistics/logtruck.htm>. The logistics section of this source contains inland truck freight rates from four major points of origin to 25 destinations in India. The Department obtained inland truck freight rates updated through September 2008 from each point of origin to each destination and averaged the data accordingly. Since this value is not contemporaneous with the POI, we deflated the rate using the WPI. See Factor Valuation Memorandum.

We used three sources to calculate an SV for domestic brokerage expenses. The Department averaged July 2004–June 2005 data contained in the January 9, 2006, public version of Kejriwal Paper Ltd.’s (“Kejriwal”) response submitted in the antidumping duty investigation of lined paper products from India,<sup>36</sup> 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,<sup>37</sup> and

the December 2003–November 2004 data contained in the February 28, 2005, public version of Essar Steel’s (“Essar”) response submitted in the antidumping duty administrative review of hot-rolled carbon steel flat products from India.<sup>38</sup> The brokerage expense data reported by Kejriwal, Agro Dutch, and Essar in their public versions are ranged data. The Department first derived an average per-unit amount from each source. Then the Department adjusted each average rate for inflation. Finally, the Department averaged the three per-unit amounts to derive an overall average rate for the POI. See Factor Valuation Memorandum.

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration’s home page, Import Library, Expected Wages of Selected NME Countries, revised in May 2008, 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.<sup>39</sup> 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.

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 Factor Valuation Memorandum.

To value factory overhead, selling, general, and administrative expenses (“SG&A”) and profit, we used audited financial statements of Carbac Holdings Ltd. (“Carbac”), an Indian brass valve producer; Upadhaya Valves Manufacturers Private Limited (“Upadhaya”), an Indian producer of

valves and fittings; and Oswal Valves Pvt. Ltd. (“Oswal”), an Indian producer of valves. We did not rely upon three company’s financial statements that were placed on the record, namely the financial statements of Brassomatic Pvt. Ltd. (“Brassomatic”), Larsen & Toubro (“L&T”), and Valve Power Engineers Private Limited (“Valve Power”). We did not rely upon the Brassomatic financial statement because it did not report a profit. It is the Department’s practice to disregard financial statements with zero profit when there are financial statements on the record of other surrogate companies that have earned a profit. 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), citing *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 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 2, section B. Additionally, we did not rely upon L&T’s financial statement because L&T’s financial statement identifies mixed operations and a significant portion of its business activities is not related to production of comparable merchandise.<sup>40</sup> It is the Department’s practice to disregard financial statements with mixed operations and significant operations unrelated to production of comparable merchandise where there are sufficient financial statements on the record for producers of comparable merchandise. See *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 159 (January 2, 2008), and accompanying Issues and Decision Memorandum at Comment 10. Further, we did not rely upon Valve Power’s financial statement because Valve Power is not a producer of comparable merchandise. Valve Power stated in its financial statement that “the company is in the business of production & sales of manual operated quarter turn gearboxes required to open & close valves.” It is the Department’s practice to disregard financial statements that indicate that the company is not a producer of identical or comparable merchandise. See *Wooded Bedroom Furniture from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New*

*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.

<sup>34</sup> See *Omnibus Trade and Competitiveness Act of 1988*, Conference Report to Accompanying H.R. 3, H.R. Rep. 100-576 at 590 (1988).

<sup>35</sup> For a detailed description of all SVs used for each respondent, see Factor Valuation Memorandum.

<sup>36</sup> See *Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products from India*, 71 FR 19706 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006).

<sup>37</sup> See *Certain Preserved Mushrooms From India: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 10597, 10599 (March 4, 2005), unchanged in *Certain Preserved*

*Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005).

<sup>38</sup> See *Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018, 2021 (January 12, 2006), unchanged in *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 40694 (July 18, 2006).

<sup>39</sup> See Factor Valuation Memorandum.

<sup>40</sup> See DunAn’s September 29, 2009, submission at Exhibit 9C.

*Shipper Review*, 73 FR 49162 (August 20, 2008), and accompanying Issues and Decision Memorandum at Comment 1C. See Factor Valuation Memorandum for a full discussion of the calculation of Carbac's, Upadhaya's, Oswal's ratios.

The Department valued water using data from the Maharashtra Industrial Development Corporation ([www.midcindia.org](http://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.

#### Post-Preliminary Determination Supplemental Questionnaire

In reviewing Sanhua's and DunAn's original and supplemental questionnaire responses, we have determined that certain reported items require additional supplemental information. We expect to issue post-preliminary determination supplemental questionnaires to both Sanhua and DunAn to address these and other deficiencies.

#### Critical Circumstances

##### A. DunAn and Sanhua

On September 9, 2008, Petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the antidumping investigation of FSVs from the PRC. Because Petitioner submitted its critical circumstances allegation more than 20 days before the preliminary determination, the Department is issuing a preliminary finding of critical circumstances with its preliminary determination.<sup>41</sup> Section 733(e)(1) of the Act provides that, upon receipt of a timely allegation of critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

To determine whether the above statutory criteria have been satisfied, the Department examined the following information: (1) evidence presented in Petitioner's September 9, 2008, submission; (2) evidence obtained since the initiation of the LTFV investigation (*i.e.*, import statistics obtained from the ITC Data Web); and (3) the ITC's preliminary material injury determination.<sup>42</sup>

To determine whether a history of dumping and material injury exists, the Department generally considers current or previous antidumping duty orders on subject merchandise from the country in question in the United States and current orders in any other country with regard to imports of subject merchandise. Petitioner makes no statement concerning a history of dumping with respect to FSVs from the PRC in the United States or elsewhere. Moreover, the Department is not aware of any other antidumping order in the United States or in any country on FSVs from the PRC. Therefore, the Department finds no history of injurious dumping of FSVs from the PRC in accordance with section 733(e)(1)(A)(i) of the Act.

To determine whether an importer knew, or should have known, that the exporter was selling subject merchandise at LTFV in accordance with section 733(e)(1)(A)(ii) of the Act, the Department must rely on the facts before it at the time the determination is made. The Department normally considers margins of 25 percent or more for export price ("EP") sales and 15 percent or more for CEP sales sufficient to impute importer knowledge of sales at LTFV.<sup>43</sup> Petitioner suggests the use of the margins used by the Department at the investigation initiation.<sup>44</sup> However, we find the use of the alleged rates in the Petition to be unnecessary in this case because the Department's preliminary determination has found margins of 26.72 percent for DunAn, and 15.41 percent for Sanhua. Based on these margins, the Department preliminarily finds that both DunAn's and Sanhua's importers knew, or should have known, that DunAn and Sanhua were selling subject merchandise at LTFV.

To determine whether an importer knew or should have known that there

was likely to be material injury caused by reason of such imports consistent with section 733(e)(1)(A)(ii) of the Act, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports.<sup>45</sup> In the instant case, the ITC preliminarily determined that material injury to the domestic industry exists due to imports of FSVs from the PRC, which are alleged to be sold in the United States at LTFV and, on this basis, the Department imputes knowledge of the likelihood of injury to Petitioner. See *ITC Preliminary Determination*.

As DunAn and Sanhua meet the first prong of the critical circumstances test according to section 733(e)(1)(A)(i) of the Act, the Department must examine whether imports from DunAn and Sanhua were massive over a relatively short period. Section 733(e)(1)(B) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that there have been massive imports of the subject merchandise over a relatively short period.

Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department will normally examine (i) the volume and value of the imports, (ii) seasonal trends, and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, "In general, unless the imports during the relatively short period . . . have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive."

Section 351.206(i) of the Department's regulations defines "relatively short period" as generally the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. This section provides further that, if the Department "finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely," the Department

<sup>42</sup> See *ITC Preliminary Determination*.

<sup>43</sup> 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 (November 28, 2007), and accompanying Issues and Decisions Memorandum at Comment 4.

<sup>44</sup> See Petitioner's September 9, 2008, submission at 3-4, citing *Initiation Notice*.

<sup>45</sup> See, *e.g.*, *Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964 (November 20, 1997).

<sup>41</sup> See 19 CFR 351.206(c)(2)(ii).

may consider a period of not less than three months from that earlier time. The Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition ("base period") to a comparable period of at least three months following the filing of the petition ("comparison period"). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.<sup>46</sup>

Petitioner based its allegation of critical circumstances in this investigation on the increase in imports of FSVs that began with the filing of the antidumping duty petition on March 19, 2008. The Department's practice is to rely upon the longest period for which information is available from the month that the petition was filed through the date of the preliminary determination.<sup>47</sup>

Generally, the Department's approach has been to examine overall industry imports as well as company-specific imports to corroborate whether massive imports have occurred within the designated comparative period, that is, the point at which importers had reason to believe that a proceeding was likely. See *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329 (May 6, 1999); see also *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand*, 65 FR 5520, 5527 (February 4, 2000). However, the Department is unable to rely on the ITC Data Web for imports within the HTSUS subheadings identified in the scope of the investigation because those HTSUS subheadings are basket categories that may include non-subject merchandise. Petitioner has acknowledged that the HTSUS data, in and of itself, is not a reliable measure to be used in the instant investigation as the HTSUS subheadings are basket categories that contain many types of merchandise. For example, HTSUS 8481.80.10.95 is a category for high-pressure valves, cocks, and taps and HTSUS

8415.90.80.85 is a category for generic air conditioner parts.<sup>48</sup> Additionally, Petitioner contends that parties misreport under the HTSUS system.<sup>49</sup> Finally, Petitioner cites that one of the HTSUS subheadings is reported in units rather than kilograms.<sup>50</sup> Lacking information on whether there was a massive import surge, the Department is unable to determine whether there have been massive imports of FSVs from the PRC.

On September 30, 2008, the Department requested that both DunAn and Sanhua provide the quantity and value of their monthly shipments of FSVs to the United States for the period November 2007 through August 2008. We received DunAn's and Sanhua's responses on October 14, 2008. Because we received DunAn's and Sanhua's information one day before the preliminary determination, we are unable to review this information prior to making our preliminary determination; however, we will review this information for purposes of the final determination. Thus, lacking the appropriate subject merchandise-specific information on whether there was a massive import surge, the Department is unable to determine, with the necessary accuracy, whether there have been massive imports of FSVs from the PRC during the designated relatively short period. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons From Japan*, 68 FR 71072, (December 22, 2003). Consequently, the criteria necessary for determining affirmative critical circumstances have not been met and, therefore, the Department preliminarily determines that critical circumstances do not exist for imports of FSVs from the PRC.

The Department will issue a final determination concerning critical circumstances for DunAn and Sanhua for FSVs from the PRC when it issues the final determination in the instant investigation. In making our final determination, we will examine the company-specific shipment data from DunAn and Sanhua to determine if critical circumstances existed for these two companies. Additionally, the Department has requested and will examine a sampling of entry packages from U.S. Customs and Border Protection ("CBP") for certain entries of

FSVs during the base and comparison periods in our analysis for the final determination.

#### B. PRC-Wide Entity

The Department follows the traditional critical circumstances criteria with respect to the companies covered in the PRC-wide entity.<sup>51</sup> First, in determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling FSVs at LTFV, we look to the PRC-wide rate.<sup>52</sup> The dumping margin for the PRC-wide entity is 55.62 percent, which is more than the 15 percent threshold necessary to impute knowledge of dumping consistent with section 733(e)(1)(A)(ii) of the Act. Second, based on the ITC's preliminary material injury determination, we also find that importers knew or should have known that there would be material injury from the dumped merchandise consistent with 19 CFR 351.206.<sup>53</sup>

Finally, with respect to massive imports, the Department's general approach is to examine CBP data on overall imports from the country in question to see if the Department could ascertain whether an increase in shipments occurred within a relatively short period following the point at which importers had reason to believe that a proceeding was likely.<sup>54</sup> However, we are unable to rely on information supplied by CBP because in this investigation the HTSUS subheadings listed in the scope of the investigation are basket categories that include non-subject merchandise. Lacking information on whether there was a massive import surge for the PRC-wide entity, we are unable to determine whether there have been massive imports of FSVs from the producers included in the PRC-wide entity.<sup>55</sup>

Consequently, the criteria necessary for determining affirmative critical circumstances have not been met.

<sup>51</sup> See, e.g., *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Affirmative Preliminary Determination of Critical Circumstances*, 73 FR 21312 (April 21, 2008), unchanged in *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 (July 15, 2008).

<sup>52</sup> See *Id.*

<sup>53</sup> See *ITC Preliminary Determination*.

<sup>54</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329 (May 6, 1999).

<sup>55</sup> See, e.g., *Notice of Preliminary Affirmative Countervailing Duty Determination and Preliminary Negative Critical Circumstances Determination: Certain Lined Paper Products from India*, 71 FR 7916 (February 15, 2006).

<sup>46</sup> See 19 CFR 351.206(h)(2).

<sup>47</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Critical Circumstances Determination: Certain Orange Juice from Brazil*, 70 FR 49557 (August 24, 2005), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 FR 2183 (January 13, 2006).

<sup>48</sup> See Petitioner's September 9, 2008, submission at 6.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

Therefore, we have preliminarily determined that critical circumstances do not exist for imports of FSVs for the PRC-wide entity.

#### 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 from DunAn and Sanhua 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 certain respondents that are eligible for a separate rate in this investigation.<sup>56</sup> This practice is described in *Policy Bulletin 05.1*.

#### Preliminary Determination

The weighted-average dumping margins are as follows:

Exporter/Producer Combination	Percent Margin
Exporter: Zhejiang Sanhua Co., Ltd. Producer: Zhejiang Sanhua Co., Ltd. ....	15.41
Exporter: Zhejiang DunAn Hetian Metal Co., Ltd. Producer: Zhejiang DunAn Hetian Metal Co., Ltd. ....	26.72
PRC-Wide Entity* .....	55.62

\* The PRC-wide entity includes Tianda.

#### 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 CBP to suspend liquidation of all entries of merchandise subject to this investigation, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. For the exporter/producer combinations listed in the chart above, the following cash deposit requirements will be effective upon publication of the

preliminary determination for all shipments of merchandise under consideration entered or withdrawn from warehouse, for consumption on or after publication date: (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 merchandise subject to this investigation that have not received their own rate, the cash-deposit rate will be the PRC-wide rate; (3) for all non-PRC exporters of merchandise subject to this investigation that 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. 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 FSVs, or sales (or the likelihood of sales) for importation of FSVs 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. The Department also requests that parties provide an electronic copy of its case and rebuttal brief submissions in either a "Microsoft Word" or "pdf" format.

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.<sup>57</sup> 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 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. 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.

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.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XI77

#### Marine Mammal Protection Act; Final Conservation Plan for the Cook Inlet Beluga Whale

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

**ACTION:** Notice; response to comments.

**SUMMARY:** NMFS announces the availability of the final conservation plan for the Cook Inlet Beluga Whale pursuant to the Marine Mammal Protection Act of 1972, as amended (MMPA). NMFS incorporated into this document new information on Cook Inlet beluga whales and comments received on the draft conservation plan released for public review and comment on March 16, 2005.

<sup>56</sup> See *Initiation Notice*, 73 FR at 20255.

<sup>57</sup> See 19 CFR 351.310(c).