a bond equal to the weighted-average dumping margins, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/Exporter	Weighted-Average margin (percent)
PT. Pabrik Kertas Tjiwi Kimia Tbk./PT. Pindo Deli Pulp and Paper/PT. Indah Kiat Pulp and Paper Tbk	10.62
All Others	10.62

All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated "All Others" rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. As mentioned above in this notice, the collapsed entity (*i.e.,* PD/TK/IK) is the only respondent in this investigation for which the Department calculated a company-specific rate. Therefore, for purposes of determining the all-others rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted-average dumping margin calculated for PD/TK/IK, as referenced above. *See, e.g., CFS from Indonesia,* 72 FR at 60637; and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy,* 64 FR 30750, 30755 (June 8, 1999).

Disclosure

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

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters, who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On April 13, 2010, PD/TK/IK requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, PD/TK/IK requested that the Department extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a six-month period. In accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b)(2), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

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 coated paper from Indonesia are materially injuring, or threatening material injury to, the U.S. industry (*see* section 735(b)(2) of the Act). Because we are postponing the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, the ITC will make its final determination no later than 45 days after our final determination.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the last sales or cost verification report in this proceeding. *See* 19 CFR 351.309(c). 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). 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 timely requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. *See* also 19 CFR 351.310(d). If a timely request for a hearing is made in this investigation, we intend to hold the hearing two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined. *See* 19 CFR 351.310. Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties, who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs.

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

Dated: April 28, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–10682 Filed 5–5–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–958]

Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

DATES: *Effective Date:* May 6, 2010.

SUMMARY: The Department of Commerce ("Department") preliminarily determines that certain coated paper suitable for high-quality print graphics using sheet-fed presses ("coated paper") from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice. Pursuant to requests from interested parties, we are postponing the final determination and extending the provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

FOR FURTHER INFORMATION CONTACT: Lindsey Novom or Demitrios Kalogeropoulos, 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) 482–5256 or (202) 482–2623, respectively.

SUPPLEMENTARY INFORMATION:

Initiation

On September 23, 2009, the Department received an antidumping duty ("AD") petition concerning imports of coated paper from the PRC filed in proper form by Appleton Coated LLC, NewPage Corporation, S.D. Warren Company d/b/a Sappi Fine Paper North America, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, "Petitioners"). *See* the Petition for the Imposition of Antidumping and Countervailing Duties Pursuant to Sections 701 and 731 of the Tariff Act of 1930, as amended ("Petition"), filed on September 23, 2009. Based on the Department's request, Petitioners filed supplements to the Petitions on October 2, 8, and 9, 2009.

The Department initiated this investigation on October 13, 2009.[1] 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")[2] and to demonstrate an absence of both *de jure* and *de facto* government control over its export activities. The SRA for this investigation was posted on the Department's Web site *http://ia.ita.doc.gov/ia-news-2009.html* on October 14, 2009. The due date for filing an SRA was December 22, 2009.

On November 23, 2009, the International Trade Commission ("ITC") 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 coated paper from the PRC.[3]

Period of Investigation

The period of investigation ("POI") is January 1, 2009, through June 30, 2009. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was September 2009. *See* 19 CFR 351.204(b)(1).

Postponement of Preliminary Determination

On January 22, 2010, petitioners made a timely request pursuant to section 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 February 19, 2010, the Department published a postponement of the preliminary AD determination on coated paper from the PRC.[4]

Tolling of Administrative Deadlines

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for this preliminary determination is now April 28, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Scope of the Investigation

The merchandise covered by this investigation includes certain coated paper and paperboard[5] in sheets suitable for high quality print graphics using sheet-fed presses; coated on one or both sides with kaolin (China or other clay), calcium carbonate, titanium dioxide, and/or other inorganic substances; with or without a binder; having a GE brightness level of 80 or higher;[6] weighing not more than 340 grams per square meter; whether gloss grade, satin grade, matte grade, dull grade, or any other grade of finish; whether or not surface-colored, surface-decorated, printed (except as described below), embossed, or perforated; and irrespective of dimensions ("Certain Coated Paper").

Certain Coated Paper includes (a) coated free sheet paper and paperboard that meets this scope definition; (b) coated groundwood paper and paperboard produced from bleached chemi-thermo-mechanical pulp ("BCTMP") that meets this scope definition; and (c) any other coated paper and paperboard that meets this scope definition.

Certain Coated Paper is typically (but not exclusively) used for printing multi-colored graphics for catalogues, books, magazines, envelopes, labels and wraps, greeting cards, and other commercial printing applications requiring high quality print graphics.

Specifically excluded from the scope are imports of paper and paperboard printed with final content printed text or graphics.

As of 2009, imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States ("HTSUS"): 4810.14.11, 4810.14.1900, 4810.14.2010, 4810.14.2090, 4810.14.5000, 4810.14.6000, 4810.14.70, 4810.19.1100, 4810.19.1900, 4810.19.2010, 4810.19.2090,

[1] *See Coated Paper From the People's Republic of China: Initiation of Antidumping Duty Investigation,* 74 FR 53710 (October 20, 2009) ("*Initiation Notice*").

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

[3] *See Investigation Nos. 701–TA–470–471 and 731–TA–1169–1170 (Preliminary): Coated Paper From China,* 74 FR 61174 (November 23, 2009).

[4] *See Coated Paper From the People's Republic of China: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 75 FR 7447 (February 19, 2010).

[5] " 'Paperboard' refers to Certain Coated Paper that is heavier, thicker and more rigid than coated paper which otherwise meets the product description. In the context of Certain Coated Paper, paperboard typically is referred to as 'cover,' to distinguish it from 'text.' "

[6] One of the key measurements of any grade of paper is brightness. Generally speaking, the brighter the paper the better the contrast between the paper and the ink. Brightness is measured using a GE Reflectance Scale, which measures the reflection of light off of a grade of paper. One is the lowest reflection, or what would be given to a totally black grade, and 100 is the brightest measured grade.

4810.22.1000, 4810.22.50, 4810.22.6000, 4810.22.70, 4810.29.1000, 4810.29.5000, 4810.29.6000, 4810.29.70. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigations is dispositive.

Scope Comments

As discussed in the preamble to the regulations, 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). The Department encouraged all interested parties to submit such comments within 20 calendar days of signature of the *Initiation Notice*. *See Initiation Notice,* 74 FR at 31692. As we stated in *Certain Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination,* 75 FR 10774 (March 9, 2010) ("*PRC Coated Paper CVD Prelim*") and *Certain Coated Paper From Indonesia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination,* 75 FR 10761 (March 9, 2010) ("*Indonesia Coated Paper CVD Prelim*"), the Department received scope comments from interested parties on November 6, 2009,[7] November 16, 2009,[8] December 16, 2009,[9] December 28, 2009,[10] and March 12, 2010,[11] with respect to whether multi-ply coated paper products are covered by the scope of the AD/CVD investigations of coated paper from the PRC and Indonesia. As the Department stated in the *PRC Coated Paper CVD Prelim* and *Indonesia Coated Paper CVD Prelim,* based on our review of the scope, we find that the number of plies is not among the specific physical characteristics (*e.g.,* brightness, coating, weight, etc.) defining the subject merchandise. Accordingly, we preliminarily find that multi-ply coated paper is covered by the scope of these investigations, to the extent that it meets the description of the merchandise in the scope.

On February 25, 2010, Petitioners filed additional comments rebutting certain documents filed by the PRC and Indonesian respondents which contained scope comments and restating their prior claims. In response to a question the Department posed during an *ex parte* meeting, Petitioners stated that the phrase "suitable for high quality print graphics" could be stricken from the description of the subject merchandise without altering the scope of these investigations. In the *PRC Coated Paper CVD Prelim* and *Indonesia Coated Paper CVD Prelim,* the Department invited interested parties to comment within 20 calendar days of publication of the *PRC Coated Paper CVD Prelim and Indonesia Coated Paper CVD Prelim* with respect to whether striking the language "suitable for high quality print graphics" from the description of the subject merchandise would alter the scope of these investigations. We received comments from interested parties on March 29, 2010,[12] and April 8, 2010.[13] Based on the information contained in these submissions, on April 23, 2010, the Department requested additional information from Petitioners with respect to this scope issue. Petitioners' submission is due May 3, 2010. Therefore, we intend to address this issue for the final determinations in these coated paper AD/CVD investigations.

In their February 25, 2010 submission, Petitioners also stated that the phrase in the scope, "(c) any other coated paper that meets the scope definition" should also include the word "paperboard." As the Department stated in the *PRC Coated Paper CVD Prelim* and *Indonesia Coated Paper CVD Prelim,* we agree that the word "paperboard" was inadvertently omitted (*e.g.,* it is already explicitly included in the first sentence of the scope language and in "(b)" of the second paragraph) and have corrected the scope language to read "(c) any other coated paper and paperboard that meets this scope definition."

Non-Market Economy Country

For purposes of initiation, Petitioners submitted an LTFV analysis for the PRC as an NME.[14] The Department's most recent examination of the PRC's market status determined that NME status should continue for the PRC.[15] Additionally, in two recent investigations, the Department also determined that the PRC is an NME country.[16] In accordance with section 771(18)(C)(i) of the Act, the NME status remains in effect until revoked by the Department. The Department has not revoked the PRC's status as an NME country, and we have therefore treated the PRC as an NME in this preliminary determination and applied our NME methodology.

Market Oriented Industry Treatment

In the *Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order: Chrome-Plated Lug Nuts From the People's Republic of China,* 57 FR 15052 (April 24, 1992) ("*Lug Nuts From the PRC*"), the Department set forth the factors to be considered in determining whether an MOI exists in an economy which is considered an NME for the purposes of the antidumping duty law. These factors include, but are not limited to:

— For the merchandise under investigation, there must be virtually

[7] *See* "Scope Comments: Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses from China and Indonesia," dated November 6, 2009.

[8] *See* "Certain Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses ("Certain Coated Paper") from Indonesia and the People's Republic of China: Petitioners' Rebuttal Comments on Scope," dated November 16, 2009.

[9] *See* "Request to Re-Examine the Department's Industry Support Calculation Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses from China," dated December 16, 2009.

[10] *See* "Certain Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia and the People's Republic of China: Petitioners' Response to Chinese and Indonesian Respondents' Request to Re-examine the Department's Industry Support Calculation," dated December 28, 2009.

[11] *See* "Ex Parte Meeting Regarding Scope: Records Documents, Certain Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia and the People's Republic of China," originally dated February 23, 2010, resubmitted on March 12, 2010.

[12] *See* "Additional Scope Comments: Certain Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses from China and Indonesia," dated March 29, 2010.

[13] *See* "Certain Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses ("Certain Coated Paper") from Indonesia and the People's Republic of China: Petitioners' Rebuttal Comments on Scope," dated April 8, 2010.

[14] *See Initiation Notice,* 74 FR at 53713.

[15] *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.*

[16] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 9591 (March 5, 2009) ("*Kitchen Racks Prelim*") unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 36656 (July 24, 2009) ("*Kitchen Racks Final*") and *Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 4929 (January 28, 2009) unchanged in *Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 29167 (June 19, 2009).

no government involvement in setting prices or amounts to be produced. For example, state-required production of the merchandise, whether for export or domestic consumption in the non-market economy country would be an almost insuperable barrier to finding a market-oriented industry (first prong).

—The industry producing the merchandise under investigation should be characterized by private or collective ownership. There may be state-owned enterprises in the industry but substantial state ownership would weigh heavily against finding a market-oriented industry (second prong).

—Market-determined prices must be paid for all significant inputs, whether material or non-material (*e.g.,* labor and overhead), and for all but an insignificant proportion of all the inputs accounting for the total value of the merchandise under investigation. For example, an input price will not be considered market-determined if the producers of the merchandise under investigation pay a state-set price for the input or if the input is supplied to the producers at government direction. Moreover, if there is any state-required production in the industry producing the input, the share of state-required production must be insignificant (third prong).

If any one of these conditions is not met, then, pursuant to sections 773(c)(1), (3) and (4) of the Act and 19 CFR 351.408, the producers of the merchandise under investigation will be treated as NME-producers, and the normal value will be calculated on the basis of the value of the factors of production, which to the extent possible will be based on prices and costs of the factors of production in one or more market economy countries that are (A) at a level of economic development comparable to that of the nonmarket economy country, and (B) are significant producers of comparable merchandise.

In *Lug Nuts From the PRC,* the Department stated that the test for finding such a market-oriented industry must begin with a strong presumption that such situations do not occur. *See Lug Nuts From the PRC.* The presumption against finding a market-oriented industry must prevail unless thorough and convincing evidence is presented on the record which demonstrates that the producers operate in an environment of market-based costs and prices. *See Lug Nuts From the PRC.*

All of the mandatory respondents and the separate rate respondent, Chenming (collectively, "MOI Respondents"), in this investigation have claimed that the coated paper industry is a market-oriented industry ("MOI"). In their February 5, 24, March 9, and April 14, 2010, submissions, the MOI Respondents claim that the market determines the prices for major inputs (pulp, China clay, and caustic soda) as evidenced by the existence of imports and an absence of government price controls. In addition, MOI Respondents claim that privately held companies and foreign-invested enterprises ("FIEs") account for a significant majority of production of these three inputs during the POI. MOI Respondents claim that the government did not regulate the quantity or pricing of subject merchandise during the POI and that the coated paper industry in the PRC consists predominantly of privately held companies and FIEs that act according to market considerations. Accordingly, these MOI Respondents state that these submissions demonstrate that the coated paper industry is an MOI and, as such, is fully entitled to market treatment in this investigation.

On February 5, 2010, MOI Respondents provided an initial MOI submission addressing the second prong (as articulated in *Lug Nuts From the PRC*) and indicated they intended to submit additional data and other factual evidence in support of their request for MOI treatment. After receiving this initial submission, the Department prompted MOI Respondents to complete their submission and address the first and third prong (as articulated in *Lug Nuts From the PRC*), as well as address the specific inputs of land, capital, and labor.[17] MOI Respondents provided the Department information for three material inputs: pulp, caustic soda, and China clay, as well as information regarding land, capital, and labor.[18] On March 9 and 19, 2010, Petitioners submitted information citing deficiencies in MOI Respondents' MOI submissions. MOI Respondents on April 14, 2010 provided additional information in support of their MOI claim and provided responses to some of the Petitioners' arguments.

The Department requires that any MOI claim be submitted such that it provides sufficient time to consider the claim. *See, e.g., Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China,* 69 FR 67314 (November 17, 2004). While the Department has given MOI Respondents' claim full consideration in this case, for future cases, the Department wishes to clarify that MOI Respondents should submit their complete MOI claim no later than two months after the initiation of a segment of a proceeding such that in the event of granting MOI treatment to a certain industry, this could allow sufficient time to request and analyze market economy data for use in the Department's determinations.

For the reasons explained below, the Department concludes that the MOI Respondents' claim is insufficient with respect to prongs two and three. The Department requires that an MOI claim cover virtually all of the producers of the industry and virtually all inputs. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms From the People's Republic of China,* 63 FR 72255 (December 31, 1998) ("*Preserved Mushrooms From the PRC*"). The Department finds that the MOI Respondents' claim does not sufficiently address the ownership of coated paper producers and does not address virtually all inputs for the coated paper industry.

With respect to the second prong, regarding private or collective ownership, the evidence on the record is inconclusive with respect to the ownership status of enterprises in the coated paper industry. MOI Respondents themselves identified one of the largest producers of coated paper as a state-owned enterprise ("SOE").[19] Petitioners have provided evidence on the record that another one of the largest producers is also an SOE.[20] In addition, Petitioners provided information that several other enterprises, classified as non-SOE by MOI Respondents, are in fact state-owned.[21] The Department further notes that MOI Respondents' April 14, 2010, submission failed to address, respond, or otherwise rebut Petitioners' evidence on the record that several enterprises are misclassified as private, FIE, and collective, and should be reclassified as SOEs. For example, under Article 4 of China's Law on Chinese-Foreign Equity Joint Ventures, an enterprise with at least 25 percent foreign capital contribution is classified as an FIE. For some enterprises, it appears that MOI Respondents classified enterprises as FIEs in the case where an SOE, or company owned by an ultimate SOE parent, contributed the

[17] *See* Department's February 24, 2010, Request for Additional Information Concerning Market-Oriented Industry Treatment.

[18] *See* MOI Respondents' March 9 and April 14 submissions.

[19] *See* Exhibit 1 of Respondents' February 5, 2010 submission.

[20] *See* Petitioners' March 9, 2010 submission.

[21] *See* Petitioners' March 9, 2010 submission.

majority of the capital.[22] The Department also notes that MOI respondents provided no information on the ultimate ownership structure of the companies that own the coated paper producers. Moreover, because the information provided by MOI Respondents regarding the percentage of ownership structure in the coated paper industry in China is presented in aggregate form on a production basis, as opposed to providing enterprise-level production data, the Department is precluded from performing its own calculation of the portion of the coated paper industry that is state-owned. For all of the above reasons, the Department finds that the MOI Respondents' claim is not sufficient with respect to the second prong of the MOI test.

Under the third MOI prong, the Department requires that the MOI claim provide a sufficient basis to demonstrate that "market determined prices" are paid for *virtually all inputs* (emphasis added, *see Preserved Mushrooms From the PRC*). With regard to the third prong, the MOI claim must provide evidence that market determined prices are paid for (1) all significant inputs, whether material or non-material (*e.g.,* labor and overhead), and (2) all but an insignificant proportion of the inputs accounting for the total value of the merchandise under investigation. *See Lug Nuts From the PRC.* The Department does not expect MOI Respondents' MOI claim to provide ownership documentation for every input supplier, and for each and every input; the Department, however, does require that, at a minimum, a claim at least include aggregate information on the state-ownership of a material input as well as summary information that provides sufficient evidence that market determined prices are paid (See factors cited in the preceding paragraph).

Aside from the lack of *de jure* price controls, MOI Respondents' claim with respect to whether market prices are paid for inputs consists of providing ownership information for three input producers in addition to the existence of imports.[23] The mere existence of imports, however, without a basis for comparison, does not provide a sufficient basis for the claim that market prices were paid. Import volumes alone do not provide a meaningful indicator unless they are, *inter alia,* compared to domestic consumption, *i.e.* the import penetration ratio. The Department notes that MOI Respondents did not provide this metric for any of the inputs. Absent or in addition to such information, it may also be appropriate to consider: (1) Whether the input is subject to any state guidance pricing, decrees, circulars, or other administratively determined reference pricing that is not explicitly referred to in the law and, (2) the absence of border measures (export taxes and quotas) on raw material inputs that can depress domestic prices. While no one factor, alone, is dispositive, the Department finds that MOI Respondents did not provide a sufficient basis to support the claim for market determined prices.

Additionally, the Department requires that the MOI claim provide information that addresses virtually all inputs. *See, e.g., Preserved Mushrooms From the PRC.* Coated paper production requires anywhere from several dozen up to hundreds of different material inputs.[24] MOI Respondents, however, have only provided information on three material inputs. For certain coated paper products, these three inputs do not account for a large portion of the direct material cost.[25] Further, the Department notes that at least one of the inputs has substantial state production.[26] With regard to the remaining material inputs, MOI Respondents' only assertion is to reference the mandatory respondents' questionnaire responses.[27] As the Department has previously stated, the MOI claim must encompass the entire industry and provide information that addresses virtually all inputs. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China,* 62 FR 41347, 41353 (August 1, 1997); *see also Preserved Mushrooms From the PRC.*

For the reasons noted above, the Department determines that MOI Respondents' MOI claim did not provide sufficient evidence as to the second and third prongs to warrant the Department's further consideration in this investigation of whether producers in the coated paper industry operate in an environment of market-based costs and prices sufficient to overcome the strong presumption that an MOI does not exist in a nonmarket economy. In light of this finding, we do not need to reach the issues with respect to the first prong or with respect to the claims concerning land, capital, and labor.

Market-Oriented Enterprise Treatment

On January 21, 2010, Gold East Paper (Jiangsu) Co., Ltd. ("GE") and Gold Huasheng Paper Co., Ltd. ("GHS") requested that the Department apply its market economy ("ME") methodology when calculating its AD margins for the GE Group. In its request, GE and GHS presented the following claims as to why the Department should afford the GE Group market-oriented enterprise ("MOE") treatment: (1) GE and GHS are 100 percent foreign owned which "signifies that market principles are being applied;" (2) a significant portion of GE and GHS's material inputs are sourced from ME countries and "reliance on market economy inputs makes it less likely that there will be residual influence from the non-market economy on the respondents' operations;" and (3) GE and GHS are subject to a companion countervailing duty case. On April 19, 2010, the GE Group submitted a ME questionnaire response, notwithstanding that the Department had not issued the GE Group a ME questionnaire.

As an initial matter, we note that the antidumping statute and the Departments' regulations are silent with respect to the term "MOE." Neither the statute nor the regulations compel the agency to treat some constituents of the NME industry as MOEs while treating others as NME entities. To date, the Department has not adopted any MOE exception to the application of the NME methodology in any proceeding involving an NME country. As we stated in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper From the People's Republic of China,* 72 FR 60632 (Oct. 25, 2007), and accompanying Issues and Decision Memorandum at Comment 1, no determination has been made "whether it would be appropriate to introduce a market oriented enterprise process" in NME antidumping investigations. Speaking to the complexity of the issue, the Department has twice asked for public comment on whether it should consider granting market-economy treatment to individual respondents operating in non-market economies, the conditions under which individual firms should be granted market-economy treatment, and how such treatment might affect antidumping calculations for such qualifying respondents. *See First MOE Comment Request,* 72 FR at 29302–03; *Antidumping Methodologies in Proceedings Involving Certain Non-Market Economies: Market-Oriented*

[22] *See* Exhibit 1 of Respondents' April 14, 2010 submission.

[23] *See* MOI Respondents' March 9, 2010 and April 14, 2010 submissions.

[24] *See* GE Group's and Sun Paper and Board's Section D questionnaire responses.

[25] Due to the proprietary nature of this data, please see the analysis memos for the GE Group and Sun Paper and Board.

[26] *See* Exhibit INPUT–3 of MOI Respondent's March 9, 2010 submission.

[27] *See* MOI Respondents' April 14, 2010 submission.

Enterprise: Request for Comment, 72 FR 60649 (Oct. 25, 2007) ("Second MOE Comment Request"). The Department received numerous comments in response to the two **Federal Register** notices. The Department is still considering those comments while evaluating whether to adopt an official policy concerning MOEs.

Pursuant to section 771(18)(A) of the Act, when a country is determined to be an NME, it means that the designated country, in this case the PRC, "{d}oes not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise." In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and remains in effect for the purpose of this investigation. Accordingly, the normal value ("NV") of the product is appropriately based on factors of production ("FOP") valued in a surrogate ME country in accordance with section 773(c) of the Act, a methodology that has been repeatedly upheld by the Courts. *See, e.g., Sigma Corp. v. United States,* 117 F.3d 1401, 1405 (Fed. Cir. 1997); *Nation Ford Chem. Co.* vs. *United States,* 166 F.3d 1373 (Fed. Cir. 1999).[28]

Selection of Respondents

In accordance with section 777A(c)(2) of the Act, the Department selected the four largest exporters of coated paper (*i.e.,* GE, GHS, Yanzhou Tianzhang Paper Industry Co., Ltd. ("Tianzhang"), and Shandong International Paper and Sun Coated Paperboard Co., Ltd./ International Paper and Sun Cartonboard Co., Ltd. ("IP Paperboard" and "IP Cartonboard") by volume as the mandatory respondents in this investigation based on the quantity and value ("Q&V") information from exporters/producers that were identified in the Petition, of which five firms filed timely Q&V questionnaire responses.[29] Of the five Q&V questionnaire responses, four companies (GE, GHS, Tiangzhang and IP Paperboard/IP Cartonboard) filed two consolidated Q&V questionnaire responses.

The Department issued its antidumping questionnaire to Tianzhang and IP Paperboard/IP Cartonboard (collectively, "Sun Paper and Board") and GE and GHS on November 27, 2009. The Department requested that the respondents provide a response to section A of the Department's questionnaire on December 18, 2009, and a response to sections C and D of the questionnaire on January 4, 2010. From December 15, 2009, until the present, the Department has granted both respondents several extensions for their submissions.

Sun Paper and Board submitted its responses to the section A and sections C and D questionnaires on December 29, 2009 and January 20, 2010, respectively. Sun Paper and Board submitted responses to the section A and section C supplemental questionnaires on March 18 and March 25, 2010, respectively. The Department received Sun Paper and Board's section D supplemental questionnaire response and section A and C 2nd supplemental questionnaire response on April 9, 2010. After the Department requested reconciliation of sales in a memorandum to the file, Sun Paper and Board submitted its reconciliation of sales on March 26, 2010. In two memorandums to the file requesting affiliation information, Sun Paper and Board submitted affiliation information on April 6, 2010, and April 14, 2010.

GE, GHS, and its affiliated producers Ningbo Zhonghua Paper Co., Ltd., ("NBZH") and Ningbo Asia Pulp and Paper Co., Ltd., ("NAPP") (collectively, "GE Group") submitted their section A responses on December 23, 2009. GE and GHS submitted responses to section C and D on January 20, 2010, and January 22, 2010, respectively. NAPP and NBZH submitted its section C and D responses on March 5, 2010. The Department received the GE Group's section A supplemental response on March 16, 2010. The Department received GE, GHS, NBZH's and NAPP's section C and D supplemental questionnaire responses on April 6, 2010.

Targeted Dumping

On March 15, 2010, the Department received Petitioners' allegations of targeted dumping by the GE group[30] using a variation of the Department's methodology as established in *Certain Steel Nails From the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value,* 73 FR 33985 (June 16, 2008) ("*Steel Nails*"), in addition to proposing an alternative targeted dumping methodology. Based on our examination of the targeted dumping allegations filed by Petitioners on March 15, 2010, pursuant to 777A(d)(1)(B)(i) of the Act, the Department has determined that the Petitioners' allegations sufficiently indicate that there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers and regions. Therefore, for purposes of this preliminary determination, we have applied the targeted dumping methodology established in *Steel Nails.*

We have rejected Petitioners' proposed targeted dumping test for purposes of the preliminary determination, for the same reasons we have explained in recent past investigations involving targeted dumping allegations (*see Steel Nails* and *Certain Oil Country Tubular Goods From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping,* 75 FR 20335 (April 19, 2010) ("*OCTG*"), where the Department rejected use of the "P/2" test). The Department will, therefore, continue to apply the targeted dumping methodology established in *Steel Nails,* and most recently applied in *OCTG.*

As a result, the Department has applied the targeted dumping analysis established in *Steel Nails* to the GE Group's U.S. sales to targeted customers and regions. The methodology we employed involves a two-stage test; the first stage addresses the pattern requirement and the second stage addresses the significant-difference requirement. *See* section 777A(d)(1)(B)(i) of the Act and *Steel Nails.* In this test we made all price comparisons on the basis of comparable merchandise (*i.e.,* by control number or CONNUM). The test procedures are the same for the customer and region targeted-dumping allegations. We based all of our targeted-dumping calculations

[28] Under the NME presumption established by the statutory scheme, the only mechanism for market economy treatment currently available to respondents in NME proceedings is market-oriented industry ("MOI") classification. Commerce currently employs an industry-wide test to determine whether, under section 773(c)(1)(B), available information in the NME country permits the use of the ME methodology for the NME industry producing the subject merchandise. The MOI test affords NME-country respondents the possibility of market economy treatment, but only upon a case-by-case, *industry-specific* basis. This test is performed only upon the request of a respondent. *See, e.g., Antidumping Methodologies in Proceedings Involving Certain Non-Market Economies: Market-Oriented Enterprise,* 72 FR 29302, 29302 (May 25, 2007) ("*First MOE Comment Request*").

[29] *See* the Department's memorandum entitled, "Antidumping Duty Investigation of Coated Paper from the People's Republic of China: Respondent Selection," dated November 25, 2009 ("Respondent Selection Memo").

[30] Specifically filed against Gold East (Jiangsu) Co., Ltd.; Gold Huasheng Paper Co., Ltd., Ningbo Zhonghua Paper Co., Ltd.; and Ningbo Asia Pulp and Paper Co., Ltd.

on the U.S. net price which we determined for U.S. sales by the GE Group in our standard margin calculations. For further discussion of the test and the results, *see* Memorandum from Bobby Wong to Wendy Frankel, regarding the "Targeted Dumping Analysis of the GE Group" ("Targeted Dumping Memo"), dated concurrently with this notice. As a result of our analysis, we preliminarily determine that there is a pattern of sales for comparable merchandise that differ significantly among certain customers for the GE Group in accordance with section 777A(d)(1)(B)(i) of the Act, and our practice as discussed in *Steel Nails.* We determine that the standard average-to-average comparison methodology does not account for the identified pattern of price differences. Therefore, consistent with *OCTG,* we have applied the average-to-transaction methodology to all sales.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on April 13, and April 20, 2010, respectively, GE Group and Sun Paper and Board requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone the final determination by 60 days. On April 16, 2010, Petitioners requested that in the event of a negative preliminary determination in this investigation, the Department postpone the final determination by 60 days, as well as the deadline to allege critical circumstances. Sun Paper and Board, and the GE Group, also requested that the Department extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a four-month period to a six-month period. In accordance with section 733(d) of the Act and 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the requests and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Surrogate Country

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs valued in a surrogate 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 utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the "Normal Value" section below.

The Department's practice with respect to determining economic comparability is explained in Policy Bulletin 04.1,[31] which states that "OP {Office of Policy} determines per capita economic comparability on the basis of per capita gross national income, as reported in the most current annual issue of the *World Development Report* (The World Bank)." The Department considers the six countries identified in its Surrogate Country List as "equally comparable in terms of economic development." *See* Policy Bulletin 04.1 at 2. Thus, we find that India, Indonesia, the Philippines, Ukraine, Thailand, and Peru are all at an economic level of development equally comparable to that of the PRC.

Second, Policy Bulletin 04.1 provides some guidance on identifying comparable merchandise and selecting a producer of comparable merchandise. Based on the financial statements of various Indian producers provided by Petitioners in the petition, we find that India is a producer of identical merchandise. *See* Petition at Volume II-a, Exhibit 4. Because the Department was unable to find production data, we are relying on export data to proxy for overall production data in this case. Of the six countries listed in the Surrogate Country List, only India, Indonesia, and Thailand are significant exporters of coated paper. *See* Memorandum to the File regarding, "Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses ("Certain Coated Paper") from the People's Republic of China: Surrogate Values for the Preliminary Determination," dated concurrently with this notice ("Surrogate Value Memorandum"), at Exhibit 1. Consequently, at this time, Ukraine, Peru, and the Philippines, are not being considered to be appropriate surrogate countries for the PRC as they are not significant exporters of subject coated paper. During the POI, India exported over 12,925 MT of comparable merchandise, Indonesia exported over 325,965 MT of comparable merchandise, and Thailand exported over 9,003 MT of comparable merchandise. Thus, India, Indonesia, and Thailand are considered as appropriate surrogate countries because each exported significant quantities of comparable merchandise. Finally, we have reliable data from India on the record that we can use to value the FOPs. Petitioners, GE Group, and Sun Paper and Board submitted surrogate values using Indian sources, suggesting greater availability of appropriate surrogate value data in India.

Therefore, the Department is preliminarily selecting India as the surrogate country on the basis that: (1) It is at a similar level of economic development pursuant to 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India that we can use to value the factors of production. Thus, we have calculated normal value using Indian prices when available and appropriate to value respondents' factors of production. *See* Surrogate Value Memorandum.

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value the FOPs within 40 days after the date of publication of the preliminary determination.[32]

Surrogate Value Comments

Surrogate factor valuation comments and surrogate value information with which to value the FOPs in this proceeding were originally due January 29, 1010. GE Group and Sun Paper and Board requested an extension to submit surrogate values on January 25, 2010, and January 27, 2010, respectively; on January 27, 2010, the Department granted this request to extend the deadline for submission of surrogate value information for all interested

[31] *See* Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process, (March 1, 2004), ("Policy Bulletin 04.1") at Attachment II of the Department's Surrogate Country Letter, also available at *http://ia.ita.doc.gov/policy/bull04-1.html.*

[32] 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.

parties until February 12, 2010. Surrogate value submissions were filed February 12, 2010, February 17, 2010, February 19, 2010 by Sun Paper and Board, GE Group, and Petitioners, respectively. GE Group filed rebuttal surrogate values comments on February 22, 2010. Petitioners filed rebuttal surrogate values comments on February 24, 2010, and April 12, 2010. GE filed rebuttal surrogate values comments on April 12, 2010. For a detailed discussion of the surrogate values used in this LTFV proceeding, *see* the "Factor Valuation" section below and the Surrogate Value Memorandum.

Affiliation

Based on the evidence presented in Sun Paper and Board's questionnaire responses, we preliminarily find affiliation between Tianzhang, IP Sun Cartonboard, and IP Sun Paperboard ("Sun Paper and Board") pursuant to sections 771(33)(E) and (F) of the Act. In addition, we find that Shandong Sun Paper Industry Joint Stock Co., Ltd. and Yanzhou City Jintaiyang Investment Co., Ltd. are affiliated pursuant to sections 771(33)(E) of the Act. Further, we find Yanzhou City Jintaiyang Investment Co., Ltd. and Jin Rui Group, Inc. to be under the common control of the Li family and thus constitute a single group ("Li Family Group") pursuant to section 771(33)(F) of the Act and section 351.102(b)(3) of the Department's regulations. Next, we find that International Paper Company ("IP Company") (which includes the division, xpedx), International Paper International Holdings, International Paper Singapore, and International Paper Asia ("IP Companies") are affiliated to each other pursuant to section 771(33)(E) of the Act. In addition, based on their ownership interests, we consider the IP Companies to be a single entity.

We also find that the IP Companies and Sun Paper and Board are affiliated pursuant to section 771(33)(E) of the Act. Moreover, we preliminarily find that the Li Family Group and the IP Companies are affiliated under section 771(33)(F) of the Act through their direct and indirect control over the joint venture partnership in IP Sun Cartonboard and IP Sun Paperboard, producers of subject merchandise.

In addition, based on the evidence presented in Sun Paper and Board's questionnaire responses, we preliminarily find that Tianzhang, IP Sun Cartonboard, and IP Sun Paperboard should be collapsed for the purposes of this investigation. This finding is based on the determination that Tianzhang, IP Sun Cartonboard, and IP Sun Paperboard are affiliated, that all three companies are producers of similar or identical products and no retooling would be necessary in order to restructure manufacturing priorities, and that there is significant potential for manipulation of price or production between the parties. *See* 19 CFR 351.401(f)(1) and (2).

For further discussion of the Department's affiliation and collapsing decisions, *see* the Department's Memorandum regarding, "Antidumping Duty Investigation of Coated Paper from the People's Republic of China: Affiliation of Tianzhang, IP Sun Cartonboard, IP Sun Paperboard, the Li Family Group, and the IP Companies, and Collapsing of Tianzhang, IP Sun Cartonboard, IP Sun Paperboard," dated concurrently with this notice.

Based on the evidence presented in the GE Group's questionnaire responses, we preliminarily find that GHS, NBZH, NAPP, and Gold East (Hong Kong) Trading Co., Ltd., ("GEHK"), a company that plays a role in GE, GHS, NBZH, and NAPP's operations involving subject merchandise, are affiliated with GE, pursuant to sections 771(33)(E) and (F) of the Act. In addition, based on the evidence presented in their respective questionnaire responses, we preliminarily find that GE, GHS, NBZH, NAPP, and GEHK should be treated as a single entity for the purposes of this investigation. This finding is based on the determination that GE, GHS, NBZH, and NAPP are producers of similar or identical products and no retooling would be necessary in order to restructure manufacturing priorities, and that GEHK is involved in the export of subject merchandise. Further, we find that there is significant potential for manipulation of price or production between the parties.[33] *See* 19 CFR Sec. 351.401(f)(1) and (2). For further discussion of the Department's affiliation and collapsing decision, *see* the Department's Memorandum titled, "Antidumping Duty Investigation of Certain Coated Paper from the People's Republic of China: Affiliation and Collapsing of Gold East Paper (Jiangsu) Co., Ltd., Gold Huasheng Paper Co., Ltd., Ningbo Asia Pulp and Paper Co., Ltd., Ningbo Zhoughua Paper Co., Ltd., and Gold East (Hong Kong) Trading Co., Ltd.," dated concurrently with this notice.

Separate Rates

In the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in NME investigations. *See Initiation Notice,* 74 FR at 31695. The process requires exporters and producers to submit an SRA. *See also* Policy Bulletin 05.1.[34] The standard for eligibility for a separate rate is whether a firm can demonstrate an absence of both *de jure* and *de facto* government control over its export activities. In this instant investigation, the Department received a timely-filed SRA from one company.[35] The four mandatory respondents (*i.e.,* GE, GHS, Tianzhang, and IP Paperboard/IP Cartonboard), the separate-rate respondent Chenming, and NAPP and NBZH, GE's affiliated exporters of subject merchandise, provided company-specific information and each stated that it meets the criteria for the assignment of a separate rate.

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes

[33] While GEHK is not a producer of coated paper, we note that where companies are affiliated, and there exists a significant potential for manipulation of prices and/or export decisions, the Department has found it appropriate to treat those companies as a single entity. The Court of International Trade ("CIT") upheld the Department's decision to include export decisions in its analysis of whether there was a significant potential for manipulation. *See Hontex Enterprises v. United States,* 248 F. Supp. 2d 1323, 1343 (CIT 2003). In this case, not only is GEHK an exporter of subject merchandise, but it is an exporter of the subject merchandise produced by its four affiliated producers of subject merchandise (*i.e.,* GE, GHS, NAPP, and NBZH).

[34] Policy Bulletin 05.1 states: "while continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applied both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation." *See* Policy Bulletin 05.1 at 6.

[35] The one separate-rate applicant is: (1) Shandong Chenming Paper Holdings Ltd. ("Chenming").

each entity exporting the subject merchandise under a test arising from *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 *Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585* (May 2, 1994) ("*Silicon Carbide* "). In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. GE, GHS, NBZH, and NAPP all indicated that they sold subject merchandise through Gold East (Hong Kong) Trading Co., Ltd. ("GEHK"). As information on the record demonstrates that GEHK is located in Hong Kong,[36] consistent with our practice, we have not conducted a separate rate analysis of GEHK.

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 all separate rate applicants supports a preliminary finding of de jure absence of government control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) applicable legislative enactments that decentralize control of the companies; and (3) formal measures by the government decentralizing control of companies. *See* Chenming's SRA submissions, dated December 22, 2009, and March 25, 2010; GE Group's section A questionnaire submissions dated December 23, 2009; and Sun Paper and Board's separate rate information in the section A questionnaire submissions dated December 30, 2009, where the separate-rate applicants certified that they had no relationship with any level of the PRC government with respect to ownership, internal management, and business operations.

[36] *See* page 8 of GEHK's financial statements, at GE's December 23, 2009, section A questionnaire response at Volume 3.

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.

In this investigation, all separate rate applicants each asserted the following: (1) That the export prices are not set by, and are not subject to, the approval of a governmental agency; (2) they have authority to negotiate and sign contracts and other agreements; (3) they have autonomy from the government in making decisions regarding the selection of management; and (4) they retain the proceeds of their export sales and make independent decisions regarding disposition of profits or financing of losses. Additionally, each of these companies' SRA responses indicate that its pricing during the POI does not involve coordination among exporters. *See* Chenming's SRA submission dated December 22, 2009, and March 25, 2010; GE Group's separate rate information in the section A questionnaire submissions dated December 23, 2009; and Sun Paper and Board's separate rate information in the section A questionnaire submissions dated December 30, 2009.

Evidence placed on the record of this investigation by Sun Paper and Board, GE Group, and Chenming 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.* Therefore, we are preliminarily granting a separate rate to these entities.

Application of Facts Otherwise Available and Adverse Facts Available

The PRC-Wide Entity and PRC-Wide Rate

We issued our request for Q&V information to 56 potential Chinese exporters of the subject merchandise, in addition to posting the Q&V questionnaire on the Department's Web site. *See* Respondent Selection Memo. While information on the record of this investigation indicates that there are numerous producers/exporters of coated paper in the PRC, we received only five timely filed Q&V responses. Although all exporters were given an opportunity to provide Q&V information, not all exporters provided a response to the Department's Q&V letter. Therefore, the Department has preliminarily determined that there were exporters/producers of the subject merchandise during the POI from the PRC that did not respond to the Department's request for information. We have treated these PRC producers/exporters as part of the PRC-wide entity because they did not apply for a separate rate. *See, e.g., Kitchen Racks Prelim,* unchanged in *Kitchen Racks Final.*

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Information on the record of this investigation indicates that the PRC-wide entity was non-responsive. Certain companies did not respond to our questionnaire requesting Q&V information. As a result, pursuant to section 776(a)(2)(A) of the Act, we find that the use of facts available ("FA") is appropriate to determine the PRC-wide rate. *See Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam,* 68 FR 4986 (January 31, 2003), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam,* 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Statement of Administrative Action,* accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103–316, 870 (1994) ("*SAA*"); *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000). We find that, because the PRC-wide entity did not respond to our requests for information, it has failed to cooperate to the best of its ability. Furthermore, the PRC-wide entity's refusal to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown. *See Nippon Steel Corporation v. United States,* 337 F.3d 1373, 1383 (Fed. Cir. 2003) ("*Nippon Steel*") where the Court of Appeals for the Federal Circuit provided an explanation of the "failure to act to the best of its ability" standard noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (*i.e.,* information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown"). Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

When employing an adverse inference, section 776 of the Act indicates that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for adverse facts available ("AFA"), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. 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. *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 31, 2000), and accompanying Issues and Decision Memorandum, at "Facts Available." As AFA, we have preliminarily assigned to the PRC-wide entity a rate of 135.8 percent, the highest calculated rate from the petition. The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA. The Department's reliance on the petition rate to determine an AFA rate is subject to the requirement to corroborate secondary information, discussed in the Corroboration section below.

Partial AFA to Sun Paper and Board

In its questionnaire responses, Tianzhang, IP Sun Paperboard, and IP Sun Cartonboard stated that they made constructed export ("CEP") sales through their U.S. affiliate, Jin Rui. Jin Rui resold some of the three producers/exporters' subject merchandise to xpedx, an operating division of IP Company. As stated above in the "Affiliation Section," we preliminarily find that IP Company, as part of the IP Companies, and Sun Paper and Board are affiliated pursuant to section 771(33)(F) of the Act. In addition, as explained above, we preliminarily find that the IP Companies, of which xpedx is a part, and the Li Family Group, of which Jin Rui is a part, are affiliated.

In finding that the Li Family Group and the IP Companies are affiliated, we find that sales from Jin Rui to xpedx are affiliated party transactions, and we requested that xpedx report its downstream sales of subject merchandise during the POI. We originally requested this data from Sun Paper and Board on March 26, 2010, with a due date of April 2, 2010. On March 31, 2010, we spoke with company officials from xpedx and IP Company who claimed that it would be difficult to provide xpedx's downstream sales. We detailed the conversation in a memo to the file and responded by continuing to request xpedx's sales.[37] On April 1, 2010, we granted an extension for xpedx to submit its downstream sales until April 9, 2010. On April 8, 2010, we granted a second (partial) extension until April 16, 2010. On April 14, 2010,[38] Sun Paper and Board stated that there were substantial operational difficulties in meeting the Department's request, reiterating that on April 8, 2010, they had requested an extension of time to submit the downstream sales. We did not receive xpedx's downstream sales on April 16, 2010. On April 20, 2010, we received communication from counsel to Sun Paper and Board that xpedx was not going to submit the information requested by the Department.[39] Nevertheless, subsequently on April 20, 2010, after the deadline for xpedx to submit the required downstream sales had passed, we received from Sun Paper and Board a request for a further extension to submit xpedx's downstream sales until April 27, 2010, one day prior to the preliminary determination.

Sun Paper and Board, in its March 31, 2010, and April 8, 2010, requests for extensions to provide the downstream sales database, outlined certain difficulties in providing the requested data. In response, the Department granted the first extension request in full, and the second extension request in part. However, Sun Paper and Board's April 20, 2010, request for extension, submitted to the Department four days subsequent to the date the downstream sales were due, while referencing certain circumstances surrounding its business relationship with xpedex, did not indicate a particular reason for not responding timely to the Department's request for information, nor did it indicate a reason why it was requesting additional time. Based on the above, *i.e.,* Sun Paper and Board's failure to submit xpedx's downstream sales in a timely manner, and its untimely submitted request for a third extension to do so, the Department finds that Sun Paper and Board did not cooperate to the best of its ability to provide the Department with timely information regarding xpedx's downstream sales of the subject merchandise, consistent with *Nippon Steel.*

Thus, Sun Paper and Board failed to report information that had been requested and significantly impeded this proceeding, pursuant to sections 776(a)(1) and (2)(A), (B) and (C) of the of Act, by not reporting certain downstream sales of its affiliate, as requested by the Department. As a result, the Department has determined to apply the facts otherwise available for the unreported downstream sales. Further, because the Department finds that Sun Paper and Board failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act,

[37] *See* Memo to the File regarding "IP–Xpedx affiliation and Xpedx's downstream sales," dated April 1, 2010.

[38] *See* Sun Paper and Board's "Submission of Section D, C, and A Supplemental response," dated April 14, 2010.

[39] *See* Memo to the File, regarding, "Communicating with the Counsel to Sun Paper and Board regarding the Department's request for Xpedx's Downstream Sales dated April 20, 2010.

the Department has determined to use an adverse inference when applying facts available for the preliminary determination. As partial AFA, the Department is applying to the unreported sales the highest margin from the Petition.[40]

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."[41] To "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. 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. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[42]

The AFA rate that the Department used is from the Petition. Petitioners' methodology for calculating the United States price and NV in the Petition is discussed in the *Initiation Notice.* To corroborate the AFA margin that we have selected, we compared this margin to the margin we found for the mandatory respondents. We found that the margin of 135.8 percent has probative value because it is in the range of the control number (CONNUM)-specific margins that we found for the GE Group during the period of investigation. *See* GE Group's Analysis Memo. Given that numerous PRC-wide entities did not respond to the Department's requests for information and that Sun Paper and Board failed to report a significant portion of U.S. sales, the Department concludes that the petition rate of 135.8 percent, as total AFA for the PRC-wide entity and as partial AFA for Sun Paper and Board, is sufficiently adverse to prevent these respondents from benefitting from their lack of cooperation. *See* SAA at 870. Accordingly, we find that the rate of 135.8 percent is corroborated to the extent practicable within the meaning of section 776(c) of the Act.

Margin for the Separate Rate Company

As discussed above, the Department received a timely and complete separate rate application from Chenming, who is an exporter of coated paper from the PRC during the POI and who was not selected as a mandatory respondent in this investigation. Through the evidence in its SRA, this company has demonstrated its eligibility for a separate rate, as discussed above. Consistent with the Department's practice, as the separate rate, we have established a margin for Chenming based on the average of the rates we calculated for the mandatory respondents, Sun Paper and Board and the GE Group, excluding any rates that were zero, *de minimis,* or based entirely on AFA.[43]

Date of Sale

19 CFR 351.401(i) states that, "in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." In *Allied Tube,* the CIT noted that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisf{y}' the Department that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'" *Allied Tube & Conduit Corp. v. United States* 132 F. Supp. 2d at 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) ("*Allied Tube*"). Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR 351.401(i); *see also Allied Tube,* 132 F. Supp. 2d 1087, 1090–1092. The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms. *See Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review,* 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From Turkey,* 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Comment 1.

For sales by the GE Group, consistent with 19 CFR 351.401(i), we used the commercial invoice date as the sale date because record evidence indicates that the terms of were not set until the issuance of the commercial invoice. *See, e.g.,* GE's section A response at Exhibit A–2 and Volume 5, page 26. *See also* GHS' section A response at page 21.

For Sun Paper and Board, we will use the pro forma/internal invoice date of Jin Rui Group, Sun Paper and Board's U.S. affiliate, as the date of sale because based on the record evidence to date, we preliminarily find that pro forma/internal invoice date best reflects the date on which the essential terms of sale are fixed and final. In our analysis of Sun Paper and Board's information, we determined that the sale date reported in Tianzhang's January 19, 2010, U.S. sales database represents the commercial invoice date (which is issued to the customer 30–60 days later when the product arrives to the customer) that Jin Rui chose to record the sale of merchandise under consideration in its books and records, not the date the material terms of the sale were established with its U.S. customer. On March 19, 2010, we asked Jin Rui to provide a new U.S. sales database based on the pro forma/internal invoice date, which it did on March 26, 2010. We preliminarily determine Jin Rui's pro forma/internal invoice date best reflects the date on which the essential terms are fixed and final.

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[40] *See* Sun Paper and Board's Analysis Memo.

[41] *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.

[42] *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 P*art, 62 FR 11825 (March 13, 1997).

[43] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber From the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber From the People's Republic of China,* 72 FR 19690 (April 19, 2007).

Fair Value Comparisons

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

U.S. Price

Constructed Export Price

In accordance with section 772(a) 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 subsections (c) and (d). In accordance with section 772(a) of the Act, we used CEP for Sun Paper and Board's U.S. sales because the merchandise subject to this investigation was sold directly to an affiliated purchaser located in the United States. In addition, in accordance with section 772(a) of the Act, we used CEP for certain U.S. sales of the GE Group because the merchandise, in these cases, was sold directly to an affiliated purchaser located in the United States.

We calculated CEP for Sun Paper and Board and the GE Group based on delivered prices to unaffiliated purchasers in the United States. We made deductions from the U.S. sales price, where applicable, for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included such expenses as foreign inland freight from the plant to the port of exportation, international freight, marine insurance, other U.S. transportation, U.S. customs duty, U.S. inland freight from port to the warehouse, and U.S. inland freight from the warehouse to the customer. In accordance with section 772(d)(1) of the Act, the Department deducted 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. Finally, we deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act.[44]

Export Price

In accordance with section 772(a) of the Act, we used EP for certain U.S. sales of the GE Group. We calculated EP based on the packed prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (*e.g.,* foreign inland freight from the plant to the port of exportation, domestic brokerage, international freight to the port of importation, etc.) in accordance with section 772(c)(2)(A) of the Act. Where foreign inland freight or foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate value rates from India. *See* "Factor Valuation" section below for further discussion of surrogate value rates.

In determining the most appropriate surrogate values to use in a given case, the Department's stated practice is to use period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the POI, and publicly available data.[45] We valued brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Navneet Publications (India) Ltd. in the 2007–2008 administrative review of certain lined paper products from India, Essar Steel Limited in the 2006–2007 antidumping duty administrative review of hot-rolled carbon steel flat products from India, and Himalya International Ltd. in the 2005–2006 administrative review of certain preserved mushrooms from India. Because these values were not concurrent with the POI, we adjusted these rates for inflation using the Wholesale Price Indices ("WPI") for India as published in the International Monetary Fund's ("IMF's") *International Financial Statistics,* available at *http://ifs.apdi.net/imf,* and then calculated a simple average of the three companies' brokerage expense data.[46] *See* Surrogate Value Memorandum.

To value domestic insurance, the Department used the publicly summarized version of the average insurance expenses reported by Agro Dutch Industries Limited in a submission dated May 24, 2005, in the antidumping administrative review of *Certain Preserved Mushrooms From India.*

To value marine insurance, the Department used data from RGJ Consultants (*http://www.rjgconsultants.com/*). This source provides information regarding the per-value rates of marine insurance of imports and exports to/from various countries.

Normal Value

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 the Department's normal methodologies. *See, e.g., Kitchen Racks Prelim,* 71 FR at 19703 (unchanged in *Kitchen Racks Final*).

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate surrogate value to value FOPs, but when a producer sources an input from a ME and pays for it in a ME currency, the Department may value the factor using the actual price paid for the input. *See* 19 CFR 351.408(c)(1); *see also Shakeproof Assembly Components Div of Ill v. United States,* 268 F.3d 1376, 1382–1383 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by respondents during the POI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values (except as discussed below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review,* 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China,* 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision

[44] *See* Surrogate Value Memorandum.

[45] *See, e.g., 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 1.

[46] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of the 2007 2008 Administrative Review of the Antidumping Duty Order,* 74 FR 32539 (July 8, 2009), (unchanged in final results) ("07–08 TRBs").

Memorandum at Comment 5. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all surrogate values used for Sun Paper and Board and the GE Group can be found in the Surrogate Value Memorandum.

For the preliminary determination, in accordance with the Department's practice, we used data from the Indian Import Statistics and other publicly available Indian sources in order to calculate surrogate values for Sun Paper and Board's and GE Group's FOPs (direct materials, energy, and packing materials) and certain movement expenses. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004). The record shows that data in the Indian Import Statistics, as well as those from the other Indian sources, are contemporaneous with the POI, product-specific, and tax-exclusive. *See* Surrogate Value Memorandum. In those instances where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the Indian WPI as published in the IMF's *International Financial Statistics. See, e.g., Kitchen Racks,* 74 FR at 9600.

Furthermore, with regard to the Indian import-based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. 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. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized. *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100–576 at 590 (1988) reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24; *see also Preliminary Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper From the People's Republic of China,* 72 FR 30758 (June 4, 2007) unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper From the People's Republic of China,* 72 FR 60632 (October 25, 2007). Rather, the Department bases its decision on information that is available to it at the time it makes its determination. *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039 (September 24, 2008). Therefore, we have not used prices from these countries in calculating the Indian import-based surrogate values. Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. *See id.*

Both the GE Group and Sun Paper and Board claimed that certain of their reported raw material inputs were sourced from an ME country and paid for in ME currencies. Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.,* not insignificant quantities), we use the actual price paid by respondent for those inputs, except when prices may have been distorted by findings of dumping by the PRC and/or subsidies.[47] Where we found ME purchases to be of significant quantities (*i.e.,* 33 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs,*[48] we used the actual purchases of these inputs to value the inputs.

Accordingly, we valued certain of respondents' inputs using the ME prices paid for in ME currencies for the inputs where the total volume of the input purchased from all ME sources during the POI exceeds or is equal to 33 percent of the total volume of the input purchased from all sources during the period. Where the quantity of the reported input purchased from ME suppliers was below 33 percent of the total volume of the input purchased from all sources during the POI, and were otherwise valid, we weight-averaged the ME input's purchase price with the appropriate surrogate value for the input according to their respective shares of the reported total volume of purchases.[49] Where appropriate, we added freight to the ME prices of inputs. Additionally, consistent with the Department's practice,[50] we excluded certain of the GE Group's claimed ME purchases which involved a PRC intermediary because we find that these sales did not occur directly between the respondent and an ME supplier. For a detailed description of the actual values used for the ME inputs reported, *see* the Department's analysis memoranda dated concurrently with this notice.

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 December 2009. *See 2009 Calculation of Expected Non-Market Economy Wages,* 74 FR 65092 (December 9, 2009), and

[47] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27366 (May 19, 1997).

[48] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717 (October 19, 2006) ("*Antidumping Methodologies: Market Economy Inputs*").

[49] *See Antidumping Methodologies: Market Economy Inputs,* 71 FR at 61718.

[50] *See, e.g., 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), and accompanying Issues and Decision Memorandum at comment 70.

http://ia.ita.doc.gov/wages/index.html. The source of these wage-rate data on the Import Administration's Web site is the 2006 and 2007 data in Chapter 5B of the International Labour Organization's *Yearbook of Labour Statistics.* 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 respondents.

We valued truck freight expenses using a per-unit average rate calculated from data on the infobanc Web site: *http://www.infobanc.com/logistics/logtruck.htm.* The logistics section of this Web site contains inland freight truck rates between many large Indian cities.

Consistent with past practice and these submissions, the Department has applied a surrogate value for hydrochloric acid using the values submitted by the parties from *Chemical Weekly. See* Surrogate Value Memorandum.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled Electricity Tariff & Duty and Average Rates of Electricity Supply in India, dated March 2008. These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to industries in India.

We valued diesel oil using published prices from the International Energy Agency: Key World Statistics 2007. We used the first quarter 2007 value for automotive diesel oil. *See* Surrogate Value Memorandum.

To value water, we used the revised Maharashtra Industrial Development Corporation water rates available at *http://www.midcindia.com/water-supply. See* Surrogate Value Memorandum.

We calculated the surrogate value for steam based upon the April 2007–March 2008 financial statement of Hindalco Industries Limited. *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 74 FR 10545 (March 11, 2009), and accompanying Issues and Decision Memorandum at Comment 4. We inflated the steam value using the appropriate WPI inflator. *See* Surrogate Value Memorandum.

We valued natural gas using April through June 2002 data from the Gas Authority of India Ltd. Consistent with the Department's recent determination in Polyvinyl Alcohol, we averaged the base and ceiling gas prices of 2,850 rupees per 1000 cubic meters ("m3") and 2,150 rupees per 1000 m3, and added a transmission charge of 1,150 rupees per 1000 m3 to calculate a value of Rs 3.650/cubic meter. *See* Surrogate Value Memorandum.

We used the Indian Bureau of Mines' publication: 2007 edition of the Indian Minerals Yearbook ("IBM Yearbook") to value coal. For this preliminary determination, we find that the IBM Yearbook's reported Grade C coal most closely matches the coal consumed by respondents during the POI. *See* Surrogate Value Memorandum.

To value factory overhead, selling, general, and administrative expenses, and profit, we used audited financial statements of JK Paper Ltd., and Seshasayee Paper and Boards, Ltd., each covering the fiscal period April 1, 2008, through March 31, 2009. The Department may consider other publicly available financial statements for the final determination, as appropriate.

Currency Conversion

Where necessary, 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 Sun Paper and Board and the GE Group 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.[51] This practice is described in Policy Bulletin 05.1.

Preliminary Determination

The weighted-average dumping margin percentages are as follows:

Exporter	Producer	Percent margin
Yanzhou Tianzhang Paper Industry Co., Ltd	Yanzhou Tianzhang Paper Industry Co., Ltd	89.71
Shandong International Paper and Sun Coated Paperboard Co., Ltd.	Shandong International Paper and Sun Coated Paperboard Co., Ltd.	
International Paper and Sun Cartonboard Co., Ltd	International Paper and Sun Cartonboard Co., Ltd.	
Gold East Paper (Jiangsu) Co., Ltd	Gold East Paper (Jiangsu) Co., Ltd	30.82
Gold Huasheng Paper Co., Ltd	Gold Huasheng Paper Co., Ltd.	
Ningbo Zhonghua Paper Co., Ltd	Ningbo Zhonghua Paper Co., Ltd.	
Ningbo Asia Pulp and Paper Co., Ltd	Ningbo Asia Pulp and Paper Co., Ltd.	
Gold East (Hong Kong) Trading Co., Ltd.		
Shandong Chenming Paper Holdings Ltd	Shandong Chenming Paper Holdings Ltd	60.27
PRC-Wide Entity		135.8

Disclosure

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

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of coated paper from the PRC as described in the "Scope of Investigation" section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as follows: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate we have determined in this preliminary determination; (2) for

[51] *See Initiation Notice*, 74 FR at 31695.

all PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the PRC-wide rate; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of coated paper, or sales (or the likelihood of sales) for importation, of the merchandise under consideration 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 a "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. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. 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: April 28, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–10701 Filed 5–5–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW09

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Operation and Maintenance of a Liquefied Natural Gas Facility off Massachusetts

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

ACTION: Notice; proposed incidental harassment authorization; receipt of application for letter of authorization; request for comments.

SUMMARY: NMFS has received an application from Neptune LNG LLC (Neptune) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to port commissioning and operations, including maintenance and repair activities, at its Neptune Deepwater Port. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to Neptune to take, by Level B harassment only, several species of marine mammals during the specified activity. NMFS is also requesting comments on its intent to promulgate regulations governing the take of marine mammals over a 5–year period incidental to the same activities described herein.

DATES: Comments and information must be received no later than June 7, 2010.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *PR1.0648–XW09@noaa.gov*. NMFS is not responsible for e mail comments sent to addresses other than the one provided here. Comments sent via e mail, including all attachments, must not exceed a 10 megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to http://www.nmfs.noaa.gov/pr/permits/incidental.htm without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

The Maritime Administration (MARAD) and U.S. Coast Guard (USCG) Final Environmental Impact Statement (Final EIS) on the Neptune LNG Deepwater Port License Application is available for viewing at *http://www.regulations.gov* by entering the search words "Neptune LNG."

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 713 2289, ext 156.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.