

Dated: June 30, 2008.

**Stephen J. Claeys,**  
Deputy Assistant Secretary for Import Administration.

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Dated: July 1, 2008.

**Faye Robinson,**  
Director, *Statutory Import Programs Staff, Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### University of Colorado, et al., Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, as amended by Pub. L. 106-36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 2104, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, D.C.

Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, that was being manufactured in the United States at the time of its order. *Docket Number: 08-016.* Applicant: University of Colorado, Boulder, CO 80309. Instrument: Three-Channel Digital Radio Vector Field Sensor (RVFS). Manufacturer: Swedish Institute of Space Physics, Sweden. Intended Use: See notice at 73 FR 30377, May 27, 2008. Reasons: The instrument has a capability to work with dipole antennas of two different lengths (1 m and 3 m) and a capability to oversample the output I&Q data. These specifications enable the instrument to operate in both mobile-mount and stationary conditions which is essential to the intended use.

*Docket Number: 08-017.* Applicant: City College of the City University of New York, New York, NY 10031. Instrument: Ultrabroadband Ti:Sapphire Laser Model Rainbow-DFG. Manufacturer: Femtolasers, Inc., Austria. Intended Use: See notice at 73 FR 30377, May 27, 2008. Reasons: The instrument can generate optical pulses of less than 7 femtoseconds which is fundamental to the intended use. The amplifier system will be coupled with a 6 femtosecond laser and streak camera system to provide high spatial, high temporal and high spectral resolution for characterization, tunneling and carrier/phonon dynamics studies for nanoscale semiconductor quantum structures and devices.

## DEPARTMENT OF COMMERCE

### International Trade Administration

C-570-926

#### Sodium Nitrite From the People's Republic of China: Final Affirmative Countervailing Duty Determination

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

**SUMMARY:** The Department of Commerce (the Department) has reached a final determination that countervailable subsidies are being provided to producers/exporters of sodium nitrite from the People's Republic of China (PRC). On April 11, 2008, we issued the Preliminary Determination, *see Sodium Nitrite From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 73 FR 19816 (April 11, 2008) (Preliminary Determination). Because neither the Government of the People's Republic of China (GOC) nor the two mandatory company respondents participated in this investigation, the Department relied on facts available and applied adverse inferences in reaching the *Preliminary Determination*. The Department assigned a countervailable subsidy rate to each program under investigation using rates calculated in *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) and accompanying *Issues and Decision Memorandum (CFS from the PRC)*. We invited interested parties to comment on the *Preliminary Determination*. No interested party submitted comments regarding the *Preliminary Determination*.

Since the publication of the *Preliminary Determination*, the Department has reached affirmative final countervailing duty determinations in several investigations of products from the PRC. We have used the rates calculated in these intervening final determinations to revise the countervailable subsidy rates for certain programs. For information on the countervailable subsidy rates, *see the "Final Determination" section of this notice.*

**EFFECTIVE DATE:** July 8, 2008.

#### FOR FURTHER INFORMATION CONTACT:

Gene Calvert or Paul Matino, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3586 or (202) 482-4146, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Case History

The following events have occurred since the publication of the *Preliminary Determination* in the **Federal Register** on April 11, 2008. On April 14, 2008, petitioner (General Chemical LLC) submitted a letter, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), requesting alignment of the final countervailing duty determination with the final determination in the companion antidumping duty investigation of sodium nitrite from the PRC. On April 28, 2008, the Department aligned the final countervailing duty determination with the final determination in the companion antidumping duty investigation of sodium nitrite from the PRC. *See Sodium Nitrite from the People's Republic of China: Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 22920 (April 28, 2008).

##### Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is calendar year 2006. See 19 CFR 351.204(b)(2).

##### Scope of the Investigation

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

## Injury Test

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine pursuant to section 701(a)(2) of the Act whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a United States industry. On January 14, 2008, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports from the PRC of subject merchandise. *See Sodium Nitrite from China and Germany: Investigation Nos. 701-TA-453 and 731-TA-1136-1137 (Preliminary)*, 73 FR 2278, (January 14, 2008).

## Application of Facts Available and Use of Adverse Inferences

Section 776 of the Act, governs the use of facts available and adverse facts available. Section 776(a) provides that if an interested party or any other person (1) withholds information that has been requested by the Department; (2) fails to provide such information by deadlines or in the form and manner requested; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified, the Department shall use the facts otherwise available in reaching its determination. The statute requires that certain conditions be met before the Department may resort to facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or to explain the deficiency.

If the party fails to remedy the deficiency within the applicable timelines, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act states that the Department shall not decline to consider information deemed “deficient” under section 782(d) of the Act if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of

its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department’s requests for information. *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1, 889-90 (1994) (SAA)* at 870.

In the *Preliminary Determination*, the Department based the CVD rates for the two mandatory company respondents, Shanxi Jiaocheng Hongxing Chemical Co., Ltd. (Shanxi Jiaocheng) and Tianjin Soda Plant, together with its subsidiary company, Tianjin Port Free Trade Zone Pan Bohai International Trading Co., Ltd. (Tianjin Soda Plant) on facts otherwise available, pursuant to section 776(a)(2)(C) of the Act because they did not respond to the Department’s countervailing duty questionnaire. Furthermore, in selecting from the facts available, the Department determined that an adverse inference was warranted, pursuant to section 776(b) of the Act because Shanxi Jiaocheng and Tianjin Soda Plant did not respond to the Department’s questionnaire and therefore did not cooperate to the best of their abilities in the investigation. *Preliminary Determination at 19817-18.*

Neither the GOC nor Shanxi Jiaocheng or Tianjin Soda Plant have provided any information or argument that would warrant a reconsideration of the Department’s *Preliminary Determination* that the reliance on facts available and the application of adverse inferences is warranted. Therefore, for purposes of this final determination we are relying on facts available and applying adverse inferences in accordance with section 776(b) of the Act.

## Selection of the Adverse Facts Available Rate

In deciding which facts to use as adverse facts available, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any other information placed on the record. The Department has no information on the record of this proceeding from which to select appropriate AFA rates for any of the subject programs, and because this is an investigation, we have no previous segments of the proceeding from which to draw potential AFA rates. In such cases, it is the Department’s practice to

select, as adverse facts available, the highest calculated rate in any segment of the proceeding. *See, e.g., Certain In-shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review (Pistachios from Iran)*, 71 FR 66165 (November 13, 2006) and accompanying Issues and Decision Memorandum at Comment 1. The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.” *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” *See SAA at 870.* In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent’s prior commercial activity, selecting the highest prior rate “reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.” *See Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1190 (Fed. Cir. 1990).

As stated in the *Preliminary Determination*, the Department determined that Shanxi Jiaocheng and Tianjin Soda Plant each failed to act to the best of its ability in this investigation; thus, for each program examined, the Department made the adverse inference that each company benefitted from the program, consistent with our practice. *See, e.g., Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 67 FR 62102 (October 3, 2002). In addition, we stated in the *Preliminary Determination* that our practice is to rely upon the highest calculated program rate for the same program or for a similar type of program.<sup>1</sup> *See e.g., Circular Welded*

<sup>1</sup> The Department’s first preference is to use the highest calculated rate for the same program (*i.e.* identical program). If there is no identical program, then the Department will use the highest calculated rate for a similar program (*e.g.* tax program to tax program, loan program to loan program).

Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, 73 FR 31966 (June 5, 2008) and accompanying Issues and Decision Memorandum at 2 (*CWP from the PRC*); *CFS from the PRC* at Comment 24; *Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) and accompanying Issues and Decision Memorandum at 6–8 (*LWS from the PRC*); *see also Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) and accompanying Issues and Decision Memorandum at 2 (*LWRP from the PRC*). We have selected the adverse facts available rate to apply to each program, for purposes of this final determination, consistent with this practice.

Information from the petition indicates that during the POI, the standard income tax for corporations in China was 30 percent and there is an additional local income tax at the rate of three percent. *See* the November 8, 2007 letter to the Secretary of Commerce, at Exhibit IV–12. To determine the program rate for the 16 alleged income tax programs under which companies receive either a reduction or exemption of income tax, we have applied an adverse inference that Shanxi Jiaocheng and Tianjin Soda Plant paid no income taxes during the POI. Therefore, the highest possible combined countervailable subsidy for the 16 national, provincial, and local income tax programs subject to this investigation total 33 percent. Thus, we are applying a countervailable rate of 33 percent on an overall basis for the 16 income tax programs (*i.e.*, the 16 income tax programs combined provided a countervailable subsidy of 33 percent). This 33 percent AFA rate does not apply to income tax credit or income tax refund programs.

For the remaining programs subject to this investigation (including income tax credit and income tax refund programs),

we are applying, where applicable, the highest countervailable subsidy rate that was calculated in a prior final countervailing duty determination for a product from the PRC for the same or similar type of program (*i.e.*, subsidy programs regarding tax refunds or credits, value-added tax (VAT), and government-provided grants and loans). *See CFS from the PRC* at Comment 24 and *LWS from the PRC* at 6–8. Absent a subsidy rate for the same or similar type of program, we are applying the highest countervailable subsidy rate for any program otherwise listed in any prior final countervailing duty determination involving the PRC.<sup>2</sup> *See id.*

For a discussion of the application of the AFA rates for each program determined to be countervailable, *see Memorandum to the File, Sodium Nitrite from the PRC: Calculation of Countervailable Subsidy Rates for the Final Determination*, dated concurrently with this notice (*Sodium Nitrite Calculation Memorandum*). Attached to this memorandum are copies of *CFS from the PRC*, *LWS from the PRC*, *CWP from the PRC*, and *LWRP from the PRC*, which contain the public information concerning subsidy programs, including the subsidy rates, upon which we are relying as adverse facts available. *See Sodium Nitrite Calculation Memorandum.*

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 or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. *See SAA* at 869.

With regard to the reliability aspect of corroboration, we note that these rates were calculated in prior final countervailing duty determinations. No information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. Unlike other types of information, such as publicly available

data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as adverse facts available, the Department will not use it. *See, e.g.*, *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996). In the absence of record evidence concerning these programs due to respondents' decision not to participate in the investigation, the Department has reviewed the information concerning China subsidy programs in this and other cases. For those programs for which the Department has found a program-type match, we find that programs of the same type are relevant to the programs of this case. For the programs for which there is no program-type match, the Department has selected the highest calculated subsidy for any China program from which the respondents could conceivably receive a benefit to use as AFA. The rate is therefore relevant to the respondents in that it is an actual calculated CVD rate for a China program from which the respondents could receive a benefit. No evidence had been presented or obtained which contradicts the reliability or relevance of the secondary information which was information from a prior China CVD investigation. *See Preliminary Determination* at 19819. Due to the lack of participation by the respondents and the resulting lack of record information concerning these programs, the Department has corroborated the rates it selected to the extent practicable.

#### Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we have assigned a subsidy rate to each of the two producers/exporters of the subject merchandise that were selected as mandatory respondent companies in this CVD investigation. We determine

<sup>2</sup> In applying the highest calculated countervailable subsidy rate for any program otherwise listed, we are disregarding the calculated rates for the programs "Hot-Rolled Steel For Less Than Adequate Remuneration" (*CWP from the PRC*), and "Government Provision of Inputs for Less Than Adequate Remuneration" (*LWS from the PRC*), because the industry under investigation in this

proceeding cannot use the products for which these rates were calculated. *See Sodium Nitrite From the Federal Republic of Germany And The People's Republic of China: Petition For The Imposition of Antidumping And Countervailing Duties*, (November 8, 2007) Volume I at 32–33. *See also Sodium Nitrite from China and Germany: Investigation Nos. 701-TA-453 and 731-TA-1136-*

1137 (Preliminary), ITC Publication 3979, January 2008 at 8. The Department's decision to not use, as AFA, these program rates is based on the particular facts of this investigation and this particular set of facts may not be applicable or identifiable in another proceeding.

the total net countervailable subsidy rates to be:

Producer/Exporter	Subsidy Rate
Shanxi Jiaocheng Hongxing Chemical Co., Ltd. (Shanxi Jiaocheng) .....	169.01%
Tianjin Soda Plant Tianjin Port Free Trade Zone Pan Bohai International Trading Co., Ltd. (Tianjin Soda Plant)	169.01%
All Others .....	169.01%

With respect to the all others rate, section 705(c)(5)(A)(ii) of the Act provides that if the countervailable subsidy rates established for all exporters and producers individually investigated are determined entirely in accordance with section 776 of the Act, the Department may use any reasonable method to establish an all others rate for exporters and producers not individually investigated. In this case, the rate established for the two mandatory respondents is based entirely on facts available under section 776 of the Act. There is no other information on the record upon which we could determine an all others rate. As a result, we have used the AFA rate assigned for Shanxi Jiaocheng and Tianjin Soda Plant as the all others rate. This method is consistent with the Department's past practice. *See e.g.* Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, 66 FR 37007, 37008 (July 16, 2001); *see also* Final Affirmative Countervailing Duty Determination: Prestressed Steel Wire Strand From India, 68 FR 68356, 68357 (December 8, 2003).

#### Suspension of Liquidation and Cash Deposit Requirements

In accordance with sections 705(c)(1)(B) of the Act, we directed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of the subject merchandise from the PRC, which are entered or withdrawn from warehouse, for consumption on or after April 11, 2008, the date of publication of the *Preliminary Determination*. In accordance with sections 705(c)(1)(B) of the Act, we will instruct CBP to require cash deposits at the rates shown above on all entries of the subject merchandise from the PRC, entered or withdrawn from warehouse, for consumption on or after the date of publication of this final determination.

If the ITC issues a final affirmative injury determination, we will issue a countervailing duty order under section 706(a) of the Act. If the ITC determines that material injury to, threat of material injury to, or material retardation of, the domestic industry does not exist, this proceeding will be terminated and all estimated duties deposited or securities

posted as a result of the suspension of liquidation will be refunded or canceled.

#### ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

#### Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Failure to comply is a violation of the APO.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: June 30, 2008.

**David M. Spooner,**

Assistant Secretary for Import Administration.

[FR Doc. E8-15479 Filed 7-7-08; 8:45 am]

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#### DEPARTMENT OF COMMERCE

#### International Trade Administration

(A-570-925)

#### Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the People's Republic of China

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

**EFFECTIVE DATE:** July 8, 2008.

**SUMMARY:** The Department of Commerce (Department) determines that sodium

nitrite 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 735 of the Tariff Act of 1930, as amended (the Act). We made no changes to the preliminary dumping margin in this investigation. The final dumping margin for this investigation is listed in the "Final Determination Margin" section below. The period covered by this investigation is April 1, 2007, through September 30, 2007.

#### FOR FURTHER INFORMATION CONTACT:

Magd Zalok or Rebecca Pandolph, AD/CVD Operations, Office 4 Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4162 and (202) 482-3627, respectively.

#### SUPPLEMENTARY INFORMATION:

#### Background

On April 23, 2008, the Department published in the **Federal Register** the notice of its preliminary determination of sales at LTFV in the antidumping duty investigation of sodium nitrite from the PRC. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the People's Republic of China*, 73 FR 21906 (April 23, 2008) (Preliminary Determination).

With respect to the Department's invitation to comment on the *Preliminary Determination*, on May 23, 2008, General Chemical LLC (the petitioner) submitted a case brief. No other party submitted case or rebuttal briefs in this proceeding.

#### Scope of the Investigation

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