

for those stakeholders on current and emerging issues in the manufacturing sector. The Council's membership shall reflect the diversity of American manufacturing by representing a balanced cross-section of the U.S. manufacturing industry in terms of industry sectors, geographic locations, demographics, and company size, particularly seeking the representation of small- and medium-sized enterprises. Additional factors which may be considered in the selection of Council members include candidates' proven experience in developing and marketing programs in support of manufacturing industries, job creation in the manufacturing sector, or the candidates' proven abilities to manage manufacturing organizations. Given the duties and objectives of the Council, the Department particularly seeks applicants who are active manufacturing executives (Chief Executive Officer, President, and a comparable level of responsibility) that are leaders within their local manufacturing communities and industries.

Each Council member shall serve as the representative of a U.S. entity in the manufacturing sector. For the purposes of eligibility, a U.S. entity shall be defined as a firm incorporated in the United States (or an unincorporated firm with its principal place of business in the United States) that is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if 50 percent plus one share of its stock (if a corporation, or a similar ownership interest of an unincorporated entity) is controlled, directly or indirectly, by non-U.S. citizens or non-U.S. entities.

Appointments to the Council will be made by the Secretary of Commerce. Council members will serve at the discretion of the Secretary of Commerce. Council members shall serve in a representative capacity, representing the views and interests of their particular industry sector. Council members are not special government employees.

Council members will receive no compensation for their participation in Council activities. Members participating in Council meetings and events will be responsible for their travel, living and other personal expenses.

Meetings will be held regularly and not less than annually, usually in Washington, DC. Members are required to attend a majority of the Council meetings. The first Council meeting for the new charter term has not yet been set.

*To be considered for membership, please provide the following:*

1. Name and title of the individual requesting consideration.

2. A sponsor letter from the applicant on organization letterhead or, if the applicant is to represent an entity other than his or her employer, a letter from the entity to be represented, containing a brief statement of why the applicant should be considered for membership on the Council. This sponsor letter should also address the applicant's manufacturing-related experience, including any manufacturing trade policy experience.

3. The applicant's personal resume.

4. An affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

5. An affirmative statement that the applicant is not a federally registered lobbyist, and that the applicant understands that if appointed, the applicant will not be allowed to continue to serve as a Council member if the applicant becomes a federally registered lobbyist.

6. Information regarding the control of the entity to be represented, including the governing structure and stock holdings as appropriate signifying compliance with the criteria set forth above.

7. The entity's size and ownership, product or service line and major markets in which the entity operates.

8. Please include all relevant contact information such as mailing address, fax, e-mail, fixed and mobile phone numbers and support staff information where relevant.

Dated: March 11, 2010.

**Michael Masserman,**  
*Director, Office of Advisory Committees.*  
[FR Doc. 2010-5716 Filed 3-15-10; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-962]

#### **Certain Potassium Phosphate Salts From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value**

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

**DATES:** *Effective Date:* March 16, 2010.

**SUMMARY:** The Department of Commerce ("the Department") preliminarily determines that certain potassium phosphate salts ("salts") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the

United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("Act"), for the period of investigation ("POI"), January 1, 2009, through June 30, 2009. The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice. Interested parties are invited to comment on this preliminary determination.

#### **FOR FURTHER INFORMATION CONTACT:**

Irene Gorelik or Katie Marksberry, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482-6905 or (202) 482-7906, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Initiation**

On September 24, 2009, the Department received an antidumping duty petition concerning imports of salts from the PRC filed in proper form by Performance Products LP ("ICL") and Prayon, Inc. (collectively, "Petitioners").<sup>1</sup> The Department initiated this investigation on October 14, 2009.<sup>2</sup>

On November 17, 2009, the United States International Trade Commission ("ITC") issued an affirmative preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from the PRC of dipotassium phosphate ("DKP"), monopotassium phosphate ("MKP"), and tetrapotassium pyrophosphate ("TKP"). Also on November 17, 2009, the ITC issued a negative preliminary determination with respect to sodium tripolyphosphate ("STPP") stating that there is no reasonable indication that an industry producing STPP is materially injured or threatened with material injury by reason of imports from the PRC.<sup>3</sup> The ITC's determination was

<sup>1</sup> See Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Sodium and Potassium Phosphate Salts from the People's Republic of China, dated September 24, 2009 ("Petition").

<sup>2</sup> See *Certain Sodium and Potassium Phosphate Salts from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 74 FR 54024 (October 21, 2009), ("Initiation Notice").

<sup>3</sup> Please note that after the *Initiation Notice* was published the ITC made a negative determination with respect to Sodium Tripolyphosphate, the only sodium phosphate salt included in the scope of the investigation. The Department subsequently issued a memo stating that the official name of this investigation is now *Certain Potassium Phosphate Salts from the People's Republic of China*. See Memorandum to the File, from Katie Marksberry,

published in the **Federal Register** on November 23, 2009.<sup>4</sup>

### Scope Comments

In accordance with the preamble to our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*.<sup>5</sup> We did not receive any scope comments.

### Period of Investigation

The 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.<sup>6</sup>

### Respondent Selection

In the *Initiation Notice*, the Department stated that it intended to select respondents based on quantity and value (“Q&V”) questionnaires.<sup>7</sup> On October 15, 2009, the Department requested Q&V information from the 60 companies that Petitioners identified as potential exporters or producers of salt from the PRC.<sup>8</sup> Additionally, the Department also posted the Q&V questionnaire for this investigation on its Web site at <http://ia.ita.doc.gov/ia-highlights-and-news.html>. The Department received timely Q&V responses from eleven exporters/producers that shipped merchandise under investigation to the United States during the POI.

On November 13, 2009, the Department selected SD BNI (LYG) Co. Ltd. (“SD BNI”), and SiChuan Blue Sword Import & Export Co., Ltd. (“SiChuan Blue Sword”), as mandatory respondents in this investigation.<sup>9</sup> The Department sent its antidumping duty questionnaire to SD BNI and SiChuan Blue Sword on November 16, 2009. On December 7, 2009, SiChuan Blue Sword, filed a letter stating that it would not

participate as a mandatory respondent in this investigation.<sup>10</sup>

On December 18, 2009, the Department determined that because it was still early enough in the investigation and because there were no requests for voluntary respondent treatment,<sup>11</sup> the Department would select the next largest producer/exporter of certain potassium phosphate salts as a mandatory respondent. Therefore the Department selected Wenda as a mandatory respondent after an analysis of the Q&V responses showed it to be the next largest producer/exporter.<sup>12</sup> On December 18, 2009, the Department sent Wenda the antidumping duty questionnaire, and on January 8, 2010, Wenda filed its Section A response. In its Section A response, Wenda corrected its Q&V data which was used as the basis of respondent selection.<sup>13</sup> Because the Q&V information changed substantially between Wenda’s original Q&V submission and its Section A response, on February 4, 2010, the Department discontinued Wenda’s status as a mandatory respondent and stated that we would continue to consider its request for separate rate status.<sup>14</sup> On February 5, 2010, the Department received comments from Wenda regarding the Department’s decision to discontinue its status as a mandatory respondent. On February 16, 2010, Petitioners filed rebuttal comments in response to Wenda’s February 5, 2010, comments, and on February 18, 2010, Wenda submitted

additional comments in response to the Petitioners’ most recent comments.

### Additional Case Background

We received a Section A response on December 7, 2009, from SD BNI.<sup>15</sup> On December 22, 2009, we received an improperly filed Section C response from SD BNI. The deadline for the Section D response was also December 22, 2009, but no response was filed. We sent a letter to SD BNI on December 28, 2009, stating that its Section C response was not properly filed and its Section D response was not filed at all by the deadline, and we provided another week, until January 4, 2010, for SD BNI to re-file its Section C response and to file its Section D response.<sup>16</sup> On January 6, 2010, the Department received an improperly filed letter from SD BNI asking for more information as to the reason its Section C response was not properly filed and asking for an extension to submit its Section C and D responses. In its January 6, 2010, response SD BNI also asked whether the Department would accept current, post-POI production information to respond to the Department’s NME questionnaires.<sup>17</sup> On January 7, 2010, the Department granted SD BNI a third opportunity to submit its Section C response and detailed how to properly file documents—per the Department’s regulations. The Department also informed SD BNI that it must report the POI production and could not base Section D on its own post-POI production. The deadline to submit these responses was January 19, 2010.<sup>18</sup> On January 20, 2010, the Department received a Section D response from SD BNI, which did not fully respond to all of the Department’s concerns.<sup>19</sup> SD BNI failed to submit a Section C response by this due date.

International Trade Compliance Analyst, regarding Certain Potassium Phosphate Salts from the People’s Republic of China, dated November 12, 2009.

<sup>4</sup> See *Investigation Nos. 701-TA-473 and 731-TA-1173 (Preliminary) Certain Sodium and Potassium Phosphate Salts From China*, 74 FR 61173 (November 23, 2009).

<sup>5</sup> See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). See also *Initiation Notice*, 74 FR at 54024.

<sup>6</sup> See 19 CFR 351.204(b)(1).

<sup>7</sup> See *Initiation Notice*, 74 FR at 54027.

<sup>8</sup> See Petition at Vol. 2., Exhibit General-12.

<sup>9</sup> See Memorandum to James C. Doyle, Director, Office IX, from Katie Marksberry, Case Analyst, through Catherine Bertrand, Program Manager, Office IX; regarding Antidumping Duty Investigation of Certain Potassium Phosphate Salts from the People’s Republic of China, dated November 13, 2009 (“Respondent Selection Memo”).

<sup>10</sup> See December 7, 2009, Letter to the Department from SiChuan Blue Sword Import & Export Co., Ltd.

<sup>11</sup> We note that Wenda Co., Ltd. (“Wenda”) filed a request for Voluntary Respondent Treatment on October 15, 2009, and withdrew its request on November 13, 2009. See letter to the Department from Wenda; regarding Sodium and Potassium Phosphate Salts from the People’s Republic of China, Antidumping Duty Investigation; Request for Voluntary Respondent Treatment, dated October 15, 2009 (“Wenda’s Voluntary Request Memo”); see also letter to the Department from Wenda; regarding Sodium and Potassium Phosphate Salts from the People’s Republic of China, Antidumping Duty Investigation; Withdrawal of Request for Voluntary Respondent Treatment, dated November 13, 2009 (“Wenda’s Voluntary Withdrawal Memo”).

<sup>12</sup> See Memorandum to James C. Doyle, Director, Office IX, from Katie Marksberry, Case Analyst, through Catherine Bertrand, Program Manager, Office IX; regarding Antidumping Duty Investigation of Certain Potassium Phosphate Salts from the People’s Republic of China: Selection of Additional Mandatory Respondent, dated December 18, 2009 (“Additional Respondent Selection Memo”).

<sup>13</sup> See Respondent Selection Memo.

<sup>14</sup> See Memorandum to James C. Doyle, Director, Office IX, from Catherine Bertrand, Program Manager, Office IX; Antidumping Duty Investigation of Certain Potassium Phosphate Salts from the People’s Republic of China: Discontinuation of Mandatory Respondent Status for Wenda Co. Ltd., dated February 4, 2010. (“Wenda Deselection Memo”).

<sup>15</sup> See Letter from SD BNI to the Department; regarding Certain Potassium Phosphate Salts from China (A-570-962): Section A Questionnaire Response, dated December 7, 2009.

<sup>16</sup> See Letter to SD BNI (LYG) Co., Ltd. from the Department; regarding Certain Potassium Phosphate Salts from the People’s Republic of China, dated December 28, 2009.

<sup>17</sup> See Memorandum to the File; from Katie Marksberry, International Trade Compliance Analyst; regarding Certain Potassium Phosphate Salts from the People’s Republic of China: SD BNI (LYG) Co., Ltd. Letter, dated January 11, 2010 (placing SD BNI’s improperly filed January 6, 2010, letter on the official record of the investigation.)

<sup>18</sup> See Letter to SD BNI (LYG) Co., Ltd. from the Department; regarding Certain Potassium Phosphate Salts from the People’s Republic of China, dated January 7, 2010.

<sup>19</sup> See Letter from SD BNI to the Department; regarding Certain Potassium Phosphate Salts from China (A-570-962): Section D Questionnaire Response, dated January 20, 2010.

### Separate Rate Applications

On November 30, 2009, we received a timely filed joint separate rate application from Chengdu Long Tai Biotechnology Co., Ltd. and Snow-Apple Group Limited. On December 22, 2009, we received timely filed separate rate applications from Wenda, Yunnan Newswift Company Ltd., and Tianjin Chengyi International Trading Co., Ltd. See the "Separate Rates" section below for further discussion on the eligibility for a separate rate. On February 3, 2010, the Department issued Wenda a supplemental questionnaire requesting additional information. Additionally, on February 18, 2010, the Department issued Chengdu Long Tai Biotechnology Co., Ltd. and Snow-Apple Group Limited a supplemental questionnaire requiring that each company submit an individual application. Additionally, on February 18, 2010, the Department issued Newswift Company Ltd. a supplemental questionnaire requesting additional information. Wenda, Yunnan Newswift Company Ltd., and Snow-Apple Group Limited submitted timely responses to these questionnaires. Chengdu Long Tai did not submit an individual separate rate application.

### Product Characteristics and Questionnaires

In the *Initiation Notice*, the Department asked all parties in this investigation for comments on the appropriate product characteristics for defining individual products. We did not receive comments from interested parties on product characteristics.

### Surrogate Country Comments

On January 7, 2010, the Department determined that India, the Philippines, Indonesia, Thailand, Ukraine, and Peru, are countries comparable to the PRC in terms of economic development.<sup>20</sup>

On January 8, 2010, the Department requested comments on surrogate country selection from the interested parties in this investigation. On January 29, 2010, Petitioners submitted surrogate country comments. No other interested parties commented on the selection of a surrogate country.

<sup>20</sup> See January 8, 2010, Letter to All Interested Parties, regarding Antidumping Duty Investigation of Certain Potassium Phosphate Salts from the People's Republic of China: Surrogate Country List, attaching January 7, 2010, Memorandum to Catherine Bertrand, Program Manager, Office 9, AD/CVD Operations, from Kelly Parkhill, Acting Director, Office for Policy, regarding Request for List of Surrogate Countries for an Antidumping Duty Investigation of Certain Potassium Phosphate Salts from the People's Republic of China ("Surrogate Country List").

### Scope of Investigation

The phosphate salts covered by this investigation include anhydrous Monopotassium Phosphate (MKP), anhydrous Dipotassium Phosphate (DKP) and Tetrapotassium Pyrophosphate (TKPP), whether anhydrous or in solution (collectively "phosphate salts").

TKPP, also known as normal potassium pyrophosphate, Diphosphoric acid or Tetrapotassium salt, is a potassium salt with the formula  $K_4P_2O_7$ . The CAS registry number for TKPP is 7320-34-5. TKPP is typically 18.7% phosphorus and 47.3% potassium. It is generally greater than or equal to 43.0%  $P_2O_5$  content. TKPP is classified under heading 2835.39.1000, HTSUS.

MKP, also known as Potassium dihydrogen phosphate, KDP, or Monobasic potassium phosphate, is a potassium salt with the formula  $KH_2PO_4$ . The CAS registry number for MKP is 7778-77-0. MKP is typically 22.7% phosphorus, 28.7% potassium and 52%  $P_2O_5$ . MKP is classified under heading 2835.24.0000, HTSUS.

DKP, also known as Dipotassium salt, Dipotassium hydrogen orthophosphate or Potassium phosphate, dibasic, has a chemical formula of  $K_2HPO_4$ . The CAS registry number for DKP is 7758-11-4. DKP is typically 17.8% phosphorus, 44.8% potassium and 40%  $P_2O_5$  content. DKP is classified under heading 2835.24.0000, HTSUS.

The products covered by this investigation include the foregoing phosphate salts in all grades, whether food grade or technical grade. The product covered by this investigation includes anhydrous MKP and DKP without regard to the physical form, whether crushed, granule, powder or fines. Also covered are all forms of TKPP, whether crushed, granule, powder, fines or solution.

For purposes of the investigation, the narrative description is dispositive, not the tariff heading, American Chemical Society, CAS registry number or CAS name, or the specific percentage chemical composition identified above.

### Non-Market Economy Country

For purposes of initiation, Petitioners submitted LTFV analyses for the PRC as a non-market economy ("NME").<sup>21</sup> The Department considers the PRC to be a NME country.<sup>22</sup> In accordance with

<sup>21</sup> See *Initiation Notice*, 74 FR 29665 (June 23, 2009).

<sup>22</sup> See *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30760

section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination and calculated normal value in accordance with section 773(c) of the Act, which applies to all NME countries.

### Wenda's Status in This Investigation

As stated above in the "Respondent Selection" section, on February 4, 2010, the Department discontinued Wenda's status as a mandatory respondent in this investigation. On February 5, 2010, the Department received comments from Wenda requesting that we reconsider the decision to deselect Wenda as a mandatory respondent, or to allow Wenda to participate as a voluntary respondent. Wenda argued the Department has the resources to investigate two respondents and that it had already cooperated with the Department in submitting its questionnaire responses. Additionally, Wenda argued that the Department is risking having no calculated margins by deselecting Wenda, that the Court of International Trade ("CIT") has recently determined that we are not selecting an adequate number of respondents, and that allowing Wenda to participate as a voluntary respondent would not impede the Department's investigation.

On February 16, 2010, the Department received comments from Petitioners rebutting Wenda's February 5, 2010 comments. They stated that we should not reconsider our decision to deselect Wenda because Wenda was not deselected based on the Department's resources, but rather based on Wenda's conduct during the investigation. Furthermore, Petitioners raised further questions about Wenda's Section A reported Q&V, and stated that Wenda withdrew its request to be a voluntary respondent. Petitioners argued that both of these are reason to deny Wenda's request for reconsideration.

The Department continues to find that the determination made in the February 4, 2010, memorandum discontinuing Wenda's status as a mandatory respondent was appropriate. The Department did not deselect Wenda based on resource constraints, but rather because Wenda's Section A Q&V

(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) ("CFS Paper").

information was significantly different from the information provided by Wenda in its Q&V questionnaire response. The Department determined that it would be inappropriate to continue to individually investigate Wenda as a mandatory respondent because the corrected Q&V information indicates that Wenda is actually one of the smallest companies by volume.<sup>23</sup> In other words, the Department selected Wenda as a mandatory respondent on the basis of information later shown to be significantly incorrect. The Department's procedures and timetables rely on the record data provided by interested parties, and when this data is shown to be false, other, larger, potential respondents are effectively prohibited from participation because of statutory deadlines. Thus, it would be inappropriate to review Wenda now that it is clear that the information upon which the Department based its decision to select Wenda as a mandatory respondent was incorrect.

Additionally, the Department notes that Wenda does not have a request for voluntary treatment on the record of the investigation because its original request was withdrawn.<sup>24</sup> Furthermore, voluntary respondents are required to complete responses to the Department's NME questionnaire on the due dates for the original mandatory respondents, but Wenda did not do this.

### Separate Rates

In proceedings involving NME countries, there is a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate.<sup>25</sup> 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.<sup>26</sup>

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.<sup>27</sup> The process requires exporters and producers to submit a separate-rate status application. The Department's practice is discussed further in *Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries*, (April 5, 2005), ("*Policy Bulletin 05.1*"), available at <http://ia.ita.doc.gov/policy/bull05-1.pdf>.<sup>28</sup>

Yunnan Newswift, Tianjin Chengyi, Snow-Apple, and Wenda (hereinafter referred to as "Separate Rate Companies"), have provided company-specific information to demonstrate that they operate independently of *de jure* and *de facto* government control or are wholly foreign owned, and therefore satisfy the standards for the assignment of a separate rate. For each of the Separate Rate Companies we are granting the separate rate only to the name of the company that appears on the English translated copy of the business license in each company's SRA.<sup>29</sup>

We have considered whether each PRC company that submitted a complete application or complete Section A Response as a mandatory respondent, is eligible for a separate rate. The Department's separate rate test is not concerned, in general, with macroeconomic/border-type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping.<sup>30</sup> The test focuses, rather, on controls over the investment, pricing,

and output decision-making process at the individual firm level.<sup>31</sup>

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the merchandise under investigation under a test arising from the *Sparklers*, as further developed in *Silicon Carbide*.<sup>32</sup> In accordance with the separate rate 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.

#### 1. 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.<sup>33</sup>

The evidence provided by the Separate Rate Companies supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the applicable legislative enactments decentralizing control of the companies; and (3) any other formal measures by the government decentralizing control of companies. See, e.g., Yunnan Newswift's December 22, 2009, SRA at 6–8; and Tianjin Chengyi's SRA at 6–9.

#### 2. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to

<sup>27</sup> See *Initiation Notice*, 74 FR 29665.

<sup>28</sup> The *Policy Bulletin 05.1* states: {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation." See *Policy Bulletin 05.1* at 6.

<sup>29</sup> See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47191 (September 15, 2009); and accompanying Issues and Decision Memorandum at Comment 17.

<sup>30</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72256 (December 31, 1998).

<sup>31</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754, 61758 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

<sup>32</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"); see also *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

<sup>33</sup> See *Sparklers*, 56 FR at 20589.

<sup>23</sup> See Wenda Deselection Memo at 2.

<sup>24</sup> See Wenda's Voluntary Request Memo; see also Wenda's Voluntary Withdrawal Memo.

<sup>25</sup> See *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, 55040 (September 24, 2008) ("*PET Film LTFV Final*").

<sup>26</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"); see also *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"), and § 351.107(d) of the Department's regulations.

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.<sup>34</sup> 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 governmental control which would preclude the Department from assigning separate rates.

We determine that, for the Separate Rate Companies, the evidence on the record supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing the following: (1) Each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each exporter has the authority to negotiate and sign contracts and other agreements; and (4) each exporter has autonomy from the government regarding the selection of management. *See, e.g.*, Yunnan Newswift's December 22, 2009, SRA at 9–15; and Tianjin Chengyi's SRA at 9–14.

### 3. Wholly Foreign-Owned

In their separate-rate applications, two separate rate companies, Wenda and Snow-Apple, reported that they were wholly owned by individuals or companies located in a market economy country during the POI.<sup>35</sup> Therefore, because they reported being wholly foreign-owned during the POI, and we have no evidence indicating that they were under the control of the PRC, a separate rate analysis is not necessary to determine whether these companies are independent from government control.<sup>36</sup> Accordingly, we have preliminarily granted a separate rate to these companies.

The evidence placed on the record of this investigation by the Separate Rate Companies, demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. As a result, we have granted the Separate Rate Companies a margin based on the Petition margins.

### Application of Adverse Facts Available, the PRC-Wide Entity and PRC-Wide Rate

The Department has data that indicate there were more exporters of salts from the PRC than those indicated in the response to our request for Q&V information during the POI. *See* Respondent Selection Memorandum. We issued our request for Q&V information to sixty potential Chinese exporters of the merchandise under investigation, in addition to posting the Q&V questionnaire on the Department's Web site. While information on the record of this investigation indicates that there are other exporters/producers of salts in the PRC, we received only eleven 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.

Furthermore, Sichuan Blue Sword, which responded to the Department's Q&V questionnaire and reported shipments during the POI, and was chosen by the Department as a mandatory respondent, did not respond to the Department's full antidumping duty questionnaire. Therefore, the Department has preliminarily determined that there were exporters/producers of the merchandise under investigation during the POI from the PRC that did not respond to the Department's request for information. We have treated these PRC exporters/producers, including Sichuan Blue Sword, as part of the PRC-wide entity because they did not qualify for a separate rate.<sup>37</sup>

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 or the Department's request for more 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.<sup>38</sup>

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.<sup>39</sup> 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. 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 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

<sup>38</sup> *See Notice of 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 *Notice of 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).

<sup>39</sup> *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).

<sup>34</sup> *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).

<sup>35</sup> *See* Wenda's December 22, 2009, SRA at 7; *see also* Snow-Apple's February 24, 2010, SRA at 6.

<sup>36</sup> *See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104–71105 (December 20, 1999) (where the respondent was wholly foreign-owned, and thus, qualified for a separate rate).

<sup>37</sup> *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China*, 70 FR 77121, 77128 (December 29, 2005), unchanged in *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006).

petition, or (b) the highest calculated rate of any respondent in the investigation.<sup>40</sup> As AFA, we have preliminarily assigned to the PRC-wide entity a rate of 95.40 percent, which is the highest margin alleged in the Petition.<sup>41</sup> The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA.

**Application of Adverse Facts Available for SD BNI**

As detailed above in the “Additional Case Background” Section, despite numerous attempts by the Department to provide additional instruction and three additional opportunities for SD BNI to file a Section C response, there is not a Section C response on the record of the investigation. Therefore, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we are applying facts otherwise available to SD BNI because the Department finds that the information necessary to calculate an accurate and otherwise reliable margin is not available on the record with respect to SD BNI. Additionally, the Department finds that SD BNI failed to provide the information requested by the Department in a timely manner and in the form required, and significantly impeded the Department’s ability to calculate an accurate margin for SD BNI. The Department is unable to calculate a margin without a Section C response, requiring the application of facts otherwise available to SD BNI for the purpose of this preliminary determination.

In addition, in accordance with section 776(b) of the Act, the Department is applying an adverse inference in selecting the facts available rate as it has determined that SD BNI did not act to the best of its ability to

cooperate with the Department and significantly impeded this investigation by not submitting a properly filed Section C response after the Department provided three opportunities for SD BNI to do so. Therefore, because SD BNI was selected as a mandatory respondent and failed to submit the information required, SD BNI will not receive a separate rate and will remain part of the PRC-wide entity.

**Corroboration**

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We have interpreted “corroborate” to mean that we will examine the reliability and relevance of the information submitted.<sup>42</sup> Because there are no margins calculated for the mandatory respondents, to corroborate the 95.40 percent margin used as AFA for the China-wide entity, to the extent appropriate information was available, we are affirming our pre-initiation analysis of the adequacy and accuracy of the information in the petition.<sup>43</sup> During our pre-initiation analysis, we examined evidence supporting the calculations in the petition and the supplemental information provided by Petitioner prior to initiation to determine the probative value of the margins alleged in the petition. During our pre-initiation analysis, we examined the information used as the basis of export price and normal value (“NV”) in the petition, and the calculations used to derive the alleged margins. Also during our pre-initiation analysis, we examined information from various independent sources provided either in

the petition or, based on our requests, in supplements to the petition, which corroborated key elements of the export price and NV calculations.<sup>44</sup> We received no comments as to the relevance or probative value of this information. Therefore, the Department finds that the rates derived from the petition and used for purposes of initiation have probative value for the purpose of being selected as the AFA rate assigned to the PRC-wide entity.

**Margin for the Separate Rate Companies**

The Department received timely and complete separate rate applications from the Separate Rate Companies. The evidence placed on the record of this investigation by the Separate Rate Companies demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporter’s exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. As a result, for the purposes of this preliminary determination, we have granted the Separate Rate Companies an anti-dumping duty margin based on an average of the rates submitted in the Petition.<sup>45</sup> This rate is 64.55 percent.

**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. See *Initiation Notice*, 74 FR at 54024. This practice is described in *Policy Bulletin 05.1*, available at <http://ia.ita.doc.gov/>.

**Preliminary Determination**

The preliminary weighted-average dumping margins are as follows:

Exporter	Supplier	Weighted-average margin
Snow-Apple Group Limited .....	Chengdu Long Tai Biotechnology Co., Ltd .....	69.58
Tianjin Chengyi International Trading (Tianjin) Co., Limited .....	Zhenjiang Dantu Guangming Auxiliary Material Factory .....	69.58
Tianjin Chengyi International Trading (Tianjin) Co., Limited .....	Sichuan Shifang Hongsheng Chemicals Co., Ltd .....	69.58
Wenda Co., Ltd. ....	Thermphos (China) Food Additive Co., Ltd .....	69.58
Yunnan Newswift Company Ltd .....	Guangxi Yizhou Yisheng Fine Chemicals Co., Ltd .....	69.58
Yunnan Newswift Company Ltd. ....	Mainzhu Hanwang Mineral Salt Chemical Co., Ltd .....	69.58
Yunnan Newswift Company Ltd. ....	Sichuan Shengfeng Phosphate Chemical Co., Ltd .....	69.58
PRC-Wide ** .....	.....	95.40

\*\* In this case, the PRC-wide rate includes Sichuan Blue Sword Import and Export Co., Ltd. and SD BNI(LYG) Co. Ltd.

<sup>40</sup> See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People’s Republic of China*, 65 FR 34660 (May 21, 2000) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>41</sup> The Department notes that in determining the AFA margin, the Department did not take into account the margins listed in the petition for STPP.  
<sup>42</sup> See, e.g. *Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 5554, 5568 (February 4, 2000).

<sup>43</sup> See Antidumping Investigation Initiation Checklist: Certain Sodium and Potassium Phosphate Salts (“Initiation Checklist”).  
<sup>44</sup> See *id.*  
<sup>45</sup> The Department notes that in calculating the average margin, the Department did not take into account the margins listed in the petition for STPP.

### Disclosure

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

### Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of merchandise subject to this investigation, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. For the exporter/producer combinations listed in the chart above, the following cash deposit requirements will be effective upon publication of the preliminary determination for all shipments of merchandise under consideration entered or withdrawn from warehouse, for consumption on or after publication date: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate we have determined in this preliminary determination; (2) for all PRC exporters of merchandise subject to this investigation that have not received their own rate, the cash-deposit rate will be the PRC-wide rate; (3) for all non-PRC exporters of merchandise subject to this investigation that have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated above. The suspension of liquidation will remain in effect until further notice.

### International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at less than fair value. 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 phosphate salts, or sales (or the likelihood of sales) for importation, of the merchandise under investigation within 45 days of our final determination.

### Public Comment

Case briefs or other written comments on the preliminary determination may be submitted to the Assistant Secretary

for Import Administration no later than 30 days after the date of publication of this preliminary determination. See 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. See 19 CFR 351.309(d). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, and if requested, we will hold a public hearing, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing shortly 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. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

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. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief. This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: March 10, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

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**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-351-825]

### Stainless Steel Bar From Brazil: Preliminary Results of Antidumping Duty Administrative Review

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

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain stainless steel bar from Brazil. The review covers one producer/exporter of the subject merchandise, Villares Metals S.A. (VMSA). The period of review (POR) is February 1, 2008, through January 31, 2009.

The Department has preliminarily determined that VMSA made U.S. sales at prices less than normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results of review. We intend to issue the final results of review no later than 120 days from the publication date of this notice.

**EFFECTIVE DATE:** March 16, 2010.

**FOR FURTHER INFORMATION CONTACT:** Catherine Carstos or Mino Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482-1757 or (202) 482-1690, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On February 21, 1995, the Department published in the **Federal Register** an antidumping duty order on certain stainless steel bar from Brazil. See *Antidumping Duty Orders: Stainless Steel Bar from Brazil, India and Japan*, 60 FR 9661 (February 21, 1995). On February 4, 2009, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 6013 (February 4, 2009).

In accordance with 19 CFR 351.213(b)(2), on March 2, 2009, VMSA requested that the Department conduct an administrative review of its sales and