DEPARTMENT OF COMMERCE

International Trade Administration

(A–602–806)

Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Electrolytic Manganese Dioxide from Australia

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

SUMMARY: We preliminarily determine that imports of electrolytic manganese dioxide from Australia are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). Interested parties are invited to comment on this preliminary determination. We will make our final determination within 75 days after the date of this preliminary determination.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Minoo 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) 482–3477 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 2007, the Department of Commerce (the Department) published in the **Federal Register** the initiation of antidumping duty investigations of electrolytic manganese dioxide from Australia and the People's Republic of China. *See Notice of Initiation of Antidumping Duty Investigations: Electrolytic Manganese Dioxide from Australia and the People's Republic of China*, 72 FR 52850 (September 17, 2007) (*Initiation Notice*). The Department set aside a period for all interested parties to raise issues regarding product coverage. The Department encouraged all interested parties to submit such comments within 20 days from publication of the initiation notice, that is, by October 9, 2007. *See Initiation Notice*, 72 FR at 52851; see also *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (Final Rule).

On October 24, 2007, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of electrolytic manganese dioxide from Australia are materially injuring the U.S. industry and the ITC notified the Department of its findings. See *Electrolytic Manganese Dioxide from Australia and the People's Republic of China, Investigation Nos. 731–TA–1124 1125 (Preliminary)*, 72 FR 60388–60389 (October 24, 2007) (*ITC Preliminary Notice*).

On January 15, 2008, we postponed the deadline for the preliminary determinations under section 733(c)(1)(A) of the Act by 50 days to March 19, 2008. See *Postponement of Preliminary Determinations of Antidumping Duty Investigations: Electrolytic Manganese Dioxide from Australia and the People's Republic of China*, 73 FR 2445 (January 15, 2008).

Period of Investigation

The period of investigation (POI) is July 1, 2006, through June 30, 2007.

Scope of Investigation

The merchandise covered by this investigation includes all manganese dioxide (MnO_2) that has been manufactured in an electrolysis process, whether in powder, chip, or plate form (EMD). Excluded from the scope are natural manganese dioxide (NMD) and chemical manganese dioxide (CMD). The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2820.10.00.00. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

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 in the *Initiation Notice* and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. See *Final Rule*, 62 FR at 27323. We did not receive comments from any interested parties in this investigation.

Respondent Identification

Section 777A(c)(1) of the Act directs the Department to calculate individual weighted–average dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act also gives the Department discretion to examine a reasonable number of such exporters and producers when it is not practicable to examine all exporters and producers. In order to identify the universe of producers/exporters in Australia to investigate for purposes of this less–than-fair–value investigation on EMD, we analyzed information from various sources, including data from U.S. Customs and Border Protection (CBP).

Using information obtained from the petition, an internet search, and CBP statistical information on U.S. imports of EMD during the POI, we identified one respondent, Delta Australia Pty Ltd (Delta). For a detailed analysis of our respondent–identification procedure, see Memorandum to Laurie Parkhill, ''Antidumping Duty Investigation on Electrolytic Manganese Dioxide from Australia Respondent Identification,'' dated October 25, 2007, on file in the Central Records Unit (CRU) in room 1117.

Delta

On October 31, 2007, we issued a questionnaire to Delta and requested that it respond by December 7, 2007. On November 27, 2007, we granted Delta an extension until December 28, 2007, to respond to all sections of the questionnaire. On December 28, 2007, we received Delta's sections A and C responses. We granted Delta an extension until February 8, 2008, to respond to sections B and D of the questionnaire. On January 31, 2008, we received a letter from Delta explaining that, due to the closing of its plant facility in Australia, it did not have resources to provide adequate responses to the questionnaire or to continue active participation in this investigation. Thus, Delta did not submit any further questionnaire responses, including sections B and D due on February 8, 2008, or a response to the Department's supplemental questionnaire (sections A and C) due on February 14, 2008.

Use of Adverse Facts Available

For the reasons discussed below, we determine that the use of adverse facts available (AFA) is appropriate for the preliminary determination with respect to Delta.

A. Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On January 31, 2008, forty–eight days before the Department's preliminary determination, Delta informed the Department that it did not have resources to continue active participation in the instant investigation. See Letter from Delta, ''Notification of Intent Not to Participate Due to Closure of Australian EMD Facility'' (January 31, 2008). Because Delta ceased participation in the instant investigation, Delta did not provide pertinent information necessary to calculate an antidumping margin for the preliminary determination. Specifically, Delta did not respond to sections B and D of the Department's questionnaire and did not respond to the January 30, 2008, supplemental questionnaire concerning its already–filed responses to sections A and C. Thus, by not providing the pertinent information we requested that is necessary to calculate an antidumping margin for the preliminary determination, Delta has failed to cooperate to the best of its ability. Therefore, we find that the application of total facts available for Delta is warranted in this preliminary determination.

B. Application of Adverse Inferences for Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act provides that, if the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, in reaching the applicable determination under this title, the administering authority may use an inference adverse to the interests of that party in selecting from among the facts otherwise available. See, *e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (*CSSSHP Final Determination*) (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' See, *e.g., Statement of Administrative Action* accompanying the Uruguay Round Agreements Act, H. Doc. No. 103–316, at 870 (1994) (*SAA*). Furthermore, ''affirmative evidence of bad faith, or willfulness, on the part of a respondent is not required before the Department may make an adverse inference.'' See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997). Although the Department provided Delta with 58 days to respond to sections A and C of the questionnaire and 93 days to respond to sections B and D of the questionnaire, Delta did not respond adequately to the Department's questionnaire. While Delta has provided a reason for not participating in this investigation, this constitutes a failure on the part of Delta to cooperate to the best of its ability to comply with a request for information by the Department within the meaning of sections 776(b) and 782(d) of the Act. Because Delta did not provide the information requested, section 782(e) of the Act is not applicable. Therefore, the Department preliminarily finds that, in selecting from among the facts otherwise available, an adverse inference is warranted. See, *e.g., CSSSHP Final Determination*, 65 FR at 42986.

C. Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. See also 19 CFR 351.308(c). It is the Department's practice to use the highest calculated rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information and there are no other respondents. See, *e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216, 77218 (December 27, 2004) (unchanged in final determination, 70 FR 28279 (May 17, 2005)). Therefore, because an adverse inference is warranted, we have assigned Delta a rate of 120.59 percent based on the rate alleged in the petition, as recalculated in this preliminary determination and discussed below. See *Antidumping Duty Petitions on Electrolytic Manganese Dioxide from Australia and the People's Republic of China* (August 22, 2007) (*Petition*), September 4, 2007, Supplements to the Petition (addressing the Department's requests for additional information and clarification on certain areas in the *Petition), Initiation Notice*, 72 FR at 52854, and the Preliminary Determination Analysis Memorandum (March 19, 2008).

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably available at its disposal.

The *SAA* clarifies that ''corroborate'' means the Department will satisfy itself that the secondary information to be used has probative value. See *SAA* at 870. To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (unchanged in final results, 62

FR 11825, 11843 (March 13, 1997)). The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. See 19 CFR 351.308(d).

For the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the *Petition* during our pre–initiation analysis and again for purposes of this preliminary determination. See *Antidumping Duty Investigation Initiation Checklist: Electrolytic Manganese Dioxide from Australia* (September 11, 2007) (Australia Initiation Checklist). We examined evidence supporting the calculations in the *Petition* to determine the probative value of the margins alleged in the *Petition* for use as AFA for purposes of this preliminary determination. During our pre–initiation analysis, we examined the key elements of the export–price and normal–value calculations used in the *Petition* to derive margins. During our pre–initiation analysis, we also examined information from various independent sources provided either in the Petition or in the supplements to the *Petition* that corroborates key elements of the export–price and normal–value calculation used in the *Petition* to derive an estimated margin.

U.S. Price

The petitioner calculated a single U.S. price using the POI–average unit customs values (AUVs) for U.S. import data, as reported on the ITC's Dataweb for the POI. The petitioner deducted an amount for foreign inland–freight costs. See *Petition*, at Exhibit 11, Supplemental Responses at Exhibit R, and *Australia Initiation Checklist*, at 5–6. The petitioner provided an affidavit from an individual attesting to the validity of the inland–freight costs it used in the calculation of net U.S. price. See *Petition*, at Exhibit 13. In calculating the export price, the petitioner relied exclusively on AUV data with respect to U.S. imports from Australia under the HTSUS number 2820.10.00.00. This HTSUS number is a ''basket category'' as it includes both subject EMD and non–subject CMD and NMD. The petitioner used PIERS data to demonstrate that the imports under HTSUS number 2820.10.00.00 are, in fact, overwhelmingly subject merchandise because PIERS provides more specific product–identification information than official U.S. Census data as reported on the ITC's Dataweb import statistics. See *Petition*, at Exhibit 10. U.S. official import statistics are sources that we consider reliable and thus require no further corroboration. See, *e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 48538 (August 18, 2005), and Memorandum to the File from Dmitry Vladimirov entitled ''Preliminary Determination in the Antidumping Duty Investigation of Superalloy Degassed Chromium from Japan: Corroboration of Total Adverse Facts Available Rate,'' at 3, August 11, 2005 (*Chromium from Japan*) (unchanged in final determination, 70 FR 65886 (November 1, 2005)). In addition, the petitioner provided information that indicates that there are no producers of CMD or NMD in Australia and that the majority of imports under this HTSUS number are from a company that only produces EMD. Further, we obtained no other information that would make us question the reliability of the pricing information provided in the *Petition*.

Based on our examination of the aforementioned information, we consider the petitioner's calculation of net U.S. prices to be reliable and relevant. Because the rate is both reliable and relevant it is corroborated.

On February 19, 2008, the petitioner provided comments with respect to U.S. price. Specifically, the petitioner requests that the Department adjust the petition rate by using information in Delta's U.S. database to calculate net U.S. price. The petitioner argues that the Department should use Delta's U.S. database to derive U.S. price because it is more accurate than the information contained in the petition. According to the petitioner, using this information will ensure that Delta is not unfairly rewarded for its failure to cooperate in this investigation.

Because we have not had an opportunity to confirm that we would be relying upon accurate information for purposes of calculating a dumping margin as accurately as possible in the instant case, we find information contained in Delta's U.S. database to be unreliable in this investigation. See sections 776(a)(2) and 782(i) of the Act. As such, we have preliminarily determined not to use any data submitted by Delta in this proceeding.

Normal Value

With respect to normal value, the petitioner provided information that there were no sales in commercial quantities of EMD in the home market during the POI and that home–market prices were not reasonably available. The petitioner proposed Japan as the largest third–country comparison market and demonstrated that Japan is a viable third–country market. See *Petition*, at Exhibit 15. The petitioner provided Global Trade Atlas EMD import data for exports from Australia into Japan and compared them with U.S. EMD import data for imports from Australia. According to these figures, the sales volume to Japan was greater than five percent of the sales volume to the United States. The petitioner compared third–country prices with an estimate of the cost of producing EMD in powder form by Delta. Because these data indicated that sales of EMD were made at prices below the product's cost of production (COP), pursuant to sections 773(a)(4), 773(b), and 773(e) of the Act, the petitioner based normal value for sales of EMD in Japan on constructed value.

Pursuant to section 773(b)(3) of the Act, the COP consists of the cost of manufacturing (COM), selling, general, and administrative expenses (SG&A), and packing expenses. To calculate the COM, the petitioner relied on its own costs during the 2006 fiscal year, adjusted for known differences between the costs in the United States and the costs in Australia. The petitioner obtained all of the cost differences between the United States and Australia that were used to calculate the COM from public sources. The petitioner used its own factory–overhead costs (FOH) as a conservative estimate of the Australian FOH. This is because the petitioner's facilities are older than Delta's and would thus likely have lower depreciation because more of the assets making up the petitioner's facilities would likely have reached the end of their service lives and, thus, have no book value. Because Delta's unconsolidated financial statements were not reasonably available, the petitioner used the financial statements of an Australian zinc producer because, it asserted, zinc undergoes a production process similar to EMD. For purposes of the *Initiation Notice*, we adjusted the petitioner's calculation of SG&A and profit ratios by using information from Delta PLC's consolidated financial statement pertinent to the Australian EMD segment of its business. We used Delta PLC's financial records because these records included Delta's actual costs of producing the merchandise under consideration. See *Australia Initiation Checklist* for a full description of the petitioner's methodology and the adjustments we made to those calculations for the initiation decision.

In the *Australia Initiation Checklist*, we stated that the petitioner provided information demonstrating reasonable grounds to believe or suspect that sales of EMD were made at prices below the fully absorbed COP within the meaning of section 773(b) of the Act. See *Australia Initiation Checklist*, at 7. Consequently, we found reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, we initiated a country–wide, sales–below-cost investigation.

With regard to profit, we stated in our *Australia Initiation Checklist* that we did not include an amount for profit in our calculation of constructed value because the manganese segment of Delta PLC had a net loss for the year ending 2006. See *Australia Initiation Checklist*, at 9. We also stated that we would examine different options for calculating a profit later in this proceeding if it becomes necessary to calculate a constructed value from the *Petition* information. *Id*. at 9.

Section 773(e)(2)(B)(iii) of the Act requires the Department to use the amounts incurred and realized for SG&A and for profits based on any other reasonable method if actual data are not available with respect to SG&A and profit. In accordance with our practice, to determine an appropriate profit rate we have considered several factors in the instant case: 1) the similarity of the potential surrogate company's business operations and products to Delta's; 2) the contemporaneity of the surrogate data to the POI. See *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel*, 66 FR 49349 (September 27, 2001), and the accompanying *Decision Memorandum* at Comment 8. The greater the similarity in business operations and products, the more likely that there is a greater correlation in the profit experience of the two companies. Contemporaneity is important because markets change over time and the more current the data the more reflective it would be of the market in which the respondent is operating. *Id*.

In its February 19, 2008, comments the petitioner requested that the Department adjust the petition rate by adding an amount for profit to the calculation of constructed value. The petitioner asserts that, in situations such as those found in this case, the Department's general practice is to assign to the non–cooperating respondent the highest margin alleged in the petition, as an adverse inference, in accordance with section 776(b) of the Act. The petitioner argues that, although the petition rate was based on constructed value, in its notice of initiation of the investigation the Department did not apply an amount for profit in its constructed–value recalculation and indicated explicitly that it would correct this deficiency if it became necessary to apply adverse inferences using the petition rate. The petitioner asserts that, because Delta is the only EMD producer in Australia and because Delta PLC's 2007 interim report indicates that its EMD division is still generating an operating loss, the Department has essentially two options for identifying a usable profit rate for recalculating constructed value. Specifically, the petitioner argues, the Department can either use the profit rate of Zinifex Limited, an Australian producer of merchandise comparable to EMD, or use the profit rate of a non–Australian EMD producer. The petitioner contends that, if the Department decides to use the profit rate of an Australian producer of comparable merchandise, it recommends that the Department use the profit rate contained in the 2007 Annual Report of Zinifex Limited. See Petitioner's Submission, ''Electrolytic Manganese Dioxide from Australia; Application of Facts Available for Preliminary Determination'' at 5 (February 19, 2008). Citing *Certain Steel Nails from the United Arab Emirates: Initiation of Antidumping Duty Investigation*, 72 FR 38816, 38820 (July 16, 2007), the petitioner argues that the Department has an established practice of accepting surrogate financial ratios of comparable companies in the same country for purposes of initiation.

The petitioner asserts that, if the Department decides to apply the surrogate profit rate of an EMD producer, then the Department must look to contemporaneous information for a company located outside Australia. The petitioner claims that it is aware of only one EMD producer in India that had a positive profit during the relevant period.

Based on the information on the record, we have preliminarily determined to use Zinifex Limited as a surrogate company from which to select a reasonable profit rate for use in the calculation of constructed value. For purposes of contemporaneity, we derived the surrogate profit rate from Zinifex Limited's 2006 financial statement. Using this statement as a source for a profit rate ensures that the data is contemporaneous with the data used in the *Petition*, which was based solely on 2006 cost experience. Our decision to use Zinifex Limited was based on the fact that it is an Australian zinc producer with similar production processes to that of EMD production, which involves electrolysis. Specifically, both production processes use the electrolytic process to produce zinc. See *Petition* at page 21 and Exhibit 8. Using Zinifex Limited's financial statements yields a profit rate of 44.27 percent. See Preliminary Determination Analysis Memorandum (March 19, 2008).

Because the petitioner had demonstrated, and we confirmed, the validity of the input–usage quantities it used in its COP/constructed value build–up, used public sources of information, such as official import statistics that we confirmed were accurate to value inputs of production, and used Delta PLC's (Delta's consolidated parent company) audited financial statements, which are publicly available, to compute Delta's finance expense that we confirmed were accurate, we consider the petitioner's calculation of normal value, based on constructed value, to be reliable. With regard to SG&A, as stated above, we recalculated the petitioner's calculation using Delta PLC's audited financial statements. In addition, with regard to profit, we calculated a profit rate using Zinifex Limited's audited financial statements, which are publicly available. Zinifex Limited is an Australian producer of comparable merchandise and thus its business operations and products are similar to that of the respondent's in the instant case. Further, we consider the petitioner's calculation of normal value corroborated because the bulk of the calculations relied on publicly available information or import statistics that do not require further corroboration. Therefore, because we confirmed the accuracy and validity of the information underlying the derivation of the margin we have calculated in this preliminary determination by examining source documents as well as publicly available information, we preliminarily determine that the margin based on the rate alleged in the *Petition*, as recalculated in this preliminary determination, is reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR

6812, 6814 (February 22, 1996), the Department disregarded the highest margin as ''best information available'' (the predecessor to ''facts available'') because the margin was based on another company's uncharacteristic business expense that resulted in an unusually high dumping margin.

In Am. *Silicon Techs. v. United States*, 273 F. Supp. 2d 1342, 1346 (CIT 2003), the court found that the AFA rate bore a ''rational relationship'' to the respondent's ''commercial practices,'' and was, therefore, relevant. In the pre–initiation stage of this investigation, we confirmed that the calculation of the margin in the *Petition* reflects commercial practices of the particular industry during the POI. Further, no information has been presented in the investigation that calls into question the relevance of this information.

As such, we preliminarily determine that the margin based on the rate alleged in the *Petition*, as recalculated in this preliminary determination, is relevant as the AFA rate for Delta in this investigation.

Similar to our position in *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405, 53407 (September 11, 2006) (unchanged in final results, 72 FR 1982 (January 17, 2007)), because this is the first proceeding involving Delta, there are no probative alternatives. Accordingly, by using information that was corroborated in the pre–initiation stage of this investigation and preliminarily determined to be relevant to Delta in this investigation, we have corroborated the AFA rate ''to the extent practicable.'' See section 776(c) of the Act, 19 CFR 351.308(d), and *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating that ''pursuant to the to the extent practicable' language...the corroboration requirement itself is not mandatory when not feasible''). Therefore, we find that the estimated margin of 120.59 percent we have calculated in this preliminary determination has probative value. Consequently, in selecting AFA with respect to Delta, we have applied the margin rate of 120.59 percent, the highest estimated dumping margin set forth in this investigation. See Preliminary Determination Analysis Memorandum (March 19, 2008).

Delta filed comments on the application of AFA and selection of a profit rate on March 11, 2008. We considered those comments for purposes of this preliminary determination. We will address comments parties raise in their case briefs in our final determination.

Targeted Dumping

On January 17, 2008, Tronox LCC (the petitioner) filed a targeted–dumping allegation concerning Delta under section 777A(d)(I)(B) of the Act. Because Delta decided not to participate in this investigation for the reasons stated above and, therefore, we have applied AFA to its exports, we find the issue of targeted dumping to be moot and have not addressed it in this preliminary determination.

All–Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted–average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all–others rate for exporters and producers not individually investigated. This provision contemplates that, if the data do not permit weight–averaging margins other than the zero, *de minimis*, or total facts–available margins, the Department may use any other reasonable methods. See also *SAA*, at 873. Because the petition contained only one estimated dumping margin and because there are no other respondents in this investigation, there are no additional estimated margins available with which to create the all–others rate. Therefore, we are using the preliminary determination margin of 120.59 percent as the all–others rate. In addition, because Delta provided incomplete information on the record that we were unable to verify, we were unable to calculate a margin for the all–others rate.

Critical Circumstances

A. Delta

On February 19, 2008, the petitioner requested that the Department make a finding that critical circumstances exist with respect to imports of EMD from Australia. The petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise. The petitioner based its allegation on evidence of massive imports of subject merchandise for the post–petition period of September through December 2007.

Because this allegation was filed earlier than the deadline for the preliminary determination, we must issue our preliminary critical–circumstances determination not later than the preliminary determination. See 19 CFR 351.206(c)(2).

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that:

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

In determining whether the relevant statutory criteria have been satisfied, the Department considered the evidence presented in the petitioner's February 19, 2008, submission and the *ITC Preliminary Notice*.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. See, *e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India*, 71 FR 19706 (April 17, 2006) (unchanged in final determination, 71 FR 45012 (August 8, 2006)). The petitioner has made no statement concerning a history of dumping of EMD from Australia. Moreover, we are not aware of any antidumping duty order on EMD from Australia in any other country. Therefore, the Department finds no history of injurious dumping of EMD from Australia pursuant to section 733(e)(1)(A)(i) of the Act.

To determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value, in accordance with section 733(e)(1)(A)(ii) of the Act, the Department normally considers margins of 25 percent or more for export–price sales or 15 percent or more for constructed export–price (CEP) transactions sufficient to impute knowledge of dumping. See, *e.g., Final Determination of Sales at Less Than*

Fair Value: Certain Cut–to-Length Carbon Steel Plate from the People's Republic of China, 62 FR 61964, 61966 (November 20, 1997)). For the reasons explained above, we have assigned a margin of 120.59 percent to Delta. Based on this margin, we have imputed importer knowledge of dumping for imports from Delta.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, consistent with section 733(e)(1)(A)(ii) of the Act, normally the Department will look to the preliminary injury determination of the ITC. See, *e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Japan*, 64 FR 30574, 30578 (June 8, 1999) (*Stainless Steel from Japan*). The ITC preliminarily found a reasonable indication of material injury to the domestic industry due to imports of EMD from Australia which are alleged to be sold in the United States at less than fair value and, on this basis, the Department may impute knowledge of likelihood of injury to this respondent. See *ITC Preliminary Notice*, 72 FR at 60388. Thus, we determine that the knowledge criterion for ascertaining whether critical circumstances exist has been satisfied.

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

Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine the volume and value of the imports, seasonal trends, and the share of domestic consumption for which the imports accounted. In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of 15 percent during the ''relatively short period'' of time may be considered ''massive.''

Section 351.206(i) of the Department's regulations defines ''relatively short period'' as normally being the period beginning on the date the proceeding begins (*i.e.*, the date on which the petition is filed) and ending at least three months later. The Department's regulations also provide that, if the Department finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

Because we do not have verifiable data from Delta, we must base our ''massive imports'' determination on the facts available, pursuant to section 776(a) of the Act.[1] Because Delta failed to cooperate by not acting to the best of its ability to respond fully to our questionnaires, we may make an adverse inference in selecting the facts available, pursuant to section 776(b) of the Act.

The Department's long–standing practice is to rely on respondent–specific shipment data to determine whether imports were massive in the context of critical–circumstance determinations. Where such information does not exist because of the respondent's failure to cooperate to the best of its ability in the course of the investigation, the Department normally makes an adverse inference that imports were massive during the relevant time period. We do not normally rely on publicly available import data as facts available in such circumstances because such data are imprecise and often reflect the activity of multiple exporters and products, *i.e.*, subject merchandise may have entered the United States during the relevant period under a broad HTSUS category. In this case, however, we are presented with unique circumstances such that Delta is the only known exporter of EMD from Australia and public information indicates that imports under the respective HTSUS category are of subject merchandise. Moreover, the data demonstrate that imports of merchandise produced and exported by Delta were massive over a relatively short period. Thus, under these unique circumstances, the Department believes it appropriate to rely on import data, as facts available with an adverse inference, in determining whether the massive–imports requirement for the critical–circumstances determination has been met with respect to Delta.

Based on our determination that there is a reasonable basis to believe or suspect that the importer knew or should have known that Delta was selling EMD from Australia at less than fair value, that there was likely to be material injury by reason of such dumped imports, and that there have been massive imports of EMD from Delta over a relatively short period, we preliminarily determine that critical circumstances exist for imports from Australia of EMD produced by Delta.

Delta filed comments on critical circumstances on March 10, 2008. We considered those comments for purposes of this preliminary determination. We will address any comments parties raise in their case briefs in our final determination.

B. All Others

It is the Department's normal practice to conduct its critical–circumstances analysis of companies in the all–others group based on the experience of investigated companies. See, *e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737, 9741 (March 4, 1997), where the Department found that critical circumstances existed for the majority of the companies investigated and concluded that critical circumstances also existed for companies covered by the all–others rate. As we determined in *Notice of Final Determination of Sales at Less Than Fair Value: Hot–Rolled Flat–Rolled Carbon–Quality Steel Products from Japan*, 64 FR 24329, 24338 (May 6, 1999), applying that approach literally could produce anomalous results in certain cases. Thus, in deciding whether critical circumstances apply to companies covered by the all–others rate, the Department also considers the traditional critical–circumstances criteria.

First, in determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling EMD at less than fair value, we look to the all–others rate. See *TTR from Japan*, 68 FR at 71077. The dumping margin for the all–others category, 120.59 percent, is greater than the 25–percent threshold necessary to impute knowledge of dumping consistent with section 733(e)(1)(A)(ii) of the Act. Second, based on the ITC's preliminary determination that there is a reasonable indication of material injury, we also find that importers knew or should have known that there would be material

[1] Because Delta did not respond fully to our questionnaires, we consider Delta a non-cooperating respondent and, accordingly, we did not request monthly shipment data from Delta, consistent with our practice. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons from Japan*, 68 FR at 71078 (December 22, 2003) (TTR from Japan) (unchanged in final determination, 69 FR 11834 (March 12, 2004)).

injury from the dumped merchandise, consistent with 19 CFR 351.206. See *ITC Preliminary Notice*, 72 FR at 60388.

Finally, with respect to massive imports, we are unable to base our determination on our findings for Delta because our determination for Delta was based on AFA. We have not inferred, as AFA, that massive imports exist for companies under the all–others category, because, unlike the uncooperative company in question, the all–others companies have not failed to cooperate in this investigation. Therefore, an adverse inference with respect to finding a massive surge in imports by the all–others companies is not appropriate. In addition, the record indicates that the only producer of EMD from Australia is Delta. See ''Antidumping Duty Investigation on Electrolytic Manganese Dioxide from Australia Respondent Identification,'' October 25, 2007. Thus, we determine that there were no massive imports from companies in the all–others category.

Consequently, the criteria necessary for determining affirmative critical circumstances with respect to the all–others category have not been met. Therefore, we have preliminarily determined that critical circumstances do not exist for imports of EMD from Australia for companies in the all–others category, as there were no shipments of the foreign like product from any other companies during the relevant period.

Preliminary Determination

We preliminarily determine that the following dumping margins exist for the period July 1, 2006, through June 30, 2007:

Manufacturer or Exporter	Margin (percent)
Delta	120.59
All Others	120.59

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of EMD from Australia that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Additionally, for Delta we will instruct CBP to suspend liquidation of entries made on or after 90 days prior to the publication of this notice in accordance with section 733(e)(2) of the Act. We will instruct CBP to require a cash deposit or the posting of a bond equal to the margins, as indicated in the chart above, as follows: (1) the rate for Delta will be 120.59 percent; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 120.59 percent. 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 determination of sales at less than fair value. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threatening material injury to, the U.S. industry. The deadline for the Commission's determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination, pursuant to section 735(b)(2) of the Act.

Public Comment

Case briefs for this investigation must be submitted no later than 50 days after the publication of this notice, pursuant to 19 CFR 351.309(c)(1)(i). Rebuttal briefs must be filed within five days after the deadline for submission of case briefs, consistent with 19 CFR 351.309(d)(1). 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.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in an investigation, the hearing normally will be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. See 19 CFR 351.310(d)(1). Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. See 19 CFR 351.310(c). Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will not be conducting a verification of Delta's responses because it has failed to file responses to all of our questionnaires, as discussed above in the Use of Adverse Facts Available section of this notice. Therefore, the deadline for submission of factual information in 19 CFR 351.301(b)(1) is not applicable. Thus, the deadline for submission of factual information in this investigation will be seven days after the date of publication of this notice.

We will make our final determination within 75 days after the date of this preliminary determination, pursuant to section 735(a)(1) of the Act.

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

Dated: March 19, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–6167 Filed 3–25–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

A–570–919

Electrolytic Manganese Dioxide from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

EFFECTIVE DATE: March 26, 2008.

SUMMARY: We preliminarily determine that electrolytic manganese dioxide (''EMD'') 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 a request from an interested party, we are postponing the final determination and extending the provisional measures from a four–month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan or Robert Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue, NW, Washington, DC, 20230; telephone: (202) 482–0414 or 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On August 22, 2007, Tronox LLC (''Tronox'' or ''Petitioner''), filed a petition in proper form on behalf of the domestic industry, concerning imports of EMD from the PRC (''Petition''). The Department of Commerce (''the Department'') initiated this investigation on September 11, 2007.[1] In the *Notice of Initiation*, the Department applied a 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] However, the standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* government control over its export activities) has not changed. The SRA for this investigation was posted on the Department's website *http://ia.ita.doc.gov/ia–highlights-and–news.html* on September 19, 2007. The due date for filing an SRA was November 9, 2007. No party filed an SRA in this investigation.

On September 25, 2007, we sent a letter to interested parties requesting comments regarding the physical characteristics to be used in our Questionnaire. On October 9, 2007, Petitioner submitted comments. No other party submitted comments.

On October 18, 2007, the United States International Trade Commission (''ITC'') issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of EMD from the PRC.[3]

On October 16, 2007, the Department issued its respondent selection memorandum, selecting Guizhou Redstar Developing Import and Export Company, Ltd. (''Redstar'') and Xiangtan Electrochemical Scientific Ltd. (''Xiangtan'') as mandatory respondents in this investigation.[4] On November 6, 2007, the Department issued an antidumping duty questionnaire to the two above–named mandatory respondents. On November 27, 2007, Xiangtan submitted a letter to the Department stating that it would not participate in the investigation.

On November 28, 2007, the Department requested that the Office of Policy provide a list of surrogate countries for this investigation.[5] On December 5, 2007, Redstar submitted its Section A response. On December 20, 2007, the Office of Policy issued its list of surrogate countries.[6] On December 28, 2007, Redstar submitted its Sections C and D responses. On January 15, 2008, subsequent to a request from Petitioner submitted on December 31, 2007, the Department extended the time period for issuing the preliminary determination by 50 days.[7] On January 23, 2008, the Department released a letter to interested parties requesting comments on the appropriate surrogate country to use in this investigation and for publicly available information to value factors of production (''FOP''). On February 6, 2008, Petitioner submitted comments on surrogate country selection. On February 20, 2008, both Petitioner and Redstar submitted publicly available information to value FOPs.

Period of Investigation

The period of investigation (''POI'') is January 1, 2007, through June 30, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was September 2007.[8]

Scope of Investigation

The merchandise covered by this investigation includes all manganese dioxide (MnO_2) that has been manufactured in an electrolysis process, whether in powder, chip, or plate form. Excluded from the scope are natural manganese dioxide (NMD) and chemical manganese dioxide (CMD). The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheading 2820.10.00.00. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations,[9] in our initiation notice, 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. No party submitted comments on the scope of this investigation.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual weighted–average dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the Department at the time of selection or (2) exporters/producers accounting for the largest volume of the merchandise under investigation that can reasonably be examined. After consideration of the complexities expected to arise in this proceeding and the resources available to it, the Department determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. We determined we had the resources to examine two exporters. We further determined to limit our examination to the two exporters accounting for the largest volume of the subject merchandise pursuant to section 777A(c)(2)(B) of the Act. Our analysis indicates that Redstar and Xiangtan are the two largest PRC exporters of subject

[1] *See Notice of Initiation of Antidumping Duty Investigations: Electrolytic Manganese Dioxide from Australia and the People's Republic of China*, 72 FR 52850 (September 17, 2007) (''*Notice of Initiation*'').

[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. 731-TA-1124 and1125 (Preliminary): Electrolytic Manganese Dioxide from Australia and China*, 72 FR 60388 (October 24, 2007).

[4] *See* Memorandum to Wendy Frankel, ''Respondent Selection Memorandum: Antidumping Duty Investigation of Electrolytic Manganese Dioxide from the People's Republic of China'' (October 16, 2007) (''Respondent Selection Memorandum''). *See also* ''Selection of Respondents'' section below.

[5] *See* Memorandum to Ron Lorentzen, Director, Office of Policy, ''Less-Than-Fair-Value Investigation of Electrlytic Manganese Dioxide from the People's Republic of China ('PRC'), Surrogate Country Selection List'' (November 28, 2007).

[6] *See* Memorandum from Ron Lorentzen, Director, Office of Policy, ''Antidumping Duty Investigation of Electrolytic Manganese Dioxide from the People's Republic of China ('PRC'): Request for a List of Surrogate Countries'' (December 20, 2007) (''Surrogate Countries Memorandum'').

[7] *See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Electrolytic Manganese Dioxide from Australia and the People's Republic of China*, 73 FR 2445(January 15, 2008).

[8] *See* 19 CFR 351.204(b)(1).

[9] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

merchandise by weight, and account for a significant percentage of all exports of the subject merchandise from the PRC during the POI. As a result, we selected these entities as the mandatory respondents in this investigation.[10]

Non–Market Economy Country

For purposes of initiation, Petitioner submitted an LTFV analysis for the PRC as an NME.[11] The Department considers the PRC an NME.[12] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the administering authority.[13] 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.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value (''NV'') on the NME producer's FOPs. The Act further instructs the Department to value FOPs based on the best available information in a surrogate market economy country or countries considered to be appropriate by the Department.[14] When valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[15] Further, the Department normally values all FOPs in a single surrogate country.[16] The sources of the surrogate values (''SV'') are discussed under the ''Normal Value'' section below and in the Memorandum to the File, Surrogate Value Memorandum, dated March 19, 2008, which is on file in the Central Records Unit, Room 1117 of the main Department building.

The Department determined that India, Indonesia, the Philippines, Colombia and Thailand are countries comparable to the PRC in terms of economic development.[17] Once the economically comparable countries have been identified, we select an appropriate surrogate country by determining whether one of these countries is a significant producer of comparable merchandise and whether the data for valuing FOPs is both available and reliable.

We have determined it appropriate to use India as a surrogate country pursuant to section 773(c)(4) of the Act based on the following: (A) India is at a level of economic development comparable to that of the PRC, and (B) India is a significant producer of comparable merchandise. Furthermore, we have reliable data from India that we can use to value the FOPs.[18] Thus, we have calculated NV using Indian prices when available and appropriate to value Redstar's FOPs. We have obtained and relied upon publicly available information wherever possible.[19]

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit within 40 days after the date of publication of the preliminary determination publicly available information to value the FOPs.[20]

Separate Rates

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* government control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *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 the *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*'').[21] However, if the Department determines that a company is wholly foreign–owned or located in a market economy, then a separate–rate analysis is not necessary to determine whether it is independent from government control. No companies in this investigation reported that they are wholly owned by individuals or companies located in a market–economy country and no companies reported that they are located outside the PRC.

The sole participating company in this investigation, Redstar, stated that it is a wholly PRC–owned company. Therefore, the Department must analyze whether Redstar can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[22]

[10] *See* Respondent Selection Memorandum.

[11] *See Notice of Initiation*, 72 FR at 52853.

[12] *See, e.g., 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 (June 4, 2007), unchanged in the *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).

[13] *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006) (''*Artist Canvas*'').

[14] *See* Section 773(c)(1) of the Act.

[15] *See* Section 773(c)(4) of the Act.

[16] *See* 19 CFR 351.408(c)(2).

[17] *See* Surrogate Countries Memorandum.

[18] *Id.* at 2.

[19] *See* Memorandum to Wendy J. Frankel, ''Electrolytic Manganese Dioxide from the People's Republic of China: Surrogate Value Memorandum'' (March 19, 2008) (''Surrogate Value Memorandum'').

[20] 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 SV 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.

[21] *See also Policy Bulletin 05.1* at 6, which 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.''

[22] *See* Sparklers, 56 FR at 20589.

The evidence provided by Redstar supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies.[23]

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.[24] 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. We determine for Redstar that the evidence on the record supports a preliminary finding of *de facto* absence of government control based on record statements and supporting documentation showing the following: (1) Redstar sets its own export prices independent of the government and without the approval of a government authority; (2) Redstar retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) Redstar has the authority to negotiate and sign contracts and other agreements; and (4) Redstar has autonomy from the government regarding the selection of management.[25]

The evidence placed on the record of this investigation by Redstar demonstrates an absence of *de jure* and *de facto* government control with respect to each its exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*.

Application of Facts Available

Section 776(a)(1) and (2) of the Act provides that the Department shall apply ''facts otherwise available'' if, *inter alia*, necessary information is not on the record or an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.[26]

Application of Total Adverse Facts Available

The PRC–Wide Entity

On October 16, 2007, we selected Xiangtan as one of the mandatory respondents. On November 6, 2007, we issued our questionnaire to Xiangtan. On November 27, 2007, Xiangtan 1) stated it will not participate in this investigation through the submission of questionnaire responses, 2) stated that it had shredded and/or erased all submissions containing business proprietary information, and 3) requested to be removed from the APO service list. Thus, there is no information on the record of this investigation with respect to Xiangtan. Because Xiangtan was selected as a mandatory respondent and failed to demonstrate its eligibility for separate–rate status, it remains subject to this investigation as part of the PRC–wide entity.

Pursuant to section 776(a) of the Act, we further find that because the PRC–wide entity (including Xiangtan) failed to respond to the Department's questionnaires, withheld or failed to provide information in a timely manner or in the form or manner requested by the Department, and otherwise impeded the proceeding, it is appropriate to apply a dumping margin for the PRC–wide entity using the facts otherwise available on the record. Additionally, because this party failed to cooperate by refusing to respond to our requests for information, we find an adverse inference is appropriate pursuant to section 776(b) of the Act for the PRC–wide entity.

Selection of the Adverse Facts Available Rate

In sum, because the PRC–wide entity failed to respond to our request 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 pursuant to section 776(b) of the Act for the PRC–wide entity.

Further, section 776(b) of the Act authorizes the Department to use as adverse facts available (''AFA'') 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 ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate

[23] *See* Redstar's Section A Questionnaire Response, dated December 5, 2007.

[24] *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).

[25] *See* Redstar's Section A Questionnaire Response, dated December 5, 2007.

[26] *See* 19 CFR 351.308(c).

information in a timely manner.''[27] Moreover, the Department will select a rate that ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.''[28]

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.[29] In the instant investigation, as AFA, we have assigned to the PRC–wide entity a margin of 236.81 percent, the highest calculated rate on the record of this proceeding, which is the calculated rate assigned to Redstar. The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA.

Consequently, we are applying a single antidumping rate – the PRC–wide rate – to all exporters which did not demonstrate entitlement to a separate rate, *i.e.*, all exporters other than Redstar. The Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final PRC–wide margin.[30]

Fair Value Comparisons

To determine whether sales of EMD to the United States by Redstar were made at LTFV, we compared Export Price (''EP'') to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EP for Red Star because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation and because constructed export price was not otherwise warranted.

We calculated EP based on the packed cost and freight or delivered prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (foreign inland freight from the plant to the warehouse, domestic brokerage, and international freight) and a discount in accordance with section 772(c)(2)(A) of the Act.[31]

Normal Value

We compared NV to weighted–average EPs in accordance with section 777A(d)(1) of the Act. Further, section 773(c)(1) of the Act provides that the Department shall determine the NV using a FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under its normal methodologies. The Department's questionnaire requires that the respondent provide information regarding the weighted–average FOPs across all of the company's plants that produce the subject merchandise, not just the FOPs from a single plant. This methodology ensures that the Department's calculations are as accurate as possible.[32] The Department calculated the FOPs using the weighted–average factor values for all of the facilities involved in producing the subject merchandise for the exporter. The Department calculated NV for each matching control number (''CONNUM'') based on the FOPs reported from the exporter's supplier.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by the respondent for the POI. To calculate NV, we multiplied the reported per–unit factor–consumption rates by publicly available Indian SVs. In selecting the SVs, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production, where appropriate. This adjustment is in accordance with the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997). A detailed description of all SVs used can be found in the Surrogate Value Memorandum and Redstar's Preliminary Analysis Memorandum.

For this preliminary determination, in accordance with the Department's practice, we used import values from the World Trade Atlas® online (''Indian Import Statistics''), which were published by the Directorate General of Commercial Intelligence and Statistics, Ministry of Commerce of India, which were reported in rupees and are contemporaneous with the POI to calculate SVs for the mandatory respondent's material inputs. Where we found Indian Import Statistics to be unavailable or unreliable, we used information from *Chemical Weekly*, an Indian trade publication. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, SVs which are non–export average values, most contemporaneous with the POI, product–specific, and tax–exclusive.[33]

Redstar reported that its supplier of EMD owns its own manganese carbonite mine, and therefore we should value manganese carbonite using the FOPs consumed to mine the ore. Our analysis of the relationship between Redstar's producer and the mine, however,

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[27] *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).

[28] *See Statement of Administrative Action* at 870. *See also, Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005).

[29] *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 34660 (May 21, 2000), and accompanying Issues and Decision Memorandum at ''Facts Available.''

[30] *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 67 FR 79049, 79054 (December 27, 2002).

[31] For a detailed description of all adjustments, *see* Memorandum to the File, ''Electrolytic Manganese Dioxide from the People's Republic of China: Analysis Memorandum for the Preliminary Determination: Guizhou Redstar Developing Import and Export Company Ltd. (March 19, 2008) (''Redstar's Preliminary Analysis Memorandum'').

[32] *See, e.g., Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 68 FR 61395 (October 28, 2003), and accompanying Issues and Decision Memorandum at Comment 19.

[33] *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 the final determination (*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)).

indicates that the producer's and the mine's production are not vertically integrated. Therefore, we are valuing manganese carbonite using SV methodology.[34]

In those instances where we could not obtain publicly available information contemporaneous with the POI with which to value FOPs, we adjusted the SVs using, where appropriate, the Indian Wholesale Price Index, as published in the *International Financial Statistics* of the International Monetary Fund.

Furthermore, with regard to the Indian import–based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non–industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[35] We are also guided by the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized.[36] The Department bases its decision on information that is available to it at the time it makes its determination. Therefore, we have not used prices from these countries in calculating the Indian import–based SVs. In addition, we excluded Indian import data from NME countries from our SV calculations.[37]

We used Indian transport information to value the inland freight cost of the raw materials. The Department determined the best available information for valuing truck freight to be from *www.infreight.com*. This source provides daily rates from six major points of origin to five destinations in India. The Department obtained a price quote on the first day of each month from June 2005 to May 2006 from each point of origin to each destination and averaged the data accordingly. We adjusted these rates for inflation. We determined the best available information for valuing rail freight to be from *www.indianrailways.gov.in*. Consistent with the Department's practice, we used two sources to calculate an SV for domestic brokerage expenses.[38] These data were averaged with the February 2004–January 2005 data contained in the May 24, 2005, public version of Agro Dutch Industries Limited's (''Agro Dutch'') response submitted in the administrative review of the antidumping duty order on certain preserved mushrooms from India.[39] The brokerage expense data reported by Essar Steel and Agro Dutch in their public versions are ranged data. The Department first derived an average per–unit amount from each source, then adjusted each average rate for inflation. Finally, the Department averaged the two per–unit amounts to derive an overall average rate for the POI.

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 January 2007, available at *http://ia.ita.doc.gov/wages/index.html*. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent.[40] If the NME wage rates are updated by the Department prior to issuance of the final determination, we will use the updated wage rate in the final LTFV determination.

To value electricity, we used data from the International Energy Agency *Key World Energy Statistics* (2003 edition). Because the value was not contemporaneous with the POI, we adjusted the rate for inflation.

The Department valued water using data from the Maharashtra Industrial Development Corporation (*www.midcindia.org*) because it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003: 193 for the ''inside industrial areas'' usage category and 193 for the ''outside industrial areas'' usage category. Because the value was not contemporaneous with the POI, we adjusted the rate for inflation.

To value factory overhead, selling, general, and administrative expenses, and profit, we used audited financial statements of Eveready Industries India Limited (''Eveready India''), producers of the subject merchandise from India, for fiscal year 2006 - 2007.[41] For purposes of initiation, we used the audited financial statements of Manganese Ore (India) Ltd. (''MOIL''), a producer of the merchandise under consideration that has a fully integrated mining operation. We stated at the initiation of this investigation that we would not use the financial statements of Eveready India because its financial statements reflect a zero profit and it is the Department's practice to disregard financial statements that do not demonstrate a profit, where other surrogate financial data exist on the record.[42] In the instant investigation, however, we find that because the respondent is a producer of EMD, and does not maintain a mining facility, it is inappropriate to use the financial statements of MOIL to calculate the surrogate financial ratios. Analysis of MOIL's financial statements indicates that, due to its integrated mining operations, MOIL's overall production is very capital intensive, requiring extensive overhead not experienced by enterprises that do not maintain their own mining facility, such as Redstar. Notwithstanding Redstar's claim to have an integrated mining operation, our analysis of Redstar's questionnaire responses, including its financial statements, indicates that Redstar's

[34] *See* Surrogate Value Memorandum.

[35] *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.

[36] *See Omnibus Trade and Competitiveness Act of 1988, Conference Report to Accompanying H.R. 3, H.R. Rep.* 100-576 at 590 (1988).

[37] For a detailed description of all SVs used for each respondent, *see* Surrogate Value Memorandum.

[38] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19704 (April 17, 2006) (utilizing these same two sources), unchanged in the final determination (*Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079 (September 8, 2006)). The Department averaged December 2003-November 2004 data contained in the February 28, 2005, public version of Essar Steel's response submitted in the antidumping duty administrative review of hot-rolled carbon steel flat products from India. *See also Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018 (January 12, 2006) , unchanged in the final results (*Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 40694 (July 18, 2006)).

[39] *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005). *See also* Surrogate Value Memorandum.

[40] *See* Surrogate Value Memorandum.

[41] *See* Surrogate Value Memorandum.

[42] *See Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 71355 (December 17, 2007), and accompanying Issues and Decision Memorandum at Comment 1; *see also Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Administrative Review and First New Shipper Review*, 72 FR 52052 (Sept. 12, 2007), and accompanying Issues and Decision Memorandum at Comment 2), and *Notice of Initiation*.

operations do not involve the equipment or facilities required for mining and consequently do not reflect the costs associated with a mining operation, such as those incurred by MOIL. Therefore, because the production experience of MOIL is so different from Redstar's, we have determined, in accordance with past practice,[43] that it is not appropriate to utilize the MOIL financial statements for this preliminary determination. However, the only financial statements currently on the record of this proceeding are those of MOIL and Eveready India. Therefore, despite the fact that it is the Department's practice not to use a financial statement without a realized profit, for this preliminary determination we have determined to use the financial statements of Eveready India to calculate surrogate financial ratios, as they represent the best available record information for this preliminary determination. We encourage interested parties to submit alternate publicly available financial statements on the record in this proceeding for use in the final determination. Moreover, the Department will also attempt to identify additional publicly available data for use in determining the surrogate financial ratios for purposes of the final determination of this investigation.

Post–Preliminary Determination Supplemental Questionnaire

In reviewing Redstar's original and supplemental questionnaire responses, we have determined that certain reported items require additional supplemental information. We will issue a post–preliminary determination supplemental questionnaire to Redstar to address these and other deficiencies. For example, Redstar has not provided complete sales and cost reconciliations. Should Redstar not provide complete and adequate sales and cost reconciliations, the Department may not be able to conduct verification for this respondent and may have to resort to the use of AFA.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information from Redstar upon which we will rely in making our final determination.

Combination Rates

In the *Notice of Initiation*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation.[44] This practice is described in *Policy Bulletin 05.1*.[45]

Preliminary Determination

The weighted–average dumping margins are as follows:

Exporter	Producer	Margin
Guizhou Redstar Developing Import and Export Company, Ltd.	Guizhou Redstar Developing Dalong Manganese Industrial Co., Ltd.	236.81%
PRC–Wide Entity*.	.....	236.81%

*The PRC–wide entity includes Xiangtan.

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 subject merchandise, 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 NV exceeds U.S. price, as indicated above. The suspension of liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of EMD, or sales (or the likelihood of sales) for importation, of the subject merchandise 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.

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.[46] 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 for 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. 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.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2)(A) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of

[43] *See Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005), and accompanying Issues and Decision Memorandum at Comment 5.

[44] *See Notice of Initiation*, 72 FR at 52852.

[45] *See* footnote 19, *supra*.

[46] *See* 19 CFR 351.310(c).

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. Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four–month period until not more than six months. We received a request to postpone the final determination from Redstar on March 11, 2008. In addition, Redstar requested the extension of provisional measures from a four–month period to not longer than six months. Because this preliminary determination is affirmative, the request for postponement was made by the exporter accounting for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and have extended provisional measures to not longer than six months.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: March 19, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

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