

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-930]

Circular Welded Austenitic Stainless Pressure Pipe 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: September 5, 2008.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that circular welded austenitic stainless pressure pipe (CWASPP) 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 dumping margins are shown in the "Preliminary Determination" section of this notice.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge or Howard Smith, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-3518 or 482-5193, respectively.

SUPPLEMENTARY INFORMATION:**Background**

On January 30, 2008, the Department received a petition concerning imports of CWASPP from the PRC filed in proper form by Bristol Metals, L.P., Felker Brothers Corp., Marcegaglia USA, Inc., Outokumpu Stainless Pipe Inc., and the United Steel Workers of America (collectively, petitioners). The Department initiated an antidumping duty investigation of CWASPP from the PRC on February 19, 2008. See *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 10221 (February 26, 2008) (*Initiation Notice*).

On February 20, 2008, the Department requested quantity and value (Q&V) information from the 11 companies that are identified in the petition as potential producers or exporters of CWASPP from the PRC. See Exhibit I-6, Volume I, of the January 30, 2008, Petition for the Imposition of Antidumping and Countervailing Duties (the petition). The Department received timely responses to its Q&V questionnaire from the

following companies: Zhejiang Jiuli Hi-Tech Metals Co., Ltd. (Jiuli), Winner Stainless Steel Tube Co., Ltd. and Winner Machinery Enterprise Co., Ltd (collectively Winner). The other nine companies to which the Department sent Q&V questionnaires received the questionnaires but did not respond to them.

On March 14, 2008, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of CWASPP from the PRC. See *Welded Stainless Steel Pressure Pipe From China, Investigation Nos. 701-TA-454 and 731-TA-1144 (Preliminary)*, 73 FR 16911 (March 31, 2008). Also, in March 2008, petitioners and Winner submitted comments to the Department regarding the physical characteristics of subject merchandise that should be used in comparing sales prices with normal value.

On April 28, 2008, the Department received separate-rate applications from Jiuli and Winner. On April 15, 2008, the Department selected Winner as a mandatory respondent and issued an antidumping questionnaire to the company. See memorandum regarding "Selection of Respondents in the Antidumping Investigation of Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China," dated April 15, 2008 (Respondent Selection Memorandum). Winner submitted timely responses to the Department's questionnaire on May 13, 2008, and June 3, 2008.

The Department issued supplemental questionnaires to, and received responses from Winner and Jiuli from April through August 2008. Petitioners submitted comments to the Department regarding Winner's questionnaire and supplemental questionnaire responses from June through July 2008.

On June 2, 2008, the Department released a memorandum to interested parties which listed potential surrogate countries and invited interested parties to comment on surrogate country and surrogate value selection. During June and July 2008, petitioners and Winner submitted comments on the appropriate surrogate country and surrogate values. The submitted surrogate value data are from India, Thailand, the United States, and international websites.

On June 10, 2008, petitioners requested postponement of the preliminary determination. On June 24, 2008, the Department extended this preliminary determination by fifty days. See *Notice of Postponement of Preliminary Determination in the*

Antidumping Duty Investigation of Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China, 73 FR 35658 (June 24, 2008).

On August 15, 2008, Winner requested that the Department extend the final determination in this case. On August 20, 2008, Winner clarified and supplemented its extension request by identifying the length of the requested extension and by including a request to extend the provisional measures to six months. See the "Postponement of Final Determination and Extension of Provisional Measures" section of this notice below.

Period of Investigation

The period of investigation (POI) is July 1, 2007, through December 31, 2007. This period comprises the two most recently completed fiscal quarters as of the month preceding the month in which the petition was filed (*i.e.*, January 2008). See 19 CFR 351.204(b)(1).

Scope of the Investigation

The merchandise covered by this investigation is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. This merchandise includes, but is not limited to, the American Society for Testing and Materials ("ASTM") A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications. ASTM A-358 products are only included when they are produced to meet ASTM A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications.

Excluded from the scope are: (1) welded stainless mechanical tubing, meeting ASTM A-554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A-249, ASTM A-688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A-269, ASTM A-270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005; 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States ("HTSUS"). They may also enter under HTSUS subheadings 7306.40.1010; 7306.40.1015; 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes

only, the written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice. See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) and *Initiation Notice*. The Department received comments concerning the scope of the CWASPP antidumping and countervailing duty investigations from Prudential Stainless & Alloy LP (Prudential), a U.S. importer and distributor of subject merchandise, on March 10, 2008, and rebuttal comments from petitioners on March 14, 2008. In addition, Prudential responded to petitioners rebuttal comments on April 28, 2008. Prudential requests that the Department limit the scope of the investigations by excluding from the scope all grades of ASTM A-312, except the 304 and 316 series, and all Schedules (wall thickness) of stainless pressure pipe except Schedules 40S and 10S. Prudential contends that the grades of pipe that they seek to exclude from the scope are premium-priced, low-volume, specialty grades that do not compete with high-volume commodity products in the 304 and 316 series. Moreover, Prudential contends that the Schedules that they seek to exclude from the scope constitute a minority of what is produced by the domestic industry and thus these Schedules do not represent a threat to petitioners. Petitioners urge the Department not to modify the scope, noting that (1) the current scope is an accurate reflection of the products for which the domestic industry is seeking relief, (2) the proposed change to the scope would exclude products that are both manufactured by, and important to, the domestic industry and (3) the products that Prudential seeks to exclude were defined by the ITC as like-products in its preliminary investigation questionnaire. In rebuttal, Prudential adds that although some of the domestic industry does produce the products that it requests to be excluded from the scope ("the products at issue"), these products are not important to the domestic industry. Prudential asks the Department to determine whether or not the products at issue are important to the domestic industry by calculating the percentage of U.S. production of the merchandise under investigation represented by the products at issue.

After considering parties' comments, the Department has decided not to modify the scope of the investigations. The starting point for determining whether merchandise is subject to an investigation is the petition. See *19 CFR 351.225(k)(1) (2001)*. See also *Eckstrom Industries, Inc. v. United States*, 254 F.3d 1068, 1071-72 (Fed. Cir. 2001) (citing *Smith Corona Corp. v. United States*, 915 F.2d 683, 685 (Fed. Cir. 1990)). While the Department does have the authority to define or clarify the scope of an investigation, the Department "must exercise this authority in a manner which reflects the intent of the petition and the Department generally should not use its authority to define the scope of an investigation in a manner that would thwart the statutory mandate to provide the relief requested in the petition." See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products From Canada*, 67 FR 15539 (April 2, 2002) and accompanying Issues and Decision Memorandum under Scope Issues (after Comment 49). Thus, "absent an overarching reason to modify the scope in the petition, the Department accepts it." See *id.* The description of subject merchandise in the petition indicates that the products at issue are to be covered by the antidumping and countervailing investigations of CWASPP from the PRC. Additionally, in their comments, petitioners have confirmed that the scope, as currently written, is an accurate reflection of the products for which they seek relief. Therefore, the scope modifications proposed by Prudential are inconsistent with the intent of the petition and "would thwart the statutory mandate to provide the relief requested in the petition." See *id.* Furthermore, Prudential's claims that the products at issue are "small-volume" products that are unimportant to the domestic industry do not provide a basis for modifying the scope. For the above reasons, the Department has not modified the scope.

Non-Market Economy Treatment

The Department considers the PRC to be a non-market economy (NME) country. In accordance with section 771(18)(c)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. See *Tapered Roller Bearings and Parts Thereof (TRBs), Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001-2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500

(February 14, 2003), unchanged in *TRBs, Finished and Unfinished, from the People's Republic of China: Final Results of 2001-2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003). The Department has not revoked the PRC's status as an NME country. Therefore, in this preliminary determination, we have treated the PRC as an NME country and applied our current NME methodology.

Selection of a Surrogate Country

In antidumping proceedings involving NME countries, the Department, pursuant to section 773(c)(1) of the Act, will generally base normal value (NV) on the value of the NME producer's factors of production. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of merchandise comparable to the subject merchandise. The Department has determined that India, Indonesia, the Philippines, Colombia, and Thailand are countries that are at a level of economic development comparable to that of the PRC. See memorandum regarding "Antidumping Duty Investigation of Circular Welded Austenitic Stainless Pressure Pipe ("C-WASP) Pipe" from the People's Republic of China (PRC): Request for a List of Surrogate Countries," dated May 22, 2008 (Policy Memorandum).

As noted above, during June and July 2008, petitioners and Winner submitted comments on the appropriate surrogate country and surrogate values. Petitioners argue that India is the most appropriate surrogate country because (1) it is a market economy (ME) country at a level of economic development comparable to the PRC in terms of gross national income (GNI), (2) it is a significant producer of subject merchandise for which public financial statements are available, (3) it maintains public data for many of the factors of production, and (4) the Department has traditionally selected India as a surrogate country for the PRC. Petitioners add that Thai surrogate values are less appropriate than Indian values because the financial statements provided by Winner are not from producers of subject merchandise.

Winner argues that Thailand, rather than India, should be selected as the surrogate country. Specifically, Winner contends that Thailand is the

appropriate surrogate country in this case because: (1) it is an ME country that is economically comparable to the PRC, (2) it is a significant producer of subject merchandise (the ITC identified Thailand (not India) as one of four substantial suppliers of CWASPP to the United States), and (3) Thai CWASPP is more comparable to the PRC's than India's CWASPP because, based on ITC data, U.S. importers did not purchase Indian CWASPP. Moreover, Winner maintains that India and Thailand should not be considered to be equally comparable to the PRC because Thailand's per capita GNI is closer to the PRC's than India's and the difference between Thailand's GNI and India's GNI is vast. In addition, Winner argues that the Department should not have listed India as a potential surrogate country because, in doing so, the Department skipped over nineteen other countries each with a GNI closer to that of the PRC. Winner also notes that predictability is not a basis for selecting India as the surrogate country; rather it is the Department's obligation to use the best available information to calculate dumping margins as accurately as possible. Lastly, Winner claims India should not be selected as a surrogate country because studies indicate its import statistics are flawed due to misclassifications and thus they should not be used to calculate surrogate values.

After evaluating interested parties' comments, the Department has selected India as the surrogate country for this investigation. Although Winner has argued that Thailand's level of economic development is closer to that of the PRC than India's, the statute does not require the Department to use a surrogate country at a level of economic development closest to the NME country; it merely requires that the surrogate country used be economically comparable to the NME country. See section 773 (c)(2) of the Act. Thus, the Department does not rank-order countries' comparability according to how close their per capita GNI is to that of the NME country in question. Rather, in NME proceedings, the Department creates a list of possible surrogate countries that it considers equivalent in terms of economic comparability. In addition, the potential surrogate countries identified reflect countries that, in the Department's experience, are most likely to offer data necessary to conduct the proceeding. Given the foregoing, and the spectrum of economic development across the world, (e.g., the World Development Report used by the Department to select

potential surrogate countries list 133 countries with GNIs ranging from \$100 to \$66,530), we continue to find it appropriate to consider India to be at a level of economic development comparable to the PRC. See Winner's June 27, 2008, submission to the Department at Exhibit 2.

With respect to the criterion that the surrogate country be a significant producer of merchandise that is comparable to subject merchandise, record evidence indicates that both India and Thailand are significant producers of comparable merchandise. See memorandum from Melissa Blackledge, to the File regarding "Potential Surrogate Countries: Significant Production of Comparable Merchandise" dated concurrently with this notice.

Since both India and Thailand satisfy the statutory criteria for selecting a surrogate country, we examined whether one country is a more appropriate surrogate than the other based on data availability and quality. After examining the surrogate value information provided by the petitioners and Winner, we find the Indian surrogate financial data better reflect the overall experience of producers of subject merchandise in a surrogate country. The Indian financial statements from Jindal SAW Ltd. and Ratnamani Metals & Tubes Ltd. are from companies that produce subject and like merchandise, and while one is contemporaneous with the POI, the other includes the year ending March 31, 2007, just three months prior to the beginning of the POI. The only usable Thai financial statement, for Great Central (International) Co., Ltd., is not contemporaneous with the POI and states that it "manufactures and distributes stainless steel," yet it lacks information regarding the type of stainless steel produced, the type and extent of manufacturing, the raw materials produced and/or consumed, and its associations with other companies or group of companies. Generally, where available, we prefer to use more than one financial statement in order to obtain a broader industry representation.¹

While petitioners and Winner have submitted financial statements in addition to those identified above, we have concluded that these financial statements are not useable. Specifically, the financial statements the Department finds not useable are: (1) two Thai

¹ See *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 5.

financial statements, one from Thai-German Products Public Co., Ltd. and one from Lokahit Metal Public Co., Ltd., which indicate receipt of subsidies, and (2) one Indian financial statement, from Suraj Stainless Ltd., which also indicates receipt of subsidies.

In *Crawfish from the PRC*, the Department discussed its practice with respect to financial statements that contain evidence of subsidization:

{T}he statute directs Commerce to base the valuation of the factors of production on "the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate . . ." Section 773(c)(1) of the Act. Moreover, in valuing such factors, Congress further directed Commerce to "avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices." Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 576, 100th Cong., 2nd Sess., at 590-91 (1988). The Department calculates the financial ratios based on financial statements of companies producing comparable merchandise from the surrogate country, some of which may contain evidence of subsidization. However, where the Department has a reason to believe or suspect that the company may have received subsidies, the Department may consider that the financial ratios derived from that company's financial statements are less representative of the financial experience of that company or the relevant industry than the ratios derived from financial statements that do not contain evidence of subsidization. Consequently, {those statements that appear to reflect subsidies} do not constitute the best available information to value the surrogate financial ratios.²

Given the record information regarding these three companies' receipt of subsidies, and the fact that we have other acceptable financial statements to use as surrogates,³ we have not considered the financial data from these three companies in our surrogate ratio calculations.

² See *Crawfish from the PRC*, and accompanying Issues and Decision Memorandum at Comment 1.

³ As noted above, those financial statements include statements from Jindal SAW Ltd. Although Winner noted that Jindal SAW Ltd.'s financial statement listed "export benefits/government grants receivable," the Department has insufficient information to determine whether these items relate to programs that have been countervailed.

Petitioners and Winner also submitted import statistics from which they calculated surrogate values. Although Winner has contested the quality of the Indian import data based on certain studies, the studies submitted by Winner do not reference the inputs used to produce CWASPP. In *Wooden Bedroom Furniture from the PRC*, the Department examined these studies and found they were not sufficiently specific to the inputs used in that case to support finding the Indian import data to be inaccurate.⁴ Likewise, the evidence that has been placed on the record of this proceeding by Winner does not cause the Department to question the quality of the Indian import statistics used here. Therefore, because India better represents the experience of producers of subject merchandise and provides better financial data; we have selected India as the surrogate country.

Separate Rates

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in NME investigations. See *Initiation Notice*, 73 FR at 10221. The process requires exporters and producers to submit a separate-rate status application. See also *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>.⁵ 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* governmental control over its export activities) has not changed.

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department’s policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China*, 56 FR 20588 (May 6, 1991) (“*Sparklers*”), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People’s Republic of China*, 59 FR 22585 (May 2, 1994) (“*Silicon Carbide*”). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control.

A. Separate Rate Applicants⁶

1. Wholly Foreign-Owned

Winner, the mandatory respondent, reported that it is wholly owned by individuals or companies located in a market economy in its separate-rate application (“Foreign-owned SR Applicant”). Therefore, because it is wholly foreign-owned, and we have no evidence indicating that it is under the control of the PRC, further separate rates analysis is not necessary to determine whether this company is independent from government control. See *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People’s Republic of China*, 64 FR 71104–05 (December 20, 1999) (where the respondent was wholly foreign-owned and, thus, qualified for a separate rate). Accordingly, we have preliminarily granted a separate rate to Winner Machinery Enterprise Company Limited.

2. Wholly Chinese-Owned

One separate rate applicant, Jiuli, stated that it is a wholly Chinese-owned company. Therefore, the Department must analyze whether this respondent can demonstrate the absence of both *de jure* and *de facto* governmental 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. See *Sparklers*, 56 FR at 20589.

The evidence provided by Jiuli supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) an absence of restrictive stipulations associated with the exporter’s business and export licenses; (2) there are applicable legislative enactments decentralizing control of the company; and (3) and there are formal measures by the government decentralizing control of the company. See Jiuli’s Separate Rate Application, (Jiuli’s SRA) dated April 28, 2008.

b. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22586–87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People’s Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

⁴ See Amended *Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture from the People’s Republic of China*, 72 FR 46957 (August 22, 2007) and accompanying Issues and Decision Memorandum, dated August 8, 2007, at Comment 1.

⁵ *Policy Bulletin 05.1* states: “while continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applied both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of “combination rates” because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.” See *Policy Bulletin 05.1* at 6.

⁶ All separate rate applicants receiving a separate rate are hereby referred to collectively as the “SR Recipients.”

We determine that the evidence on the record supports a preliminary finding of de facto absence of governmental control with respect to Jiuli based on record statements and supporting documentation showing that the company: 1) sets its own export prices independent of the government and without the approval of a government authority; 2) retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; 3) has the authority to negotiate and sign contracts and other agreements; and 4) has autonomy from the government regarding the selection of management. See, e.g., Jiuli's SRA.

The evidence placed on the record of this investigation by Winner and Jiuli demonstrates an absence of *de jure* and *de facto* government control with respect to the exporters' exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, we have preliminary granted Winner and Jiuli separate rate status. We calculated a company-specific dumping margin for Winner and also assigned this margin to Jiuli.

The PRC-Wide Entity

Although PRC exporters of subject merchandise to the United States were given an opportunity to provide Q&V information to the Department, not all exporters responded to the Department's request for Q&V information.⁷ Based upon our knowledge of the volume of imports of subject merchandise from the PRC, we have concluded that the companies that responded to the Q&V questionnaire do not account for all U.S. imports of subject merchandise from the PRC made during the POI. We have treated the non-responsive PRC producers/exporters as part of the PRC-wide entity because they did not qualify for a separate rate.

Section 776(a)(2) of the Act provides that the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D)

provides such information but the information cannot be verified.

As noted above, the PRC-wide entity withheld information requested by the Department. As a result, pursuant to section 776(a)(2)(A) of the Act, we find it appropriate to base the PRC-wide dumping margin on facts available. See *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003), unchanged in *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000); see also *Statement of Administrative Action*, accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. I at 843 (1994) (SAA), reprinted in 1994 U.S.C.A.N. 4040 at 870. Because the PRC-wide entity did not respond to the Department's request for information, the Department has concluded that the PRC-wide entity 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.

Section 776(b) of the Act authorizes the Department to use, as adverse facts available (AFA): (1) information derived from the petition; (2) the final determination from the LTFV investigation; (3) a previous administrative review; or (4) any other information placed on the record. In selecting a rate for AFA, the Department selects one 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 information in a timely manner." See *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909 (February 23, 1998). It is the Department's practice to select, as AFA, the higher of: (a) the highest margin

alleged in the petition or (b) the highest calculated rate for any respondent in the investigation. See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From the People's Republic of China*, 65 FR 34660 (May 31, 2000) and accompanying Issues and Decisions Memorandum at Facts Available. Here, we assigned the PRC-wide entity the dumping margin calculated for Winner, which exceeds the highest margin alleged in the petition and is the highest rate calculated in this investigation. Pursuant to section 776(c) of the Act, we do not need to corroborate this rate because it is based on information obtained during the course of this investigation rather than secondary information. See SAA at 870. The dumping margin for the PRC-wide entity applies to all entries of the merchandise under investigation except for entries of subject merchandise produced and exported by Winner and produced and exported by Jiuli.

Fair Value Comparisons

To determine whether Winner sold CWASPP to the United States at LTFV, we compared the weighted-average export price (EP) of the CWASPP to the NV of the CWASPP, as described in the "U.S. Price," and "NV" sections of this notice.

U.S. Price

EP

In accordance with section 772(a) of the Act, we based the U.S. price of sales on EP because the first sale to unaffiliated purchasers was made prior to importation and the use of constructed export price methodology was not otherwise warranted.

In accordance with section 772(c) of the Act, we calculated EP by deducting, where applicable, the following expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States: foreign movement expenses, marine insurance, international freight, and foreign brokerage and handling expenses.

We based these movement expenses on surrogate values where a PRC company provided the service and was paid in Renminbi (RMB). Where market economy service providers, who were paid in a market economy currency, provided movement services for over 33 percent of subject merchandise shipments, by volume, we based the movement expenses on the actual price charged by the service provider. See *Antidumping Methodologies: Market*

⁷ The Department received only two timely responses to the requests for Q&V information that it sent to 11 potential exporters identified in the petition. The record indicates the questionnaires were received by the exporters. See Respondent Selection Memorandum.

Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716 (October 19, 2006); *see also Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997) (*Final Rule*). For details regarding our EP calculation, *see* Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China – Preliminary Analysis Memorandum for Winner Machinery Enterprise Co., Ltd. NV

In accordance with section 773(c) of the Act, we constructed NV from the factors of production employed by Winner to manufacture subject merchandise during the POI. Specifically, we calculated NV by adding together the value of the factors of production, general expenses, profit, and packing costs. We valued the factors of production using prices and financial statements from the surrogate country, India. If market economy suppliers, who were paid in a market economy currency, supplied over 33 percent of the total volume of a material input purchased from all sources during the POI, we based the input value on the actual price charged by the supplier. If market economy suppliers, who were paid in a market economy currency, supplied less than 33 percent of the total volume of a material input purchased from all sources during the POI, we calculated the value by weight-averaging surrogate values with the actual price charged by the suppliers. *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006); *see also Final Rule*. In selecting surrogate values, we followed, to the extent practicable, the Department's practice of choosing values which are non-export average values, contemporaneous with, or closest in time to, the POI, product-specific, and tax-exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). We also considered the quality of the source of surrogate information in selecting surrogate values.

We valued material inputs and packing by multiplying the amount of the factor consumed in producing subject merchandise by the average unit value of the factor. In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407 (Fed. Cir. 1997). Where we could not obtain surrogate values that were not contemporaneous with the POI, we inflated (or deflated) the surrogate values using the Indian Wholesale Price Index (WPI) as published in the International Financial Statistics of the International Monetary Fund.

Further, in calculating surrogate values from Indian imports, we disregarded imports from Indonesia, South Korea, and Thailand because in other proceedings the Department found that these countries maintain broadly available, non-industry-specific export subsidies. Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 11670 (March 15, 2002); *see also 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).⁸ Thus, we have not used prices from these countries in calculating the Indian import-based surrogate values.

We valued raw materials and packing materials using Indian import statistics, except as noted below. Winner reported both ME and NME purchases of grades 304 and 316 stainless steel coil (coil) used to produce the merchandise under investigation. Petitioners argue that Winner purchased coil at dumped and subsidized prices. Specifically, they argue that the Department should not use Winner's ME purchase price to

⁸ In addition, we note that legislative history explains that the Department is not required to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. 100-576 at 590 (1988). As such, it is the Department's practice to base its decision on information that is available to it at the time it makes its determination.

value coil because: (1) the Department has a dumping order on U.S. imports of coil from Taiwan, and Winner's coil supplier has received an adverse facts available (AFA) dumping margin in the proceeding; (2) the European Union (EU) initiated a dumping investigation on stainless steel cold rolled flat products from Taiwan which covers the period during which the respondent purchased coil from its supplier; (3) the European Community (EC) imposed countervailing duties (CVD) on Taiwanese hot-rolled flat steel coils, (specifically, petitioners argue that the CVD programs existed during the instant POI, and, although Winner's coil supplier was not examined in the EC's CVD investigation, it is reasonable to believe that this supplier could have benefitted from these programs since the programs are broadly available, non-industry specific, and were likely used by steel producers); (4) Winner's ME purchase prices are well below the prices of 304 and 316 stainless steel coil from the Steel Authority of India Limited (SAIL), prices reported by the publication *American Metal Market (AMM)*, and prices quoted on *metalsprices.com*; and (5) Winner's ME purchase prices are below the estimated cost of producing grades 304 and 316 stainless steel, even where one conservatively treats alloys as the only material input used to produce the stainless steel (petitioners constructed the cost of grades 304 and 316 stainless steel using market prices for alloys and Indian surrogate overhead and profit ratios).

Winner counters that its ME purchases of grades 304 and 316 coil (which constitute over 33% of its total purchases of coil) have not been dumped or subsidized and should be used to value the coils that it consumed. Specifically, Winner argues that: (1) in the latest review in the U.S. antidumping proceeding cited by petitioners, another company, not its coil supplier, received the AFA dumping margin, while the review of Winner's supplier covering the instant POI was rescinded; (2) the EU has made no determination in its dumping investigation; (3) evidence of third-country (EC and US) dumping is irrelevant; (4) there is no evidence that Winner's coil supplier received subsidies or that there are subsidies available for coil, (5) the EC CVD order is outdated (2000), expired in 2005, does not cover *stainless* coil (only hot-rolled coil), and does not name Winner's coil supplier, and (6) petitioners' price and cost comparisons are unreliable because: (a) Indian SAIL

price quotes do not indicate the seller or buyer, are not certified by anyone, and do not include discounts, rebates, etc., (b) AMM prices are U.S.-specific representing industry averages and do not reasonably reflect Taiwanese stainless prices, and (c) petitioners' calculation of the cost used in their comparison is inaccurate. Lastly, Winner claims that Asia MEPS (International) Ltd. (MEPS) data corroborates Winner's coil supplier's coil prices (petitioners identified MEPS as a leading source of pricing data in the stainless steel industry.)

Petitioners then argue that import statistics, regardless of the selected surrogate country, should not be used to value coil because they do not differentiate between basic coil and grades 304 and 316 coil. Petitioners claim that differentiating between other grades of coil and grades 304 and 316 coil is critical because grades 304 and 316 coil contain high concentrations of expensive alloys, such as nickel and molybdenum, and cost several times more than basic coil. Specifically, petitioners contend that the average unit values from Indian import data for the HTS classification for coil, for example, do not approach the cost of the nickel and molybdenum contained in grades 304 and 316 coils, and therefore, the Department should use SAIL prices as the surrogate value for 304 and 316 coil.⁹

The Department finds no evidence that Winner's ME purchases were dumped or subsidized because: (1) neither the U.S. AD order on coil from Taiwan nor the EU investigation have relevance to the prices paid in the PRC,¹⁰ (2) the countervailing duty proceeding conducted by the EC (a) does not cover merchandise produced by the Taiwanese coil supplier, (b) does not cover stainless coil, (c) does not name the Taiwanese coil supplier as a respondent, and (d) expired in 2005, and (3) there is no evidence on the record that any of the subsidies on hot rolled steel found by the EC to be countervailable still exist or, even if they exist, that the Taiwanese coil

supplier would be eligible to receive them. Moreover, although Winner's ME purchase prices for stainless coil are lower than the prices and constructed costs submitted by petitioners, prices can be affected by numerous indeterminate factors. Thus, these price differences do not provide a basis to believe or suspect that the product may be dumped or subsidized. Therefore, because the quantity of ME purchases of coil exceeded 33% of Winner's total purchases of coil, the Department has used the ME purchase price as its surrogate value for all purchases of coil.

We 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 rate was not contemporaneous with the POI, we inflated the rate using the WPI. See the Memorandum Regarding "Investigation of Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Surrogate Values Selected" for Winner dated concurrently with this notice (Factor Value Memorandum).

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated July 2006. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to industries in India. Since the rates are not contemporaneous with the POI, we inflated the values using the WPI. See Factor Value Memorandum.

We valued natural gas using a value obtained from the Gas Authority of India Ltd.'s website, a supplier of natural gas in India. See <http://www.gailonline.com/gailnewsite/index.html>. The value relates to the period January through June 2002. Therefore, we inflated the value using the WPI. In addition, we added transportation charges to the value. See Surrogate Value Memorandum and *Polyvinyl Alcohol From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 27991 (May 15, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

We valued fuel oil/diesel using the prices for petrol from Indian Oil Corp.

Ltd. from June 2007, after inflating the value using the WPI for the POI. See Factor Value Memorandum.

For direct labor, indirect labor, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the most recently calculated regression-based wage rate, which relies on 2005 data. This wage rate can be found on the Department's website on Import Administration's home page. See Expected Wages of Selected NME Countries (revised May 2008) (available at <http://ia.ita.doc.gov/wages/index.html>). The source of these wage rate data on the Import Administration's web site is the International Labour Organization, Geneva, Labour Statistics Database Chapter 5B: Wages in Manufacturing. Since 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 Winner. See Factor Value Memorandum.

We valued truck freight expenses using a per-unit average rate calculated from data on the following web site: <http://www.infobanc.com/logistics/logtruck.htm>. The logistics section of this website contains inland freight truck rates between many large Indian cities. Since this value is not contemporaneous with the POI, we deflated the rate using the WPI. See Factor Value Memorandum.

We valued brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Agro Dutch Industries Ltd. in the antidumping duty administrative review of certain preserved mushrooms from India, Kejirwal Paper Ltd. in the LTFV investigation of certain lined paper products from India, and Essar Steel in the antidumping duty administrative review of hot-rolled carbon steel flat products from India. See *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006); see also *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 *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012

⁹ Although not mentioned by petitioners, we noted that SAIL is specifically named in the EC CVD order on hot-rolled steel.

¹⁰ The Department has previously noted that it will "disregard market economy prices for imported inputs as dumped only when the importing country has an antidumping duty order in effect for the products in question * * * dumping is specific to competitive conditions in particular markets and cannot be assumed to apply globally." See *Notice of Final Determination of Sales at Less Than Fair Value: Lawn and Garden Steel Fence Posts From the People's Republic of China*, 68 FR 20373 (April 25, 2003), and accompanying Issues and Decision Memorandum at Comment 2.

(August 8, 2006) and *Certain hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018,2021 (January 12, 2006) (unchanged in *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Administrative Review*, 71 FR 40694 (July 18, 2006)). Since the resulting value is not contemporaneous with the POI, we inflated the rate using the WPI. See Factor Value Memorandum. We valued international freight and marine insurance using purchase prices. See analysis memorandum for Winner dated concurrently with this notice.

We valued factory overhead, selling, general, and administrative (SG&A) expenses, and profit, using the 2006–2007 audited financial statements of Jindal SAW Ltd. and Ratnamani Metals & Tubes Ltd. See Factor Value Memorandum. For additional information regarding the selection of financial ratios, see the “Surrogate Country” section above.

In accordance with 19 CFR 351.301(c)(3)(i), interested parties may submit publicly available information with which to value factors of production in the final determination within 40 days after the date of publication of the preliminary determination.

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 upon which we will rely in making our final determination.

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. See *Initiation Notice*. This change in practice is described in *Policy Bulletin 05.1*, available at <http://ia.ita.doc.gov/>. *Policy Bulletin 05.1*, states: {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the

exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non–investigated firms receiving the weighted–average of the individually calculated rates. This practice is referred to as the application of “combination rates” because such rates apply to specific combinations of exporters and one or more producers. The cash–deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

See *Policy Bulletin 05.1*, “Separate Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non–Market Economy Countries.”

Preliminary Determination

The weighted–average dumping margins are as follows:

Exporter & Producer	Weighted–Average Margin
ZHEJIANG JIULI HI–TECH METALS CO., LTD. Produced by: Zhejiang Jiuli Hi–Tech Metals Co., Ltd.	22.03%
WINNER MACHINERY ENTERPRISE CO., LTD. Produced by: Winner Stainless Steel Tube Co., Ltd.	22.03%
PRC–WIDE RATE	22.03%

Disclosure

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

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of CWASPP from the PRC as described in the “Scope of Investigation” section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average amount by which the normal value exceeds U.S. price, as indicated above.

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 CWASPP, 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 the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, no later than five days after the deadline for submitting case briefs. See 19 CFR 351.309(c)(1)(i) and 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties that wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. See 19 CFR 351.310(c). Requests should contain the party’s name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party’s case brief and may make rebuttal presentations only on arguments included in that party’s rebuttal brief.

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

Pursuant to section 735(a)(2) of the Act, on August 15, 2008, as amended on August 22, 2008, Winner requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, Winner agreed that the Department may extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a 4-month period to a 6-month period. In accordance with section 733(d) of the Act and 19 CFR 351.210(b), we are granting the request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register** because: (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist. Suspension of liquidation will be extended accordingly.

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

Dated: August 27, 2008.

Stephen J. Claeys,

*Acting Assistant Secretary for Import
Administration.*

[FR Doc. E8-20508 Filed 9-4-08 8:45 am]

BILLING CODE 3510-DS-S
