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**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-570-910]

**Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination**

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

**EFFECTIVE DATE:** January 15, 2008.

**SUMMARY:** We preliminarily determine that circular welded carbon quality steel pipe ("CWP") 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 less than fair value ("LTFV") are shown in the "Preliminary Determination" section of this notice. Pursuant to requests from interested parties, we are postponing for 60 days the final determination and extending 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:** Thomas Martin or Maisha Cryor, 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) 482-3936 and (202) 482-5831, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 7, 2007, the Department of Commerce (the "Department") received a petition on imports of CWP from the PRC filed in proper form by Allied Tube & Conduit, Sharon Tube Company, IPSCO Tubulars, Inc., Western Tube & Conduit Corporation, Northwest Pipe Company, Wheatland Tube Co., *i.e.*, the Ad Hoc Coalition For Fair Pipe Imports From China, and the United Steelworkers (collectively, the "petitioners") on behalf of the domestic industry producing CWP. The Department initiated this investigation on June 27, 2007. *See Initiation of Antidumping Duty Investigation: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 72 FR 36663 (July 5, 2007) ("Initiation Notice"). Additionally, in the Initiation Notice, the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in non-market economy ("NME") investigations. *See Initiation Notice* 72 FR at 36666. The process requires exporters and producers to submit a separate-rate status application. *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>. 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.

On July 31, 2007, the 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 or threatened with material injury by reason of imports of CWP from the PRC. *See Circular Welded Carbon-Quality Steel Pipe from the PRC*, Investigation Nos. 701-TA-447 and 731-TA-1116, 72 FR 43295 (Preliminary) (August 3, 2007). On October 2, 2007, the petitioners filed a timely request that the Department postpone the preliminary determination pursuant to section 733(c)(1)(B)(i) of the Act. We did so on October 31, 2007. *See*

*Postponement of Preliminary Determination of Antidumping Duty Investigation: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 72 FR 62626 (November 6, 2007).

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

Pursuant to section 735(a)(2) of the Act, on December 18, 2007, respondent Jiangsu Yulong Steel Pipe Co., Ltd. ("Yulong") requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. In addition, Yulong requested that the Department extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a four-month period to not more than six-months. In accordance with section 733(d) of the Act and 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

##### 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*, 72 FR at 36669. On July 19, 2007, the petitioners submitted timely comments concerning the scope of the CWP antidumping and countervailing duty investigations. Man Ferrostaal Inc., Macsteel Service Centers USA, and Sunbelt Group L.P. (collectively, "Ferrostaal"), U.S. interested parties, also submitted timely comments concerning the scope of these investigations on July 19, 2007. The petitioners and Ferrostaal both submitted rebuttal comments on July 26, 2007.

We analyzed the comments of the interested parties regarding the scope of this investigation and, based upon those comments, revised the scope language. *See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, Re: Scope of the Antidumping and Countervailing Duty*

Investigations of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China, "Analysis of Comments and Recommendation for Scope of Investigations" (November 5, 2007) ("Scope Memorandum").

In addition, on December 18, 2007, the petitioners submitted additional comments concerning the scope of the CWP antidumping and countervailing duty investigations. In their comments, the petitioners requested that the Department revise the scope of the investigations to define product coverage by end-use application. The petitioners also requested that the Department explicitly state that single-stenciled line pipe meeting certain product characteristics is covered by the scope of this investigation, to eliminate reference to the grade "X-42" when referring to API stenciled pipe, and to define the length criterion for "single random length" CWP.

Regarding end-use application, the petitioners provided an affidavit which states that substitutions of API 5L stenciled products for subject ASTM pipe have occurred. *See the petitioners' December 18, 2007, comments at Exhibit 2.* The petitioners argue that the inclusion of end-use application to determine product coverage is necessary to distinguish between single-stenciled API 5L imports that are not intended to be covered by this investigation and pipe products that are intended to be covered. Next, the petitioners argue that the Department should revise the scope language to eliminate the reference to grade "X-42" when referring to API stenciled pipe because they view this reference as unnecessary given that the grade is subsumed within the API 5L specification. In addition, to prevent evasion of any antidumping order issued in this proceeding, the petitioners urge the Department to define the length criterion for inclusion of imported API specification CWP to include any such pipe of 32 feet or less. Lastly, the petitioners urge the Department to state in the scope that imports of single-stenciled API 5L line pipe are covered by the scope if such imports have one or more of the following physical characteristics: (1) a length of 32 feet or less; (2) an outer diameter less than 2 inches; (3) a galvanized and/or painted surface; or (4) a threaded and/or coupled end finish.

Upon review of the petitioner's December 18, 2007, submission, we have preliminarily adopted two of the petitioners' proposed changes. Specifically, we have preliminarily accepted the petitioners' request that single random length be defined as 32 feet in length or less. In addition, we

preliminarily accepted the petitioners' request to eliminate the reference to grade "X-42" when referring to API 5L stenciled pipe. These two changes are reflected in the "Scope of Investigation" section below.

#### Period of Investigation

The period of investigation ("POI") is October 1, 2006, through March 31, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, *i.e.*, June 2007. See 19 CFR 351.204(b)(1).

#### Scope of Investigation

The scope of this investigation covers certain welded carbon quality steel pipes and tubes, of circular cross-section, and with an outside diameter of 0.372 inches (9.45 mm) or more, but not more than 16 inches (406.4 mm), whether or not stenciled, regardless of wall thickness, surface finish (*e.g.*, black, galvanized, or painted), end finish (*e.g.*, plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (*e.g.*, ASTM, proprietary, or other), generally known as standard pipe and structural pipe (they may also be referred to as circular, structural, or mechanical tubing).

Specifically, the term "carbon quality" includes products in which (a) iron predominates, by weight, over each of the other contained elements; (b) the carbon content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

- (i) 1.80 percent of manganese;
- (ii) 2.25 percent of manganese;
- (iii) 1.00 percent of copper;
- (iv) 0.50 percent of aluminum;
- (v) 1.25 percent of chromium;
- (vi) 0.30 percent of cobalt;
- (vii) 0.40 percent of lead;
- (viii) 1.25 percent of nickel;
- (ix) 0.30 percent of tungsten;
- (x) 0.15 percent of molybdenum;
- (xi) 0.10 percent of niobium;
- (xii) 0.41 percent of titanium;
- (xiii) 0.15 percent of vanadium; or
- (xiv) 0.15 percent of zirconium.

Standard pipe is made primarily to American Society for Testing and Materials ("ASTM") specifications, but can be made to other specifications. Standard pipe is made primarily to ASTM specifications A-53, A-135, and A-795. Structural pipe is made primarily to ASTM specifications A-252 and A-500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications. This is often the case, for example, with fence tubing.

Pipe multiple-stenciled to a standard and/or structural specification and to any other specification, such as the American Petroleum Institute ("API") API-5L specification, is also covered by the scope of this investigation when it meets the physical description set forth above and also has one or more of the following characteristics: is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted surface finish; or has a threaded and/or coupled end finish.

The scope of this investigation does not include: (a) pipe suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces and feedwater heaters, whether or not cold drawn; (b) mechanical tubing, whether or not cold-drawn; (c) finished electrical conduit; (d) finished scaffolding; (e) tube and pipe hollows for redrawing; (f) oil country tubular goods produced to API specifications; and (g) line pipe produced to only API specifications.

The pipe products that are the subject of this investigation are currently classifiable in HTSUS statistical reporting numbers 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90, 7306.50.10.00, 7306.50.50.50, 7306.50.50.70, 7306.19.10.10, 7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. However, the product description, and not the harmonized tariff schedule of the United States ("HTSUS") classification, is dispositive of whether merchandise imported into the United States falls within the scope of the investigation.

#### Respondent Selection

On June 28 and 29, 2007, and July 2, 2007, the Department requested quantity and value ("Q&V") information from a total of 53 companies identified by the petitioners as potential producers or exporters of CWP from the PRC. See Memorandum to The File, from Maisha Cryor, Analyst, Office 4, Regarding "Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Summary of Issuance of Quantity and Value Questionnaires," dated July 2, 2007 ("Q&V Memorandum"). Also, on June 29, 2007, the Department sent a letter requesting Q&V information to the Ministry of Commerce ("MOFCOM") and requested that MOFCOM transmit the letter to all companies who export subject merchandise to the United States, or produce the subject merchandise for the companies who were engaged in exporting the subject merchandise to the United States during the POI. *Id.* For a

complete list of all parties from which the Department requested Q&V information, see Q&V Memorandum. The Department received timely Q&V responses from 32 interested parties. See Memorandum from Abdelali Elouaradia, Director, Office 4, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, "Selection of Respondents for the Antidumping Duty Investigation of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China," dated August 2, 2007 ("Respondent Selection Memorandum"). The Department did not receive any communication from MOFCOM regarding its request for Q&V information. In August and September 2007, the Department returned untimely Q&V responses submitted by Bazhou Dongsheng Hot Dip Galvanizing Steel Pipe Co., Ltd. ("Bazhou"); Shanxi Tianli Industries Co., Ltd. ("Shanxi"); and Zhejiang Kingland Pipeline and Technologies Co., Ltd. ("Kingland").

On August 2, 2007, the Department selected Tianjin Shuangjie Group ("Shuangjie") and Yulong as mandatory respondents in this investigation. See Respondent Selection Memorandum at 4. On August 8 and 15, 2007, Weifang East Steel Pipe Co., Ltd. ("Weifang"), submitted letters requesting that the Department select it as a mandatory respondent. In addition, in its August 15, 2007, letter, Weifang requested that, in the event it was not selected as a mandatory respondent, it be permitted to participate in the investigation as a voluntary respondent. On August 24, 2007, the Department informed Weifang that it would not be selected as a mandatory respondent. See Letter from Stephen J. Claeys, Deputy Assistant Secretary, to Weifang, Regarding "Antidumping Duty Investigation of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China; Respondent Selection," dated August 24, 2007. In addition, on November 17, 2007, the Department informed Weifang that it would not be selected as a voluntary respondent. See Letter from Stephen J. Claeys, Deputy Assistant Secretary, to Weifang, Regarding "Antidumping Duty Investigation of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China; Respondent Selection," dated November 17, 2007.

On December 26, 2007, Weifang again requested that it be selected as a mandatory respondent. If it is not selected as a mandatory respondent, Weifang also provided recommended methodologies that the Department should use in determining its separate rate. In addition, Weifang noted that the

Department calculated countervailing duty margins in the companion countervailing duty investigation on CWP from the PRC. According to Weifang, application of the NME methodology in conjunction with countervailing duty margins will result in double-remedy. Weifang argues that the Department is legally obligated to avoid such double-remedy. As these comments were submitted five business days prior to this preliminary determination, the Department did not consider Weifang's arguments. However, the Department will consider them for the final determination.

### Separate Rates Applications

Between August 2, 2007, and August 26, 2007, we received timely separate-rate applications from 27 non-mandatory respondent companies: Weifang; Shijiazhuang Zhongqing Imp & Exp Co., Ltd. ("Shijiazhuang"); Tianjin Baolai Int'l Trade Co., Ltd. ("Baolai"); Wai Ming (Tianjin) Int'l Trading Co., Ltd. ("Wai Ming"); Kunshan Lets Win Steel Machinery Co., Ltd. ("Kunshan Lets Win"); Shenyang BOYU M/E Co., Ltd. ("BOYU"); Dalian Brollo Steel Tubes Ltd. ("Dalian"); Benxi Northern Pipes Co., Ltd. ("Benxi"); Shanghai Metals & Minerals Import & Export Corp. ("Shanghai Metals"); Huludao Steel Pipe Industrial Co., Ltd. ("Huludao"); Tianjin Xingyuda Import & Export Co. Ltd. ("Xingyuda"); Jiangyin Jianye Metal Products Co., Ltd. ("Jianye"); Rizhao Xingye Import & Export Co., Ltd. ("Rizhao"); Tianjin No. 1 Steel Rolled Co., Ltd. ("Tianjin No. 1"); Kunshan Hongyuan Machinery Manufacture Co., Ltd. ("Kunshan"); Qingdao Yongjie Import & Export Co., Ltd. ("Yongjie"); Wuxi Fastube Industry Co., Ltd. ("Fastube"); Jiangsu Guoqiang Zinc-Plating Company, Ltd. ("Jiangsu"); Wuxi Eric Steel Pipe Co., Ltd. ("Wuxi Eric"); Beijing Sai Lin Ke Hardware Co., Ltd. ("SLK"); Qingdao Xiangxing Steel Pipe Co., Ltd. ("Qingdao"); Wah Cit Enterprises ("Wah Cit"); Guangdong Walsall Steel Pipe Industrial Co., Ltd. ("Guangdong"); Hengshui Jinghua Steel Pipe Co., Ltd. ("Hengshui"); Zhangjiagang Zhongyuan Pipe-Making Co., Ltd. ("Zhongyuan"); Shandong Fubo Group Co. ("Fubo") and Tianjin Youcheng Galvanized Steel Pipe Co., Ltd. ("Youcheng").

In August and September 2007, the Department informed Kingland and Bazhou that it would not consider their separate-rate applications because their Q&V submissions were untimely filed and returned. *See* Letter from Abdelali Elouaradia, Office Director, to Kingland, Regarding "Antidumping Duty Investigation of Circular Welded Carbon

Quality Steel Pipe From the People's Republic of China Submissions by Zhejiang Kingland Pipeline and Technologies Co., Ltd.," dated August 24, 2007; *see also* Letter from Abdelali Elouaradia, Office Director, to Bazhou, Regarding "Quantity and Value Information and Separate Rate Application," dated September 14, 2007.

### Questionnaires

On August 3, 2007, the Department issued to Shuangjie and Yulong sections A, C, D, and E<sup>1</sup> of the antidumping duty questionnaire, which included draft product characteristics used in the designation of control numbers ("CONNUMs") and assigned to the merchandise under consideration. On August 3, 2007, the Department also requested comments from all interested parties on the draft product characteristics included in the Department's questionnaire. The Department received comments from the petitioners and rebuttal comments from Shuangjie. On September 13, 2007, the Department issued the final product characteristics used in the designation of CONNUMs and assigned to the merchandise under consideration.

On September 4, 2007, Yulong submitted its response to Section A of the Department's questionnaire, and on September 10, 2007, Shuangjie submitted its response to section A of the Department's questionnaire. On September 24, 2007, Shuangjie submitted its responses to sections C and D of the Department's questionnaire. On September 24, 2007, Yulong submitted its responses to sections C and D of the Department's questionnaire. Weifang voluntarily submitted responses to section A of the Department's questionnaire on September 10, 2007, and to sections C and D of the Department's questionnaire on September 24, 2007.

The Department issued supplemental questionnaires to Shuangjie in September and October 2007. However, Shuangjie did not submit responses to the Department's supplemental questionnaires because it withdrew from the investigation and requested that the Department return all of its proprietary filings. *See* Letter from Shuangjie, dated October 31, 2007. On

November 15, 2007, the Department returned Shuangjie's business proprietary information. *See* Letter from Abdelali Elouaradia, Office Director, to Shuangjie, Regarding "Antidumping Duty Investigation: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China," dated November 15, 2007.

The Department issued supplemental questionnaires to Yulong between September 21, 2007, and November 28, 2007, and received responses between October 15, 2007, and December 10, 2007. On October 9, 2007 and November 13, 2007, the petitioners submitted comments on Shuangjie and Yulong's questionnaire responses.

On October 10, 2007, the Department issued supplemental questionnaires to separate rate applicants Shanghai Metals and Huludao and received responses on October 19, 2007. On October 15, 2007, the Department issued supplemental questionnaires to separate rate applicants Benxi and Xingyuda and received responses on October 25, 2007. On October 17, 2007, the Department issued a supplemental questionnaire to separate rate applicant Jianye and received a response on October 29, 2007. On October 25, 2007, the Department issued a supplemental questionnaire to separate rate applicant Weifang and received a response on November 8, 2007. On November 8, 2007, the Department issued supplemental questionnaires to separate rate applicants Fastube, Jiangsu, Wuxi Eric, SLK, Qingdao, Guangdong, Hengshui and Zhongyuan. Qingdao submitted its response on November 19, 2007. Hengshui and SLK submitted their responses on November 21, 2007. Wuxi Eric, Jiangsu, Fastube, Guangdong, and Zhongyuan submitted their responses on November 26, 2007. On November 15, 2007, the Department issued a supplemental questionnaire to the separate rate applicants Fubo, Shijiazhuang, Baolai, Wai Ming, Kunshan Lets Win, BOYU, and Dalian, and received responses from Shijiazhuang on November 29, 2007, and from Baoli, Dalian, and Fubo from December 3-4, 2007. Wai Ming, Kunshan Lets Win, and BOYU submitted their responses on December 27, 2007.

### Critical Circumstances

On September 17, 2007, the petitioners requested that the Department make an expedited finding that critical circumstances exist with respect to imports of CWP from the PRC. Shuangjie submitted comments responding to the petitioners' allegations of critical circumstances on

<sup>1</sup> Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section C requests a complete listing of U.S. sales. Section D requests information on factors of production, and Section E requests information on further manufacturing.

September 24, 2007. The petitioners responded to Shuangjie's comments on September 27, 2007. The Department issued questionnaires to Shuangjie and Yulong regarding the critical circumstances allegation on October 29, 2007. Yulong submitted its response on November 5, 2007. As explained further above, Shuangjie did not respond to the Department's request because it withdrew from the investigation on October 31, 2007.

On December 11, 2007, the Department preliminarily found that there is reason to believe or suspect that critical circumstances exist for imports of subject merchandise from Yulong, the separate-rate companies, and the PRC-wide entity (including Shuangjie) because, A) in accordance with section 733(e)(1)(A)(i) of the Act, there is a history of dumped imports of subject merchandise and of material injury caused by such dumped imports, and B) in accordance with section 733(e)(1)(B) of the Act, Yulong, the separate-rate companies, and the PRC-wide entity had massive imports during a relatively short period. See Memorandum from Abdelali Elouaradia, Director, Office 4, "Preliminary Affirmative Determination of Critical Circumstances," dated December 11, 2007.

#### Non-Market Economy Country

For purposes of initiation, the petitioners submitted LTFV analyses for the PRC as a non-market economy ("NME"). See *Initiation Notice*, 72 FR at 36665. The Department considers the PRC to be a NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. On December 26, 2007, Weifang argued that the PRC should be treated as a market economy. As these comments were submitted five business days prior to this preliminary determination, the Department did not consider Weifang's comments. However, the Department will consider them for the final determination. Therefore, we have treated the PRC as an NME country for purposes of this preliminary determination.

#### Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the NME country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an

exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.

We have considered whether each PRC company that submitted a complete and timely separate-rate application is eligible for a separate rate. The Department's separate-rate test is not concerned, in general, with macroeconomic/border-type controls, e.g., export licenses, quotas, and minimum export prices ("EPs"), particularly if these controls are imposed to prevent dumping. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72256 (December 31, 1998). The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See *Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less Than Fair Value*, 62 FR 61754, 61758 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the 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*"). In accordance with the separate-rate criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

In this case, Shuangjie did not provide information we requested that is necessary to determine whether it is eligible for a separate rate. Specifically, on October 31, 2007, Shuangjie notified the Department of its decision to no longer participate in this investigation and withdrew all of its proprietary information from the record. As Shuangjie has decided to no longer participate in this investigation, and has withdrawn all of its responses from the record, the Department has no basis upon which to grant Shuangjie a

separate rate. Although Shuangjie remains a mandatory respondent, the Department considers Shuangjie part of the PRC-wide entity because it failed to demonstrate that it qualifies for a separate rate.

Wai Ming, Fastube, Wuxi Eric, SLK, Wah Cit, and Guangdong provided company-specific separate-rate information and stated that the standards for the assignment of separate rates have been met because they are privately owned trading companies incorporated and held by foreign ownership. Because each of these companies is foreign owned, it is not necessary to undertake additional separate-rates analysis for the Department to determine that the export activities of Wai Ming, Fastube, Wuxi Eric, SLK, Wah Cit, and Guangdong are independent from the PRC government's control. Accordingly, Wai Ming, Fastube, Wuxi Eric, SLK, Wah Cit, and Guangdong are eligible for separate rates. See, e.g., *Brake Rotors From the People's Republic of China: Preliminary Results of the Tenth New Shipper Review*, 69 FR 30875, 30876 (June 1, 2004) (unchanged in the final results, *Brake Rotors From the People's Republic of China: Final Results of the Tenth New Shipper Review*, 69 FR 52228 (August 25, 2004)) ("*Brake Rotors 10th NSR*"); *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104 (December 20, 1999); and *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996). As a result, for the purposes of this preliminary determination, we have granted separate company-specific rates to Wai Ming, Fastube, Wuxi Eric, SLK, Wah Cit, and Guangdong. See Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, through Mark Manning, Program Manager, AD/CVD Operations, Office 4, from Maisha Cryor, Senior International Trade Analyst, AD/CVD Operations, Office 4. Regarding "Antidumping Duty Investigation of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Separate Rates Memorandum," dated January 3, 2008 ("*Separate Rates Memorandum*").

Youcheng stated in its August 27, 2007, separate-rate application that it sold subject merchandise to a U.S. customer during the POI and, as evidence, presented a sales contract dated within the POI. This contract covers multiple sizes and types of subject merchandise. Section 351.401(i) of the Department's regulations states

that, "in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business."

However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR 351.401(i); *see also Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090–1093 (CIT 2001) ("*Allied Tube*"). In other words, the date of the invoice is the presumptive date of sale, although this presumption may be overcome. The date of sale is generally the date on which the parties finalize the substantive terms of the sale, such as the price, quantity, delivery terms, and payment terms.

Youcheng claims that the appropriate date of sale should be the contract date. However, Youcheng acknowledges that the first shipment of subject merchandise pursuant to this contract did not take place until well after the POI. Because this contract covers multiple sizes and types of subject merchandise, and each different product is considered separately by the Department for purposes of its dumping analysis, the Department preliminarily finds that the contract does not include product-specific prices. Instead, it provides only the total value and total quantity of all products that will be shipped pursuant to this contract. In addition, Youcheng provided a memorandum between itself and the U.S. customer, dated well after the POI, in which Youcheng provided the customer a price reduction for all products shipped pursuant to the contract due to a change in the terms of delivery. Thus, even if the contract had product-specific prices, which it did not, such prices were not final, as they were reduced after the POI at time of shipment. For these reasons, the Department determines that the terms of sale were not finalized until the final commercial invoice was issued, after the POI. Therefore, the appropriate date of sale to use in analyzing Youcheng's separate-rate application is the invoice date. As the invoice date is outside the POI, the Department finds that Youcheng did not have a sale within the POI and is, therefore, not eligible to receive a separate rate.

#### 1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of

restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20588.

The evidence provided by Yulong, Weifang, Shijiazhuang, Baolai, Dalian, Benxi, Shanghai Metals, Huludao, Xingyuda, Jianye, Rizhao, Tianjin No. 1, Yongjie, Hengshui, Zhongyuan, Kunshan Lets Win, and BOYU indicates that there are no restrictive stipulations associated with their exporter and/or business licenses and that there are legislative enactments decentralizing control of the companies. The Department's analysis of the record evidence supports a preliminary finding of absence of *de jure* control. *See Separate Rates Memorandum*.

In its August 26, 2007, separate-rate application, Fubo reported that it was established and is completely owned by the Fushan Village Committee ("Fushan Committee"), and the Fushan Committee operates under the Village Committee Law. In *Brake Rotors*, the Department examined a village committee, which operated under the Village Committee Law, and found that the committee was a PRC government entity. *See 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 (November 18, 2005) and accompanying Issues and Decision Memorandum at Comment 7 ("*Brake Rotors*"). In analyzing the village committee, the Department found the Village Committee Law demonstrates that village committees are part of the PRC government. Specifically, the Department stated that "Article 2 of the Village Committee Law indicates that a Village Committee is not an independent entity but operates under the leadership of the Chinese Communist Party. The party branch is in effect the core of the village power structure." *Id.* Fubo's description of the role of the Fushan Committee supports this analysis, as the Fushan Committee "has an active role in implementing policy directives, expanding local commerce, and overseeing social welfare matters such as education, healthcare, and sanitation." *See Fubo's* December 4, 2007, supplemental questionnaire response at 1.

Accordingly, we examined whether there is sufficient evidence of *de facto* absence of government control of Fubo's export activities.

#### 2. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the exporter has authority to negotiate and sign contracts and other agreements; (3) whether the exporter has autonomy from the government in making decisions regarding the selection of management; and (4) whether the exporter 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.

We determine that, for Yulong, Weifang, Shijiazhuang, Baolai, Dalian, Benxi, Shanghai Metals, Huludao, Xingyuda, Jianye, Rizhao, Tianjin No. 1, Kunshan, Yongjie, Jiangsu, Qingdao, Hengshui, Zhongyuan, Kunshan Lets Win, and BOYU, the evidence on the record supports a preliminary finding of an absence of *de facto* governmental control based on record statements and supporting documentation showing the following: 1) each exporter sets its own export prices independent of the government and without the approval of a government authority; 2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; 3) each exporter has the authority to negotiate and sign contracts and other agreements; and 4) each exporter has autonomy from the government regarding the selection of management. *See Separate Rates Memorandum*. Therefore, the Department has preliminarily found an absence of *de facto* government control over these companies' export activities.

Regarding Fubo, the Fushan Committee appoints Fubo's board of directors and managers. During the POI, Fubo's directors and managers were also members of the Fushan Committee. In particular, Fubo reported that its general manager, chief financial supervisor, and sales manager were members of the Fushan Committee. Since these

managers control the day-to-day operations of the company, it is clear that the Fushan Committee directly controls Fubo's sales negotiation and export pricing. In addition, Fubo acknowledges that its profits are distributed to the Fushan Committee. For these reasons, the Department preliminarily finds that Fubo has not demonstrated that there is an absence of *de facto* control by the PRC government.

As stated above, because Wai Ming, Fastube, Wuxi Eric, SLK, Wah Cit, and Guangdong are wholly foreign-owned, we have determined that they are independent of the PRC government's control and are eligible for a separate rate. In addition, the evidence placed on the record of this investigation by Yulong, Weifang, Shijiazhuang, Baolai, Dalian, Benxi, Shanghai Metals, Huludao, Xingyuda, Jianye, Rizhao, Tianjin No. 1, Kunshan, Yongjie, Jiangsu, Qingdao, Hengshui, Zhongyuan, Kunshan Lets Win, and BOYU demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporters' exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers and Silicon Carbide*. As a result, for the purposes of this preliminary determination, we have granted a separate company-specific rate to Wai Ming, Fastube, Wuxi Eric, SLK, Wah Cit, Guangdong, Yulong, Weifang, Shijiazhuang, Baolai, Dalian, Benxi, Shanghai Metals, Huludao, Xingyuda, Jianye, Rizhao, Tianjin No. 1, Kunshan, Yongjie, Jiangsu, Qingdao, Hengshui, Zhongyuan, Kunshan Lets Win, and BOYU.

In determining what rate to assign companies receiving separate rates, the Department's normal practice is to weight-average the individually calculated margins from the mandatory respondents. In this investigation, Yulong is the only mandatory respondent receiving an individually calculated margin, and its margin is zero percent. Shuangjie, the other mandatory respondent, is receiving a rate based entirely on adverse facts available ("AFA") as part of the PRC-wide entity for its failure to cooperate. See "Adverse Facts Available" section below. Therefore, in this case, we have assigned to the companies receiving separate rates the simple average of Yulong's zero percent margin and the AFA margin assigned to Shuangjie as part of the PRC-wide entity. Since the Department has selected 51.34 percent as the AFA rate (see "Adverse Facts Available" section below), the simple average of this rate and zero percent is 25.67 percent. Therefore, we have

assigned 25.67 percent as the rate applicable to Wai Ming, Fastube, Wuxi Eric, SLK, Wah Cit, Guangdong, Weifang, Shijiazhuang, Baolai, Dalian, Benxi, Shanghai Metals, Huludao, Xingyuda, Jianye, Rizhao, Tianjin No. 1, Kunshan, Yongjie, Jiangsu, Qingdao, Hengshui, Zhongyuan, Kunshan Lets Win, and BOYU. See Separate Rates Memorandum.

#### Adverse Facts Available

Sections 776(a)(1) and (2) of the Act provide 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 of the Act; (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 if it can do so without undue difficulties.

In this case, all PRC exporters of subject merchandise to the United States were given an opportunity to provide Q&V information to the Department. However, not all exporters responded to the Department's request for Q&V information.<sup>2</sup> Based upon our

knowledge of the volume of imports of subject merchandise, we have concluded that the companies that responded to the Q&V questionnaire do not account for all U.S. imports during the POI of subject merchandise. We have treated the non-responsive PRC producers/exporters (including Shuangjie) as part of the PRC-wide entity because they did not qualify for a separate rate.

Since the PRC-wide entity (including Shuangjie) withheld information requested by the Department, we find that the use of facts available is appropriate to determine the PRC-wide rate, pursuant to section 776(a)(2)(A) of the Act. See *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See *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); *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819-20 (October 16, 1997); *Crawfish Processors Alliance v. United States*, 343 F. Supp.2d 1242 (CIT 2004) (approving use of AFA when respondent refused to participate in verification); see also *Statement of Administrative Action*, accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103-316, 870 (1994) ("SAA"). Because the PRC-wide entity (including Shuangjie) did not respond to the Department's request for information, the Department has concluded 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.

<sup>2</sup> The Department received only 32 timely responses to the requests for Q&V information that it sent to the 53 potential exporters identified in the

petition. See Q&V Memorandum; see also Respondent Selection Memorandum.

Section 776(b) of the Act authorizes the Department to use, as 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 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, 8932 (February 23, 1998). 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 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 21, 2000) and accompanying Issues and Decision Memorandum, at "Facts Available". Because the dumping margin derived from the petition is higher than the calculated weighted-average margin for the mandatory respondents, we examined whether it was appropriate to base the PRC-wide dumping margin on the secondary information in the petition.

When the Department relies on secondary information, rather than information obtained in the course of an investigation, section 776(c) of the Act requires it to corroborate that information, to the extent practicable, from independent sources reasonably at its disposal.<sup>3</sup> The SAA also states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. See SAA at 870.

The SAA also clarifies that "corroborate" means that 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, to the extent practicable, examine 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 *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

To corroborate the dumping margin alleged in the petition (as adjusted by the Department in initiating the instant investigation), we compared sales-specific dumping margins calculated for the preliminary determination to the dumping margins alleged in the petition. We found that Yulong's highest sales-specific dumping margin corroborates, to the extent practicable, the petition margin of 51.34 percent. See *Initiation Notice*, see also Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to Abdelali Elouaradia, Office Director, "Corroboration of the Facts Available Rate for the Preliminary Determination," dated January 3, 2008. We are assigning this rate, 51.34 percent, as AFA to the PRC-wide entity (including Shuangjie).

#### Fair Value Comparisons

To determine whether sales of CWP to the United States by Yulong were made at less than fair value, we compared the export price ("EP") to normal value ("NV"), as described in the "U.S. Price," and "Normal Value" sections of this notice. We compared NV to weighted-average EPs in accordance with section 777A(d)(1) of the Act.

#### U.S. Price

For Yulong, we based U.S. price on EP in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and CEP was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, brokerage and handling, international freight, and marine insurance, in accordance with section 772(c) of the Act.

Where foreign inland freight, brokerage and handling, or international ocean freight was provided by PRC

service providers, or paid for in Renminbi ("RMB"), we analyzed the amount of service provided by PRC entities to determine the appropriate method of valuing the services. Yulong received foreign inland freight services, and brokerage and handling services, from PRC service providers. Yulong paid for international ocean freight services through a PRC freight forwarder. See Yulong's October 31, 2007, questionnaire response at 9. For a complete discussion of the calculations of the U.S. price for Yulong, see Memorandum to the File, through Mark Manning, Program Manager, AD/CVD Operations, Office 4, from Thomas Martin, Senior International Trade Analyst, AD/CVD Operations, Office 4, Regarding "Program Analysis for the Preliminary Determination of Antidumping Duty Investigation of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Yulong," dated January 3, 2007 ("Yulong Analysis Memorandum"). See also the "Factors of Production" section below.

Yulong reported that all of its U.S. sales had foreign inland freight provided by NME freight providers. Therefore, we valued foreign inland freight using a surrogate value obtained from the web site of an Indian transportation company, InFreight Technologies India Limited. See <http://www.infreight.com/>. This average rate was used by the Department in the antidumping duty administrative review of *Saccharin from the PRC*. See *Saccharin from the People's Republic of China; Preliminary Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 25247 (May 4, 2007) ("*Saccharin from the PRC*"). Because this value is not contemporaneous with the POI, we adjusted it to account for inflation using the Indian Wholesale Price Index ("WPI"). See Memorandum to the File, from Thomas Martin, Senior International Trade Compliance Analyst, Office 4, AD/CVD Operations, Regarding "Less-Than-Fair-Value ("LTFV") Investigation of Circular Welded Carbon Quality Steel Pipe ("CWP") from the People's Republic of China ("PRC"): Surrogate Values for the Preliminary Determination - Jiangsu Yulong Steel Pipe Co., Ltd. ("Yulong")," dated January 3, 2008 ("Factor Value Memorandum"), at Exhibit 7.

For brokerage and handling, Yulong reported that all of its U.S. sales had foreign brokerage and handling provided by NME companies. We valued Yulong's use of foreign brokerage and handling using a simple average of the public version of the brokerage and handling expenses reported in an

<sup>3</sup> Secondary information is described in the SAA as "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise." See SAA at 870.



administrative review of preserved mushrooms from India by Agro Dutch Industries Ltd., in its section A–D submission, dated May 24, 2005, at Exhibit B–1, (*see Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006)), and the section C submission from Kejriwal Paper Ltd., dated January 9, 2006, at Exhibit C–2, used in *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 (August 8, 2006)). Because these data were not contemporaneous to the POI, we adjusted them for inflation using the Indian WPI. *See* Factor Value Memorandum at Exhibit 8.

Yulong also reported that all of its U.S. sales had international freight provided by NME companies. We valued international freight expenses using U.S. dollar freight quotes that the Department obtained from Maersk Sealand (“Maersk”), a market-economy shipper. We obtained quotes from Maersk for shipments from the PRC port of export and the U.S. port of import reported by Yulong for its U.S. sales. Because these data were not contemporaneous to the POI, we adjusted them for inflation using the U.S. WPI. *See* Factor Value Memorandum at Exhibit 9.

### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production (“FOP”) methodology if the merchandise is exported from an NME country 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 FOP because the presence of government controls on various aspects of non-market economies renders price comparisons and the calculation of production costs invalid under the Department’s normal methodologies.

#### 1. Factors of Production

Yulong reported that it does not have complete, product-specific POI records that track the consumption of hot-rolled steel in coils on a product-specific basis,

and, therefore, it allocated the same quantity of steel to all subject merchandise products. However, the Department finds that a single steel consumption rate for all products is not reasonable. Therefore, on the basis of the production data submitted by Yulong, which the Department intends to verify, the Department has adjusted Yulong’s reported consumption rate for hot-rolled steel in coils to be product-specific on the basis of steel coil and pipe thickness. *See* Yulong Analysis Memorandum. An amount for yield loss was added to the reported consumption rate per metric ton of CWP produced.

#### 2. Surrogate Country Selection

In antidumping proceedings involving NME countries, the Department, pursuant to section 773(c)(1) of the Act, will generally base 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.

On November 5, 2007, the Department determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See* Letter to All Interested Parties, from Mark Manning, Program Manager, Office 4, AD/CVD Operations, Regarding “Antidumping Duty Investigation of Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China (“PRC”),” dated November 5, 2007, attaching Memorandum to Mark Manning, Program Manager, Office 4, AD/CVD Operations, from Ron Lorentzen, Director, Office of Policy, Regarding “Investigation of Circular Welded Carbon Quality Steel Pipe (“Pipe”) from the People’s Republic of China from the People’s Republic of China (PRC): Request for List of Surrogate Countries,” dated October 29, 2007.

On November 5, 2007, the Department requested comments on surrogate country selection, and on surrogate values, from the interested parties in this investigation. No interested party commented on the selection of a surrogate country. However, on November 15, 2007, Yulong submitted surrogate value information, *i.e.*,

surrogate financial statements, for use in this investigation.<sup>4</sup>

As detailed in the Surrogate Country Memorandum, the Department has preliminarily selected India as the surrogate country because: (1) it is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to 773(c)(4) of the Act; and (3) we have reliable data from India that we can use to value the factors of production. For a detailed discussion of the selection of the surrogate country, *see* Memorandum to the File, through Abdelali Elouaradia, Director, Office 4, AD/CVD Operations, from Maisha Cryor, Analyst, Office 4, AD/CVD Operations, Regarding “Antidumping Duty Investigation of Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Selection of a Surrogate Country,” dated December 14, 2007 (“Surrogate Country Memorandum”). Thus, we have calculated NV using Indian prices when available and appropriate to value Yulong’s factors of production. *See* Factor Value Memorandum.

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

#### 3. Factor Value Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by Yulong for the POI. The FOPs for subject merchandise include: (1) quantities of raw materials consumed; (2) hours of labor required; (3) amounts of energy and other utilities consumed; (4) representative capital and selling costs; and (5) packing materials. We valued the reported FOPs by multiplying the reported per-unit factor-consumption rates by publicly available prices and financial statements from the surrogate country, India, or, where appropriate, the market economy prices paid for the factor (*see* further discussion below).

In selecting the surrogate values, we considered the quality of the source of surrogate information, the specificity of the surrogate value to the FOP being valued, and contemporaneity of the data to the POI. To the extent practicable, we selected values that are non-export average values and tax-exclusive. *See, e.g., Notice of Preliminary*

<sup>4</sup>The petitioners submitted surrogate value information, including surrogate financial statements, in their June 7, 2007, petition.

*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) (“*Shrimp from Vietnam*”).

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. We derived the average unit value of the factors from Indian import statistics. As appropriate, we added to the surrogate values a cost for inland freight to make them delivered prices. Specifically, we calculated the inland freight cost by multiplying a surrogate freight rate by the shorter of the reported distance from the PRC domestic supplier to the respondent’s factory or the distance from the nearest seaport to the respondent’s factory, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit’s decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). A detailed description of all surrogate values used for respondents can be found in the Factor Value Memorandum.

Where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values, where appropriate, using the WPI as published in the International Financial Statistics of the International Monetary Fund. See Factor Value Memorandum at Exhibit 2.

Furthermore, with regard to the Indian import-based surrogate values, we disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. See, e.g., *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 (“*CTVs*

*from the PRC*”). We are also directed by legislative history not to conduct a formal investigation to ensure that such prices are not subsidized. See H.R. Rep. 100–576 at 590 (1988). Rather, Congress directed the Department to base 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 either in calculating the Indian import-based surrogate values or in calculating market-economy input values. In instances where a market-economy input was obtained solely from suppliers located in these countries, we used Indian import-based surrogate values to value the input. See *Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People’s Republic of China*, 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum at Comment 1.

Yulong purchased certain inputs into the production of the merchandise under investigation from market economy suppliers and paid for such purchases in market economy currencies. The Department has instituted a rebuttable presumption that market economy input prices are the best available information for valuing an input when the total volume of the input purchased from all market economy sources during the POI or period of review is 33 percent or greater of the total volume of the input purchased from all sources during the period.<sup>5</sup> In these cases, unless case-specific facts provide adequate grounds to rebut the Department’s presumption, the Department will use the weighted-average market economy purchase price to value the input. Alternatively, when the volume of an NME firm’s purchases of an input from market economy suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the weighted-average market economy purchase price with an appropriate surrogate value according to their respective shares of the total

<sup>5</sup> Notwithstanding the determination the Department reached in *Shrimp from Vietnam*, at Comment 8, the Department will examine if and when the inputs were used in the production process when case-specific conditions demand it. Unless there are case-specific reasons to examine other criteria, the Department will base its decision on whether to accept market economy input purchases to value the input on the relative share of market economy purchases during the POI or period of review to total purchases during that period.

volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption. When a firm has made market economy input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid market economy purchases meet the 33 percent threshold. See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006) (“*Notice for Antidumping Methodologies*”).

In accordance with this policy, we valued Yulong’s inputs using the market economy prices paid for in market economy currencies where appropriate. Alternatively, when the volume of Yulong’s purchases of an input from market economy suppliers during the POI was below 33 percent of the company’s total volume of purchases of the input during the POI, we weight-averaged the weighted-average market economy purchase price with an appropriate surrogate value according to their respective shares of the total volume of purchases. See Yulong’s September 24, 2007, section D response at Exhibit D–3.

#### 4. Surrogate Values

The Department valued direct materials and packing materials using publicly available import prices reported in the *Monthly Statistics of the Foreign Trade of India* for the POI, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India. The same import prices are also available from the *World Trade Atlas* (“*WTA*”), published by Global Trade Information Services, Inc., which is a secondary electronic source based upon the publication *Monthly Statistics of the Foreign Trade of India. Volume II: Imports*. See <http://www.gtis.com/wta.htm>.

To value electricity, we used the 2000 electricity price in India of 3.602 Rs. per kilowatt hour from *Energy Prices & Taxes, Second Quarter 2003* published by the International Energy Agency. Because these data were not contemporaneous to the POI, we adjusted for inflation using WPI. See Factor Value Memorandum at Exhibit 5.

To value water, the Department used data from the Maharashtra Industrial Development Corporation ([www.midcindia.org](http://www.midcindia.org)) to be the best

available information since it includes a wide range of industrial water rates. 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. The data was averaged accordingly. Because these data were not contemporaneous to the POI, we adjusted for inflation using WPI. See Factor Value Memorandum at Exhibit 6.

Consistent with 19 CFR 351.408(c)(3), we valued direct, indirect, and packing labor using the most recently calculated regression-based wage rate, which relies on 2004 data. This wage rate can currently be found on the Department’s website on Import Administration’s home page, Import Library, Expected Wages of Selected NME Countries, revised in January 2007, <http://ia.ita.doc.gov/wages/index.html>. The source of these wage-rate data on the Import Administration’s web site is the Yearbook of Labour Statistics 2002, ILO (Geneva: 2002), Chapter 5B: Wages in Manufacturing. 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 Yulong.

As we did in valuing foreign inland freight for U.S. sales, we valued truck freight expenses using a per kilometer per kilogram average rate from data obtained from the web site of an Indian transportation company, InFreight Technologies India Limited. See <http://www.infreight.com/>. Because this value is not contemporaneous with the POI,

we adjusted to account for inflation using the WPI. See Factor Value Memorandum at Exhibit 7.

To value factory overhead, selling, general and administrative (“SG&A”) expenses, and profit values, we used the financial statements from the following Indian companies for the fiscal year ending March 31, 2006: Zenith Birla (India) Limited; Surya Roshni Limited; Bhawani Industries Limited; and Bihar Tubes Limited. From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor, and energy (“ML&E”) costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and profit as a percentage of the cost of manufacture plus SG&A. See Factor Value Memorandum at Exhibit 10.

**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 all information relied upon in making our final determination.

**Combination Rates**

In the *Initiation Notice*, the Department stated that it would calculate combination rates for 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 Department has determined that the following preliminary weighted-average dumping margins exist:

Exporter	Producer	Weighted-Average Margin
Beijing Sai Lin Ke Hardware Co., Ltd. ....	Xuzhou Guang Huan Steel Tube Products Co, Ltd.	25.67
Wuxi Fastube Industry Co., Ltd. ....	Wuxi Fastube Industry Co., Ltd.	25.67
Jiangsu Guoqiang Zinc-Plating Co., Ltd. ....	Jiangsu Guoqiang Zinc-Plating Co., Ltd.	25.67
Wuxi Eric Steel Pipe Co., Ltd. ....	Wuxi Eric Steel Pipe Co., Ltd.	25.67
Qingdao Xiangxing Steel Pipe Co., Ltd. ....	Qingdao Xiangxing Steel Pipe Co., Ltd.	25.67
Wah Cit Enterprises .....	Guangdong Walsall Steel Pipe Industrial Co., Ltd.	25.67
Guangdong Walsall Steel Pipe Industrial Co., Ltd. ....	Guangdong Walsall Steel Pipe Industrial Co., Ltd.	25.67
Hengshui Jinghua Steel Pipe Co., Ltd. ....	Hengshui Jinghua Steel Pipe Co., Ltd.	25.67
Zhangjiagang Zhongyuan Pipe-Making Co., Ltd. ....	Zhangjiagang Zhongyuan Pipe-Making Co., Ltd.	25.67
Weifang East Steel Pipe Co., Ltd. ....	Weifang East Steel Pipe Co., Ltd.	25.67
Shijiazhuang Zhongqing Imp & Exp Co., Ltd. ....	Bazhou Zhuofa Steel Pipe Co., Ltd.	25.67
Tianjin Baolai Int’l Trade Co., Ltd. ....	Tianjin Jinghai County Baolai Business and Industry Co., Ltd.	25.67
Wai Ming (Tianjin) Int’l Trading Co., Ltd. ....	Bazhou Dong Sheng Hot-dipped Galvanized Steel Pipes Co., Ltd.	25.67
Kunshan Lets Win Steel MachineryCo., Ltd. ....	Kunshan Lets Win Steel Machinery Co., Ltd.	25.67
Shenyang Boyu M/E Co., Ltd. ....	Bazhou Dong Sheng Hot-dipped Galvanized Steel Pipes Co., Ltd.	25.67
Dalian Brollo Steel Tubes Ltd. ....	Dalian Brollo Steel Tubes Ltd.	25.67
Benxi Northern Pipes Co., Ltd. ....	Benxi Northern Pipes Co., Ltd.	25.67
Shanghai Metals & Minerals Import & Export Corp. ....	Huludao Steel Pipe Industrial Co.	25.67
Shanghai Metals & Minerals Import & Export Corp. ....	Benxi Northern Pipes Co., Ltd.	25.67
Huludao Steel Pipe Industrial Co. ....	Huludao Steel Pipe Industrial Co.	25.67
Tianjin Xingyuda Import & Export Co., Ltd. ....	Tianjin Lifengyuanda Steel Group	25.67

Exporter	Producer	Weighted-Average Margin
Tianjin Xingyuda Import & Export Co., Ltd. ....	Tianjin Xingyuda Steel Pipe Co.	25.67
Tianjin Xingyuda Import & Export Co., Ltd. ....	Tianjin Lituo Steel Products Co.	25.67
Tianjin Xingyuda Import & Export Co., Ltd. ....	Tangshan Fengnan District Xinlida Steel Pipe Co., Ltd.	25.6
Jiangyin Jianye Metal Products Co., Ltd. ....	Jiangyin Jianye Metal Products Co., Ltd.	25.67
Rizhao Xingye Import & Export Co., Ltd. ....	Shandong Xinyuan Group Co., Ltd.	25.67
Tianjin No. 1 Steel Rolled Co., Ltd. ....	Tianjin Hexing Steel Co., Ltd.	25.67
Tianjin No. 1 Steel Rolled Co., Ltd. ....	Tianjin Ruitong Steel Co., Ltd.	25.67
Tianjin No. 1 Steel Rolled Co., Ltd. ....	Tianjin Yayi Industrial Co.	25.67
Kunshan Hongyuan Machinery Manufacture Co., Ltd. ....	Kunshan Hongyuan Machinery Manufacture Co., Ltd.	25.67
Qingdao Yongjie Import & Export Co., Ltd. ....	Shandong Xinyuan Group Co., Ltd.	25.67
Jiangsu Yulong Steel Pipe Co. Ltd. ....	Jiangsu Yulong Steel Pipe Co. Ltd.	0.00
PRC-Wide Entity (Including Shuangjie) .....	.....	51.34

**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**

As noted above, the Department has found that critical circumstances exist with respect to imports of subject merchandise from the PRC. Therefore, 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 CWP from the PRC as described in the “Scope of Investigation” section, entered, or withdrawn from warehouse, for consumption from the separate rate companies and the PRC-wide entity (including Shuangjie) on or after 90 days prior to the date of publication in the **Federal Register** of our preliminary determination. 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.

In accordance with section 733(d)(2) of the Act, we are directing CBP not to suspend liquidation of imports of certain CWP from the PRC produced and exported by Yulong, and entered, or withdrawn from warehouse, for consumption on or after the date of publication of this preliminary determination in the **Federal Register**. CBP shall not require a cash deposit or the posting of a bond, as indicated above, because we have calculated a margin of zero percent for Yulong.

**International Trade Commission Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at less than fair value. Section

735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of CWP, 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 of 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 date for case briefs. 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 who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. See 19 CFR 351.310(c). Requests should contain the party’s name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing,

each party may make an affirmative presentation only on issues raised in that party’s case brief and may make rebuttal presentations only on arguments included in that party’s rebuttal brief.

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

Dated: January 3, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8-494 Filed 1-14-08; 8:45 am]

**BILLING CODE 3510-DS-S**