

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

[A-428-840]

**Lightweight Thermal Paper from Germany: 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.

**SUMMARY:** The U.S. Department of Commerce (the Department) preliminarily determines that lightweight thermal paper (LWTP) from Germany is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the "Suspension of Liquidation" section of this notice. Interested parties are invited to comment on this preliminary determination. Pursuant to requests from interested parties, we are postponing for 60 days the final determination and extending the provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

**EFFECTIVE DATE:** May 13, 2008.

**FOR FURTHER INFORMATION CONTACT:** Cindy Robinson or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-3797 or (202) 482-1167, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On October 29, 2007, the Department initiated the antidumping duty investigations of LWTP from Germany, the Republic of Korea, and the People's Republic of China (PRC). See *Notice of Initiation of Antidumping Duty Investigations: Lightweight Thermal Paper from Germany, the Republic of Korea, and the People's Republic of China*, 72 FR 62430 (November 5, 2007) (*Initiation Notice*). The petitioner in this investigation is Appleton Papers, Inc.

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. See *Initiation Notice*, 72 FR at 62431; see also *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). On November 19, 2007, the petitioner submitted scope comments in which it requested that the Department add several additional categories from the Harmonized Tariff Schedule of the United States (HTSUS) to the scope of the investigations. In response, on December 18, 2007, the Department requested comments from interested parties regarding the petitioner's proposed scope modification. However, no reply comments were received in any of the aforementioned respective cases. See *Scope Comments* section, below.

On November 14, 2007, the petitioner submitted comments on the proposed model-matching criteria. The Department requested comments on model-matching criteria in its letter to the interested parties, dated November 16, 2007. In response, the Department received several comments on model-matching criteria from certain interested parties. See *Model Match* section, below.

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. The Department identified a large number of producers and exporters of LWTP in Germany and determined that it was not practicable to examine each known exporter/producer of the subject merchandise, as provided in section 777A(c)(1) of the Act. Thus, we selected for examination Papierfabrik August Koehler AG and Koehler America, Inc. (collectively, Koehler). This particular exporter/producer accounts for the largest volume of subject merchandise exported to the United States from Germany during the period of investigation (POI). See section 777A(c)(2)(B) of the Act; See Memorandum from Melissa Skinner,

Director, Office 3, to Deputy Assistant Secretary Stephen J. Claeys, entitled "Selection of Respondent(s) for Individual Review," dated December 4, 2007, on file in the Central Records Unit (CRU), Room 1117 of the main Department building. We subsequently issued the antidumping duty questionnaire<sup>1</sup> to Koehler on December 7, 2007.

On November 16, 2007, the United States 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 certain lightweight thermal paper from Germany and the PRC that are alleged to be sold in the United States at LTFV. The ITC also determined that imports of LTWP from the Republic of Korea were negligible, and therefore, terminated the investigation with regard to the Republic of Korea. See *Certain Lightweight Thermal Paper from China, Germany, and Korea, Investigation Nos. 701-TA-451 and 731-TA-1126-1128 (Preliminary)*, 72 FR 70343 (December 11, 2007). The ITC notified the Department of these findings.

In the petition filed on September 19, 2007, the petitioner provided information demonstrating reasonable grounds to believe or suspect that sales of LWTP in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a sales-below-cost investigation. See September 19, 2007, Petition, Volume III: Germany Dumping Allegation, at page 8. We found that the petitioner provided a reasonable basis to believe or suspect that German producers were selling LWTP in Germany at prices below the COP. See section 773(b)(2)(A)(i) of the Act.

Accordingly, the Department initiated a country-wide sales-below-cost investigation and requested that Koehler respond to section D of the Department's questionnaire. See *Initiation Notice*; see also, the Department's questionnaire issued to Koehler on December 7, 2007.

<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 B requests a complete listing of all home market sales or, if the home market is not viable, of sales in the most appropriate third-country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further manufacturing.

On January 14, 2008, the Department received the Section A questionnaire response from Koehler. On January 30, 2008, the Department received the Sections B, C and D responses from Koehler. On February 11, 2008, the Department received comments from the petitioner on the Sections A through D responses for Koehler. After reviewing the Sections A through D responses from Koehler, the Department issued supplemental questionnaires to Koehler. On March 27, 2008, the petitioner submitted additional comments on Koehler's questionnaire and supplemental questionnaire responses. The Department issued additional supplemental questions, after reviewing Koehler's supplemental questionnaire response.

On February 6, 2008, the petitioner requested that the Department postpone the preliminary determination by 50 days and requested that the Department extend the deadline for filing a targeted dumping allegation for Germany. On February 25, 2008, the Department advised the petitioner that the deadline to file a targeted dumping allegation would be 30 days from any revised deadline for the preliminary determination. See Memorandum from George McMahon to the File, entitled "Extension of the Deadline to File a Targeted Dumping Allegation in the Antidumping Duty Investigations on Lightweight Thermal Paper from Germany and the People's Republic of China," dated February 25, 2008. On February 25, 2008, the Department postponed the preliminary determination by 50 days. See *Lightweight Thermal Paper from Germany and the People's Republic of China: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 73 FR 9997 (February 25, 2008).

## Targeted Dumping Allegation

The petitioner submitted an allegation of targeted dumping with respect to Koehler on March 27, 2008. See section 777A(d)(1)(B) of the Act. In its allegation, the petitioner asserts that there are patterns of export prices (EPs), or constructed export prices (CEPs) for comparable merchandise that differ significantly among purchasers, regions, and time periods. Specifically, the petitioner based its allegation on four targeted purchasers, the west region as defined by the Census Bureau, and the last four months of the POI. The Department requested more information from the petitioner with respect to its targeted dumping allegation. See Letter from James Terpstra to the petitioner, dated April 8, 2008. On April 14, 2008,

the petitioner provided its response to the Department's request for additional information regarding its targeted dumping allegation.

On April 16, 2008, the Department received comments from Koehler objecting to the targeted dumping allegation on the basis that it does not meet the statutory standard for targeted dumping. Specifically, Koehler argues that the petitioner failed to: 1) explain any statistical tests that should be applied, 2) demonstrate a pattern exists within the context of market conditions, 3) explain why a two-percent threshold is significant for all three types of alleged targeting, 4) explain why differences cannot be taken into account using the average-to-average analysis, 5) explain why the Department should ignore the statutory application of the term "or" (instead filing allegations based on purchasers, regions, and time periods), and 6) justify the counterintuitive conclusion that, when all three targeting allegations are considered together, over half of Koehler's sales are allegedly targeted. On April 23, 2008, the Department also received comments from Mitsubishi HiTec Paper Flensburg GmbH and Mitsubishi HiTec Paper Bielefeld GmbH, and Mitsubishi International Corporation (collectively, Mitsubishi) objecting to the targeted dumping allegation. First, Mitsubishi objects to the use of zeroing to calculate dumping margins in any situation. Second, Mitsubishi asserts that the threshold requirements advocated by the petitioner are unworkable. Finally, Mitsubishi argues that, should the Department find that Koehler targeted sales of LWTP during the POI, the Department may not apply any weighted-average margins calculated for sales within the targeted subset to Mitsubishi.

#### **New Targeted Dumping Test applied in Steel Nails**

The statute allows the Department to employ the average-to-transaction methodology in its margin calculations if: 1) there is a pattern of EPs that differ significantly among purchasers, regions, or periods of time; and 2) the Department explains why such differences cannot be taken into account using the average-to-average or transaction-to-transaction methodology. See section 777A(d)(1)(B) of the Act. The Department has developed a new test to determine whether targeted dumping has occurred. This new test is a two-stage test: the first test to address the pattern requirement and the second test to address the significant difference requirement. For additional detail, see

the memorandum entitled "Antidumping Duty Investigations of Certain Steel Nails from the Peoples Republic of China (PRC) and the United Arab Emirates (UAE): Post-Preliminary Determinations on Targeted Dumping (Steel Nails Targeted Dumping Determination), dated April 21, 2008, and placed on the record of this investigation on April 30, 2008.

#### **Results of the Application of the New Targeted Dumping Test**

For purposes of this preliminary determination on targeted dumping, we have applied the above test to the U.S. sales data reported by the respondent, Koehler. In applying the Steel Nails test, we clarified various aspects of the test, applied the Steel Nails methodology to multiple allegations in this investigation (customer, region, and time period), and made certain corrections to the underlying programming applied in Steel Nails. We clarified the price gap test described in Steel Nails as involving only average prices to non-targets that are *above* the average price charged to the alleged target. That is, the price gap test only "looks up" when calculating price gaps for non-targets. We also made corrections to the SAS code underlying the price gap test. Our observations and results are discussed in more detail in a separate memorandum placed on the record of this investigation. See "Calculation Memorandum for the Preliminary Determination – Koehler," dated May 6, 2008, on file in the CRU.

As outlined in the separate memorandum, we did not find a pattern of EPs for comparable merchandise that differ significantly among customers, regions or by time period. As a result, we applied the average-to-average methodology to the EPs of all of Koehler's sales to the United States during the POI.

#### **Comments by Interested Parties**

Although the Department has not yet established explicit criteria or standards for defining "region" in the targeted dumping context, we have accepted the petitioner's use of U.S. Census-based regions for purposes of our targeted dumping analysis in this investigation. As we did in the investigations covering Steel Nails, the Department invites comments on standards and criteria for definitions of "region" that are reflective of the industry and commercial market in the United States. See Steel Nails Targeted Dumping Determination at 9.

Parties may also comment on the Department's overall preliminary

determination application of the new targeted dumping test in this proceeding. Consistent with 19 CFR 351.309(c)(2), all comments should be filed in the context of the case and rebuttal briefs. See the "Public Comment" section below for details regarding the briefing schedule for this investigation.

#### **Period of Investigation**

The POI is July 1, 2006, to June 30, 2007. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition.

#### **Scope of the Investigation**

The merchandise covered by this investigation includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter (g/m<sup>2</sup>) (with a tolerance of  $\pm 4.0$  g/m<sup>2</sup>) or less; irrespective of dimensions;<sup>2</sup> with or without a base coat<sup>3</sup> on one or both sides; with thermal active coating(s)<sup>4</sup> on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat;<sup>5</sup> and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to this investigation may be classified in the HTSUS under subheadings 4811.90.8040 and 4811.90.9090.<sup>6</sup> As discussed below, we added to the scope of the investigation the following HTSUS subheadings: 3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00.

<sup>2</sup> LWTP is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both jumbo rolls and converted rolls (as well as LWTP in any other forms, presentations, or dimensions) are covered by the scope of these investigations.

<sup>3</sup> A base coat, when applied, is typically made of clay and/or latex and like materials and is intended to cover the rough surface of the paper substrate and to provide insulating value.

<sup>4</sup> A thermal active coating is typically made of sensitizer, dye, and co-reactant.

<sup>5</sup> A top coat, when applied, is typically made of polyvinyl acetone, polyvinyl alcohol, and/or like materials and is intended to provide environmental protection, an improved surface for press printing, and/or wear protection for the thermal print head.

<sup>6</sup> HTSUS subheading 4811.90.8000 was a classification used for LWTP until January 1, 2007. Effective that date, subheading 4811.90.8000 was replaced with 4811.90.8020 (for gift wrap, a non-subject product) and 4811.90.8040 (for "other," including LWTP). HTSUS subheading 4811.90.9000 was a classification for LWTP until July 1, 2005. Effective that date, subheading 4811.90.9000 was replaced with 4811.90.9010 (for tissue paper, a non-subject product) and 4811.90.9090 (for "other," including LWTP).

Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

#### Scope Comments

In our *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*.

On November 19, 2007, the petitioner submitted scope comments in which it requested that the Department add the following additional HTSUS subheadings to the scope of the investigations: HTSUS subheading 3703.10.60, 4811.59, 4820.10, and 4823.40 based on the claim that subject merchandise may also enter under these HTSUS subheadings. On December 18, 2007, the Department requested comments from interested parties regarding the petitioner's proposed scope modification. However, no reply comments were received in this, or any of the aforementioned simultaneous investigations. On April 11, 2008, and April 16, 2008, the Department received letters from the National Import Specialists at U.S. Customs and Border Protection (CBP) requesting that HTSUS subheadings 3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00 be added to the scope of the antidumping duty investigations of LWTP from Germany and the PRC, and the countervailing duty investigation of LWTP from the PRC on the basis that entries of subject merchandise could be classified therein. See Memorandum to the File from the Team to the File through James Terpstra, entitled "Request from Customs and Border Protection to update AD /CVD Module," dated April 17, 2008. The Department has added these additional subheadings to the scope of this investigation.

#### Model Match

In accordance with section 771(16) of the Act, all products produced by the respondent covered by the description in the *Scope of the Investigation* section, above, and sold in Germany during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on 12 criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: 1) form, 2) thermal active coating, 3) top coating, 4) basis weight, 5) maximum optical density units, 6) static sensitivity, 7) dynamic sensitivity, 8) coating color, 9) printing, 10) width, 11) length, and 12) core material. Where there were no sales

of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

On November 14, 2007, and November 21, 2007, the petitioner filed proposed model-matching criteria to use in the Department's questionnaire. On November 23, 2007, and November 28, 2007, Koehler submitted comments on the proposed model-matching criteria. On November 26, 2007, and November 28, 2007, Mitsubishi also submitted comments on the proposed model-matching criteria. On December 3, 2007, the petitioner filed comments in response to the model-matching criteria comments submitted by Koehler and Mitsubishi. On December 4, 2007, Koehler submitted additional comments challenging the petitioner's proposed ranges of the dynamic sensitivity model-match criterion as overly broad. On December 7, 2007, the Department issued the questionnaire containing the criteria identified above. See the Department's antidumping duty questionnaire issued to Koehler on December 7, 2007, at pages B-8 through B-14.

#### Date of Sale

Section 351.401(i) of the Department's regulations states that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulations further provide that the Department 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 material terms of sale are established. The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established. See 19 CFR 351.401(i); see also *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; and *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2. Therefore, we used the earlier of shipment date or invoice date as the date of sale in accordance with our practice.

#### Fair Value Comparisons

To determine whether sales of LWTP from Germany were made in the United States at less than normal value (NV), we compared the EP or CEP to the NV, as described in the *Export Price and Constructed Export Price* and *Normal Value* sections below. In accordance with section 777A(d)(1) of the Act, we calculated the weighted-average prices for NV and compared these to the weighted average of EP (and CEP).

#### Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. Pursuant to section 772(a) of the Act, we used the EP methodology when the merchandise was first sold by the producer or exporter outside the United States directly to the unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the first sale to the unaffiliated purchaser in the United States of the subject merchandise. See section 772(b) of the Act. We based EP and CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale. When appropriate, we adjusted prices to reflect billing adjustments, rebates, and early payment discounts, and commissions.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including U.S. warehouse expense, inland freight, inland insurance, brokerage & handling, international freight, marine insurance, and U.S. customs duties.

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (cost of credit, warranty, and other direct selling expenses). These expenses include certain indirect selling expenses incurred by affiliated U.S. distributors. See "Calculation Memorandum for the Preliminary Determination - Koehler." We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act. We made additions, where appropriate, for freight rebate revenue and other transportation revenue.

## Normal Value

### A. Home Market Viability and Comparison Market Selection

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondents' volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B)(i) of the Act, because Koehler had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.

### B. Arm's-Length Test

Koehler reported that its sales of the foreign like product were made to unaffiliated customers. Therefore, the arm's-length test is not applicable to Koehler's sales of the foreign like product.

### C. Cost of Production Analysis

Based on our analysis of the petitioner's allegation stated in the petition, we initiated a sales-below-cost investigation to determine whether Koehler had sales that were made at prices below their COP pursuant to section 773(b) of the Act. See Petition at page 8. See also; *Initiation Notice* at page 62432.

#### 1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated Koehler's COP based on the sum of its costs of materials and conversion for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses (see the *Test of Comparison Market Sales Prices* section below for the treatment of home market selling expenses).

The Department relied on the COP data submitted by Koehler and its supplemental section D questionnaire responses for the COP calculation, except for the following instances where the information was not appropriately quantified or valued:

- a. We adjusted the denominator of Koehler's reported G&A expense ratio to reflect Koehler's 2006 cost of goods sold.
- b. We adjusted Koehler's reported financial expense ratio to include the total foreign exchange gains and losses reported in Koehler Holding's 2006 consolidated financial statements. We adjusted the denominator of the financial

expense ratio to reflect Koehler Holding's 2006 consolidated cost of goods sold.

Our revisions to Koehler's COP data are discussed in the Memorandum from Robert Greger, Senior Accountant, to Neal Halper, Director, Office of Accounting, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Koehler," dated May 6, 2008.

#### 2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sales prices were below the COP. For purposes of this comparison, we used the COP exclusive of selling and packing expenses. The prices were exclusive of any applicable movement charges, direct and indirect selling expenses, and packing expenses. In addition, we included an amount for freight rebate revenue and other transportation revenue.

#### 3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product during the POI were at prices less than COP, we determined that such sales have been made in "substantial quantities." See section 773(b)(2)(C) of the Act. Further, the sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because we examined below-cost sales occurring during the entire POI. In such cases, because we compared prices to POI-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our preliminary findings show that we did not find that more than 20 percent of Koehler's sales were at prices less than the COP. The Department excluded certain sales transactions reported as samples by Koehler. However, we did not exclude any additional sales as a result of the COP test. Therefore, we used all of Koehler's

home market sales as the basis for determining NV.

### D. Calculation of Normal Value Based on Comparison Market Prices

We based home market prices on packed prices to unaffiliated purchasers in Germany. We adjusted the starting price for billing adjustments, early payment discounts, rebates, warehouse expense, and inland freight where appropriate, pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, for comparisons made to EP sales, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense, warranty directly linked to sales transactions, and other direct selling expenses) and adding U.S. direct selling expenses (credit, commissions, warranty directly linked to sales transactions, and other direct selling expenses), where appropriate. See 19 CFR 351.410.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise. See 19 CFR 351.411(b).

### E. Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. In identifying LOTs for EP and comparison market sales (i.e., NV based on home market), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison

market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP–offset provision).

Koehler reported its sales in the home market and the U.S. market at the same single LOT. In the home market, Koehler reported that its sales were made through two channels of distribution: (1) direct sales and (2) consignment sales. In the U.S. market, Koehler reported that its sales were made through four channels of distribution: (1) direct sales through its U.S. affiliate (*i.e.*, CEP sales) (2) consignment sales, (3) warehouse sales, and (4) direct sales from Koehler AG (*i.e.*, EP sales). Based on our analysis, we found that Koehler's sales to the U.S. and home market were made at the same LOT, and as a result, no LOT adjustment was warranted. Furthermore, our analysis shows that Koehler's home market sales were not made at a more advanced LOT than Koehler's U.S. sales. Accordingly, we have not made a CEP offset to NV. *See* 773(a)(7)(B) of the Act.

For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, see our analysis contained in the "Calculation Memorandum for the Preliminary Determination – Koehler."

#### Currency Conversion

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

#### All-Others Rate

Pursuant to section 735(c)(5)(A) of the Act, the all–others rate is equal to the weighted average of the estimated weighted–average dumping margins of all respondents investigated, excluding zero or *de minimis* margins or margins determined entirely using facts available. Koehler is the only respondent in this investigation for which the Department has calculated a company-specific rate and it is not zero, *de minimis* or based entirely upon facts available. Therefore, for purposes of determining the all–others rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted–average dumping margin calculated for Koehler

for the all–others rate, as referenced in the *Suspension of Liquidation* section, below.

#### Verification

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

#### Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing CBP to suspend liquidation of all entries of LWTP from Germany that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing CBP to require a cash deposit or the posting of a bond equal to the weighted–average dumping margin, as indicated in the chart below. These suspension–of–liquidation instructions will remain in effect until further notice.

The weighted–average dumping margins are as follows:

Manufacturer/Exporter	Weighted–Average Margin (percent)
Papierfabrik August Koehler AG and Koehler America, Inc. ....	6.49
All Others .....	6.49

#### Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

#### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the Department's final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of LWTP from Germany are materially injuring, or threaten material injury to, a U.S. industry. Because we have postponed the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, the ITC will make its final determination within 45 days of our final determination.

#### Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the final verification

report in this proceeding. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d)(1) and (2). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette. In accordance with section 774 of the Act, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing 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 of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. *See* 19 CFR 351.310(c). At the hearing, oral presentations will be limited to issues raised in the briefs.

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

Pursuant to section 735(a)(2) of the Act, on February 19, 2008, Koehler, which accounts for a significant proportion of exports of LWTP from Germany, requested that in the event of an affirmative preliminary determination in this investigation, the Department fully extend the final determination (*i.e.*, postpone its final determination by 60 days). In its February 19, 2008, letter, Koehler also requested, pursuant to section 733(d) of the Act, that in the event of an affirmative preliminary determination in this investigation, the Department extend the maximum duration of provisional measures from four months

to six months from the date of implementation. See section 735(a)(2) of the Act and 19 CFR 351.210(e)(2). In accordance with section 733(d) of the Act and 19 CFR 351.210(b)(2)(ii), 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 its 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.

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

Dated: May 6, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8-10659 Filed 5-12-08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-920]

#### Lightweight Thermal Paper 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

**DATES:** *Effective Date:* May 13, 2008.

**SUMMARY:** We preliminarily determine that lightweight thermal paper ("LWTP") from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice. Pursuant to requests from interested parties, we are postponing the final determination and extending the provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination. See the "Postponement of the Final Determination" section below.

**FOR FURTHER INFORMATION CONTACT:** Frances Veith or Marin Weaver, AD/CVD Operations, Office 8, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4295 or (202) 482-2336, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Initiation

On September 19, 2007, Appleton Papers, Inc. ("petitioner" or "Appleton"), filed an antidumping petition in proper form on behalf of the domestic industry and workers producing LWTP, concerning imports of LWTP from Germany, the Republic of Korea ("Korea"), and the PRC, in addition to a countervailing duty petition on LWTP from the PRC. See Antidumping Duty Petition on Lightweight Thermal Paper from Germany, the Republic of Korea, and the People's Republic of China and Countervailing Duty Petition on Lightweight Thermal Paper from the People's Republic of China, dated September 19, 2007 (the "*Petition*").

On October 16, 2007, the Department of Commerce ("the Department"), pursuant to section 732(c)(1)(B) of the Act, extended the deadline for the initiation determination in order to determine the adequacy of the petition.<sup>1</sup>

The Department initiated this investigation on October 29, 2007.<sup>2</sup> 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. The process requires exporters and producers to submit a separate-rate status application ("SRA").<sup>3</sup> However, the standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* government control over its export activities) has not changed. The SRA for this investigation was posted on the Department's Web site <http://ia.ita.doc.gov/ia-highlights-and-news.html> on November 5, 2007. The

<sup>1</sup> See *Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping Duty Petitions: Lightweight Thermal Paper from Germany, the Republic of Korea, and the People's Republic of China; and the Countervailing Duty Petition: Lightweight Thermal Paper from the People's Republic of China*, 72 FR 58639 (October 16, 2007).

<sup>2</sup> See *Notice of Initiation of Antidumping Duty Investigations: Lightweight Thermal Paper from Germany, the Republic of Korea, and the People's Republic of China*, 72 FR 62430 (November 5, 2007) ("Initiation Notice").

<sup>3</sup> See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries (April 5, 2005) ("*Policy Bulletin 05.1*"), available at <http://ia.ita.doc.gov/policy/bulletin05-1.pdf>.

due date for filing an SRA was December 28, 2007. No party filed an SRA in this investigation.

On December 5, 2007, the International Trade Commission ("ITC") 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 LWTP from the PRC.<sup>4</sup>

##### Period of Investigation

The period of investigation ("POI") is January 1, 2007, through June 30, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was September 2007. See 19 CFR 351.204(b)(1).

##### Postponement of Preliminary Determination

On February 6, 2008, petitioner made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e) for a 50-day postponement of the preliminary determination. On February 25, 2008, the Department published a postponement of the preliminary antidumping duty determination on LWTP from the PRC.<sup>5</sup>

##### Postponement of Final Determination

On April 14, 2008, and May 2, 2008, Hanhong International Limited, Shanghai Hanhong Paper Co., Ltd., and Hong Kong Hanhong Ltd. (collectively ("Hanhong")) and Guangdong Guanhao High-Tech Co., Ltd. ("Guanhao"), respectively, made a timely request pursuant to section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) that the Department extend the final determination by the full amount of time allowed by law. On May 6, 2008, Hanhong and Guanhao supplemented their requests to extend the final determination to include requests to extend provisional measures pursuant to section 735(a)(2)(A) of the Act and 19 CFR 351.210(e)(2).

##### Scope of the Investigation

The merchandise covered by this investigation includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter (g/m<sup>2</sup>) (with a tolerance of  $\pm 4.0$  g/m<sup>2</sup>) or less;

<sup>4</sup> See *Investigation Nos. 701-TA-451 and 731-TA-1126-1128 (Preliminary): Certain Lightweight Thermal Paper from China, Germany, and Korea*, 72 FR 70343 (December 11, 2007).

<sup>5</sup> See *Lightweight Thermal Paper From Germany and the People's Republic of China: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 73 FR 9997 (February 25, 2008).

irrespective of dimensions;<sup>6</sup> with or without a base coat<sup>7</sup> on one or both sides; with thermal active coating(s)<sup>8</sup> on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat;<sup>9</sup> and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to this investigation may be classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under subheadings 4811.90.8040, 4811.90.9090, 3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00.<sup>10</sup> Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

### Scope Comments

We set aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encouraged all interested parties to submit such comments within 20 calendar days of signature of the *Initiation Notice*, 72 FR at 62431. We only received comments on the scope from petitioner. *See* petitioner's letter to the Department regarding, "Lightweight Thermal Paper From China, Germany, And Korea," dated November 19, 2007.

<sup>6</sup> LWTP is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both jumbo and converted rolls (as well as LWTP in any other form, presentation, or dimension) are covered by the scope of these investigations.

<sup>7</sup> A base coat, when applied, is typically made of clay and/or latex and like materials and is intended to cover the rough surface of the paper substrate and to provide insulating value.

<sup>8</sup> A thermal active coating is typically made of sensitizer, dye, and co-reactant.

<sup>9</sup> A top coat, when applied, is typically made of polyvinyl acetone, polyvinyl alcohol, and/or like materials and is intended to provide environmental protection, an improved surface for press printing, and/or wear protection for the thermal print head.

<sup>10</sup> HTSUS subheading 4811.90.8000 was a classification used for LWTP until January 1, 2007. Effective that date, subheading 4811.90.8000 was replaced with 4811.90.8020 (for gift wrap, a nonsubject product) and 4811.90.8040 (for "other" including LWTP). HTSUS subheading 4811.90.9000 was a classification for LWTP until July 1, 2005. Effective that date, subheading 4811.90.9000 was replaced with 4811.90.9010 (for tissue paper, a nonsubject product) and 4811.90.9090 (for "other," including LWTP). Petitioner indicated that, from time to time, LWTP also may have been entered under HTSUS subheading 3703.90, HTSUS heading 4805, and perhaps other subheadings of the HTSUS, including HTSUS subheadings: 3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00.

Petitioner requested that the Department include in LWTP's scope language the HTSUS subheadings 3703.10.60,<sup>11</sup> 4811.59,<sup>12</sup> 4820.10,<sup>13</sup> and 4823.40<sup>14</sup> because LWTP may enter the United States under one of these HTSUS subheadings. Specifically, the petitioner contends that HTSUS subheading 3703.1060 should be included because LWTP is sensitive to heat radiation; LWTP with certain latex topcoats could enter as paper coated with plastic under HTSUS subheading 4811.59; HTSUS subheading 4820.10's description may encompass products converted from thermal paper; and HTSUS subheading 4823.40's description appears to encompass LWTP not elsewhere specified within the HTSUS.

In the *Petition* we stated that merchandise subject to this investigation may be classified in the HTSUS under subheadings 4811.90.8040 and 4811.90.9090. On April 11, 2008 and April 16, 2008, the Department received a request from U.S. Customs and Border Protection ("CBP") to update the antidumping and countervailing duty ("AD/CVD") module for LWTP from the PRC. Specifically, CBP requested that the Department add HTSUS subheadings 3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00 to the AD/CVD module. *See* the Department's memorandum to the file entitled, "Request from Customs and Border Protection to update AD/CVD Module," dated April 17, 2008. We have reviewed petitioner's and CBP's request and have updated the AD/CVD module accordingly.

### Non-Market Economy Country

For purposes of initiation, petitioner submitted an LTFV analysis for the PRC as an NME.<sup>15</sup> Recently, the Department examined the PRC's market status and determined that NME status should continue for the PRC.<sup>16</sup> Additionally, in

<sup>11</sup> *See* ITC Web site located at <http://usitc.gov/>, which describes 3703.1060 as "photographic paper, paperboard, and textiles, sensitized: other."

<sup>12</sup> *See id.*, which describes HTSUS subheading 4859.10 as "other: In strips or rolls of a width exceeding 15 cm or in rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state."

<sup>13</sup> *See id.*, which describes HTSUS subheading 4820.10 as "Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles."

<sup>14</sup> *See id.*, which describes HTSUS subheading 4823.40 as "Rolls, sheets and dials, printed for self-recording apparatus."

<sup>15</sup> *Initiation Notice*, 72 FR at 62433.

<sup>16</sup> *See* the Department's memorandum entitled, "Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China ("China")—China's status as a non-market economy ("NME")," dated August 30, 2006. This document is available online at: <http://ia.ita.doc.gov/>

two recent investigations, the Department also determined that the PRC is an NME country.<sup>17</sup> In accordance with section 771(18)(C)(i) of the Act, the NME status remains in effect until revoked by the Department. The presumption of the NME status of the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of this investigation.

### Selection of Respondents

In accordance with section 777A(c)(2) of the Act, the Department selected the two largest exporters of LWTP (*i.e.*, Hanhong and Kosoku Business Paper Ltd. ("Kosoku")) by volume as the mandatory respondents in this investigation based on CBP entry data listed in the data under the HTSUS subheadings 4811.9080.00, 4811.9080.40, 4811.9090.90, 4811.9090.00.<sup>18</sup> These two companies appeared to cover a significant share of the total U.S. imports by volume, and both had been identified in the public realm.<sup>19</sup>

The Department issued its antidumping questionnaire to Hanhong and Kosoku on December 3, 2007.<sup>20</sup> In its questionnaire, the Department requested that the two firms provide a response to section A of the Department's questionnaire on December 24, 2007, and to sections C and D of the questionnaire on January 8, 2008. Additionally we asked Hanhong and Kosoku to notify the official in charge if they did not export/ship any merchandise falling within the scope of the investigation that entered the United States during the POI. On December 11, 2007, Kosoku contacted the Department and stated that it did not export or ship any merchandise falling under investigation that entered the United States during the POI.<sup>21</sup>

[download/prc-nmestatus/prc-lined-paper-memo-08302006.pdf.](#)

<sup>17</sup> *See Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007), and *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).

<sup>18</sup> *See* the Department's memorandum entitled, "Antidumping Duty Investigation on Lightweight Thermal Paper from the People's Republic of China: Selection of Respondents," dated November 29, 2007 ("Respondent Selection Memo").

<sup>19</sup> *See* the Department's memorandum regarding "Release of Customs Entry data from U.S. Customs and Border Security," dated November 5, 2007.

<sup>20</sup> *See, e.g.*, the Department's letter to Hanhong entitled, "Antidumping Investigation of Lightweight Thermal Paper from the People's Republic of China: Questionnaire," dated December 3, 2007.

<sup>21</sup> *See* the Department's memorandum to the file entitled, "Lightweight Thermal Paper from the

Because our *Respondent Selection Memo* stated that we had resources to investigate two firms with the largest export volume during the POI, and one of the two firms selected (*i.e.*, Kosoku) reported that it did not export or ship merchandise under investigation during the POI, we looked to the next four companies listed in the CBP data to identify and select the next largest exporter by volume as a mandatory respondent. On December 17, 2007, the Department sent Ampress Enterprises Ltd. (“Ampress”), Arting Stationery Products Factory Ltd. (“Arting”), Xiamen Anne Paper Co., Ltd. (“Anne Paper”), and Yalong Paper Product (Kunshan) Co., Ltd. (“Yalong”) a shipment questionnaire asking each whether the company exported merchandise under investigation that entered the United States during the POI. Responses were due by close of business on December 27, 2007.<sup>22</sup> The Department did not receive any responses from any of the four parties as of that deadline. The Department sent a second letter to each of the four parties noted above on December 28, 2007, again requesting information on shipments of merchandise under investigation. Responses were due to the Department no later than January 11, 2008.<sup>23</sup>

On January 2, 2008, Ampress submitted a response to the Department stating that it did not have any shipments of LWTP during the POI.<sup>24</sup> On January 11, 2008, Arting submitted a response to the Department stating that it did not have any shipments of LWTP during the POI.<sup>25</sup> Anne Paper and Yalong did not respond to the Department’s first or second requests for information.<sup>26</sup> See “Facts Available and the PRC-wide Entity” section below for further information on Anne Paper and Yalong.

People’s Republic of China: No Shipments,” dated December 12, 2007.

<sup>22</sup> See, *e.g.*, the Department’s letter to Ampress entitled, “Antidumping Investigation of Lightweight Thermal Paper from the People’s Republic of China: Shipment Questionnaire,” dated December 17, 2007.

<sup>23</sup> See, *e.g.*, the Department’s letter to Ampress entitled, “Antidumping Investigation of Lightweight Thermal Paper from the People’s Republic of China: Shipment Questionnaire,” dated December 28, 2007.

<sup>24</sup> See the Department’s memorandum to the file entitled, “Investigation of Lightweight Thermal Paper from the People’s Republic of China: Ampress Enterprises Ltd. Shipment Questionnaire Response,” dated January 3, 2008.

<sup>25</sup> See the Department’s memorandum to the file entitled, “Investigation of Lightweight Thermal Paper from the People’s Republic of China: Arting Stationery Products Factory Ltd. Shipment Questionnaire Response,” dated January 11, 2008.

<sup>26</sup> See *id.*

Section 782(a) of the Act states that the Department shall examine voluntary respondents: (1) if they submit information within the deadlines established by the Department, and (2) if the number of voluntary respondents is not so large as to be unduly burdensome and inhibit the Department’s timely completion of the review.

In the *Respondent Selection Memo*, we noted that, in the event a mandatory respondent failed to participate, we might, at our discretion, accept a voluntary respondent for review, provided that the voluntary respondent had met the two criteria outlined above. As noted above, one of the two firms selected for investigation, Kosoku, did not ship the merchandise under investigation during the POI. Also, as noted above, the Department was unsuccessful in its attempts to select a second mandatory firm for investigation from the next four firms listed in the CBP data. Because of our statutory deadlines, we determined that we could not expend additional resources in attempting to identify the next largest exporter by volume of merchandise subject to this investigation during the POI to serve as the second firm to be investigated.<sup>27</sup>

On December 4, 2007, Guan hao reported that it had shipped merchandise under consideration during the POI, and requested that it be treated as a voluntary respondent in this investigation. Further, Guan hao submitted sections A, C, and D questionnaire responses on December 21, 2007, January 9, 2008, and January 16, 2008, respectively, within the Department’s deadlines established in this investigation. Therefore, on January 18, 2008, we determined to accept the voluntary respondent (*i.e.*, Guan hao), pursuant to section 782(a) of the Act.<sup>28</sup> Thus, the Department is examining two firms (*i.e.*, Hanhong and Guan hao) in this investigation.

We noted, however, that as explained in our *Respondent Selection Memorandum*, the Department will exclude any individually calculated rate for voluntary respondents (*i.e.*, Guan hao) from the calculation of the rate to be applied to exporters/producers which qualify for a separate rate but were not selected for examination as mandatory respondents. As stated in the “Initiation” section

<sup>27</sup> See *Respondent Selection Memorandum*.

<sup>28</sup> See the Department’s memorandum regarding, “Lightweight Thermal Paper from the People’s Republic of China: Antidumping Duty Investigation: Selection of Voluntary Respondent: Guangdong Guan hao High-Tech co., Ltd.,” dated January 18, 2008.

above, no party filed an SRA in this investigation. Thus, it is not necessary to calculate a weighted-average margin for exporters/producers that were not selected for examination as mandatory respondents in this investigation.

### Surrogate Value Comments

Surrogate factor valuation comments and surrogate value information with which to value the factors of production (“FOPs”) in this proceeding were filed on February 28, 2008, by Guan hao and on February 29, 2008, by petitioner and Hanhong. On March 12, 2008, petitioner and Hanhong filed rebuttal comments on surrogate factor valuation comments and surrogate value information. For a detailed discussion of the surrogate values used in this LTFV proceeding, see the “Factor Valuation” section below and the Department’s memorandum to the file entitled, “Antidumping Investigation of Lightweight Thermal Paper from the People’s Republic of China: Factor Valuations for the Preliminary Determination,” dated concurrently with this notice (“*Surrogate Value Memorandum*”).

### Surrogate Country

Section 773(c)(1) of the Act directs the Department to base normal value (“NV”) on the NME producer’s FOPs, valued in a surrogate market economy (“ME”) country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more ME countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the “Factor Valuations” section below. See also *Surrogate Value Memorandum*.

On December 20, 2007, the Department determined that India, Indonesia, Thailand, the Philippines, and Colombia are countries comparable to the PRC in terms of economic development.<sup>29</sup> On January 15, 2008, the Department requested comments on the selection of a surrogate country from the interested parties in this investigation. Petitioner submitted comments on February 12, 2008, and

<sup>29</sup> See the Department’s Office of Policy memorandum entitled, “Antidumping Duty Investigation of Lightweight Thermal Paper from the People’s Republic of China (PRC): Request for a List of Surrogate Countries,” dated December 20, 2007 (“*Policy Memorandum*”).

Hanhong submitted comments on February 13, 2008.

Customarily, we select an appropriate surrogate country from the *Policy Memorandum* based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. In this case, we found that India is at a level of economic development comparable to that of the PRC; is a significant producer of comparable merchandise (*i.e.*, LWTP); and has publicly available and reliable data.<sup>30</sup> Accordingly, we selected India as the primary surrogate country for purposes of valuing the FOPs in the calculation of NV because it meets the Department's criteria for surrogate country selection.<sup>31</sup> We obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in antidumping investigations, interested parties may submit publicly available information to value FOPs under 19 CFR 351.408(c) within 40 days after the date of publication of this preliminary determination.<sup>32</sup>

### Separate Rates

In the *Initiation Notice*, the Department notified parties of the recent application process by which exporters and producers may obtain separate-rate status in NME investigations. See *Initiation Notice* at 62434. The process requires exporters and producers to submit an SRA. See also *Policy Bulletin 05.1*.<sup>33</sup> However, the standard for

eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* government control over its export activities) has not changed.

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 this investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. The Department analyzes each entity exporting the merchandise subject to this investigation 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 Recipients

No company reported that it is wholly owned by individuals or companies located in a market economy or that it is located outside the PRC in this investigation. Therefore, we are not addressing these ownership structures in this preliminary determination.

#### 1. Joint Ventures between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

In this investigation no company reported that its ownership structure is a joint venture between Chinese and

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.

Foreign companies. However, both respondents examined (*i.e.*, Hanhong and Guanhao) reported that they are wholly Chinese-owned companies. Therefore, the Department must analyze whether Hanhong and Guanhao can demonstrate the absence of both *de jure* and *de facto* government control over their 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 Hanhong and Guanhao supports a preliminary finding of *de jure* absence of government control based on the following: (1) An absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies. See, *e.g.*, Hanhong's and Guanhao's section A submissions dated January 4, 2008, and December 21, 2007, respectively.

#### b. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. 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 government control which would

<sup>30</sup> See the Department's memorandum to the file entitled, "Antidumping Investigation of Lightweight Thermal Paper from the People's Republic of China: Selection of a Surrogate Country," dated April 21, 2008 ("*Surrogate Country Memorandum*").

<sup>31</sup> See *id.*

<sup>32</sup> In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying *Issues and Decision Memorandum* at Comment 2.

<sup>33</sup> *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

preclude the Department from assigning separate rates.

In this case petitioner alleged that Guanhao should not receive a separate rate because there is *de facto* control over Guanhao by the PRC government. See petitioner's March 20, 2008, submission regarding its comments on the Second Supplemental A Questionnaire Response of Guanhao. Among other things, petitioner alleged that Guanhao's chairman of the board of directors ("BoD") and general manager ("GM") are PRC government officials. We solicited additional information from Guanhao regarding petitioner's allegations as they relate to the Department's criteria in determining whether there is *de facto* control by the PRC government over a company's export activities. See, e.g., Guanhao's April 4, 2008, and April 18, 2008, supplemental questionnaire responses. In response, Guanhao reported that in addition to its chairman of the BoD and GM, there are several company officials (e.g. directors, managers) that have authority to sign and negotiate sales contracts. Guanhao further reported descriptions of the roles and duties that the BoD and GM assume in their respective non-Guanhao positions in various associations and government-owned entities. The mere fact that Guanhao's chairman of the BoD is a board member of a government-owned entity does not in itself demonstrate that he is a government official or is controlled by the PRC central government, nor does membership in various associations, committees, etc. mean that the chairman of the BoD or the GM are controlled by the central PRC government. Instead, we examine whether their roles, duties, etc. in these outside entities and at Guanhao, may potentially or effectively allow these officials to exercise control over certain activities at Guanhao. We do not believe that the roles and duties undertaken by these company officials outside of Guanhao confer government control over the day-to-day activities and decisions regarding its export activities. Furthermore, neither of these company officials have majority control over the disposition of Guanhao's profits. Guanhao reported that the BoD determined the plan for Guanhao's disposition of profits, which is then presented to the general shareholders for a vote of approval. Based on the information on the record, there is no evidence that would lead us to conclude that Guanhao's export prices, sales negotiations or management decisions are controlled by the PRC government.

The evidence placed on the record of this investigation by Hanhong and

Guanhao demonstrate an absence of *de jure* and *de facto* government control with respect to their respective exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*.

#### *B. Companies Not Receiving a Separate Rate*

The Department has determined that all parties applying for a separate rate in this segment of the proceeding have demonstrated an absence of government control both in law and in fact (see discussion above), and is, therefore, not denying separate-rate status to any respondent (*i.e.*, Hanhong and Guanhao).

#### **Facts Available and the PRC-Wide Entity**

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: (A) Withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (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, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On December 17, 2007, and December 28, 2007, the Department sent Anne Paper and Yalong a questionnaire asking each whether the company exported merchandise under investigation that

entered the United States during the POI.<sup>34</sup> We have confirmed that the questionnaires were delivered to Anne Paper and Yalong.<sup>35</sup> Responses were due by close of business on December 27, 2007 and January 11, 2008, respectively.<sup>36</sup> The Department did not receive any responses from Anne Paper and Yalong.

Because Anne Paper and Yalong did not provide any information, we determine that sections 782(d) and (e) of the Act are not relevant to our analysis. We further find that the Anne Paper and Yalong failed to respond to the Department's requests for information and, therefore, failed to demonstrate that they operate free of government control and that they are entitled to a separate rate. Based on the above facts, the Department preliminarily determines that there were exports of the merchandise subject to this investigation from PRC exporters/producers that did not respond to the Department's shipment questionnaire, and we are treating these PRC exporters/producers as part of the PRC-wide entity. Moreover, because the PRC-wide entity did not cooperate to the best of its ability when it did not respond to our questionnaire asking whether it exported merchandise under investigation that entered the United States during the POI, use of facts available pursuant to section 776(a)(2)(A) and (B) of the Act is warranted for the PRC entity, which includes Anne Paper and Yalong.<sup>37</sup>

Section 776(b) of the Act provides that if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may employ adverse inferences.<sup>38</sup> We find that, because the PRC-wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

<sup>34</sup> See *Respondent Selection Memorandum*.

<sup>35</sup> See the Department's memorandum regarding, "Lightweight Thermal Paper from the People's Republic of China: Delivery of Shipment Questionnaires," dated March 12, 2008.

<sup>36</sup> See, e.g., the Department's letter to Ampress entitled, "Antidumping Investigation of Lightweight Thermal Paper from the People's Republic of China: Shipment Questionnaire," dated December 17, 2007.

<sup>37</sup> See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Artist Canvases from the People's Republic of China*, 71 FR 16116 (March 30, 2006) ("Artist Canvases").

<sup>38</sup> See, e.g., *Artist Canvases*, 71 FR 16116, 16118 (March 30, 2006). See also, Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103-316 ("SAA") at 870.

### Selection of the Adverse Facts Available Rate

In deciding which facts to use as adverse facts available (“AFA”), section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) The petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse “as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”<sup>39</sup> It is also the Department’s practice to select a rate that ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>40</sup>

Generally, the Department finds selecting the highest rate in any segment of the proceeding as AFA to be appropriate.<sup>41</sup> It is the Department’s practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.<sup>42</sup> In the instant investigation, as AFA, we have preliminarily assigned to the PRC-wide entity, including Anne Paper and Yalong, the highest calculated rate on the record of this proceeding, which in this case is the calculated margin for Hanhong. The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA.

The Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate AFA

<sup>39</sup> 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).

<sup>40</sup> 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, 69939 (November 18, 2005); see also, SAA at 870.

<sup>41</sup> See, e.g., *Certain Cased Pencils from the People’s Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part*, 70 FR 76755, 76761 (December 28, 2005) *Unchanged in Certain Cased Pencils from the People’s Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 38366, (July 6, 2006), and accompanying *Issues and Decision Memorandum* at Comment 10.

<sup>42</sup> See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People’s Republic of China*, 65 FR 34660 (May 21, 2000), and accompanying *Issues and Decision Memorandum* at “Facts Available.”

rate for the PRC-wide entity including Anne Paper and Yalong.<sup>43</sup>

### Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described as “information derived from the petition that gave rise to the investigation or review, the final determination concerning merchandise subject to this investigation, or any previous review under section 751 concerning the merchandise subject to this investigation.”<sup>44</sup> To “corroborate” means simply that the Department will satisfy itself that the secondary information to be used has probative value.<sup>45</sup> Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.<sup>46</sup> To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.<sup>47</sup>

As we did not rely upon secondary information, no corroboration was required under section 776(c) of the Act; rather we used the highest margin rate calculated for any respondent in this investigation as the AFA rate for this investigation.<sup>48</sup> See the “Preliminary

<sup>43</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin from the People’s Republic of China*, 67 FR 79049, 79053–54 (December 27, 2002), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Saccharin From the People’s Republic of China*, 68 FR 27530 (May 20, 2003).

<sup>44</sup> See *Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People’s Republic of China*, 73 FR 6479, 6481 (February 4, 2008); see also, SAA at 870.

<sup>45</sup> See *id.*

<sup>46</sup> See *id.*

<sup>47</sup> 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).

<sup>48</sup> See *Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People’s Republic of China*, 73 FR 6479 (February 4, 2008).

Determination” section of this notice below.

Consequently, we are applying a single antidumping rate—the PRC-wide rate—to producers/exporters that failed to respond to the Department’s antidumping questionnaires, or requests for shipment information, or did not apply for a separate rate, as applicable. The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from respondents, Hanhong and Guan hao. These companies and their corresponding antidumping duty cash deposit rates are listed below in the “Preliminary Determination” section of this notice.

### Fair Value Comparisons

To determine whether sales of LWTP to the United States by the respondents were made at LTFV, we compared export price (“EP”) to NV, as described in the “Export Price” and “Normal Value” sections of this notice.

### Export Price

In accordance with section 772(a) of the Act, EP is the price at which the merchandise subject to this investigation is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the merchandise subject to this investigation outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EP for Hanhong’s and Guan hao’s U.S. sales because the merchandise subject to this investigation was sold directly to the unaffiliated customers in the United States prior to importation and because constructed export price (“CEP”) was not otherwise indicated.

In response to questions raised by the Petitioner, we reviewed Hanhong’s relationship with its U.S. customer and find that Hanhong and its U.S. customer were not affiliated during the POI under the meaning of section 771(33) of the Act. Our determination in this regard is based on Hanhong’s response that: (1) Its U.S. customer controls the price at which it resells the merchandise under consideration to its U.S. customers; (2) Hanhong’s U.S. customer takes title to the merchandise and thus bears the risk of loss; and (3) the written agreement between Hanhong and its U.S. customer allows Hanhong to sell to other U.S. customers and does not restrict its U.S. customer from purchasing thermal paper from other U.S. domestic or foreign suppliers. Accordingly, we treated Hanhong’s reported sales to the

United States as EP transactions for the preliminary determination.

We calculated EP based on the packed FOB delivered prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (e.g., foreign inland freight from the plant to the port of exportation, domestic brokerage) in accordance with section 772(c)(2)(A) of the Act.<sup>49</sup> Where foreign inland freight or foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate value rates from India. See “Factor Valuation” section below for further discussion of surrogate value rates.

In determining the most appropriate surrogate values to use in a given case, the Department’s stated practice is to use period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the POI, and publicly available data.<sup>50</sup> The data we used for brokerage and handling expenses fulfill all of the foregoing criteria except that they are not specific to the merchandise subject to this investigation. There is no information of that type on the record of this investigation. The Department used two sources to calculate a surrogate value for domestic brokerage expenses: (1) data from the January 9, 2006, public version of the Section C questionnaire response from Kejriwal Paper Ltd. (“Kejriwal”) in the investigation of certain lined paper products from India;<sup>51</sup> and (2) data from Agro Dutch Industries Ltd. in the administrative review of certain preserved mushrooms

<sup>49</sup> For a detailed description of all adjustments, see the Department’s Memorandum to the File entitled, “Lightweight Thermal Paper from the People’s Republic of China: Analysis of the Preliminary Determination Margin Calculation for Hanhong” dated May 6, 2008 (“*Hanhong Preliminary Analysis Memorandum*”); and the Department’s Memorandum to the File entitled, “Lightweight Thermal Paper from the People’s Republic of China: Analysis of the Preliminary Determination Margin Calculation for Guangdong Guanhao High-Tech Co., Ltd.” dated May 6, 2008 (“*Guanhao Preliminary Analysis Memorandum*”).

<sup>50</sup> See, e.g., *Certain Cased Pencils from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 38366 (July 6, 2006), and accompanying *Issues and Decision Memorandum* at Comment 1.

<sup>51</sup> Kejriwal was a respondent in the certain lined paper products from India investigation for which the POI was July 1, 2004, to June 30, 2005. See *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) (“*CLPP*”) (unchanged in final determination).

from India.<sup>52</sup> Because these values were not concurrent with the POI of this investigation, we adjusted these rates for inflation using the Wholesale Price Indices (“WPI”) for India as published in the International Monetary Fund’s (“IMF’s”) *International Financial Statistics*, available at <http://ifs.apdi.net/imf>, and then calculated a simple average of the two companies’ brokerage expense data.<sup>53</sup>

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department’s normal methodologies. See, e.g., *CLPP*, 71 FR at 19703 (unchanged in final determination).

Guanhao has not provided a complete cost reconciliation to the Department nor has it shown that Guanhao’s reported FOPs tie to its accounting system. However, the Department is using Guanhao’s reported FOPs to calculate its margin for the preliminary determination and is providing Guanhao with a final opportunity to provide a complete cost reconciliation as requested by the Department in the original questionnaire issued on December 3, 2008, and in the two supplemental questionnaires, issued to Guanhao on February 5, 2008, and March 25, 2008.

A complete cost reconciliation, including all requested support documentation, is hereby due to the Department no later than 14 days after its receipt of our supplemental questionnaire requesting Guanhao to provide its complete cost reconciliation, which we soon intend to issue to Guanhao. Given the fact that Guanhao was first instructed to provide this cost reconciliation on December 3, 2008, the fact that the Department has granted numerous extensions to Guanhao in which to provide its complete cost

<sup>52</sup> See *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005) (unchanged in final results).

<sup>53</sup> See, e.g., *Helical Spring Lock Washers From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 52073, 52076 (September 12, 2007) (unchanged in final results).

reconciliation, and in light of the impending verification, which is currently scheduled for early June 2008, and statutorily prescribed deadlines, it is unlikely that the Department will be able to grant Guanhao any additional time to provide a complete cost reconciliation in accordance with the Department’s instructions and questions. If Guanhao does not provide a complete cost reconciliation in accordance with the Department’s instructions, we may not conduct verification or consider this company’s data usable for the final determination and may resort to the use of facts available or AFA for all of Guanhao’s data pursuant to sections 776(a) and (b) of the Act. We may revisit this issue for the final determination pending receipt of the data.

#### Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by respondents for the POI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available Indian surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production, where appropriate. This adjustment is in accordance with the U.S. Court of Appeals for the Federal Circuit decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997).

Guanhao reported that certain of its reported raw material inputs were sourced from a ME country and paid for in ME currencies. Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (i.e., not insignificant quantities), we use the actual price paid by respondents for those inputs, except when prices may have been distorted by findings of dumping by the PRC and/or subsidies.<sup>54</sup> Guanhao’s reported information demonstrates that it has both significant and insignificant quantities of certain raw materials purchased from ME suppliers. Where we found ME

<sup>54</sup> See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

purchases to be of significant quantities, in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,<sup>55</sup> we used the actual purchases of these inputs to value the inputs. Accordingly, we valued Guanhao's inputs using the ME prices paid for in ME currencies for the inputs where the total volume of the input purchased from all ME sources during the POI exceeded 33 percent of the total volume of the input purchased from all sources during the period.<sup>56</sup> Where the quantity of the reported input purchased from ME suppliers was below 33 percent of the total volume of the input purchased from all sources during the POI, and were otherwise valid, we weight averaged the ME input's purchase price with the appropriate surrogate value for the input according to their respective shares of the reported total volume of purchases.<sup>57</sup> Where appropriate, we added freight to the ME prices of inputs. For a detailed description of the actual values used for the ME inputs reported, see *Guanhao Preliminary*.

#### Analysis Memorandum.

For this preliminary determination, in accordance with past practice, we used import values from the World Trade Atlas online ("Indian Import Statistics"), published by the Directorate General of Commercial Intelligence and Statistics, Ministry of Commerce of India, which were reported in rupees and are contemporaneous with the POI to calculate surrogate values for the respondents' reported material inputs.<sup>58</sup> In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive.<sup>59</sup>

<sup>55</sup> See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717 (October 19, 2006) ("*Antidumping Methodologies: Market Economy Inputs*").

<sup>56</sup> See Guanhao's December 21, 2007 section D submission at Exhibit 10. See also Guanhao's March 20, 2008, supplemental D submission at Exhibit 3.

<sup>57</sup> See *Antidumping Methodologies: Market Economy Inputs* at 71 FR 61718.

<sup>58</sup> See *Surrogate Value Memorandum*.

<sup>59</sup> 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*

Where we could not obtain publicly available information contemporaneous with the POI with which to value FOPs, we adjusted the surrogate values using, where appropriate, the Indian WPI as published in the IMF's.

Furthermore, with regard to the Indian import-based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.<sup>60</sup> We are also directed by the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized.<sup>61</sup> 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 in calculating the Indian import-based surrogate values. In instances where an ME input was obtained solely from suppliers located in these countries, we used Indian import-based surrogate values to value the input. In addition, we excluded Indian import data from NME and undesignated countries from our surrogate value calculations.<sup>62</sup>

In this case, parties have debated which surrogate value is the best available information for valuing coated jumbo rolls of thermal paper ("CJRs"). Hanhong argues in favor of using the average of three Indonesian HTS categories contending that these data account for much larger import quantities than Indian imports of CJRs and represent average unit prices that are more comparative to the "normal value" German benchmark which it calculated from publicly available data from the companion German investigation. Hanhong also asserts that Indian import values for CJRs during the

*Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

<sup>60</sup> See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying *Issues and Decision Memorandum* at Comment 7.

<sup>61</sup> See *Omnibus Trade and Competitiveness Act of 1988, Conference Report to Accompanying H.R. 3*, H.R. Rep. 100-576 at 590 (1988).

<sup>62</sup> See *Surrogate Value Memorandum*.

POI are aberrational because of small quantities and specialized imports.<sup>63</sup>

Petitioner argues that the single Indian HTS category is more appropriate as a surrogate value because it is the only value that is specific to CJRs. Additionally, petitioner asserts that these Indian data are not aberrational as evidenced by the pattern of the WTA yearly data for the category showing average prices remaining constant over a three-year period. Petitioner claims that two of the three Indonesian HTS categories submitted by Hanhong do not exist, and the third is incorrect.

All the HTS data, including the Indian and Indonesian values that parties have proposed that the Department use to value the CJRs in this preliminary determination are contemporaneous with the POI and are tax-exclusive values. However, the Indonesian HTS categories submitted by Hanhong are broad basket categories. Where a category is more specific to an input it is the Department's preference to use that category rather than a basket category. 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* at Comment 13; See also *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079, (September 8, 2006), and accompanying *Issues and Decision Memorandum* at Comment 3 (where the Department declined to use a broad basket category because it was not as specific to the input being valued as other potential sources on the record of the proceeding). Furthermore, we have not considered using the German value as a benchmark (provided by Hanhong) because Germany is not on the list of possible surrogate countries due to its advanced level of economic development, and we have a value on the record from India, a country deemed in this proceeding to be economically comparable to the PRC, which is specific to CJRs. Therefore, the Department has valued CJRs with Indian imports from HTS 4811.90.94 for this preliminary determination because this Indian HTS category is more specific to CJRs reported by the respondent, and as

<sup>63</sup> See, e.g., Hanhong's submission regarding, "Lightweight Thermal Paper from the People's Republic of China: Rebuttal regarding Surrogate Values," dated March 12, 2008, at pages 3 and 4.

such, is the best available information currently on the record. Pursuant to 19 CFR 351.301(c)(3)(i), we encourage interested parties to submit additional publicly available information for consideration in valuing CJRs within 40 days after the date of publication of this determination.

We used Indian transport information to value the inland truck, rail, and waterway freight cost of the raw materials. The Department valued truck freight using Indian freight rates published by Indian Freight Exchange available at <http://www.infreight.com>. This source provided daily rates from six major points of origin to six destinations in India for the period April 2005, through October 2005. We averaged the monthly rates for each rate observation to obtain a surrogate value. The Department determined the best available information for valuing rail freight to be from <http://www.indianrailways.gov.in>. To value waterway freight, we used an Indian domestic ship rate from Indian Waterways Authority. For data that were not contemporaneous with the POI, we adjusted the rates for inflation using WPI, where applicable.

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration's web page, Import Library, Expected Wages of Selected NME Countries, revised in January 2007, available at <http://ia.ita.doc.gov/wages/index.html>. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to

all skill levels and types of labor reported by the respondent. If the NME wage rates are updated by the Department prior to issuance of the final determination, we will use the updated wage rate in the final LTFV determination. The Department is currently in the process of updating its regression-based wage rate for the PRC for 2007. The deadline for submitting comments on the 2007 expected wages of selected NME countries' calculation was May 1, 2008 and the Department intends to finalize its calculations based on 2005 GNI within one month thereafter. See <http://www.trade.gov/ia/>. Therefore, for the final determination of this investigation we intend to update our PRC Expected Hourly Wage Rate with the finalized 2007 expected wages calculation.

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

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

To value factory overhead, selling, general, and administrative expenses, and profit, we used audited financial statements for the year ending March

31, 2006, of two Indian producers of identical and comparable merchandise, Parag Copigraph Pvt. Ltd. ("Parag") and Alpha Carbonless Paper Ltd. ("Alpha").<sup>64</sup> The Department may consider other publicly available financial statements for the final determination, as appropriate.

**Currency Conversion**

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

**Verification**

As provided in section 782(i)(1) of the Act, we intend to verify the information from Hanhong and Guan hao upon which we will rely in making our final determination. However, as noted in the "Normal Value" section above, should Guan hao fail to provide a complete cost reconciliation, the Department may determine that there is insufficient cost reconciliation information to warrant verification of any of Guan hao's information on the record.

**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.<sup>65</sup> This practice is described in the *Separate Rate Policy Bulletin*.

**Preliminary Determination**

The weighted-average dumping margin percentages are as follows:

Exporter/producer combination	Customs ID No.	Percent margin
Exporter: Shanghai Hanhong Paper Co., Ltd., also known as, Hanhong International Limited; Producer: Shanghai Hanhong Paper Co. Ltd .....	A-570-920-001	132.95
Exporter: Guangdong Guan hao High-Tech Co., Ltd.; Producer: Guangdong Guan hao High-Tech Co., Ltd	A-570-920-002	2.30
PRC-Wide Entity* .....	A-570-920-000	132.95

\* Includes Anne Paper and Yalong.

**Disclosure**

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

**Suspension of Liquidation**

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of merchandise subject to this investigation, entered, or

withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Department has determined in its *Lightweight Thermal Paper from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 13850 (March 14, 2008) ("CVD LWTP Prelim"),

that the product under investigation, exported and produced by Guan hao, benefitted from an export subsidy. Normally, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct CBP to require an antidumping cash deposit or posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated above, minus the amount determined to constitute an

<sup>64</sup> See petitioner's submission entitled, "Lightweight Thermal Paper From China," dated

March 19, 2008, and *Surrogate Value Memorandum*.

<sup>65</sup> See *Initiation Notice*, 72 FR at 62435.

export subsidy. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India*, 69 FR 67306, 67307 (November 17, 2007). Therefore, for merchandise under consideration entered, or withdrawn from warehouse, for consumption on or after publication date of this preliminary determination exported and produced by Guan hao, we will instruct CBP to require an antidumping cash deposit or the posting of a bond for each entry equal to the weighted-average margin indicated above, adjusted for the export subsidy rate determined in *CVD LWTP Prelim.*

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

#### **International Trade Commission Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at 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 LWTP, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of our final determination.

#### **Public Comment**

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs. *See* 19 CFR 351.309. A table of contents, list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. The Department also requests that parties provide an electronic copy of its case and rebuttal brief submissions in either a "Microsoft Word" or a "pdf" format.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice.<sup>66</sup> Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we intend to hold the hearing three days after the deadline 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. *See* 19 CFR 351.310. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

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

Dated: May 6, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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<sup>66</sup> *See* 19 CFR 351.310(c).