

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

C-570-926

**Sodium Nitrite From the People's Republic of China: Final Affirmative Countervailing Duty Determination**

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

**SUMMARY:** The Department of Commerce (the Department) has reached a final determination that countervailable subsidies are being provided to producers/exporters of sodium nitrite from the People's Republic of China (PRC). On April 11, 2008, we issued the Preliminary Determination, *see Sodium Nitrite From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 73 FR 19816 (April 11, 2008) (Preliminary Determination). Because neither the Government of the People's Republic of China (GOC) nor the two mandatory company respondents participated in this investigation, the Department relied on facts available and applied adverse inferences in reaching the *Preliminary Determination*. The Department assigned a countervailable subsidy rate to each program under investigation using rates calculated in *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) and accompanying *Issues and Decision Memorandum (CFS from the PRC)*. We invited interested parties to comment on the *Preliminary Determination*. No interested party submitted comments regarding the *Preliminary Determination*.

Since the publication of the *Preliminary Determination*, the Department has reached affirmative final countervailing duty determinations in several investigations of products from the PRC. We have used the rates calculated in these intervening final determinations to revise the countervailable subsidy rates for certain programs. For information on the countervailable subsidy rates, *see* the "Final Determination" section of this notice.

**EFFECTIVE DATE:** July 8, 2008.

**FOR FURTHER INFORMATION CONTACT:** Gene Calvert or Paul Matino, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3586 or (202) 482-4146, respectively.

**SUPPLEMENTARY INFORMATION:****Case History**

The following events have occurred since the publication of the *Preliminary Determination* in the **Federal Register** on April 11, 2008. On April 14, 2008, petitioner (General Chemical LLC) submitted a letter, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), requesting alignment of the final countervailing duty determination with the final determination in the companion antidumping duty investigation of sodium nitrite from the PRC. On April 28, 2008, the Department aligned the final countervailing duty determination with the final determination in the companion antidumping duty investigation of sodium nitrite from the PRC. *See Sodium Nitrite from the People's Republic of China: Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 22920 (April 28, 2008).

**Period of Investigation**

The period of investigation (POI) for which we are measuring subsidies is calendar year 2006. See 19 CFR 351.204(b)(2).

**Scope of the Investigation**

The merchandise covered by this investigation is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by this investigation may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is NaNO<sub>2</sub> and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name "sodium nitrite" to sodium nitrite. The CAS registry number is 7632-00-0. For purposes of the scope of this investigation, the narrative description is dispositive, not the tariff heading, CAS registry number or CAS name, which are provided for convenience and customs purposes.

### Injury Test

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine pursuant to section 701(a)(2) of the Act whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a United States industry. On January 14, 2008, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports from the PRC of subject merchandise. *See Sodium Nitrite from China and Germany: Investigation Nos. 701-TA-453 and 731-TA-1136-1137 (Preliminary)*, 73 FR 2278, (January 14, 2008).

### Application of Facts Available and Use of Adverse Inferences

Section 776 of the Act, governs the use of facts available and adverse facts available. Section 776(a) provides that if an interested party or any other person (1) withholds information that has been requested by the Department; (2) fails to provide such information by deadlines or in the form and manner requested; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified, the Department shall use the facts otherwise available in reaching its determination. The statute requires that certain conditions be met before the Department may resort to facts available. 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 an opportunity to remedy or to explain the deficiency.

If the party fails to remedy the deficiency within the applicable timelines, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act states that the Department shall not decline to consider information deemed “deficient” under section 782(d) of the Act if: (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.

Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department’s requests for information. *See Statement of Administrative Action* accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1, 889-90 (1994) (SAA) at 870.

In the *Preliminary Determination*, the Department based the CVD rates for the two mandatory company respondents, Shanxi Jiaocheng Hongxing Chemical Co., Ltd. (Shanxi Jiaocheng) and Tianjin Soda Plant, together with its subsidiary company, Tianjin Port Free Trade Zone Pan Bohai International Trading Co., Ltd. (Tianjin Soda Plant) on facts otherwise available, pursuant to section 776(a)(2)(C) of the Act because they did not respond to the Department’s countervailing duty questionnaire. Furthermore, in selecting from the facts available, the Department determined that an adverse inference was warranted, pursuant to section 776(b) of the Act because Shanxi Jiaocheng and Tianjin Soda Plant did not respond to the Department’s questionnaire and therefore did not cooperate to the best of their abilities in the investigation. *Preliminary Determination* at 19817-18.

Neither the GOC nor Shanxi Jiaocheng or Tianjin Soda Plant have provided any information or argument that would warrant a reconsideration of the Department’s *Preliminary Determination* that the reliance on facts available and the application of adverse inferences is warranted. Therefore, for purposes of this final determination we are relying on facts available and applying adverse inferences in accordance with section 776(b) of the Act.

### Selection of the Adverse Facts Available Rate

In deciding which facts to use as adverse facts available, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any other information placed on the record. The Department has no information on the record of this proceeding from which to select appropriate AFA rates for any of the subject programs, and because this is an investigation, we have no previous segments of the proceeding from which to draw potential AFA rates. In such cases, it is the Department’s practice to

select, as adverse facts available, the highest calculated rate in any segment of the proceeding. *See, e.g., Certain In-shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review (Pistachios from Iran)*, 71 FR 66165 (November 13, 2006) and accompanying Issues and Decision Memorandum at Comment 1. The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.” *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” *See SAA* at 870. In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent’s prior commercial activity, selecting the highest prior rate “reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.” *See Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1190 (Fed. Cir. 1990).

As stated in the *Preliminary Determination*, the Department determined that Shanxi Jiaocheng and Tianjin Soda Plant each failed to act to the best of its ability in this investigation; thus, for each program examined, the Department made the adverse inference that each company benefitted from the program, consistent with our practice. *See, e.g., Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea; Final Affirmative Countervailing Duty Determination*, 67 FR 62102 (October 3, 2002). In addition, we stated in the *Preliminary Determination* that our practice is to rely upon the highest calculated program rate for the same program or for a similar type of program.<sup>1</sup> *See e.g., Circular Welded*

<sup>1</sup> The Department’s first preference is to use the highest calculated rate for the same program (*i.e.* identical program). If there is no identical program, then the Department will use the highest calculated rate for a similar program (*e.g.* tax program to tax program, loan program to loan program).

Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, 73 FR 31966 (June 5, 2008) and accompanying Issues and Decision Memorandum at 2 (*CWP from the PRC*); *CFS from the PRC* at Comment 24; *Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) and accompanying Issues and Decision Memorandum at 6–8 (*LWS from the PRC*); see also *Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) and accompanying Issues and Decision Memorandum at 2 (*LWRP from the PRC*). We have selected the adverse facts available rate to apply to each program, for purposes of this final determination, consistent with this practice.

Information from the petition indicates that during the POI, the standard income tax for corporations in China was 30 percent and there is an additional local income tax at the rate of three percent. See the November 8, 2007 letter to the Secretary of Commerce, at Exhibit IV–12. To determine the program rate for the 16 alleged income tax programs under which companies receive either a reduction or exemption of income tax, we have applied an adverse inference that Shanxi Jiaocheng and Tianjin Soda Plant paid no income taxes during the POI. Therefore, the highest possible combined countervailable subsidy for the 16 national, provincial, and local income tax programs subject to this investigation total 33 percent. Thus, we are applying a countervailable rate of 33 percent on an overall basis for the 16 income tax programs (*i.e.*, the 16 income tax programs combined provided a countervailable subsidy of 33 percent). This 33 percent AFA rate does not apply to income tax credit or income tax refund programs.

For the remaining programs subject to this investigation (including income tax credit and income tax refund programs),

we are applying, where applicable, the highest countervailable subsidy rate that was calculated in a prior final countervailing duty determination for a product from the PRC for the same or similar type of program (*i.e.*, subsidy programs regarding tax refunds or credits, value-added tax (VAT), and government-provided grants and loans). See *CFS from the PRC* at Comment 24 and *LWS from the PRC* at 6–8. Absent a subsidy rate for the same or similar type of program, we are applying the highest countervailable subsidy rate for any program otherwise listed in any prior final countervailing duty determination involving the PRC.<sup>2</sup> See *id.*

For a discussion of the application of the AFA rates for each program determined to be countervailable, see Memorandum to the File, *Sodium Nitrite from the PRC; Calculation of Countervailable Subsidy Rates for the Final Determination*, dated concurrently with this notice (*Sodium Nitrite Calculation Memorandum*). Attached to this memorandum are copies of *CFS from the PRC*, *LWS from the PRC*, *CWP from the PRC*, and *LWRP from the PRC*, which contain the public information concerning subsidy programs, including the subsidy rates, upon which we are relying as adverse facts available. See *Sodium Nitrite Calculation Memorandum*.

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 or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. See SAA at 869.

With regard to the reliability aspect of corroboration, we note that these rates were calculated in prior final countervailing duty determinations. No information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. Unlike other types of information, such as publicly available

data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as adverse facts available, the Department will not use it. See, *e.g.*, *Fresh Cut Flowers from Mexico*; *Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996). In the absence of record evidence concerning these programs due to respondents' decision not to participate in the investigation, the Department has reviewed the information concerning China subsidy programs in this and other cases. For those programs for which the Department has found a program-type match, we find that programs of the same type are relevant to the programs of this case. For the programs for which there is no program-type match, the Department has selected the highest calculated subsidy for any China program from which the respondents could conceivably receive a benefit to use as AFA. The rate is therefore relevant to the respondents in that it is an actual calculated CVD rate for a China program from which the respondents could receive a benefit. No evidence had been presented or obtained which contradicts the reliability or relevance of the secondary information which was information from a prior China CVD investigation. See *Preliminary Determination* at 19819. Due to the lack of participation by the respondents and the resulting lack of record information concerning these programs, the Department has corroborated the rates it selected to the extent practicable.

### Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we have assigned a subsidy rate to each of the two producers/exporters of the subject merchandise that were selected as mandatory respondent companies in this CVD investigation. We determine

<sup>2</sup> In applying the highest calculated countervailable subsidy rate for any program otherwise listed, we are disregarding the calculated rates for the programs "Hot-Rolled Steel For Less Than Adequate Remuneration" (*CWP from the PRC*), and "Government Provision of Inputs for Less Than Adequate Remuneration" (*LWS from the PRC*), because the industry under investigation in this

proceeding cannot use the products for which these rates were calculated. See *Sodium Nitrite From the Federal Republic of Germany And The People's Republic of China: Petition For The Imposition of Antidumping And Countervailing Duties*, (November 8, 2007) Volume I at 32–33. See also *Sodium Nitrite from China and Germany: Investigation Nos. 701-TA-453 and 731-TA-1136-*

1137 (*Preliminary*), ITC Publication 3979, January 2008 at 8. The Department's decision to not use, as AFA, these program rates is based on the particular facts of this investigation and this particular set of facts may not be applicable or identifiable in another proceeding.

the total net countervailable subsidy rates to be:

Producer/Exporter	Subsidy Rate
Shanxi Jiaocheng Hongxing Chemical Co., Ltd. (Shanxi Jiaocheng) .....	169.01%
Tianjin Soda Plant Tianjin Port Free Trade Zone Pan Bohai International Trading Co., Ltd. (Tianjin Soda Plant) .....	169.01%
All Others .....	169.01%

With respect to the all others rate, section 705(c)(5)(A)(ii) of the Act provides that if the countervailable subsidy rates established for all exporters and producers individually investigated are determined entirely in accordance with section 776 of the Act, the Department may use any reasonable method to establish an all others rate for exporters and producers not individually investigated. In this case, the rate established for the two mandatory respondents is based entirely on facts available under section 776 of the Act. There is no other information on the record upon which we could determine an all others rate. As a result, we have used the AFA rate assigned for Shanxi Jiaocheng and Tianjin Soda Plant as the all others rate. This method is consistent with the Department's past practice. *See e.g.* Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, 66 FR 37007, 37008 (July 16, 2001); *see also* Final Affirmative Countervailing Duty Determination: Prestressed Steel Wire Strand From India, 68 FR 68356, 68357 (December 8, 2003).

#### Suspension of Liquidation and Cash Deposit Requirements

In accordance with sections 705(c)(1)(B) of the Act, we directed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of the subject merchandise from the PRC, which are entered or withdrawn from warehouse, for consumption on or after April 11, 2008, the date of publication of the *Preliminary Determination*. In accordance with sections 705(c)(1)(B) of the Act, we will instruct CBP to require cash deposits at the rates shown above on all entries of the subject merchandise from the PRC, entered or withdrawn from warehouse, for consumption on or after the date of publication of this final determination.

If the ITC issues a final affirmative injury determination, we will issue a countervailing duty order under section 706(a) of the Act. If the ITC determines that material injury to, threat of material injury to, or material retardation of, the domestic industry does not exist, this proceeding will be terminated and all estimated duties deposited or securities

posted as a result of the suspension of liquidation will be refunded or canceled.

#### ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

#### Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Failure to comply is a violation of the APO.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: June 30, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8-15479 Filed 7-7-08; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-570-925)

#### Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the People's Republic of China

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

**EFFECTIVE DATE:** July 8, 2008.

**SUMMARY:** The Department of Commerce (Department) determines that sodium

nitrite 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 735 of the Tariff Act of 1930, as amended (the Act). We made no changes to the preliminary dumping margin in this investigation. The final dumping margin for this investigation is listed in the "Final Determination Margin" section below. The period covered by this investigation is April 1, 2007, through September 30, 2007.

**FOR FURTHER INFORMATION CONTACT:** Magd Zalok or Rebecca Pandolph, AD/CVD Operations, Office 4 Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4162 and (202) 482-3627, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On April 23, 2008, the Department published in the **Federal Register** the notice of its preliminary determination of sales at LTFV in the antidumping duty investigation of sodium nitrite from the PRC. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the People's Republic of China*, 73 FR 21906 (April 23, 2008) (*Preliminary Determination*).

With respect to the Department's invitation to comment on the *Preliminary Determination*, on May 23, 2008, General Chemical LLC (the petitioner) submitted a case brief. No other party submitted case or rebuttal briefs in this proceeding.

##### Scope of the Investigation

The merchandise covered by this investigation is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by this investigation may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is NaNO<sub>2</sub> and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS).

The American Chemical Society Chemical Abstract Service (CAS) has assigned the name "sodium nitrite" to sodium nitrite. The CAS registry number is 7632-00-0.

While the HTSUS subheading, CAS registry number, and CAS name are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

#### Analysis of Comments Received

In its May 23, 2008, case brief, the petitioner argues that the Department should base its final determination, like the *Preliminary Determination*, on adverse facts available (AFA) because the two mandatory respondents, Qingdao Hengyuan Chemical Co., Ltd. (Qingdao) and Hualong Ammonium Nitrate Company Ltd. (Hualong), did not submit responses to the Department's questionnaire. In addition, the petitioner explains that it does not object to the preliminary AFA rate used by the Department (which is the highest margin alleged in the petition, as adjusted by the Department at initiation) because it believes the rate is consistent with both the dumping margins alleged in the petition and the dumping margins used for purposes of initiating the investigation. The petitioner notes that the Department's practice is to base an AFA rate on the highest margin in a proceeding and here the highest margin is the most probative evidence of current margins because, if it were not, evidence showing the margins to be less would have been provided.<sup>1</sup> See the May 23, 2008, submission, Sodium Nitrite from China: Case Brief of General Chemical LLC.

The petitioner also notes that no party filed separate rate information in this investigation. Given the PRC's status as a non-market economy (NME) country, and the lack of information on the record rebutting the Department's presumption that all companies in the PRC are subject to government control, the petitioner argues that the rate applied to the PRC-wide entity cannot be lower than the rate applied to Qingdao and Hualong. See the May 23, 2008, submission, Sodium Nitrite from China: Case Brief of General Chemical LLC.

We agree that the dumping margin in this case should be based on total AFA because the two mandatory respondents, Qingdao and Hualong, failed to respond to the Department's questionnaire. Moreover, by not responding to the Department's questionnaire, Qingdao and Hualong

failed to establish their entitlement to separate rates, and thus they are part of the PRC-wide entity. Therefore, the AFA rate will be applied to the PRC-wide entity. See "The PRC-Wide Rate" section of this notice below for a full discussion of this topic.

#### No Changes Since the Preliminary Determination

Based on our analysis of the comments received, the Department has made no changes to its *Preliminary Determination*.

#### Separate Rates

No party filed separate rates information in this investigation. Therefore, as was the case in the *Preliminary Determination*, we have considered all PRC exporters of subject merchandise to be part of the PRC-wide entity.

#### The PRC-Wide Rate

Section 776(a)(2) of the Act provides that if an interested party withholds information requested by the Department, fails to provide information by the deadline or in the form or manner requested, or significantly impedes a proceeding, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Furthermore, in selecting from among the facts otherwise available, section 776(b) of the Act permits the Department to use inferences that are adverse to a party if it finds that the party failed to cooperate by not acting to the best of its ability to comply with a request for information. Because, as noted above, Qingdao and Hualong are part of the PRC-wide entity, and they withheld information that is required by the Department to calculate dumping margins, the Department continues to conclude that it is appropriate to base the PRC-wide entity's dumping margin on facts available, pursuant to section 776(a) of the Act.<sup>2</sup>

Moreover, because Qingdao and Hualong did not respond to our request for information, we continue to find that the PRC-wide entity failed to cooperate to the best of its ability to comply with a request for information. Therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985, 42986 (July 12,

2000) (applying total adverse facts available because the respondent failed to respond to the antidumping questionnaire). For the reasons noted in the *Preliminary Determination*, we continue to find that the highest dumping margin from the petition, 190.74 percent, as revised by the Department, is the appropriate AFA rate in this case. See *Preliminary Determination*, 73 FR at 21907-21908. As explained in the *Preliminary Determination*, we corroborated this rate pursuant to section 776(c) of the Act. See *Preliminary Determination*, 73 FR at 21908.

Since we begin with the presumption that all companies within an NME country are subject to government control, and no company submitted information to rebut that presumption, we are applying a single antidumping duty rate, the PRC-wide rate, to all exporters of subject merchandise from the PRC. See, e.g., *Synthetic Indigo from the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706, 25707 (May 3, 2000) (applying the PRC-wide rate to all exporters of subject merchandise in the PRC based on the presumption that the export activities of the companies that failed to respond to the Department's questionnaire were controlled by the PRC government). Thus, the PRC-wide rate will apply to all entries of subject merchandise.

#### Final Determination Margin

We determine that the following weighted-average dumping margin exists for the period April 1, 2007, through September 30, 2007:

Manufacturer/exporter	Margin (percent)
PRC-Wide Rate .....	190.74

#### Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all imports of subject merchandise that is entered or withdrawn from warehouse, for consumption on or after April 23, 2008, the date of publication of the *Preliminary Determination* in the **Federal Register**. We will instruct CBP to continue to require a cash deposit or the posting of a bond for all companies based on the estimated weighted-average dumping margin shown above. The suspension of liquidation instructions will remain in effect until further notice.

<sup>1</sup> See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990).

<sup>2</sup> Section 782(d) of the Act is not applicable here because Qingdao and Hualong failed to provide any response to the Department's request for information.

## International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise within 45 days of this final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

### Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 30, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8-15488 Filed 7-7-08; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

A-428-841

### Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany

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

**SUMMARY:** The U.S. Department of Commerce (the Department) determines that imports of sodium nitrite from the Federal Republic of Germany (Germany) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final weighted-average dumping margins are listed below in the section entitled "Final Determination of Investigation."

**EFFECTIVE DATE:** July 8, 2008.

**FOR FURTHER INFORMATION CONTACT:** Brian C. Smith or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482 1766 or (202) 482 3773, respectively.

### SUPPLEMENTARY INFORMATION:

#### Background

On April 23, 2008, the Department published the preliminary determination of sales at LTFV in the antidumping investigation of sodium nitrite from Germany. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 21909 (April 23, 2008) (*Preliminary Determination*). We invited parties to comment on the *Preliminary Determination*. We received case briefs from the petitioner, General Chemical LLC, and the respondent, BASF AG (BASF), on May 23, 2008. The petitioner submitted a rebuttal brief on May 28, 2008. No party requested a hearing.

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping investigation are addressed in the "Issues and Decision Memorandum for the Final Determination in the Less-Than-Fair-Value Investigation of Sodium Nitrite from the Federal Republic of Germany" (Decision Memorandum) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, dated June 30, 2008, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in the Decision Memorandum, which is on file in the Central Records Unit, room 1117, of the main Department Building. In addition, a complete version of the Decision Memorandum can be accessed

directly on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the Decision Memorandum are identical in content.

### Period of Investigation

The period of investigation is October 1, 2006, through September 30, 2007.

### Scope of the Investigation

The merchandise covered by this investigation is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by this investigation may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is NaNO<sub>2</sub> and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name "sodium nitrite" to sodium nitrite. The CAS registry number is 7632-00-0.

While the HTSUS subheading, CAS registry number, and CAS name are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

### Adverse Facts Available

For the final determination, we continue to find that, by failing to respond to the antidumping duty questionnaire, BASF, the sole mandatory respondent in this investigation, did not act to the best of its ability in this investigation. Therefore, the use of adverse facts available (AFA) is warranted for this company under sections 776(a)(2) and (b) of the Act. *See Preliminary Determination*, 73 FR at 21909-21910. As we explained in the *Preliminary Determination*, we selected as the AFA rate the highest margin alleged in the petition, 237.00 percent, as referenced in the notice of initiation. *See Sodium Nitrite from the Federal Republic of Germany and the People's Republic of China: Initiation of Antidumping Duty Investigations*, 73 FR 68563, 68567 (December 5, 2007). Further, as discussed in the *Preliminary Determination*, we corroborated the AFA rate pursuant to section 776(c) of the Act. *See Preliminary Determination*, 73 FR at 21910-21912, and Comment 1 of the Decision Memorandum accompanying this notice for further discussion.

**All–Others Rate**

For the final determination, we have continued to assign as the all–others rate the simple average of the margins in the petition in accordance with the Department’s current practice. See *Preliminary Determination*, 73 FR at 21912, and Comment 2 of the Decision Memorandum accompanying this notice for further discussion.

**Final Determination of Investigation**

We determine that the following weighted–average dumping margins exist for the period October 1, 2006, through September 30, 2007:

Manufacturer/exporter	Margin (percent)
BASF AG .....	237.00
All Others .....	150.82

**Continuation of Suspension of Liquidation**

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of subject merchandise from Germany, entered, or withdrawn from warehouse, for consumption on or after April 23, 2008, the date of publication of the *Preliminary Determination*. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average dumping margins, as indicated in the chart above, as follows: (1) the rate for the firm listed above will be the rate we have determined in this final determination; (2) if the exporter is not a firm identified in this investigation, but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 150.82 percent.<sup>1</sup> These suspension–of–liquidation instructions will remain in effect until further notice.

**International Trade Commission Notification**

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative and in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC

determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

**Notification Regarding APO**

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: June 30, 2008.

**David M. Spooner,**  
*Assistant Secretary for Import Administration.*

**Appendix—Issues in Decision Memorandum***Comments*

Issue 1: Selection of the Adverse Facts Available Rate for BASF  
Issue 2: Selection of the All–Others Rate  
[FR Doc. E8–15458 Filed 7–7–08; 8:45 am]

**BILLING CODE 3510–DS–S**

<sup>1</sup> This rate was incorrectly stated as 237.00 percent in the “Suspension of Liquidation” section of the *Preliminary Determination*. See *Preliminary Determination*, 73 FR at 21912.