Dated: June 30, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–15963 Filed 7–6–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–905]

Certain Polyester Staple Fiber from the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review and Extension of Time Limit for the Final Results

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

SUMMARY: The Department of Commerce (''Department'') is conducting the first administrative review of the antidumping duty order on certain polyester staple fiber (''PSF'') from the People's Republic of China (''PRC'') for the period of review (''POR'') December 26, 2006, through May 31, 2008. The Department has preliminarily determined that sales have been made below normal value (''NV'') by the respondents. If these preliminary results are adopted in our final results of this review, the Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

Interested parties are invited to comment on these preliminary results. The Department intends to issue the final results no later than 180 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''). See ''Extension of the Time Limits for the Final Results'' below.

EFFECTIVE DATE: July 7, 2009.

FOR FURTHER INFORMATION CONTACT: Emeka Chukwudebe or Alexis Polovina AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482 0219 or (202) 482 3927 respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2007, the Department published in the **Federal Register** an antidumping duty order on certain polyester staple fiber from the PRC. *See Notice of Antidumping Duty Order: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 30545 (June 1, 2007) (''Order''). On July 30, 2008, the Department published a notice of initiation of an administrative review of certain PSF from the PRC covering the period December 26, 2006, through May 31, 2008 for 27 companies.[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review*, 73 FR 44220 (July 30, 2008) (''Initiation Notice''). On February 19, 2009, the Department published a notice extending the time period for issuing the preliminary results by 120 days to June 30, 2009. *See Certain Polyester Staple Fiber from the People's Republic of China: Extension of Time Limits for Preliminary Results of the Antidumping Duty Administrative Review*, 74 FR 7660 (February 19, 2009).

Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to examine all exporters or producers involved in the review.

On August 5, 2008, the Department released CBP data for entries of the subject merchandise during the POR under administrative protective order (''APO'') to all interested parties having an APO as of five days of publication of the Initiation Notice, inviting comments regarding the CBP data and respondent selection. The Department received comments and rebuttal comments between August 14, 2008, and August 22, 2008.

On October 1, 2008, the Department sent out a quantity and value (''Q&V'') questionnaire to all 27 companies for which a review was requested because a significant amount of the volume in the CBP data was unclear. In the CBP data, the identity of the largest exporter could not be publicly identified by any party, including the Department. Moreover, it was unclear if companies with the same CBP module suffix could be grouped together or whether the CBP module suffix was properly used by those companies which were assigned the CBP module suffix in the investigation. In addition, parties requested numerous adjustments to the CBP data, including but not limited to grouping of companies, and corrections to company names. The Department received Q&V responses between October 16, 2008, and October 20, 2008, from 19 of the 27 companies who received the questionnaire.

On November 7, 2008, the Department issued its respondent selection memorandum after assessing its resources and determining that it could reasonably examine two exporters subject to this review. Pursuant to section 777A(c)(2)(B) of the Act, the Department selected Ningbo Dafa Chemical Fiber Co., Ltd. (''Ningbo Dafa'') and Cixi Santai Chemical Fiber Co. (''Santai'') as mandatory respondents.[2] The Department sent antidumping duty questionnaires to Ningbo Dafa and Santai on November 14, 2008.

Ningbo Dafa submitted the Section A Questionnaire Response on December 5, 2008, the Section C Questionnaire Response on December 30, 2008, and the Section D Questionnaire Response on January 9, 2009. Santai submitted the Section A Questionnaire Response on December 12, 2008, and the Sections C and D Questionnaire Responses on January 9, 2009.

Petitioners submitted deficiency comments regarding respondents' questionnaire responses between December 2008 and May 2009. The Department issued supplemental questionnaires to Ningbo Dafa and Santai between March 2009 and May 2009 to which both companies responded.

[1] Those companies are: Far Eastern Industries, Ltd., (Shanghai) and Far Eastern Polychem Industries;Ningbo Dafa Chemical Fiber Co., Ltd.; Cixi Sansheng Chemical Fiber Co., Ltd.; Cixi Santai Chemical Fiber Co., Ltd.; Cixi Waysun Chemical Fiber Co., Ltd.; Hangzhou Best Chemical Fibre Co., Ltd.; Hangzhou Hanbang Chemical Fibre Co., Ltd.; Hangzhou Huachuang Co., Ltd.; Hangzhou Sanxin Paper Co., Ltd.; Hangzhou Taifu Textile Fiber Co., Ltd.; Jiaxang Fuda Chemical Fibre Factory; Nantong Loulai Chemical Fiber Co., Ltd.;Nanyang Textile Co., Ltd.; Suzhou PolyFiber Co., Ltd.; Xiamen Xianglu Chemical Fiber Co.; Zhaoqing Tifo New Fiber Co., Ltd.; Zhejiang Anshun Pettechs Fibre Co., Ltd.; Zhejiang Waysun Chemical Fiber Co., Ltd.; Dragon Max Trading Development; Xiake Color Spinning Co., Ltd.; Jiangyin Hailun Chemical Fiber Co., Ltd.; Hyosung Singapore PTE Ltd.; Jiangyin Changlong Chemical Fiber Co., Ltd.; Ma Ha Company, Ltd.; Jiangyin Huahong Chemical Fiber Co., Ltd.; Jiangyin Mighty Chemical Fiber Co., Ltd.; and Huvis Sichuan.

[2] *See* Memorandum to James Dole, Director, AD/CVD Operations, Office 9, from Alexis Polovina, International Trade Compliance Analyst, AD/CVD Operations, Office 9; First Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the PRC: Selection of Respondents for Individual Review, dated November 7, 2008 (''*Respondent Selection Memo*'').

Surrogate Country and Surrogate Value Data

On February 13, 2009, the Department sent interested parties a letter inviting comments on surrogate country selection and surrogate value data.[3] No parties provided comments with respect to selection of a surrogate country. On April 27, 2009, the Department received information to value factors of production (''FOP'') from Ningbo Dafa, Santai, and Petitioners. On May 11, 2009, Ningbo Dafa and Santai filed rebuttal comments. On May 14, 2009, Ningbo Dafa provided additional surrogate value information and comments. On May 19, 2009, Petitioners filed additional rebuttal comments. All the surrogate values placed on the record were obtained from sources in India.

Scope of the Order

The merchandise subject to this order is synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The subject merchandise may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture.

The following products are excluded from the scope: (1) PSF of less than 3.3 decitex (less than 3 denier) currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheading 5503.20.0025 and known to the industry as PSF for spinning and generally used in woven and knit applications to produce textile and apparel products; (2) PSF of 10 to 18 denier that are cut to lengths of 6 to 8 inches and that are generally used in the manufacture of carpeting; and (3) low–melt PSF defined as a bi–component fiber with an outer, non–polyester sheath that melts at a significantly lower temperature than its inner polyester core (classified at HTSUS 5503.20.0015).

Certain PSF is classifiable under the HTSUS subheadings 5503.20.0045 and 5503.20.0065. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the orders is dispositive.

[3] *See* the Department's Letter to All Interested Parties; Antidumping Investigation of Certain Polyester Staple Fiber (''PSF'') from the People's Republic of China (''PRC''): Surrogate Country List, dated February 13, 2009 (''*Surrogate Country List*'').

Non–Market Economy (''NME'') Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See*, *e.g.*, *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006). None of the parties to this proceeding have contested such treatment. Accordingly, the Department calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department investigates imports from an NME country and available information does not permit the Department to determine NV pursuant to section 773(a) of the Act, then, pursuant to section 773(c)(4) of the Act, the Department bases NV on an NME producer's FOPs, to the extent possible, in one or more market–economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department determined India, Philippines, Indonesia, Colombia, Thailand, and Peru are countries comparable to the PRC in terms of economic development.[4]

Based on publicly available information placed on the record (*e.g.*, production data), the Department determines India to be a reliable source for surrogate values because India is at a comparable level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of subject merchandise, and has publicly available and reliable data. Accordingly, the Department has selected India as the surrogate country for purposes of valuing the FOPs because it meets the Department's criteria for surrogate country selection.

Separate Rates

In 2005, the Department notified parties of a new application and certification process by which exporters and producers may obtain separate rate status in an NME review. The process requires exporters and producers to submit a separate rate status certification and/or application. *See also Policy Bulletin 05.1: Separate–Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non–Market Economy Countries*, (April 5, 2005) (''*Policy Bulletin 05.1*''), available at: http://ia.ita.doc.gov. 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.

[4] *See Surrogate Country List.*

A designation of a country as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(c)(i) of the Act. In proceedings involving NME countries, it is the Department's practice to begin with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. *See*, *e.g.*, *Policy Bulletin 05.1*; *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, 53082 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006) (''*Diamond Sawblades*''). It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can affirmatively demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *See*, *e.g.*, *Diamond Sawblades*, 71 FR at 29307. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. *Id.* The Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (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, 22586–87 (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. *See*, *e.g.*, *Final*

Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China, 72 FR 52355, 52356 (September 13, 2007).

In addition to the two mandatory respondents, Ningbo Dafa and Santai, the Department received separate rate applications or certifications from the following 15 companies (''Separate–Rate Applicants''): Far Eastern Industries, Ltd., (Shanghai) and Far Eastern Polychem Industries; Cixi Sansheng Chemical Fiber Co., Ltd.; Cixi Waysun Chemical Fiber Co. Ltd., Hangzhou Best Chemical Fibre Co., Ltd.; Hangzhou Hanbang Chemical Fibre Co., Ltd.; Hangzhou Huachuang Co., Ltd.; Hangzhou Sanxin Paper Co., Ltd.; Hangzhou Taifu Textile Fiber Co., Ltd.; Jiaxang Fuda Chemical Fibre Factory; Nantong Loulai Chemical Fiber Co., Ltd.; Nanyang Textile Co., Ltd.; Xiamen Xianglu Chemical Fiber Co.; Zhaoqing Tifo New Fiber Co., Ltd.; Zhejiang Anshun Pettechs Fibre Co., Ltd.; and Zhejiang Waysun Chemical Fiber Co., Ltd. However, the following 10 companies did not submit either a separate–rate application or certification: Dragon Max Trading Development; Xiake Color Spinning Co., Ltd.; Jiangyin Hailun Chemical Fiber Co., Ltd.; Hyosung Singapore PTE Ltd.; Jiangyin Changlong Chemical Fiber Co., Ltd.; Ma Ha Company, Ltd.; Jiangyin Huahong Chemical Fiber Co., Ltd.; Jiangyin Mighty Chemical Fiber Co., Ltd.; Huvis Sichuan; and Suzhou PolyFiber Co., Ltd. Therefore, because these companies did not demonstrate their eligibility for separate rate status, they have now been included as part of the PRC–wide entity.

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) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589. The evidence provided by Ningbo Dafa, Santai, and the Separate–Rate Applicants 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 exporter's 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.*, Ningbo Dafa's Separate Rate Certification, dated September 4, 2008, at pages 3–4; and Santai's Section A Questionnaire Response, dated December 12, 2008, at pages 2–9.

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 preclude the Department from assigning separate rates. The evidence provided by Ningbo Dafa, Santai, and the Separate–Rate Applicants supports a preliminary finding of *de facto* absence of government control based on the following: (1) the companies set their own export prices independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies' use of export revenue. *See, e.g.*, Ningbo Dafa's Separate Rate Certification, dated December 12, 2008, at pages 5–6 and Santai's Section A Questionnaire Response, dated September 5, 2008, at pages 2–9. Therefore, the Department preliminarily finds that Ningbo Dafa and Santai have established that they qualify for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

Separate Rate Calculation

As stated previously, this administrative review covers 27 exporters. Of those, the Department selected two exporters, Ningbo Dafa and Santai, as mandatory respondents in this review. As stated above, 10 companies are part of the PRC–Wide entity and thus are not entitled to a separate rate.[5] The remaining 15 companies submitted timely information as requested by the Department and thus, the Department has preliminarily determined to treat these companies as cooperative Separate–Rate Applicants.

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all–others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all–others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Accordingly, the Department's practice in this regard, in reviews involving limited respondent selection based on exporters accounting for the largest volumes of trade, has been to average the rates for the selected companies, excluding zero and de minimis rates and rates based entirely on facts available. *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 52273, 52275 (September 9, 2008) and accompanying Issues and Decision Memorandum at Comment 6 (''*Shrimp from Vietnam*''). Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, *de minimis*, or based entirely on facts available, we may use ''any reasonable method'' for assigning the rate to non–selected respondents, including ''averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.''

The Department has available in administrative reviews information that would not be available in an investigation, namely rates from prior

[5] Those companies are: Dragon Max Trading Development; Xiake Color Spinning Co., Ltd.; Jiangyin Hailun Chemical Fiber Co., Ltd.; Hyosung Singapore PTE Ltd.; Jiangyin Changlong Chemical Fiber Co., Ltd.; Ma Ha Company, Ltd.; Jiangyin Huahong Chemical Fiber Co., Ltd.; Jiangyin Mighty Chemical Fiber Co., Ltd.; Huvis Sichuan; and Suzhou PolyFiber Co., Ltd.

administrative and new shipper reviews. Accordingly, since the determination in the investigation in this proceeding, the Department has determined that in cases where we have found dumping margins in previous segments of a proceeding, a reasonable method for determining the rate for non–selected companies is to use the most recent rate calculated for the non–selected company in question, unless we calculated in a more recent review a rate for any company that was not zero, *de minimis* or based entirely on facts available. *See Shrimp from Vietnam* at Comment 6; *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part*, 73 FR 52823, 52824 (September 11, 2008) and accompanying Issues and Decision Memorandum at Comment 16; *see also Certain Fish Fillets from the Socialist Republic of Vietnam: Notice of Preliminary Results of the New Shipper Review and Fourth Antidumping Duty Administrative Review and Partial Rescission of the Fourth Administrative Review*, 73 FR 52015 (September 8, 2008) (changed in final results as final calculated rate for mandatory respondent was above *de minimis*, which remained unchanged in the amended final results).[6]

In this case, all the Separate–Rate Applicants received a separate rate in the original investigation. Therefore, for the preliminary results, we are assigning all the Separate–Rate Applicants a separate rate of 4.44%, which is the separate rate from the original investigation. Entities receiving this rate are identified by name in the ''Preliminary Results of Review'' section of this notice.

Date of Sale

Ningbo Dafa and Santai reported the invoice date as the date of sale because they claim that, for their U.S. sales of subject merchandise made during the POR, the material terms of sale were established on the invoice date. The Department preliminarily determines that the invoice date is the most appropriate date to use as Ningbo Dafa's and Santai's date of sale is in accordance with 19 CFR 351.401(i) and the Department's long–standing practice of determining the date of sale.[7]

Fair Value Comparisons

To determine whether sales of certain PSF to the United States by Ningbo Dafa and Santai were made at less than fair value, the Department compared the export price (''EP'') to NV, as described in the ''U.S. Price,'' and ''Normal Value'' sections below.

U.S. Price

Export Price

In accordance with section 772(a) of the Act, the Department calculated the EP for a portion of sales to the United States for Ningbo Dafa and Santai because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP (''CEP'') was not otherwise warranted. The Department calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, the Department deducted from the starting price to unaffiliated purchasers foreign inland freight and brokerage and handling. Each of these services was either provided by an NME vendor or paid for using an NME currency. Thus, the Department based the deduction of these movement charges on surrogate values.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors–of-production 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 non–market economies renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

Factor Valuations

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the FOPs, but when a producer sources an input from a market economy country and pays for it in a market economy currency, the Department may value the factor using the actual price paid for the input. During the POR, both Ningbo Dafa and Santai reported that they purchased certain inputs from a market economy supplier and paid for the inputs in a market economy currency. *See* Ningbo Dafa Section D Questionnaire Response, dated January 9, 2009, at pages D–5–6 and Exhibit 3; and Santai's Section D Questionnaire Response, dated January 9, 2009, at page 5 and Exhibit D–1–B. The Department has a rebuttable presumption that market economy input prices are the best available information for valuing an input when the total volume of the input purchased from all market economy sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period. *See Antidumping Methodologies: Market Economy Inputs, Expected Non–Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717–18 (October 19, 2006) (''*Antidumping Methodologies*''). In these cases, unless case–specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted average market economy purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from market economy suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight–average the market economy purchase price with an appropriate surrogate value according to their respective shares of the total volume of purchases, unless case–specific facts provide adequate grounds to rebut the presumption. *See Antidumping Methodologies*. When a firm has made market economy input purchases that may have been dumped or subsidized, are not bona fide, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid market economy purchases meet the 33–percent threshold. *See Antidumping Methodologies*.

The Department used Indian import data from the World Trade Atlas (''WTA Indian import data'') published by Global Trade Information Services, Inc., which is sourced from the Directorate General of Commercial Intelligence & Statistics, Indian Ministry of Commerce,

[6] *See Notice of Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 74 FR 11349 (March 17, 2009) and accompanying Issues and Decision Memorandum at Comment 6; *Notice of Amended Final Results of the Fourth Antidumping Duty Administrative Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 74 FR 17816 (April 17, 2009).

[7] *See, e.g., 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.

to determine the surrogate values for raw material, steam coal, by–products, and packing material inputs. The Department has disregarded statistics from NMEs, countries with generally available export subsidies, and undetermined countries, in calculating the average value. For a detailed description of all surrogate values used for Ningbo Dafa and Santai, *see* Memorandum to the File through Alex Villanueva, Program Manager, Office 9 from Alexis Polovina, Case Analyst: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China (''PRC''): Surrogate Values for the Preliminary Results (''Prelim Surrogate Value Memo'') dated June 30, 2009.

In accordance with section 773(c) of the Act, for subject merchandise produced by Ningbo Dafa and Santai, the Department calculated NV based on the FOPs reported by Ningbo Dafa and Santai for the POR. The Department used the WTA Indian import data and other publicly available Indian sources in order to calculate surrogate values for Ningbo Dafa and Santai's FOPs. To calculate NV, the Department multiplied the reported per–unit factor quantities by publicly available Indian surrogate values. The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, surrogate values which are product–specific, representative of a broad market average, publicly available, contemporaneous with the POR and exclusive of taxes and duties. *See*, *e.g.*, *Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the *Federal Circuit in Sigma Corp. v. United States*, 117 F. 3d 1401, 1408 (Fed. Cir. 1997). *See* Prelim Surrogate Value Memo.

In those instances where the Department could not obtain publicly available information contemporaneous to the POR with which to value factors, the Department adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index (''WPI'') as published in the International Financial Statistics of the International Monetary Fund, a printout of which is attached to the Prelim Surrogate Value Memo at Attachment 2. Where necessary, the Department adjusted surrogate values for inflation and exchange rates, taxes, and the Department converted all applicable items to a per–kilogram basis.

The Department valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India (''CEA'') in its publication titled ''Electricity Tariff & Duty and Average Rates of Electricity Supply in India,'' dated July 2006. These electricity rates represent actual country–wide, publicly available information on tax–exclusive electricity rates charged to industries in India. Since the rates are not contemporaneous with the POR, the Department inflated the values using the WPI. Parties have suggested that the Department rely on the 2005 International Energy Agency (''IEA'') data. However, the Department preliminarily finds that we cannot rely on those data because the 2005 IEA data are less contemporaneous than the July 2006 CEA data. Therefore, we preliminarily determine to value electricity using the CEA price data. *See* Prelim Surrogate Value Memo.

Because water is essential to the production process of the subject merchandise, the Department is considering water to be a direct material input, and not as overhead, and valued water with a surrogate value according to our practice. *See Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 68 FR 61395 (October 28, 2003) and accompanying Issue and Decision Memorandum at Comment 11. The Department valued water using data from the Maharashtra Industrial Development Corporation (www.midcindia.org) as it includes a wide range of industrial water tariffs. To value water, we used the revised Maharashtra Industrial Development Corporation (''MIDC'') water rates available at http://www.midcindia.com/water–supply, which we deflated using Indian WPI. *See* Prelim Surrogate Value Memo.

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), the Department used the PRC regression–based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in May 2008; see http://ia.ita.doc.gov/wages/index.html; *Corrected 2007 Calculation of Expected Non–Market Economy Wages*, 73 FR 27795 (May 14, 2008). The source of these wage–rate data listed on Import Administration's web site is the Yearbook of Labour Statistics 2005, ILO (Geneva: 2007), Chapter 5B: Wages in Manufacturing. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, the Department has applied the same wage rate to all skill levels and types of labor reported by the respondents. *See* Prelim Surrogate Value Memo.

The Department valued truck freight expenses using a per–unit average rate calculated from data on the infobanc Web site: http://www.infobanc.com/logistics/logtruck.htm. The logistics section of this website contains inland freight truck rates between many large Indian cities. Since this value is not contemporaneous with the POR, the Department deflated the rate using WPI. See Prelim Surrogate Value Memo.

To value brokerage and handling, the Department calculated a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, the Department averaged the public brokerage and handling expenses reported by Navneet Publications (India) Ltd. in the 2007–2008 antidumping duty administrative review of certain lined paper products from India, Essar Steel Limited in the 2006–2007 antidumping duty administrative review of hot–rolled carbon steel flat products from India, and Himalaya International Ltd. in the 2005–2006 antidumping duty administrative review of certain preserved mushrooms from India. The Department inflated the brokerage and handling rate using the appropriate WPI inflator. *See* Prelim Surrogate Value Memo.

To value factory overhead, selling, general, and administrative (''SG&A'') expenses, and profit, the Department used the audited financial statements of Ganesh Polytex Limited.

We are preliminarily granting a by–product offset to Ningbo Dafa for waste paper and waste bottle hood. We are also preliminarily granting a by–product offset to Ningbo Dafa for waste fiber based on its production of waste fiber, as opposed to its POR reintroduction of waste fiber. Ningbo Dafa stated that when waste fiber is produced it enters an inventory–in account and a value is assigned to that inventory in their books. Moreover, Ningbo claims that all of the waste fiber produced during the POR has been or will be reintroduced. In other words, there is no indication

that any of the waste fiber produced is not ultimately reintroduced into the processing stage. Under such a circumstance, the practice of using the ''lower of'' the quantity of by–product produced or reintroduced in each POR may lead to a biased result over multiple review periods. The Department notes that granting the by–product offset based on total by–product production during the POR is a departure from past NME practice, in which by–product offsets were based on its total POR reintroduction of the by–product produced during the POR. *See*, *e.g.*, *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003) and accompanying Issues and Decisions Memorandum at Comment 12. However, this change brings our NME practice into line with normal accounting principles, which recognizes and records the economic value of a by–product when it is produced. We are hereby notifying parties of this change in practice for NME cases and we invite interested parties to provide comments in their case briefs.

We are also preliminarily granting a by–product offset to Santai for polypropylene (''PP'') waste and polyethylene terephthalate (''PET'') waste.

Currency Conversion

Where necessary, the Department 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.

Preliminary Results of Review

The Department preliminarily determines that the following weighted–average dumping margins exist:

CERTAIN POLYESTER STAPLE FIBER FROM THE PEOPLE'S REPUBLIC OF CHINA

Manufacturer/Exporter	Weighted Average Margin (Percent)
Ningbo Dafa Chemical Fiber Co., Ltd.	0.00
Cixi Santai Chemical Fiber Co.	0.06 (*de minimis*)
Far Eastern Polychem Industries	4.44
Cixi Sansheng Chemical Fiber Co., Ltd.	4.44
Cixi Waysun Chemical Fiber Co. Ltd.	4.44
Hangzhou Best Chemical Fibre Co., Ltd.	4.44
Hangzhou Hanbang Chemical Fibre Co., Ltd.	4.44
Hangzhou Huachuang Co., Ltd.	4.44
Hangzhou Sanxin Paper Co., Ltd.	4.44
Hangzhou Taifu Textile Fiber Co., Ltd.	4.44
Jiaxang Fuda Chemical Fibre Factory	4.44
Nantong Loulai Chemical Fiber Co., Ltd.	4.44
Nanyang Textile Co., Ltd.	4.44
Xiamen Xianglu Chemical Fiber Co.	4.44
Zhaoqing Tifo New Fiber Co., Ltd.	4.44
Zhejiang Anshun Pettechs Fibre Co., Ltd.	4.44
Zhejiang Waysun Chemical Fiber Co., Ltd.	4.44
PRC–Wide Rate	44.30

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Because, as discussed above, the Department intends to seek additional information, the Department will establish the briefing schedule at a later time, and will notify parties of the schedule in accordance with 19 CFR 351.309. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities. *See* 19 CFR 351.309(c) and (d).

Pursuant to 19 CFR 351.310(c), 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, Room 1117, within 30 days of the date of 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 issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Extension of the Time Limit for the Final Results

Section 751(a)(3)(A) of the Act requires that the Department issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results to a maximum of 180 days after the date on which the preliminary results are published.

In this proceeding, the Department requires additional time to complete the final results of this administrative review to issue additional supplemental questionnaires, conduct verifications of several producers in addition to the exporters, generate the reports of the verification findings, and properly consider the issues raised in case briefs from interested parties. Thus, it is not practicable to complete this administrative review within the original time limit. Consequently, the Department is extending the time limit for completion of the final results of this review by 60 days, in accordance with section 751(a)(3)(A) of the Act. The final results are now due no later 180 days after the publication date of these preliminary results.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by these reviews. The Department intends to issue assessment instructions to CBP 15

days after the publication date of the final results of this review excluding any reported sales that entered during the gap period. In accordance with 19 CFR 351.212(b)(1), we calculated exporter/importer (or customer)-specific assessment rates for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculated importer (or customer)-specific ad valorem rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). *See* 19 CFR 351.212(b)(1). Where an importer (or customer)-specific ad valorem rate is greater than *de minimis*, we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR. *See* 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales, we calculated a per–unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). *See* 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific ad valorem ratios based on the estimated entered value. Where an importer (or customer)-specific ad valorem rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

For the companies receiving a separate rate that were not selected for individual review, the assessment rate will be based on the rate from the investigation or, if appropriate, a simple average of the cash deposit rates calculated for the companies selected for individual review pursuant to section 735(c)(5)(B) of the Act.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis*, i.e., less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 44.3 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: June 30, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–15964 Filed 7–6–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 0906231085–91085–01]

Relocation of Federal Systems in the 1710–1755 MHz Frequency Band: Review of the Initial Implementation of the Commercial Spectrum Enhancement Act

AGENCY: National Telecommunications and Information Administration.

ACTION: Notice of Inquiry.

SUMMARY: The U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) seeks comment on the initial implementation of the Commercial Spectrum Enhancement Act (CSEA).[1] The CSEA, which was enacted in 2004, created an innovative funding mechanism allowing Federal agencies to recover the costs of relocating their radio systems from the proceeds of the auction of the radio spectrum vacated. The first auction under the CSEA, that of the 1710–1755 MHz band, concluded in 2006, providing new opportunities for Advanced Wireless Services (AWS–1). Over two years into the relocation of Federal systems from this band, NTIA requests information on what implementation steps should be retained as best practices, what lessons have been learned, and what, if any, improvements should be made in future relocations under the CSEA.

DATE: Comments are requested on or before August 21, 2009, 2009.

ADDRESSES: Parties may mail written comments to Gary Patrick, Spectrum Engineering and Analysis Division, Office of Spectrum Management, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Room 6725, Washington, DC 20230, with copies to Gina Harrison, Esq., Office of Spectrum Management, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Room 4099, Washington, DC 20230. Alternatively, comments may be submitted in Microsoft Word format electronically to csealessonslearned@ntia.doc.gov. Comments will be posted on NTIA's website at http://www.ntia.doc.gov and regulations.gov.

FOR FURTHER INFORMATION CONTACT: Gary Patrick, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Room 6725, Washington, DC 20230 or Gina Harrison, Esq., National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Room 4099, Washington, DC 20230; telephone (202) 482–9132 or (202) 482–2695; or email: gpatrick@ntia.doc.gov or rharrison@ntia.doc.gov.

SUPPLEMENTARY INFORMATION:

Overview

NTIA decided to reallocate the 1710–1755 MHz band to commercial use in

[1] Title II, Pub. Law No. 108–494, 118 Stat. 3986, 47 U.S.C. §§ 309 (j) (3), 921, 923, 928 and note (annual report requirement).