

that the proposal is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the manufacturing and distribution of aluminum foil liner stock and aluminum foil at the facilities of Reynolds Packaging LLC, located in Louisville, Kentucky (Subzone 29J), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 30th day of December 2009.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**Pierre V. Duy,**

*Acting Executive Secretary.*

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**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XT33

#### Western Pacific Crustacean Fisheries; 2010 Northwestern Hawaiian Islands Lobster Harvest Guideline

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notification of lobster harvest guideline.

**SUMMARY:** NMFS announces that the annual harvest guideline for the commercial lobster fishery in the Northwestern Hawaiian Islands (NWHI) for calendar year 2010 is established at zero lobsters.

**FOR FURTHER INFORMATION CONTACT:** Bob Harman, NMFS Pacific Islands Region, 808-944-2271.

**SUPPLEMENTARY INFORMATION:** The NWHI commercial lobster fishery is managed under the Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region. The regulations at 50 CFR 665.50(b)(2) require NMFS to publish an annual harvest guideline for lobster Permit Area 1, comprised of Federal waters around the NWHI.

Regulations governing the Papahānaumokuākea Marine National Monument in the NWHI prohibit the unpermitted removal of monument resources (50 CFR 404.7), and establish a zero annual harvest guideline for lobsters (50 CFR 404.10(a)).

Accordingly, NMFS establishes the harvest guideline at zero lobsters for the NWHI commercial lobster fishery for calendar year 2010. Thus, no harvest of NWHI lobster resources is allowed.

Furthermore, the NMFS Regional Administrator determined that all 15 NWHI lobster limited entry permits held by vessel owners (i.e., permit holders) are no longer valid. This action complies with the final rule governing compensation to Federal commercial bottomfish and lobster fishermen due to fishery closures in the Monument (74 FR 47119, September 15, 2009). During December 2009 and January 2010, eligible NWHI lobster permit holders voluntarily accepted and received monetary payments, as authorized by Congress under the Consolidated Appropriations Act of 2008 (P.L. 110-161). Thus, no fishing for NWHI lobster resources is allowed.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: January 6, 2010.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-570-949)

#### Wire Decking from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

**EFFECTIVE DATE:** January 12, 2010.

**SUMMARY:** The Department of Commerce ("Department") preliminarily determines that wire decking 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.

**FOR FURTHER INFORMATION CONTACT:** Frances Veith or Trisha Tran, 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) 482-4852, respectively.

### SUPPLEMENTARY INFORMATION:

#### Initiation

On June 5, 2009, the Department received an antidumping duty ("AD") petition concerning imports of wire decking from the PRC filed in proper form by AWP Industries, Inc., ITC Manufacturing, Inc., J&L Wire Cloth, Inc., and Nashville Wire Products Mfg. Co., Inc., (collectively, "Petitioners"). See the Petition for the Imposition of Antidumping and Countervailing Duties Pursuant to Sections 701 and 731 of the Tariff Act of 1930, as amended ("Petition"), filed on June 5, 2009. On June 22, 2009, Petitioners submitted a letter stating that another domestic producer of the like product, Wireway Husky Corporation, had joined the petition.

The Department initiated this investigation on June 25, 2009.<sup>1</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>2</sup> and to demonstrate an absence of both *de jure* and *de facto* government control over its export activities. The SRA for this investigation was posted on the Department's website <http://ia.ita.doc.gov/ia-highlights-and-news.html> on July 2, 2009. The due date for filing an SRA was August 31, 2009.

On July 31, 2009, 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 wire decking from the PRC.<sup>3</sup>

<sup>1</sup> See *Wire Decking from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 74 FR 31691 (July 2, 2009) ("*Initiation Notice*").

<sup>2</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/bull05-1.pdf>.

<sup>3</sup> See *Investigation Nos. 701-TA-466 and 731-TA-116 (Preliminary): Wire Decking from China*, 74 FR 38229 (July 31, 2009).

### Period of Investigation

The period of investigation ("POI") is October 1, 2008, through March 31, 2009. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was June 2009. See 19 CFR 351.204(b)(1).

### Postponement of Preliminary Determination

On October 15, 2009, petitioners 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 October 27, 2009, the Department published a postponement of the preliminary antidumping duty determination on wire decking from the PRC.<sup>4</sup>

### Scope of the Investigation

The scope of the investigation covers welded-wire rack decking, which is also known as, among other things, "pallet rack decking," "wire rack decking," "wire mesh decking," "bulk storage shelving," or "welded-wire decking." Wire decking consists of wire mesh that is reinforced with structural supports and designed to be load bearing. The structural supports include sheet metal support channels, or other structural supports, that reinforce the wire mesh and that are welded or otherwise affixed to the wire mesh, regardless of whether the wire mesh and supports are assembled or unassembled and whether shipped as a kit or packaged separately. Wire decking is produced from carbon or alloy steel wire that has been welded into a mesh pattern. The wire may be galvanized or plated (e.g., chrome, zinc or nickel coated), coated (e.g., with paint, epoxy, or plastic), or uncoated ("raw"). The wire may be drawn or rolled and may have a round, square or other profile. Wire decking is sold in a variety of wire gauges. The wire diameters used in the decking mesh are 0.105 inches or greater for round wire. For wire other than round wire, the distance between any two points on a cross-section of the wire is 0.105 inches or greater. Wire decking reinforced with structural supports is designed generally for industrial and other commercial storage rack systems.

Wire decking is produced to various profiles, including, but not limited to, a flat ("flush") profile, an upward curved back edge profile ("backstop") or

downward curved edge profile ("waterfalls"), depending on the rack storage system. The wire decking may or may not be anchored to the rack storage system. The scope does not cover the metal rack storage system, comprised of metal uprights and cross beams, on which the wire decking is ultimately installed. Also excluded from the scope is wire mesh shelving that is not reinforced with structural supports and is designed for use without structural supports.

Wire decking enters the United States through several basket categories in the Harmonized Tariff Schedule of the United States ("HTSUS"). U.S. Customs and Border Protection has issued a ruling (NY F84777) that wire decking is to be classified under HTSUS 9403.90.8040. Wire decking has also been entered under HTSUS 7217.10, 7217.20, 7326.20, 7326.90, 9403.20.0020 and 9403.20.0030. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of the investigations is dispositive.

### Scope Comments

As discussed in the preamble to the regulations, 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*. See *Initiation Notice*, 74 FR at 31692. The Department did not receive scope comments from any interested party.

### Non-Market Economy Country

For purposes of initiation, Petitioners submitted an LTFV analysis for the PRC as an NME.<sup>5</sup> The Department's most recent examination of the PRC's market status determined that NME status should continue for the PRC.<sup>6</sup> Additionally, in two recent investigations, the Department also determined that the PRC is an NME country.<sup>7</sup> In accordance with section

<sup>5</sup> *Initiation Notice*, 72 FR at 31693-94.

<sup>6</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/download/prc-nmestatus/prc-lined-paper-memo-08302006.pdf>.

<sup>7</sup> See, e.g., *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 9591 (March 5, 2009)

771(18)(C)(i) of the Act, the NME status remains in effect until revoked by the Department. The Department has not revoked the PRC's status as an NME country, and we have therefore treated the PRC as an NME in this preliminary determination and applied our NME methodology.

### Selection of Respondents

In accordance with section 777A(c)(2) of the Act, the Department selected the two largest exporters of wire decking (i.e., Dalian Huameilong Metal Products Co., Ltd. ("DHMP") and Dalian Eastfound Metal Products Co., Ltd. ("Eastfound Metal") and its affiliate Dalian Eastfound Material Handling Products Co., Ltd. ("Eastfound Material") (collectively, "Eastfound") by volume as the mandatory respondents in this investigation based on the quantity and value ("Q&V") information from exporters/producers that were identified in the Petition, of which eight firms filed timely Q&V questionnaire responses.<sup>8</sup> Of the eight Q&V questionnaire responses, two companies (i.e. Eastfound Material and Eastfound Metal) filed a consolidated Q&V questionnaire response.

The Department issued its antidumping questionnaire to DHMP and Eastfound on August 31, 2009. In its questionnaire, the Department requested that the respondents provide a response to section A of the Department's questionnaire on September 21, 2009, and to sections C and D of the questionnaire on October 7, 2009. On September 16, 2009, and September 18, 2009, the Department granted DHMP's and Eastfound's requests, respectively, to extend the deadline to submit Sections A, C, and D. As such, Section A was timely submitted on September 28, 2009, by both parties. DHMP timely submitted its Sections C and D Response on October 16, 2009. On October 16, 2009, the Department granted Eastfound an extension to submit its Sections C and D

("Kitchen Racks Prelim") unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656 (July 24, 2009) ("Kitchen Racks Final") and *Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 4929 (January 28, 2009) unchanged in *Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 29167 (June 19, 2009).

<sup>8</sup> See the Department's memorandum entitled, "Antidumping Duty Investigation of Wire Decking from the People's Republic of China: Selection of Respondents," dated August 19, 2009 ("Respondent Selection Memo").

<sup>4</sup> See *Wire Decking from the People's Republic of China: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 74 FR 55211 (October 27, 2009).

questionnaire. Eastfound timely submitted its Sections C and D Response on October 23, 2009. The Department issued several supplemental questionnaires to both DHMP and Eastfound between October and December 2009. Both respondents responded timely to those supplemental questionnaires.

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

Pursuant to section 735(a)(2) of the Act, between December 31, 2009, and January 4, 2010, Eastfound, DHMP, and Petitioners requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone the final determination by 60 days. Eastfound, DHMP, and Petitioners also each requested that the Department extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a four-month period to a six-month period. In accordance with section 733(d) of the Act and 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the requests 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.

### Surrogate Country

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs it to base normal value, in most circumstances, on the NME producer's factors of production ("FOPs") valued in a surrogate market-economy 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 utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the "Normal Value" section below.

The Department's practice with respect to determining economic comparability is explained in Policy Bulletin 04.1,<sup>9</sup> which states that "OP

{Office of Policy} determines per capita economic comparability on the basis of per capita gross national income, as reported in the most current annual issue of the *World Development Report* (The World Bank)." On September 15, 2009, the Department identified six countries as being at a level of economic development comparable to the PRC for the specified POR: India, the Philippines, Indonesia, Colombia, Thailand, and Peru.<sup>10</sup> The Department considers the six countries identified in the Surrogate Countries Memo as "equally comparable in terms of economic development." See Policy Bulletin 04.1 at 2. Thus, we find that India, the Philippines, Indonesia, Colombia, Thailand, and Peru are all at an economic level of development equally comparable to that of the PRC.

On September 30, 2009, the Department invited all interested parties to submit comments on the surrogate country selection.<sup>11</sup> The Department did not receive any comments regarding the Department's selection of a surrogate country for the preliminary determination.

Policy Bulletin 04.1 provides some guidance on identifying comparable merchandise and selecting a producer of comparable merchandise. As noted in the Policy Bulletin, comparable merchandise is not defined in the statute or the regulations, since it is best determined on a case-by-case basis. See Policy Bulletin 04.1 at 2. As further noted in Policy Bulletin 04.1, in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise. *Id.*

The Department examined worldwide export data for comparable merchandise, using the six-digit level of the HTS numbers listed in the scope language for this investigation.<sup>12</sup> Specifically, we reviewed the POI

2004), ("Policy Bulletin 04.1") at Attachment II of the Department's Surrogate Country Letter, also available at <http://ia.ita.doc.gov/policy/bull04-1.html>.

<sup>10</sup> See the Department's Memorandum from Kelly Parkhill, Acting Director, Office of Policy, to Wendy Frankel, Office Director, AD/CVD Operations, Office 8, regarding, "Request for a List of Surrogate Countries for an Antidumping Duty Investigation of Wire Decking from the People's Republic of China ("PRC")," dated September 15, 2009 ("Surrogate Countries Memo").

<sup>11</sup> See the Department's letter regarding, "Antidumping Duty Investigation of Wire Decking from the People's Republic of China" requesting all interested parties to provide comments on surrogate-country selection and provide surrogate FOP values from the potential surrogate countries (i.e., India, Indonesia, the Philippines, Thailand, Colombia, and Peru), dated September 30, 2009.

<sup>12</sup> Because the Department was unable to find production data, we relied on export data as a substitute for overall production data in this case.

export data from the World Trade Atlas ("WTA") for the HTS headings. The merchandise subject to the scope of the order is currently classifiable under subheading HTSUS 9403.90.8040. Wire decking has also been entered under HTSUS 7217.10, 7217.20, 7326.20, 7326.90, 9403.20.0020, and 9403.20.0030.<sup>13</sup> The Department found that, of the countries provided in the Surrogate Country List, using the six-digit level of the HTS numbers listed in the scope language for this investigation (the best data available to the Department for this purpose), all six countries were exporters of comparable merchandise. Thus, all countries on the Surrogate Country List are considered as appropriate surrogates because each exported comparable merchandise.

Policy Bulletin 04.1 also provides some guidance on identifying significant producers of comparable merchandise and selecting a producer of comparable merchandise. Further analysis was required to determine whether any of the countries which produce comparable merchandise are significant producers of that comparable merchandise. The HTS data is reported in either kilograms or pieces, depending upon the HTS category and country. The data we obtained shows that, during the POI, worldwide exports from these countries under the relevant HTS categories were as follows: (1) 355,679 kilograms (HTS 7217.10, 7217.20) and 11,080,755 pieces (HTS 9403.90, 9403.20, 7326.20, 7326.90) from Colombia; (2) 37,994,423 kilograms from Indonesia; (3) 5,385,873 kilograms from Philippines; (4) 89,367,977 kilograms from Thailand; (5) 1,065,699 kilograms (HTS 7217.10, 7217.20) and 618,727 pieces (HTS 9403.90, 9403.20, 7326.20, 7326.90) from Peru; and (6) 53,185,837 kilograms from India. We find that these exports are sufficient to establish that all of the potential surrogate countries are significant producers of comparable merchandise. Thus, all countries on the Surrogate Country List are considered as appropriate surrogates because each exported significant comparable merchandise. Finally, we have reliable data from India on the record that we can use to value the FOPs. Petitioners, DHMP, and Eastfound submitted surrogate values using Indian sources, suggesting greater availability of appropriate surrogate value data in India.

The Department is preliminarily selecting India as the surrogate country on the basis that: (1) it is at a similar

<sup>13</sup> See *Harmonized Tariff Schedule of the United States (2007) (Rev. 2)*, available at [www.usitc.gov](http://www.usitc.gov).

<sup>9</sup> See Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process, (March 1,

level of economic development pursuant to section 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India that we can use to value the FOPs. Thus, we have calculated normal value (“NV”) using Indian prices when available and appropriate to the respondents’ FOPs. See Surrogate Value Memorandum.<sup>14</sup> In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value the FOPs within 40 days after the date of publication of the preliminary determination.<sup>15</sup>

### Surrogate Value Comments

Surrogate factor valuation comments and surrogate value information with which to value the FOPs in this proceeding were filed on November 13, 2009, by DHMP and Petitioners. On November 18, 2009, DHMP and Eastfound filed rebuttal surrogate factor valuation comments. On November 23, 2009, Eastfound filed additional surrogate valuation comments. On November 24, 2009, Petitioners filed additional comments on appropriate surrogate values for factors of production reported by Eastfound and DHMP. For a detailed discussion of the surrogate values used in this LTFV proceeding, see the “Factor Valuation” section below and the Surrogate Value Memorandum.

### Affiliation

Based on the evidence presented in Eastfound’s questionnaire responses, we preliminarily find that Eastfound Metal is affiliated with Eastfound Material, which also produces subject merchandise, pursuant to sections 771(33)(E) and (G) of the Act. In

<sup>14</sup> See the Department’s memorandum to the file entitled, “Antidumping Investigation of Wire Decking from the People’s Republic of China: Factor Valuations for the Preliminary Determination,” dated concurrently with this notice (“Surrogate Value Memorandum”).

<sup>15</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 will not 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.

addition, based on the evidence presented in Eastfound’s questionnaire responses, we preliminarily find that Eastfound Metal and Eastfound Material should be collapsed for the purposes of this investigation. This finding is based on the determination that Eastfound Metal and Eastfound Material are affiliated, that Eastfound Metal and Eastfound Material Handling are both producers of identical products and no retooling would be necessary in order to restructure manufacturing priorities, and that there is significant potential for manipulation of price or production between the parties. See 19 C.F.R. Sec. 351.401(f)(1) and (2). For further discussion, see the Department’s Memorandum regarding, “Antidumping Duty Investigation of Wire Decking from the People’s Republic of China: Affiliation and Collapsing of Dalian Eastfound Metal Products Co., Ltd. and Dalian Eastfound Material Handling Products Co., Ltd.,” dated concurrently with this notice.

In response to allegations raised by Petitioners,<sup>16</sup> we reviewed Eastfound’s relationship with its U.S. customer and we preliminarily find that Eastfound and its U.S. customer were not affiliated during the POI under the meaning of section 771(33) of the Act. Specifically, based on Eastfound’s questionnaire responses identifying its ownership structure, we preliminarily find that Eastfound is not affiliated with its U.S. customer within the meaning of sections 771(33)(B) and (E) of the Act. In addition, we preliminarily find that Eastfound is not affiliated with its U.S. customer within the meaning of sections 771(33)(F) and (G) of the Act, because in its response, Eastfound presented evidence that the distributor agreement between Eastfound and its U.S. customer does not offer either party control over the other party to the agreement. Accordingly, we have used Eastfound’s reported export price (“EP”) sales to the United States for the preliminary determination. However, we intend to issue additional questions to Eastfound following the publication of the preliminary determination with respect to this affiliation issue.

### Separate Rates

In the *Initiation Notice*, the Department notified parties of the application process by which exporters

<sup>16</sup> See Letter from Kelley Drye & Warren LLP, regarding “Wire Decking from the People’s Republic of China - Eastfound Is Affiliated with Its Exclusive North American Importer and Distributor,” dated December 18, 2009, where they allege that Eastfound and its U.S. Customer are affiliated pursuant to sections 771(33)(B), (E), (F), and (G) of the Act.

and producers may obtain separate-rate status in NME investigations. See *Initiation Notice*, 74 FR at 31695. The process requires exporters and producers to submit an SRA. See also Policy Bulletin 05.1.<sup>17</sup> The standard for eligibility for a separate rate is whether a firm can demonstrate an absence of both *de jure* and *de facto* government control over its export activities. In this instant investigation, the Department received timely-filed SRA’s from seven companies.<sup>18</sup> The two mandatory respondents (*i.e.*, Eastfound Metal and Eastfound Material (collectively Eastfound) and DHMP) and the four separate-rate respondents provided company-specific information and each<sup>19</sup> stated that it meets the criteria for the assignment of a separate rate.

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department’s policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from *Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China*, 56 FR 20588

<sup>17</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 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.

<sup>18</sup> The seven separate-rate applicants are: (1) Eastfound Material; (2) Eastfound Metal; (3) DHMP; (4) Dandong Riqian Logistics Equipment Co. Ltd. (“Riqian”); (5) Globsea Co., Ltd. (“Globsea”); (6) Ningbo Xinguang Rack Co., Ltd. (“Ningbo Xinguang”); and (7) Dalian Xingbo Metal Products Co. Ltd. (“Dalian Xingbo”).

<sup>19</sup> The non-selected respondents are as follows: Riqian, Globsea, Ningbo Xinguang, and Dalian Xingbo.

(May 6, 1991) (“*Sparklers*”), as further developed in *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. In this investigation, one company, Eastfound Material has provided company-specific information that indicates it is a wholly-foreign owned entity. Therefore, a separate rate-analysis is not necessary to determine whether it is independent from government control.

The other remaining companies have all stated that they are either joint ventures between PRC and foreign companies, or are wholly PRC-owned companies. Thus, the Department must analyze whether Eastfound Metal, DHMP, Riqian, Globsea, Ningbo Xinguang, and Dalian Xingbo 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 Eastfound Metal, DHMP, Riqian, Globsea, Ningbo Xinguang, and Dalian Xingbo 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) applicable legislative enactments that decentralize control of the companies; and (3) formal measures by the government decentralizing control of companies. See each company’s SRA submission, dated August 21, 2009, through August 31, 2009, where each separate-rate respondent stated that it had no relationship with any level of the PRC government with respect to ownership, internal management, and business operations.

#### 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.

In this investigation, Eastfound Metal, DHMP, Riqian, Globsea, Ningbo Xinguang, and Dalian Xingbo each asserted the following: (1) that the export prices are not set by, and are not subject to, the approval of a governmental agency; (2) they have authority to negotiate and sign contracts and other agreements; (3) they have autonomy from the government in making decisions regarding the selection of management; and (4) they retain the proceeds of their export sales and make independent decisions regarding disposition of profits or financing of losses. Additionally, each of these companies’ SRA responses indicate that its pricing during the POI does not involve coordination among exporters. See each company’s SRA submissions dated August 21, 2009, through August 31, 2009. However, evidence placed on the record by Dalian Xingbo indicates that it did not export wire decking to the United States during the POI. See the “Companies Not Receiving a Separate Rate” section below for further details.

Evidence placed on the record of this investigation by Eastfound Material, Eastfound Metal, DHMP, Riqian, Globsea, and Ningbo Xinguang 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*. Therefore, we are preliminary granting a separate rate to these entities.

#### Companies Not Receiving a Separate Rate

We preliminarily determine that Dalian Xingbo does not qualify for a separate rate because Dalian Xingbo did not export wire decking to the United States during the POI. Dalian Xingbo stated that the invoice it provided in its SRA, which is dated within the POI, for its first sale to an unaffiliated customer in the United States, is not its commercial invoice. See Dalian Xingbo’s SRA dated August 21, 2009, at Exhibit 1. The commercial invoice provided by Dalian Xingbo is dated outside the POI. See Dalian Xingbo’s Supplemental SRA questionnaire dated September 21, 2009, at Exhibit 1. Furthermore, evidence on the record (U.S. Customs and Border Protection (“CBP”) entry summary form 7501) indicates that Dalian Xingbo exported the above goods from the PRC to the United States prior to the POI. See Dalian Xingbo’s SRA dated August 21, 2009, at Exhibit 1. Nevertheless, Dalian Xingbo asserts that because the shipment entered the United States during the POI, this shipment represents Dalian Xingbo’s first sale to an unaffiliated customer in the United States during the POI. See Dalian Xingbo’s Supplemental SRA questionnaire dated September 21, 2009, at 7/16.

In the introductory paragraph of the Department’s SRA, we state that the Department will limit its consideration of SRAs in the wire decking investigation to firms that either exported or sold wire decking to the United States during the POI. Though Dalian Xingbo argues that the entry date into the United States of its wire decking establishes that it either exported or sold wire decking to the United States during the POI, the Department normally considers the shipment date as establishing when a product is exported, and the Department normally considers the date of invoice as establishing the date of sale, unless record evidence demonstrates otherwise. The documentation provided by Dalian Xingbo (*i.e.*, CBP entry summary form 7501 and commercial invoice) indicate that the goods were both sold and exported to the United States prior to the POI. Thus, we preliminarily determine that Dalian Xingbo does not qualify for a separate rate in this investigation.

In addition, though we received a Q&V response from Brynick Enterprises Limited and Shanghai Hesheng Hardware Products Co., neither company submitted a separate rate

application, and therefore will be treated as part of the PRC-wide entity.

### Application of Facts Otherwise Available and Total Adverse Facts Available

#### The PRC-Wide Entity and PRC-Wide Rate

The Department has data that indicate there were more exporters of wire decking from the PRC than those indicated in the response to our request for Q&V information during the POI. See the Department's memorandum regarding, "Antidumping Duty Investigation of Wire Decking from the People's Republic of China: Delivery of Quantity and Value Questionnaire and Separate Rate Application to Exporters/Producers," dated September 2, 2009 ("Q&V Delivery Memo"). We issued our request for Q&V information to 83 potential Chinese exporters of the subject merchandise, in addition to posting the Q&V questionnaire on the Department's website. See Q&V Delivery Memo. While information on the record of this investigation indicates that there are numerous producers/exporters of wire decking in the PRC, we received only nine timely filed Q&V responses. Although all exporters were given an opportunity to provide Q&V information, not all exporters provided a response to the Department's Q&V letter. Therefore, the Department has preliminarily determined that there were exporters/producers of the subject merchandise during the POI from the PRC that did not respond to the Department's request for information. We have treated these PRC producers/exporters as part of the PRC-wide entity because they did not apply for a separate rate. See, e.g., *Kitchen Racks Prelim, unchanged in Kitchen Racks Final*.

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Information on the record of this investigation indicates that the PRC-wide entity was non-responsive. Certain companies did not respond to our questionnaire requesting Q&V information. As a result, pursuant to

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

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

When employing an adverse inference, section 776 indicates that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for adverse facts available ("AFA"), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. 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. 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 31, 2000), and accompanying Issues and Decision Memorandum, at "Facts Available." As AFA, we have preliminarily assigned to the PRC-wide

entity a rate of 289.00 percent, the highest calculated rate from the petition. The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA. The Department's reliance on the petition rate to determine an AFA rate is subject to the requirement to corroborate secondary information, discussed in the Corroboration section below.

#### 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 FA, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA as "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise."<sup>20</sup> The SAA explains that to "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* The SAA also explains that independent sources used to corroborate may include, for example, published price lists, official import statistics and CBP data, and information obtained from interested parties during the particular investigation. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.<sup>21</sup>

The AFA rate that the Department used is derived from information in the Petition and from the Antidumping Duty Investigation Initiation Checklist: Wire Decking from the PRC ("Initiation Checklist").<sup>22</sup> Petitioners' methodology for calculating the EP and NV in the petition, and modified by the

<sup>20</sup> See SAA at 870.

<sup>21</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>22</sup> See Initiation Checklist at Exhibit V.

Department, is discussed in the Initiation Checklist.<sup>23</sup>

Based on our examination of information on the record, including examination of the petition export prices and normal values, we find that, for purposes of this investigation, there is not a sufficient basis to consider that certain petition margins have probative value. However, there is a sufficient basis to determine that the petition margin selected does have probative value. In this case, we have selected a margin that is not so much greater than the highest CONNUM-specific margin calculated for one of the mandatory respondents in this proceeding that it can be considered to not have probative value. This method of selecting an AFA dumping margin is consistent with the recent final determination involving kitchen appliance shelving and racks from the PRC and prestressed concrete steel wire strand from the PRC. See July 20, 2009, Memorandum to the File, regarding Corroboration of the PRC-Wide Entity Rate and the Wireking Total AFA Rate for the Final Determination in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China, see also, *Prestressed Concrete Steel Wire Strand From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 74 FR 68232 (December 23, 2009).

The Department's practice, when selecting an AFA rate from among the possible sources of information, has been 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 and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55796 (Aug. 30, 2002); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (Feb. 23, 1998). As guided by the SAA, the information used as AFA should ensure an uncooperative party does not benefit more by failing to cooperate than if it had cooperated fully. See SAA at 870. We conclude that using DHMP's highest transaction-specific margin as a limited reference point, the highest petition margin that can be corroborated within the meaning of the statute is 289.00 percent, which is sufficiently adverse so

as to induce cooperation such that the uncooperative companies do not benefit from their failure to cooperate. See Memorandum to the File, regarding Corroboration of the PRC-Wide Entity Rate and for the Preliminary Determination in the Antidumping Duty Investigation of Wire Decking from the People's Republic of China, dated concurrently with this notice.

Accordingly, we find that the rate of 289.00 percent is corroborated within the meaning of section 776(c) of the Act.

Consequently, we are applying 289.00 percent as the single antidumping rate to the PRC-wide entity. The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from Eastfound Metal, Eastfound Material, DHMP, and the separate rate applicants receiving a separate rate (i.e., Riqian, Globsea, and Ningbo Xinguang).

#### Margin for the Separate Rate Companies

As discussed above, the Department received timely and complete separate rate applications from Riqian, Globsea, and Ningbo Xinguang, who are all exporters of wire decking from the PRC during the POI and who were not selected as mandatory respondents in this investigation. Through the evidence in their applications, these companies have demonstrated their eligibility for a separate rate, as discussed above. Consistent with the Department's practice, as the separate rate, we have established a margin for the Riqian, Globsea, and Ningbo Xinguang based on the average of the rates we calculated for the mandatory respondents, Eastfound and DHMP, excluding any rates that were zero, *de minimis*, or based on total adverse facts available.<sup>24</sup>

#### Date of Sale

19 CFR 351.401(i) states that, "in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." In *Allied Tube*, the Court of International Trade ("CIT") noted that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to

satisfy the Department that a different date better reflects the date on which the exporter or producer establishes the material terms of sale." *Allied Tube & Conduit Corp. v. United States* 132 F. Supp. 2d at 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) ("*Allied Tube*"). Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. See 19 CFR 351.401(i); see also *Allied Tube*, 132 F. Supp. 2d 1087, 1090-1092. The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms. See *Carbon and Alloy Steel Wire Rod from Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Comment 1.

#### Eastfound

For the preliminary determination, we used the shipment date as the date of sale rather than Eastfound's reported sale date (booking date), because based on the record evidence to date, we preliminarily find that shipment date best reflects the date on which the essential terms of sale are fixed and final. In our analysis of Eastfound's information, we determined that the sale date reported in Eastfound's sales database only represents the date that Eastfound chose to record the sale of merchandise under consideration in its books and records, not the date the material terms of the sale were established with its U.S. customer. We asked Eastfound to provide sales based on commercial invoice date or explain why Eastfound's booking date better reflects the date on which the exporter established the material terms of sale (e.g., price, quantity, etc.). Instead, Eastfound explained how it uses its commercial invoice numbering and dating system to assign invoice numbers and dates and how it recorded its sales in its books and records. The information that Eastfound provided did not adequately demonstrate when the material terms of its sale were established. Because Eastfound has not adequately demonstrated that the material terms of sale for Eastfound's

<sup>24</sup> See, e.g., *Preliminary 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*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *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>23</sup> See Initiation Checklist at Exhibit V.

sales were established on its reported sale date (*i.e.*, booking date) or any other date, we preliminarily determine Eastfound's shipment date best reflects the date on which the essential terms are fixed and final. However, subsequent to the preliminary determination we will request additional information with respect to this issue.

#### DHMP

For the preliminary determination, we used DHMP's shipment date as the date of sale, because, based on record evidence to date, we preliminarily find that it best represents the date on which the essential terms of sale are fixed and final. In DHMP's October 16, 2009, questionnaire response, DHMP designated a date of sale other than the invoice date but did not produce sufficient evidence to establish that "a different date better reflects the date on which the exporter or producer establishes the material terms of sale." On November 16, 2009, the Department issued a supplemental questionnaire and explained that the Department will normally use the date of invoice, unless DHMP demonstrates that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. In DHMP's December 1, 2009, Supplemental Questionnaire Response, DHMP submitted an alternate database for its U.S. sales during the POI based on the shipment date. Additionally, in DHMP's December 23, 2009 submission, DHMP stated that the material terms of sale are set at the time of shipment. Thus, for the preliminary determination, the Department has used the shipment date as the date of sale. However, subsequent to the preliminary determination we will request additional information with respect to this issue.

#### Fair Value Comparisons

To determine whether sales of wire decking to the United States by the respondents were made at LTFV, we compared 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 DHMP's and Eastfound'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. See Affiliation Section above.

We calculated EP based on the packed 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, international freight to the port of importation, etc.) in accordance with section 772(c)(2)(A) of the Act. 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>25</sup> We valued brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Navneet Publications (India) Ltd. in the 2007–2008 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 Himalya International Ltd. in the 2005–2006 administrative review of certain preserved mushrooms from India. 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 three companies' brokerage expense data.<sup>26</sup> See Surrogate Value Memo.

To value marine insurance, the Department used data from RGJ Consultants (<http://www.rgjconsultants.com/>). This source provides information regarding the per-value rates of marine insurance of imports and exports to/from various countries. We valued international freight shipping expenses using contemporaneous rates reported by Maersk Line Shipping. Where applicable, the Department used the international freight rates reported for each corresponding origin and destination port for each month of the POI.

#### 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.*, *Kitchen Racks Prelim*, 71 FR at 19703 (unchanged in *Kitchen Racks Final*).

#### Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by respondents during the POI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values (except as discussed below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. See, *e.g.*, *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5. As

<sup>25</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>26</sup> See *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Preliminary Results of the 2007–2008 Administrative Review of the Antidumping Duty Order*, 74 FR 32539 (July 8, 2009), (unchanged in final results) ("07-08 TRBs").



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 or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all surrogate values used for DHMP and Eastfound can be found in the Surrogate Value Memorandum.

For the preliminary determination, in accordance with the Department's practice, we used data from the Indian Import Statistics and other publicly available Indian sources in order to calculate surrogate values for DHMP's and Eastfound's FOPs (direct materials, energy, and packing materials) and certain movement expenses. 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. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). The record shows that data in the Indian Import Statistics, as well as those from the other Indian sources, are contemporaneous with the POI, product-specific, and tax-exclusive. See Surrogate Value Memorandum. In those instances where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the Indian WPI as published in the IMF's *International Financial Statistics*. See, e.g., *Kitchen Racks*, 74 FR at 9600.

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. 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.

Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized. See Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100–576 at 590 (1988) reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24; see also *Preliminary Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758 (June 4, 2007) unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007). Rather, the Department bases its decision on information that is available to it at the time it makes its determination. See *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008). Therefore, we have not used prices from these countries in calculating the Indian import-based surrogate values. Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an “unspecified” country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. See *id.*

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 home page, Import Library, Expected Wages of Selected NME Countries, revised in December 2009. See *2009 Calculation of Expected Non-Market Economy Wages*, 74 FR 65092 (December 9, 2009), and

<http://ia.ita.doc.gov/wages/index.html>. The source of these wage-rate data on the Import Administration's web site is the 2006 and 2007 data in Chapter 5B of the International Labour Organization's *Yearbook of Labour Statistics*. 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 respondents.

We 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 Web site contains inland freight truck rates between many large Indian cities. This value is contemporaneous with the POI.

We 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.

Because water is essential to the production process of the merchandise under consideration, the Department considers water to be a direct material input, not 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 23, 2003), and accompanying Issues and Decision Memorandum at Comment 11. To value water, we used the revised Maharashtra Industrial Development Corporation water rates available at <http://www.midcindia.com/water-supply>. See Surrogate Value Memorandum.

To value low carbon steel wire rod, we used price data from the Indian Joint Plant Committee (“JPC”), which is a joint industry/government board that monitors Indian steel prices. These data are fully contemporaneous with the POI, and are specific to the reported inputs of the respondents. See Eastfound's Surrogate Value Rebuttal Comments, dated November 18, 2009. Further, these data are publicly available, represent a broad market average, and we are able to calculate them on a tax-exclusive basis. See 19 CFR 351.408(c)(1). For a detailed discussion of all surrogate values used for this preliminary

determination, *see* Surrogate Value Memo.

To value factory overhead, selling, general, and administrative expenses, and profit, we used audited financial statements of Bansidhar Granites Private Limited (“Bansidhar”), Bedmutha Wire Com. Ltd. (“Bedmutha”), and Mekins Agro Products (“Mekins”), each covering the fiscal period April 1, 2007, through March 31, 2008. Each of the three surrogate producers makes a range of products including: wire decking, drawn and welded wire products, fasteners or nuts and bolts, or some combination thereof. These are all comparable merchandise to that produced by the respondents.<sup>27</sup> The Department may consider other publicly available financial statements for the final determination, as appropriate.

**Use of Facts Available**

Section 776(a)(1) of the Act mandates that the Department use FA if necessary information is not available on the record of an antidumping proceeding.

*Eastfound*

In our review of Eastfound’s reported information, we found that Eastfound did not report FOPs for certain control numbers (“CONNUMs”) in its sales database. In our original questionnaire, we instructed Eastfound to ensure that its FOP database contains a separate record for each unique CONNUM contained in its U.S. sales file. Additionally, in a supplemental questionnaire, we pointed out to Eastfound that the FOP database did not contain FOPs for certain sales CONNUMs. We requested that Eastfound report consumption factors for all of these CONNUMs. In its December 7, 2009, response, Eastfound stated that it had no production for these CONNUMs during the POI and it provided alternate CONNUMs for the Department to use in its margin program for the missing FOPs. However, in its supplemental questionnaire response, Eastfound did not adequately explain why the Department should use the FOPs of these alternate CONNUMs in lieu of obtaining FOPs for the actual

CONNUMs. Eastfound stated that the missing CONNUMs represent a small percentage of its reported sales and that its alternate CONNUMs are “very similar” to the CONNUMs that did not have production during the POI. On December 23, 2009, Eastfound submitted an update to its alternate CONNUM recommendation and also provided an explanation as to why the FOPs for these alternate CONNUMs should be used in lieu of the actual CONNUMs.

Pursuant to section 776(a)(2)(B) of the Act, Eastfound failed to provide information relevant to the Department’s analysis with respect to the above-mentioned missing FOPs for certain CONNUMs. Thus, consistent with section 782(d) of the Act, the Department has determined it necessary to apply facts otherwise available for these CONNUMs. For the preliminary determination, as FA, we will use the FOPs of the CONNUMs recommended by Eastfound in its December 23, 2009, submission because they represent a very small percentage of Eastfound’s U.S. sales, and based on a review of the product characteristics we find that Eastfound’s suggested alternate CONNUMs represent very similar products to the CONNUMs with no FOPs.

In our review of Eastfound’s FOP database, we found that for certain CONNUMs the consumption of hot-rolled steel strip in coils and wire rods (collectively “steel weight”), which is the amount of steel needed to produce Eastfound’s wire decking, is less than the reported “standard weight” of the finished product. *See* Eastfound’s Preliminary Analysis Memorandum. Because we did not provide Eastfound an opportunity to remedy the above weight discrepancies, we intend to issue a supplemental questionnaire after this preliminary determination. However, for the preliminary determination, for those CONNUMs where the steel weight in Eastfound’s FOP database is less than the standard weight reported in its sales database, we applied partial FA. Pursuant to section 776(b) of the Act, as FA, we applied the weighted average

margin calculated for Eastfound to these transactions. *See* Eastfound’s Analysis Memorandum.

The Department instructed Eastfound to provide an FOP database for the processing performed for Eastfound Metal and/or Eastfound Material by their galvanizing tollers during the POI. Eastfound stated that its unaffiliated galvanizing tollers refused to provide the requested information because the information is proprietary. Eastfound recommends that for the preliminary determination, the Department use the galvanizing costs used in the Petition, which were also used in *Certain Steel Threaded Rod from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 58931 (October 8, 2008). Petitioners recommend that we use an average of the galvanizing surrogate values from the Petition. For the preliminary determination, we are applying the average of both surrogate values from the Petition as a surrogate cost to the galvanizing performed by Eastfound’s unaffiliated tollers.

**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 DHMP and Eastfound upon which we will rely in making our final determination.

**Combination Rates**

In the *Initiation Notice*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation.<sup>28</sup> This practice is described in Policy Bulletin 05.1.

**Preliminary Determination**

The weighted-average dumping margin percentages are as follows:

Exporter	Producer	Percent Margin
Dalian Huameilong Metal Products Co., Ltd. ....	Dalian Huameilong Metal Products Co., Ltd.	50.95%
Dalian Eastfound Metal Products Co., Ltd. / Dalian Eastfound Material Handling Products Co. Ltd. ....	Dalian Eastfound Metal Products Co., Ltd., or Dalian Eastfound Material Handling Products Co. Ltd.	42.61%
Globsea Co., Ltd. ....	Dalian Yutiein Storage Manufacturing Co. Ltd., or Dalian Xingbo Metal Products Co. Ltd.	46.78%
Ningbo Xinguang Rack Co., Ltd. ....	Ningbo Xinguang Rack Co., Ltd.	46.78%
Dandong Riqian Logistics Equipment Co. Ltd. ....	Dandong Riqian Logistics Equipment Co. Ltd.	46.78%

<sup>27</sup> *See* Surrogate Value Memorandum.

<sup>28</sup> *See* *Initiation Notice*, 74 FR at 31695.

Exporter	Producer	Percent Margin
PRC—Wide Entity*		289.00%

\* This rate also applies to Brynick Enterprises Limited, Shanghai Hesheng Hardware Products Co., and Dalian Xingbo Metal Products Co. Ltd.

## 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 *Wire Decking from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 74 FR 57629 (November 9, 2009) ("*CVD Wire Decking Prelim*"), that the product under investigation, exported and produced by Eastfound, 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 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).

Accordingly, the following cash deposit requirements will be effective upon publication of the preliminary determination. For merchandise under consideration entered, or withdrawn from warehouse, for consumption on or after the publication date of this preliminary determination in the **Federal Register** that is exported and produced by Eastfound, we will instruct CBP to require an antidumping cash deposit or the posting of a bond for each entry equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated above, adjusted for the export subsidy rate determined in *CVD Wire Decking Prelim*.

For merchandise under consideration entered, or withdrawn from warehouse, for consumption on or after the publication date of this preliminary

determination in the **Federal Register** that is exported and produced by DHMP, we will instruct CBP to require an antidumping cash deposit or the posting of a bond for each entry equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated above. For the non-individually examined separate rate recipients in this investigation, we will instruct CBP to require an antidumping cash deposit or the posting of a bond for each entry equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated above.<sup>29</sup>

For all other entries of wire decking from the people's republic of china, the following cash deposit/bonding instructions apply: (1) For all PRC exporters of wire decking which have not received their own rate, the cash-deposit or bonding rate will be the PRC-wide rate; (2) for all non-PRC exporters of wire decking from the people's republic of china which have not received their own rate, the cash-deposit or bonding rate will be the rate applicable to the exporter/producer combinations that supplied that non-PRC exporter. This 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 wire decking, or sales (or the likelihood of sales) for importation, of the merchandise under consideration

<sup>29</sup>Normally, where the non-individually examined entities receiving a separate rate in an AD investigation are found to have benefitted from export subsidies in a concurrent CVD investigation on the same product (either through individual examination or through the "All Others" rate), the Department will instruct CBP to collect a cash deposit or the posting of a bond equal the amount of the AD margin adjusted for the amount of the export subsidy. In this case, none of the non-individually examined entities receiving a separate rate in the AD investigation were individually examined in the companion CVD investigation. Further, the export subsidy found for "All Others" in *CVD Wire Decking Prelim* is so small (0.005 percent) as to have no impact on the AD margin. Accordingly, we will not adjust the AD margins for these entities in our instructions to CBP.

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. See 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. 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: January 4, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2010-372 Filed 1-11-10; 8:45 am]

**BILLING CODE 3510-DS-S**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

The following notice of meeting is published pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, 5 U.S.C. 552b.

**AGENCY HOLDING THE MEETING:**

Commodity Futures Trading Commission.

**TIME AND DATE:** 1 p.m., January 14, 2010.

**PLACE:** Three Lafayette Center, 1155 21st St., NW., Washington, DC, Lobby Level Hearing Room (Room 1000).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Issuance of a proposed rule on energy position limits and hedge exemptions on regulated futures exchanges, derivatives transaction execution facilities and electronic trading facilities.

**CONTACT PERSON FOR MORE INFORMATION:**

David A. Stawick, Secretary of the Commission, 202-418-5071.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. 2010-450 Filed 1-8-10; 4:15 pm]

**BILLING CODE 6351-01-P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting Notice

**TIME AND DATE:** Wednesday, January 13, 2010, 2 p.m.-4 p.m.

**PLACE:** Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Closed to the Public.

### Matter To Be Considered

*Compliance Weekly Report—Commission Briefing*

The staff will brief the Commission on various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504-7948.

**CONTACT PERSON FOR MORE INFORMATION:**

Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (301) 504-7923.

Dated: January 5, 2010.

**Todd A. Stevenson,**

*Secretary.*

[FR Doc. 2010-305 Filed 1-11-10; 8:45 am]

**BILLING CODE 6355-01-M**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Proposed Information Collection; Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed Stakeholder Assessment of Senior Corps RSVP grantees. This information collection is a requirement of the Serve America Act. The information collection will be used by the community partners of current Senior Corps grantees for the national RSVP re-competition beginning in 2013. Completion of the Stakeholder Assessment is required in order for RSVP grantees to receive pre-competition training and technical assistance.

**DATES:** Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by March 15, 2010.

**ADDRESSES:** You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Senior Corps; Attention Katharine Delo Gregg, Program Officer, Room 9408A, 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room

6010 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606-3475, Attention Katharine Delo Gregg, Program Officer.

(4) *Electronically through the Corporation's e-mail address system:* [kgregg@cns.gov](mailto:kgregg@cns.gov).

**FOR FURTHER INFORMATION CONTACT:**

Katharine Delo Gregg, (202) 606-6965, or by e-mail at [kgregg@cns.gov](mailto:kgregg@cns.gov).

**SUPPLEMENTARY INFORMATION:**

The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

### Background

The Serve America Act requires re-competition of RSVP grants beginning in 2013. In preparation for the re-competition, the legislation requires a stakeholder assessment. Each grantee will receive a custom report with feedback, based on the results of the assessments. The Stakeholder Assessment will be completed electronically using Zoomerang.

### Current Action

The information collection is intended to be completed by the Community Advisory Boards of current RSVP grantees. The individual questions have previously existed in grant applications, program handbooks and guidance, however, the format of the information collection is new.

The information collection will be used to collect data to enhance technical assistance for current grantees. The Corporation will not use the results of this information collection for decisionmaking purposes regarding grant awards.