

Animals may be weighed, measured, photographed, skin biopsied, flipper and passive integrated transponder (PIT) tagged, and released. The modification authorizes the permit holder to use satellite telemetry to assess habitat use of sea turtles and study whether relocation distances for sea turtles captured in relocation trawlers are appropriate. The permit holder may attach transmitters to up to 12 green sea turtles captured by their project by research nets in St. Joseph Bay, Apalachicola Bay, and St. Andrews Bay and attach transmitters to up to 25 green, hawksbill (*Eretmochelys imbricata*), Kemp's ridley, and loggerhead sea turtles (any combination) already legally captured by relocation trawlers in the St. Andrews Bay area. These animals may also be flipper and PIT tagged, measured, photographed, tissue sampled and weighed before release. The permit is valid through April 30, 2013.

Issuance of this modification, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 6, 2010.

**P. Michael Payne,**

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

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**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[C-533-839]

**Carbazole Violet Pigment 23 from India: Extension of Time Limit for Final Results of Countervailing Duty Administrative Review**

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

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

**FOR FURTHER INFORMATION CONTACT:** Myrna Lobo or Elfi Blum, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-2371 or (202) 482-0197, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 7, 2010, the Department of Commerce (the Department) published the preliminary results of the countervailing duty order on carbazole violet pigment 23 (CVP-23) from India. *See Carbazole Violet Pigment 23 from India: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 977 (January 7, 2010). This administrative review covers the period January 1, 2007 through December 31, 2007. This review covers one producer/exporter of the subject merchandise to the United States, Alpanil Industries Ltd. (Alpanil).

On February 12, 2010, the Department issued a memorandum revising all case deadlines. As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5 through February 12, 2010. *See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm*, dated February 12, 2010, a public document on file in the Department's Central Records Unit (CRU) in Room 1117 of the main Department building. Thus, all deadlines in all proceedings were extended by seven days. Consequently, the deadline for the final results of this review was revised from May 7, 2010 to May 14, 2010.

**Extension of Time Limit for Final Results**

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(1), the Department shall issue final results in an administrative review of a countervailing duty order within 120 days after the date on which notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within the time limits, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the 120-day period up to 180 days.

Pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we determine that it is not practicable to complete the results of this review within the original time limit. The Department had to request additional information from Alpanil after the

preliminary results. Consequently, the Department needs additional time to analyze this information and to consider comments filed by the parties. In accordance with section 751(a)(3)(A) of the Act, the Department has decided to extend the time limit for the final results from 120 days to 145 days; the final results will now be due no later than June 8, 2010.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: May 6, 2010.

**John M. Andersen,**

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010-11320 Filed 5-11-10; 8:45 am]

**BILLING CODE 3510-DS-S**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-570-964]

**Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination**

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

**DATES:** *Effective Date:* May 12, 2010.

**SUMMARY:** The Department of Commerce (the "Department") has preliminarily determined that seamless refined copper pipe and tube ("copper pipe and tube") 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 dumping margins are shown in the "Preliminary Determination" section of this notice. Interested parties are invited to comment on the preliminary determination.

**FOR FURTHER INFORMATION CONTACT:** Karine Gziryan or Shawn Higgins, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4081 and (202) 482-0679, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 30, 2009, the Department received a petition concerning imports of copper pipe and tube from the PRC and Mexico filed in

proper form by Cerro Flow Products, Inc., KobeWieland Copper Products, LLC, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc. (collectively, "Petitioners").<sup>1</sup> The Department initiated antidumping duty investigations of copper pipe and tube from the PRC and Mexico on October 20, 2009.<sup>2</sup>

In the *Initiation Notice*, the Department stated that it intended to select PRC respondents based on quantity and value ("Q&V") questionnaires.<sup>3</sup> On October 21, 2009, the Department requested Q&V information from the eight companies identified in the petition as potential producers or exporters of copper pipe and tube from the PRC.<sup>4</sup> Additionally, the Department posted the Q&V questionnaire for this investigation on its Web site at <http://ia.ita.doc.gov/ia-highlights-and-news.html>. The Department received timely responses to its Q&V questionnaire from the following eleven companies: Golden Dragon Precise Copper Tube Group, Inc. ("Golden Dragon"), Hong Kong Hailiang Metal Trading Limited ("Hong Kong Hailiang"), Zhejiang Hailiang Co., Ltd. ("Zhejiang Hailiang"), Sinochem Ningbo Ltd. ("Sinochem"), Luvata Tube (Zhongshan) Ltd. ("Luvata Tube"), Foshan Hua Hong Copper Tube Co., Ltd. ("Foshan Hua Hong"), Ningbo Jintian Copper Tube Co. Ltd. ("Ningbo Jintian"), Zhejiang Naile Copper Co., Ltd. ("Zhejiang Naile"), Chinalco Luoyang Copper Co., Ltd. ("Chinalco"), Zhejiang Jiahe Pipes Inc. ("Zhejiang Jiahe"), and Luvata Alltop (Zhongshan) Ltd. ("Luvata Alltop").<sup>5</sup>

On November 24, 2009, the International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States has been materially

injured or threatened with material injury by reason of imports of copper pipe and tube from the PRC and Mexico.<sup>6</sup>

On December 3, 2009, the Department selected Golden Dragon, Hong Kong Hailiang, and Zhejiang Hailiang as mandatory respondents.<sup>7</sup> On December 4, 2009, the Department issued antidumping questionnaires to these three companies. In January and February 2010, Golden Dragon, Hong Kong Hailiang, and Zhejiang Hailiang submitted timely responses to sections A, C, and D of the Department's antidumping questionnaire.

In November and December 2009, the Department received timely filed separate-rate applications from the following six companies: Luvata Tube, Ningbo Jintian, Zhejiang Naile, Chinalco, Zhejiang Jiahe, and Luvata Alltop.

The Department issued supplemental questionnaires to Golden Dragon, Hong Kong Hailiang, Zhejiang Hailiang, Luvata Tube, Ningbo Jintian, and Chinalco from January to April 2010. The Department received responses to its supplemental questionnaires from Golden Dragon, Hong Kong Hailiang, Zhejiang Hailiang, Luvata Tube, and Ningbo Jintian from January to May 2010. From January to May 2010, Petitioners submitted comments to the Department regarding the submissions and/or responses of Golden Dragon, Hong Kong Hailiang, Zhejiang Hailiang, Ningbo Jintian, and Chinalco.

On January 8, 2010, the Department released a letter to interested parties which listed potential surrogate countries and invited interested parties to comment on surrogate country and surrogate value ("SV") selection.<sup>8</sup> Between February and March 2010, Petitioners, Golden Dragon, Hong Kong Hailiang, and Zhejiang Hailiang submitted publicly available SV information, comments, and rebuttal comments on the selection of a surrogate country and SVs. For a discussion of the selection of the surrogate country, see "Surrogate Country" section below.

On February 12, 2010, Petitioners requested a 50-day postponement of the preliminary determination. On February 25, 2010, pursuant to section

733(c)(1)(A) of the Act and 19 CFR 351.205(e), the Department postponed this preliminary determination by 50 days.<sup>9</sup>

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the final determination of this investigation is now May 5, 2010.<sup>10</sup>

#### Period of Investigation

The period of investigation ("POI") is January 1, 2009, through June 30, 2009. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September, 2009).<sup>11</sup>

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

Pursuant to section 735(a)(2) of the Act, on April 22, 2010, Zhejiang Hailiang and Hong Kong Hailiang requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. Golden Dragon submitted an identical request on April 23, 2010. In these submissions, Zhejiang Hailiang, Hong Kong Hailiang, and Golden Dragon agreed to the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) until the date of the final determination. Because our preliminary determination is affirmative, the respondents requesting an extension of the final determination and an extension of the provisional measures accounts for a significant proportion of exports of the merchandise under consideration, and no compelling reasons for denial exist, the Department is extending the due date for the final determination by 60 days. Suspension of liquidation will be extended accordingly.

#### Scope of Investigation

For the purpose of this investigation, the products covered are all seamless circular refined copper pipes and tubes,

<sup>9</sup> See *Seamless Refined Copper Pipe and Tube From the People's Republic of China and Mexico: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 75 FR 8677 (February 25, 2010).

<sup>10</sup> See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," (February 12, 2010).

<sup>11</sup> See 19 CFR 351.204(b)(1).

<sup>1</sup> See Petitions for the Imposition of Antidumping Duties on Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico (September 30, 2009).

<sup>2</sup> See *Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations*, 74 FR 55194 (October 27, 2009) ("Initiation Notice").

<sup>3</sup> See *Initiation Notice*, 74 FR at 55198.

<sup>4</sup> See Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to All Interested Parties, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Quantity and Value Questionnaire" (October 21, 2009).

<sup>5</sup> See Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Respondent Selection in the Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China" (December 3, 2009) ("Respondent Selection Memorandum").

<sup>6</sup> See *Seamless Refined Copper Pipe and Tube From China and Mexico*, Investigation Nos. 731-TA-1174-1175 (Preliminary), 74 FR 62595 (November 30, 2009).

<sup>7</sup> See Respondent Selection Memorandum at 5.

<sup>8</sup> See Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to All Interested Parties, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China" (January 8, 2010).

including redraw hollows, greater than or equal to 6 inches (152.4 mm) in length and measuring less than 12.130 inches (308.102 mm) (actual) in outside diameter (“OD”), regardless of wall thickness, bore (e.g., smooth, enhanced with inner grooves or ridges), manufacturing process (e.g., hot finished, cold-drawn, annealed), outer surface (e.g., plain or enhanced with grooves, ridges, fins, or gills), end finish (e.g., plain end, swaged end, flared end, expanded end, crimped end, threaded), coating (e.g., plastic, paint), insulation, attachments (e.g., plain, capped, plugged, with compression or other fitting), or physical configuration (e.g., straight, coiled, bent, wound on spools).

The scope of this investigation covers, but is not limited to, seamless refined copper pipe and tube produced or comparable to the American Society for Testing and Materials (“ASTM”) ASTM-B42, ASTM-B68, ASTM-B75, ASTM-B88, ASTM-B88M, ASTM-B188, ASTM-B251, ASTM-B251M, ASTM-B280, ASTM-B302, ASTM-B306, ASTM-359, ASTM-B743, ASTM-B819, and ASTM-B903 specifications and meeting the physical parameters described therein. Also included within the scope of this investigation are all sets of covered products, including “line sets” of seamless refined copper tubes (with or without fittings or insulation) suitable for connecting an outdoor air conditioner or heat pump to an indoor evaporator unit. The phrase “all sets of covered products” denotes any combination of items put up for sale that is comprised of merchandise subject to the scope.

“Refined copper” is defined as: (1) Metal containing at least 99.85 percent by weight of copper; or (2) metal containing at least 97.5 percent by weight of copper, provided that the content by weight of any other element does not exceed the following limits:

Element	Limiting content percent by weight
Ag—Silver .....	0.25
As—Arsenic .....	0.5
Cd—Cadmium .....	1.3
Cr—Chromium .....	1.4
Mg—Magnesium .....	0.8
Pb—Lead .....	1.5
S—Sulfur .....	0.7
Sn—Tin .....	0.8
Te—Tellurium .....	0.8
Zn—Zinc .....	1.0
Zr—Zirconium .....	0.3
Other elements (each) ..	0.3

Excluded from the scope of this investigation are all seamless circular hollows of refined copper less than 12 inches in length whose OD (actual)

exceeds its length. The products subject to this investigation are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Products subject to this investigation may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

**Scope Comments**

In accordance with the preamble to the Department’s regulations,<sup>12</sup> the Department’s *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. The Department received comments and scope exclusion requests from BrassCraft Manufacturing,<sup>13</sup> Johnson Controls, Inc.,<sup>14</sup> and National de Cobre, S.A. de C.V.<sup>15</sup> In a memorandum dated concurrently with this notice, the Department determined that the merchandise included in these scope exclusion requests are subject to this investigation.<sup>16</sup>

**Affiliation/Single Entity**

Section 771(33) of the Act states that the Department considers the following entities to be affiliated: (A) Members of a family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants; (B) any officer or director of an organization and such organization; (C) partners; (D) employer and employee; (E) any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or

shares of any organization and such organization; (F) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) any person who controls any other person and such other person. For purposes of affiliation, section 771(33) of the Act states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. In order to find affiliation between companies, the Department must find that at least one of the criteria listed above is applicable to the respondents. The Statement of Administrative Action accompanying the Uruguay Round Agreements Act (“SAA”), H. Doc. No. 316, 103d Cong., 2d Session at 838 (1994), indicates that stock ownership is not the only evidentiary factor that the Department may consider to determine whether a person is in a position to exercise restraint or direction over another person (e.g., control may be established through corporate or family groupings, or joint ventures and other means).<sup>17</sup> To the extent that the affiliation provisions in section 771(33) of the Act do not conflict with the Department’s application of separate rates and the statutory NME provisions in section 773(c) of the Act, the Department will determine that exporters and/or producers are affiliated if the facts of the case support such a finding.<sup>18</sup>

The Department preliminarily determines that two mandatory respondents, Zhejiang Hailiang (a producer/exporter) and Hong Kong Hailiang (an exporter), as well as an additional producer/exporter, Shanghai Hailiang Copper Co., Ltd. (“Shanghai Hailiang”) (collectively and hereinafter the “Hailiang Group”), are affiliated pursuant to section 771(33) of the Act. Based on the Department’s examination of the evidence presented in the questionnaire responses of Zhejiang Hailiang and Hong Kong Hailiang, the

<sup>12</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (“Preamble”).

<sup>13</sup> See Letter from BrassCraft Manufacturing to the Secretary of Commerce, “Comments Requesting Clarification of the Scope in the Investigation of Seamless Refined Copper Pipe and Tube from the People’s Republic of China and Mexico” (March 22, 2010).

<sup>14</sup> See Letter from Johnson Controls, Inc. to the Secretary of Commerce, “Seamless Refined Copper Pipe and Tube from China and Mexico; Comments of Johnson Controls, Inc.—Purchaser” (November 10, 2009).

<sup>15</sup> See Letter from Nacional de Cobre, S.A. de C.V. to the Secretary of Commerce, “Seamless Refined Copper Pipe and Tube from Mexico: Comments on Scope of Investigation” (March 29, 2010).

<sup>16</sup> See Memorandum from George McMahon, Case Analyst, Office 3, to Melissa Skinner, Director, Office 3, “Seamless Refined Copper Pipe and Tube from Mexico and the People’s Republic of China: Scope Exclusion Requests” (May 5, 2010).

<sup>17</sup> See *Certain Fresh Cut Flowers From Colombia: Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42853 (August 19, 1996); *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53810 (October 16, 1997).

<sup>18</sup> See *Certain Preserved Mushrooms From the People’s Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review*, 69 FR 10410, 10413 (March 5, 2004), unchanged in *Certain Preserved Mushrooms From the People’s Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review*, 69 FR 54635 (September 9, 2004).

Department determines that Zhejiang Hailiang owns and controls both Hong Kong Hailiang and Shanghai Hailiang. Accordingly, the Department preliminarily determines that those parties are affiliated under sections 771(33)(E), (F), and (G) of the Act.<sup>19</sup>

Additionally, under its affiliated single entity regulation, 19 CFR 351.401(f), the Department may collapse affiliated producers where it finds that producers have production facilities for similar or identical products, and that a significant potential for manipulation of price or production exists. The regulation addresses the specific situation of affiliated producers. However, the regulation is not exhaustive of the situations that may call for collapsing of affiliated entities, and the Department has developed a practice of collapsing entities that do not qualify as producers, such as Hong Kong Hailiang, which is an exporter.<sup>20</sup>

Based on the Department's examination of the evidence presented in the questionnaire responses of Zhejiang Hailiang and Hong Kong Hailiang, the Department preliminarily determines that Zhejiang Hailiang and Shanghai Hailiang have similar production facilities such that retooling would not be required to shift production from one company to another.<sup>21</sup> The Department further determines that Zhejiang Hailiang, Hong Kong Hailiang, and Shanghai Hailiang have a significant potential for manipulation of prices and production because Zhejiang Hailiang owns and controls Hong Kong Hailiang and Shanghai Hailiang and because Zhejiang Hailiang, Hong Kong Hailiang, and Shanghai Hailiang have overlapping managers and directors.<sup>22</sup> The Department, therefore, preliminarily determines that Zhejiang Hailiang, Hong Kong Hailiang, and Shanghai Hailiang should be treated as a single entity for purposes of the antidumping

investigation of copper pipe and tube from the PRC.

### Non-Market Economy Treatment

The Department considers the PRC to be a non-market economy ("NME") country.<sup>23</sup> 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. No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, the Department continues to treat the PRC as an NME country for purposes of this preliminary determination.

### Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value ("NV"), 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 SVs that the Department has used in this investigation are discussed under the "Normal Value" section below.

The Department determined that India, the Philippines, Indonesia, Thailand, Ukraine, and Peru are countries comparable to the PRC in terms of economic development.<sup>24</sup> Once the countries that are economically comparable to the PRC have been identified, the Department selects an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing FOPs are both available and reliable.

On March 23, 2010, the Department determined that it is appropriate to use

India as a surrogate country pursuant to section 773(c)(4) of the Act based on the following: (1) it is at a similar level of economic development to the PRC pursuant to section 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) the Department has reliable data from India that it can use to value the FOPs.<sup>25</sup> Thus, the Department calculated NV using Indian prices when available and appropriate to the FOPs of Golden Dragon and the Hailiang Group. The Department obtained and relied upon publicly available information wherever possible.<sup>26</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>27</sup>

### Separate Rates

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME investigations.<sup>28</sup> The process requires exporters and producers to submit a separate rate application.<sup>29</sup>

<sup>19</sup> See Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Selection of a Surrogate Country" (March 23, 2010).

<sup>20</sup> See Memorandum to the File from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, "Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Surrogate Value Memorandum," (May 5, 2010) ("Surrogate Value Memorandum").

<sup>21</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 SV information pursuant to 19 CFR 351.301(c)(1). See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>22</sup> See *Initiation Notice*, 74 FR at 55198-99.

<sup>23</sup> See *Policy Bulletin 05.1: Separate-Rate Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries* (April 5, 2005), at 6, available at <http://ia.ita.doc.gov/policy/bull05-1.pdf> ("Policy Bulletin 05.1"). *Policy Bulletin 05.1* states, in relevant part, "While continuing the practice of

Continued

<sup>19</sup> See Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Affiliation and Treatment as a Single Entity of Zhejiang Hailiang Co., Ltd., Shanghai Hailiang Copper Co., Ltd., and Hong Kong Hailiang Metal Trading Limited" (May 5, 2010) at 3-5 ("Affiliation and Single Entity Memorandum").

<sup>20</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil*, 69 FR 76910 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 5.

<sup>21</sup> See Affiliation and Single Entity Memorandum at 3-4.

<sup>22</sup> See Affiliation and Single Entity Memorandum at 3-5.

<sup>23</sup> See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30760 (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).

<sup>24</sup> See Memorandum from Kelly Parkhill, Acting Director, Office of Policy, to Robert Bolling, Program Manager, AD/CVD Operations, Office 4, "Request for a List of Surrogate Countries for an Investigation of Copper Pipe and Tube from the People's Republic of China" (January 7, 2010).

In proceedings involving NME countries, the Department holds 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 subject merchandise 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 the test announced in the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control.

#### Separate Rate Recipients

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

Three separate rate applicants in this investigation, Ningbo Jintian, Zhejiang Naile, and Zhejiang Jiahe (collectively, "Chinese SR Applicants") and the mandatory respondents Golden Dragon and the Hailiang Group, provided evidence that they are either joint ventures between Chinese and foreign companies or wholly Chinese-owned companies. The Department has analyzed whether each of the three Chinese SR Applicants and the

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."

mandatory respondents have demonstrated the absence of *de jure* and *de facto* governmental control over their respective 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 license; (2) legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.<sup>30</sup> The evidence provided by the three Chinese SR Applicants and the mandatory respondents supports a preliminary finding that all of the above criteria have been satisfied.

The evidence provided by the three Chinese SR Applicants and the mandatory respondents supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of Chinese companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.

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

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the 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.<sup>31</sup> The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control

which would preclude the Department from assigning separate rates.

The evidence provided by the three Chinese SR Applicants and the mandatory respondents supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing that the companies: (1) Set their own export prices independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses.

Therefore, the evidence placed on the record of this investigation by the three Chinese SR Applicants and the mandatory respondents demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, the Department has preliminarily granted a separate rate to the Chinese SR Applicants.<sup>32</sup>

##### 2. Wholly Foreign-Owned

Two separate rate applicants in this investigation, Luvata Alltop and Luvata Tube, ("Foreign-Owned SR Applicants"), provided evidence that they are wholly owned by individuals or companies located in market economies in their separate rate applications. Therefore, because they are wholly foreign-owned and the Department has no evidence indicating that they are under the control of the government of the PRC, a separate rates analysis is not necessary to determine whether these companies are independent from government control.<sup>33</sup> Accordingly, the Department has preliminarily granted a separate rate to these Foreign-Owned SR Applicants.<sup>34</sup>

##### Companies Not Receiving a Separate Rate

On February 22, 2010, the Department issued Chinalco a supplemental questionnaire that requested that Chinalco correct certain deficiencies in its January 21, 2010, separate rate

<sup>32</sup> See "Preliminary Determination" section below.

<sup>33</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104 (December 20, 1999) (determining that the respondent was wholly foreign-owned and, thus, qualified for a separate rate).

<sup>34</sup> See "Preliminary Determination" section below.

<sup>30</sup> See *Sparklers*, 56 FR at 20589.

<sup>31</sup> 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).

application.<sup>35</sup> The Department stated that Chinalco did not provide (1) documentation of its first sale by invoice date of merchandise under consideration to an unaffiliated customer in the United States during the POI, (2) documentation in support of Chinalco's certifications that it conducts independent price negotiations and has autonomy from the government in making decisions regarding the selection of management, (3) capital verification reports, (4) consolidated financial statements, (5) share transfer agreements, (6) articles of incorporation, and (7) an export certificate of approval. On February 26, 2010, Chinalco informed the Department that it cannot provide the missing documentation.<sup>36</sup> Therefore, because Chinalco did not comply with the Department's February 22, 2010, request for information, the Department has determined that Chinalco has failed to demonstrate an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, the Department has preliminarily determined not to grant Chinalco a separate rate.

Additionally, in the *Initiation Notice*, the Department requested that all companies wishing to qualify for separate rate status in this investigation submit a separate rate application.<sup>37</sup> Sinochem and Foshan Hua Hong submitted timely responses to the Department's Q&V questionnaire but did not provide separate rate applications. Therefore Sinochem and Foshan Hua Hong have not demonstrated their eligibility for separate rate status in this investigation. As a result, the Department is treating Sinochem and Foshan Hua Hong as part of the PRC-wide entity.

#### Margins for Separate Rate Recipients

Through the evidence in their applications, the Chinese SR Applicants and the Foreign-Owned SR Applicants have demonstrated their eligibility for a separate rate. See the "Separate Rates" section above. The separate rate is determined based on the estimated weighted-average dumping margins established for exporters and producers

individually investigated, excluding zero and *de minimis* margins or margins based entirely on adverse facts available ("AFA").<sup>38</sup> In this investigation both mandatory respondents, Golden Dragon and the Hailiang Group, have estimated weighted-average dumping margins which are above *de minimis* and which are not based on total AFA. Therefore, because there are only two relevant weighted-average dumping margins for this preliminary determination, the separate rate is a simple-average of these two values, which is 34.48 percent.<sup>39</sup>

#### Use of Facts Available and Adverse Facts Available

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" ("FA") if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.<sup>40</sup> Such an adverse inference may include reliance on information derived from the petitions, the final determination, a previous administrative review, or other information placed on the record.

#### Hailiang Group

The Department requested on several occasions that the Hailiang Group provide its FOPs on a more specific basis (*i.e.*, control number ("CONNUM") specific, plant/division specific, or product-group specific).<sup>41</sup> On March 18,

2010, and April 12, 2010, the Hailiang Group stated that it is not able to provide the requested information to the Department. However, the Hailiang Group's own information on the record indicates that it has the ability to report its FOPs on a product-group specific basis.<sup>42</sup> Because the Hailiang Group continued to report FOP values that are identical for all CONNUMs, despite the Department's multiple requests to provide this data on a more specific basis, all the information necessary for the Department to calculate an accurate dumping margin for the Hailiang Group is not on the record and available for use in the preliminary determination. Since the Hailiang Group did not provide the requested FOPs on a product-group specific basis, this necessary information was not available on the record and, therefore, we have determined, pursuant to section 776(a)(1) and (2)(B) of the Act, that it is appropriate to base the Hailiang Group's preliminary dumping margin, in part, on FA.

The Hailiang Group's response to the Department's initial request for CONNUM-specific FOPs simply stated that it reported FOPs on a CONNUM-specific basis.<sup>43</sup> However, in its original section D response, Hailiang reported FOP values that are identical for all CONNUMs.<sup>44</sup> These values were calculated as the total consumption of each input divided by the total production quantity. On February 25, 2010, the Department again requested that the Hailiang Group provide its FOPs on a more specific basis. Once again, the Hailiang Group responded to the Department's request by stating that it was unable to provide the requested data.<sup>45</sup> Based on the Hailiang Group's April 12, 2010 submission, the record

Tube from the People's Republic of China: Request for Information" (December 4, 2010) at D-2.

<sup>42</sup> See Letter from the Hailiang Group to the Secretary of Commerce, "Certain Seamless Refined Copper Pipe & Tube from the People's Republic of China: Supplemental Section D Questionnaire Response of Hailiang Group" (March 19, 2010) at Exhibit 6; Letter from the Hailiang Group to the Secretary of Commerce, "Certain Seamless Refined Copper Pipe & Tube from the People's Republic of China: Supplemental Section D Questionnaire Response of Hailiang Group" (April 12, 2010) at Exhibit 12.

<sup>43</sup> See Letter from the Hailiang Group to the Secretary of Commerce, "Certain Seamless Refined Copper Pipe & Tube from the People's Republic of China: Section D Questionnaire Response of Hailiang Group" (January 25, 2010) ("Hailiang Group Section D Response") at 4.

<sup>44</sup> See Hailiang Group Section D Response at Exhibit 1.

<sup>45</sup> See Letter from the Hailiang Group to the Secretary of Commerce, "Certain Seamless Refined Copper Pipe & Tube from the People's Republic of China: Supplemental Section D Questionnaire Response of Hailiang Group" (March 19, 2010) at 4.

<sup>35</sup> See Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to Chinalco Luoyang Copper Co., Ltd., "Separate Rate Application Supplemental Questionnaire" (February 22, 2010).

<sup>36</sup> See Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Antidumping Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Email from Chinalco Luoyang Copper Co., Ltd." (April 16, 2010).

<sup>37</sup> See *Initiation Notice*, 74 FR at 55198-99.

<sup>38</sup> See section 735(c)(5)(A) of the Act.

<sup>39</sup> See section 735(c)(5)(B) of the Act.

<sup>40</sup> See SAA at 870.

<sup>41</sup> See Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to the Hailiang Group, "Sections C&D Third Supplemental Questionnaire" (April 28, 2010) at 2-3; Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to the Hailiang Group, "Sections C&D Second Supplemental Questionnaire" (March 29, 2010) at 5; Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to the Hailiang Group, "Sections C&D Supplemental Questionnaire" (February 26, 2010) at 8-9; Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to Zhejiang Hailiang, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and

indicates that the Hailiang Group has the ability to report its FOPs on a product-group specific basis. The Hailiang Group's failure to provide the requested information has prevented the Department from calculating an accurate margin for the Hailiang Group. Accordingly, the Department has preliminarily determined that necessary information is not on the record and that the Hailiang Group has not provided requested information. Therefore, for the preliminary determination, as partial FA, the Department recalculated the FOPs reported by the Hailiang Group to reflect product-group specific production steps and the corresponding processing yields at each stage using information from the Hailiang Group's April 12, 2010 submission.<sup>46</sup> On April 29, 2010, the Department again requested that the Hailiang Group provide its FOPs on a product-group specific basis. The Department will analyze this data for the final determination.

#### *PRC-Wide Entity*

On October 21, 2009, the Department requested Q&V information from the eight companies that Petitioners identified as potential exporters or producers of copper pipe and tube from the PRC. Additionally, the Department's *Initiation Notice* informed all potential PRC exporters/manufacturers of subject merchandise of the requirements to respond to both the Department's Q&V questionnaire and the separate rate application in order to receive consideration for separate rate status.<sup>47</sup>

Two of the potential exporters/manufacturers identified in the petition, Qingdao Hongtai International Trading Co., Ltd. and Zhejiang Hongtian Copper Co., Ltd., did not respond to the Department's requests for Q&V information. Furthermore, two exporters/manufacturers, Sinochem and Foshan Hua Hong, that submitted Q&V information did not submit a separate rate application. In addition, a third exporter/manufacturer, Chinalco, who submitted Q&V information as well as a separate rate application, failed to provide additional information requested by the Department in order for the Department to determine its separate rate eligibility.

Therefore, the Department preliminarily determines that there were

<sup>46</sup> See Memorandum from Karine Gziryan, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Analysis Memorandum for the Hailiang Group" (May 5, 2010) ("Hailiang Group Analysis Memo").

<sup>47</sup> See *Initiation Notice*, 74 FR at 55198–99.

exports of merchandise under investigation from PRC exporters/manufacturers that did not respond to the Department's Q&V questionnaire, and/or subsequently did not demonstrate their eligibility for separate rate status. As a result, the Department is treating these PRC exporters/manufacturers ("non-responsive companies") as part of the PRC-wide entity.

#### *Application of Total Adverse Facts Available*

As noted above, the Department has determined that the companies that did not submit Q&V information or who failed to demonstrate that they operate free of government control, are part of the PRC-wide entity. Pursuant to section 776(a) of the Act, the Department finds that the PRC-wide entity has failed to respond to the Department's questionnaires, withheld required information, and/or submitted information that cannot be verified, thus significantly impeding the proceeding.<sup>48</sup> Accordingly, the Department has preliminarily determined to base the PRC-wide entity's margin on FA.<sup>49</sup> Further, because the PRC-wide entity failed to cooperate by not acting to the best of its ability to comply with the Department's request for information, the Department preliminarily determines that, when selecting from among the FA, an adverse inference is warranted for the PRC-wide entity pursuant to section 776(b) of the Act.

#### *Selection of the Adverse Facts Available Rate*

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) The petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate

<sup>48</sup> See, e.g., *Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 70 FR 77121, 77128 (December 29, 2005), unchanged in *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 (May 22, 2006).

<sup>49</sup> See section 776(a) of the Act.

information in a timely manner."<sup>50</sup> Further, it is the Department's practice to select a rate that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>51</sup> It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.<sup>52</sup> In the instant investigation, as AFA, the Department has preliminarily assigned to the PRC-wide entity, including companies that did not respond to the Department's Q&V questionnaire or establish their eligibility for a separate rate, the highest rate on the record of this proceeding, which is the 60.50 percent margin from the petition.<sup>53</sup> The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA. The Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate AFA rate for the PRC-wide entity.

The dumping margin for the PRC-wide entity applies to all entries of the merchandise under investigation except for entries of merchandise under investigation from the exporter/manufacturer combinations listed in the chart in the "Preliminary Determination" section below.

#### *Corroboration of Information*

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 as "information derived from the petition that gave rise to the investigation or review, the final determination concerning merchandise subject to this investigation, or any previous review under section 751

<sup>50</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>51</sup> See *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005) (quoting SAA accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994)).

<sup>52</sup> See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From The People's Republic of China*, 65 FR 34660 (May 31, 2000) and accompanying Issues and Decision Memorandum at "Facts Available."

<sup>53</sup> See *Initiation Notice*, 74 FR at 55198.

concerning the merchandise under investigation.”<sup>54</sup> To “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value. Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.<sup>55</sup>

The AFA rate that the Department used is the 60.50 percent rate from the petition. Petitioners’ methodology for calculating the United States price and NV in the petition is discussed in the *Initiation Notice*.<sup>56</sup> To corroborate the AFA margin that the Department selected, the Department compared this margin to the margins found for the mandatory respondents, Golden Dragon and the Hailiang Group. The Department found that the margin of 60.50 percent has probative value because it is in the range of the model-specific margins that the Department found for the Hailiang Group.<sup>57</sup> Accordingly, the Department finds that the rate of 60.50 percent is corroborated within the meaning of section 776(c) of the Act.

#### Fair Value Comparison

To determine whether sales of copper pipe and tube to the United States by Golden Dragon and the Hailiang Group were made at LTFV, the Department compared export price (“EP”) and constructed export price (“CEP”) to NV, as described in the “U.S. Price” and “Normal Value” sections of this notice.

#### U.S. Price

In accordance with section 772(a) of the Act, the Department used EP as the basis for U.S. price for Golden Dragon’s and the Hailiang Group’s sales where the first sale to unaffiliated purchasers was made prior to importation and the

use of CEP was not otherwise warranted. In accordance with section 772(c) of the Act, the Department calculated EP for Golden Dragon and the Hailiang Group by deducting the following expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States: foreign inland freight from the plant to the port of exportation, foreign brokerage and handling, international freight, and marine insurance. Additionally, the Department based movement expenses on SVs where the service was purchased from a PRC company.<sup>58</sup> For details regarding our EP calculations, see Golden Dragon Analysis Memo and the Hailiang Group Analysis Memo.

In accordance with section 772(b) of the Act, the Department used CEP as the basis for U.S. price for Golden Dragon’s sales where Golden Dragon first sold subject merchandise to its affiliated company in the United States, which in turn sold subject merchandise to unaffiliated U.S. customers. In accordance with section 772(b) of the Act, CEP is the price at which the merchandise under investigation is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. The Department calculated CEP for Golden Dragon based on delivered prices to unaffiliated purchasers in the United States and made deductions, where applicable, from the U.S. sales price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These movement expenses included foreign inland freight from the plant to the port of exportation, international freight, marine insurance, U.S. customs duty, U.S. inland freight from port to the warehouse, and U.S. inland freight from the warehouse to the customer. In accordance with section 772(d)(1) of the Act, the Department deducted credit expenses and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. Finally, the Department deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act.

<sup>58</sup> See Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, “Seamless Refined Copper Pipe and Tube from the People’s Republic of China: Preliminary Analysis Memorandum for Golden Dragon Precise Copper Tube Group, Inc.” (May 5, 2010) (“Golden Dragon Analysis Memo”); Hailiang Group Analysis Memo.

For details regarding the CEP calculation, see Golden Dragon Analysis Memo.

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a 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 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.<sup>59</sup>

As the basis for NV, Golden Dragon and the Hailiang Group provided FOPs used in each stage for producing copper pipe and tube. Consistent with section 773(c)(1)(B) of the Act, it is the Department’s practice to value the FOPs that a respondent uses to produce the merchandise under consideration.

#### Factor Valuation Methodology

In accordance with section 773(c) of the Act, the Department calculated NV based on FOP data reported by Golden Dragon and the Hailiang Group. To calculate NV, the Department multiplied the reported per-unit factor-consumption rates by publicly available Indian SVs. In selecting the SVs, the Department considered the quality, specificity, and contemporaneity of the data.<sup>60</sup> As appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. Specifically, the Department added to Indian import SVs 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

<sup>59</sup> See, e.g., *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People’s Republic of China*, 71 FR 19695, 19703 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China*, 71 FR 53079 (September 8, 2006).

<sup>60</sup> 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; *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.

<sup>54</sup> See SAA at 870.

<sup>55</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>56</sup> See *Initiation Notice*, 74 FR at 55198.

<sup>57</sup> See Hailiang Group Analysis Memo.



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 SVs used for Golden Dragon and the Hailiang Group can be found in the Surrogate Value Memorandum.<sup>61</sup>

Golden Dragon and the Hailiang Group each reported that one of their raw material inputs (*i.e.*, copper) was sourced from market economy countries and paid for in market economy currencies. Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from a market economy supplier in meaningful quantities (*i.e.*, not insignificant quantities), the Department normally will use the actual price paid by the respondent for those inputs.<sup>62</sup> Because information reported by Golden Dragon and the Hailiang Group demonstrates that they each purchased significant quantities (*i.e.*, 33 percent or more) of copper from market economy suppliers, the Department used each respondent's actual market economy purchase prices of copper to value each of their FOPs for this input.<sup>63</sup> Where appropriate, freight expenses were added to the market economy prices of this input. When Golden Dragon or the Hailiang Group made market economy copper 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 excluded them from the numerator of the ratio to ensure a fair determination of whether valid market economy purchases meet the 33-percent threshold.<sup>64</sup>

In accordance with the Department's practice, the Department used data from the Indian import statistics in the World Trade Atlas ("WTA") and other publicly available Indian sources in order to calculate SVs for Golden Dragon and the Hailiang Group's FOPs (*i.e.*, direct materials, energy, 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, SVs which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive.<sup>65</sup>

<sup>61</sup> See Surrogate Value Memorandum at Exhibits 1 and 2.

<sup>62</sup> See Preamble, 62 FR at 27366.

<sup>63</sup> See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717 (October 19, 2006) ("*Antidumping Methodologies*").

<sup>64</sup> See *Antidumping Methodologies*, 71 FR at 61717–18.

<sup>65</sup> See, *e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative*

The record shows that data in the WTA Indian import statistics, as well as those from the other Indian sources, are contemporaneous with the POI, product-specific, and tax-exclusive.<sup>66</sup> In those instances where the Department could not obtain publicly available information contemporaneous to the POI with which to value factors, the Department adjusted the SVs using, where appropriate, the Indian Wholesale Price Index as published in the International Financial Statistics of the International Monetary Fund.<sup>67</sup>

Furthermore, with regard to the Indian import-based SVs, the Department disregarded import prices that it has reason to believe or suspect may be subsidized. The Department has reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. The Department has found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.<sup>68</sup> 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.<sup>69</sup> Rather, the Department bases its decision on information that is available to it at the time it makes its determination.<sup>70</sup> Therefore, the Department has not used prices from these countries in calculating the Indian import-based SVs. Additionally, the Department disregarded prices from

*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).

<sup>66</sup> See Surrogate Value Memorandum at Exhibits 1 and 2.

<sup>67</sup> See Surrogate Value Memorandum at Exhibit 3.

<sup>68</sup> See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 7.

<sup>69</sup> 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.

<sup>70</sup> 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) ("*PET Film from China*"), 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).

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.<sup>71</sup>

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, <http://ia.ita.doc.gov/wages/index.html>, 2007 Income Data (Revised: Dec 2009), "Expected Wages Of Selected Non-Market Economy Countries, Expected Wage Calculation; 2007 GNI Data, Regression Analysis: 2007 GNI Data." Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, the Department applied the same wage rate to all skill levels and types of labor reported by the respondent.<sup>72</sup>

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 Web site contains inland freight truck rates between many large Indian cities. The value is contemporaneous with the POI.<sup>73</sup>

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 in its publication entitled "Electricity Tariff & Duty and Average Rates of Electricity Supply in India," dated March 2008. These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to industries in India. As the rates listed in this source became effective on a variety of different dates, the Department is not adjusting the average value for inflation.<sup>74</sup>

The Department calculated the SV for natural gas based upon the 2008–2009 annual report of GAIL (India) Limited.<sup>75</sup>

The Department valued water using data from the Maharashtra Industrial Development Corporation <http://midcindia.org> as it includes a wide range of industrial water tariffs. This source provides industrial water rates

<sup>71</sup> See *PET Film from China*, 73 FR at 24559.

<sup>72</sup> See Surrogate Value Memorandum at Exhibit 8.

<sup>73</sup> See Surrogate Value Memorandum at Exhibit 11.

<sup>74</sup> See Surrogate Value Memorandum at Exhibit 11.

<sup>75</sup> See Surrogate Value Memorandum at Exhibit 7.

within the Maharashtra province for April 2009 through June 2009.<sup>76</sup>

The Department valued brokerage and handling using a simple average of the brokerage and handling costs reported in public submissions 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 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. The Department adjusted the average brokerage and handling rate for inflation.<sup>77</sup>

To value factory overhead, selling, general, and administrative expenses, and profit, the Department used the factory overhead, selling, general and administrative expenses, and profit data from three Indian companies, Mehta Tubes Limited, Multimetals Limited, and Nissan Copper Limited, producers of merchandise comparable to the merchandise under consideration, for

the fiscal year April 1, 2008, through March 31, 2009. The Department did not rely on two companies' financial statements on the record, namely the financial statements of Vaishali Metals Private Limited ("Vaishali Metals") and Mukesh Metal Industries Pvt. Ltd. ("Mukesh Metals").<sup>78</sup> The Department did not rely on the financial statements of Vaishali Metals because certain schedules in the financial statements of Vaishali Metals are incomplete and/or not provided. The Department has an established practice of rejecting financial statements of surrogate producers whose financial statements are incomplete.<sup>79</sup> Additionally, the Department did not rely on the financial statements of Mukesh Metals because the Department has determined that Mukesh Metals' financial statements do not provide sufficient information to determine whether Mukesh Metals' "job work" income is an offset to direct labor, manufacturing income, or simply a revenue item. Therefore, the Department cannot determine whether it is appropriate to classify "job work" income as an offset to manufacturing,

labor, and energy, manufacturing overhead, or to totally exclude it.<sup>80</sup>

**Currency Conversion**

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.

**Verification**

As provided in section 782(i)(1) of the Act, the Department intends to verify the information upon which it will rely in making its 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>81</sup> This practice is described in *Policy Bulletin 05.1*, available at <http://www.trade.gov/ia>.

**Preliminary Determination**

The Department preliminarily determines that the following dumping margins exist for the period January 2009 through June 2009:

Exporter	Producer	Weighted-average percent margin
Golden Dragon Precise Copper Tube Group, Inc	Golden Dragon Precise Copper Tube Group, Inc	10.26
Zhejiang Hailiang Co., Ltd.; Hong Kong Hailiang Metal Trading Limited; Shanghai Hailiang Copper Co., Ltd.	Zhejiang Hailiang Co., Ltd.; Shanghai Hailiang Copper Co., Ltd.	58.69
Zhejiang Naile Copper Co., Ltd	Zhejiang Naile Copper Co., Ltd	34.48
Zhejiang Jiahe Pipes Inc	Zhejiang Jiahe Pipes Inc	34.48
Luvata Tube (Zhongshan) Ltd	Luvata Tube (Zhongshan) Ltd	34.48
Luvata Tube (Zhongshan) Ltd	Luvata Alltop (Zhongshan) Ltd	34.48
Luvata Alltop (Zhongshan) Ltd	Luvata Alltop (Zhongshan) Ltd	34.48
Ningbo Jintian Copper Tube Co. Ltd	Ningbo Jintian Copper Tube Co. Ltd	34.48
PRC-Wide Entity	PRC-Wide Entity	60.50

**Disclosure**

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

**Suspension of Liquidation**

In accordance with section 733(d) of the Act, the Department will instruct U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of copper pipe and tube from the PRC as described in the "Scope of

Investigation" section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Department will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as indicated above.

**International Trade Commission Notification**

In accordance with section 733(f) of the Act, the Department has notified the ITC of our preliminary affirmative determination of sales at LTFV. If the Department's final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of copper pipe and tube from the PRC are materially injuring, or threatening material injury

<sup>76</sup> See Surrogate Value Memorandum at Exhibit 6.  
<sup>77</sup> See Surrogate Value Memorandum at Exhibit 10.  
<sup>78</sup> See Surrogate Value Memorandum at Exhibit 9.  
<sup>79</sup> See *Certain Tissue Paper Products From the People's Republic of China: Final Results and*

*Partial Rescission of the 2007–2008 Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 74 FR 52176 (October 9, 2009) and accompanying Issues and Decision Memorandum at Comment 5.  
<sup>80</sup> See *Amended Final Results of Antidumping Duty Administrative Review and New Shipper*

*Reviews: Wooden Bedroom Furniture From the People's Republic of China*, 72 FR 46957 (August 22, 2007) and accompanying Issues and Decision Memorandum at Comment 23.  
<sup>81</sup> See *Initiation Notice*, 74 FR at 55199.

to, the U.S. industry.<sup>82</sup> As the Department is postponing the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, the ITC will make its final determination no later than 45 days after 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 and must be received no later than five days after the deadline date for case briefs.<sup>83</sup> A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, and if timely requested, the Department will hold a public hearing, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, the Department intends to hold the hearing two days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice.<sup>84</sup> Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

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

Dated: May 5, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2010-11344 Filed 5-11-10; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-201-838]

#### Seamless Refined Copper Pipe and Tube From Mexico: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

**SUMMARY:** The U.S. Department of Commerce ("the Department") preliminarily determines that seamless refined copper pipe and tube ("copper pipe and tube") from Mexico is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733(b)(1)(A) of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are listed in the "Suspension of Liquidation" section of this notice. Interested parties are invited to comment on this preliminary determination. Pursuant to a request submitted on behalf of the respondents, IUSA S.A. de C.V. ("IUSA") and Nacional de Cobre, S.A. de C.V. ("Nacobre"), we are postponing for 60 days the final determination and extending provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

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

**FOR FURTHER INFORMATION CONTACT:** Joy Zhang or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-1168 or (202) 482-1167, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On October 20, 2009, the Department initiated the antidumping duty investigation of copper pipe and tube from Mexico. See *Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico: Initiation of Antidumping Duty*

*Investigations*, 74 FR 55194 (October 27, 2009) ("*Initiation Notice*"). The petitioners in this investigation are Cerro Flow Products, Inc., KobeWieland Copper Products, LLC, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc. (collectively, "Petitioners").

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. See *Initiation Notice*, 74 FR at 55194. See also *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997). For further details, see the "Scope Comments" section of this notice, below. The Department also set aside a time for parties to comment on product characteristics for use in the antidumping duty questionnaire. During November 2009, we received product characteristic comments from the Petitioners and the respondents, IUSA and Nacobre, Mexican producers and exporters of the subject merchandise. For an explanation of the product-comparison criteria used in this investigation, see the "Product Comparisons" section of this notice, below.

On November 30, 2009, the United States International Trade Commission ("ITC") published its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, by reason of imports from China and Mexico of copper pipe and tube, and the ITC notified the Department of its finding. See *Seamless Refined Copper Pipe and Tube From China and Mexico*, 74 FR 62595 (November 30, 2009); see also USITC Publication 4116 (November 2009), entitled *Seamless Refined Copper Pipe and Tube from China and Mexico: Investigation Nos. 731-TA-1174-1175 (Preliminary)*.

On December 2, 2009, we selected IUSA and Nacobre as the mandatory respondents in this investigation and issued the Department's antidumping duty questionnaire to both respondents. See Memorandum entitled: "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from Mexico Selection of Respondents for Individual Review," dated December 2, 2009. IUSA and Nacobre submitted responses to section A (*i.e.*, the section covering general information about the company) of the antidumping duty questionnaire on December 24, 2009, and sections B (*i.e.*, the section covering comparison market sales), C (*i.e.*, the

<sup>82</sup> See section 735(b)(2) of the Act.

<sup>83</sup> See 19 CFR 351.309(c)(1)(i) and (d).

<sup>84</sup> See 19 CFR 351.310(c).