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Investigation  
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E&C/V: KJA

July 16, 2014

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** Christian Marsh *CM*  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for Preliminary Determination of the  
Antidumping Duty Investigation of Calcium Hypochlorite from the  
People's Republic of China

## I. SUMMARY

The Department of Commerce ("Department") preliminarily determines that calcium hypochlorite 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 period of investigation ("POI") is April 1, 2013, through September 30, 2013. The estimated margin of sales at LTFV is shown in the "Preliminary Determination" section of the accompanying Federal Register notice.

## II. BACKGROUND

### 1. Initiation

On December 18, 2013, the Department received an antidumping duty ("AD") petition concerning imports of calcium hypochlorite from the PRC filed in proper form by Arch Chemicals, Inc. ("Petitioner").<sup>1</sup> The Department published the initiation of this investigation and the companion countervailing duty investigation on January 14, 2014.<sup>2</sup> On March 24, 2014, the U.S. International Trade Commission ("ITC") published its preliminary determination in which it determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the PRC of calcium hypochlorite.<sup>3</sup>

<sup>1</sup> See Letter to the Secretary of Commerce from Petitioner "Petition for Antidumping and Countervailing Duties Pursuant Sections 701 and 731 of the Tariff Act of 1930, as Amended" (December 18, 2013) ("Petition").

<sup>2</sup> See Calcium Hypochlorite From the People's Republic of China: Initiation of Antidumping Duty Investigation, 79 FR 2410 (January 14, 2014) ("Initiation Notice").

<sup>3</sup> See Calcium Hypochlorite From China, 79 FR 16054 (March 24, 2014).



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.<sup>4</sup> The process requires exporters and producers to submit a separate rate application (“SRA”)<sup>5</sup> and to demonstrate an absence of both de jure and de facto government control over their export activities. In the Initiation Notice, we stated that the SRA would be due 60 days after publication of the notice, or on March 15, 2014.

## 2. Period of Investigation

The POI is April 1, 2013, through September 30, 2013. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition, which was December 2013.<sup>6</sup>

## 3. Postponement of Preliminary Determination

On May 5, 2014, pursuant to section 733(c)(1)(B) of the Act and 19 CFR 351.205(b)(2), the Department issued a 60-day postponement of the preliminary AD determination on calcium hypochlorite from the PRC.<sup>7</sup>

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

Pursuant to section 735(a)(2) of the Act, on July 1, 2014, Wuhan Rui Sunny Chemical Co., Ltd. (“Rui Sunny”), requested that the Department postpone the final determination and that the Department extend the provisional measures in the event of an affirmative preliminary determination.<sup>8</sup> In accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b) and (e), because (1) our preliminary determination is affirmative, (2) the requesting exporter Rui Sunny accounts for a significant proportion of exports of the merchandise under consideration, and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the Federal Register, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

## 5. Scope of the Investigation

The product covered by this investigation is calcium hypochlorite, regardless of form (e.g., powder, tablet (compressed), crystalline (granular), or in liquid solution), whether or not blended with other materials, containing at least 10% available chlorine measured by actual weight. The scope also includes bleaching powder and hemibasic calcium hypochlorite.

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<sup>4</sup> See Initiation Notice, 79 FR at 2413.

<sup>5</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://enforcement.trade.gov/policy/bull05-1.pdf>.

<sup>6</sup> See 19 CFR 351.204(b)(1).

<sup>7</sup> See Calcium Hypochlorite From the People’s Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation, 79 FR 25570 (May 5, 2014).

<sup>8</sup> See Letter to the Secretary of Commerce from Rui Sunny “Request for Extension of Final Determination” (July 1, 2014); Memo to the File from Alexis Polovina, Senior International Trade Analyst, Office V, “Phone Call Regarding Clarification of Respondent’s Request for an Extension of the Final Determination” (July 2, 2014).

Calcium hypochlorite has the general chemical formulation  $\text{Ca}(\text{OCl})_2$ , but may also be sold in a more dilute form as bleaching powder with the chemical formulation,  $\text{Ca}(\text{OCl})_2 \cdot \text{CaCl}_2 \cdot \text{Ca}(\text{OH})_2 \cdot 2\text{H}_2\text{O}$  or hemibasic calcium hypochlorite with the chemical formula of  $2\text{Ca}(\text{OCl})_2 \cdot \text{Ca}(\text{OH})_2$  or  $\text{Ca}(\text{OCl})_2 \cdot 0.5\text{Ca}(\text{OH})_2$ . Calcium hypochlorite has a Chemical Abstract Service (“CAS”) registry number of 7778-54-3, and a U.S. Environmental Protection Agency (“EPA”) Pesticide Code (“PC”) Number of 014701. The subject calcium hypochlorite has an International Maritime Dangerous Goods (“IMDG”) code of Class 5.1 UN 1748, 2880, or 2208 or Class 5.1/8 UN 3485, 3486, or 3487.

Calcium hypochlorite is currently classifiable under the subheading 2828.10.0000 of the Harmonized Tariff Schedule of the United States (“HTSUS”). The subheading covers commercial calcium hypochlorite and other calcium hypochlorite. When tableted or blended with other materials, calcium hypochlorite may be entered under other tariff classifications, such as 3808.94.5000 and 3808.99.9500, which cover disinfectants and similar products. While the HTSUS subheadings, the CAS registry number, the U.S. EPA PC number, and the IMDG codes are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

#### 6. Scope Comments

In accordance with the preamble to the Department’s regulations,<sup>9</sup> in our Initiation Notice we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments by January 27, 2014.<sup>10</sup> Because we did not receive any comments on the scope of the investigation, we preliminarily find that the products that meet the plain language of the scope are necessarily products for which Petitioner is seeking relief and are therefore subject to the scope of this investigation.

#### 7. Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate an individual weighted-average dumping margin for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted-average dumping margin determinations because of the large number of exporters and producers involved in the investigation. When the Department limits the number of exporters examined in an investigation pursuant to section 777A(c)(2) of the Act, section 782(a) of the Act directs the Department to calculate individual weighted-average dumping margins for companies not initially selected for individual examination who voluntarily provide the information requested of the mandatory respondents if (1) the information is submitted by the due date specified for the mandatory respondents and (2) the number of such companies that have voluntarily provided such information is not so large that individual examination would be unduly burdensome and inhibit the timely completion of the investigation.

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<sup>9</sup> See Antidumping Duties; Countervailing Duties, 62 FR 27296 (May 19, 1997).

<sup>10</sup> See Initiation Notice, 79 FR at 2411.

In the Initiation Notice, we stated we would issue quantity and value (“Q&V”) questionnaires to each potential respondent and post the Q&V questionnaire along with filing instructions on our website.<sup>11</sup> We further stated that respondent selection in this investigation will be based on responses to the Q&V questionnaire and that all responses must be submitted by all PRC exporters/producers no later than January 21, 2014.<sup>12</sup> On January 8, 2014, we sent Q&V questionnaires to 31 producers/exporters of merchandise under consideration and which were identified by Petitioner in the Petition. Of these questionnaires, 19 were successfully delivered.<sup>13</sup> On or before January 22, 2014,<sup>14</sup> the Department received timely filed Q&V questionnaire responses from three exporters and/or producers, two of which were not issued questionnaires by the Department.<sup>15</sup> Furthermore, 18 of the companies that were issued and received a Q&V questionnaire by the Department did not respond to the questionnaire.<sup>16</sup> On February 4, 2014, the Department determined that it was not practicable to examine more than two mandatory respondents in this investigation.<sup>17</sup> Therefore, in accordance with section 777A(c)(2) of the Act, the Department selected the two exporters accounting for the largest volume of calcium hypochlorite exported from the PRC during the POI (i.e., China Petrochemical and Rui Sunny) based on Q&V data.<sup>18</sup> The Department issued its AD NME questionnaire to China Petrochemical and Rui Sunny on February 4, 2014.

On March 4, 2014, Rui Sunny submitted its section A response after the 5 p.m. deadline, and the Department rejected it as untimely pursuant to 19 CFR 351.302(d).<sup>19</sup> On March 14, 2014, the Department selected Tianjin Jinbin International Trade Co., Ltd. (“Jinbin”), as an additional mandatory respondent<sup>20</sup> and issued to Jinbin the AD NME questionnaire on March 18, 2014.<sup>21</sup> On April 15, 2014, Jinbin notified the Department that it would not participate as a mandatory respondent in this investigation.<sup>22</sup> On April 28, 2014, the Department instructed Rui Sunny to refile its section A response and allowed it to continue as a mandatory respondent in this investigation.<sup>23</sup>

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<sup>11</sup> Id., 79 FR at 2413.

<sup>12</sup> Id.

<sup>13</sup> See Memo to the File from Kabir Archuleta, Senior International Trade Analyst, Office V, “Quantity & Value Questionnaire Delivery Confirmation” (January 24, 2014) (“Q&V Delivery Confirmation”).

<sup>14</sup> The Federal Government was closed due to hazardous weather on the original deadline of January 21, 2014.

<sup>15</sup> China Petrochemical International (Wuhan) Co., Ltd. (“China Petrochemical”) (the Q&V questionnaire was sent to its parent company) and Rui Sunny. See Q&V Delivery Confirmation, at Attachments 1 and 2.

<sup>16</sup> See PRC-wide Entity section below.

<sup>17</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from James C. Doyle, Director, Office V “Antidumping Duty Investigation of Calcium Hypochlorite from the People’s Republic of China: Respondent Selection” (February 4, 2014) (“Respondent Selection Memo”).

<sup>18</sup> Id.

<sup>19</sup> See Letter to Rui Sunny from Catherine Bertrand, Program Manager, Office V “Rejection of Section A Questionnaire Response and Removal from the Record” (March 11, 2014).

<sup>20</sup> See Memorandum to the Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from James C. Doyle, Director, Office V “Investigation of Calcium Hypochlorite from the People’s Republic of China: Selection of Additional Mandatory Respondent” (March 14, 2014).

<sup>21</sup> See Letter to Jinbin from Catherine Bertrand, Program Manager, Office V (March 18, 2014).

<sup>22</sup> See Letter to the Secretary of Commerce from Jinbin “Withdrawal from Investigation” (April 15, 2014).

<sup>23</sup> See Letter to Rui Sunny from Catherine Bertrand, Program Manager, Office V “Refile of Section A Questionnaire Response and Supplemental Section D” (April 28, 2014) (“April 28 Letter to Rui Sunny”).

On June 19, 2014, China Petrochemical notified the Department that it would no longer be participating in this investigation as a mandatory respondent and would not submit further questionnaire responses or allow on-site verification of its responses.<sup>24</sup> On June 23, 2014, Rui Sunny submitted a supplemental questionnaire response and informed the Department that its unaffiliated supplier of merchandise under consideration, Jiangnan Salt and Chemical Complex (“JSCC”), would not respond to the Department’s outstanding supplemental section D questionnaire.<sup>25</sup>

### III. DISCUSSION OF THE METHODOLOGY

#### 1. Non-Market Economy Country

The Department considers the PRC to be an NME country.<sup>26</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. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination.

#### 2. Separate Rates

In proceedings involving NME countries, the Department maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.<sup>27</sup> The Department’s policy is to assign all exporters of merchandise under consideration that are 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.<sup>28</sup> The Department analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in Sparklers<sup>29</sup> and further developed in Silicon Carbide.<sup>30</sup> According to this separate rate test, the Department will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both de jure and de facto government control over its export activities. As noted above, China Petrochemical and Jinbin notified the Department that they would no longer respond to supplemental questionnaires or submit to on-site verification of their questionnaire responses and, thus, do not

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<sup>24</sup> See Letter to the Secretary of Commerce from China Petrochemical “Withdraw of Participation from Investigation – China Petrochemical International (Wuhan) Co., Ltd.” (June 19, 2014) (“China Petrochemical Withdrawal”).

<sup>25</sup> See Letter to the Secretary of Commerce from Rui Sunny “Supplemental Section A, C & D Questionnaire Response” (June 24, 2014) (“Rui Sunny SuppAC”).

<sup>26</sup> See Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 77 FR 21734 (April 11, 2012).

<sup>27</sup> See, e.g., 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, 55040 (September 24, 2008).

<sup>28</sup> See Final Determination of Sales at Less Than Fair Value: Sparklers From the People’s Republic of China, 56 FR 20588, 20589 (May 6, 1991) (“Sparklers”).

<sup>29</sup> Id.

<sup>30</sup> See 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”).

qualify for a separate rate.<sup>31</sup> Further, as explained below, the Department preliminarily determines that Rui Sunny is not eligible for a separate rate based on its failure to provide requested information in a timely manner, and because it impeded the proceeding and did not cooperate to the best of its ability. Therefore, the Department preliminarily determines that there were exports of merchandise under consideration from PRC exporters (China Petrochemical, Jinbin, and Rui Sunny) that did not demonstrate eligibility for separate rate status. As a result, the Department is treating China Petrochemical, Jinbin, and Rui Sunny as part of the PRC-wide entity. Finally, as noted above, the Department issued Q&V questionnaires to 19 exporters/producers of merchandise under consideration, 18 of which did not respond.<sup>32</sup> Accordingly, the Department preliminarily determines that a total of 21 PRC exporters of merchandise under consideration did not demonstrate their eligibility for separate rate status in this investigation. As a result, the Department is preliminarily treating these 21 PRC exporters as part of the PRC-wide entity, subject to the PRC-wide rate.<sup>33</sup>

### 3. Total Adverse Facts Available for Rui Sunny

#### A. Background

On March 27, 2014, Rui Sunny submitted its initial section C and D questionnaire responses and stated that it believed that it had no data to report for section D because Rui Sunny did not manufacture the merchandise under consideration and it believed that its supplier would answer these questions directly.<sup>34</sup> We note that the instructions included in the section D questionnaire explicitly state that, if “your company did not produce the merchandise under consideration, we request that this section be immediately forwarded to the company that produces the merchandise and supplies it to you or to your customers.”<sup>35</sup>

On April 28, 2014, the Department notified Rui Sunny that its section D response was deficient and reiterated the request that Rui Sunny must contact its supplier to obtain any necessary information, as previously instructed.<sup>36</sup> On May 2, 2014, Rui Sunny submitted a section D

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<sup>31</sup> See, e.g., Steel Wire Garment Hangers From the People’s Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Second Antidumping Duty Administrative Review, 76 FR 66903, 66906-07 (October 28, 2011) (where the Department determined that certain unresponsive mandatory respondents had not demonstrated their eligibility for a separate rate as a result of their decision to terminate their participation in the review, and thus considered the companies to be part of the PRC-wide entity), unchanged in Steel Wire Garment Hangers From the People’s Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review, 77 FR 12553 (March 1, 2012).

<sup>32</sup> See Q&V Delivery Confirmation, at Attachment I.

<sup>33</sup> Those companies are: Changzhou Keling Biotechnology Co., Ltd., Changzhou Xinliang Chemical Industry Co., Ltd., China Petrochemical International (Wuhan) Co., Ltd., Deqing Kangbo Sterilization Co., Ltd., Hebei Qian’an Greatwall Chemical Co., Ltd., Henan Yuzhou Weilite Chemical Co., Ltd., Hubei Dinglong Chemical Co., Ltd., Hunan Dale Chemical Industry Co., Ltd., Jiangsu Sopo (Group) Co., Ltd., Jinzhoushi Shashi Yinghui Paper Auxiliaries Co., Ltd., Shanghai Chlor-Alkali Chemical Co., Ltd., Taian Huawei Disinfectant Co., Ltd., Tianjin Jinbin International Trade Co., Ltd., Tianjin Jinggang Chemical Co., Ltd., Tianjin Kaifeng Chemical Co., Ltd., Tianjin Nanke Fine Chemical Co., Ltd., Tianjin Xinxin Chemical Factory, Tianjin Yufeng Chemicals Co., Ltd., W & W Marketing Corporation, Wuhan Rui Sunny Chemical Co., Ltd., and Zhejiang Linghua Chemicals Group Co., Ltd.

<sup>34</sup> See Letter to the Secretary of Commerce from Rui Sunny “Rui Sunny Sections C&D Questionnaire Response” (March 27, 2014) (“Rui Sunny SCDQR”) at 44.

<sup>35</sup> See Rui Sunny SCDQR, at 45.

<sup>36</sup> See April 28 Letter to Rui Sunny.

response provided by JSCC, which contained a certification of Rui Sunny's Sales Manager who prepared or otherwise supervised the preparation of the submission.<sup>37</sup> On May 22, 2014, Rui Sunny filed a response, again certified by Rui Sunny's Sales Manager, to a supplemental section D questionnaire that requested clarification of Rui Sunny's reported factors of production ("FOP") and sales process.<sup>38</sup>

On May 29, 2014, the Department issued to Rui Sunny a second supplemental section D questionnaire, consisting of 39 questions and multiple sub-parts and requesting substantial revisions and clarifications to JSCC's FOP database and supporting documentation for a number of its FOP calculations.<sup>39</sup> On June 9, 2014, the Department granted Rui Sunny's request for an extension of the deadline to submit its response to the Second Supplemental D.<sup>40</sup> On June 13, 2014, the Department granted a second request from Rui Sunny for an extension of the deadline to submit its Second Supplemental D response.<sup>41</sup>

As noted above, on June 24, 2014, Rui Sunny submitted a supplemental section A and C questionnaire response and informed the Department in that response that JSCC had notified Rui Sunny that it would no longer participate in this investigation but that "Rui Sunny has no control over this decision and, obviously, disagrees with it."<sup>42</sup> On June 24, 2014, the Department sent the Second Supplemental D questionnaire directly to JSCC,<sup>43</sup> and on June 27, 2014, JSCC informed the Department that it would not be responding to the outstanding Second Supplemental D questionnaire.<sup>44</sup>

On June 30, 2014, the Department issued to Rui Sunny a supplemental questionnaire requesting details and documentation of Rui Sunny's attempts to obtain the requested FOP data from JSCC.<sup>45</sup> Rui Sunny filed its response on July 3, 2014, and explained that the factory director of JSCC sent a mobile phone message to Rui Sunny on June 19, 2014, stating that it decided to stop participating, to which Rui Sunny simply responded "thank you."<sup>46</sup> Rui Sunny also stated that, because JSCC did not want to release confidential information to Rui Sunny, "all the Section D

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<sup>37</sup> See Letter to the Secretary of Commerce from Rui Sunny "Rui Sunny Supplemental Section D Questionnaire Response" (May 2, 2014) ("Initial Section D Response"), at Company Certification.

<sup>38</sup> See Letter to the Secretary of Commerce from Rui Sunny "Rui Sunny Supplemental Section D Questionnaire Response" ("Supplemental Section D Response") (May 22, 2014).

<sup>39</sup> See Letter to Rui Sunny from Catherine Bertrand, Program Manager, Office V "Second Supplemental Section D Questionnaire" (May 29, 2014) ("Second Supplemental D").

<sup>40</sup> See Memo to the File from Kabir Archuletta, Senior International Trade Analyst, Office V "Supplemental Section D Extension Request for China Petrochemical International (Wuhan) Co., Ltd. ('China Petrochemical') and Wuhan Rui Sunny Chemical Co., Ltd. ('Rui Sunny')" (June 9, 2014) ("Second SuppD Extension 1").

<sup>41</sup> See Memo to the File from Irene Gorelik, Senior International Trade Compliance Analyst, Office V "Second Supplemental Sections A, C, and D Extension Request for Wuhan Rui Sunny Chemical Co., Ltd. ('Rui Sunny')" (June 13, 2014) ("Second SuppD Extension 2").

<sup>42</sup> See Rui Sunny SuppAC, at cover letter.

<sup>43</sup> See Letter to JSCC from Catherine Bertrand, Program Manager, Office V "Supplemental Section D Questionnaire" (June 24, 2014).

<sup>44</sup> See Letter to the Secretary of Commerce from JSCC "Clarification of Mayer Brown LL Representation" (June 27, 2014).

<sup>45</sup> See Letter to Rui Sunny from Catherine Bertrand, Program Manager, Office V "Supplemental Questionnaire" (June 30, 2014).

<sup>46</sup> See Letter to the Secretary of Commerce from Rui Sunny "Rui Sunny Supplemental Questionnaire Response" (July 3, 2014) ("Rui Sunny JSCC Communication").

questionnaire responses that may contain confidential information from JSCC were sent/received only by the attorneys for both parties.”<sup>47</sup> Rui Sunny submitted email communications between the attorneys regarding JSCC’s proprietary submissions.<sup>48</sup> However, as we explain below, the Department preliminarily determines that the documentation provided by Rui Sunny fails to demonstrate that Rui Sunny put forth its maximum effort to obtain the information after it was notified by JSCC that it would no longer cooperate with this investigation.

#### B. Facts Available and Selection Based Upon Adverse Inferences for Rui Sunny

Section 776(a)(1) of the Act provides that if necessary information is not available on the record, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Because Rui Sunny was unable to provide the Second Supplemental D questionnaire or provide requested revisions to the initial FOP database and calculations it submitted, the Department preliminarily determines that it is unable to use JSCC’s database for any purposes. Thus, the record does not contain a usable FOP database by which to calculate normal value (“NV”). Because NV is used for comparison purposes to match sales prices with production factors for specific control numbers, and the record does not contain any FOP information to which we can compare Rui Sunny’s sales, we preliminarily determine that we cannot calculate an accurate margin for Rui Sunny and, thus, cannot use Rui Sunny’s submitted sales information.

Further, based on an analysis of the record, the Department preliminarily determines that Rui Sunny failed to cooperate to the best of its ability such that the application of an adverse inference is warranted. This determination is based on record evidence demonstrating that Rui Sunny did not put forth its maximum effort in complying with the Department’s requests for information.

As noted above, Rui Sunny was granted two separate one-week extensions of the deadline to obtain and submit the information requested in the Second Supplemental Section D questionnaire. When Rui Sunny informed the Department that JSCC would no longer participate in this investigation, it stated that “Rui Sunny has no control over this decision and, obviously, disagrees with it.”<sup>49</sup> However, when the Department requested information detailing Rui Sunny’s efforts to obtain the information, which it had more than three weeks to obtain,<sup>50</sup> Rui Sunny produced a single text message dated three days prior to the deadline for submission of the Second Supplemental Section D response<sup>51</sup> and emails between respective counsels for Rui Sunny and JSCC that similarly fail to demonstrate that Rui Sunny made any substantive effort to encourage JSCC to respond to the Department’s questions. Based on Rui Sunny’s submitted information, the Department preliminarily finds that, after receiving notification from JSCC that it would not continue to participate, Rui Sunny did not engage JSCC any further to elicit its cooperation or stress the implications of a failure to cooperate with the Department’s inquiries.

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<sup>47</sup> Id.

<sup>48</sup> Id.

<sup>49</sup> See Rui Sunny SuppAC, at cover letter.

<sup>50</sup> See Second Supplemental D, at cover letter (providing 10 days for completion of the questionnaire); Second SuppD Extension 1 (granting an extension of one week); Second SuppD Extension 2 (granting an extension of one week).

<sup>51</sup> Compare Second SuppD Extension 2 with Rui Sunny JSCC Communication, at 1 and Exhibit 1.

To be clear, the Department requested that Rui Sunny, *inter alia*, “submit documentary evidence of **any and all** communication between JSCC and Rui Sunny demonstrating Rui Sunny’s efforts to procure the information requested; if communication was made via telephone, submit a signed affidavit explaining when and how many times Rui Sunny contacted JSCC regarding the outstanding Supplemental Section D questionnaire.”<sup>52</sup> These instructions extended to communication between counsels on behalf of JSCC and Rui Sunny regarding this matter, who each acted on behalf of their respective clients. Therefore, it appears that, in the two weeks that transpired from the point Rui Sunny was notified on June 19 to the point that Rui Sunny submitted information to the Department documenting its efforts to obtain the information from JSCC on July 3, Rui Sunny had no further communication with JSCC.<sup>53</sup> In cases where the Department has found a respondent’s efforts to comply with the request to be lacking and therefore applied an adverse inference in selecting among the facts available, the U.S. Court of International Trade (“CIT”) has recognized the relevance of the degree to which that respondent attempted to comply. In this case, Rui Sunny did not undertake any of the efforts which the Department considers to be indicative of sufficient efforts to procure the information requested, including having its counsel contact JSCC’s counsel to reconsider non-cooperation, calling JSCC’s counsel to request a change of position, contacting JSCC to offer assistance with the cost of production or other means of alleviating the weight of the responsive task, or attempting to schedule an in-person meeting with JSCC to further appeal for cooperation.

The United States Court of Appeals for the Federal Circuit (“CAFC”) has recognized that, where a cooperating party has an existing relationship with an unaffiliated non-cooperating party, the cooperating party could have used its relationship to induce the cooperation of the non-cooperating party.<sup>54</sup> Rui Sunny is one of the largest exporters of merchandise under consideration, as evidenced by its initial selection as a mandatory respondent in this investigation,<sup>55</sup> and all of its exports were supplied by JSCC.<sup>56</sup> Thus, it is reasonable to conclude that Rui Sunny could have, indeed, should have, used its position as one of the largest exporters of calcium hypochlorite produced by JSCC to influence JSCC’s participation but, instead, Rui Sunny did not contact or make any effort to induce the cooperation of JSCC after it was notified that JSCC would not respond to the outstanding questionnaire.<sup>57</sup> If Rui Sunny attempted to obtain the requested information from or engage JSCC in any manner after July 19, 2014, Rui Sunny did not produce such documentation, as requested by the Department.

The Department notes that this scenario gives rise to enforcement considerations of whether a failure to cooperate to the best of one’s ability would have produced a more favorable result than full cooperation. The CAFC has stated that “{w}ithout the ability to enforce full compliance with its questions, {the Department} runs the risk of gamesmanship and lack of finality in its investigations.”<sup>58</sup> The Department’s ability to enforce compliance with our AD orders is utterly

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<sup>52</sup> See Rui Sunny JSCC Communication, at question 1.c. (emphasis added).

<sup>53</sup> *Id.*, at 1 and Exhibits 1, 2-1 and 2-2.

<sup>54</sup> See Mueller Comercial de Mexico v. United States, 2014 U.S. App. LEXIS 9884, at \*19 (Fed. Cir. 2014) (“Mueller”).

<sup>55</sup> See Respondent Selection Memo.

<sup>56</sup> See, e.g., Letter to the Secretary of Commerce from Rui Sunny “Rui Sunny Re-Filing of Section A Questionnaire Response” (April 28, 2014), at 37.

<sup>57</sup> See Rui Sunny JSCC Communication, at 1 and Exhibits 1, 2-1, and 2-2.

<sup>58</sup> See Essar Steel Ltd. v. United States, 678 F.3d 1268, 1276 (CIT 2012).

diminished where parties are able to choose the information they allow us to analyze. We note that JSCC is also the sole supplier and close affiliate of China Petrochemical,<sup>59</sup> a mandatory respondent that has chosen not to participate any further in this investigation or allow verification.<sup>60</sup> Thus, the potential exists for JSCC, a non-cooperative interested party in this investigation, to channel its sales through Rui Sunny if Rui Sunny were to obtain a more favorable rate than China Petrochemical. Although we recognize that Rui Sunny and JSCC are unaffiliated parties and this presents the potential for inequity that existed in Mueller,<sup>61</sup> Rui Sunny has failed to demonstrate that it put forth its maximum effort after it was notified that JSCC would not cooperate. The CAFC recognized in Nippon Steel that a mere failure to respond is insufficient grounds for a finding that a respondent did not put forth its maximum effort and that such a finding may only be drawn under circumstances where it is reasonable to expect that more forthcoming responses should have been made or conclude that less than full cooperation has been shown.<sup>62</sup> Rui Sunny has failed to meet the standard set forth in Nippon Steel.

Section 776(b) of the Act provides that the Department, in selecting from among the facts otherwise available, may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>63</sup> Although “affirmative evidence of bad faith, or willfulness, on the part of a respondent is not required before the Department may make an adverse inference,”<sup>64</sup> the CAFC has held that the “best of its ability” standard “requires the respondent to do the maximum it is able to do.”<sup>65</sup> As detailed above, the Department preliminarily finds that Rui Sunny has failed to put forth its maximum effort to comply with the Department’s requests for information.

Section 782(e) of the Act states that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. Because we preliminarily find that Rui Sunny is an interested party that has not demonstrated that it acted to the best of its ability, we are, pursuant to Section 776(b) of the Act in selecting from among the facts available, applying an adverse inference in reaching our preliminary determination. Accordingly, because we do not have any information to construct an accurate NV corresponding to the merchandise

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<sup>59</sup> See, e.g., Letter to the Secretary of Commerce from China Petrochemical “Section A Questionnaire Response – China Petrochemical International (Wuhan) Co., Ltd.” (March 5, 2014), at 6 and 14-19.

<sup>60</sup> See China Petrochemical Withdrawal.

<sup>61</sup> See Mueller, 2014 U.S. App. LEXIS 9884, at \*21 (“if the cooperating entity has no control over the non-cooperating suppliers, a resulting adverse inference is potentially unfair to the cooperating party.” (citing to SKF USA Inc. v. United States, 630 F.3d 1365, 1375 (Fed. Cir. 2011)).

<sup>62</sup> See Nippon Steel Corporation v. United States, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (“Nippon Steel”).

<sup>63</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 103-316, at 870 (1994) (“SAA”).

<sup>64</sup> See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997).

<sup>65</sup> See Nippon Steel, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

sold by Rui Sunny during the POI, the Department preliminarily determines that the information necessary to calculate an accurate dumping margin for Rui Sunny, based upon the information provided, is not available. Therefore, we are preliminarily making our determination based upon the facts available. In selecting from among the facts available, we are preliminarily applying an adverse inference based upon Rui Sunny's failure to cooperate to the best of its ability in this investigation.

#### 4. The PRC-wide Entity

As discussed above, we have determined not to grant a separate rate to China Petrochemical and Jinbin. Specifically, because these companies withdrew from this investigation, none of their submitted separate rate information can be subjected to further inquiry or verification and, therefore, it is unusable for any purpose. Because China Petrochemical and Jinbin have not demonstrated that they are eligible for separate rate status, the Department considers them part of the PRC-wide entity. Further, because we are preliminarily applying total adverse facts available ("AFA") to Rui Sunny, we are finding Rui Sunny to be part of the PRC-wide entity. As explained below, we preliminarily determine to calculate the PRC-wide rate on the basis of AFA.

#### 5. Application of Facts Available and Selection Based Upon Adverse Inferences for the PRC-Wide Entity

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 AD 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.

The Department preliminarily finds that the PRC-wide entity, which includes China Petrochemical, Jinbin, and Rui Sunny, failed to provide necessary information, withheld information requested by the Department, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. The PRC-wide entity neither filed documents indicating that it was having difficulty providing the information, nor did it request to submit the information in an alternate form. As a result, the Department preliminarily determines, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act, to use facts otherwise available to determine the rate for the PRC-wide entity.<sup>66</sup>

Section 776(b) of the Act provides that the Department, in selecting from among the facts otherwise available, may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The Department finds that the PRC-wide entity's failure to provide the requested

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<sup>66</sup> See, e.g., Notice of 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, 4991 (January 31, 2003), unchanged in Notice of 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).

information constitutes circumstances under which it is reasonable to conclude that the PRC-wide entity was not fully cooperative.<sup>67</sup> Therefore, the Department preliminarily determines that the PRC-wide entity failed to cooperate to the best of its ability to comply with requests for information and, consequently, the Department may employ an inference that is adverse to the PRC-wide entity in selecting from among the facts otherwise available.

Section 776(b) of the Act states that the Department, when employing an adverse inference, 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 based on 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. The Department's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated dumping margin of any respondent in the investigation.<sup>68</sup> Thus, for this preliminary determination, we have assigned the PRC-wide entity the rate of 210.52 percent, which is the highest dumping margin calculated in the Petition.<sup>69</sup>

#### 6. Corroboration of AFA Rate

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the Petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. The SAA clarifies that "corroborate" means the Department will satisfy itself that the secondary information to be used has probative value.<sup>70</sup> As stated in Japanese TRBs, to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.<sup>71</sup> The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.<sup>72</sup>

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<sup>67</sup> See Nippon Steel Corporation v. United States, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (i.e., information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.")).

<sup>68</sup> See Certain Stilbenic Optical Brightening Agents From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 17436, 17438 (March 26, 2012).

<sup>69</sup> See "AD Investigation Checklist: Calcium Hypochlorite from the People's Republic of China" (January 7, 2014) ("Initiation Checklist"), at 9.

<sup>70</sup> See SAA at 870.

<sup>71</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) ("Japanese TRBs"), 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, 11843 (March 13, 1997).

<sup>72</sup> See section 351.308(d) of the Department's regulations, and the SAA, at 870.

For the purposes of this investigation and to the extent that appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis and for purposes of this preliminary determination.<sup>73</sup> We examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis we examined the key elements of the export price (“EP”) and NV calculations used in the Petition to derive margins. During our pre-initiation analysis we also examined information from various independent sources provided either in the Petition or in supplements to the Petition that demonstrated the accuracy and validity of key elements of the EP and NV calculations used in the Petition to derive estimated margins.<sup>74</sup>

Based on our examination of the information, as discussed in detail in the Initiation Checklist, we consider the Petitioners’ calculation of the EP and NV to be reliable. Therefore, because we confirmed the accuracy and validity of the information underlying the calculation of margins in the Petition by examining source documents as well as publicly available information, we preliminarily determine that the margins in the Petition are reliable for the purposes of this investigation.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant.<sup>75</sup> Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin.<sup>76</sup> The rates in the Petition reflect commercial practices of the calcium hypochlorite industry and, as such, are relevant to the respondents in this investigation.<sup>77</sup> The courts have acknowledged that the consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry.<sup>78</sup> Such consideration typically encompasses the commercial behavior of other respondents under investigation; however, as there are no cooperating respondents in this investigation, we have relied upon the rates found in the Petition, which is the only information regarding the calcium hypochlorite industry reasonably at the Department’s disposal. Because the petition rates are derived from the calcium hypochlorite industry and are based on information related to aggregate data involving the calcium hypochlorite industry, we have determined that the Petition rates are relevant. Accordingly, by using information that was determined to be reliable in the pre-initiation stage of this investigation and preliminarily determining it to be relevant for the uncooperative respondents in this investigation, we have

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<sup>73</sup> See Initiation Checklist, at 6-9.

<sup>74</sup> Id.

<sup>75</sup> See Certain Steel Nails from the United Arab Emirates: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 76 FR 68129, 68132 (November 3, 2011), unchanged in Certain Steel Nails from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value, 77 FR 17029 (March 23, 2012).

<sup>76</sup> See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest dumping margin as best information available because the margin was based on another company’s uncharacteristic business expense resulting in an unusually high margin).

<sup>77</sup> See Initiation Checklist at 6-9.

<sup>78</sup> See, e.g., Ferro Union, Inc. v. United States, 44 F. Supp. 2d 1310, 1334 (1999).

corroborated the AFA rate of 210.52 percent “to the extent practicable” as provided in section 776(c) of the Act. Therefore, we have applied the petition rate of 210.52 percent to the PRC-wide entity, which includes China Petrochemical, Jinbin, and Rui Sunny, as AFA.

#### 7. Verification

Section 782(i)(1) of the Act directs the Department to verify all information relied upon in making a final determination in an investigation. However, because we are preliminarily finding all exporters subject to this investigation to be part of the PRC-wide entity, the Department does not intend to conduct verification of any portion of the PRC-wide entity, in accordance with our standard practice.<sup>79</sup>

#### 8. Section 777A(f) of the Act

In applying section 777A(f) of the Act, the Department has examined (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether the Department can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.<sup>80</sup> For a subsidy meeting these criteria, the statute requires the Department to reduce the AD by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.<sup>81</sup> In conducting this analysis, the Department has not concluded that concurrent application of NME ADs and CVDs necessarily and automatically results in overlapping remedies. Rather, a finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute. Because all respondents in this investigation are being found to be part of the PRC-wide entity, the Department is preliminarily not making any adjustments pursuant to section 777A(f) of the Act to the AD cash deposit rate for the PRC-wide entity in this investigation.

### **IV. ITC 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

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<sup>79</sup> See, e.g., Galvanized Steel Wire From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 17430 (March 26, 2012), and accompanying Issues and Decision Memorandum, at Comment 1.C. (“... a prerequisite to verification in an investigation is that a selected mandatory respondent submit a substantially complete questionnaire response. If the respondent does not provide the complete questionnaire response, and the rate is based on facts available, it is clear that verification of some portion of the information required (on which the Department cannot rely) is meaningless. The Department is not required to verify the portion of the information a respondent may self-select for verification. Doing so would allow for the PRC-wide entity to potentially manipulate AD results by selectively providing data on the record and dictating what data can be verified.”)

<sup>80</sup> See section 777A(f)(1)(A)-(C) of the Act.

<sup>81</sup> See section 777A(f)(1)-(2) of the Act.

materially injured, or threatened with material injury, by reason of imports of calcium hypochlorite, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of our final determination.

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.

**V. CONCLUSION**

We recommend applying the above methodology for this preliminary determination.

✓  
Agree

\_\_\_\_\_  
Disagree

*Paul Piquado*  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

16 July 2014  
(Date)