



A-570-049
Investigation
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DATE: November 1, 2016

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 the Preliminary Determination of the
Less Than Fair Value Investigation of Ammonium Sulfate from
the People's Republic of China

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that ammonium sulfate 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).

II. BACKGROUND

On May 25, 2016, the Department received an antidumping duty (AD) petition concerning imports of ammonium sulfate from the PRC that was properly filed with the Department by PCI Nitrogen, LLC (PCI, or Petitioner).¹ On May 27, 2016 and June 3, 2016, the Department requested additional information and clarification of certain parts of the Petition.² Petitioner

¹ See the Petition for the Imposition of Antidumping and Countervailing Duties on Ammonium Sulfate from the People's Republic of China, dated May 25, 2016, (the Petition) at Volumes I and II.

² See the Letter from the Department to Petitioner entitled, "Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Ammonium Sulfate from the People's Republic of China: Supplemental Questions," dated May 27, 2016 (General Issues Supplemental Questionnaire); see also the Letter from the Department to Petitioner entitled, "Petition for the Imposition of Antidumping Duties on Imports of Ammonium Sulfate from the People's Republic of China: Supplemental Questions," dated May 27, 2016 (AD Supplemental Questionnaire); see also the Letter from the Department to Petitioner entitled, "Petition for the Imposition of Antidumping Duties on Imports of Ammonium Sulfate from the People's Republic of China: Supplemental Questions," dated June 3, 2016 (Second AD Supplemental Questionnaire).



filed responses to these requests on June 1 and 6, 2016, respectively.³ The Department initiated this investigation on June 14, 2016.⁴

In the *Initiation Notice*, the Department stated that, in accordance with its standard for respondent selection in cases involving non-market economy (NME) countries, the Department intended to issue quantity and value (Q&V) questionnaires to producers/exporters of merchandise subject to the investigation, and base respondent selection on the responses received.⁵ Accordingly, the Department sent Q&V questionnaires to the 95 companies identified in the petition.⁶

³ See the Letter from Petitioner to the Department entitled, “Ammonium Sulfate from the People’s Republic of China/Petitioner’s Response to the Department’s Questions Regarding the Petition,” dated June 1, 2016 (General Issues Supplement); see also the Letter from Petitioner to the Department entitled, “Ammonium Sulfate from the People’s Republic of China/Petitioner’s Response to the Department’s Questions Regarding the Petition,” dated June 1, 2016 (AD Supplement); see also the Letter from Petitioner to the Department entitled, “Ammonium Sulfate from the People’s Republic of China/Petitioner’s Response to the Department’s Questions Regarding the Petition,” dated June 6, 2016 (Second AD and General Issues Supplement).

⁴ See *Ammonium Sulfate from the People’s Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 81 FR 40665 (June 22, 2016) (*Initiation Notice*).

⁵ See *Initiation Notice* at 40669.

⁶ See Exhibit I-10 (Collectively, “95 companies” - Abel Chemical Jiangsu Co., Ltd.; Anhui Huaihua Group Quanshan Chemical Co., Ltd; Anhui Runquan Trading Co., Ltd.; Anyang Steel Group Co., Ltd.; Allied Harvest Company Ltd.; Asende Company Ltd. Qingdao; Beitai Iron & Steel; Bengang Steel Plates Co., Ltd.; Chem-Together Int’l Group Limited; China Shenzen Yanghuiyuan Trading Co., Ltd.; Chongqing Iron & Steel (Group) Co., Ltd.; CNAMPGC Holding Limited Corporation; CNAMPGC Agricultural Implements Holding; CNCEC, Chengdu, Sichuan; CNPC – China National Petroleum Corporation; CNSIC – China National Salt Industry Corporation; DSM Nanjing Chemical Co., Ltd.; Fujian Dongxin Petrochemical Co., Ltd; Fujian Longyan Longua Chemical Co., Ltd.; Fujian Refining & Petrochemical Co. Quanzhou; Fujian Shenyuan Highsun, Lianjiang; Fujian Tiachen Yaolong; Great Global Corporation Limited; Guangdong Guanghua Sci-Tech Co., Ltd. (JHD); Guangxi Tiangdong Power Plant; H Sulphur Corp.; Hebei Jiheng Chemical Co., Ltd.; Hebei Risun Coking Co., Ltd.; Hebei Shangyi Fertilizer Co., Ltd.; Hebei Shengweilong Trading Co., Ltd.; Heilongjiang Heihua Co., Ltd.; Heilongjiang Zhongmeng Longxin Chemical Co., Ltd.; Henan Shenma Industrial Co., Ltd.; Hengshui Hengji Agricultural Material Co., Ltd.; Heze Sainuo Agricultural Science & Technology Co. Ltd.; Hong Kong Zhongxin International Co. (Hainan Zhongxin Chemical Co., Ltd.); Hubei Sanning Chemical Co., Ltd.; Hunan Agricultural Products Co., Ltd; Hunan Heaven Materials Development Co., Ltd.; Hunan Yongli Chemical Industry Co., Ltd.; Intual Industry Limited; Jiangsu Haili Chemical Co., Ltd.; Jiangsu Nantong Province Fertilizer Plant; Jiangsu Sanding Petrochemical and Technology; Jiuding International Fertilizer Co., Limited; Jiuquan Iron & Steel (Group) Co., Ltd. (JISCO); Jizhou Yin Hai Fertilizer Co., Ltd.; Juhua Group Corp.; Keytrade; Lanhua Sci-Tech Venture Company; Liaocheng Meisi New Materials & Technology Co. Ltd.; Linfen Town Star Industrial Co., Ltd.; Luxi Group Co., Ltd.; Meishan Chemical Industry; Panjin Zhongrun Chemical Co., Ltd.; Petrochina Jilin Petrochemical; Qingdao Chinaoil Co., Ltd.; Qingzhou Huashun Production Co., Ltd.; Quzhou Juhua Polyamide Fibre Llc; Shandong Fangming Chemical Industry Co., Ltd.; Shandong Haili Chemical Industry Co., Ltd.; Shandong Hongye Chemical Group Co., Ltd.; Shanghai Pengkai Chemical Co., Ltd.; Shanxi Jintaoyuan Coking Co., Ltd.; Shanxi Yangmei Fengxi Fertilizer Industry (Group) Co., Ltd.; Shengyi International Trade; Shijiazhuang Haofang Chemical Co., Ltd.; Sinochem Fertilizer Co., Ltd.; Sinopec Baling Hengyi Petrochemical; Sinopec Fujian Petrochemical Company Ltd. (FPCL); Sinopec Maoming Petrochemical Company; Sinopec Qulu Petrochemical Corporation; Sinopec Shijiazhuang Refining & Chemical Company; Sinosun International Investment; Suifenhe Longsheng Economic Trade; TCC Fujian Yao Long New Materials Co., Ltd.; Taiyuan Chemical Industry Group Co., Ltd. Coking Factory; Tangshan Fengrun Jiuding Chemical Production Co. Ltd.; Tianjin Chengyi International Trading Co. Ltd.; Tianjin Dongri Animal By-Products Co., Ltd.; Tianjin Topfert Agrochemical Co. Limited; Tongling Chemical, Anhui; United Fertilizer Chemical Co. LTD/Hunan Agricultural Products Co. Ltd.; Wengfu Intertrade Limited; Wuzhoufeng Agricultural Science & Technology Co. Ltd.; Xinjiang Dushanzi Tianli High & New Tech Co., Ltd.; Yangmei Group Taiyuan Chemical New Material Co., Ltd.; Yantai C-Richon Agricultural Means of Production; Yantai Jiahe Agricultural Means of Production; Yantai Yuanrui International Trade Company, Ltd.; Yueyang Juyuan

The *Initiation Notice* also notified parties of an opportunity to comment on the scope of this investigation as well as the appropriate physical characteristics of ammonium sulfate to be reported in response to the Department's AD questionnaire.⁷ Petitioners submitted comments on July 5, 2016, regarding the physical characteristics of the subject merchandise to be used for reporting purposes.⁸

On July 14, 2016, the U.S. International Trade Commission (the ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of ammonium sulfate from the PRC.⁹

We are conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is October 1, 2015, through March 31, 2016. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition, which was May 2016.¹⁰

IV. SCOPE COMMENTS

In accordance with the *Preamble* to the Department's regulations, and as noted in the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding the products covered by the scope of this investigation.¹¹ We received no comments from any parties.

V. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is ammonium sulfate in all physical forms, with or without additives such as anti-caking agents. Ammonium sulfate, which may also be spelled as ammonium sulphate, has the chemical formula $(\text{NH}_4)_2\text{SO}_4$.

The scope includes ammonium sulfate that is combined with other products, including by, for example, blending (*i.e.*, mixing granules of ammonium sulfate with granules of one or more other products), compounding (*i.e.*, when ammonium sulfate is compacted with one or more other products under high pressure), or granulating (incorporating multiple products into granules through, *e.g.*, a slurry process). For such combined products, only the ammonium sulfate component is covered by the scope of this investigation.

Petrochemical Co., Ltd.; Zhangjiagang Huachang Import & Export Co. LTD.; Zhejiang Hengyi Group Co., LTD.; Zhejiang Ronghen Holding Group.

⁷ See *Initiation Notice* at 40665-40666.

⁸ See Letter from Petitioners to the Department, "RE: Ammonium Sulfate from the People's Republic of China – Comments on Product Characteristics," dated July 5, 2016.

⁹ See *Ammonium Sulfate From China; Determinations*, 81 FR 45533 (July 14, 2016).

¹⁰ See *Initiation Notice*, at 40665; see also 19 CFR 351.204(b)(1).

¹¹ See *Initiation Notice*; see also *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

Ammonium sulfate that has been combined with other products is included within the scope regardless of whether the combining occurs in countries other than China.

Ammonium sulfate that is otherwise subject to this investigation is not excluded when commingled (*i.e.*, mixed or combined) with ammonium sulfate from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

The Chemical Abstracts Service (CAS) registry number for ammonium sulfate is 7783-20-2.

The merchandise covered by this investigation is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 3102.21.0000. Although this HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

VI. SELECTION OF RESPONDENTS

Section 777A(c)(1) of the Act directs the Department to calculate the individual dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters or producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. In the *Initiation Notice* we stated that we intended to select respondents based on the responses to the Q&V questionnaires issued to the 95 companies identified in the petition as producers/exporters of ammonium sulfate. *See Initiation Notice*.

On June 15, 2016, the Department issued Q&V questionnaires to the 95 companies identified in the petition, and posted the Q&V questionnaire on its website. Of these 95 companies, the Department received responses from only five companies. Three of those responses submitted no shipment notifications.¹² The remaining two responses included Q&V data showing that the companies did not ship to the United States the subject merchandise during the POI.¹³

VII. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy Country

The Department considers the PRC to be an NME country.¹⁴ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall

¹² See Letter to Secretary of Commerce from TCC Fujian Yao Long New Materials Co., Ltd., “Re: Response to Questions in Attachment 1: Reporting Quantity and Value of Sales,” dated June 28, 2016; *see also* Letter to Honorable Penny Pritzker from Fibrant Co., Ltd., “RE: Ammonium Sulfate from China – Quantity and Value Response,” dated June 28, 2016; *see also* Letter to Honorable Penny Pritzker from Fujian Shenyan New Materials Co., Ltd., entitled, “RE: Ammonium Sulfate from China – Quantity and Value Response,” dated June 28, 2016.

¹³ See Letter to U.S. Department of Commerce from H Sulphur Corp. “Re: A-570-049 Investigation: Certificate Of Accuracy,” dated July 15, 2016; *see also* Letter to Mr. Robert Bolling from Asende Co., Ltd. Qingdao, “RE: Ammonium Sulfate from the People’s Republic of China (“PRC”): Response to Quantity and Value Questionnaire,” dated July 5, 2016.

¹⁴ See, *e.g.*, *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*

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.

B. The PRC-wide Entity

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.¹⁵ 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 demonstrates that it is sufficiently independent so as to be entitled to a separate rate.¹⁶ The Department analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*¹⁷ and further developed in *Silicon Carbide*.¹⁸ 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. If, however, the Department determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

The Department continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from the PRC AD proceeding, and its determinations therein.¹⁹ In particular, in litigation involving the diamond sawblades from the PRC proceeding, the CIT found the Department's existing separate rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity had significant ownership in the respondent exporter.²⁰ Following the Court's reasoning, in recent proceedings, we have

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).

¹⁵ 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).

¹⁶ 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*).

¹⁷ *Id.*

¹⁸ 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*).

¹⁹ See *Final Results of Redetermination pursuant to Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), and available at <http://enforcement.trade.gov/remands/12-147.pdf>, *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014) (*Advanced Technology II*). See also *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013) and accompanying Preliminary Decision Memorandum at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying Issues and Decision Memorandum at Comment 1.

²⁰ See, e.g., *Advanced Technology I*, 885 F. Supp. 2d at 1349 (CIT 2012) ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *Id.*, at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {State-owned Assets Supervision and Administration Commission's} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor de jure 'separation' that Commerce concludes.") (footnotes

concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally.²¹ This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profit distribution of the company.

The record indicates that there are PRC exporters and/or producers of subject merchandise during the POI that did not respond to the Department's requests for information. Of the 95 companies that were sent Q&V questionnaires, the Department received responses from only five. Three of those companies submitted no shipment notifications.²² The remaining two responses included Q&V data showing that the companies did not ship subject merchandise during the POI.²³ Furthermore, the Department did not receive separate rate applications from any companies. Because there are PRC exporters and/or producers of subject merchandise that have not responded to the Department's request for information, and thus have not demonstrated that they are eligible for separate rate status, the Department finds that they have not rebutted the presumption of government control and, therefore, the Department considers them to be part of the PRC-wide entity. As explained below, we preliminarily determine that the PRC-wide rate is based on adverse facts available (AFA).

C. Application of Facts Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that, if necessary information is missing from the record, or 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.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the

omitted); *Id.*, at 1355 (“The point here is that ‘governmental control’ in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a ‘degree’ of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to ‘day-to-day decisions of export operations,’ including terms, financing, and inputs into finished product for export.”); *Id.*, at 1357 (“AT&M itself identifies its ‘controlling shareholder’ as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.”) (footnotes omitted).

²¹ See *Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying Preliminary Decision Memorandum at 5-9.

deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and countervailing duty (CVD) law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.²⁴ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.²⁵

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.

The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

1. Use of Facts Available

Information on the record of this investigation indicates that the PRC-wide entity was unresponsive to the Department’s requests for information. Specifically, as discussed above, of the 95 companies identified in the petition, only five submitted Q&V information, none of which qualify for the Department’s use as a potential respondent. It is our standard practice to select respondents in NME investigations based on Q&V information we receive from potential

²² See Letter to Secretary of Commerce from TCC Fujian Yao Long New Materials Co., Ltd., “Re: Response to Questions in Attachment 1: Reporting Quantity and Value of Sales,” dated June 28, 2016; see also Letter to Honorable Penny Pritzker from Fibrant Co., Ltd., “RE: Ammonium Sulfate from China – Quantity and Value Response,” dated June 28, 2016; see also Letter to Honorable Penny Pritzker from Fujian Shenyuan New Materials Co., Ltd., entitled, “RE: Ammonium Sulfate from China – Quantity and Value Response,” dated June 28, 2016.

²³ See Letter to U.S. Department of Commerce from H Sulphur Corp. “Re: A-570-049 Investigation: Certificate Of Accuracy,” dated July 15, 2016; see also Letter to Mr. Robert Bolling from Asende Co., Ltd. Qingdao, “RE: Ammonium Sulfate from the People’s Republic of China (“PRC”): Response to Quantity and Value Questionnaire,” dated July 5, 2016.

²⁴ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) . The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

²⁵ See *Applicability Notice*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

respondents.²⁶ Without a Q&V response from a potential respondent, we are not able to select a respondent for individual examination in accordance with our normal methodology and calculate a rate. Accordingly, the Department preliminarily finds that the PRC-wide entity 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. Moreover, because the PRC-wide entity failed to provide any information, section 782(d) of the Act is inapplicable. Accordingly, the Department preliminarily determines that use of facts available is warranted in determining the rate of the PRC-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.²⁷

2. *Application of Facts Available with an Adverse Inference*

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 because the PRC-wide entity failed to provide the requested information, the PRC-wide entity failed to cooperate by not acting to the best of its ability.²⁸ Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available with respect to the PRC-wide entity in accordance with section 776(b) of the Act and 19 CFR 351.308(a).²⁹

3. *Selection and Corroboration of the AFA Rate*

In applying an adverse inference, the Department may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.³⁰ In selecting an AFA rate, 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. In an investigation, the Department's practice with respect to the assignment of an AFA rate is to select 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.³¹ In this investigation, we did not calculate a company-specific margin and the highest petition rate is 493.46 percent. Therefore, we have preliminarily assigned the PRC-wide entity an AFA rate of 493.46 percent.

²⁶ See *Initiation Notice*.

²⁷ 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).

²⁸ 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.")).

²⁹ *Id.*, at 1382-83.

³⁰ See section 776(b) of the Act.

³¹ See, e.g., *Certain Uncoated Paper From Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016).

When using facts otherwise available, section 776(c) of the Act provides that, generally, 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. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.³² The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.³³ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used, although under the TPEA, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.³⁴ Finally, under section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.³⁵

The only rate on the record of this investigation is the rate in the Petition. We have not calculated margins based on respondents’ submissions. Therefore, as AFA we are preliminarily assigning the highest petition margin of 493.46 percent as the rate applicable to the PRC-wide entity. The petition rate was calculated by Petitioner by first calculating the average unit value (AUV) of ammonium sulfate imports from the PRC during the POI using U.S. import statistics published by the ITC.³⁶ Second, Petitioner obtained shipment-specific prices from Chinese exporters to U.S. customers by comparing data contained in the official U.S. Government import statistics to data contained in the U.S. Customs and Border Protection’s (CBP) Automated Manifest System (AMS) database that contains ship manifests for all ocean going shipments entering U.S. ports.³⁷

We determine that the petition margin of 493.46 percent is reliable where, to the extent 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.³⁸

³² See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. 103-316, at 870 (1994) (SAA).

³³ See SAA at 870; see also 19 CFR 351.308(d).

³⁴ See, e.g., *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).

³⁵ See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

³⁶ See Petition at 4; see also Exhibit II-4.

³⁷ See Petition at 4; see also Exhibits II-5 and II-6.

³⁸ See Enforcement and Compliance Office of AD/CVD Operations AD Investigation Initiation Checklist: “Ammonium Sulfate from the People’s Republic of China (PRC)” (June 14, 2016) (Initiation Checklist).

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), based on a comparison of ship manifest data and official U.S. import statistics, and normal value (NV) calculations used in the petition to derive an estimated margin. During our pre-initiation analysis, we also examined information from various independent sources (to the extent that such information was reasonably available) provided either in the petition or, on our request, in the supplements to the petition that corroborates some of the key elements of the EP and NV calculations used in the petition to derive an estimated margin.³⁹

We stated in the *Initiation Notice* (and discussed in detail in the Initiation Checklist) that we considered the Petitioner's EP and NV calculations to be reliable.⁴⁰ Because we obtained no other information that would make us question the validity of the sources of information or the validity of information supporting the U.S. price or NV calculations provided in the petition, based on our examination of the aforementioned information, we continue in this preliminary determination to consider that the EP and NV calculations from the petition to be reliable. Because we confirmed the accuracy and validity of the information underlying the derivation of the margin in the petition by examining source documents and affidavits, as well as publicly available information, we also preliminarily determine that this petition rate is reliable for the purposes of assigning an AFA rate as the PRC-wide rate in this investigation.

In making a determination as 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. No information has been placed on the record to indicate that the rates in the petition are unreflective of commercial practices of the ammonium sulfate industry. As such, we find the petition rate of 493.46 percent relevant to the PRC-wide entity. Furthermore, as there are no respondents in this investigation for which we are calculating a dumping margin, we relied upon the rates found in the petition, which is the only information regarding the ammonium sulfate industry reasonably at the Department's disposal.

Because there has been no demonstration that an adjustment for domestic subsidies is warranted, the Department is not making any such adjustment to the rate being assigned to the PRC-wide entity.

VIII. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES IN COMPANION COUNTERVAILING DUTY INVESTIGATION

Pursuant to section 772(c)(1)(C) of the Act, the Department makes adjustments for countervailable export subsidies. The Department is making no adjustments to the antidumping cash deposit rate in the instant investigation because the Department has made no findings in the companion CVD investigation that any of the programs are export subsidies. While we recognize that certain programs in the companion CVD investigation were alleged to be export subsidies, the Government of the PRC (GOC) and the two mandatory company respondents in the CVD investigation – Wuzhoufeng Agricultural Science & Technology Co. Ltd. (Wuzhong

³⁹ See Initiation Checklist.

⁴⁰ *Id.*

AST) and Yantai Jiahe Agriculture Means of Production Co. Ltd. (Yantai AMP) – did not cooperate to the best of their ability, and so the Department’s preliminary determination that the alleged programs were countervailable subsidies was based on facts available with adverse inferences, (or AFA). In relying on facts available with adverse inferences, the Department did not preliminarily determine that the subsidies in question were export subsidies. As such, the Department finds that, without a determination in the companion CVD investigation that a program is an export subsidy, it is not appropriate to make an offset to the cash deposit rates in this AD investigation pursuant to section 772(c)(1)(C) of the Act. Accordingly, we will not apply the export subsidy offset to the cash deposit rates assigned to Wuzhoufeng AST or Yantai AMP or to the “all-others” rate, which are reflected in the accompanying *Federal Register* notice.

IX. PUBLIC COMMENT

Case briefs may be submitted to Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than 30 days after the publication of this preliminary determination in the *Federal Register*, and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.⁴¹

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.⁴² This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.⁴³ Requests should contain the party’s name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing. Issues raised in the hearing will be limited to those raised in the respective case briefs.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS. Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,⁴⁴ on the due dates established above.

X. U.S. ITC NOTIFICATION

In accordance with section 733(f) of the Act, we will notify the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to

⁴¹ See 19 CFR 351.309(c)(1)(i) and (d)(1).

⁴² See 19 CFR 351.309(c)(2) and (d)(2).

⁴³ See 19 CFR 351.310(c).

⁴⁴ See 19 CFR 351.303(b)(1).

make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain ammonium sulfate, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of our final determination.

XI. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

1 November 2016
Date