



A-570-012  
Investigation  
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August 29, 2014

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM: Gary Taverman *GT*  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination of the  
Antidumping Duty Investigation of Carbon and Certain Alloy Steel  
Wire Rod from the People's Republic of China

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## SUMMARY

The Department of Commerce (Department) preliminarily determines that carbon and certain alloy steel wire rod (steel wire rod) from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of the accompanying Federal Register notice.

## BACKGROUND

On January 31, 2014, the Department received an antidumping duty (AD) petition concerning imports of steel wire rod from the PRC filed in proper form by ArcelorMittal USA LLC, Charter Steel, Evraz Pueblo (formerly Evraz Rocky Mountain Steel), Gerdau Ameristeel US Inc., Keystone Consolidated Industries, Inc., and Nucor Corporation (collectively, the petitioners).<sup>1</sup> The Department initiated an AD investigation of steel wire rod from the PRC on February 20, 2014.<sup>2</sup>

In the Initiation Notice, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in non-market economy (NME)

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<sup>1</sup> See Petition for the Imposition of Antidumping and Countervailing Duties on Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China, filed on January 31, 2014 (petition); and the petitioners' February 10, 2014, filing titled, "Petitioners' Response to Commerce Department Antidumping Supplemental Questionnaire-Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China."

<sup>2</sup> See Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Initiation of Antidumping Duty Investigation, 79 FR 11077 (February 27, 2014) (Initiation Notice).



investigations.<sup>3</sup> The process requires exporters and producers to submit a separate rate application (SRA) and to demonstrate an absence of both de jure and de facto government control over their export activities. The Initiation Notice stated that the SRA was due 60 days after publication of the notice, which was April 29, 2014.

On February 24 and 25, 2014, the Department mailed quantity and value (Q&V) questionnaires to the 58 PRC exporters and/or producers of steel wire rod named in the petition. On March 13, 2014, the Department received timely filed Q&V questionnaire responses from 11 exporters/producers.<sup>4</sup>

On March 19, 2014, the U.S. International Trade Commission preliminary determined that there is a reasonable indication that an industry in the United States was materially injured by reason of imports of steel wire rod from the PRC.<sup>5</sup>

On April 16, 2014, the Department determined that it was not practicable to examine more than two mandatory respondents in the investigation and selected the two exporters accounting for the largest volume of steel wire rod exported from the PRC during the POI based on Q&V data (i.e., Benxi Beiyong Iron and Steel Group Imp. and Exp. Corp. Ltd. (Benxi) and Tangshan Iron and Steel Group Co. Ltd. (Tangshan)).<sup>6</sup>

On April 17, 2014, the Department issued its AD NME questionnaire to Benxi and Tangshan. Tangshan did not respond to the Department's AD questionnaire.<sup>7</sup> On May 22 and June 9, 2014, Benxi submitted its response to sections A and C of the Department's AD questionnaire, respectively.

On April 28, 2014, eight PRC companies submitted SRAs.<sup>8</sup> From May 30 to June 6, 2014, the Department issued supplemental questionnaires to these eight separate rate applicants, and received responses to those supplemental questionnaires between June 19 and August 1, 2014.

On June 4, the petitioners filed a critical circumstances allegation and made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) for a 50-day postponement of the preliminary determination.<sup>9</sup>

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<sup>3</sup> See Initiation Notice, 79 FR at 11080.

<sup>4</sup> The Department did not issue a Q&V questionnaire to one PRC company, Xuanhua Iron and Steel Group Ltd. (Xuanhua), because it was not named in the Petition. Nevertheless, the Department received a Q&V response from this company on March 13, 2014. See Letter from Xuanhua to the Department, dated March 13, 2014.

<sup>5</sup> See Carbon and Certain Alloy Steel Wire Rod From China, 79 FR 16373 (March 25, 2014) (ITC Preliminary Determination).

<sup>6</sup> See Memorandum to James Maeder, Director, Office II, from Irene Darzenta Tzafolias, Program Manager, Office II, entitled, "Respondent Selection in the Antidumping Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China," dated April 16, 2014 (Respondent Selection Memo).

<sup>7</sup> See Memorandum to the File entitled, "Documentation Confirming Delivery Receipt of the Antidumping Duty Questionnaire by Tangshan Iron and Steel Group Ltd. (Tangshan)," dated August 22, 2014.

<sup>8</sup> These companies included Angang Group International Trade Corporation (Angang), Baotou Steel International Economic and Trading Co., Ltd. (Baotou), Bei Tai Iron and Steel Group Imp. and Exp. (Dalian) Co., Ltd. (Beitai), Hunan Valin Xiangtan Iron & Steel Co., Ltd. (Hunan Valin), Qingdao Iron and Steel Co., Ltd. (Qingdao), Rizhao Steel Wire Co.; Ltd. (Rizhao), Jiangsu Shagang International Trade Co., Ltd. (Shagang); and Jiangsu Yonggang Group Co. Ltd. (Yonggang).

On June 16, 2014, Benxi notified the Department that it declined to respond to additional information requests in this investigation.<sup>10</sup>

On June 17, 2014, the Department published a postponement fully extending the due date of the preliminary determination to August 29, 2014.<sup>11</sup>

On July 25, 2014, the petitioners submitted comments for consideration in the preliminary determination.<sup>12</sup>

## **PERIOD OF INVESTIGATION**

The period of investigation (POI) is July 1, 2013, through December 31, 2013. This period corresponds to the two most recent fiscal quarters prior to the month in which the petition was filed, which was on January 31, 2014.<sup>13</sup>

## **SCOPE OF INVESTIGATION**

The merchandise covered by this investigation is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately circular cross section, less than 19.00 mm in actual solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; or (e) concrete reinforcing bars and rods. Also excluded are free cutting steel (also known as free machining steel) products (*i.e.*, products that contain by weight one or more of the following elements: 0.1 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093; 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035 of the HTSUS. Products entered under subheadings 7213.99.0090 and 7227.90.6090 of the HTSUS also may be included in this scope if they meet the physical description of subject merchandise above. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

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<sup>9</sup> See Petitioners' Critical Circumstances Allegation, dated June 4, 2014, and Petitioners' letter Requesting to Postpone the Preliminary Determination, dated June 4, 2014.

<sup>10</sup> See Benxi's letter to the Department, dated June 17, 2014.

<sup>11</sup> See Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation, 79 FR 34491 (June 17, 2014).

<sup>12</sup> See the petitioners' letter to the Department, dated July 25, 2014.

<sup>13</sup> See 19 CFR 351.204(b)(1).

## SCOPE COMMENTS

In accordance with the preamble to the Department's regulations,<sup>14</sup> in our Initiation Notice, we notified parties of an opportunity to comment on the scope of the investigation.<sup>15</sup> No parties submitted comments on the scope of the investigation. Therefore, we have not made any changes to the existing scope of this investigation.

## RESPONDENT SELECTION

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 an 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.

In the Initiation Notice, the Department stated that it intended to select respondents using information derived from Q&V questionnaire responses.<sup>16</sup> Between February 24 and 25, 2014, the Department mailed Q&V questionnaires to the 58 PRC exporters and/or producers of steel wire rod named in the petition. All of the Q&V questionnaires were successfully delivered to the addressees, except for 12, as evidenced by FedEx notification and delivery slip confirmation receipts on the record.<sup>17</sup> The Department also posted a copy of the Q&V questionnaire on its website.

On March 13, 2014, the Department received timely filed Q&V questionnaire responses from 11 exporters/producers. On April 16, 2014, the Department determined that it was not practicable to examine more than two mandatory respondents in the investigation. Therefore, in accordance with section 777A(c)(2) of the Act, the Department selected the two exporters accounting for the largest volume of steel wire rod exported from the PRC during the POI based on Q&V data (i.e., Benxi and Tangshan).<sup>18</sup> The Department issued its AD NME questionnaire to Benxi and Tangshan on April 17, 2014.

On May 22 and June 9, 2014 Benxi submitted its response to sections A and C of the Department's AD questionnaire, respectively. However, on June 16, 2014, Benxi notified the

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<sup>14</sup> See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997) (Preamble).

<sup>15</sup> See Initiation Notice, 79 FR at 11078.

<sup>16</sup> Id., at 11080.

<sup>17</sup> See the Department's memo to the file entitled, "Issuance of Quantity and Value Questionnaire," dated April 1, 2014.

<sup>18</sup> See Respondent Selection Memo.

Department that it declined to respond to additional information requests in this investigation.<sup>19</sup> As a result of Benxi's decision to terminate its participation in this case, it did not submit a response to section D of the Department's AD questionnaire. Tangshan, the other mandatory respondent, did not respond to the Department's AD questionnaire in its entirety. No company requested to be a voluntary respondent in this investigation.

## DISCUSSION OF THE METHODOLOGY

### Non-Market Economy Country

The Department considers the PRC to be an NME country.<sup>20</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.

### Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the NME country are subject to government control and, thus, should be assessed a single AD rate.<sup>21</sup> In the Initiation Notice, the Department notified parties of the application process by which exporters may obtain separate-rate status in NME proceedings.<sup>22</sup> It is the Department's policy to assign all exporters of merchandise under investigation that are in an NME country a single weighted-average dumping margin unless an exporter can demonstrate that it is sufficiently independent from government control so as to be entitled to a separate rate.<sup>23</sup> The Department analyzes whether each entity exporting the subject merchandise is sufficiently independent from government control under a test arising from Sparklers,<sup>24</sup> as further developed in Silicon Carbide.<sup>25</sup> In accordance with this separate rates test, the Department assigns separate rates to respondents in NME proceedings if respondents can demonstrate the absence of both de jure and de facto governmental control over their export

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<sup>19</sup> See Benxi's letter to the Department dated June 17, 2014.

<sup>20</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>21</sup> See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079, 53082 (September 8, 2006); see also Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China, 71 FR 29303, 29307 (May 22, 2006).

<sup>22</sup> See Initiation Notice, 78 FR at 29330.

<sup>23</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); Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585, 22586-89 (May 2, 1994) (Silicon Carbide).

<sup>24</sup> See Sparklers, 56 FR at 20588.

<sup>25</sup> See Silicon Carbide, 59 FR at 22586-89.

activities.<sup>26</sup> If, however, the Department determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether it is independent from government control and, therefore, eligible for a separate rate.

Under the separate rates test, the Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.<sup>27</sup>

Further, the Department typically considers four factors in evaluating whether a respondent is subject to de facto government control of its export functions: (1) whether the export prices ("EP") are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and, (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.<sup>28</sup>

The Department continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China antidumping duty proceeding, and Commerce's determinations therein.<sup>29</sup> In particular, we note that in litigation involving the diamond sawblades proceeding, the U.S. Court of International Trade found the Department's existing separate rates analysis deficient in the circumstances of that case, in which a government-controlled entity had significant ownership in the respondent exporter.<sup>30</sup> We have concluded that

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<sup>26</sup> See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China, 72 FR 52355, 52356 (September 13, 2007); Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review, 66 FR 1303, 1306 (January 8, 2001), unchanged in Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review, 66 FR 27063 (May 16, 2001); Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China, 64 FR 71104 (December 20, 1999).

<sup>27</sup> See Sparklers, 56 FR at 20589.

<sup>28</sup> See Silicon Carbide, 59 FR at 22586-89; Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

<sup>29</sup> See Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China (May 6, 2013) in Advanced Technology & Materials Co., Ltd., et al. v. United States, 885 F. Supp. 2d 1343 (CIT 2012), affirmed in Advanced Technology & Materials Co., Ltd., et al. v. United States, 938 F. Supp. 2d 1342 (CIT 2013). This remand redetermination is on the Enforcement and Compliance website at <http://enforcement.trade.gov/remands/12-147.pdf>. 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 Memo 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.

<sup>30</sup> See, e.g., Advanced Technology & Materials Co., Ltd. v. United States, 885 F. Supp. 2d 1343, 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}

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, which 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 profitability of the company. Accordingly, we have considered the level of government ownership where necessary.

#### A. Separate Rate Recipients

The Department preliminarily determines that Rizhao, Hunan Valin, and Shagang are eligible to receive a separate rate, as explained below.

##### 1. Absence of De Jure Control

The evidence provided by Rizhao, Hunan Valin, and Shagang supports a preliminary finding of an absence of de jure government control for each of these companies based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of the companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.<sup>31</sup>

##### 2. Absence of De Facto Control

The evidence provided by Rizhao,<sup>32</sup> Hunan Valin,<sup>33</sup> and Shagang<sup>34</sup> supports a preliminary finding of an absence of de facto government control based on record statements and supporting documentation showing that the companies: (1) set their own EPs independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding the disposition of profits or financing of losses.

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'management' of its 'state-owned assets' is restricted to the kind of passive-investor de jure 'separation' that Commerce concludes.") (footnotes 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).

<sup>31</sup> See Rizhao's April 28, 2014, SRA at 6 through 9, and Exhibits 2, 3, and 4; Hunan Valin's April 28, 2014, SRA at 9 through 13, and Exhibits 6, 7 and 8; and Shagang's April 28, 2014, SRA at 6 through 9, and Exhibits 2, 3, and 5a-d.

<sup>32</sup> See Rizhao's April 28, 2014, SRA at 9 through 17, and Exhibits 1, 7, 8, and 9.

<sup>33</sup> See Hunan Valin's April 28, 2014, SRA at 13 through 21, and Exhibits 4, 5, 10, 11, and 12.

<sup>34</sup> See Shagang's April 28, 2014, SRA at 9 through 19, and Exhibits 1a-b, 9a-d, and 10.

Therefore, the evidence placed on the record of this investigation by Rizhao, Hunan Valin and Shagang demonstrates an absence of de jure and de facto government control under the criteria identified in Sparklers and Silicon Carbide. Accordingly, the Department preliminarily grants separate rates to Rizhao, Hunan Valin, and Shagang.<sup>35</sup>

## B. Companies Not Receiving a Separate Rate

The Department preliminarily determines that Angang, Baotou, Qingdao, and Yonggang are not eligible to receive a separate rate, as explained below. The Department also preliminarily determines that Beitai is ineligible for a separate rate because of its relationship with mandatory respondent Benxi.<sup>36</sup>

### 1. Absence of De Jure Control

The evidence provided by Angang,<sup>37</sup> Baotou,<sup>38</sup> Qingdao,<sup>39</sup> and Yonggang<sup>40</sup> supports a preliminary finding of an absence of de jure government control for each of these companies.

### 2. Failure to Demonstrate Absence of De Facto Control

The Department preliminarily determines that Angang, Baotou, Qingdao, and Yonggang have not demonstrated an absence of de facto government control, and is, therefore, not granting these companies a separate rate for the reasons explained below.<sup>41</sup>

Angang is wholly-owned by Anshan Iron and Steel Group Corporation (Ansteel), which is, in turn, wholly-owned by Ansteel Group Corporation (Ansteel Group). Ansteel Group is wholly-owned by the State-owned Assets Supervision and Administration Commission of the State Council (SASAC). Because of this level of government ownership, and the control that such ownership on its own establishes, we conclude that Angang does not satisfy the criteria demonstrating an absence of de facto government control over export activities. Consequently, Angang is ineligible for a separate rate. We note that evidence demonstrates that, via its 100-percent SASAC-owned Ansteel and Ansteel Group assets, the PRC government exercises its rights inherent in majority ownership as would be expected. For instance, Angang does not choose its managers, and there is significant overlap in management among Angang, Ansteel, and Ansteel Group.<sup>42</sup> Furthermore, Angang does not make independent decisions concerning the

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<sup>35</sup> See “Margin for the Separate Rate Companies” section below.

<sup>36</sup> See “The PRC-wide Entity” section below for further discussion.

<sup>37</sup> See Angang’s April 28, 2014, SRA at 9-10.

<sup>38</sup> See Baotou’s April 28, 2014, SRA at 11-12.

<sup>39</sup> See Qindao’s April 28, 2014, SRA at 8, and June 26, 2014, Supplemental SRA Response at Exhibit 18.

<sup>40</sup> See Yonggang’s July 2, 2014, Supplemental SRA Response at Exhibits 1A and 1B.

<sup>41</sup> For business proprietary information details for Angang, Baotou and Qingdao, see Memorandum entitled “Business Proprietary Information Related to Companies Not Receiving a Separate Rate in the Preliminary Determination,” dated concurrently with this memorandum. For business proprietary information details for Yonggang, see Memorandum entitled “Separate Rate Analysis for Jiangsu Yonggang Group Co. Ltd.” (Yonggang Separate Rate Analysis Memo), dated concurrently with this memorandum.

<sup>42</sup> See Angang’s April 28, 2014 SRA at Exhibits 7 and 10; and Angang’s July 2, 2014, Supplemental SRA Response at Exhibits 15 and 18.

disposition of its profits or the financing of its losses. Specifically, Angang does not retain its own profits.<sup>43</sup>

Similarly, Baotou is wholly-owned by Baotou Iron & Steel (Group) Co., Ltd. (Baotou Group), which is, in turn, majority-owned by the People's Government of Inner Mongolia Autonomous Region, a PRC government entity.<sup>44</sup> Because of this level of government ownership, and the control that such ownership on its own establishes, we conclude that Baotou does not satisfy the criteria demonstrating an absence of de facto government control over export activities. Consequently, Baotou is ineligible for a separate rate. As with Angang, we note that evidence demonstrates that, via its majority ownership of the Baotou Group, the PRC government exercises its rights inherent in majority ownership as would be expected. For instance, Baotou's Board of Directors and General Manager are appointed by the Baotou Group.<sup>45</sup>

Qingdao's largest shareholder is a wholly state-owned enterprise.<sup>46</sup> Because of this level of government ownership, and the control that such ownership on its own establishes, we conclude that Qingdao does not satisfy the criteria demonstrating an absence of de facto government control over export activities. Consequently, Qingdao is ineligible for a separate rate. We note that evidence demonstrates that, via its 100-percent state-owned asset, the PRC government exercises its rights inherent in majority ownership as would be expected. For instance, Qingdao's largest shareholder appoints its board members and there is shared management between Qingdao and its largest shareholder.

With respect to Yonggang, as noted above, we find it to be ineligible for a separate rate. Because the information underlying our determination is of a business proprietary nature, our separate rate analysis with respect to Yonggang is included in a separate memorandum.<sup>47</sup>

### **The PRC-wide Entity**

The Department did not receive a response to its AD questionnaire from Tangshan, which was selected as a mandatory respondent in this investigation. Because Tangshan did not respond to the Department's request for information, it has not demonstrated that it is eligible for a separate rate and, therefore, the Department considers it to be a part of the PRC-wide entity.

Benxi, the other mandatory respondent in this investigation, provided responses to sections A and C of the Department's AD questionnaire, which included a separate rate application.<sup>48</sup> However, on June 16, 2014, Benxi notified the Department that it declined to respond to additional information requests in this investigation, and, thus, withdrew from the investigation.<sup>49</sup> Prior to withdrawing from this investigation, Benxi stated in its May 22, 2014, response to section A of the Department's AD questionnaire (Section A Response) that: (1) its section A submission was being submitted on behalf of itself and "its affiliated exporter, Beitai

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<sup>43</sup> See Angang's April 28, 2014 SRA at Exhibit 7.

<sup>44</sup> See Baotou's April 28, 2014 SRA at Exhibits 9 and 15.

<sup>45</sup> See Baotou's April 28, 2014 SRA at Exhibit 9.

<sup>46</sup> See Qingdao's June 26, 2014, Supplemental SRA Response at 2.

<sup>47</sup> See Yonggang Separate Rate Analysis Memo.

<sup>48</sup> See Benxi May 22, 2014, Section A Response at 2-20.

<sup>49</sup> See Benxi's Letter to the Department, dated June 16, 2014.

Iron and Steel Group Imp. and Exp. (Dalian) Co., Ltd...”;<sup>50</sup> (2) Beitai should be treated as part of the Benxi Group entity;<sup>51</sup> and, (3) it was “supplementing and clarifying certain responses and information” contained in Beitai’s SRA filed on April 28, 2014.<sup>52</sup> Additionally, Benxi reported Beitai’s sales of subject merchandise made during the POI in its June 9, 2014, response to section C of the Department’s AD questionnaire (Section C Response).<sup>53</sup> Therefore, in light of these statements as well as other record evidence<sup>54</sup> (including Benxi’s withdrawal from the investigation), we find it appropriate to consider Beitai a part of Benxi for purposes of this preliminary determination. Because Benxi stated that it will not respond to any additional information requests in this investigation, the Department does not have sufficient information on the record to determine whether it is eligible for a separate rate or to calculate a margin for Benxi. Therefore, the Department considers Benxi (of which Beitai is a part) to be part of the PRC-wide entity.

Furthermore, as discussed above, we have determined not to grant a separate rate to Angang, Baotou, Qingdao, and Yonggang. Because these companies have not demonstrated that they are eligible for a separate rate, the Department considers them to be part of the PRC-wide entity.

In addition, the record indicates that there are other PRC exporters and/or producers of the merchandise under consideration during the POI that did not respond to the Department’s requests for information. Specifically, the Department did not receive responses to its Q&V questionnaire from 48 PRC exporters and/or producers<sup>55</sup> that were named in the petition and to

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<sup>50</sup> See Benxi Section A Response at 1. In its SRA, Beitai also provided information showing its affiliation with Benxi. See Beitai’s April 28, 2014, SRA at Exhibit 13. On July 25, 2014, the petitioners argued that the Department should not grant Beitai a separate rate because of its affiliation with Benxi and Benxi’s decision to no longer participate in this investigation. See the petitioners’ letter, dated July 25, 2014. Neither Benxi nor Beitai responded to the petitioners’ comments.

<sup>51</sup> See Benxi’s Section A Response at 1.

<sup>52</sup> See *id.* at 3.

<sup>53</sup> See Benxi’s Section C Response at 2 and Exhibit C-1.

<sup>54</sup> For example, the record shows that Beitai and Benxi are part of the same corporate group. See Beitai’s April 28, 2014, SRA at Exhibit 13; and Benxi’s May 22, 2014, Section A Response at Exhibit 11. Benxi and Beitai also have common board members and export subject merchandise manufactured by the same affiliated producers. See Beitai’s April 28, 2014, SRA at 8 and 18; and Benxi’s May 22, 2014, Section A Response at Exhibits 7 and 16. Beitai also provided a company certification in Benxi’s Section A and C responses. See cover letters in Benxi’s May 22, 2014, and June 9, 2014, submissions.

<sup>55</sup> These companies include: Baoshan Iron & Steel Co., Ltd, Beijing Jianlong Heavy Industry Group Co., Ltd., Changzhou Zongtain Iron & Steel Co., Chongqing Iron and Steel Group Co., Ltd., Delong Steel Limited, Fugang Group, Guangxi Liuzhou Iron and Steel Group Co., Guofeng Iron and Steel, Handan Iron & Steel Group Co., Ltd., Hangzhou Iron and Steel Group Company, Hebei Iron & Steel Group Co., Ltd. (includes Jin Ding Heavy Industry Co., Ltd.), Hebei Jingye Group, Hebei Puyang Iron and Steel Co. Ltd., Hebei Xinjin Iron and Steel Co., Ltd. (includes Xuanhua Iron & Steel Group and Tang Steel), Hubei Xinyegang Steel Co. Ltd., Henan Jiyuan Iron & Steel Group Co., Ltd., Jiangxi PXSteel Industrial Co., Ltd., Jinan Iron and Steel Group, Co., Ltd. (subsidiary of Shandong Iron and Steel Group Co., Ltd.), Jinxi Group, Jiuquan Iron & Steel Group Co., Ltd. (JISCO) (includes Yugang (Yuzhong Iron & Steel)), Kuming Iron & Steel Holding Co., Ltd. (KISC), Laiwu Iron and Steel Group. Co. Ltd., Laiyuan County Aoyu Steel Co. Ltd., Ling Yuan Iron and Steel Group Co., Ltd., Lengshuijiang Iron & Steel Group Co., Maanshan Iron & Steel Co., Ltd., Nanjing Iron and Steel United Co., Ltd., Panzhihua Iron & Steel (Group) Co. (Pangang Group), Pingxiang Iron & Steel Co., Ltd., Shaanxi Longmen Iron & Steel Group Co., Ltd. (includes Hangzhong Iron and Steel), Shanxi Jincheng Steel Holding Group Co., Ltd. (Jingang Group), Shanxi Zhongyang Iron and Steel Co., Ltd., Shougang Changzhi Iron & Steel Ltd. (includes Shougang Qian'an), Shougang Group (includes Shougant Corp. aka Beijing Capital Iron and Steel Group company (Shougang Steel), Shougang Tonggang

whom the Department issued or attempted to issue the questionnaire.<sup>56</sup> Because non-responsive PRC companies have not demonstrated that they are eligible for separate rate status, the Department considers them to be part of the PRC-wide entity. Furthermore, as explained in the next section, we have preliminarily determined the rate applicable to the PRC-wide entity on the basis of AFA.

### **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 or any other person (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 the companies named in “The PRC-wide Entity” section above) failed to provide necessary information, withheld information requested by the Department, failed to provide information in a timely manner, and significantly impeded the proceeding by not submitting the requested information. The PRC-wide entity neither filed documents indicating that it was experiencing difficulty providing the information, nor did it request to submit the information in an alternate form. As a result, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act, we find that the use of facts available is appropriate to determine the rate for the PRC-wide entity.<sup>57</sup>

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may use an inference that is adverse to the interests of an interested party if that party failed to cooperate by not acting to the best of its ability to comply with requests for information. The Department finds that the PRC-wide entity’s failure to provide the requested information constitutes circumstances under which it is reasonable to conclude that the PRC-wide entity is not fully cooperative.<sup>58</sup> Therefore, the Department preliminarily determines that the PRC-wide entity failed to cooperate by not acting to the best of its ability to comply with requests for information and, consequently, the Department may employ an adverse inference in

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Group, Sichuan Tranvic Group Co. Ltd., Tempo International Industry Co., Ltd., Tianjin Iron & Steel Group Co., Ltd., Tianjin Rockcheck Steel Group Co., Ltd., Tianjin Tiantie Metallurgical Group, Tianjin Tiantie Zhaer Steel Production Co., Ltd., Tonghua Steel Group, Weifang Special Steel Group Co., Ltd., Wuhan Iron & Steel Co., Ltd. (Wuhan Iron & Steel (Group) Corp.) (WISCO), Wuanshi Yuhua Steel Co, Ltd., Xilin Iron & Steel Group, Xingtai Iron & Steel Co., Ltd., and Xinyu Iron & Steel Co., Ltd.

<sup>56</sup> See “Respondent Selection” section above.

<sup>57</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).

<sup>58</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”).

selecting from among the facts otherwise available. When using an adverse inference, section 776(b) of the Act states that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

In selecting a rate for the PRC-wide entity based on adverse facts available (AFA), the Department's practice is to select 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.<sup>59</sup> Specifically, it is the Department's practice to select, as an AFA rate, the higher of: (a) the highest dumping margin alleged in the petition; or, (b) the highest calculated dumping margin of any respondent in the investigation.<sup>60</sup> There are no calculated margins for any respondents in this investigation. Therefore, as AFA, the Department has preliminarily assigned to the PRC-wide entity the rate of 110.25 percent, which is the highest dumping margin alleged in the petition. The dumping margin for the PRC-wide entity applies to all entries of the merchandise under investigation except for entries of subject merchandise from the exporter/manufacturer combinations listed in the "Margin for the Separate Rate Companies" section below.

### **Corroboration of the 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>61</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>62</sup> The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import

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<sup>59</sup> See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland, 69 FR 77216 (December 27, 2004), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland, 70 FR 28279 (May 17, 2005).

<sup>60</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); Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From the People's Republic of China, 65 FR 34660 (May 31, 2000), and accompanying Issues and Decision Memorandum, at "Facts Available."

<sup>61</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994).

<sup>62</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).

statistics and customs data, and information obtained from interested parties during the particular investigation.<sup>63</sup>

For 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.<sup>64</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 EP and normal value (NV) calculations used in the petition to derive margins. We also examined information from various independent sources provided either in the petition or in the supplement 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>65</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>66</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>67</sup> We find that the rates in the petition reflect commercial practices of the steel wire rod industry and, as such, are relevant to the respondents in this investigation.<sup>68</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>69</sup> Such consideration typically encompasses the commercial behavior of other respondents under investigation; however, as there are no cooperating mandatory respondents in this investigation, we have relied upon the rates found in the petition, which is the only information regarding the steel wire rod industry reasonably at the Department's disposal. Because the petition rates are derived from the steel wire rod industry and are based on information related to aggregate data involving the steel wire rod industry, we have determined that the petition rates are relevant. Accordingly, by using information that was determined

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<sup>63</sup> 19 CFR 351.308(d).

<sup>64</sup> See Initiation Checklist, at 6-10.

<sup>65</sup> Id.

<sup>66</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 6929, 69132 (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>67</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>68</sup> See Initiation Checklist at 6-9.

<sup>69</sup> See, e.g., Ferro Union, Inc. v. United States, 44 F. Supp. 2d 1310, 1334-35 (CIT 1999).

to be reliable in the pre-initiation stage of this investigation and preliminarily determining it to be relevant to the uncooperative respondents in this investigation, we have corroborated the AFA rate of 110.25 percent “to the extent practicable” as provided in section 776(c) of the Act. Therefore, as AFA, we have applied the petition rate of 110.25 percent to the PRC-wide entity, which includes Angang, Beitai, Benxi, Baotou, Qingdao, Tangshan, Yonggang, and the other companies listed in “The PRC-wide Entity” section above.

### **Margin for the Separate Rate Companies**

Normally, the Department’s practice is to assign to separate rate companies that were not individually examined a rate equal to the average of the rates calculated for the individually examined respondents, excluding any rates that are zero, de minimis, or based entirely on AFA, in accordance with section 735(c)(5)(A) of the Act.<sup>70</sup> The statute further provides that, where all margins are zero rates, de minimis rates, or rates based entirely on facts available, the Department may use “any reasonable method” for assigning the rate to non-selected respondents.<sup>71</sup> In this case, neither of the mandatory respondents are receiving a separate rate for this preliminary determination, i.e., they are receiving a rate based on AFA as part of the PRC-wide entity. Therefore, pursuant to sections 735(c)(5)(A) and (B) of the Act, we determined the rate for the separate rate companies using a reasonable method that is consistent with our practice. Accordingly, we assigned Hunan Valin, Rizhao, and Shagang a rate of 106.19 percent, which is equal to the simple average of the petition rates.<sup>72</sup>

### **Combination Rates**

In the Initiation Notice, the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation.<sup>73</sup> This practice is described in Policy Bulletin 05.1.<sup>74</sup>

## **CRITICAL CIRCUMSTANCES**

In their June 4, 2014, allegation, the petitioners argue that the Department should find that critical circumstances exist with respect to imports covered by the scope of the investigation based on the criteria in section 733(e) of the Act. The petitioners contend that the Department may rely on the margins alleged in the petition, and stated in the Initiation Notice, to determine

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<sup>70</sup> See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People’s Republic of China, 71 FR 77373, 77377 (December 26, 2006), unchanged in Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People’s Republic of China, 72 FR 19690 (April 19, 2007).

<sup>71</sup> See section 735(c)(5)(B) of the Act.

<sup>72</sup> See Galvanized Steel Wire From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 17430, 17432 (March 26, 2012), and accompanying Issues and Decision Memorandum at Comment 7. See also Memorandum to the File entitled “Calculation of Preliminary Margin for Separate Rate Companies,” dated concurrently with this decision memorandum.

<sup>73</sup> See Initiation Notice, 78 FR at 73836.

<sup>74</sup> See Enforcement and Compliance Policy Bulletin No. 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 on the Department’s website at <http://enforcement.trade.gov/policy/bull05-1.pdf>.

whether importers knew or should have known that exporters were selling the subject merchandise at LTFV.<sup>75</sup> The petitioners argue that because these estimated margins range from 99.32 to 110.25 percent,<sup>76</sup> the magnitude of margins is sufficient to impute importer knowledge of dumping of the subject merchandise.<sup>77</sup>

The petitioners also contend that, based on the preliminary determination of injury by the ITC, there is a reasonable basis to impute importer knowledge that there is material injury by reason of dumped imports.<sup>78</sup> Finally, as part of their allegation and pursuant to 19 CFR 351.206(h)(2), the petitioners submitted import statistics for the products covered by the scope of this investigation for the period between November 2013 and January 2014, as well as for February through April 2014, as evidence of massive imports of steel wire rod from the PRC during a relatively short period.<sup>79</sup>

### *Analysis*

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. For the reasons explained below, we are preliminarily determining that critical circumstances do not exist for the separate rate companies but that they do exist for the PRC-wide entity. We considered each of the statutory criteria for finding critical circumstances below.

#### ***A History of Dumping and Material Injury Section 733(e)(1)(A)(i) of the Act:***

In determining whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, the Department generally considers current or previous AD duty orders on subject merchandise from the country in question in the United States and current orders in any other country with regard to imports of subject merchandise.<sup>80</sup> There are no current or previous orders

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<sup>75</sup> See Letter from Petitioners to the Department entitled, “Carbon and Certain Steel Wire Rod from the People’s Republic of China-Critical Circumstances Allegations,” June 4, 2014 (Petitioners’ Critical Circumstances Allegation) at 4.

<sup>76</sup> See Initiation Notice, 79 FR at 11080.

<sup>77</sup> See Petitioners’ Critical Circumstances Allegation at 3-5.

<sup>78</sup> Id., at 4-5.

<sup>79</sup> Id., at 10-11, and Attachment 1.

<sup>80</sup> See, e.g., Certain Oil Country Tubular Goods From the People’s Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination, 74 FR 59117, 59120 (November 17, 2009) unchanged in Certain Oil Country Tubular Goods from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010).

on the subject merchandise from the PRC in the United States.<sup>81</sup> The Department is aware of the existence of an active AD order on steel wire rod from the PRC in one other country which covers some of the products within the scope of the investigation.<sup>82</sup> As a result, the Department finds that there is a history of injurious dumping of steel wire rod from the PRC, pursuant to section 733(e)(1)(A)(i) of the Act.

***Knowledge that Exporters Were Dumping Section 733(e)(1)(A)(ii) of the Act:***

Alternatively, under section 733(e)(1)(A)(ii) of the Act, the Department normally considers margins of 25 percent or more for export price sales and 15 percent or more for constructed export price sales sufficient to impute importer knowledge of sales at LTFV.<sup>83</sup> Because the PRC-wide entity (which includes the mandatory respondents and the non-individually investigated companies which we preliminarily determined do not qualify for a separate rate) failed to cooperate in this investigation, we are preliminarily assigning, as AFA, a margin of 110.25 percent.<sup>84</sup> With respect to the non-individually investigated companies that we preliminarily determine qualify for a separate rate, we have preliminarily assigned them a rate of 106.19 percent.<sup>85</sup> Because the preliminary dumping margins exceed the threshold sufficient to impute knowledge of dumping, these margins provide a sufficient basis for imputing knowledge to the importers of sales of subject merchandise at LTFV.

Finally, because the ITC preliminarily found a reasonable indication that an industry in the United States is materially injured by imports from the PRC of steel wire rod, the Department determines that importers knew, or should have known, that there was likely to be material injury by reason of sales of steel wire rod at LTFV by the non-individually investigated companies that qualify for a separate rate and the PRC-wide entity.<sup>86</sup>

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<sup>81</sup> The domestic industry did file an antidumping duty case against steel wire rod from the PRC in 2005, but the International Trade Commission reached a preliminary negative determination. See Carbon and Certain Alloy Steel Wire Rod from China, Germany, and Turkey, Inv. Nos. 731-TA-1099-1101 (Preliminary), USITC Pub. 3456 (Jan. 2006); Carbon and Certain Steel Wire Rod from China, Germany, and Turkey, 71 FR 132 (January 3, 2006).

<sup>82</sup> Specifically, Malaysia has an AD measure (order) in place on steel wire rod from China, the scope of which covers some of the products covered by the scope of this investigation. (The HTS numbers involved in the Malaysian case are 7213.10, 7213.20, 7213.91 and 7213.99). This AD measure (order) was imposed on February 20, 2013, and to the Department's knowledge, was still in force as of August 29, 2014. See Memorandum to The File entitled "Information Pertaining to History of Dumping and Massive Imports Analysis," dated concurrently with this memorandum (Critical Circumstances Memorandum).

<sup>83</sup> See, e.g., Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances, 67 FR 6224, 6225 (February 11, 2002), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Moldova, 67 FR 55790 (August 30, 2002); Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China, 70 FR 5606, 5607 (February 3, 2005), unchanged in Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal From the People's Republic of China, 70 FR 9037 (February 24, 2005).

<sup>84</sup> For further information, see "The PRC-Wide Entity" and "Application of Facts Available and Adverse Inferences" sections above.

<sup>85</sup> See "Separate Rates" and "Margin for the Separate Rate Companies" sections above.

<sup>86</sup> See ITC Preliminary Determination, 79 FR 16373.

***Massive Imports Over a Relatively Short Period Section 733(e)(1)(B) of the Act:***

The Department's regulations at 19 CFR 351.206(h)(1) provide that, in determining whether imports of the subject merchandise were "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, "{i}n general, unless the imports during the 'relatively short period' ...have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive." The regulation defines "relatively short period" generally as the period starting on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later (*i.e.*, the comparison period). 19 CFR 351.206(i). These regulations further provide that, if the Department "finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely," then the Department may consider a period of not less than three months from that earlier time. The comparison period is normally compared to a corresponding period prior to the filing of the petition (*i.e.*, the base period).

The petitioners included in their submission U.S. import data compiled by the Department for the period November 2013 through April 2014.<sup>87</sup> Based on these data, the petitioners calculated the monthly average imports for the base period (*i.e.*, imports for November 2013 through January 2014) and for the comparison period (*i.e.*, imports for February through April 2014), and claimed that imports of steel wire rod from the PRC increased by over 24.5 percent by volume during the three-month comparison period as compared to the three-month base period. Thus, the petitioners concluded that there were massive imports during a relatively short period.<sup>88</sup>

It is the Department's practice to base the critical circumstances analysis on all available data, using base and comparison periods of no less than three months.<sup>89</sup> Based on this practice, we chose to examine the base period October 2013 through January 2014, and the corresponding comparison period February 2014 through June 2014, in order to determine whether imports of subject merchandise were massive. These base and comparison periods satisfy the Department's practice that the comparison period is at least three months.

For the non-individually investigated separate rate companies, we relied upon Global Trade Atlas (GTA) import statistics specific to steel wire rod to determine if imports in the post-petition period for the subject merchandise were massive.<sup>90</sup> These GTA data show that there was no increase in imports of more than 15 percent during a "relatively short period" of time, in

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<sup>87</sup> See Petitioners' Critical Circumstances Allegation at 10 at Attachment 1.

<sup>88</sup> *Id.*

<sup>89</sup> See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India, 69 FR 47111, 47118-47119 (August 4, 2004), unchanged in Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India, 69 FR 76916 (December 23, 2004); and Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 3.

<sup>90</sup> See Critical Circumstances Memorandum.

accordance with 19 CFR 351.206(h) and (i). Therefore, we preliminarily do not find there to be massive imports for the non-individually investigated separate rate entities, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).

Because, as explained above, the PRC-wide entity has been unresponsive, as AFA, we preliminarily find there to be massive imports for the PRC-wide entity, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).

As a result, although we find that there is a history of dumping and material injury in other countries and that the margins alleged in the petition provide a sufficient basis for imputing knowledge to the importers of sales of subject merchandise at LTFV, because there are no massive imports for the non-individually investigated separate rate companies, we find that critical circumstances do not exist with respect to these companies. In addition, because we find that there is a history of dumping and material injury in other countries and elsewhere, that the margins alleged in the petition provide a sufficient basis for imputing knowledge to the importers of sales of subject merchandise at LTFV, and that there are massive imports for the PRC-wide entity, we find that critical circumstances exist with respect to the PRC-wide entity.

## **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 the mandatory respondents in this investigation to be part of the PRC-wide entity and we have preliminarily determined to apply AFA to 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>91</sup>

## **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>92</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

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<sup>91</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>92</sup> See section 777A(f)(1)(A)-(C) of the Act.

subject to a specified cap.<sup>93</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.

The Department's practice is to calculate an adjustment under section 777(A)(f) of the Act based on the information provided by the mandatory respondents. In this case, the Department has no information upon which to make an adjustment because the mandatory respondents did not respond to the Department's request for information. Therefore, the Department is preliminarily not making any adjustment pursuant to section 777(A)(f) of the Act to the AD cash deposit rates found in this investigation.

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

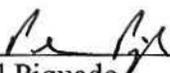
We intend to make our final determination no later than 75 days after the date of publication of this preliminary determination, pursuant to section 735(a)(1) of the Act.

### CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓  
Agree

\_\_\_\_\_  
Disagree

  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

29 AUGUST 2014  
Date

<sup>93</sup> See section 777A(f)(1)-(2) of the Act.