

*People's Republic of China*, 72 FR 9926 (March 6, 2007) ("Initiation Notice"); see also *Notice of Correction of Initiation of Antidumping Duty Investigation: Sodium Hexametaphosphate from the People's Republic of China*, 72 FR 11325 (March 13, 2007). Additionally, in the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in non-market economy ("NME") investigations. The process requires exporters and producers to submit a separate-rate status application. See *Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries*, (April 5, 2005), ("*Policy Bulletin 05.1*") available at <http://ia.ita.doc.gov>. However, the standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* governmental control over its export activities) has not changed.

On April 3, 2007, the United States International Trade Commission ("ITC") issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from the PRC of SHMP. The ITC's determination was published in the **Federal Register** on April 9, 2007. See Investigation No. 731-TA-1110 (Preliminary), *Sodium Hexametaphosphate (SHMP) From China*, 72 FR 17581 (April 9, 2007).

#### Scope Comments

The Department also set aside a 20-day period from the publication of the initiation for all interested parties to raise issues regarding product coverage. The Department did not receive any comments from interested parties regarding product coverage during the 20-day period and subsequently, did not change the scope in the *Initiation Notice*.

#### Scope of Investigation

The merchandise subject to this investigation is sodium hexametaphosphate ("SHMP"). SHMP is a water-soluble polyphosphate glass that consists of a distribution of polyphosphate chain lengths. It is a collection of sodium polyphosphate polymers built on repeating NaPO<sub>3</sub> units. SHMP has a P<sub>2</sub>O<sub>5</sub> content from 60 to 71 percent. Alternate names for SHMP include the following: Calgon; Calgon S; Glassy Sodium Phosphate; Sodium Polyphosphate, Glassy;

Metaphosphoric Acid; Sodium Salt; Sodium Acid Metaphosphate; Graham's Salt; Sodium Hex; Polyphosphoric Acid, Sodium Salt; Glass H; Hexaphos; Sodaphos; Vitrafos; and BAC-N-FOS. SHMP is typically sold as a white powder or granule (crushed) and may also be sold in the form of sheets (glass) or as a liquid solution. It is imported under heading 2835.39.5000, HTSUS. It may also be imported as a blend or mixture under heading 3823.90.3900, HTSUS. The American Chemical Society, Chemical Abstract Service ("CAS") has assigned the name "Polyphosphoric Acid, Sodium Salt" to SHMP. The CAS registry number is 68915-31-1. However, SHMP is commonly identified by CAS No. 10124-56-8 in the market. For purposes of the investigation, the narrative description is dispositive, not the tariff heading, CAS registry number or CAS name.

The product covered by this investigation includes SHMP in all grades, whether food grade or technical grade. The product covered by this investigation includes SHMP without regard to chain length *i.e.*, whether regular or long chain. The product covered by this investigation includes SHMP without regard to physical form, whether glass, sheet, crushed, granule, powder, fines, or other form.

However, the product covered by this investigation does not include SHMP when imported in a blend with other materials in which the SHMP accounts for less than 50 percent by volume of the finished product.

#### Quantity and Value

On March 6, 2007, the Department requested quantity and value ("Q&V") information from a total of 38 companies identified by Petitioners as potential producers or exporters of SHMP from the PRC. Also, on March 6, 2007, the Department sent a letter requesting Q&V information to the China Bureau of Fair Trade for Imports & Exports ("BOFT") of the Ministry of Commerce ("MOFCOM") requesting that BOFT transmit the letter to all companies who manufacture and export subject merchandise to the United States, or produce the subject merchandise for the companies who were engaged in exporting the subject merchandise to the United States during the POI. For a complete list of all parties from which the Department requested Q&V information, see Memorandum to James C. Doyle, Director, Office 9, AD/CVD Operations, through Christopher D. Riker, Program Manager, Office 9, AD/CVD Operations, from Erin Begnal, Senior International Trade Analyst,

## DEPARTMENT OF COMMERCE

### International Trade Administration

A-570-908

#### Preliminary Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate from the People's Republic of China

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

**EFFECTIVE DATE:** September 14, 2007.

**SUMMARY:** We preliminarily determine that sodium hexametaphosphate ("SHMP") 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 less than fair value ("LTFV") are shown in the "Preliminary Determination" section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Erin Begnal or Kristina Horgan, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482-1442 or (202) 482-8173, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Initiation

On February 8, 2007, the Department of Commerce ("Department") received a petition on imports of SHMP from the PRC filed in proper form by ICL Performance Products, LP and Innophos, Inc. ("Petitioners") on behalf of the domestic industry producing SHMP. This investigation was initiated on February 28, 2007. See *Initiation of Antidumping Duty Investigation: Sodium Hexametaphosphate From the*

Office 9, AD/CVD Operations, regarding "Selection of Respondents for the Antidumping Investigation of Sodium Hexametaphosphate from the People's Republic of China" (April 17, 2007) (*"Respondent Selection Memorandum"*). The Department received timely Q&V responses from five interested parties. The Department did not receive any type of communication from BOFT regarding its request for Q&V information. *See id.*, at 1.

On April 17, 2007, the Department selected Hubei Xingfa Chemicals Group ("Hubei Xingfa") and Mianyang Aostar Phosphorous Chemical Industry Co., Ltd. ("Mianyang Aostar") as mandatory respondents in this investigation. *See id.*, at 3–4.

### Surrogate Country

On May 10, 2007, the Department determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See* Letter to All Interested Parties, from Christopher D. Riker, Program Manager, Office 9, AD/CVD Operations, regarding "Antidumping Duty Investigation of Sodium Hexametaphosphate from the People's Republic of China ("PRC")," dated May 10, 2007, attaching Memorandum to Christopher D. Riker, Program Manager, Office 9, AD/CVD Operations, from Ron Lorentzen, Director, Office of Policy, regarding "Investigation of Sodium Hexametaphosphate from the People's Republic of China (PRC): Request for List of Surrogate Countries," dated May 9, 2007.

On May 10, 2007, the Department requested comments on surrogate country selection from the interested parties in this investigation. Petitioners submitted surrogate country comments on June 4, 2007. Hubei Xingfa submitted surrogate country comments on June 4, 2007. Petitioners submitted rebuttal surrogate country comments on June 14, 2007. No other interested parties commented on the selection of a surrogate country. For a detailed discussion of the selection of the surrogate country, *see* "Surrogate Country" section below, and the Memorandum to the File, through James C. Doyle, Director, Office 9, AD/CVD Operations, from Scot T. Fullerton, Program Manager, Office 9, AD/CVD Operations, regarding "Antidumping Duty Investigation of Sodium Hexametaphosphate from the People's Republic of China: Selection of a Surrogate Country," dated September 6, 2007 (*"Surrogate Country Memorandum"*).

### Separate Rates Applications

Between April 3, 2007, and May 4, 2007, we received timely separate-rate applications from three non-mandatory respondent companies: Jiangyin Chengxing International Trading Co., Ltd. ("Chengxing"), Yibin Tianyuan Group Co., Ltd. ("Tianyuan"), and Sichuan Mianzhu Norwest Phosphate Chemical Company Limited ("Norwest").

### Questionnaires

On March 30, 2007, the Department requested comments from all interested parties on product characteristics to be used in the designation of control numbers ("CONNUMs") to be assigned to the subject merchandise. The Department received comments from Petitioners and Hubei Xingfa.

On April 18, 2007, the Department issued its sections A, C, D, and E,<sup>1</sup> questionnaire to Hubei Xingfa and Mianyang Aostar, which included product characteristics used in the designation of CONNUMs and assigned to the merchandise under consideration.

On May 9, 2007, Hubei Xingfa submitted its response to section A of the Department's questionnaire, and on June 1, 2007, Hubei Xingfa submitted its response to sections C and D of the Department's questionnaire. On May 9, 2007, the Department placed on the record a letter submitted by Mianyang Aostar, indicating that it was withdrawing from the investigation. *See Mianyang Aostar Withdrawal Memo.*<sup>2</sup> The Department issued supplemental questionnaires to Hubei Xingfa between June and August 2007, and received responses between June and August 2007. On June 12, and June 20, 2007, Petitioners submitted comments on Hubei Xingfa's questionnaires responses.

On July 20, 2007, the Department issued a supplemental questionnaire to separate rate respondent, Chengxing, which was submitted on July 30, 2007.

<sup>1</sup> Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section C requests a complete listing of U.S. sales. Section D requests information on factors of production, and Section E requests information on further manufacturing.

<sup>2</sup> On May 3, 2007, Mianyang Aostar submitted an improperly filed letter to the Department indicating it was withdrawing from the investigation. *See* Memorandum to the File, from Erin Begnal, Senior International Trade Analyst, Office 9, AD/CVD Operations, regarding "Antidumping Duty Investigation of Sodium Hexametaphosphate ("SHMP") from the People's Republic of China: Withdrawal of Mianyang Aostar Phosphorous Chemical Industry Co., Ltd." (May 9, 2007) (*"Mianyang Aostar Withdrawal Memo"*).

In addition, on July 23, 2007, the Department issued a supplemental questionnaire to separate rate respondent, Tianyuan, which was submitted on August 6, 2007.

### Surrogate Value Comments

On June 20, 2007, Petitioners and Hubei Xingfa submitted comments on surrogate information with which to value the factors of production in this proceeding. On July 2, 2007, Petitioners also filed rebuttal comments on surrogate information with which to value the factors of production in this proceeding. On August 14, 2007, Petitioners and Hubei Xingfa submitted additional comments on surrogate information with which to value factors of production.

### Postponement of Preliminary Determination

On June 25, 2007, Petitioners requested that the Department postpone the preliminary determination pursuant to section 733(c)(1)(B)(i) of the Act. We did so on July 2, 2007. *See Notice of Postponement of Preliminary Determination of Antidumping Duty Investigation: Sodium Hexametaphosphate from the People's Republic of China*, 72 FR 37728 (July 11, 2007).

### Period of Investigation

The period of investigation ("POI") is July 1, 2006, through December 31, 2006. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (February 8, 2007). *See* 19 CFR 351.204(b)(1).

### Non-Market-Economy Country

For purposes of initiation, Petitioners submitted LTFV analyses for the PRC as a non-market economy. *See Initiation Notice*, 72 FR at 9927. The Department considers the PRC to be a NME country. 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. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, ("TRBs") From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *Final Results of 2001–2002 Administrative Review: TRBs from the People's Republic of China*, 68 FR 70488 (December 18, 2003). No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, we have treated the PRC as

an NME country for purposes of this preliminary determination.

### Surrogate Country

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs it to base normal value, in most circumstances, on the NME producer's factors of production valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the normal value section below.

As detailed in the *Surrogate Country Memorandum*, the Department has preliminarily selected India as the surrogate country on the basis that: (1) It is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to 773(c)(4) of the Act; and (3) we have reliable data from India that we can use to value the factors of production. Thus, we have calculated normal value using Indian prices when available and appropriate to value Hubei Xingfa's factors of production. See Memorandum to the File, through Scot T. Fullerton, Program Manager, Office 9, AD/CVD Operations, from Erin Begnal, Senior International Trade Analyst, Office 9, AD/CVD Operations, regarding "Sodium Hexametaphosphate from the People's Republic of China: Surrogate Values for the Preliminary Determination" (September 6, 2007) ("*Factor Value Memorandum*").

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value the factors of production within 40 days after the date of publication of the preliminary determination.

### Affiliation

Based on the evidence presented in Hubei Xingfa's questionnaire responses, we preliminarily find that Hubei Xingfa is affiliated with Baokang Chuyuan Chemical Industry Co., Ltd. ("Baokang Chuyuan"), which also produces subject merchandise, and certain suppliers of its material inputs, pursuant to sections 771(33)(E) and (G) of the Act. In addition, based on the evidence

presented in Hubei Xingfa's questionnaire responses, we preliminarily find that Hubei Xingfa and Baokang Chuyuan should be collapsed for the purposes of this investigation. This finding is based on the determination that Hubei Xingfa and Baokang Chuyuan are affiliated, that Hubei Xingfa and Baokang Chuyuan are both producers of identical products and no retooling would be necessary in order to restructure manufacturing priorities, and there is significant potential for manipulation of price or production between the parties. See 19 C.F.R. Sec. 351.401(f)(1) and (2). For further discussion, see Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9, through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Erin C. Begnal, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding "Antidumping Duty Investigation of Sodium Hexametaphosphate from the People's Republic of China: Affiliation and Collapsing of Hubei Xingfa Chemicals Group, Ltd." dated September 6, 2007.

### Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Companies Hubei Xingfa and the separate rate applicants, Chengxing and Norwest, (hereinafter referred to as the Separate Rate Companies) have provided company-specific information to demonstrate that they operate independently of *de jure* and *de facto* government control, and therefore satisfy the standards for the assignment of a separate rate.

We have considered whether each PRC company that submitted a complete application is eligible for a separate rate. The Department's separate-rate test is not concerned, in general, with macroeconomic/border-type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72256 (December 31, 1998). The test focuses,

rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See *Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less Than Fair Value*, 62 FR 61754, 61758 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588.

(May 6, 1991) ("Sparklers"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

#### 1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589.

The evidence provided by Hubei Xingfa and the Separate Rate Companies supports a preliminary finding of *de jure* absence of governmental control based on the following: 1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; 2) the applicable legislative enactments decentralizing control of the companies; and 3) any other formal measures by the government decentralizing control of companies. See Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9, through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Erin Begnal, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding

“Antidumping Duty Investigation of Sodium Hexametaphosphate from the People’s Republic of China: Separate Rates Memorandum” (September 6, 2007) (“*Separate Rates Memorandum*”).

## 2. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22586–87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People’s Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

We determine that, for Hubei Xingfa and the Separate Rate Companies, the evidence on the record supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing the following: 1) Each exporter sets its own export prices independent of the government and without the approval of a government authority; 2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; 3) each exporter has the authority to negotiate and sign contracts and other agreements; and 4) each exporter has autonomy from the government regarding the selection of management.

With respect to Tianyuan, we determine that it failed to provide evidence regarding its corporate structure, specifically the nature of its parent company and whether or not its parent company was subject to control by the government. The separate rate application requires that the applicant provide specific documentation regarding its corporate history and corporate structure. Tianyuan did not provide complete information in its

application nor in its supplemental response in regard to a specific question from the Department asking for this information. See *Separate Rates Memo*. Therefore, we determine that Tingyuan has failed to establish its eligibility for a separate rate and it is deemed to be part of the PRC-wide Entity.

The evidence placed on the record of this investigation by Hubei Xingfa, Chengxing, and Norwest demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporter’s exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. As a result, for the purposes of this preliminary determination, we have granted a separate company-specific rate to Hubei Xingfa. Additionally, we have granted the Separate Rate Companies a weighted-average margin for the purposes of this preliminary determination. See *Separate Rates Memorandum*.

## The PRC-Wide Entity

The Department has data that indicates there were more exporters of SHMP from the PRC than those indicated in the response to our request for Q&V information during the POI. See *Respondent Selection Memorandum*. We issued our request for Q&V information to 38 potential Chinese exporters of the subject merchandise, in addition to the Bureau of Foreign Trade/Ministry of Commerce of the PRC (“BOFT/MOFCOM”).<sup>3</sup> See *id.*, at 1–2. While information on the record of this investigation indicates that there are numerous producers/exporters of SHMP in the PRC, we received only five timely-filed Q&V responses. Further, based on our knowledge of the volume of imports of subject merchandise from the PRC, the companies which responded to the Q&V questionnaire do not account for all imports into the United States. Although all exporters were given an opportunity to provide Q&V information, not all exporters provided a response to the Department’s Q&V letter. Further, the Government of the PRC did not respond to the Department’s questionnaire. Therefore, the Department determines preliminarily that there were PRC exporters of the subject merchandise during the POI from PRC producers/exporters that did not respond to the Department’s request for information. We have treated these PRC producers/exporters as part of the PRC-wide entity

because they did not qualify for a separate rate.

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

Information on the record of this investigation indicates that the PRC-wide entity was non-responsive. Certain companies did not respond to our request for Q&V information and did not respond to the Department’s questionnaire (including the mandatory respondent, Mianyang Aostar). As a result, pursuant to section 776(a)(2)(A) of the Act, we find that the use of facts available is appropriate to determine the PRC-wide rate. See *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

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

When employing an adverse inference, the statute indicates that the Department may rely upon information

<sup>3</sup> For a list of companies to which the Department sent its request for Q&V information, see *Respondent Selection Memorandum* at 1–2.

derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for adverse facts available (“AFA”), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. See *SAA* at 870. It is the Department’s practice to select, as AFA, the higher of the (a) Highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People’s Republic of China*, 65 FR 34660 (May 21, 2000) and accompanying Issues and Decision Memorandum, at “Facts Available.” In the instant investigation, as AFA, we have assigned to the PRC-wide entity the calculated margin for Hubei Xingfa, the highest rate calculated of any respondent in the investigation. Section 776(c) of the Act requires that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal.<sup>4</sup> As we did not rely upon secondary information, no corroboration was required under section 776(c) of the Act.

#### Margin for the Separate Rate Companies

The Department received timely and complete separate rates applications from the Separate Rates Companies, who are all exporters of SHMP from the PRC, which were not selected as mandatory respondents in this investigation. Through the evidence in their applications, these companies have demonstrated their eligibility for a separate rate, as discussed above in the “Separate Rates” section and in the *Separate Rates Memorandum*. Consistent with the Department’s practice, as the separate rate, we have established a weighted-average margin for the Separate Rates Companies based on the rate we calculated for Hubei Xingfa, which was not zero, *de minimis*, or based entirely on AFA. Companies receiving this rate are identified by

<sup>4</sup> Secondary information is described in the *SAA* as “information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.” See *SAA* at 870.

name in the “Suspension of Liquidation” section of this notice.

#### Date of Sale

Section 351.401(i) of the Department’s regulations states that, “in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the normal course of business.” However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. See 19 CFR 351.401(i); see also *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090–1093 (CIT 2001) (“*Allied Tube*”). The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms. In order to simplify the determination of date of sale for both the respondent and the Department, in accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporter’s or producer’s records kept in the ordinary course of business, unless satisfactory evidence is presented that the exporter or producer establishes the material terms of sale on some other date. In other words, the date of the invoice is the presumptive date of sale, although this presumption may be overcome. For instance, in *Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan*, 61 FR 14067 (March 29, 1996), the Department used the date of the purchase order as the date of sale because the terms of sale were established at that point.

After examining the questionnaire responses and the sales documentation that Hubei Xingfa placed on the record, we preliminarily determine that invoice date is the most appropriate date of sale for Hubei Xingfa because the terms of sales are set at the invoice date.

#### Fair Value Comparisons

To determine whether sales of SHMP to the United States by Hubei Xingfa were made at less than fair value, we compared the export price (“EP”) to normal value (“NV”), as described in the “U.S. Price,” and “Normal Value” sections of this notice. We compared NV to weighted-average EPs in accordance with section 777A(d)(1) of the Act.

#### U.S. Price-Export Price

For Hubei Xingfa, we based U.S. price on EP in accordance with section 772(a)

of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and CEP was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States. Where applicable, we deducted foreign movement expenses, foreign brokerage and handling expenses, and international freight expenses from the starting price (gross unit price), in accordance with section 772(c) of the Act.

Where foreign movement or international ocean freight was provided by PRC service providers or paid for in Renminbi (“RMB”), we valued these services using surrogate values (see “Factors of Production” section below for further discussion).

For a complete discussion of the calculations of the U.S. price for Hubei Xingfa, see Memorandum to the File, through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Erin Begnal, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding “Program Analysis for the Preliminary Determination of Antidumping Duty Investigation of Sodium Hexametaphosphate from the People’s Republic of China: Hubei Xingfa,” dated September 6, 2007 (“*Hubei Xingfa Analysis Memorandum*”).

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production (“FOP”) methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOP because the presence of government controls on various aspects of non-market economies renders price comparisons and the calculation of production costs invalid under the Department’s normal methodologies.

#### Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by Hubei Xingfa for the POI.<sup>5</sup> To calculate NV, we multiplied

<sup>5</sup> The Department did not value the factors of production for the production of phosphate rock, silica quartzite, or crude coal, consistent with the Department’s practice in *Notice of Final Antidumping Duty 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) and accompanying Issues and Decision Memorandum at Comment 3.

the reported per-unit factor-consumption rates by publicly available surrogate values (except as discussed below).

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407-1408 (Fed. Cir. 1997). A detailed description of all surrogate values used for respondents can be found in the Memorandum to the File, Through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, From Erin Begnal, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding, "Antidumping Duty Investigation of Sodium Hexametaphosphate from the People's Republic of China: Selection of Factor Values," dated September 6, 2007 ("*Factor Value Memorandum*") and Memorandum to the File, Through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, From Erin Begnal, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding, "Antidumping Duty Investigation of Sodium Hexametaphosphate from the People's Republic of China: Analysis Memorandum for Hubei Xingfa Chemicals Group Co., Ltd.," dated September 6, 2007 ("*Hubei Xingfa Analysis Memorandum*"). Additionally, for detailed descriptions of all actual values used for market-economy inputs, where applicable, see *Hubei Xingfa Analysis Memorandum*.

For this preliminary determination, in accordance with the Department's practice, we used data from the Indian Import Statistics in order to calculate surrogate values for Hubei Xingfa's material inputs. In selecting the best available information for valuing FOP in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen*

*and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), results unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). The record shows that the Indian import statistics represent import data that is contemporaneous with the POI, product-specific, and tax-exclusive. Where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values, where appropriate, using the Indian Wholesale Price Index ("WPI") as published in the International Financial Statistics of the International Monetary Fund.

Furthermore, with regard to the Indian import-based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. See, e.g., *Amended Final Determination of Sales at Less than Fair Value: Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 11670 (March 15, 2002) and accompanying Issues and Decision Memorandum at Comment 4; see also *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 7 ("CTVs from the PRC"). We are also directed by the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized. See H.R. Rep. 100-576 at 590 (1988). Rather, Congress directed the Department to base its decision on information that is available to it at the time it makes its determination. Therefore, we have not used prices from these countries either in calculating the Indian import-based surrogate values or in calculating market-economy input values. In instances where a market-economy input was obtained solely from suppliers located in these countries, we used Indian import-based surrogate values to value the input. See *Final Determination of Sales at Less Than*

*Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China*, 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum at Comment 1.

For Hubei Xingfa, certain inputs into the production of the merchandise under investigation were purchased from market economy suppliers and paid for in market economy currencies. We valued Hubei Xingfa's inputs using the market economy prices paid for the inputs where the total volume of the input purchased from all market economy sources during the POI exceeded 33 percent of the total volume of the input purchased from all sources during that period. Alternatively, when the volume of Hubei Xingfa's purchases of an input from market economy suppliers during the POI was below 33 percent of the company's total volume of purchases of the input during the POI, we weight-averaged the weighted-average market economy purchase price with an appropriate surrogate value according to their respective shares of the total volume of purchases, as appropriate.

The Department used the Indian Import Statistics to value the raw material and packing material inputs that Hubei Xingfa used to produce the subject merchandise during the POI, except where listed below. To value electricity the Department used rates from Key World Energy Statistics 2003, published by the International Energy Agency. Because these data were not contemporaneous to the POI, we adjusted for inflation using WPI. See *Factor Value Memorandum*.

Consistent with 19 CFR 351.408(c)(3), we valued direct, indirect, and packing labor, using the most recently calculated regression-based wage rate, which relies on 2004 data. This wage rate can currently be found on the Department's website on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in January 2007, <http://ia.ita.doc.gov/wages/index.html>. The source of these wage-rate data on the Import Administration's web site is the Yearbook of Labour Statistics 2002, ILO (Geneva: 2002), Chapter 5B: Wages in Manufacturing. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by GE and Chenming. See *Factor Value Memorandum*.

Because water is essential to the production process of the subject merchandise, the Department considers water to be a direct material input, and



not overhead. Hubei Xingfa stated in its questionnaire responses that it used water in the production of SHMP, but since it took the water from the river free of charge, it did not record its consumption of water. Therefore, we are using the water consumption rate from the petition for the production of SHMP only, and valued water with a surrogate value according to our practice. See *Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 68 FR 61395 (October 28, 2003) and, accompanying Issue and Decision Memorandum at Comment 11. Although Hubei Xingfa has reported that it obtains water free of charge from the river, we find that whether the producer pays for water is irrelevant in determining whether it should be considered a direct material input. See, e.g., *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 69 FR 58392 (September 30, 2004) and accompanying Issues and Decision Memorandum at Comment 1.

Further, there is no evidence on the record that the Indian producer of comparable merchandise from which we are obtaining an overhead financial ratio accounts for water as an overhead expense. The Department valued water using data from the Maharashtra Industrial Development Corporation ([www.midcindia.org](http://www.midcindia.org)) since it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003: 193 of the water rates were for the "inside industrial areas" usage category and 193 of the water rates were for the "outside industrial areas" usage category. Because the value was not contemporaneous with the POI, we adjusted the rate for inflation. See *Factor Value Memorandum*. After the preliminary determination, we will allow Hubei Xingfa an opportunity to report water consumption, but may have to resort to using an inference that is adverse to Hubei Xingfa if we are unable to obtain the information.

We used Indian transport information to value the freight-in cost of the raw materials. The Department determined the best available information for valuing truck freight to be from [www.infreight.com](http://www.infreight.com). This source provides daily rates from six major points of origin to five destinations in India during the POI. The Department obtained a price quote on the first day of each month of the POI from each point of origin to each destination and averaged the data accordingly. See

*Factor Value Memorandum*. Consistent with the calculation of inland truck freight, the Department used the same freight distances used in the calculation of inland truck freight, as reported by [www.infreight.com](http://www.infreight.com) to derive a value in Rupees per kilogram per kilometer. To value PRC inland freight by barge we used Indian Inland Waterways rates from July, 1997, as used in the 2000–2001 antidumping duty administrative review of helical spring lock washers from the PRC. See *Certain Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 67 FR 8520 (February 25, 2002) and accompanying Issues and Decision Memorandum at Comment 5. After inflating the value, the rate we derived from this source is in rupees per kilogram. See *Factor Value Memorandum*.

To value brokerage and handling ("B&H"), the Department used a simple average of the publicly summarized version of the average value for B&H expenses reported in the U.S. sales listings in: (1) Essar Steel Ltd.'s February 28, 2005, submission in the antidumping duty review of Certain Hot-Rolled Carbon Steel Flat Products from India (See *Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review* 71 FR 2018, 2022 (January 12, 2006)); (2) Agro Dutch Industries Ltd.'s March 2, 2006, submission in the antidumping duty review of Certain Preserved Mushrooms From India (See *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 72 FR 5268 (February 5, 2007)); and, (3) Kejirwal Paper Ltd.'s January 9, 2006, submission in the antidumping duty investigation of Lined Paper from India (See *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006)). The Department first derived an average per-unit amount from each source, and then adjusted each average rate for inflation. Finally, the Department averaged the three per-unit amounts to derive an overall average rate for the POI. See *Factor Value Memorandum*.

Hubei Xingfa reported that it sourced ocean freight from market-economy countries and paid for it in U.S. dollars. For ocean freight, we are using Hubei Xingfa's reported market-economy ocean freight expenses. The Department valued marine insurance, where necessary, based on a publicly available price quote from a marine insurance

provider at <http://www.rjgconsultants.com/insurance.html>, as used in the 2004–2005 administrative review of brake rotors from the PRC. See *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006). The rates quoted are based on 110% of US \$100.00 value on all destinations from China. After inflating the value, the rate we derived is in rupees per kilogram.

#### Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

#### Verification

As provided in section 782(i)(1) of the Act, we intend to verify all information relied upon in making our final determination.

#### Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. See *Initiation Notice* 72 FR 9926 at 9929. This practice is described in Policy Bulletin 05.1, available at <http://ia.ita.doc.gov/>.

#### Preliminary Determination

The weighted-average dumping margins are as follows:

#### SODIUM HEXAMETAPHOSPHATE FROM THE PRC

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Hubei Xingfa Chemicals Group Co., Ltd. ....	183.15
Jiangyin Chengxing International Trading Co., Ltd. ....	183.15
Sichuan Mianzhu Norwest Phosphate Chemical Company Limited .....	183.15
PRC-Wide Rate (including Yibin Tianyuan Group Co., Ltd. and Mianyang Aostar Phosphorous Chemical Industry Co., Ltd. ) .....	183.15

#### Disclosure

We will disclose the calculations performed within five days of the date

of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

#### **Suspension of Liquidation**

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of SHMP from the PRC as described in the "Scope of Investigation" section, entered, or withdrawn from warehouse, for consumption from Hubei Xingfa, the Separate Rate Companies and the PRC-wide entity on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as indicated above.

#### **International Trade Commission Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at less than fair value. 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 SHMP, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

#### **Public Comment**

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date of the final verification report is issued in this proceeding and rebuttal briefs limited to issues raised in case briefs no later than five days after the deadline date for case briefs. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing three days after the

deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. See 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

We will make our final determination no later than 75 days after the date of publication of this preliminary determination, pursuant to section 735(a) of the Act. This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: September 6, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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**BILLING CODE 3510-DS-S**

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