
DEPARTMENT OF COMMERCE
International Trade Administration

[A-570-908]

Final 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.

DATES: *Effective Date:* February 4, 2008.

SUMMARY: On September 14, 2007, the Department of Commerce (the "Department") published its preliminary determination of sales at less than fair value ("LTFV") in the antidumping investigation of sodium hexametaphosphate ("SHMP") from the People's Republic of China ("PRC"). The period of investigation ("POI") is July 1, 2006, through December 31, 2006. We invited interested parties to comment on our preliminary determination of sales at LTFV. The final dumping margins for this investigation are listed in the "Final Determination Margins" section below.

FOR FURTHER INFORMATION CONTACT: Erin Begnal or Scot Fullerton, 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) 482-1386, respectively.

Final Determination

We determine that SHMP from the PRC is being, or is likely to be, sold in the United States at LTFV as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Final Determination Margins" section of this notice.

SUPPLEMENTARY INFORMATION:**Case History**

The Department published its preliminary determination of sales at LTFV on September 14, 2007. See *Preliminary Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate from the People's*

Republic of China, 72 FR 52544 (September 14, 2007) ("*Preliminary Determination*").

On September 11, 2007, Hubei Xingfa Chemicals Group ("Hubei Xingfa") requested a 60-day extension of the final determination. On September 28, 2007, the Department published the postponement of the final determination. See *Postponement of Final Determination of Antidumping Duty Investigation: Sodium Hexametaphosphate from the People's Republic of China*, 72 FR 55176 (September 28, 2007). On September 28, 2007, Hubei Xingfa withdrew from participating in the investigation.¹

On September 17, 2007, the Department received an allegation from Petitioners that the Department made clerical errors in its *Preliminary Determination*.² On October 25, 2007, the Department found that it had made a clerical error with regard to its preliminary determination calculation for Hubei Xingfa, but found that the error was not "significant" to warrant amending the *Preliminary Determination*.³

We invited parties to comment on the *Preliminary Determination*. On November 19, 2007, the Petitioners⁴ filed a case brief.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the "Investigation of Sodium Hexametaphosphate from the People's Republic of China: Issues and Decision Memorandum," dated January 28, 2008, which is hereby adopted by this notice ("Issues and Decision Memorandum"). A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issue and Decision Memorandum is a public document and is on file in the Central Records Unit ("CRU"), Main Commerce

¹ See Letter from Greenberg Traurig to the Department of Commerce, regarding "Sodium Hexametaphosphate from the People's Republic of China: Withdrawal from Participation," dated September 28, 2007 ("Hubei Xingfa Withdrawal Letter").

² See Letter from Williams Mullen to the Department of Commerce, regarding "Sodium Hexametaphosphate from China: Clerical Error Comments," dated September 17, 2007.

³ 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: Allegation of Ministerial Errors," dated October 25, 2007 ("Ministerial Error Memo").

⁴ ICL Performance Products, LP and Innophos, Inc.

Building, Room B-099, and is accessible on the Web at <http://www.trade.gov/ia>. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made changes in our margin calculations for the separate rate respondents. Additionally, because Hubei Xingfa refused to participate in verification, we determined to apply total adverse facts available ("AFA") to Hubei Xingfa. As AFA, we found that Hubei Xingfa did not demonstrate that it was entitled to a separate rate, and is therefore part of the PRC entity. See *Adverse Facts Available* below.

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 NaPO₃ units. SHMP has a P₂O₅ 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 3824.90.3900, 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, and whether or not in solution.

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.

Scope Comments

We have addressed comments regarding the Scope in our Issues and Decision Memorandum and have determined to revise the scope of this investigation. See *Issues and Decision Memorandum* at Comment 2.

Adverse Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. On September 28, 2007, subsequent to the *Preliminary Determination* and before the commencement of verification, counsel for Hubei Xingfa informed the Department that it would not continue its participation in the instant investigation. See Hubei Xingfa Withdrawal Letter dated September 28, 2007. Because Hubei Xingfa ceased participation in the instant investigation, the Department was not able to conduct its verification of Hubei Xingfa's responses. Verification is integral to the Department's analysis because it allows the Department to satisfy itself that it is relying upon accurate information and calculating dumping margins as accurately as possible. By failing to participate in verification, Hubei Xingfa prevented the Department from verifying its reported information, including separate rates information, and significantly impeded the proceeding. Moreover, by not permitting verification, Hubei Xingfa

failed to demonstrate that it operates free of government control and is entitled to a separate rate. Therefore, we find the use of facts available, pursuant to sections 776(a)(2)(C) and (D), to be appropriate in determining the applicable rate for Hubei Xingfa.

Section 776(b) of the Act authorizes the Department to use an adverse inference with respect to an interested party if the Department finds that the party failed to cooperate by not acting to the best of its ability to comply with a request for information. See, e.g., *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997); see also *Crawfish Processors Alliance v. United States*, 343 F. Supp.2d 1242, 1270–1271 (CIT 2004) (approving use of AFA when respondent refused to participate in verification). We find that Hubei Xingfa's late withdrawal from participation and refusal to participate in verification constitutes a failure to cooperate by not acting to the best of its ability to comply with a request from the Department. See section 776(b) of the Act. Therefore, pursuant to section 776(b) of the Act, we find that when selecting from among the facts available, an adverse inference is warranted. As AFA, due to its failure to demonstrate separateness, we have, as AFA, treated Hubei Xingfa as part of the PRC-wide entity and thus will receive the rate applicable to PRC-wide entity, which is 188.05 percent. See the sections entitled "The PRC-Wide Rate" and "Corroboration," below, for a discussion of the selection and corroboration of the PRC-Wide rate.

Surrogate Country

In the *Preliminary Determination*, we stated that we had selected India as the appropriate surrogate country to use in this investigation for the following reasons: (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. See *Preliminary Determination*. For the final determination, we received no comments and made no changes to our findings with respect to the selection of a surrogate country.

Separate Rates

In proceedings involving non-market-economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government

control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an 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. See *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 amplified by *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"), and Section 351.107(d) of the Department's regulations.

In the *Preliminary Determination*, we found that the separate rate applicants, Jiangyin Chengxing International Trading Co., Ltd. ("Chengxing") and Sichuan Mianzhu Norwest Phosphate Chemical Company Limited ("Norwest"), demonstrated their eligibility for separate-rate status. For the final determination, we continue to find that the evidence placed on the record of this investigation by Chengxing and Norwest demonstrate both a *de jure* and *de facto* absence of government control, with respect to their respective exports of the merchandise under investigation, and, thus are eligible for separate rate status.

In the *Preliminary Determination*, we assigned the rate for Hubei Xingfa, who was a cooperating respondent, as a separate rate to Chengxing and Norwest. However, we have found that Hubei Xingfa has not demonstrated entitlement to a separate rate for this final determination. As such, Hubei Xingfa will be assigned the PRC-wide rate, which is based on AFA. Normally the separate rate is determined based on the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding *de minimis* margins or margins based entirely on AFA. See section 735(c)(5)(A). If, however, the estimated weighted average margins for all individually investigated respondents are *de minimis* or based entirely on AFA, the Department may use any reasonable method. See section 735(c)(5)(B). In this proceeding, because the rate for all individually investigated respondents is based on AFA, we have relied on information from the petition to determine a rate to be applied to the respondents that have demonstrated entitlement to a separate rate. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical*

Circumstances: Glycine from Japan, 72 FR 67271 (November 28, 2007) (citing *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand*, 65 FR 5520, 5527–28 (February 4, 2000) and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Canada*, 64 FR 15457 (March 31, 1999)). Specifically, we have assigned an average of the margins calculated for purposes of initiation as the separate rate for the final determination. See *Initiation of Antidumping Duty Investigation: Sodium Hexametaphosphate From the People's Republic of China*, 72 FR 9926 (March 6, 2007) (“*Initiation Notice*”). See also Memorandum to the File, from Erin Begnal, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding “Calculation of the Separate Rate” dated January 22, 2008.

To corroborate the initiation margins for use as a separate rate, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis. See *Initiation Checklist*. We examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as the separate rate. During our pre-initiation analysis, we examined the key elements of the export-price and normal-value calculations used in the petition to derive margins. Also, during our pre-initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition, that corroborates key elements of the export-price and normal-value calculations used in the petition to derive estimated margins. We received no comments as to the relevance or probative value of this information. Therefore, the Department finds that the rates derived from the petition for purposes of initiation are reliable for purposes of calculating the separate rate. We determined in the *Preliminary Determination* that Yibin Tianyuan Group Co., Ltd. (“Tianyuan”) is not entitled to a separate rate. We received no comments on this issue and continue to find that Tianyuan is not entitled to a separate rate.

The PRC-Wide Rate

In the *Preliminary Determination*, the Department found that certain companies and the PRC-wide entity did not respond to our requests for

information. In the *Preliminary Determination* we treated these PRC producers/exporters as part of the PRC-wide entity because they did not demonstrate that they operate free of government control over their export activities. No additional information has been placed on the record with respect to these entities after the *Preliminary Determination*. The PRC-wide entity has not provided the Department with the requested information; therefore, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find that the use of facts available is appropriate to determine the PRC-wide rate. 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 *Notice of 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). See also, “*Statement of Administrative Action*” accompanying the URAA, H.R. Rep. No. 103–316, vol. 1, at 870 (1994) (“*SAA*”). We determined 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 finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate for the PRC-wide entity.

Because we begin with the presumption that all companies within an NME country are subject to government control and because only the companies listed under the “Final Determination Margins” section below have overcome that presumption, we are applying a single antidumping rate—the PRC-wide rate—to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. See, e.g., *Synthetic Indigo from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for entries from the respondents which are listed in the “Final Determination Margins” section below.

At the *Preliminary Determination*, we assigned to the PRC-wide entity the calculated margin for Hubei Xingfa, the highest rate calculated for any respondent in the investigation. For the final determination, as total AFA, we have assigned to the PRC-wide entity the rate of 188.05 percent, which is the

rate based on the information supplied by Hubei Xingfa in the preliminary determination, with adjustments made for clerical errors. See Ministerial Error Memo. In selecting the AFA rate for the PRC-wide entity, we did not use the petition rates because we have an alternative that we find to be sufficiently adverse to effectuate the purpose of the AFA provision of the statute. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil*, 69 FR 76910, 76912 (December 23, 2004). See also, *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) and accompanying Issues and Decision Memorandum at Comment 2 and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Venezuela*, 67 FR 62119, 62120 (October 3, 2002). We assigned the rate of 188.05 percent, which was based on information submitted by Hubei Xingfa in its questionnaire responses and database submissions, and remains on the record of this investigation.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We have interpreted “corroborate” to mean that we will, to the extent practicable, examine the reliability and relevance of the information submitted. See *Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 5554, 5568 (February 4, 2000); See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996). Because the AFA rate is based on information provided to us by a respondent to this investigation, it is not considered to be secondary information, and therefore, needs not be corroborated. We conclude that this data, although unverified, continues to be the best information reasonably available to us to effectuate the purpose of AFA.

Final Determination Margins

We determine that the following percentage weighted-average margins exist for the POI:

SODIUM HEXAMETAPHOSPHATE FROM THE PRC

Manufacturer/exporter	Weighted-average margin (percent)
Jiangyin Chengxing International Trading Co., Ltd.	92.02
Sichuan Mianzhu Norwest Phosphate Chemical Company Limited	92.02
PRC-Wide Rate (including Yibin Tianyuan Group Co., Ltd., Mianyang Aostar Phosphorous Chemical Industry Co., Ltd., and Hubei Xingfa Chemicals Group Co., Ltd.)	188.05

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).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (“CBP”) to continue to suspend liquidation of all imports of subject merchandise that are entered or withdrawn from warehouse, for consumption on or after September 14, 2007, the date of publication of the preliminary determination in the **Federal Register**. We will instruct CBP to continue to require a cash deposit or the posting of a bond for all companies based on the estimated weighted-average dumping margins shown above. The suspension of liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (“ITC”) of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be

terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order (“APO”) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: January 28, 2008.

David M. Spooner,
Assistant Secretary for Import Administration.

Appendix

Comment 1: Scope Revision
Comment 2: Basis for the Final Determination

[FR Doc. E8-1971 Filed 2-1-08; 8:45 am]

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