

*Review*, 74 FR 430, (January 6, 2009). The final results are currently due on March 6, 2009.

#### Extension of Time Limits for Final Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (“the Act”), and 19 CFR 351.214(i)(1) require the Department to issue the final results of a new shipper review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the 90-day period for completion of the final results of a new shipper review to 150 days if it determines that the case is extraordinarily complicated. *See* section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

As a result of the complex issues raised in this new shipper review, including by-product offsets and separate rate eligibility, the Department determines that this new shipper review is extraordinarily complicated and it cannot complete this new shipper review within the current time limit. Accordingly, the Department is extending the time limit for the completion of the final results by an additional 30 days until April 6, 2009,<sup>1</sup> in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

We are issuing and publishing this notice in accordance with sections 751(2)(B) and 777(i)(1) of the Act.

Dated: February 26, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9-4742 Filed 3-4-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-941]

#### Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

**DATES:** Effective Date: March 5, 2009.

**SUMMARY:** We preliminarily determine that certain kitchen appliance shelving

and racks from the People's Republic of China (“PRC”) are being, or are 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 (“Act”). The estimated margins of sales at LTFV are shown in the “Preliminary Determination” section of this notice. Interested parties are invited to comment on this preliminary determination.

**FOR FURTHER INFORMATION CONTACT:** Julia Hancock or Katie Marksberry, 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) 482-1394 or (202) 482-7906, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Initiation

On July 31, 2008, Nashville Wire Products Inc., SSW Holding Company, Inc., United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied-Industrial and Service Workers International Union, and the International Association of Machinists & Aerospace Workers, District Lodge 6 (Clinton IA) (hereafter referred to as the “Petitioners”) filed an antidumping duty petition on PRC imports of kitchen appliance shelving and racks. *See* Petition for the Imposition of Antidumping Duties: Certain Kitchen Appliance Shelving and Racks From the People's Republic of China (in two volumes), dated July 31, 2008 (“Petition”). The Department of Commerce (“Department”) initiated this investigation on August 20, 2008. *See* Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Initiation of Antidumping Duty Investigation, 73 FR 50596 (August 27, 2008) (“Initiation Notice”).

On September 22, 2008, 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 by reason of imports from the PRC of certain kitchen appliance shelving and racks. The ITC's determination was published in the **Federal Register** on September 24, 2008. *See* Certain Kitchen Appliance Shelving and Racks From China, 73 FR 55132 (September 24, 2008); *see also* Certain Kitchen Appliance Shelving and Racks From China: Investigation No. 731-TA-458 and 731-TA-1154 (Preliminary), USITC Publication 4035 (September 2008).

#### Scope Comments

In accordance with the preamble to our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. *See* Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997). *See also* Initiation Notice, 73 FR at 50596. We received no comments from interested parties on issues related to the scope. However, on February 5, 2009, we placed a memorandum to the file on the record of this investigation stating that the companion countervailing duty investigation team at the Department spoke with the National Import Specialist at U.S. Customs and Border Protection (“CBP”) who indicated the Department should include the additional Harmonized Tariff Schedule of the United States (“USHTS”) number 8418.99.80.60 to the scope of the investigation. *See* Memorandum to the File from Katie Marksberry dated February 5, 2009. Therefore, we are adding the HTS number 8418.99.80.60 to the scope of this investigation for this preliminary determination. The Department did not receive any comments on the change to the scope of this investigation. *See* “Scope of Investigation” section below.

#### Period of Investigation

The period of investigation (“POI”) is January 1, 2008, through June 30, 2008. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (July 31, 2008). *See* 19 CFR 351.204(b)(1).

#### Respondent Selection

In the *Initiation Notice*, the Department stated that it intended to select respondents based on quantity and value (“Q&V”) questionnaires. *See* Initiation Notice, 73 FR at 50598–50599. On September 8, 2008, the Department requested Q&V information from the 12 companies that Petitioners identified as potential exporters or producers of certain kitchen appliance shelving and racks from the PRC. *See* Petition at Vol 1., Exhibit 3. Additionally, the Department also posted the Q&V questionnaire for this investigation on its Web site at [www.trade.gov/ia](http://www.trade.gov/ia).

The Department received timely Q&V responses from six exporters that shipped merchandise under investigation to the United States during the POI, and from one company who stated it had no shipments of merchandise under investigation to the United States during the POI. On

<sup>1</sup> An extension of an additional 30 days would result in a new deadline of April 5, 2009. As April 5, 2009, falls on a Sunday, the final results will now be due no later than April 6, 2009, the next business day.

October 8, 2008, the Department selected Guandong Wireking Housewares & Hardware Co., Ltd. ("Wireking") and Asber Enterprise Co., Ltd. (China) ("Asber") as mandatory respondents in this investigation. See October 8, 2008, Memorandum to the File, from Julia Hancock, Senior International Trade Analyst, through Catherine Bertrand, Program Manager, and James C. Doyle, Director, to Stephen J. Claeys, Deputy Assistant Secretary, regarding Selection of Respondents for the Antidumping Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China ("Respondent Selection Memo"). The Department sent its antidumping duty questionnaire to Asber and Wireking on October 8, 2008. On October 23, 2008, Asber filed a letter stating that it will not participate as a mandatory respondent in this investigation. See Letter to the Department from Asber dated October 23, 2008. On November 19, 2008, the Department selected New King Shan (Zhu Hai) Co., Ltd. ("New King Shan") as an additional mandatory respondent because it was the next largest producer/exporter of those companies that submitted Q&V responses. See November 19, 2008, Memorandum to the File, from Julia Hancock, Senior International Trade Analyst and Blaine Wiltse, International Trade Analyst, through Catherine Bertrand, Program Manager, and James C. Doyle, Director, to Stephen J. Claeys, Deputy Assistant Secretary, regarding Selection of an Additional Mandatory Respondent. ("Additional Respondent Selection Memo").

#### Separate Rates Applications

Between October 23, 2008, and October 29, 2008, we received timely filed separate-rate applications ("SRA") from three companies: Jiangsu Weixi Group Co., Marmon Retail Services Asia, and Hangzhou Dunli Import & Export Co., Ltd.

#### Product Characteristics & Questionnaires

In the *Initiation Notice*, the Department asked all parties in this investigation for comments on the appropriate product characteristics for defining individual products. On September 29, 2008, we received comments from Petitioners regarding product characteristics. On October 8, 2008 the Department issued its antidumping duty questionnaire to Asber and Wireking, and on November 21, 2008, the Department issued its antidumping duty questionnaire to New King Shan. Wireking and New King

Shan submitted responses to the Department's questionnaire. As stated above, Asber did not submit questionnaire responses.

#### Surrogate Country Comments

On September 29, 2008, the Department determined that India, Indonesia, the Philippines, Colombia, and Thailand are countries comparable to the PRC in terms of economic development. See Letter to All Interested Parties, from Catherine Bertrand, Program Manager, Office 9, AD/CVD Operations, regarding "Antidumping Duty Investigation of Kitchen Appliance Shelving and Racks From the People's Republic of China," ("Surrogate Country Letter"), attaching September 29, 2008, Memorandum to Catherine Bertrand, Program Manager, Office 9, AD/CVD Operations, from Carole Showers, Acting Director, Office of Policy, regarding "Antidumping Duty Investigation of Kitchen Appliance Shelving and Racks from the People's Republic of China (PRC): Request for List of Surrogate Countries."

On September 29, 2008, the Department requested comments on surrogate country selection from the interested parties in this investigation. On January 26, 2009, Petitioners submitted surrogate country comments. 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.

#### Surrogate Value Comments

On December 4, 2008, December 17, 2008, and January 21, 2009, the Department extended the deadline for interested parties to submit surrogate information with which to value the factors of production in this proceeding. On January 26, 2009, Petitioners and Wireking submitted surrogate value comments. On February 2, 2009, Petitioners and Wireking submitted clarifying surrogate value comments.

#### Postponement of Preliminary Determination

Pursuant to section 733(c) of the Act and 19 CFR 351.205(f)(1), the Department extended the preliminary determination by 50 days. The Department published a postponement of the preliminary determination on December 23, 2008. See *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Postponement of Preliminary Determination of the Antidumping Duty Investigation*, 73 FR 78721 (December 23, 2008).

#### Scope of Investigation

The scope of this investigation consists of shelving and racks for refrigerators, freezers, combined refrigerator-freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens ("certain kitchen appliance shelving and racks" or "the merchandise under investigation"). Certain kitchen appliance shelving and racks are defined as shelving, baskets, racks (with or without extension slides, which are carbon or stainless steel hardware devices that are connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures for oven racks that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and subframes (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support oven rack assemblies utilizing extension slides) with the following dimensions:

- Shelving and racks with dimensions ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or

- Baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or

- Side racks from 6 inches by 8 inches by 0.1 inch to 16 inches by 30 inches by 4 inches; or

- Subframes from 6 inches by 10 inches by 0.1 inch to 28 inches by 34 inches by 6 inches.

The merchandise under investigation is comprised of carbon or stainless steel wire ranging in thickness from 0.050 inch to 0.500 inch and may include sheet metal of either carbon or stainless steel ranging in thickness from 0.020 inch to 0.2 inch. The merchandise under investigation may be coated or uncoated and may be formed and/or welded. Excluded from the scope of this investigation is shelving in which the support surface is glass.

The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") statistical reporting numbers 8418.99.8050, 8418.99.8060, 7321.90.5000, 7321.90.6090, and 8516.90.8000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

#### Non-Market Economy Country

For purposes of initiation, Petitioners submitted LTFV analyses for the PRC as a non-market economy ("NME"). See

*Initiation Notice*, 73 FR at 50598. The Department considers the PRC to be a NME country. See *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper From the People's Republic of China*, 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper From the People's Republic of China*, 72 FR 60632 (October 25, 2007). 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. No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, we continue to treat 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 ("FOP") 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 FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs 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.

The Department's practice with respect to determining economic comparability is explained in *Policy Bulletin 04.1*,<sup>1</sup> which states that "OP (Office of Policy) determines per capita economic comparability on the basis of per capita gross national income, as reported in the most current annual issue of the *World Development Report* (The World Bank)." The Department considers the five countries identified in its Surrogate Country List as "equally comparable in terms of economic development." See *Policy Bulletin 04.1* at 2. Thus, we find that India, Indonesia, the Philippines, Colombia, and Thailand are all at an economic level of

development equally comparable to that of the PRC.

*Policy Bulletin 04.1* provides some guidance on identifying comparable merchandise and selecting a producer of comparable merchandise. As noted in the Policy Bulletin, comparable merchandise is not defined in the statute or the regulations, since it is best determined on a case-by-case basis. See *Policy Bulletin 04.1* at 2. As further noted in *Policy Bulletin 04.1*, in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise. *Id.*

The Department examined worldwide export data for comparable merchandise, using the six-digit level of the HTS numbers listed in the scope language for this investigation.<sup>2</sup> Specifically, we reviewed the POI export data from the World Trade Atlas ("WTA") for the HTS headings 7321.09, 8516.90, 8418.99. The Department found that, of the countries provided in the *Surrogate Country List*, all five countries were exporters of comparable merchandise. Thus, all countries on the *Surrogate Country List* are considered as appropriate surrogates because each exported comparable merchandise.

The *Policy Bulletin 04.1* also provides some guidance on identifying significant producers of comparable merchandise and selecting a producer of comparable merchandise. Further analysis was required to determine whether any of the countries which produce comparable merchandise are "significant" producers of that comparable merchandise. The data we obtained shows that, during the POI, worldwide exports for these HTS numbers were: 2,396,007 kilograms from Colombia; 1,758,325 kilograms from India; 6,615,309 kilograms from Indonesia; 450,110 kilograms from Philippines; and 8,833,547 kilograms from Thailand. Thus, all countries on the Surrogate Country List are considered as appropriate surrogates because each exported significant comparable merchandise. Finally, we have reliable data from India on the record that we can use to value the FOPs. Petitioners and Wireking submitted surrogate values using Indian sources, suggesting greater availability of appropriate surrogate value data in India.

As noted above, the Department only received surrogate country comments from Petitioners, which favored selection of India. The Department is

preliminarily selecting India as the surrogate country on the basis that: (1) It is at a similar level of economic development pursuant to section 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India that we can use to value the FOPs. Thus, we have calculated NV using Indian prices when available and appropriate to the respondents' FOPs. See Memorandum to the File from Julia Hancock, through Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, and James C. Doyle, Director, AD/CVD Operations, Office 9: Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Surrogate Values for the Preliminary Determination, (February 26, 2009) ("Surrogate 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 FOPs within 40 days after the date of publication of the preliminary determination.<sup>3</sup>

### Affiliations

Section 771(33) of the Act, provides that:

The following persons shall be considered to be "affiliated" or "affiliated persons":

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

<sup>3</sup> In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>1</sup> See *Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process*, (March 1, 2004), ("Policy Bulletin 04.1") at Attachment II of the Department's *Surrogate Country Letter*, also available at <http://ia.ita.doc.gov/policy/bull04-1.html>

<sup>2</sup> Because the Department was unable to find production data, we relied on export data as a substitute for overall production data in this case.

(G) Any person who controls any other person and such other person.

Additionally, section 771(33) of the Act stipulates that: "For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person."

#### Wireking

Based on the evidence on the record in this investigation and based on the evidence presented in Wireking's questionnaire responses, we preliminarily find that Wireking is affiliated with Company G,<sup>4</sup> which was involved in Wireking's sales process, and other companies, pursuant to sections 771(33)(E), (F) and (G) of the Act, based on ownership and common control. In addition to being affiliated, there is a significant potential for price manipulation based on the level of common ownership and control, shared management, shared offices, and an intertwining of business operations. See 19 CFR 351.401(f)(1) and (2).

Accordingly, we find that Wireking and Company G should be considered as a single entity for purposes of this investigation. See 19 CFR 351.401(f). For a detailed discussion of this issue, see Wireking Affiliation Memo.

#### New King Shan

Based on the evidence on the record in this investigation and based on the evidence presented in New King Shan's questionnaire responses, we preliminarily find that New King Shan is affiliated with Company A, Company B, Company C, and Company D,<sup>5</sup> pursuant to sections 771(33)(A), (E), (F), and (G) of the Act, based on ownership and common control. For a detailed discussion of this issue, see New King Shan Affiliation Memo.

#### Separate Rates

In proceedings involving NME countries, there is a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. See *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (Sept. 24, 2008) (*PET Film LTFV Final*). 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. See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991); see also *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), and section 19 CFR 351.107(d) of the Department's regulations.

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME investigations. See *Initiation Notice*, 73 FR at 17321. The process requires exporters and producers to submit a separate-rate status application. The Department's practice is discussed further in *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/policy/bull05-1.pdf>.<sup>6</sup>

Jiangsu Weixi Group Co., Marmon Retail Services Asia, Hangzhou Dunli Import & Export Co., Ltd. (hereinafter referred to as "Separate Rate

Companies"), and Wireking and New King Shan, the mandatory respondents, have provided company-specific information to demonstrate that they operate independently of *de jure* and *de facto* government control or are wholly foreign owned, and therefore satisfy the standards for the assignment of a separate rate.

We have considered whether each PRC company that submitted a complete application or complete Section A Response as a mandatory respondent 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 merchandise under investigation 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 rate 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

<sup>4</sup> The identity of this company is business proprietary information; for further discussion of this company, see Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Julia Hancock, Senior Case Analyst, AD/CVD Operations, Office 9: Preliminary Determination in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Affiliation Memorandum of Wireking, (February 26, 2009) ("Wireking Affiliation Memo").

<sup>5</sup> The identities of these companies are business proprietary; for further discussion of these companies, see Memorandum to the File from Katie Marksberry, Case Analyst: Preliminary Determination of Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Affiliation Memorandum of New King Shan (Zhuhai) Co., Ltd., (February 26, 2009) ("New King Shan Affiliation Memo").

<sup>6</sup> The *Policy Bulletin 05.1*, states: "{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation. See *Policy Bulletin 05.1* at 6.

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 the Separate Rate Companies, Wireking, and New King Shan 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, e.g., Jiangsu Weixi Group Co.'s* October 23, 2008, SRA at 5–8; *Jiangsu Weixi Group Co.'s* December 19, 2008, SRA at 4; *Hangzhou Dunli Import & Export Co., Ltd.'s* October 29, 2009, SRA at 12–17; *New King Shan's* October 27, 2008, SRA at 12–16; and *Wireking's* November 12, 2008 Section A Response at 4–7.

## 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 the Separate Rate Companies, Wireking, and New King Shan, 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. *See, e.g., Jiangsu Weixi Group Co.'s* October 23, 2008, SRA at 9–15; *Jiangsu Weixi Group Co.'s* December 19, 2008, SRA at 5; *Hangzhou Dunli Import & Export Co., Ltd.'s* October 29, 2009, SRA at 21–25; *New King Shan's* October 27, 2008, SRA at 16–19; and *Wireking's* November 12, 2008 Section A Response at 7–11.

## 3. Wholly Foreign-Owned

In its separate-rate application, one separate rate company, Marmon Retail Services Asia, reported that it is wholly owned by individuals or companies located in a market economy country. Therefore, because it is wholly foreign-owned, and we have no evidence indicating that it is under the control of the PRC, a separate rate analysis is not necessary to determine whether this company is independent from government control. *See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104–71105 (December 20, 1999) (where the respondent was wholly foreign-owned, and thus, qualified for a separate rate). Accordingly, we have preliminarily granted a separate rate to this company.

The evidence placed on the record of this investigation by the Separate Rate Companies, Wireking, and New King Shan 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, we have granted the Separate Rate Companies a weighted-average margin based on the experience of mandatory respondents and excluding any *de minimis* or zero rates or rates based on total adverse facts available (“AFA”) for the purposes of this preliminary determination. In addition, for the reasons outlined above, we have preliminarily granted Wireking and New King Shan separate rate status.

## Application of Adverse Facts Available, the PRC-Wide Entity and PRC-Wide Rate

The Department has data that indicate there were more exporters of certain kitchen appliance shelving and racks

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 12 potential Chinese exporters of the merchandise under investigation, in addition to posting the Q&V questionnaire on the Department's Web site. While information on the record of this investigation indicates that there are other producers/exporters of certain kitchen appliance shelving and racks in the PRC, we received only seven timely filed Q&V responses. 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. Furthermore, Asber, which did respond to the Department's Q&V questionnaire and reported shipments during the POI, did not respond to the Department's full anti-dumping duty questionnaire. Therefore, the Department has preliminarily determined that there were exporters/producers of the merchandise under investigation during the POI from the PRC that did not respond to the Department's request for information. We have treated these PRC producers/exporters, including Asber, as part of the PRC-wide entity because they did not qualify for a separate rate. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China*, 70 FR 77121, 77128 (December 29, 2005), and unchanged in *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 (May 22, 2006).

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

questionnaire requesting Q&V information. As a result, pursuant to section 776(a)(2)(A) of the Act, we find that the use of facts available ("FA") 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 requests 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, section 776 indicates 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 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. 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 Comment 1. As AFA, we have preliminarily assigned to the PRC-wide entity a rate of 96.45

percent, the average of all margins. The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA. The Department's reliance on the petition rates to determine an AFA rate is subject to the requirement to corroborate secondary information.

#### Corroboration

Section 776(c) of the Act provides 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. The SAA provides guidance as to what constitutes secondary information. One of the suggested sources of secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."<sup>7</sup> The SAA further suggests that to "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* Independent sources used to corroborate may include, for example, published price lists, official import statistics, and CBP data, and information obtained from interested parties during the particular investigation. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.<sup>8</sup>

The AFA rate selected by the Department is from the petition.<sup>9</sup> Petitioners' methodology for calculating the export price ("EP") and NV in the petition is discussed in the *Initiation Notice* at 73 FR 50598 and 50599. To corroborate the AFA margin that we selected, we compared the U.S. prices and normal values of the two mandatory respondents to the U.S. prices and normal values of the margins contained

in the petition. All of the U.S. prices and normal values in the margins calculated in the petition are within the range of the U.S. prices and normal values of the mandatory respondents. Therefore, we took the simple average of all seven of the petition margins, which results in a margin of 96.45 percent. We find that the margin of 96.45 percent has probative value because it is the average of all petition margins which were based on the corroborated U.S. price and normal values in the petition which were corroborated by comparison of the U.S. price and normal values of the two mandatory respondents. Accordingly, we find that the rate of 96.45 percent is corroborated within the meaning of section 776(c) of the Act. Accordingly, we determine that 96.45 percent is the single antidumping rate for the PRC-wide entity. The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from Wireking, New King Shan, and the Separate Rate Companies.

#### Margin for the Separate Rate Companies

The Department received timely and complete separate rate applications from the Separate Rate Companies, who are all exporters of certain kitchen appliance shelving and racks 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, *see the "Separate Rates" section and in the Memorandum to the File*, from Katie Marksberry, Case Analyst, AD/CVD Operations, Office 9: Preliminary Determination in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Calculation of the Separate Rate Weighted-Average Margin, (February 26, 2009). Consistent with the Department's practice, as the separate rate, we have established a average margin for the Separate Rate Companies based on the rates we calculated for Wireking and New King Shan, excluding any rates that are zero, *de minimis*, or based entirely on AFA.<sup>10</sup> Jiangsu Weixi Group Co., Marmon Retail Services Asia, and Hangzhou Dunli Import & Export Co., Ltd. are the companies receiving this

<sup>7</sup> See SAA at 870.

<sup>8</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), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

<sup>9</sup> See Petition, at Volume II, Exhibit 14.

<sup>10</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) ("PSF"), 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).



rate and are listed in the "Suspension of Liquidation" section of this notice.

#### Date of Sale

19 CFR 351.401(i) states that, "in identifying the date of sale of the merchandise under consideration 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." In *Allied Tube*, the Court of International Trade ("CIT") noted that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'" *Allied Tube & Conduit Corp. v. United States* 132 F. Supp. 2d at 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) ("Allied Tube"). Additionally, 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*, 132 F. Supp. 2d 1087, 1090–1092. 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. See *Carbon and Alloy Steel Wire Rod from Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007) and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000) and accompanying Issues and Decision Memorandum at Comment 1.

New King Shan reported that the date of sale was determined by the invoice issued by the affiliated importer to the unaffiliated United States customer. In this case, as the Department found no evidence contrary to New King Shan's claims that invoice date was the appropriate date of sale, the Department used invoice date as the date of sale for this preliminary determination.

Wireking reported its U.S. sales as constructed export price ("CEP") sales because the sales are not made until after importation to the United States. Wireking reported that while it issues a commercial invoice to the U.S. customer for the quantities of merchandise subject to the investigation that it shipped, the quantity of each sale is not fixed when it issues the commercial invoice to the

U.S. customer. See Wireking's Supplemental Section C, (February 18, 2009) at 20. According to Wireking, the U.S. customer does not agree to purchase the final quantity for each of Wireking's reported sales until the U.S. customer issues document X<sup>11</sup> to Wireking, upon which payment and the total value of each sale is based. See *id.*, at 17 and 20.

Wireking stated that it is not reporting the date of the commercial/shipment invoice issued to the U.S. customer as the date of sale because this is not when all the material terms of sale, *i.e.*, final quantity and total value/payment of each sale, are fixed. See *id.*, at 17. According to Wireking, the U.S. customer is not contractually obligated to purchase the quantity shipped by Wireking and thus Wireking's commercial/shipment invoice is a fair retail value of the merchandise but not a document establishing all material terms of sale. See *id.*, at 17. Instead, Wireking stated that it has reported the date of document X issued by the U.S. customer as the date of sale because all the material terms of sale, *i.e.*, final quantity, and total value and payment of the sale, were not finalized until this document was issued by the U.S. customer. Moreover, Wireking has reported that it does not record the commercial/shipment invoice issued to the U.S. customer in its accounting records. See *id.*, at 14. Wireking has reported that it records the date of document X in its accounting records, as well as the payment received pursuant to the sale.<sup>12</sup> Accordingly, based on the record evidence, the Department preliminarily determines that Wireking's date of sale is the date on which document X is issued because all the material terms of sale, *i.e.*, final quantity, value, and payment, are not fixed until the U.S. customer issues document X to Wireking. Therefore, the Department will calculate Wireking's price for its U.S. sales using the date of document X as the date of sale.

However, based on the documents currently on the record of this proceeding, Wireking has not shown that it will be able to reconcile its total quantity of shipments to the total final

quantity of merchandise purchased by the U.S. customer. See Wireking's February 18, 2009, Letter, at 4. While Wireking reported that it will be able to support its reported U.S. sales by reconciling the reported U.S. quantity and value to document X, Wireking has stated that it will be unable to tie its total shipments to its total reported U.S. sales database quantity because Wireking does not have access to the U.S. customer's records, including inventory records, that establish whether Wireking's reported U.S. sales database is complete. The Department preliminarily finds that there is a difference between Wireking's reported total shipments to the U.S. customer during the POI and its total reported U.S. sales during the POI. See *id.*, at 3; Wireking's Section C and D Response, (December 2, 2009), at Exhibit R1; Wireking Analysis Memo. Because Wireking has not shown that the reported total quantity and value of its U.S. sales is complete, *i.e.*, there are unreported U.S. sales, we must conclude that the application of facts otherwise available is warranted for Wireking's unreported sales, pursuant to section 776(a)(2)(D) of the Act because Wireking is unable to reconcile the reported total quantity of sales to a verifiable source document. Because Wireking has claimed that it has provided all the information it can regarding the unusual sales arrangement with the U.S. customer, where the U.S. customer dictates the final quantity and value of the sale, and the Department currently has no information on the record to the contrary, the Department preliminarily determines that the application of AFA is not warranted, pursuant to section 776(b) of the Act. Accordingly, as FA, the Department preliminarily determines that it will apply the weighted-average margin of Wireking's reported U.S. sales to the unreported quantity and value<sup>13</sup> of Wireking's unreported sales. Furthermore, after the preliminary determination, the Department intends to issue additional supplemental questionnaires to Wireking to determine whether Wireking's reported quantity and value can be verified. The Department notes that all information relied upon must be verifiable. See *Final*

<sup>11</sup> The description of this document is business proprietary; for further discussion of this document, see Wireking's Section C Supp. at 14 and Wireking Analysis Memo.

<sup>12</sup> Although Wireking's affiliate, Company G, receives payment for the sale from the U.S. customer and records the date of sale of document X in its accounting records, because Wireking and Company G have been found to be a single entity ("Wireking"), the Department preliminarily determines that the single entity, Wireking, records document X as the date of sale in its accounting records. See Wireking's Section C Supp.

<sup>13</sup> Because the Department has used the total shipments/purchases to Company G as Wireking's total shipments to the U.S. customer during the POI and Wireking has reported that there is a difference in the total value of these shipment/purchases to the total value of Wireking's shipments to the U.S. customer, the Department has increased the total value by this difference. See Wireking's Section C Supp. at 17, for further discussion of this difference, which is business proprietary information. See also Wireking's Analysis Memo

*Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 2049 (January 14, 2009) and accompanying Issues and Decision Memorandum at Comment 1. Therefore, based on these supplemental responses, the Department will make a determination as to whether Wireking's reported U.S. sales are verifiable.

### Fair Value Comparison

To determine whether sales of certain kitchen appliance shelving and racks to the United States by Wireking and New King Shan were made at less than fair value, we compared CEP to NV, as described in the "U.S. Price" and "Normal Value" sections of this notice.

### U.S. Price

In accordance with section 772(b) of the Act, we based the U.S. price for New King Shan's sales on CEP because these sales were made by New King Shan's U.S. affiliate, which purchased the merchandise under investigation produced and sold by New King Shan through two other affiliates,<sup>14</sup> Company A and Company B.<sup>15</sup> In accordance with section 772(c)(2)(A) of the Act, we calculated CEP by deducting, where applicable, the following expenses from the gross unit price charged to the first unaffiliated customer in the United States, foreign movement expenses, and U.S. movement expenses, including U.S. duties, U.S. warehousing, and

inventory carrying cost. Further, in accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), where appropriate, we deducted from the starting price the following selling expenses associated with economic activities occurring in the United States: credit expenses and other direct selling expenses. In addition, pursuant to section 772(d)(3) of the Act, we made an adjustment to the starting price for CEP profit. We based movement expenses on either surrogate values or actual expenses. For details regarding our CEP calculations, and for a complete discussion of the calculation of the U.S. price for New King Shan, see New King Shan Analysis Memo.<sup>16</sup>

Additionally, in accordance with section 772(b) of the Act, we based the U.S. price for Wireking's sales on CEP because these sales were sold (or agreed to be sold) after the date of importation into the United States by Wireking. In accordance with section 772(c)(2)(A) of the Act, we calculated CEP by deducting, where applicable, the following expenses from the gross unit price charged to the first unaffiliated customer in the United States, foreign movement expenses, and U.S. movement expenses, including U.S. inland freight from port to warehouse, U.S. inland insurance, U.S. duties, and inventory carrying cost. Additionally, in accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), where appropriate, we deducted from the starting price the following selling expenses associated with economic activities occurring in the United States: credit expenses. We have based Wireking's imputed credit expenses on the difference between the date of shipment, which is when the merchandise was withdrawn from the U.S. warehouse, and the date that Wireking received payment. *See Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Final Results of Antidumping Duty Administrative Review*, 73 FR 31961 (June 5, 2008) and accompanying Issues and Decision Memorandum at Comment 23. Moreover, pursuant to section 772(d)(3) of the Act, we made an adjustment to the starting price for CEP profit. For discussion of our valuation of Wireking's movement expenses, *see the*

section of this notice entitled "Use of AFA for Wireking's Movement Expenses." For a complete discussion of the calculation of the U.S. price for Wireking, *see Wireking Analysis Memo*.

### Use of AFA for Wireking's Movement Expenses

In this investigation, Wireking reported that it incurred certain freight expenses for sales made under sales term X and sales term Y<sup>17</sup> that were purchased from a market economy carrier and paid for in market economy currency. *See Wireking's Section C Supp*, at 29–30 and Exhibit 17 at pages 26–33. However, for these freight expenses, after twice being requested by the Department to report these as market economy purchases, Wireking continued to report these freight expenses as non-market economy purchases because the market economy carrier has a PRC branch office that arranged these shipments. *See id.*, at 30. Because it is the Department's practice to treat expenses purchased from a market economy supplier and paid for in a market economy currency as market economy purchases, and there is record evidence showing that Wireking was charged and paid the market economy supplier of these expenses in market economy currency under sales term X, the Department preliminarily determines to value these expenses as market economy purchases under sales term X. *See 19 CFR 351.408(c)(1); Certain Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comment 35. However, for freight expenses incurred under sales term Y, the Department preliminarily determines to value these expenses as non-market economy purchases because there is record evidence showing that Wireking paid the market economy supplier of these expenses in non-market economy currency. *See Wireking's Section C Supp*, at Exhibit 17 at pages 19–25.

Because Wireking was twice requested by the Department to report the price of its market economy freight expenses but failed to provide such information after being requested, the Department preliminarily determines that the application of facts otherwise available to Wireking's market economy

<sup>14</sup> The identity of these companies is business proprietary; for further discussion of these companies, *see New King Shan Analysis Memo*.

<sup>15</sup> New King Shan reported these sales as CEP sales. The Department finds that these sales are CEP sales because New King Shan reported that its affiliate in the United States performed sales functions such as: sales negotiation, issuance of invoices and receipt of payment from the ultimate U.S. customer during the POI. Moreover, New King Shan reported expenses incurred in the United States that are normally deducted from the gross unit price. *See New King Shan's Section C Questionnaire Response*, (January 12, 2009); *see also Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Rescission*, in *Part*, 72 FR 18457 (April 12, 2007) unchanged in *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission*, in *Part*, 72 FR 58809 (October 17, 2007) (where the Department stated that "we based U.S. price for certain sales on CEP in accordance with section 772(b) of the Act, because sales were made by Nantong Donchang's U.S. affiliate, Wavort, Inc. {"Wavort"} to unaffiliated purchasers."); *AK Steel Corp., et al v. United States*, 226 F.3d 1361, 1367 (Fed.Cir. 2000) (where the court stated that "the purpose of these additional deductions in the CEP methodology is to prevent foreign producers from competing unfairly in the U.S. market by inflating the U.S. price with amounts spent by the U.S. affiliate on marketing and selling the products in the United States").

<sup>16</sup> The identity of this company is business proprietary information; for further discussion of this company, *see Memorandum to Catherine Bertrand*, Program Manager, AD/CVD Operations, Office 9, from Katie Marksberry, Case Analyst, AD/CVD Operations, Office 9: Preliminary Determination in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Analysis Memorandum of New King Shan, (February 26, 2008) ("New King Shan Memo").

<sup>17</sup> The details of sales term X and sales term Y are business proprietary; for further discussion of sales term X and sales term Y, *see Wire King Analysis Memo*.



freight expenses incurred under sales term X is warranted, pursuant to sections 776(a)(2)(A) and (B) of the Act. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department shall promptly inform the party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. After receipt of Wireking's response to Section C of the Department's initial questionnaire, which clearly directed Wireking to report the market economy price of any freight expense that it incurred using a market economy carrier and paid for in market economy currency, the Department issued Wireking a supplemental Section C questionnaire. This supplemental Section C questionnaire granted Wireking an additional opportunity to report the price of its market economy freight expenses. See the Department's Supplemental Section C Questionnaire to Wireking (January 28, 2009) at Questions 44, 46, 50, 51, and 56. However, Wireking refused to comply with the Department's request and instead argued that it was appropriate to treat this market economy carrier as an "NME service provider" and did not provide the requested information. See Wireking's Section C Supp. at 30. Accordingly, section 782(d) of the Act does not prevent application of partial AFA under these circumstances. See *Reiner Brach GmbH & Co. KG v. United States*, 206 F. Supp. 2d 1323, 1332–38 (CIT 2002).

For these reasons, the Department has preliminarily determined to apply partial AFA to Wireking's market economy freight expenses incurred under sales term X, as specified under sections 776(a)(2)(A) and (B) of the Act. As stated above, Wireking had multiple opportunities to report the price of these market economy freight expenses to the Department. Despite Wireking's categorization of these freight expenses as non-market economy purchases, the Department's request for this information was unambiguous. Therefore, for the reasons stated above, the Department finds that, pursuant to section 776(b) of the Act, Wireking has failed to cooperate to the best of its ability with regard to its unreported market economy freight expenses incurred under sales term X. Because Wireking failed to fully cooperate with the Department in this matter, we find it appropriate to use an inference that is adverse to the interests of Wireking in

selecting from among the facts otherwise available. See section 776(b) of the Act. By doing so, we ensure that Wireking will not obtain a more favorable result by failing to cooperate than had it cooperated fully in this investigation. See SAA at 870, reprinted at 1994 U.S.C.C.A.N. at 4199. Consequently, as facts otherwise available, the Department will use the market economy price from one freight invoice submitted by Wireking as the basis for freight expenses for all shipments made under sales term X. Furthermore, because the freight invoice is Wireking's own information, the Department preliminarily determines that it is not secondary information and does not need to be corroborated, pursuant to section 776(c) of the Act. See Wireking Analysis Memo.

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a 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. See e.g., *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products From the People's Republic of China*, 71 FR 19695 (April 17, 2006) ("CLPP") unchanged in *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 (September 8, 2006).

As the basis for NV, both Wireking and New King Shan provided FOPs used in each stage for processing kitchen appliance shelving and racks, i.e., from the drawing of the steel wire rod to completion of the final product. Additionally, both Wireking and New King Shan reported that they are integrated producers because both respondents draw the steel wire from the steel wire rod and provided the FOP information used in this production stage.

Consistent with section 773(c)(1)(B) of the Act, it is the Department's practice to value the FOPs that a respondent uses to produce the merchandise under

consideration. See *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China*, 69 FR 70997 (December 8, 2004) and accompanying Issues and Decision Memorandum at Comment 9(E). If the NME respondent is an integrated producer, we take into account the factors utilized in each stage of the production process. See *id.* In this case, we are valuing those inputs reported by Wireking and New King Shan that were used to produce the main input to the processing stage (steel wire) when calculating NV, regardless of whether the FOPs were produced or purchased by the respondents.

A portion of Wireking's corrugated packing FOP was produced by Wireking's Affiliate E.<sup>18</sup> We are not, however, valuing these inputs as self-produced because Wireking and Affiliate E operate independently of each other, do not share business transactions, do not share facilities, do not share management/employees, and do not share production and pricing decisions. See Letter to Adams Lee, counsel for Wireking, from Catherine Bertrand, Program Manager, Office 9, Import Administration, (January 29, 2009); Wireking's Supplemental Section D, (February 5, 2009) at Exhibit 24; Wireking's 2nd Supplemental Section A Questionnaire Response, (January 23, 2009) at 20–23; *Sinopec Sichuan Vinylon Works v. United States*, Slip Op. 06–191 (December 28, 2007), at 5–7. Additionally, Wireking's Affiliate E is not a producer of similar or identical merchandise to that produced by Wireking, and could not produce this merchandise without substantial retooling. Moreover, Wireking's Affiliate E is not involved in the export or sale of merchandise under investigation and thus, we find that the initial regulatory criteria for treating affiliated producers as a single entity are not met, nor are circumstances similar to that under which the Department has treated affiliated exporters as a single entity present in this case. See *Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 57329 (October 2, 2008) and accompanying Issues and Decision Memorandum at Comment 8 ("*Thermal Paper from PRC Final*"). Accordingly, even though Wireking and its affiliated supplier of a portion of this packing factor are affiliated through indirect

<sup>18</sup> The identity of Wireking's Affiliate E is business proprietary. See Wireking's Section A Questionnaire Response, (November 12, 2008) at Exhibit 5; Wireking's January 21, 2009, letter, at 2.

common control of person F,<sup>19</sup> absent a significant potential for manipulation, we find it unnecessary to value upstream inputs that were not used by the actual producer of merchandise under investigation in NV calculations because such valuation would not reflect the producer's, *i.e.*, Wireking's, own production experience. See *Thermal Paper from the PRC Final*, at Comment 8; *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission*, 73 FR 15479 (March 24, 2008) and accompanying Issues and Decision Memorandum at Comment 5C.

### Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by Wireking and New King Shan. To calculate NV, we multiplied 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. See, *e.g.*, *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China*, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5. 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, 1407–08 (Fed. Cir. 1997). A detailed description of all surrogate values used for Wireking and New King Shan can be found in the Surrogate Value Memorandum (February 26, 2009).

For this preliminary determination, in accordance with the Department's practice, we used data from the Indian Import Statistics and other publicly

available Indian sources in order to calculate surrogate values for Wireking and New King Shan's FOPs (direct materials, energy, and packing materials) and certain movement expenses. In selecting the best available information for valuing FOPs 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), 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 data in the Indian Import Statistics, as well as those from the other Indian sources, are contemporaneous with the POI, product-specific, and tax-exclusive. See Surrogate Value Memorandum. In those instances where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index ("WPI") as published in the International Financial Statistics of the International Monetary Fund. See, *e.g.*, *PSF* 71 FR, at 77380 and *CLPP* 71 FR, at 19704.

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 *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. Further, guided by the legislative history, it is the Department's practice not to

conduct a formal investigation to ensure that such prices are not subsidized. See Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100–576 at 590 (1988) reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24; see also *Preliminary Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758 (June 4, 2007) unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007). Rather, the Department bases its decision on information that is available to it at the time it makes its determination. See *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008). Therefore, we have not used prices from these countries in calculating the Indian import-based surrogate values. Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. See *id.*

Additionally, during the POI, New King Shan reported that it purchased certain inputs from a market economy supplier and paid for the inputs in a market economy currency. The Department has a rebuttable presumption that market economy input prices are the best available information for valuing an input when the total volume of the input purchased from all market economy sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period. In these cases, unless case-specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted-average market economy purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from market economy suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no

<sup>19</sup> Person F's identity is business proprietary information. See Wireking's Section A Questionnaire Response, (November 12, 2008) at Exhibit 5.

reason to disregard the prices, the Department will weight-average the market economy purchase price with an appropriate surrogate value ("SV") according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption. When a firm has made market economy input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid market economy purchases meet the 33-percent threshold. *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717–18 (October 19, 2006).

The Department has determined that although New King Shan reported purchasing certain inputs from market economy sellers during the POI and paying for the inputs in a market economy currency, New King Shan did not provide sufficient supporting documentation to demonstrate that these purchases were in fact market economy purchases, and therefore the Department is not valuing these inputs using New King Shan's reported market economy prices for each of these inputs for this preliminary determination. *See New King Shan's Questionnaire Responses*, (January 12, 2009), (February 9, 2009) and (February 13, 2009) and New King Shan's Analysis Memorandum. The Department used the Indian Import Statistics to value the raw material and packing material inputs that Wireking and New King Shan used to produce the merchandise under investigation during the POI, except where listed below.

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in May 2008, *see Corrected 2007 Calculation of Expected Non-Market Economy Wages*, 73 FR 27795 (May 14, 2008), and <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 2005, ILO (Geneva: 2007), 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 the respondents.

We valued truck freight expenses using a per-unit average rate calculated from data on the infobanc Web site: <http://www.infobanc.com/logistics/logtruck.htm>. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. Since this value is not contemporaneous with the POI, we deflated the rate using WPI.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India ("CEA") in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated July 2006. These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to industries in India. Since the rates are not contemporaneous with the POI, we inflated the values using the WPI. Parties have suggested that the Department rely on June 2008 CEA data and International Energy Agency ("IEA") data, however, we preliminarily find that we cannot rely on them because we are unable to separate duty rates from the June 2008 CEA data, and the IEA data are less contemporaneous than the July 2006 CEA data. Additionally, petitioners have recommended that we not use CEA data because of a May 2007 TERI report that indicated that the rates include subsidies and are below production; however, the Department was unable to find sufficient evidence of subsidies to demonstrate that the electricity rates used in the CEA data were unreliable. Moreover, the Department was also unable to find sufficient evidence to demonstrate that the electricity rates used in the CEA data were below cost.

Because water is essential to the production process of the merchandise under consideration, the Department considers water to be a direct material input, not overhead, 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 23, 2003) and accompanying Issues and Decision Memorandum at Comment 11. The Department valued water using data from the Maharashtra Industrial Development Corporation (<http://www.midindia.orgwww.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 used WPI data to inflate the rate to be contemporaneous to the POI.

We continued our recent practice to value brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Agro Dutch Industries Ltd. in the antidumping duty administrative review of certain preserved mushrooms from India, Kejirwal Paper Ltd. in the LTFV investigation of certain lined paper products from India, and Essar Steel in the antidumping duty administrative review of hot-rolled carbon steel flat products from India. *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006); *see also Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India*, 71 FR 19706 (April 17, 2006), unchanged in *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); *Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018,2021 (January 12, 2006) unchanged in *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Administrative Review*, 71 FR 40694 (July 18, 2006). Since the resulting value is not contemporaneous with the POI, we inflated the rate using the WPI.

To value marine insurance, the Department used data from RGJ Consultants (<http://www.rgjconsultants.com/>). This source provides information regarding the per-value rates of marine insurance of imports and exports to/from various countries.

To value U.S. inland insurance, the Department used data from P.A.F. Cargo Insurance (<http://www.pafinsurance.com/>). This source provides information regarding the per-value rate of basic and all risk coverage

insurance rates of commodities transported within the United States.

To value factory overhead, selling, general, and administrative expenses, and profit, we used the average of the audited financial statements of three Indian fastener companies, Nasco Steel 07/08, Sterling Tools Limited 07/08, and Lakshmi Precision Screw, Ltd. 06/07. While all three of these companies produce comparable rather than identical merchandise, each of these companies use an integrated wire-drawing production process with wire rod as one of its primary inputs, which closely mirrors that of the mandatory respondents. Although Petitioners argued that the production process of fastener products is not as complex and high value-added as the production process of certain kitchen appliance shelving and racks, we find that there is no evidence on the record demonstrating that the financial experience of these three fastener companies is not comparable to the experience of the mandatory respondents.

Additionally, while Petitioners have also provided an additional source for surrogate financial ratios using the financial statements of Usha Martin Ltd. ("Usha"), which is an Indian producer of steel wire and wire rope, we find that the financial statements of producers of wire and wire rope should not be used for purposes of calculating surrogate financial ratios because certain kitchen appliance shelving and racks are a downstream product of wire requiring additional manufacturing processes and wire and wire rope do not undergo comparable additional fabrication. Using wire producers to calculate the surrogate financial ratios would not capture all the costs beyond wire reported by the respondents in the production of kitchen appliance shelving and racks, such as painting, powder coating, degreasing, etc. Therefore, we find that a company which produces fasteners would better reflect the production experience of kitchen appliance shelving and racks because fasteners, like kitchen appliance shelving and racks, undergoes further processing. As such, we averaged financial ratios from the financial statements of Lakshmi, Nasco, and Sterling, all of which are integrated wire fastener producers, to calculate the surrogate financial ratios.

To value low carbon steel wire rod, we used price data from the Indian Joint Plant Committee ("JPC"), which is a joint industry/government board that monitors Indian steel prices. These data are fully contemporaneous with the POI, and are specific to the reported inputs

of the respondents. *See* Wireking's Section D Supp; New King Shan's Section D Supp. Further, these data are publicly available, represent a broad market average, and we are able to calculate them on a tax-exclusive basis. *See* 19 CFR 351.408(c)(1). For a detailed discussion of all surrogate values used for this preliminary determination, *see* Surrogate Value Memo.

Wireking stated that we should use the WTA data for valuing all inputs even though the WTA data available for wire rod represents a basket category consisting of wire rod 14mm or less in diameter. This data, however, is less specific to the reported inputs than the JPC price data. Wireking argued that the Department reject the use of the JPC price data because it includes information from steel companies that have received domestic subsidies as indicated on their financial statements which Wireking has placed on the record of this proceeding. Wireking asserts that the JPC data are affected by these subsidies and therefore we should not use the JPC data to value low carbon steel wire rod.

On the one hand, the advantage of the JPC data are that they are from an official government source and are far more specific to the input in question. However, we are mindful of the concerns of Wireking. Bearing those concerns in mind, in selecting between the two datasets we are selecting the dataset more specific to the input in question. We will consider this issue for the final determination, and we invite all parties to comment on the proper balancing of these considerations.

#### Use of Facts Available for Wireking's Unit Weights

Section 776(a)(1) of the Act mandates that the Department use facts available if necessary information is not available on the record of an antidumping proceeding. In this investigation, Wireking reported that does not maintain production records that reports per-unit consumption of each FOP to specific products. *See* Wireking Section D Supplemental Questionnaire Response, (February 5, 2009) at 2. Accordingly, Wireking reported that it has calculated its FOPs by dividing, at each production stage, the total POI volume of each FOP consumed by the total volume of all products, subject and non-subject, generated at that stage. Then, Wireking reported that it then multiplied the FOP ratio by the unit weight of the finished product. *See id.*, at 3 and Exhibit D-7.

In their February 17, 2009, submission, Petitioners submitted data gathered from Wireking's submitted

packing lists and Petitioners' own production experience of certain products that allegedly demonstrated that Wireking's reported unit weights were understated. After comparing Petitioners' production experience of certain products and the unit weight of products reported in Wireking's packing lists to Wireking's reported unit weights, we find that Wireking has understated the unit weights of its finished products. *See* Wireking's Analysis Memo, at Attachment 4, Petitioners' February 17, 2009, Submission on Underreported Steel Weights, at 6 and Attachment 3. Additionally, because Wireking reported that it multiplied its FOP ratios by the unit weight of the finished product to obtain the per-unit consumption ratio of finished product, we also find that Wireking has understated its FOP ratios. Therefore, pursuant to section 776(a)(2)(B) of the Act, Wireking has not provided accurate information relevant to the Department's analysis. Thus, consistent with section 782(d) of the Act, the Department has determined it is necessary to apply facts otherwise available to Wireking's unit weight of each finished product to calculate Wireking's NV based on its reported FOP data. To account for the correct per-unit consumption ratio of each of Wireking's finished product, the Department has preliminarily determined to increase Wireking's reported FOP data by the difference in Wireking's reported unit weight and the unit weight reported in Wireking's packing list. Additionally, where there was no packing list on the record of the unit weight for various finished products, the Department has preliminarily determined to increase Wireking's reported FOP data for these finished products by the weighted-average difference of the unit weights for the finished products that are on the record. Moreover, to account for the correct weight of finished product to convert certain surrogate values to Wireking's reported U.S. price per piece, the Department has also preliminarily determined to increase Wireking's reported unit weight of each finished product by the weight difference, as discussed above. *See* Wireking's Analysis Memo.

#### 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 the information upon which we will rely 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 at 60806. 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:

Exporter	Producer	Weighted-average margin
Guandong Wireking Housewares & Hardware Co., Ltd. (a/k/a Foshan Shunde Wireking Housewares & Hardware Co., Ltd.).	Guandong Wireking Housewares & Hardware Co., Ltd. ....	25.66
New King Shan (Zhu Hai) Co., Ltd. ....	New King Shan (Zhu Hai) Co., Ltd. ....	17.15
Separate Rates Entities	Producer .....	Margin
Marmon Retail Services Asia .....	Leader Metal Industry Co., Ltd. (a/k/a Marmon Retail Services Asia).	21.41
Hangzhou Dunli Import & Export Co., Ltd. ....	Hangzhou Dunli Industry Co., Ltd. ....	21.41
Jiangsu Weixi Group Co. ....	Jiangsu Weixi Group Co. ....	21.41
PRC-wide Entity (including Asber Enterprise Co., Ltd. (China))	.....	96.45

**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 CBP to suspend liquidation of all entries of subject certain kitchen appliance shelving and racks from the PRC as described in the "Scope of Investigation" section, entered, or withdrawn from warehouse, for consumption from Wireking, New King Shan, Marmon Retail Services Asia, Hangzhou Dunli Import & Export Co., Ltd., Jiangsu Weixi Group Co., 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.

Additionally, as the Department has determined in its *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 74 FR 683 (January 7, 2009) ("CVD Prelim") that the product under investigation, exported and produced by Wireking, benefitted from an export subsidy we will instruct CBP to require an antidumping cash deposit or posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated above, minus the amount determined to

constitute an export subsidy. *See, e.g. Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India*, 69 FR 67306, 67307 (November 17, 2007). Therefore, for merchandise under consideration exported and produced by Wireking entered or withdrawn from warehouse, for consumption on or after publication date of this preliminary determination, we will instruct CBP to require an antidumping duty cash deposit or the posting of a bond for each entry equal to the weighted-average margin indicated above adjusted for the export subsidy rate determined in the *CVD Prelim* (i.e., Income Tax reduction for Export Oriented FIEs: countervailable subsidy of 0.94 percent; and Local Income Tax Reduction for "Productive" FIEs: countervailable subsidy of 0.23 percent). The adjusted cash deposit rate for Wireking is 24.49 percent.

Furthermore, in the *CVD Prelim*, Wireking's rate was assigned to the all-others rate as it was the only rate that was not zero, de minimis or based on total facts available. *See CVD Prelim*, 74 FR at 693. Accordingly, as the countervailing duty rate for New King Shan, Marmon Retail Services Asia, Hangzhou Dunli Import & Export Co., Ltd., Jiangsu Weixi Group Co. is the all others rate, which includes the two countervailable export subsidies listed above, we will also instruct CBP to require an antidumping duty cash deposit or the posting of a bond for each entry equal to the weighted-average margin indicated above for these companies adjusted for the export subsidies determined in the *CVD Prelim*. The adjusted cash deposit rate

for New King Shan is 15.98 percent and the adjusted cash deposit rate for Marmon Retail Services Asia, Hangzhou Dunli Import & Export Co., Ltd., Jiangsu Weixi Group Co. is 20.24 percent.

**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 certain kitchen appliance shelving and racks, or sales (or the likelihood of sales) for importation, of the merchandise under investigation 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 on which the final verification report is issued in this proceeding and rebuttal briefs limited to issues raised in case briefs and must be received no later than five days after the deadline date for case briefs. *See* 19 CFR 351.309(c)(i) and (d). 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, and if requested, we will hold a public hearing, 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 shortly 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.

#### **Postponement of Final Determination and Extension of Provisional Measures**

Pursuant to section 735(a)(2) of the Act, on February 23, 2009, Wireking requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. Wireking also requested that the Department extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a 4-month period to a 6-month period. In accordance with section 733(d) of the Act and 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: February 26, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9-4612 Filed 3-4-09; 8:45 am]

**BILLING CODE 3510-DS-P**

## **DEPARTMENT OF EDUCATION**

### **Submission for OMB Review; Comment Request**

**AGENCY:** Department of Education.  
**SUMMARY:** The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before April 6, 2009.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or recordkeeping burden. OMB invites public comment.

Dated: February 17, 2009.

**Angela C. Arrington,**

*Director, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.*

#### **Office of Elementary and Secondary Education**

*Type of Review:* Revision.

*Title:* Local Flexibility Demonstration Program (Local-Flex) Application Package.

*Frequency:* Annually.

*Affected Public:* Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 50.

Burden Hours: 4,000.

*Abstract:* The Local Flexibility Demonstration (Local-Flex) program provides participating local educational agencies (LEAs) with unprecedented flexibility to consolidate certain Federal education funds and to use those funds for any educational purpose under the Elementary and Secondary Education Act (ESEA) in order to meet the State's definition of adequate yearly progress and attain specific measurable goals for improving student achievement and narrowing achievement gaps. The application package contains information applicants will need to prepare and submit their Local-Flex proposals.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3923. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to the Internet address [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E9-4741 Filed 3-4-09; 8:45 am]

**BILLING CODE 4000-01-P**

## **ELECTION ASSISTANCE COMMISSION**

### **Sunshine Act Notice**

**AGENCY:** U.S. Election Assistance Commission.

**ACTION:** Notice of public hearing agenda.

**DATE AND TIME:** Tuesday, March 17, 2009, 1-3 p.m.

**PLACE:** U.S. Election Assistance Commission, 1225 New York Ave, NW., Suite 150, Washington, DC 20005 (Metro Stop: Metro Center).