

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-840]

Manganese Metal From the People's Republic of China; Final Results of Second Antidumping Administrative Review

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review of Manganese Metal from the People's Republic of China.

SUMMARY: We have determined that sales by China Metallurgical Import & Export Hunan Corporation/Hunan Nonferrous Metals Import & Export Associated Corporation have been made below normal value during the period of review of February 1, 1997, through January 31, 1998. Since we were unable to verify that China Hunan International Economic Development Corporation reported all of its U.S. sales during the period of review, we are applying adverse facts available to calculate the dumping margin for this exporter of the subject merchandise. Based on these final results of review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price and normal value on all appropriate entries.

EFFECTIVE DATE: September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Greg Campbell or Craig Matney, Group 1, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-2239 or (202) 482-1778, respectively.

SUPPLEMENTARY INFORMATION:**Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, all references to the Department's regulations are to 19 CFR Part 351 (April 1998).

Background

On February 6, 1996, the Department of Commerce (the Department) published in the **Federal Register** the antidumping duty order on manganese

metal from the People's Republic of China (PRC). *See Notice of Amended Final Determination and Antidumping Duty Order: Manganese Metal from the People's Republic of China*, 61 FR 4415 (February 6, 1996) (*LTFV Investigation*). In accordance with 19 CFR 351.213(b)(2), on February 9, 1998, Elkem Metals Company and Kerr-McGee Chemical Corporation (the petitioners) requested that we conduct an administrative review of this order. On March 23, 1998, in accordance with 19 CFR 351.213(c)(3), we published a notice of initiation of this antidumping duty administrative review. *See* 63 FR 13837.

On March 8, 1999, we published our preliminary results of review. *See* 64 FR 10986. Included in our *Preliminary Results* notice was our notice of partial rescission of this review with respect to two PRC exporters: China National Electronics Import and Export Hunan Company (CEIEC) and Minmetals Precious & Rare Minerals Import & Export Corporation (Minmetals).

We subsequently provided interested parties an opportunity to comment on the preliminary results, and held a public hearing on May 14, 1999. The following parties submitted comments: Elkem Metals Company and Kerr-McGee Chemical Corporation (together comprising the petitioners), and China Hunan International Economic Development Corporation (HIED) and China Metallurgical Import & Export Hunan Corporation/Hunan Nonferrous Metals Import & Export Associated Corporation (CMIECHN/CNIECHN) (together comprising the respondents), as well as Sumitomo Canada, Limited (SCL) (a Canadian reseller of subject merchandise). Because it was not practicable to complete the review within the time limit mandated by section 751(a)(3)(A) of the Act, on July 1, 1999, we published a notice of extension of time limit for this review. *See* 64 FR 35626.

The Department is conducting this administrative review in accordance with section 751 of the Act. The period of review (POR) is February 1, 1997 through January 31, 1998.

Scope of Review

The merchandise covered by this review is manganese metal, which is composed principally of manganese, by weight, but also contains some impurities such as carbon, sulfur, phosphorous, iron and silicon. Manganese metal contains by weight not less than 95 percent manganese. All compositions, forms and sizes of manganese metal are included within the scope of this administrative review,

including metal flake, powder, compressed powder, and fines. The subject merchandise is currently classifiable under subheadings 8111.00.45.00 and 8111.00.60.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Verification

We verified factor information provided by Xiang Tan Huan Yu Metallurgical Products Plant (Huan Yu). We also conducted sales verifications at HIED, CMIECHN/CNIECHN, and Minmetals. Our verification at each of these companies consisted of standard verification procedures, including the examination of relevant sales and financial records and the selection of original documentation containing relevant information. In addition to these standard verifications, we also verified the sales documents submitted by SCL. Our verification results for each of these companies are detailed in the verification reports on file in the Central Records Unit (CRU) in room B-099 of the Department's main building.

Export Price

For those U.S. sales made by CMIECHN/CNIECHN and which we verified, we calculated an export price, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and constructed export price treatment was not otherwise indicated.

For these sales, we calculated export price based on the price to unaffiliated purchasers. We deducted an amount, where appropriate, for foreign inland freight, ocean freight, and marine insurance.¹ The costs for these items were valued in the surrogate country.

As discussed in the *Customs Data* section below, there were many more shipments of manganese metal listing CMIECHN/CNIECHN as the manufacturer/exporter entered into the United States during the POR than the number of CMIECHN/CNIECHN's verified U.S. sales. We have determined that these additional entries are not CMIECHN/CNIECHN sales for the purposes of this review and, therefore,

¹ For a detailed discussion of how we derived net export price and constructed value, see *Memorandum to the Case File; Calculations for the Final Results of Review for CMIECHN/CNIECHN* (September 7, 1999), a public version of which is available in room B-099 of the Department's main building.

we have not calculated an export price for these entries. Likewise, for the reasons enumerated in the *Facts Available* section below, we have not calculated an export price for HIED's sales.

Normal Value

1. Non-Market-Economy Status

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine normal value (NV) using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) 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 has treated the PRC as an NME country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Furthermore, available 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. Therefore, we treated the PRC as a NME country for purposes of this review and calculated NV by valuing the factors of production in a comparable market-economy country which is a significant producer of comparable merchandise.

2. Surrogate-Country Selection

In accordance with section 773(c)(4) of the Act and section 351.408(b) of our regulations, we find that India has a level of economic development comparable to the PRC and that it is a significant producer of comparable merchandise.² Therefore, for this review, we have selected India as the surrogate country and have used publicly available information relating to India, unless otherwise noted, to value the various factors of production.

3. Factors-of-Production Valuation

For purposes of calculating NV, we valued PRC factors of production, in accordance with section 773(c)(1) of the Act. Factors of production include but are not limited to the following elements: (1) hours of labor required; (2) quantities of raw materials employed;

(3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining potential surrogate values, we selected, where possible and appropriate, the publicly available value which was: (1) an average non-export value; (2) representative of a range of prices either within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. Where we could not obtain a POR-representative price for an appropriate surrogate value, we selected a value in accordance with the remaining criteria mentioned above and which was the closest in time to the POR. In accordance with this methodology, we have valued the factors as described below.³

We valued manganese ore using a June 1998 export price quotation (in U.S. dollars) from a Brazilian manganese mine for manganese carbonate ore. Consistent with our methodology used in the first administrative review final results, this price was adjusted to reflect the decline in manganese ore world prices since the POR.⁴ We adjusted this price further to account for the reported manganese content of the ore used in the PRC manufacture of the subject merchandise and to account for the differences in transportation distances.

To value various process chemicals used in the production of manganese metal, we used prices obtained from the following Indian sources: *Indian Chemical Weekly* (February 1997 through November 1997); the *Monthly Statistics of Foreign Trade of India, Volume II—Imports* (February through May 1997) (*Import Statistics*); price quotations from Indian chemicals producers, and the *Indian Minerals Yearbook* (1995) (*IMY*). Where necessary, we adjusted these values to reflect inflation up to the POR using an Indian wholesale price index (WPI) published by the International Monetary Fund (IMF). Additionally, we adjusted these values, where appropriate, to account for differences in chemical content and to account for freight costs incurred between the suppliers and manganese metal producers.

To value the labor input, consistent with 19 CFR 351.408(c)(3), we used the regression-based estimated wage rate for

the PRC as calculated by the Department and updated in May 1999.

For selling, general, and administrative expenses (SG&A), factory overhead, and profit values, we used information from the *Reserve Bank of India Bulletin* (January 1997) for the Indian industrial grouping "Processing and Manufacturing: Metals, Chemicals, and Products Thereof." To value factory overhead, we calculated the ratio of factory overhead expenses to the cost of materials and energy. Using the same source, we also calculated the SG&A expense as a percentage of the cost of materials, energy and factory overhead, and profit as a percentage of the cost of production (i.e., materials, energy, labor, factory overhead and SG&A).

For most packing materials values, we used per-unit values based on the data in the *Import Statistics*. For iron drums, however, we used a price quotation from an Indian manufacturer rather than a value from the *Import Statistics* because the quoted price was for the appropriate type of container used, whereas the *Import Statistics* were aggregated over various types of containers. We made further adjustments to account for freight costs incurred between the PRC supplier and manganese metal producers.

To value electricity, we used the average rate applicable to large industrial users throughout India as reported in the *1995 Confederation of Indian Industries Handbook of Statistics*. We adjusted the March 1, 1995, value to reflect inflation up to the POR using the WPI published by the IMF.

To value rail freight, we relied upon rates published in June 1998 by the Indian Railway Conference Association, deflated by the Indian WPI to derive a surrogate value contemporaneous with the POR. To value truck freight, we used a price quotation from an Indian freight provider. Because this quotation was for a period subsequent to the POR, we deflated the value back to the POR using the WPI published by the IMF.

4. Changes Since the Preliminary Results

We have made certain changes, as identified below, in our margin calculations pursuant to comments we received from interested parties, to the availability of updated information, and to the discovery of clerical errors since the preliminary results.

- (a) Liquid ammonium: see *Comment 5*
- (b) Sulphuric acid: see *Comment 5*
- (c) Rail freight: see *Comment 10*
- (d) Packing materials: see *Comment*

² See Memorandum to Susan Kuhnach from Jeff May; *Non-Market-Economy Status and Surrogate Country Selection* (June 23, 1998), a public copy of which is available in the Central Records Unit.

³ For a more detailed explanation of the methodology used in calculating various surrogate values, see Memorandum to the File from Case Team; *Factors of Production Valuation for the Final Results* (September 7, 1999).

⁴ See *Manganese Metal from the PRC; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12440, 12442 (March 13, 1998) (*First Review Results*).

(e) Labor: In May 1999, the Department revised its regression-based PRC wage rate (as published on the Department's website). This revised wage rate has been incorporated into these final results.

Customs Data

In the course of this administrative review, the Department obtained customs entry documentation from the U.S. Customs Service (Customs). We initially requested this customs data to verify the non-shipment claims by certain PRC exporters. Our request for entry data was also responsive to concerns expressed by the petitioners that many more shipments of manganese metal had entered the United States during the POR than were reported as sales by the respondents. The information we obtained included the documentation submitted by the U.S. importers, as required upon entry, for each shipment of subject merchandise that entered during the POR. We have closely examined this documentation for each entry and find the following.⁵

To start, the customs data indicates that many more shipments of manganese metal listing CMIECHN/CNIECHN as the exporter were entered into the United States than the number of U.S. sales reported by CMIECHN/CNIECHN and verified by the Department. In fact, the verified sales represent less than five percent of the total value of POR entries listing CMIECHN/CNIECHN as the exporter. CMIECHN/CNIECHN maintains that its verified sales are the only sales it made to the United States during the POR. Thus, the issue before the Department was whether this merchandise was properly identified as being exported by CMIECHN/CNIECHN and, consequently, whether these entries were entitled to CMIECHN/CNIECHN's cash deposit rate.

An examination of this customs documentation shows that these disputed CMIECHN/CNIECHN entries can be classified into three categories. The first category consists of entries which correspond to sales of subject merchandise reported by the respondents in the first administrative review. The Department therefore has previously reviewed these sales and calculated the appropriate dumping margin on these entries accordingly.

The second category of disputed CMIECHN/CNIECHN entries includes what appear to be resales of subject merchandise that was, at some point, purchased from CMIECHN/CNIECHN. The documentation for these reseller entries generally includes a commercial invoice from the reseller to the U.S. importer. In certain instances this commercial invoice also indicates that this merchandise was originally sourced from CMIECHN/CNIECHN.⁶ The defining characteristic of the documentation for this category of entries, however, is that there are no commercial invoices from CMIECHN/CNIECHN addressed directly to the U.S. importer.

We note that most of the entries in the second-category are U.S. sales of the third-country reseller SCL. During this review, the Department verified at SCL that this merchandise was, in fact, purchased from CMIECHN/CNIECHN. The Department also verified at SCL and CMIECHN/CNIECHN that there was no reason to believe that CMIECHN/CNIECHN would have known that these sales to SCL were destined for exportation to the United States.⁷

The third category of disputed CMIECHN/CNIECHN entries is comprised of shipments for which the customs documentation includes commercial invoices from CMIECHN/CNIECHN directly to the U.S. importer. CMIECHN/CNIECHN alleges that these commercial invoices and certain other documents submitted to Customs for these entries are, in fact, forged and has formally asked Customs to investigate whether these documents represent customs fraud. However, Customs has not made any determination regarding the accuracy and authenticity of these documents as of the date of these final results.

Nevertheless, in the course of this review the Department has examined a considerable amount of evidence regarding the nature of and circumstances surrounding these disputed CMIECHN/CNIECHN entries. There is substantial evidence which supports a finding that CMIECHN/CNIECHN was improperly identified as the exporter of record of these disputed entries and, consequently, that these entries should not have been subject to

CMIECHN/CNIECHN's cash deposit rate.⁸ For instance, an affidavit on the record of this review suggests that one U.S. importer may have knowingly entered subject merchandise incorrectly under CMIECHN/CNIECHN's cash deposit rate rather than under the PRC-wide rate. Moreover, we note that the relationship between other PRC exporters and the other U.S. importer of these disputed CMIECHN/CNIECHN entries is already in question and was one of the reasons we have used adverse facts available to determine HIED's dumping margin in these final results. See *Facts Available* section below. Thus, based on this evidence and the fact that these entries do not reflect sales from third-country resellers, there is reason to believe that the importers of these disputed entries did not enter the merchandise at the proper cash deposit rate.

Given the above, and based upon our verification of CMIECHN/CNIECHN's total U.S. sales, we have determined that the disputed CMIECHN/CNIECHN entries which comprise this third category are neither U.S. sales nor exports by CMIECHN/CNIECHN for the purposes of this review. Consequently, we determine that these entries were not entitled to CMIECHN/CNIECHN's cash deposit rate and, instead, should have been subject to the PRC-wide rate of 143.32 percent. Therefore, as explained in the *Assessment and Cash Deposit Rates* section below these entries will be liquidated at the PRC-wide rate of 143.32 percent.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form requested, (3) significantly impedes a proceeding under the antidumping statute, or (4) provides information that cannot be verified, the Department shall use, subject to section 782(d), facts available in reaching the applicable determination. While section 782(d) of the Act provides certain conditions that must be satisfied before the Department may disregard all or part of the information submitted by a respondent, these conditions only apply when the information submitted can be verified and the interested parties have cooperated to the best of their abilities. See section 782(e) of the Act.

1. Application of Facts Available

We determine that, in accordance with sections 776(a)(2) and 776(b) of the

⁵ For a detailed analysis of the issues raised by this customs data, see *Memorandum to Richard W. Moreland from Greg Campbell; Major Concurrence Issues for the Final Results of Review* (September 7, 1999) (*Final Concurrence Memo*), a public version of which is available in room B-099 of the Department's main building.

⁶ The documentation for some of these reseller entries also includes inspection certificates, country of origin certificates, or secondary commercial invoices indicating that the merchandise was, at some point, purchased from CMIECHN/CNIECHN.

⁷ For a detailed account of the Department's verification at SCL, see *Memorandum to the Case File; Results of Verification of SCL* (July 23, 1999), a public version of which is available in room B-099 of the Department's main building.

⁸ See *Final Concurrence Memo*.

Act, the use of facts otherwise available, adverse to the company, is appropriate for HIED because its sales data could not be verified and because it did not cooperate to the best of its ability in the course of this review. The bases for these conclusions are detailed below.

On August 13, 1998, the Department provided HIED with the customs data showing the POR entries into the United States of manganese metal purportedly from HIED. In an accompanying letter we noted that these entries differed in material ways from HIED's reported U.S. sales and requested that HIED comment on this inconsistency. HIED replied that its reported sales were correct and could be reconciled with its books. HIED further noted that any inconsistencies were likely due to "fraudulent schemes" on the part of other exporters to export subject merchandise into the United States under the most favorable circumstances.

The Department subsequently conducted a verification of HIED's reported sales. During the course of verification, we encountered numerous inconsistencies and delays, and certain documents were not available. For instance, HIED officials' explanation of the company's relationship to its U.S. customer was, in general, incongruous and incomplete and, at times, entirely contrary to what other company officials had stated previously. Moreover, although company officials claimed initially that only one of HIED's departments and one of its affiliates made sales of manganese metal during the POR, Department officials conducting the verification (the Verification Team) subsequently identified accounting records which indicated that at least one additional business unit may also have been involved in selling manganese metal. Furthermore, the Verification Team was unable to verify the total quantity and value of subject merchandise sold by HIED and its affiliates because certain intermediate accounting records could not be reconciled to source data or to the financial statements.

Verification of the completeness of HIED's sales reporting was also seriously hindered by the Verification Team's inability to review several of the sales and accounting records reportedly maintained by HIED. In some cases, the source documentation requested by the Department to verify total sales was reportedly discarded prior to verification. Company officials offered no explanation as to why they were unable to retrieve other sales and accounting records, maintained at the company headquarters, for the majority of HIED's sales departments. Sales and

accounting records for HIED's affiliates, including those selling manganese metal, were likewise not available though, according to HIED management, this was because company officials were unwilling to travel to other locations in the PRC where the documents were kept.

There were many significant delays in the verification process as a result of sorting through conflicting statements by officials and of the difficulty in locating documents which were explicitly requested by the Department in the verification outline sent prior to the verification. Despite the fact that the verification was extended—at the Department's initiative—for an additional half day, several important documents were not presented to the Verification Team until near or at the end of verification, preventing an adequate review of important data.

Subsequent to verification, the Department received from Customs supporting documentation (e.g., Customs Form 7501, commercial invoices, packing lists) filed by the U.S. importer upon entering the subject merchandise into the United States for several of the entries which appeared in the customs data. The supporting documentation for several entries listed in the customs data identified HIED as the actual exporter of the subject merchandise. However, for many of these entries there were no corresponding sales listed in HIED's U.S. sales listing, as submitted to the Department.

These numerous inconsistencies and delays, and the unavailability of documentation, taken together, constitute a verification failure under section 776(a)(2)(D) of the Act. Thus, we have determined that HIED failed to report sales it made to the United States. The Department has, therefore, determined that, because HIED's reported sales data could not be verified and, generally, the credibility of the information contained in HIED's questionnaire responses could not be established, section 776(a) of the Act requires the Department to disregard HIED's questionnaire responses and apply facts available.

2. Use of Adverse Facts Available

In selecting from among the facts available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. See *Statement of Administrative Action* (SAA), H.R. Doc. 316, Vol. 1, 103rd Cong., 2d sess. 870 at 870 (1994). To

examine whether the respondent "cooperated" by "acting to the best of its ability" under section 776(b) of the Act, the Department considers, *inter alia*, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. See, e.g., *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–53820 (October 16, 1997).

As discussed above, HIED failed to provide much of the documentation requested by the Verification Team and necessary to verify HIED's sales. Moreover, various company officials' statements were contradictory on several points central to a successful verification. Furthermore, the Department identified unreported sales of subject merchandise by HIED which the company knew, or should have known, should have been properly included in the reported U.S. sales list. Thus, we have determined that HIED withheld information we requested and significantly impeded the antidumping proceeding.

We find, therefore, that HIED has not acted to the best of its ability to comply with our requests for information. Accordingly, consistent with section 776(b) of the Act, we have applied adverse facts available to this company.

3. Corroboration of Secondary Information

In this review, we are using as adverse facts available the PRC-wide rate (143.32 percent) determined for non-responding exporters involved in the *LTFV Investigation*. This margin represents the highest margin in the petition, as modified by the Department for the purposes of initiation. See *Initiation of Antidumping Duty Investigation: Manganese Metal from the PRC*, 59 FR 61869 (December 2, 1994) (*LTFV Initiation*).

Information derived from the petition constitutes secondary information within the meaning of the SAA. See SAA at 870. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The SAA provides that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. The SAA at 870, however, states further that "the fact that corroboration may not be practicable in a given circumstance will not prevent the agencies from applying an adverse inference." In addition, the

SAA, at 869, emphasizes that the Department need not prove that the facts available are the best alternative information.

To corroborate secondary information, to the extent practicable the Department will examine the reliability and relevance of the information to be used. To examine the reliability of margins in the petition, we examine whether, based on available evidence, those margins reasonably reflect a level of dumping that may have occurred during the period of investigation by any firm, including those that did not provide us with usable information. This generally consists of examining, to the extent practicable, whether the significant elements used to derive the petition margins, or the resulting margins, are supported by independent sources. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be relevant, the Department will attempt to find a more appropriate basis for facts available. See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

For the initiation of the investigation, based on an analysis of the petition and a subsequent supplement to the petition, the Department modified the dumping margin contained in the petition. See *LTFV Initiation* at 61870. In the petition, the U.S. price was based on price quotations obtained for manganese metal from the PRC during December 1993 through May 1994. The factors of production were valued, where possible, using publicly available published information for India. Where Indian values were not available, the petitioners used data based on their own costs. For the initiation, however, the Department disallowed all factors valued by using the petitioners' own costs. Instead, we recalculated factory overhead and depreciation expenses using the statistics in the *Reserve Bank of India Bulletin* (December 1992), a publicly available and independent source used in other investigations of imports from the PRC. We also recalculated the valuation of several process chemicals using data from the independent source *Chemical Marketing*

Reporter. Furthermore, we revalued electricity costs using World Bank data on electricity rates for industrial users in Indonesia, an appropriate surrogate country at a comparable level of economic development to the PRC.

We find, therefore, for the purpose of these final results that the PRC-wide margin established in the *LTFV Investigation* is reliable. As there is no information on the record of this review that demonstrates that the rate selected is not an appropriate adverse facts available rate for HIED, we determine that this rate has probative value and, therefore, is an appropriate basis for facts otherwise available.

Analysis of Comments Received

We received comments from interested parties regarding the following general topics: (1) The use of facts available, (2) the appropriate rate for resellers, and (3) the valuation of factors of production and the by-product credit. Summaries of the comments and rebuttals, as well as the Department's responses to the comments, are included below.

1. Use of Facts Otherwise Available

Comment 1: The petitioners argue that the Department, consistent with its established practice regarding respondents who have failed to report a significant portion of their U.S. sales, should apply total adverse facts available to all customs entries indicating HIED or CMIECHN/CNIECHN as the manufacturer/exporter. As a basis for this adverse facts available finding, the petitioners note that customs entry documentation and port arrival data indicate that there were several more entries from these exporters than their reported U.S. sales. None of the record information or arguments submitted by the respondents, the petitioners maintain, adequately accounts for these additional entries which the respondents claim not to have made.

First, argue the petitioners, the respondents have not sufficiently substantiated their allegations that these additional entries represent customs fraud. Minor differences in the appearance of the sales documents of an exporter are not uncommon, and do not establish one document form as authentic and the other fraudulent.

Second, the petitioners continue, even if these additional, disputed entries do represent legitimate sales by the respondents to intermediary resellers, who then resold the merchandise to the United States, these sales might still be U.S. sales for the purposes of this review if the respondents had

knowledge of the ultimate U.S. destination of the sales.

The petitioners further argue that the Department encountered major problems at the verification of HIED and CMIECHN/CNIECHN and, therefore, was unable to verify the completeness of these respondents' sales reporting. In particular, the verification of CMIECHN/CNIECHN's total sales was dependent on the respondent's consistent use of its invoice numbering system. The petitioners note that the invoice numbers on many of the disputed CMIECHN/CNIECHN entries were not consistent with this numbering system. Moreover, although the Department examined at verification all of CMIECHN/CNIECHN's sales invoices reflecting this system, the Department could not then trace those invoices to the company's general accounting records. Therefore, the petitioners assert, the completeness of CMIECHN/CNIECHN's reporting of total sales remains unverified.

With regard to HIED, the petitioners note that the Department applied adverse facts available to this exporter in the preliminary results based in part on the fact that the Department could not confirm HIED's sales at verification. There is no new information on the record since the preliminary results, the petitioners maintain, that would warrant a change in this decision.

Given the above, in the petitioners' view, the Department cannot reasonably conclude that the disputed entries do not represent U.S. sales by the respondents for the purpose of this review. The Department, therefore, cannot proceed with its intention, as stated in the preliminary results, of assigning facts available to CMIECHN/CNIECHN's "unreported sales" while applying a calculated margin to that company's "reviewed sales." The petitioners maintain that the Department has a longstanding practice of applying facts available to all of a respondent's sales if a significant portion of those sales are found to be unreported. Therefore, the petitioners argue, the Department should apply total adverse facts available to all of CMIECHN/CNIECHN's sales, "reported and unreported," for these final results. Likewise, the Department should continue to apply total adverse facts available to all of HIED's sales.

The respondents counter that there is no credible evidence on the record that CMIECHN/CNIECHN failed to include a significant portion of its U.S. sales, that it withheld information, or that it has done anything wrong in this case. To the contrary, the respondents argue, CMIECHN/CNIECHN has provided

accurate and complete information regarding its U.S. sales.

The respondents further note that CMIECHN/CNIECHN's allegations regarding fraudulent entry data are still under consideration by Customs. See *Customs Data* section above. Therefore, until Customs makes an official determination regarding these allegations, no wrongdoing by CMIECHN/CNIECHN can be proven, and the petitioners' arguments are mere speculation. CMIECHN/CNIECHN cannot be penalized based on the disputed customs data, the respondents maintain, if no finding in any fraud investigation by Customs has been made.

Moreover, the respondents continue, CMIECHN/CNIECHN has cooperated fully with the Department's requests for information and fully disclosed the required U.S. sales information. Contrary to the petitioners' assertion, insist the respondents, at verification the Department was able to review and trace a variety of records and documents, none of which indicated unreported sales. The Department has not found any of the problems initially identified in CMIECHN/CNIECHN's accounting practices at verification to be evidence of unreported U.S. sales.

Therefore, the respondents conclude, the Department should continue to base CMIECHN/CNIECHN's dumping margin on the sales and factors data submitted by the company. Likewise, the Department should apply a separate rate to HIED for these final results because HIED has cooperated with the Department.

Department's Position: We agree with the respondents that adverse facts available is not the appropriate basis for determining the dumping margin of CMIECHN/CNIECHN. The petitioners point to the disputed entries in the customs data and the Department's alleged inability to verify CMIECHN/CNIECHN's total sales at verification as support for the use of total adverse facts available. With regard to the first issue, for the reasons discussed in the *Customs Data* section above we have determined that the disputed CMIECHN/CNIECHN entries are not U.S. sales by CMIECHN/CNIECHN for the purposes of this review.

As to the verification of sales, although the Department experienced certain difficulties in tracing total sales through CMIECHN/CNIECHN's accounting system, these difficulties did not preclude us from verifying the completeness of CMIECHN/CNIECHN's

sales reporting.⁹ It is true that, due to the nature of CMIECHN/CNIECHN's methodology for recording sales, the company's accounting records cannot be fully relied upon to confirm sales made during the POR. However, for the purposes of conducting an antidumping review the Department does not require that responding companies adopt a specific accounting methodology. The Department recognizes that while some companies maintain more sophisticated records including audited financial statements, other companies have more rudimentary record-keeping systems and may lack audited financial statements. In these cases, the Department attempts to use other reasonable methods of verifying the respondents' data.

Therefore, in the case of CMIECHN/CNIECHN, because sales were not necessarily recorded in their accounting system in a consistent manner, we found other means at verification of confirming that no POR manganese metal sales were unreported. For instance, relying on the accuracy of the company's invoicing system, we reviewed in sequential order the commercial invoices for sales of all products by CMIECHN/CNIECHN. In this process, we did not identify any evidence of unreported sales.

The petitioners contend that because there were no means of confirming the accuracy and consistency of this invoicing system, the Department cannot rely on this system to verify sales. Apart from the allegedly-forged commercial invoices for the disputed entries, however, we found no inconsistencies or inaccuracies in CMIECHN/CNIECHN's application of its system of assigning numbers to its commercial invoices. We therefore find that it is reasonable to rely on this system as one means of establishing the completeness and accuracy of CMIECHN/CNIECHN reported U.S. sales.

With regard to HIED, we agree with the petitioners that continued use of adverse facts available in these final results is warranted. No significant new information has become available since the preliminary results that would lead us to reconsider this position. In response to the respondents' argument that the Department should apply a separate rate to HIED for these final results because HIED has cooperated with the Department, we note that the

rate we have found for HIED is a separate rate based on facts available. Moreover, for the reasons enumerated in the *Facts Available* section above, we find that HIED has not fully cooperated with the Department in this review.

2. Appropriate Rate for Resellers

Comment 2: During the POR, SCL imported into the United States subject merchandise which it had purchased from CMIECHN/CNIECHN.¹⁰ SCL entered its appearance in this review subsequent to the preliminary results and submitted, along with its case brief, sales documentation for all of its POR entries. SCL argues that it was necessary to become a party to this proceeding in order to object to the change in practice, as first articulated in the preliminary results, in the Department's treatment of third country exporters of subject merchandise. SCL argues that this change is an abuse of the Department's discretion and is contrary to law, for the following reasons.

First, SCL states that the Department's established policy is to assign a third-country exporter of subject merchandise the specific rate applicable to its supplier of subject merchandise in instances where the third-country exporter has not been named in a request for review, has not received a questionnaire from the Department, and where no allegation of middleman dumping has been made. SCL maintains that it is clear from the facts of this case that SCL meets these criteria and is, therefore, entitled to CMIECHN/CNIECHN's reviewed rate.

Second, the Department cannot, SCL argues, draw the adverse inference that all of the disputed entries not reported directly by CMIECHN/CNIECHN are not genuine sales of CMIECHN/CNIECHN-supplied material. To do so would be to treat SCL, a legitimate reseller of CMIECHN/CNIECHN-supplied material, the same as an unscrupulous importer committing customs fraud. In entering its merchandise under CMIECHN/CNIECHN's cash deposit rate, SCL maintains, it was not acting fraudulently but was merely acting according to its understanding of the Department's practice concerning resellers of PRC material.

Third, SCL notes that 19 U.S.C. 1675(a)(2)(B) (section 751(a)(2)(B) of the Act) provides for "new shipper reviews" in instances where the Department receives a request for review from a producer or exporter who did not export, during the period of

⁹ For a detailed account of the Department's verification at CMIECHN/CNIECHN, see *Memorandum to the Case File; Results of Verification of CMIECHN/CNIECHN* (October 14, 1998), a public version of which is available in room B-099 of the Department's main building.

¹⁰ SCL was both the foreign exporter and the U.S. importer of record for its entries of subject merchandise.

investigation, the merchandise subject to the antidumping duty order. However, SCL argues, it was not eligible for a new shipper review given that its supplier CMIECHN/CNIECHN had previously exported merchandise subject to the dumping order.

Fourth, SCL argues that the PRC-wide rate which the Department preliminarily determined to apply to all of the disputed CMIECHN/CNIECHN entries was originally calculated in the *LTFV Investigation* based on adverse best information available because some PRC suppliers in the investigation refused to respond to the Department's questionnaire. This adverse best information available (BIA) rate was imposed prior to the URAA. The current review, however, is subject to the URAA amendments to the Act. Under the amended Act, SCL continues, the Department can only apply facts otherwise available (formerly BIA) where an interested party withholds information, fails to provide the information in the form or manner requested by the Department, impedes the proceeding, or provides information which cannot be verified. None of these criteria apply to the actions of SCL. Moreover, the Department cannot apply inferences adverse to SCL because SCL has never failed to cooperate with the Department but, rather, has acted to the best of its ability by providing its sales documents along with its case brief as soon as it was made aware in the preliminary results of the Department's intended change in practice regarding resellers.

Based on the above, SCL argues that the Department should not liquidate SCL's entries at the PRC-wide rate, as envisioned in the preliminary results, but instead adopt one of the following alternative approaches. First, the Department could initiate a changed circumstances review in order to determine the extent of third-country sales of CMIECHN/CNIECHN merchandise and the identity of the third-country resellers. Under this approach, SCL argues, SCL would be given the opportunity to establish that CMIECHN/CNIECHN supplied SCL's merchandise and that the sales were not made below normal value.

A second alternative approach suggested by SCL would be to assess CMIECHN/CNIECHN's calculated rate on all direct or indirect sales to the United States of CMIECHN/CNIECHN material. The Department would accept SCL's factual information (submitted after the preliminary results) and then verify SCL's sales data to confirm that the merchandise was originally sourced from CMIECHN/CNIECHN.

A final alternative proposed by SCL would be to calculate a new rate specific to SCL based, not on adverse facts available, but on SCL's reported U.S. sales prices.

The petitioners argue that, according to SCL's own admission, SCL, not CMIECHN/CNIECHN, was the party with the knowledge of the U.S. destination of the merchandise entered by SCL. Thus, the petitioners contend, SCL is the exporter for the purposes of the antidumping law. Furthermore, the petitioners assert, the statute clearly requires the Department to assess antidumping duties on entries at the margin of dumping on those entries. Therefore, CMIECHN/CNIECHN's assessment rate cannot be applied to entries of merchandise exported by SCL given that the calculation of CMIECHN/CNIECHN's rate does not take into account the prices of sales from SCL to its unrelated U.S. customers.

The petitioners further maintain that if the Department finds that CMIECHN/CNIECHN, not SCL, is the exporter of these entries, then the Department must conclude that CMIECHN/CNIECHN failed to report a significant volume of U.S. sales to SCL. Therefore, the Department would have to apply the 143.32 percent facts available rate to all entries corresponding to CMIECHN/CNIECHN sales.

If the Department concludes that SCL is the exporter of these POR entries, then SCL was required to request an administrative review to obtain an assessment rate for those entries different from the PRC-wide rate. The petitioners argue that even if SCL was not the exporter of the merchandise and, therefore, could not request a new shipper review, SCL could nevertheless have requested an administrative review as the U.S. importer. The petitioners continue that the Department cannot now calculate a margin for SCL after the preliminary results when the company failed to request in a timely manner a review of its POR entries.

Finally, the petitioners contend, the Department could apply the PRC-wide rate to SCL even if that rate was based on BIA (or facts available) because in other proceedings the courts have upheld the Department's application of a BIA-based PRC-wide rate to parties that failed to request administrative reviews.

Department's Position: We agree with SCL that it's been the Department's established practice to assign to the entries of non-PRC exporters of subject merchandise from the PRC the rate applicable to the PRC supplier of that exporter. See e.g., *Manganese Metal from the People's Republic of China*;

Amended Final Results of Antidumping Duty Administrative Review, 64 FR 7624, 7626 (February 16, 1999); *Fresh Garlic from the PRC; Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 62 FR 23758, 23760; *Sparklers from the PRC; Final Results of Antidumping Duty Administrative Review*, 61 FR 39630, 39631.

The assessment language in the preliminary results was premised on the information on the record at the time. Prior to the preliminary results, much of the available information and argument centered on the possibility of unreported sales by CMIECHN/CNIECHN and potential fraud on the part of U.S. importers. At that point, SCL had not entered an appearance as an interested party. Recognizing the potential need for additional information, in the notice of our preliminary results we stated that we would reconsider, in the final results, our preliminary determination that CMIECHN/CNIECHN was not the exporter of these disputed entries in the event that "any substantive new information on the matter, including any potential determination by the Customs Service regarding alleged customs fraud, becomes available." 64 FR at 10988.

Since we issued the preliminary results, substantial new information has become available that has clarified the status of SCL as a reseller. This new information includes, *inter alia*, SCL's sales documentation tracing its purchases of manganese metal from CMIECHN/CNIECHN and the subsequent resale of this subject merchandise into the United States. Our subsequent verification of SCL's documents further confirmed SCL's position as a third-country reseller of merchandise supplied by CMIECHN/CNIECHN. The SCL verification also further confirmed that, at the time of the sales transactions, CMIECHN/CNIECHN was not aware of the ultimate U.S. destination of the merchandise it sold to SCL. Moreover, the additional customs documentation which the Department obtained only after the preliminary results were issued played an important part in differentiating the disputed CMIECHN/CNIECHN entries that represented sales by the reseller SCL from those disputed entries for which customs fraud has been alleged. See *Customs Data* section above.

We took the unusual step in this review of accepting substantial new information onto the record from an interested party which entered its appearance only after the preliminary

results were issued. However, the facts and circumstances of this review, particularly as they relate to the customs data and alleged customs fraud, are themselves highly unusual. Moreover, these final results were postponed in part to develop an adequate record on which to make a determination with respect to SCL, and to give all parties sufficient time to analyze and comment on the additional information the Department has collected since the preliminary results. Therefore, the interests of no party have been prejudiced by this unusual step.

For all the above reasons, we find that the PRC-wide rate is not the rate applicable to SCL's POR entries and that SCL, as a third-country reseller, was entitled to enter the subject merchandise under CMIECHN/CNIECHN's cash deposit rate.

3. Valuation of Factors of Production

(a) Ore Valuation

Comment 3: In the preliminary results, to value the respondents' "ore 1" we used a June 1998 price quotation for carbonate manganese ore obtained by the respondents from a Brazilian manganese ore mine. The petitioners argue that this was an inappropriate surrogate value given that, according to information on the record provided by the petitioners, the Brazilian ore producer had ceased mining operations by 1998 and was only selling from its remaining small stock, consisting of off-specification ore, at the time of the price quote. According to the petitioners, companies in the process of closing down operations often reduce their prices below normal market levels and, therefore, this price quotation is not representative of a commercial value for the ore. The petitioners further note that the U.S. manganese importer to whom the ore price quotation was addressed (and from whom the respondents obtained the price information) has otherwise been implicated in this review in the respondents' fraud allegation. The Department cannot, the petitioners assert, rely on this price quotation as though it were obtained from a party whose information can be relied upon as truthfully presented and obtained in good faith. There is, finally, no compelling reason to rely on this price quotation given that, according to the petitioners, there are other reasonable surrogate ore values on the record, including the value the Department used in the *First Review Results*.¹¹

¹¹ In the first administrative review of this proceeding, the Department used as a surrogate

The respondents counter by noting, first, that the price quotation from the Brazilian ore producer included the full specifications for the type of ore being offered; based on the chemical content listed, there is no reason to believe that the price quoted was for off-grade ore. Second, the respondents note that the price quotation originated from the Brazilian ore producer, not the U.S. importer to whom the quotation was addressed. In lieu of any indication or allegation that the document itself was fraudulent, the respondents argue, there is no reason to reject the price quotation as inaccurate or unreliable merely because it was addressed to an importer allegedly committing customs fraud. Finally, the respondents contend, this price quotation represents the best ore surrogate value because it is the most current information available and because it pertains to an ore type most similar to that used by the PRC manganese metal producers.

Department's Position: We agree with the respondents that the 1998 Brazilian ore price quotation represents the best ore surrogate information available on the record. To start, we note that the ore price quotation originated with the Brazilian ore producer in question, whereas the seemingly contrary information was provided by the petitioners' researcher. In light of other information regarding this surrogate value, we cannot conclude that commercial sales did not exist during the POR simply because the petitioners' researcher could not obtain information on commercial prices from the ore producer's management.

Next, we note that the ore grade's chemical composition and physical properties listed in the 1998 price quote, with the exception of the moisture content, were provided at a level of detail and specificity greater than that of the 1993 price quote, the suggested surrogate of the petitioners. The petitioners are correct in that the ore specifications listed (in either the 1993 or the 1998 quote) do not account for 100 percent of the ore's chemical content. However, based on the criteria established on the record of this and previous segments of this proceeding, we find the level of specification and detail, with regard to the ore's primary physical and chemical properties, to be sufficient for determining the quotation's suitability as a surrogate value.¹²

value for ore 1 a 1993 price quotation for the same basic grade of ore from the same Brazilian mine.

¹² The suitability of alternative ore surrogate values was a particularly contentious and closely examined issue in the investigation and first

Moreover, given that the specifications stated for the 1998 price quotation were essentially the same as those for the 1993 price quotation (which was, undisputably, for a commercial grade ore), it would seem likely that the ore producer, a long-established seller of ore on the world market, would clearly indicate in the 1998 quotation that the ore grade on offer was not of commercial quality, if that were the case. There is nothing in the 1998 price quote, however, indicating that the merchandise on offer is not of normal commercial grade. Also, contrary to the information provided by the petitioners' researcher that "the remaining inventories of 1998 refers to the cleaning of stocks, with very low quantity * * *" the quoted 1998 price is for a quantity of 35,000 to 44,000 metric tons, an amount which would generally be considered commercial. Additionally, despite the petitioners' general assertion to the contrary, there is no evidence on the record to suggest that in 1998 the Brazilian mine sold its ore at a discount merely because it was in the process of closing down its mining operations.

Furthermore, we reject the petitioners' argument that we should not utilize information that was sent to a company accused by parties in this case of customs fraud. The price quotation was generated by the Brazilian producer and there is no evidence indicating that the producer was involved in any fraudulent activity.

Despite the petitioners' argument that there is no compelling reason to use the 1998 price quotation because there are other reasonable ore surrogate values on the record, we find that the 1998 price quotation represents the best ore 1 surrogate available. As discussed in the *Factors of Production Valuation* section above, where we could not identify an appropriate POR-representative surrogate value, we selected a value, in accordance with the normal surrogate criteria, which was the closest in time to the POR. In the first administrative review of this proceeding, we selected the ore grade from the Brazilian producer because among all the available ore surrogates, it best fulfilled the standard criteria for surrogate selection. However, because the 1993 price quotation was not contemporaneous with the first review POR, we adjusted the quoted price to reflect movement in manganese ore

administrative review segments of this proceeding. The Department has, therefore, accumulated extensive expertise in considering the physical and chemical properties of manganese ore, one of the most significant inputs in the subject merchandise. See *LTFV Investigation* and *First Review Results*.

prices in the intervening years. Using the 1993 price quotation in the current administrative review, however, would require a time-adjustment spanning roughly four years. Given that the 1998 price quotation is dated only four months after the POR, consistent with the Department's established methodology we have used the more contemporaneous 1998 value.

(b) Electricity Valuation

Comment 4: To value electricity in the preliminary results, we used the average electricity rate for large industrial electricity users in India as of March 1, 1995, inflated to the POR using the Indian WPI. Subsequent to the preliminary results, the petitioners submitted an Indian WPI that was specific to the electricity industry. The petitioners argue that the general Indian WPI used in the preliminary results reflects changes in the price of a wide variety of goods across the full spectrum of the Indian economy. In contrast, the electricity-specific WPI reflects more accurately the movement in Indian electricity prices in particular. Given the Department's practice of selecting surrogates that correspond as closely as possible to the inputs used by the respondents, the petitioners argue, the Department should inflate the 1995 electricity rate by the electricity-specific WPI to derive an electricity surrogate value that is contemporaneous with the POR.

The respondents counter that, consistent with the calculations performed in previous segments of this proceeding, the Department should continue using the general Indian WPI to inflate the 1995 electricity rate. The respondents further note that the Department has never used in any case before the electricity-specific WPI submitted by the petitioners.

Department's Position: We have continued to use the general WPI to inflate the 1995 Indian electricity rate. The petitioners are correct in stating that it is the Department's general practice to use surrogate information as specific as possible to the input and industry in question. Thus, we considered very carefully the electricity-specific WPI that the petitioners submitted. Given that the Department has not examined this information in prior proceedings, and given that the publisher of this data appears to be a private research organization rather than a government agency, we attempted to analyze the methodology used to collect, synthesize and report this

data.¹³ We found, however, that there was insufficient information on the record to confirm the accuracy, objectivity, and breadth of coverage (*i.e.*, the extent to which the electricity data reflects price trends throughout all of India) of the data presented.

Therefore, considering the uncertainty surrounding this data, we find that the continued use of the general Indian WPI, as published in the *International Financial Statistics* and as used by the Department for factors of production surrogates in numerous prior PRC cases, is more appropriate for purposes of this administrative review.

(c) Chemical Valuation

Comment 5: The respondents argue that the Department incorrectly calculated the tax-exclusive price for sulphuric acid. The respondents claim that Indian excise and sales taxes are assessed sequentially, a fact the Department has acknowledged in other cases, and that this should be accounted for in the calculation of tax-exclusive prices for this chemical.

Moreover, the respondents argue that we did not properly exclude the non-market economy imports from the *Import Statistics* used to value liquid ammonium. The respondents point to other cases where the Department has explicitly excluded the imports of these countries when deriving surrogate values.

The petitioners have no comment.

Department's Position: We agree with the respondents that our calculation for excluding taxes from the sulphuric acid surrogate value was incorrect in our preliminary results. For these final results, we have corrected this calculation so that it is consistent with the Department's established formula for deriving tax-exclusive Indian surrogate values, as articulated in *Chrome Plated Lug Nuts from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 63 FR 53872, 53874 (October 7, 1998).

Likewise, the respondents are correct regarding our practice of excluding non-market economy imports from the trade data used as surrogate values. We have revised our liquid ammonium surrogate value in these final results accordingly.

Comment 6: In our preliminary results, we valued selenium dioxide using a 1998 price quotation from an Indian selenium manufacturer. The respondents argue that we should use

the Indian import statistics they submitted to value the input because the import statistics are publicly-available published information.

The petitioners argue that the Department used the correct surrogate value in the preliminary results. The value in the Indian import statistics is for selenium, the petitioners note, whereas the manufacturer's price quotation is for selenium dioxide, the input actually used by the respondents.

Department's Position: We agree with the petitioners that the 1998 price quotation used in our preliminary results is the best available surrogate value because it is for the actual chemical used by the respondents. The value in the *Import Statistics* preferred by the respondents is for selenium, not selenium dioxide.

Moreover, the regulations at section 351.408(c)(1) state that the Department "will normally use publicly available information to value factors." In prior segments of this proceeding, as well as in numerous other proceedings, the Department has used price quotations to value production factors. As discussed above, for instance, we have used a price quotation submitted by the respondents to value ore 1 in these final results. See *Normal Value* section above. We, therefore, have continued to value selenium dioxide in these final results using this price quotation.

Comment 7: The respondents argue that the Department misunderstood the information they submitted regarding the concentration of the SDD chemical used in the production of the respondents' merchandise. In the preliminary results, the Department used a price quotation from an Indian chemicals producer for SDD with a 40 percent purity. We then adjusted this price to account for the fact that the reported purity of the SDD actually used by the respondents was significantly different. The respondents claim that all standard SDD has a purity level of 40 percent, and that the respondents' reported purity level should be interpreted as a percentage of the 40 percent.

The petitioners counter that the information on which the respondents base their arguments was first submitted on the record by the respondents with their case brief, well after the deadline for new factual information. Moreover, the petitioners continue, it is not clear that the information in the affidavit, provided by the respondents in support of their argument, pertains to the type of SDD used by the PRC manganese metal producers. Nor does it appear, the petitioners note, that the manganese

¹³ See *Memorandum to the Case File from Andrew Covington; Research into Center for Monitoring Indian Economy* (August 31, 1999), a copy of which is available in the Department's Central Records Unit.

metal producer certified these facts supplied by the respondent.

Department's Position: We have not revised our adjustment to the SDD surrogate value for these final results. In the Department's June 12, 1998 initial questionnaire, we asked the respondents' to report "the chemical composition/purity for each raw material input * * *" and, in our subsequent August 21, 1998 supplemental questionnaire we asked them to confirm the correct composition of their SDD input. In our preliminary results, we used the purity level as reported and confirmed by the respondents.

Although the respondents had ample opportunity to clarify or revise any misleading or incorrect information in their responses within the regulatory deadlines for factual information, it was not until their April 16, 1999 case brief that the respondents submitted additional factual information regarding purported standard purity levels for this chemical. In a May 18, 1999 letter to the respondents' counsel, the Department informed the respondents that this portion of the case brief contained untimely filed, new factual information which would be removed from the record of this review.

Therefore, for these final results, we have continued to adjust the SDD surrogate value to reflect the SDD purity level as reported in the respondents' questionnaire and supplemental responses.

(d) Overhead, SG&A and Profit

Comment 8: The respondents argue that the Department should include the labor and labor benefit items, such as the "Provident Fund" and "Employees Welfare Expense," in the cost of manufacture before calculation of overhead, SG&A and profit ratios. The respondents cite an accounting textbook that states that, "* * * a labor-intensive firm—a firm whose operations are performed manually and only incidentally by machines—should use a labor-oriented base * * *" in making labor-exclusive overhead allocations." Citing several past cases, the respondents claim further that the standard Department practice is to include such expenses in the COM for determining the overhead, SG&A and profit ratios.

Furthermore, the respondents argue that the fact that the Department adopted an approach similar to that used in the preliminary results in calculating labor-exclusive overhead

and SG&A ratios in *TRBs-10*¹⁴ is irrelevant to this proceeding because the surrogate values used in *TRBs-10* were from a different source and because the methodology in *TRBs-10* was an exception to the Department's normal practice.

The petitioners counter by first noting that, contrary to the respondents' assertion, the Department did include labor costs in its calculation of a surrogate profit percentage. The petitioners continue by stating that it was appropriate for the Department to exclude all labor from the calculation of overhead and SG&A surrogate percentages because the Department separately had valued all labor, including direct and indirect factory labor and SG&A labor. Had the Department not excluded all labor from the numerator and denominator in calculating factory overhead and SG&A expense ratios, certain labor costs would have been double-counted. Rather, the Department's approach in the preliminary results was consistently applied and appropriate given the level of detail on the record of the respondents' reported labor costs.

Moreover, continue the petitioners, the respondents' quotation from the accounting text is irrelevant in this instance. In looking at the context of the quotation, the petitioners argue that the text deals with the cost-accounting issue of allocation of factory overhead costs among multiple products. Given that this review involves non-market economy producers, producers costs are irrelevant and no allocation among different products is being made.

Finally, the petitioners argue, the overhead and SG&A ratios in this case are based on Indian, and not PRC, production experience. Although the amount of labor hours incurred in different countries in the production of a unit of given merchandise may vary significantly, the amounts of raw materials and energy consumed per unit of output is generally more uniform. Therefore, the petitioners claim that it is appropriate to use a labor-exclusive basis for calculating the surrogate overhead and SG&A percentages in one country that will be used to derive production costs in a different country.

Department's Position: We believe that the calculation of labor-exclusive surrogate overhead and SG&A percentages is appropriate and reasonable. To start, we note that our

calculation of the profit surrogate ratio fully includes all labor costs in the numerator and denominator. We have excluded all labor costs from our calculation of overhead and SG&A ratios, however, to increase the accuracy and specificity of our valuation of the respondents' costs of production. In particular, we have the somewhat unusual benefit in this case of having reported total unit labor inputs (broken down into direct, factory overhead and SG&A labor categories). We therefore have valued the total unit labor costs of the PRC producers by multiplying the total unit labor inputs by the surrogate wage rate. In many past cases, only direct labor was reported and, therefore, overhead and SG&A labor was subsumed within the general surrogate percentages for the overhead and SG&A cost categories.

Given that we are valuing overhead and SG&A labor directly based on the respondents' reported factors, we have excluded all labor (from both the numerator and denominator) in calculating surrogate ratios for the remaining overhead and SG&A costs. Likewise, we have excluded all labor components from the respondents' direct inputs cost base to which we apply these labor-exclusive surrogate overhead and SG&A ratios. As the petitioners point out, failure to do so would in this case overstate the respondents' total labor costs.

Turning to the respondents' other points, the passage in the accounting text cited by the respondents does not necessarily pertain to the facts of this case. First, it does not appear that the respondents' producer is a labor-intensive firm, "whose operations are performed manually and only incidentally by machines." To the contrary, based on reported and verified information, the manufacture of manganese metal is technologically sophisticated, involving advanced equipment and machinery to support complex chemical and electrolytic processes. Labor, therefore, would not appear to be the central input driving the overhead and SG&A cost structure of the producer.

Moreover, we agree with the petitioners' argument that the cited passage is referring to the allocation of factory overhead costs among multiple products. The issue at hand, however, is the appropriate means of estimating the costs of certain producers (the PRC manganese metal manufacturers) based on the relative size of certain costs to the total cost structure of other producers (Indian chemicals and metals manufacturers).

¹⁴ *Tapered Roller Bearing and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 1996-97 Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part*, 63 FR 63842 (November 17, 1998) (*TRBs-10*).

Furthermore, it is true that the overhead and SG&A ratios in *TRBs-10* were based on the reported costs of particular Indian TRBs producers whereas the overhead and SG&A surrogates in this review are based on the aggregated data of Indian chemicals and metals producers generally as published by the Reserve Bank of India. It is important to note, first, that these two sources are not that dissimilar given that the aggregate data presumably incorporates the experiences of individual producers. Any differences between the surrogates, however, are beside the point. Whether or not to exclude labor in deriving overhead and SG&A ratios is a methodological issue specific to each case which depends on whether and to what extent the Department must adjust and manipulate the surrogate data to derive cost estimates that best reflect the production costs in the respondents' country.

Therefore, for the reasons above, we have continued to derive labor-exclusive overhead and SG&A surrogate ratios for these final results.

Comment 9: To value the respondents' factory overhead, SG&A and profit in the preliminary results, we calculated surrogate ratios based on financial data reported in the *Reserve Bank of India Bulletin (RBI Data)*. Subsequent to the preliminary results, the petitioners submitted data published by the *Center for Monitoring Indian Economy (CMIE Data)* regarding factory overhead, SG&A and profit of Indian nonferrous metals producers. The petitioners argue that we should use the *CMIE Data* to value these costs because the Department's established practice is to base surrogates upon the industry experience closest to the producer under investigation. The petitioners suggest that the *CMIE Data* which is specific to Indian nonferrous metals producers is more representative of manganese metal manufacture than the *RBI data*, which more broadly encompasses the "processing and manufacture" of "metals, chemicals and products thereof."

Moreover, the petitioners continue, the *RBI Data* pertains to the period 1992-93, whereas the *CMIE Data* reports financial information for 1996-97 and is, therefore, more contemporaneous with the POR. The petitioners thus conclude that the *CMIE Data* is a more appropriate basis for deriving surrogate ratios for overhead, SG&A and profit.

The respondents disagree that the *CMIE Data* is the most appropriate surrogate source for these expenses for several reasons. First, this source has never been used by the Department in

other PRC cases to value these expenses whereas the Department has relied upon the *RBI Data* as a basis for valuing overhead, SG&A and profit. To support this contention, the respondents cite to several past proceedings and note that, in several cases, the surrogates in earlier segments were based on other sources but that in the more recent segments of those proceedings the Department relied on the *RBI Data*.

The respondents also maintain that, contrary to the claims of the petitioners, the *CMIE Data* is not specific to nonferrous metals producers, but rather, according to the notes accompanying the data, includes information for a wide variety of non-metals related manufacturers (e.g., food products, fertilizers, chemicals). Moreover, the respondents continue, this data appears to encompass "central government public sector" companies as well as companies with an indeterminate volume of sales.

Department's Position: We have continued to use the *RBI Data* in these final results to derive surrogate factory overhead, SG&A and profit ratios. The Department has used this source of data to value these expenses in all previous segments of this proceeding as well as in numerous other PRC cases.

The petitioners' proposed data is based on the same source as their electricity-specific Indian WPI discussed in *Comment 4* above. Given that the Department has not examined this information in prior proceedings, and given that the publisher of this data appears to be a private research organization rather than a government agency, we attempted to analyze the methodology used to collect, synthesize and report this data. Although we do not necessarily agree with the inferences regarding industry coverage the respondents draw from *CMIE's* notes on its sampling methodologies, we find, nevertheless, that there is insufficient information on the record to confirm the accuracy, objectivity, and breadth of coverage (i.e., the extent to which the data reflects the financial experience of companies across all of India) of the data presented.

This paucity of background and explanatory information for the *CMIE Data* is especially worrisome in light of the fact that, as the petitioners note, several further adjustments must be made to the reported data so that it comports with the standard definitions and methodology underlying the Department's surrogate overhead, SG&A and profit calculations. For instance, in their proposed calculation of a factory overhead rate, the petitioners estimated certain expense line items, which were

not reported individually in the *CMIE Data*, based on allocation ratios derived from data in a separate publication. Given that we know so little about how this data is collected, aggregated and reported, it is not clear that deriving allocation ratios based on the information in one publication to adjust the data from a different publication is methodologically correct and reasonable.

Therefore, considering the uncertainty surrounding this data, we find that the continued use of the *RBI Data*, as used by the Department for valuing surrogates in numerous prior PRC cases, is more appropriate for the purposes of this administrative review.

(e) Freight Valuation

Comment 10: In the preliminary results, we valued inland rail freight using Indian rail rates reported in an August 13, 1997 ore price quotation from an Indian manganese mine. The petitioners argue that manganese metal is packed in drums or closed containers whereas manganese ore is shipped in open rail cars and, therefore, rates quoted for ore transportation are not representative of manganese metal freight costs. Instead, the petitioners contend, the Department should rely on rates published by the Indian Railway Conference Association (IRCA), as contained in the petitioners' March 29, 1999 submission. According to the petitioners, this surrogate source for rail freight has been used by the Department in several other cases for valuing the costs of rail transportation of finished metals such as manganese metal.

The respondents counter¹⁵ that the petitioners' proposed surrogate rail rates are inappropriate because (1) they came into effect only after the POR and (2) the rates do not apply to the respondents' reported freight distances.

Department's Position: We agree with the petitioners that the IRCA data is a more accurate surrogate source for rail freight. In choosing among alternative surrogate values, we select the one that, *inter alia*, most broadly represents the cost of the input across the surrogate country. The surrogate rail values used in our preliminary results were based on the rates offered by one Indian ore producer, whereas the IRCA data provided by the petitioners represents rates widely available throughout India, as published with the authority of the central Indian government.

It is true that, all other things being equal, the Department will normally

¹⁵ Based on the context of the comment, the respondents appear to be addressing the petitioners' proposed rail freight although the actual text of respondents' comment refers to "truck rates."

choose the surrogate value most contemporaneous with the POR. In this instance, however, the IRCA values came into effect only roughly five months after the POR. Moreover, although the IRCA data submitted by the petitioners does not correspond to the reported rail distances for the respondents' factor inputs, the data does correspond to the distances reported for the rail transportation of the respondents' end product. The input freight costs are inconsequential relative to the costs of transporting inland the manganese metal. We note that the surrogate value used in the preliminary results and favored here by the respondents did not directly correspond to the reported transportation distances of either the input factors or the manufactured manganese metal.

Finally, we note that the IRCA data has been used in other recent cases by the Department to value PRC rail freight rates.¹⁶ Therefore, weighing all of the above considerations, we find that the IRCA data is the most appropriate surrogate source for valuing the respondents' rail freight costs, and have revised the calculations for these final results accordingly.

Comment 11: The respondents claim that the Department's decision to apply facts available to value ocean freight was unreasonable and ungrounded and that the Department should use CMIECHN/CNIECHN's reported information to value ocean freight in these final results. The respondents argue that although the bills of lading reviewed at verification did not show freight charges, they are otherwise accurate and complete, and can be tied to CMIECHN/CNIECHN's expense ledgers and audited financial statements which show the applicable freight charges. Additionally, the respondents state that it is not reasonable to disregard CMIECHN/CNIECHN's international freight information on the basis that the payments for this service were made through a local Chinese agent. The respondents point out that foreign freight forwarders must hire local agents to handle billing if that company is not locally registered. However, if the Department determines that it should continue to apply facts available for ocean freight, the respondents argue that it should calculate a more reasonable surrogate value based on price quotations from a sample of international forwarding companies.

The petitioners contend that the Department should reject the respondents' argument because

CMIECHN/CNIECHN was unable to support at verification its claim that it purchased ocean freight services from market-economy carriers and that there is no evidence that the PRC companies from which CMIECHN/CNIECHN purchased ocean freight acted merely as agents for the market-economy carriers, rather than PRC resellers of ocean freight services.

The petitioners argue, citing to 19 U.S.C. 1673b(c) of the Act, that the Department cannot use the ocean freight information provided by the respondents because transactions between NME entities are presumed to be distorted and unuseable for purposes of calculating a dumping margin. The petitioners point out that the Department will normally determine ocean freight using the actual amounts paid by NME entities to market-economy shippers; however, in situations where the NME exporter purchased the ocean freight services from an NME entity, the Department must use a surrogate value. In *Saccharin*,¹⁷ note the petitioners, the Department rejected the use of an actual freight cost, as directed by the statute, because those costs were purchased from a domestic supplier in an NME.

The petitioners further argue that the fact that CMIECHN/CNIECHN paid rates to NME entities that are well below surrogate rates is evidence that it did not pay market-determined rates.

Department's Position: We agree with the petitioners that CMIECHN/CNIECHN was unable to support its claim that it purchased ocean freight services from market-economy carriers. Furthermore, the respondents have not supplied evidence that the PRC agents from which CMIECHN/CNIECHN allegedly purchased ocean freight acted as agents for the market-economy carriers, rather than as PRC resellers of ocean freight services. At verification, the Department reviewed ocean freight documentation for the majority of CMIECHN/CNIECHN's sales. Ultimately the verification team could not determine that the ocean freight CMIECHN/CNIECHN reported as supplied by a market-economy carrier was, in fact, supplied by a market-economy carrier. Furthermore, the bills of lading did not tie to the other documentation pertaining to the ocean freight costs nor did they tie to the company's accounting records. Additionally, there was no evidence that CMIECHN/CNIECHN purchased ocean freight directly from the market-

economy carrier. Therefore, in these final results the Department has continued to value CMIECHN/CNIECHN's ocean freight costs using a surrogate freight rate. With regard to the respondents' arguments regarding which surrogate value we should use for ocean freight, see the following comment.

Comment 12: The petitioners state that, consistent with the Department's established practice of using the most specific surrogate data available, the Department should rely on the ocean freight values submitted by the petitioners subsequent to the preliminary results, since these values are both route- and product-specific. The petitioners contend that the ocean freight surrogates used in the preliminary results are not as accurate because they are based on averages of quoted rates to the U.S. east and west coasts freight rates, taken from *TRBs-9*¹⁸ and adjusted using the U.S. producer price index. The petitioners maintain that the freight quotations they provided are specific to manganese metal and are specific to the actual routes and destinations, as reported by the respondents, to which the subject merchandise was shipped.

The respondents counter that if the Department uses a surrogate to value ocean freight in these final results, the Department should continue to use the surrogate source used in the preliminary results. The petitioners' preferred surrogate rates, the respondents claim, should be disregarded as aberrational because these rates increased in excess of inflation over a three-year period. Furthermore, the respondents note, the petitioners' rate quotes were in effect only after the POR. Moreover, the respondents note that the petitioners' quotations are not publicly available published information.

Department's Position: We have continued to use the surrogate rates used to value ocean freight in the preliminary results. Although the petitioners' rates appear to be closer to (though still not contemporaneous with) the POR than those used in our preliminary results, the petitioners surrogate information, in its entirety, was submitted as proprietary data. As stated in the Department's response above to the comment regarding selenium dioxide surrogate values, the regulations at section 351.408(c)(1) state that the Department "will normally use

¹⁸ *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 62 FR 36764 (July 9, 1997) (*TRBs-9*).

¹⁷ *Final Determination of Sales at Less Than Fair Value; Saccharin from the People's Republic of China*, 59 FR 58818, 58825 (November 15, 1994).

¹⁶ See, e.g., *TRBs-10*.

publicly available information to value factors." In this instance, the petitioners' ocean freight rate quotations do not constitute publicly available information.

Moreover, there is no information on the record that suggests the rates used in *TRBs-9*, as supplied by the same shipping company that supplied the petitioners' rates, are not applicable to the shipment of manganese metal. Therefore, because the *TRBs-9* rates are publicly available information, and because there is no reason to believe they are not representative of the costs of shipping manganese metal, we have continued to use these rates as a surrogate for valuing ocean freight in these final results.

(f) Packing Material Valuation

Comment 13: The petitioners claim that the *Import Statistics* used by the Department as surrogate values for plastic bags and wooden pallets are based on imports that pre-date the POR. The petitioners argue that the Department should rely on the data submitted by the petitioners subsequent to the preliminary results to value plastic bags and pallets because this import data, for the period June 1997 through October 1997, is contemporaneous with the POR.

The respondents agree with the Department's choice of surrogates in the preliminary results for packing materials.

Department's Position: We agree with the petitioners. We have reviewed the *Import Statistics* used in the preliminary results to value plastic bags and wooden pallets and note that, although these *Import Statistics* cover Indian imports in general through the initial months of the POR, there appear not to have been POR imports within the particular product categories relevant to the packing materials in question. The more recent *Import Statistics* submitted by the petitioners subsequent to the preliminary results, however, report POR imports for these particular product categories. Therefore, in these final results we have based our valuation of plastic bags and wooden pallets on these more recent *Import Statistics*.

(4) Valuation of By-Product Credit

Comment 14: To value the "positive mud" generated as a by-product in manganese metal manufacture, we have used the 82-84 percent manganese dioxide ore price published in the *Indian Minerals Yearbook* (IMY). The respondents argue that this IMY 82-84 percent ore is an incorrect surrogate value, for several reasons. First, positive

mud is not an ore, but a by-product resulting from the electrolytic processing of MnO₂ ore. Therefore, the respondents reason, a product resulting from the transformation of the ore cannot be considered to be the ore itself. Rather, the resulting product should command a higher price than the ore. However, the IMY 82-84 percent ore surrogate value the Department used for positive mud was "at an almost 100 percent lower price" than the surrogate the Department used to value the respondents' "ore 2" input.

According to the respondents, the IMY 82-84 percent manganese dioxide ore surrogate value is clearly aberrational and should be disregarded. This finding would be consistent with the Department's practice in the *LTFV Investigation* where, according to the respondents, to value this by-product the Department used manganese dioxide but not manganese dioxide ore. Therefore, conclude the respondents, in these final results the Department should use a value for electrolytic manganese dioxide (EMD) to value positive mud.

The petitioners counter that the IMY 82-84 percent manganese dioxide ore price used in the preliminary results is a proper surrogate. The petitioners note that respondents did not provide detailed information specifying the full metallurgical content of the positive mud. And, in fact, the only specification the respondents did provide the manganese oxide content was roughly comparable to that of the IMY 82-84 percent surrogate.

According to the petitioners, the respondents' argument that, based on reported differences in manganese contents, the value of the positive mud surrogate value should be almost double the value of the ore 2 surrogate value, is mistaken and is based on confusion in understanding the reported metallurgical composition; the content of the positive mud is stated as a percentage of manganese dioxide whereas the content of the ore 2 surrogate is stated in terms of manganese (only). The petitioners state that the IMY 82-84 manganese dioxide ore is an appropriate surrogate for positive mud precisely because the MnO₂ content is the only specification reported by the respondents for the positive mud. The MnO₂ content is known for the 82-84 percent ore but not known for the ore 2 surrogate value. Using the IMY 82-84 percent surrogate enables the Department to make the appropriate adjustments to the surrogate price to reflect the actual MnO₂ content of the positive mud.

Finally, the petitioners conclude, electrolytic manganese dioxide (EMD) prices should not be used as a surrogate value for positive mud because EMD is a high-value product used mainly in the production of dry-cell batteries, and was specifically rejected by the Department as a surrogate in the first administrative review in this proceeding.

Department's Position: As suggested by the parties' comments, we have considered this issue in prior segments of this proceeding. As in the first administrative review, we disagree with the respondents' contention that the IMY 82-84 percent manganese dioxide ore is an inappropriate surrogate for valuing positive mud. In the *First Review Results* we stated,

The Department disagrees with the respondents' argument for the use of EMD as a surrogate value. First, the respondents are incorrect in stating that the Department used for a by-product surrogate in the *LTFV Investigation* an Indian import value for manganese dioxide excluding ores. In the *LTFV Final Determination*, the Department used an 82-84 percent MnO₂ peroxide ore, as listed in the 1993 *Indian Minerals Yearbook*, to value the respondents' by-product credit. EMD is a very high-valued product used mainly in the production of dry-cell batteries * * * The respondents have not sufficiently demonstrated that the PRC by-product is of the same rigorous specifications as EMD.

The respondents have demonstrated, however, that their by-product does have some resale value. In lieu of any information on the Indian value of the actual by-product in question, the Department is maintaining the methodology used in the *LTFV Final Determination* of using for a surrogate the price of high-valued Indian manganese dioxide ore. (63 FR at 12448).

Moreover, we find the respondents' comparison of the surrogate value for positive mud with the surrogate value for ore 2 to be misplaced. The respondents reason that the value of a by-product must be greater than the value of an input from which the by-product was generated. However, a by-product (as distinct from a co-product) is something that is generated incidentally in the course of manufacturing some primary finished good, in this case manganese metal. The fact that the respondents' by-product happens to have some residual value does not require that value to be greater than the value of the ore used in the manufacturing process.

The respondents imply that our choice of a lower-valued by-product surrogate suggests value destruction, which occurs when the value of the inputs is greater than the value of the final product. This is not the case. The value created in this manufacturing

process is captured in the price of the primary product—manganese metal—and is fully recoverable, under normal market conditions, in the sale of that product. Any value recovered from the sale of the by-product merely serves to offset the production costs incurred in the production of the primary product. We, therefore, have not changed our choice of the positive mud surrogate value for these final results.

Final Results of the Review

We hereby determine that the following weighted-average margins exist for the period February 1, 1997, through January 31, 1998:

Exporter	Margin (percent)
CMIECHN/CNIECHN	4.30
HIED	143.32

Because we are rescinding the review with respect to CEIEC and Minmetals, the respective company-specific rates for these exporters remain unchanged.

Assessment and Cash Deposit Rates

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisalment instructions directly to Customs.

In order to assess duties on appropriate entries as a result of this review, we have calculated entry-specific duty assessment rates based on the ratio of the amount of duty calculated for each of CMIECHN/CNIECHN's verified sales during the POR to the total entered value of the corresponding entry. The Department will instruct Customs to assess these rates only on those entries which correspond to sales verified by the Department as having been made directly by CMIECHN/CNIECHN. The Department will also instruct Customs to liquidate all POR entries by bona fide third-country resellers at rates equal to the cash deposit rate required at the time of their entry.

On all remaining entries that entered under CMIECHN/CNIECHN's cash deposit rate, the Department will instruct Customs to assess the PRC-wide rate of 143.32 percent. The Department will likewise instruct Customs to assess the facts available rate, also 143.32 percent, on all POR entries which entered under HIED's cash deposit rate.

Moreover, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section

751(a)(1) of the Act: (1) For HIED and CMIECHN/CNIECHN, the cash deposit rate will be the rates for these firms established in the final results of this review; (2) for Minmetals and CEIEC, which we determined to be entitled to a separate rate in the *LTFV Investigation* but which did not have shipments or entries to the United States during the POR, the rates will continue to be 5.88 percent and 11.77 percent, respectively (these are the rates which currently apply to these companies); (3) for all other PRC exporters, all of which were found not to be entitled to a separate rate, the cash deposit rate will continue to be 143.32 percent; and (4) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

Dated: September 7, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-23777 Filed 9-10-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration [C-508-605]

Industrial Phosphoric Acid From Israel: final results and partial rescission of countervailing duty administrative review

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

ACTION: Notice of final results and partial rescission of Countervailing Duty administrative review.

SUMMARY: On May 7, 1999, the Department of Commerce published in the **Federal Register** its preliminary

results of administrative review of the countervailing duty order on industrial phosphoric acid (IPA) from Israel for the period January 1, 1997 through December 31, 1997 (64 FR 24582). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: September 13, 1999.

FOR FURTHER INFORMATION CONTACT:

Dana Mermelstein or Sean Carey, Office of CVD/AD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3208 or (202) 482-3964, respectively.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers Rotem-Amfert Negev Ltd. (Rotem) and Haifa Chemicals Ltd. (Haifa). Haifa did not export the subject merchandise during the period of review (POR). Therefore, in accordance with section 351.213(d)(3) of the Department of Commerce's (the Department) regulations, we are rescinding the review with respect to Haifa. This review also covers eleven programs.

Since the publication of the preliminary results, the following events have occurred. We invited interested parties to comment on the preliminary results. On June 7, 1999 case briefs were filed by both petitioners (FMC Corporation and Albright & Wilson Americas Inc.) and respondents (the Government of Israel (GOI) and Rotem-Amfert Negev, the producer/exporter of IPA to the United States during the review period). On June 11, 1999, respondents filed a rebuttal brief; petitioners filed a rebuttal brief on June 14, 1999.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round