This notice also serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 29, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–24806 Filed 10–4–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–811]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany; Termination of Anticircumvention Inquiry of Antidumping Duty Order

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

ACTION: Notice of termination of anticircumvention inquiry.

SUMMARY: On August 31, 1995, Inland Steel Bar Company and USS Kobe Steel Company, petitioners in this proceeding, withdrew their petition, filed on August 23, 1994, in which they requested that the Department of Commerce (the Department) initiate an investigation to determine whether imports of certain leaded steel products are circumventing the antidumping order issued against certain hot-rolled lead and bismuth carbon steel products from Germany. The Department is now terminating this anticircumvention inquiry.

EFFECTIVE DATE: October 5, 1995.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5831/4114.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1994, pursuant to section 781(b) of the Tariff Act of 1930, as amended, (the Tariff Act) and 19 CFR 353.29 (b) and (f), the Department received a request from petitioners to investigate whether imports of certain leaded steel products from the Netherlands are circumventing the antidumping duty order issued against certain hot-rolled lead and bismuth carbon steel products from Germany.

Petitioners alleged that Thyssen AG, a German steel producer, is shipping leaded steel billets to its wholly-owned subsidiary Nedstaal BV (Nedstaal), located in the Netherlands, hot-rolling the billets into bars and rods and then exporting them from the Netherlands to the United States.

On February 7, 1995, the Department published in the Federal Register a notice of initiation of the anticircumvention inquiry (60 FR 7166). Subsequently, petitioners withdrew their anticircumvention petition on August 31, 1995. Because withdrawal by petitioners does not unfairly burden the Department or other interested parties, we have determined that it is reasonable to terminate this anticircumvention inquiry.

Dated: September 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–24808 Filed 10–4–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–841]

Notice of Final Determination of Sales at Less Than Fair Value: Manganese Sulfate From the People's Republic of China

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

EFFECTIVE DATE: October 5, 1995.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch, Dorothy Tomaszewski or Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3773; (202) 482–0631 or (202) 482–0922, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Final Determination

We determine that manganese sulfate from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination on May 9, 1995 (59 FR 25885, May 16, 1995), the following events have occurred:

On May 12, 1995, the Department issued an additional supplemental questionnaire to respondents China National Nonferrous Metals Import and Export Company (''CNIEC'') and its U.S. subsidiary, Hunan Chemicals Import and Export Company (''Hunan Chemicals''), Xian Lu Chemical Factory, and Yan Jiang Chemical Factory. The Department received responses and subsequent revisions to those submissions from respondents in June 1995.

Petitioner, American Microtrace Corporation, submitted clerical error allegations following the Department's preliminary determination. The Department found that clerical errors were made in the preliminary determination; however, these errors did not result in a combined change of at least 5 absolute percentage points in, and no less than 25 percent of, any of the original preliminary dumping margins. Accordingly, no revision to the preliminary determination was made (see Notice of Amended Preliminary Determinations of Sales at Less Than Fair Value: Antidumping Duty Investigations of Pure and Alloy Magnesium from the Russian Federation and Pure Magnesium from Ukraine, (60 FR 7519, February 8, 1995)).

In June and July 1995, we verified the respondents' questionnaire responses. Additional publicly available published information on surrogate values was submitted by petitioner and respondents on August 4, 1995, and comments from the respective parties were submitted on August 11, 1995. Petitioner and respondents filed case briefs on August 18, 1995, and rebuttal briefs on August 25, 1995.

Scope of Investigation

The product covered by this investigation is manganese sulfate, including manganese sulfate monohydrate ($MnSO_4H_2O$) and any other forms, whether or not hydrated, without regard to form, shape or size, the addition of other elements, the presence of other elements as impurities, and/or the method of manufacture. The subject merchandise is currently classifiable under subheading 2833.29.50 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the

HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (''POI'') is June 1, 1994, through November 30, 1994.

Best Information Available

As stated in the preliminary determination, we have based the duty deposit rate for all other exporters in the PRC (''the 'PRC-wide' rate'') on best information available (''BIA''). The evidence on record indicates that the responding companies may not account for all exports of the subject merchandise.

In the case of Hunan Chemicals, verification revealed that, for its sole POI sale to the U.S., there was no evidence that Hunan Chemicals knew at the time of its sale to its customer that the merchandise was destined for the United States. Therefore, we have not treated that transaction as a sale by Hunan Chemicals to the United States. Accordingly, Hunan Chemicals will be subject to the ''PRC-wide'' deposit rate for manganese sulfate. (see Comment 2, ''Interested Party Comments'' section of this notice).

Because information has not been presented to the Department to prove otherwise, other PRC exporters not participating in this investigation are not entitled to separate dumping margins. In the absence of responses from all exporters, therefore, we are basing the country-wide deposit rate on BIA, pursuant to section 776(c) of the Act. (See, e.g., Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From Ukraine (61 FR 16433, March 30, 1995).

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. As outlined in the Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium (58 FR 37083, July 9, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. In this investigation, we are assigning to any PRC company, other than those specifically identified below, the ''PRC-Wide'' deposit rate of 362.23 percent, *ad valorem*. This margin represents the highest margin in the petition, as recalculated by the Department for purposes of the final determination. In the preliminary determination, we adjusted the BIA rate by reassigning the value for ocean freight based on the highest reported ocean freight charge incurred by a responding company—CNIEC—because the surrogate value cited for ocean freight in the petition appeared to be aberrational (*e.g.*, the unit charge for ocean freight deducted from gross unit price equals 68 percent of the gross unit price). (See Calculation Memorandum for the Preliminary Determination of Sales at Less Than Fair Value: Manganese Sulfate from the People's Republic of China (59 FR 25885, May 16, 1995)). For the final determination, we determined CNIEC's reported ocean freight charges are based on non-market economy rates (see Comment 7, ''Interested Party Comments'' section of this notice). Therefore, we adjusted the PRC-wide rate, as recalculated in the preliminary determination, to reflect the market economy rate determined by the Department as the appropriate surrogate value for ocean freight in final margin calculation for CNIEC.

Separate Rates

CNIEC and Hunan Chemicals have each requested a separate rate. Because, as explained above, we determined that Hunan Chemicals had no reported sales to the U.S. during the POI, Hunan Chemicals is precluded from being considered for a separate rate, the request of this company will not be further analyzed (see Final Determination of Sales at Less Than Fair Value: Nitromethane from the People's Republic of China (59 FR 14834, March 30, 1994)).

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department uses criteria that were developed in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (56 FR 20588, May 6, 1991) (''Sparklers'') and in Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China (59 FR 22585, May 2, 1994) (''Silicon Carbide''). Under the separate rates criteria, the Department assigns a separate rate only when an exporter can demonstrate the absence of both *de jure* [1] and *de facto* [2] governmental control over export activities.

CNIEC's business license indicates that it is owned ''by all the people.'' As stated in the Silicon Carbide, ''ownership of a company by all the people does not require the application of a single rate.'' Accordingly, CNIEC is eligible to be considered for a separate rate.

De Jure Control

CNIEC has submitted copies of the following laws in support of its claim of absence of *de jure* control: ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People,'' adopted on April 13, 1988 (''1988 Law''); ''Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises,'' approved on August 23, 1992 (''1992 Regulations''); and the ''Temporary Provisions for Administration of Export Commodities,'' approved on December 21, 1992 (''*Export Provisions*''). The 1988 Law states that enterprises have the right to set their own prices (see Article 26). This principle was restated in the 1992 Regulations (see Article IX). The Export Provisions list those products subject to direct government control. Manganese sulfate does not appear on the Export Provisions list and is not, therefore, subject to the constraints of these provisions. The 1994 Quota Measure supersedes earlier laws dealing with the export of the named commodities. Manganese sulfate was not named in the 1994 Quota Measure and does not, therefore, appear to be subject to the export quota regulation of this measure.

The Department stated in Silicon Carbide that the existence of the 1988 Law and the 1992 Regulations support a finding that the respondents are not subject to *de jure* control either by the central government or otherwise. However, we found in Silicon Carbide

[1] Evidence supporting, though not requiring, a finding of *de jure* absence of central control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies.

[2] The factors considered include: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (see Silicon Carbide).

and other reports (see ''PRC Government Findings on Enterprise Autonomy,'' in Foreign Broadcast Information Service-China-93–133 (July 14, 1993)) that laws shifting control from the government to the enterprises themselves have not been implemented uniformly. Therefore, the Department has determined that an analysis of *de facto* control is critical to determining whether respondents are, in fact, subject to governmental control.

De Facto Control

During verification, our examination of correspondence and sales documentation revealed no evidence that CNIEC's export prices are set, or subject to approval, by any governmental authority. That CNIEC has the authority to negotiate and sign contracts and other agreements independent of any government authority was evident from our examination of correspondence and written agreements and contracts. We also noted that CNIEC retained proceeds from its export sales and made independent decisions regarding disposition of profits and financing of losses (based on our examination of financial records and purchase invoices). Finally, we have determined that CNIEC has autonomy from the central government in making decisions regarding the selection of management, based on our examination of management election notices, staff congress election ballots and minutes from the last company election meeting. According to CNIEC's company constitution, the company president is elected by the staff congress. Examination of management documents and correspondence provided no evidence of involvement by the central or provincial government in CNIEC's management selection process. Further, there is no evidence in this proceeding that any exporters are subject to common control.

Conclusion

Given that the record of this investigation demonstrates a *de jure* and *de facto* absence of governmental control over the export functions of CNIEC, we determine that CNIEC should receive a separate rate.

Fair Value Comparisons

To determine whether sales by CNIEC of manganese sulfate from the PRC to the United States were made at less-than-fair value prices, we compared the United States price (''USP'') to the foreign market value (''FMV''), as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice.

United States Price

USP for CNIEC was calculated on the same basis as in the preliminary determination. Certain adjustments were made to the CNIEC's reported U.S. sales, based on verification findings, as follows: reported quantities were changed for certain transactions; one sale was added and another reported sale was determined actually to be two sales; and no deduction for marine insurance was made since it was determined that this charge was not incurred. We also rejected CNIEC's reported ocean freight in favor of a surrogate freight rate (see Comment 7, ''Interested Party Comments'' section of this notice) For the one unreported sale discovered at verification, adjustments for freight charges and duty were made using the highest figures for any transportation charges reported by CNIEC as best information available (''BIA''). (See Calculation Memorandum, attached to the Concurrence Memorandum, on file in room B–099 of the Main Commerce Department Building, for details of adjustments made.)

Foreign Market Value

We calculated FMV based on Yan Jiang's and Xian Lu's factors of production cited in the preliminary determination, making adjustments based on verification findings. To calculate FMV, the verified factor amounts were multiplied by the appropriate surrogate values for the different inputs. We have used the same surrogate values as the preliminary determination with the exception of certain factors. The identities of certain factors were deemed proprietary by the Department and, therefore, their names are not disclosed in this notice. The two factors in question will be referred to as ''factor X'' and ''factor Z'' for the remaining sections of this notice.

For Xian Lu and Yan Jiang we used verified packing factor amounts to calculate packing cost for the final calculations.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are (1) at a level of economic development comparable to that of the non-market economy country, and (2) significant production of comparable merchandise. The Department has determined that India is the country most comparable to the PRC in terms of overall economic development and significant production of comparable merchandise. (*See* memorandum from the Office of Policy to the file, dated April 13, 1995.) To value factors of production, we have obtained and relied upon published, publicly available information wherever possible.

Verification

As provided in section 776(b) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Interested Party Comments

Comment 1: Dumping Margins Based on BIA

Petitioner asserts that the Department should calculate the dumping margins for CNIEC and Hunan Chemicals based on the highest margins alleged in the petition as BIA. First, petitioner notes that respondents failed to file questionnaire responses to section A for the responding companies within the deadline established by the Department and failed to request an extension before that deadline expired. Further, according to petitioner, the perpetual revision of the responses has reduced the credibility of the information presented in respondents' submissions.

Respondents contend that there is no legal basis in this case for the use of BIA to calculate the responding trading companies' respective margins. Respondents note that the Department accepted and verified the respondents' questionnaire responses. According to respondents, the minor deviations and discrepancies discovered at verification were well within the limits of what the Department accepts as correcting insignificant errors found at verification.

DOC Position

Given the special circumstances outlined in the Memorandum to the File dated June 8, 1995, the Department exercised its discretion to accept the questionnaire responses (19 CFR 353.31(b)(1)). Further, except for Hunan Chemicals' response, the discrepancies discovered at verification were not such that the overall reliability of the responses was called into question. Therefore, the Department is basing its final determination on verified information from questionnaire responses from CNIEC and supplier factories.

Comment 2: Hunan Chemicals' Status as Respondent

Petitioner contends that the Department has no basis for determining a company-specific margin for Hunan Chemicals. According to petitioner, evidence on the record for its only reported sale indicates that Hunan Chemicals did not know, at the time of sale, that the merchandise it sold to the third country trading company was ultimately destined for the United States. All documentary evidence on the record indicates that Hunan Chemicals only learned that the merchandise was destined for the United States at the time of shipment, after the sale had already been made.

Respondents argue that the Department should continue to treat Hunan Chemicals' only reported sale as a U.S. sale and, therefore, assign Hunan Chemicals a separate rate for the final determination because of the following evidence on the record: (1) The bill of lading for the shipment in question listed the destination as a U.S. port; (2) PRC Customs export statistics' printout of exports to the United States showed that this shipment was sent to the United States; and, (3) correspondence from a company in New York with respect to this shipment was dated before the issuance of this sales contract.

DOC Position

We agree with petitioner. Based on the evidence on the record, we determine that this transaction was not a U.S. sale made by Hunan Chemicals. The sales contract for the reported sale did not stipulate the ultimate destination. The customer listed on the sales contract was a non-U.S. trading company. The actual sales documents (*i.e.*, sales contract, invoice, bill of lading), sales records, or accounting records do not mention the name of the company with the New York address found on the facsimile correspondence dated before the issuance of the sales contract. Further, the sales correspondence up to and including the date of sale does not mention the identity of the U.S. customer or the ultimate destination as the United States. The terms of delivery on the sales invoice were not to the United States. The fact that the bill of lading lists the U.S. port as destination of the shipment does not prove that Hunan Chemicals knew the ultimate destination at the time of the sale because this shipping document was issued well after the date of the sales contract which established the date of sale in this case. The PRC Customs export statistics do not provide any supporting evidence as to the company's knowledge at the date of the sale that the destination of the shipment was the United States. Even though Hunan Chemicals cooperated in supplying the requested information and permitting verification, absence of a viable U.S. sale made by Hunan Chemicals gives the Department no choice but to reject the company as a respondent in this investigation. Therefore, based on the record of this investigation, the Department did not calculate a separate margin for Hunan Chemicals for the final determination. Accordingly, Hunan Chemicals will be subject to the ''PRC-wide'' rate.

Comment 3: Surrogate Value for Factor X

(*N.b.*, Due to the proprietary nature of this issue, the following discussion is presented in non-confidential form. A more detailed analysis of the interested parties' positions and the Department's position is given in the September 28, 1995, decision memorandum to the file.)

Petitioner asserts that the surrogate value for factor X from the Indian Minerals Yearbook (''Yearbook'') used in the preliminary determination is aberrational and should not be used in the final determination. In support of its assertion, petitioner (1) cites to past cases where the Yearbook value was not chosen as the surrogate value; (2) observes that the Yearbook value is significantly lower than other values on the record for comparable material, including a price quotation from a PRC supplier; and (3) notes that there is no evidence on the record of any company in India purchasing the material at the price listed in the Yearbook.

Moreover, petitioner argues that the type of material respondents claim to use is different from the type of material priced in the Yearbook. Based on these reasons, petitioner requests the Department to use publicly available published value information in the TEX Report (for a material that petitioner characterizes as similar to that used by the PRC producers) and adjust the price to account for any differences.

Respondents assert that the material used by the PRC producers is in fact the same material as priced in the Yearbook. Contrary to petitioner's claims, respondents contend that the Department has no basis for determining the Yearbook price as aberrational since the Yearbook price reflects a publicly available, published domestic price in the chosen surrogate country based on credible source used in past cases. Accordingly, respondents request that the Department use the Yearbook unit price as the appropriate surrogate value for factor X in the final determination.

DOC Position

We have determined to use the Yearbook price for valuing factor X. Contrary to petitioner's suggestion, the Yearbook has been used repeatedly by the Department as a reasonable source of publicly available public information for factor valuation. Additionally, information submitted by petitioner does not establish that the value is aberrational. Specifically, with the exception of one price provided by petitioner, all other prices apply to products which are less comparable to the input used by the PRC producers than the product described in the Yearbook. Hence, those values are not appropriate to value factor X; and, the evidence provided does not allow us to use them to test whether the Yearbook price is correct. With respect to the one price provided by petitioner that is for a comparable product, the information is not publicly available published information. Therefore, consistent with our policy (see Notice of Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Certain Carbon Steel Butt-Weld Pipe Fittings From the PRC (57 FR 21062, May 18, 1992)), we will give preference to the Yearbook price.

Further, a comparison of the Yearbook price to a non-market export price quotation for the comparable material, as petitioner suggested, cannot be considered a reasonable or meaningful test of whether a surrogate value is aberrational. It has been the Department's practice not to rely on prices set in non-market economies due to state controls imposed on prices, wages, currency and production as well as the absence of market forces in the economy. Petitioner asserts that a non-market economy price quotation would be an understatement of the market price due to price controls. However, the Department cannot be certain that the quoted export price is in fact an understatement due to the market distortions existing in a non-market economy.

Comment 4: Surrogate Value for Factor Z

(*N.b.*, Due to the proprietary nature of this issue, the following discussion is presented in non-confidential form. A more detailed analysis of the interested parties' positions and the Department's position is given in the September 28, 1995, decision memorandum to the file.)

Respondents argue that the Chemical Weekly price used to value factor Z in the preliminary determination is an

inappropriate surrogate value for the following reasons: (1) it includes selling and movement expenses for smaller quantity purchases not normally incurred in bulk purchases, and (2) it is for a different type of material. According to respondents, the PRC producers bought a different type of material in bulk quantities. While not considered publicly available published information, respondents suggest that a more appropriate surrogate value data for this material is a price quotation based on information that respondents obtained from the Department's US&FCS office in New Delhi and market research correspondence since those prices are for a more comparable material and reflect a unit price figure for bulk quantity purchases. Respondents also suggest that, if the Department does not decide to change the surrogate value, it should adjust the surrogate value used in the preliminary determination to reflect the actual quality of the material and further adjust the value to reflect a unit price exclusive of any selling/movement expenses that are normally included in the retail price from Chemical Weekly.

Petitioner counters that the Department's choice of a surrogate value for factor Z in the preliminary determination is appropriate because it is based on publicly available information from an Indian publication and has been accepted by the Department in past investigations as an appropriate surrogate value for factor Z. Petitioner asserts that the alternative suggested by respondents is not a preferred surrogate value under the Department's hierarchy because it stems from individuals' statements and single transactions—information which does not demonstrate that the Chemical Weekly price is in any way an ''incorrect'' or aberrational value for the material.

Further, petitioner argues that the Department should not make an adjustment for the difference in material type allegedly used by the PRC producers. Petitioner considers the disclosure of the specific type of material as new information since this information was not provided to petitioner until August 4, 1995, when it was disclosed in respondents' factor valuation submission. Therefore, petitioner urges the Department to reject respondents' arguments to adjust the surrogate value in the Chemical Weekly for differences in type and as best information available, to assume that the PRC producers value factor Z without adjustment.

DOC Position

We agree with petitioner. The Department verified that the PRC producers use a specific type of factor Z. Verification did not reveal the nature of the purchase arrangements or the production process for the input (nor was any such information on the record prior to verification). Further, there is no evidence on the record to indicate that the surrogate value from the Chemical Weekly is aberrational for purposes of this investigation. In fact, the type of material used by PRC producers corresponds to the common description of the material priced in Chemical Weekly. Therefore, for purposes of the final determination, we are using the preliminary determination's surrogate value from the Chemical Weekly without adjustment.

Comment 5: Packing Material Consumption and Surrogate Value

Petitioner requests that the Department reject respondents' data for packing and rely on the petition's packing data as BIA since verification revealed that the reported factor consumption for packing was substantially understated. In the event that the Department decides to base its final determination on the information submitted by respondents, it should use the verified packing materials usage factor and not the understated figure originally reported by respondents. Further, petitioner asserts that the Department should use the surrogate unit value for ''polypropylene bags'' based on information in Monthly Statistics of Foreign Trade of India. Petitioner notes that this surrogate value was used in past cases (see, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from PRC (59 FR 22585, May 2, 1994)) and respondents are in agreement with this choice of surrogate value for the packing materials (see respondents' August 11, 1995, submission on factor valuation).

Respondents alleged a discrepancy in the weight of the packing materials at verification of Xian Lu Chemical Plant, as noted in the corresponding verification report.

DOC Position

We have determined that the value for plastic bags (expressed in terms of weight) based on 1991–1992 UN Trade Statistics is the more appropriate surrogate value. Information concerning the exact type of plastic bag used by respondents was first presented to the Department in respondents' August 11, 1995, submission on publicly available published information for surrogate values and, therefore, is untimely and too late to be verified for purposes of the final determination. Further, information on the record does not indicate that the UN Trade Statistics data is an inappropriate basis for surrogate value. The UN Trade Statistics are the most recent, publicly available, published information suitable for valuing plastic bags in this investigation.

Further, as we note no discrepancy in the verified weight of the 25 kilogram plastic bag used at Xian Lu Chemical Plant, no change from the amount noted in the Department's verification report is warranted.

Comment 6: Surrogate Value for Unskilled Labor

Respondents argue that the surrogate labor rate from the ILO Yearbook used to value unskilled labor in the preliminary determination is inappropriate because it is an aggregate labor rate for all skill levels of labor in India. According to respondents, the Department should adjust downward the surrogate labor rate used in the preliminary determination using formulae applied in previous cases.

Petitioner counters that the Department cannot accept respondents' argument because there is no factual evidence on the record of this investigation to support such a proposed adjustment. Petitioner maintains that it is impossible to know whether the formula used in the previous cases would be applicable to the unique circumstances of the manganese sulfate industry in India, or whether it is specific to the products involved in those cases. Further, petitioner contends that respondents failed to provide complete and verifiable information regarding their usage of different types of labor. Accordingly, petitioner urges the Department to reject respondents' request.

DOC Position

We agree with petitioner. For purposes of the final determination, the Department is valuing unskilled labor using the Indian labor rate reported in the ILO Yearbook without adjustment. Respondents' proposed method of (1) assuming that the ILO Yearbook labor rate is an average, semi-skilled labor rate, and (2) adjusting this labor rate to reflect unskilled and skilled labor rates using certain ratio adjustment factors was applied by the Department in a particular investigation based on the specific record of that investigation (see Final Determination of Sales at Less Than Fair Value: Antidumping Duty

Investigation of Helical Spring Lock Washers from the People's Republic of China (''HSLW'') Concurrence Memorandum (September 20, 1993)). In another case, the Department has used the ILO Yearbook without adjustment (see, *e.g.*, Preliminary Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Certain Paper Clips from the PRC Calculation Memorandum (May 11, 1995), and Notice of Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Certain Paper Clips from the PRC (59 FR 1168, October 7, 1994)).

Additionally, there is no evidence on the record of this case on which to base the application of the method proposed by respondents. The manganese sulfate production process and industry in this investigation are not comparable to those examined in HSLW. Because the production processes and industries are different, the type of skilled and unskilled labor used may vary significantly and, consequently, may affect the wage adjustments in each case. Therefore, there is no reasonable basis for applying the HSLW's assumptions and formulae to the ILO Yearbook Indian labor rate used in this investigation.

With respect to petitioner's argument concerning the absence of verified information on labor amounts, although the total labor hours reported by the PRC producers were not verifiable due to record keeping deficiencies, the reported hours exceeded the labor hours given in the petition. Therefore, our decision to use the PRC producers' reported hours represents an adverse inference for purposes of the final determination.

Comment 7: Ocean Freight

Petitioner asserts that verification demonstrated that U.S. sales were shipped via a non-market economy carrier, China Ocean Shipping Company (''COSCO''). Petitioner requests that the Department revise the final margin calculations for CNIEC to use a market-economy ocean freight rate as a surrogate value instead of the reported ocean freight rates.

Petitioner further argues that the ocean freight rates provided by petitioner are not aberrational, and should be used in the final determination. Petitioner maintains that only its information is provided from a publicly available market-economy source, and representative of terms similar to those verified to have applied to CNIEC's shipments. Accordingly, petitioner also requests that the Department revise its preliminary determination calculation of the ''PRC-wide'' deposit rate by using market-economy ocean freight rates instead of the reported ocean freight used in the preliminary determination.

Respondents argue that CNIEC's reported ocean freight was verified as a market economy freight rate. According to respondents, the Department verified that CNIEC's U.S. subsidiary purchased ocean freight services in the United States from a U.S. company and paid in U.S. dollars.

DOC Position

We agree in part with petitioner. In NME proceedings, the Department's consistent methodology has been to determine whether a good or service obtained through a market-economy transaction is, in fact, sourced from a market economy rather than merely purchased in a market economy (see, *e.g.*, Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Ferrovanadium and Nitrided Vanadium from the Russian Federation (60 FR 27962, May 26, 1995)). Because the good or service is produced in a NME, the Department cannot rely on the transaction as a basis for valuation because the underlying costs and expenses are not market-based. Verification indicated that COSCO performed the service. Although CNIEC's U.S. subsidiary arranges ocean freight through a U.S.-based company, the company's costs for contracting ocean freight with COSCO, a NME provider (see, e.g., Notice of Final Results of Antidumping Administrative Review: Iron Castings from the PRC (56 FR 2742, January 24, 1991)), cannot be relied on unless found to be representative of market-economy freight rates. The record of this case does not indicate that the COSCO rates are representative of market economy rates and, thus, the rate charged to CNIEC's U.S. subsidiary cannot be used for purposes of the final determination.

When a service, such as ocean freight, is determined to be provided by a non-market carrier, it has been the Department's practice to use a surrogate rate from a market economy country to value that service (see, *e.g.*, Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Disposable Pocket Lighters from the PRC (60 FR 22361, May 5, 1995); Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Sebacic Acid from the PRC (59 FR 28053, May 31, 1994); and Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Sparklers from the PRC (56 FR 20588, May 6, 1991)).

Therefore, we have valued ocean freight using a surrogate, market-economy value based on international shipping rates.

Comment 8: Brokerage and Handling

Petitioner contends that foreign brokerage and handling should be deducted from USP. Further, these charges should be valued at market economy rates provided on the record by petitioner. Petitioner requests that the Department adjust the margin calculations to account for this movement charge and apply a market economy value for services a forwarder provides in the final margin calculations.

Respondents counter that CNIEC did not incur any separate foreign brokerage and handling charges. According to respondents, any foreign brokerage and handling charges incurred by CNIEC are subsumed in the freight rate.

DOC Position

We agree with respondents. No separate brokerage or handling charges were reported in respondents' questionnaire responses or discovered at CNIEC's verification. Accordingly, such charges were not valued or accounted for in CNIEC's final margin calculation.

Comment 9: Marine and Foreign Inland Insurance

Because verification revealed that marine insurance and foreign inland insurance were provided by non-market economy suppliers, petitioner requests that the Department use market economy surrogate rates, as provided in petitioner's July 7, 1995, submission, to value these two movement expenses, where appropriate.

Respondents argue that verification revealed that neither CNIEC nor its U.S. subsidiary obtained marine insurance for their manganese sulfate shipments within the POI and, therefore, petitioner's proposed surrogate value for marine insurance is inapplicable in this case.

DOC Position

Verification revealed no indication that marine insurance was incurred by CNIEC or its U.S. subsidiary; therefore, this expense is not considered for purposes of the final margin calculation. However, we did confirm that foreign inland insurance was obtained by CNIEC from a non-market provider and, therefore, we have valued this expense based on market-economy surrogate rates in the margin calculation.

Comment 10: Adjusted Calculation to Reflect Actual Working Days in India for Surrogate Labor Rate

Petitioner requests that, if the Department chooses to rely upon the reported labor factor amounts in the questionnaire responses, the Department adjust the factors to account for labor practices in India. According to petitioner, if the PRC producers report that their workers worked more hours than the total number of hours worked in India during a normal work week, the Department should value the excess hours at double the normal labor rate as ''overtime.''

Respondents assert that there is no basis under law, precedent or practice to value PRC producers' ''excess'' hours at double the rate the Department decides to use as its surrogate value based on labor practices in India. Further, respondents counter that there is no indication on the record that any of the PRC producers' employees work over the hours calculated based on Indian labor practices. Accordingly, respondents request that the Department reject such a request.

DOC Position

We agree with respondents. While the Department does use information on labor practices in India to convert daily, weekly, and monthly wage rates from India into hourly wage rates, it is not Department practice to apply the surrogate country's overtime policies in valuing NME labor. Further, because our questionnaire did not require NME producers to report potential ''overtime'' hours worked as a component of ''regular'' hours, there was no opportunity for this issue to be fully analyzed, verified, and commented upon by interested parties.

Critical Circumstances

In our preliminary determination, we found that critical circumstances existed for all non-responding trading companies, but not for Hunan Chemicals or CNIEC.

Under 19 CFR 353.16(a), critical circumstances exist if (1) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of this investigation; or the importer knew or should have known that the producer or reseller was selling the merchandise which is the subject of this investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise which is the subject of this investigation over a relatively short period.

In determining whether imports have been massive over a short period of time, 19 CFR 353.16(f) instructs consideration of: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports.

Further, 19 CFR 353.16(f)(2) states that imports will not generally be considered massive unless they have increased by at least 15 percent over the imports during the immediately preceding period of comparable duration.

In accordance with 19 CFR 353.16, we preliminarily determined that critical circumstances did not exist for CNIEC and Hunan Chemicals based on the following criteria: (1) The finding of no imputed knowledge of dumping to importers because the estimated dumping margins were less than 15 percent (the threshold where, as here, only ESP sales are involved) and (2) the adverse assumption, based on BIA, that massive imports of manganese sulfate occurred over a relatively short period of time. (See Preliminary Determination Notice of Sales at Less Than Fair Value: Manganese Sulfate from PRC (59 FR 25885, May 16, 1995)).

For the final determination, we continue, as BIA, to determine that critical circumstances exist for all non-respondent exporters. The ''PRC-wide'' margin of 362.23 percent for those exporters exceeds the 25 percent threshold for imputing a knowledge of dumping to the importers of the merchandise. In addition, we have adversely assumed, as BIA, a massive increase in imports from these non-respondent exporters. We, therefore, determine that critical circumstances exist for all non-respondent exporters in this investigation.

Since the preliminary determination, we have determined that Hunan Chemicals is not a respondent and will not be assigned a separate rate. Therefore, we extend to Hunan Chemicals the same BIA-based determination of critical circumstances applied to the non-responding trading companies.

Additionally, CNIEC submitted shipment information following the preliminary determination which has now been verified. While CNIEC's margin (32.48%) does indicate that importers knew, or should have known, that CNIEC's merchandise was being sold at LTFV prices, CNIEC's shipment data shows that there has been no massive increase in the shipments from CNIEC in the period following the filing of the petition. Accordingly, for CNIEC, we determine that critical circumstances do not exist.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of manganese sulfate from the PRC from all non-responding trading companies, that are entered, or withdrawn from warehouse for consumption, on or after February 14, 1995, which is the date that is 90 days prior to the date of publication of our notice of preliminary determination in the Federal Register. This retroactive suspension will now also apply to Hunan Chemicals. In addition, we are instructing Customs to suspend liquidation from the date of publication of this notice in the Federal Register for all entries of manganese sulfate from the PRC sold by CNIEC. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage	Critical circumstances
CNIEC	32.48	No.
''PRC-Wide'' Rate	362.23	Yes.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will within 45 days determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: September 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–24805 Filed 10–4–95; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination of whether a Secretary of Commerce should issue a Certificate to the applicant. An original and five (5) copies of such comments should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as ''Export Trade Certificate of Review, application number 95–00006.''

Summary of the Application

Applicant: Water and Wastewater Equipment, Manufacturers Association (WWEMA), 101 E. Holly Ave., Suite 14, Sterling, Virginia 22170. Contact: Randolph J. Stayin. Telephone: (202) 289–1313.

Application No.: 95–00006.

Date Deemed Submitted: September 21, 1995.

Members (in addition to applicant): See Attachment I.

WWEMA seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

Products

Machinery, equipment, instrumentation, chemicals, supplies, systems, accessories, turnkey systems, and software development (as these items are used in the treatment of water and/or wastewater).

Services

A. Identification, conceptual prefeasibility, and feasibility assessments of residential, commercial, industrial, and municipal Products and water and/or wastewater treatment facilities for homeowners, businesses, companies, utilities, or foreign government entities;

B. Engineering and architectural services related to Products and/or to turnkey contracts that substantially incorporate Products;

C. Design and installation of water and/or wastewater treatment facilities and/or Products;

D. Project and construction management of water and/or wastewater treatment facilities;

E. Arranging or offering financing for investments in water and/or wastewater treatment facilities and/or Products, including lease, loan, shared savings arrangements, guaranteed lease or loans, and third party financing;

F. Providing bonded performance guarantees that guarantee a certain level of water and/or wastewater treatment as a result of the installation of water and/or wastewater treatment Products;

G. Servicing, training, and other services related to the sale, use, installations, maintenance monitoring, rehabilitation, or upgrading of Products or to projects that substantially incorporate Products;

H. All other services related to water and/or wastewater treatment.

Export Trade Facilitation Services (as they relate to the Export of Products and Services)

Consulting; international market research; insurance; legal assistance; accounting assistance; services related to compliance with foreign customs requirements; trade documentation and freight forwarding; communication and processing of export orders and sales leads; warehousing; foreign exchange; financing; liaison with U.S. and foreign government agencies, trade associations and banking institutions; taking title to goods; marketing and trade promotion; trade show participation; coordination and negotiation of the terms and conditions of participation in trade promotion activities such as trade shows, expositions, exhibitions, conferences or similar events; and negotiations with providers of transportation, insurance, exhibits and lodging in connection with such trade promotion opportunities.

Technology Rights

Patents, trademarks, service marks, trade names, copyrights (including neighboring rights); trade secrets; know-how; technical expertise; utility models (including petty patents); computer modeling; semiconductor mask works; industrial designs; computer software protection associated with Products, Services, industrial designs, first die proofs, design of die block impressions, inserts, and Export Trade Facilitation Services.

Export Markets

The Export Markets include all parts of the world except the United States (the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

A. To engage in Export Trade, in the Export Markets, WWEMA and/or one or more of its Members may:

1. Engage in joint selling arrangements for the sale of Products and/or Services in the Export Markets, such as joint marketing, joint negotiation, joint offering, joint bidding, and joint financing; and allocate sales resulting from such arrangements.

2. Establish export prices of Products and/or Services by the Members in Export Markets.

3. Discuss and reach agreements relating to the interface specifications and engineering of Products and/or