D.C. 20230; telephone (202) 482–3019 or 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1997, the Department published in the **Federal Register** (62 FR 11150), the preliminary results of the antidumping duty order on CA flux from France (59 FR 30337). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results of review. The Department received no written comments or requests for a hearing. Based on our analysis, these final results of review remain the same as those presented in the preliminary results of review. Therefore, we determine that the following weighted-average margin exists:

Manufacturer/exporter	Period of review	Margin (percent)
Lafarge Aluminates, Inc	06/01/95–05/31/96	7.30

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and normal value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of CA flux from France within the scope of the order entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate list above; (2) for previously reviewed or investigated companies not listed above, the rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate of 37.93 percent, the ''all others'' rate, established in the LTFV investigation, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation to 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 subsequent assessment of double antidumping duties.

Notification of Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. Timely written notification of the return/destruction of APO materials or converion to judicial protective order is hereby requested.

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: May 9, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–13057 Filed 5–16–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

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

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

EFFECTIVE DATE: May 19, 1997.

FOR FURTHER INFORMATION CONTACT: James Maeder, Barbara Wojcik-Betancourt, or Howard Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3330, (202) 482–0629, or (202) 482–5193, respectively.

THE 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 Rounds Agreements Act (''URAA'').

FINAL DETERMINATION: We determine that persulfates from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States Sales at Less Than Fair Value (''LTFV''), as provided in section 735 of the Act.

Case History

FMC Corporation (''FMC'') is the petitioner in this investigation. The respondents in this investigation are, Shanghai Ai Jian Import & Export Corporation (''AJ''), Sinochem Jiangsu Wuxi Import & Export Corporation (''Wuxi'') (exporters), Shanghai Ai Jian Reagant Works (''AJ Works'') (producer for AJ and Wuxi), Guangdong Petroleum Chemical Import & Export Trade Corporation (''Guangdong'') (exporter), Guangzhou City Zhujiang Electrochemical Factory (''Zhujiang'') (producer for Guangdong), ICC Chemical Corporation (''ICC'') [1]. Since the preliminary determination in this investigation (*Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Persulfates From the PRC* 61 FR 68232, (December 27, 1996), the following events have occurred:

In December 1996, and January 1997, FMC, AJ Works, AJ and Wuxi alleged that the Department made a ministerial error in its preliminary determination (*see* Comment 8 below). The Department found that there was an error made in the preliminary determination; however, this error did not result in a change of at least five absolute percentage points in, but no less than 25 percent of, the weighted-average dumping margin calculated in the preliminary determination. Accordingly, no revision to the preliminary determination was made. (*see* Ministerial Error Memorandum from the Team to Jeffrey P. Bialos dated January 17, 1997).

On March 25, 1997, petitioner submitted the Chinese Communist Party (''CCP'') Circular and requested that the

[1] ICC is Guangdong's U.S. customer. ICC submitted responses in this investigation because it claimed that U.S. price (''USP'') should be based on its sales to U.S. customers. We have determined that USP should be based on Guangdong's price to ICC (*see* Comment 25).

Department revisit its policy regarding separate rates (*see* Comments 1, 2, and 3 in the *General Comments* section below).

In February and March 1997 we verified the respondents' questionnaire responses. Additional publicly available information on surrogate values was submitted by petitioner and respondents on April 4, 1997. Petitioner and respondents submitted case briefs on April 4, 1997, and rebuttal briefs on April 9, 1997 [2]. A public hearing was held on April 11, 1997.

Scope of the Investigation

The products covered by this investigation are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Ammonium and potassium persulfates are currently classified under subheading 2833.40.60 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Sodium persulfate is classified under HTSUS subheading 2833.40.20. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of this investigation (''POI'') comprises each exporter's two most recent fiscal quarters prior to the filing of the petition (*i.e.*, January through June 1996).

Separate Rates

Each of the participating respondent exporters has requested a separate, company-specific antidumping rate. The claimed ownership structure of the respondents is as follows: (1) Wuxi and Guangdong are owned by all the people; (2) AJ is a publicly-held company.

As stated in *Silicon Carbide* and *Furfuryl Alcohol,* ownership of a company by all the people does not require the application of a single rate. Accordingly, all three are eligible for consideration for a separate rate. (*See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''), and *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544 (May 8, 1995) (''*Furfuryl Alcohol*'').

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test stated in of the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*'') and amplified in *Silicon Carbide.* Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

Respondents have placed on the administrative record a number of documents to demonstrate absence of *de jure* control. These documents include laws, regulations and provisions enacted by the central government of the PRC, describing the deregulation of Chinese enterprises as well as the deregulation of the Chinese export trade, (but for a list of products that may be subject to central government export constraints which the respondents claim does not involve the subject merchandise). Specifically, the respondents provided English translations of the laws and regulations governing their enterprises (*see* Comment 3). These laws and regulations authorize these companies to make their own operational and managerial decisions.

In prior cases, the Department has analyzed the laws which the respondents have submitted in this record and found that they establish an absence of *de jure* control. (*See Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China,* 60 FR 54472 (October 24, 1995) (''*Steel Drawer Slides*''); and *see also Furfuryl Alcohol*). We have no new information in this proceeding which would cause us to reconsider this determination (*see* Comment 1 below).

However, as in previous cases, there is some evidence that the PRC central government enactments have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (*See Silicon Carbide* and *Furfuryl Alcohol.*) Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices (''EP'') 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 *Furfuryl Alcohol*).

Each company asserted, and we verified, the following: (1) it establishes its own export prices; (2) it negotiates contracts, without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs and has the authority to sell its assets and to obtain loans. In addition, questionnaire responses on the record indicate that pricing was company-specific during the POI, which does not suggest coordination among or common control of exporters. During verification proceedings, Department officials viewed such evidence as sales documents, company correspondence, and bank statements. This information supports a finding that there is a *de facto* absence of governmental control of export functions. We determined that both Wuxi and AJ had autonomy from the central government in making decisions regarding the selection of management. In the case of Wuxi, the general manager was elected by an employee assembly. We found no involvement by any government entity in AJ's selection of management. With respect to Guangdong, we found that the general manager was appointed by the local administering authority, the Guangdong Heavy and Chemical Industrial Bureau (''GHCIB''). While this may indicate that Guangdong is subject to the control of the GHCIB, there is no evidence that any other exporter of the subject merchandise is currently under the control of the GHCIB, which could raise the issue of manipulation of the export function to evade antidumping duties. Therefore, we have concluded that Guangdong is entitled to a separate

[2] Counsel for ICC, Zhujiang, and Guangdong did not submit case briefs, but did submit rebuttal briefs.

rate[3]. This determination is consistent with our recent decision in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results and Partial Termination of Antidumping Duty Administrative Review,* 62 FR 6173, 6174 (February 11, 1997) (''*Tapered Roller Bearings*''). Consequently, we have determined that Wuxi, AJ, and Guangdong have met the criteria for the application of separate rates.

China-Wide Rate

U.S. import statistics indicate that the total quantity and value of U.S. imports of persulfates from the PRC is greater than the total quantity and value of persulfates reported by all PRC companies that submitted responses. Furthermore, after sending antidumping questionnaires to 18 companies identified as potential respondents in the petition, we received responses from only two producers and three exporters. Thus, we have concluded that not all exporters of PRC persulfates responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate—the China-Wide rate—to all exporters in the PRC, other than Wuxi, AJ and Guangdong (Zhujiang, and AJ Works are producers), based on our presumption that those respondents who failed to respond constitute a single enterprise under the common control of the PRC government. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China,* 61 FR 19026 (April 30, 1996) (''*Bicycles*'').

This China-wide antidumping rate is based on adverse facts available. Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority * * *; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use information that is adverse to the interests of that party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

Consistent with section 776(b)(1) of the Act, we have applied, as total facts available, the higher of the average margin from the petition or the highest rate calculated for a respondent in this proceeding. In the present case, based on our comparison of the calculated margins for the respondents in this proceeding to the average margin in the petition, we have concluded that the petition is the most appropriate record information to base the dumping calculations in this investigation. Accordingly, the Department has based the China-wide rate on information in the petition. In this case, the average petition rate is 134.00 percent. Section 776(c) of the Act provides that where the Department relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action (SAA), accompanying the URAA clarifies that the petition is ''secondary information.'' *See* SAA at 870. The SAA also clarifies that ''corroborate'' means to determine that the information used has probative value. *Id.* However, where corroboration is not practicable, the Department may use uncorroborated information.

In accordance with section 776(c) of the Act, we corroborated the margins in the petition to the extent practicable. The petitioner based EPs on price quotes obtained from U.S. importers, reduced by estimated importer mark-ups and movement charges. We compared the starting prices used by petitioner less the importer mark-ups against prices derived from U.S. import statistics and found that the two sets of prices are consistent. We also compared the movement charges used in the petition with the surrogate values used by the Department in its margin calculations and found them to be consistent.

Regarding normal value (''NV''), petitioner used publicly available information from India to value the factors of production. Petitioner based factory overhead, selling, general and administrative (''SG&A'') and profit surrogates on data from an annual report of National Peroxide Limited (''National Peroxide''), an Indian producer of hydrogen peroxide. Based on the information on the record regarding similarities in the production process for hydrogen peroxide and persulfates, we have determined that it is appropriate to base surrogate factory overhead, SG&A and profit on National Peroxide's financial data (*see* Comment 3). Although we found in the preliminary determination that the financial data for Sanderson Industries Ltd. (''Sanderson''), the surrogate company proposed by one respondent, was more consistent with the financial data we obtained for other Indian chemical producers, in the final determination we have concentrated our analysis on product comparability, including similarities in the production process. Based on our analysis, we have accepted the factory overhead, SG&A and profit percentages in the petition for the final determination.

With respect to all other elements of the NV calculation in the petition (*i.e.*, materials, labor, energy and packing), the Department corroborated the values used in the petition by comparing them with values obtained from publicly available information collected in this and previous nonmarket economy investigations.

Accordingly, we have corroborated, to the extent practicable, the data contained in the petition.

Fair Value Comparisons

To determine whether respondents' sales of the subject merchandise to the United States were made at less than fair value, we compared EP to NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice.

United States Price

We based USP on EP in accordance with section 772(a) of the Act, because the persulfates were sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price methodology was not otherwise indicated by the facts in this case. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide NVs to POI-wide weighted-average EPs.

We corrected the respondents' data for errors and minor omissions submitted to the Department and found at verification. We made company-specific adjustments as follows:

1. Wuxi

We calculated EP in accordance with our preliminary calculations, except

[3] All non-responding exporters are presumed to be under the control of the central government. However, there is no basis on which to conclude that any non-responding exporter is controlled by the GHCIB.

that we corrected inland freight expenses, control numbers in the company's sales listing, and international freight expenses, based on findings at verification.

2. AJ

We calculated EP in accordance with our preliminary calculations except that we corrected inland and international freight expenses, based on findings at verification.

3. Guangdong

We calculated EP based on packed, ex-factory PRC prices to an unaffiliated purchaser in the United States (*see* Comment 25). Insofar as Guangdong claimed that all the movement expenses were paid by the purchaser, we did not make any adjustments to the starting price for such expenses.

Normal Value

Factors of Production

We calculated NV based on factors of production cited in the preliminary determination, making adjustments for specific verification findings *(see Final Valuation Memorandum from the Team to Louis Apple, Acting Office Director* dated May 12, 1997) (''Final Valuation Memorandum''). To calculate NV, the verified amounts for the factors of production were multiplied by the appropriate surrogate values for the different inputs. We have used the same surrogate sources as in the preliminary determination with the exception of the source for overhead, SG&A and profit. For the final determination we based the percentages for overhead, SG&A and profit on the detailed public version of National Peroxide's financial statement that was placed on the record of this investigation by the petitioner.

Because Zhujiang, one of the producers in this investigation, failed to cooperate by not acting to the best of its ability to provide the weight of packing materials, we have used as the weight of each type of packing material the greatest weight reported for the material in the petition or in the public versions of the other respondent producer's submissions in this investigation. Where the weight for a particular type of packing material is not on the record, we have estimated the weight for these materials (*see* Final Valuation Memorandum). Also, because Zhujiang failed to provide supplier distances for packing materials we have used the greatest supplier distance reported by Zhujiang for any material input as the distance between the factory and the supplier of each type of packing material.

In addition, AJ Works, the other producer in this investigation, failed to report certain packing materials. Therefore, we have estimated the weight for these materials in our calculations for the final determination (*see* Final Valuation Memorandum). Also because AJ Works failed to provide supplier distances for the unreported packing materials we have used the greatest supplier distance reported by AJ Works for any packing material as the distance between the factory and the supplier of each type of unreported packing material.

Verification

As provided in section 782(i) 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.

General Comments

Comment 1: Assigning a Country-Wide Rate to all Respondents

Petitioner alleges that the *Notice of the Communist Party of China Central Committee on Reinforcing and Improving Party Building in State-Owned Enterprises* (''the Circular'') issued by the CCP in January 1997 requires the Department to abandon its entire separate rates analysis and establish an irrebuttable presumption that all exporters of a particular product comprise a single exporter under government control. Petitioner argues that the Circular reasserts complete centralized state control over state-owned enterprises. Petitioner points out that the Circular requires generally that an enterprise's activities should be conducted under the guidance of state planning. Also, petitioner notes that the Circular imposes central control over decisions regarding the selection of management and ''capital utilization.'' Based on this Circular, petitioner argues that the CCP has reasserted both de jure and de facto control over state-owned enterprises and, thus, the Department should not allow any exporter to rebut the presumption of state control.

Respondents claim the Circular is hortatory and aspirational and does not constitute a change either in the legal status or in the de facto operations of companies in China. Furthermore, respondents claim the Circular does not apply to the instant investigation because it was issued six months after the close of the POI. Finally, respondents argue it would be an error for the Department to ignore the company-specific information on the record pertaining to independence and rely on petitioner's speculations regarding the future effect of the Circular.

DOC Position

We have examined the Circular closely and have carefully considered the implications in may have for our separate rates analysis. While we agree with the petitioner that some of the language can be interpreted to indicate heightened government involvement in SOEs, it is not clear that the circular nullifies or amends any laws or regulations that grant operational independence to exporters, or that it will result in de facto government control over export activities of SOEs at some time. Moreover, we note that the Circular was issued on January 14, 1997, and submitted to the Department on March 25, 1997. Thus, it was not before the Department during verification. At verification, we found that the companies subject to investigation operate independently with respect to exports and thus qualified for separate rates. Therefore, on the basis of all of the information in the record, we cannot conclude that the companies are not entitled to separate rates. However, we will continue to closely examine the effect, in fact and in law, of the circular with respect to any reassertion of central government control of export activities of SOEs. If, in any future investigation or review, we find that the new party circular results in government control of export activities, we will not grant companies separate rates.

Comment 2: Assigning a Country-Wide Rate Based on Affiliation

Petitioner argues that if the Department continues its separate rates analysis in nonmarket economy cases despite the Circular, it should assign a single country-wide rate in accordance with its methodology for evaluating whether affiliated parties should be collapsed into one entity. Petitioner notes that the Department considers entities under common control to be affiliated. In such situations, petitioner alleges, if there is a strong possibility of price manipulation, the Department will collapse the entities and assign a single antidumping margin. In light of the Circular reasserting government control over SOEs, petitioner alleges that it is clear the respondents are under common control and that the Chinese government has the authority to control exports and pricing activities. Thus, in accordance with the Department's affiliated parties methodology, all respondents should be collapsed into

one entity and assigned a single country-wide rate.

Respondents claim that Departmental practice shows that the affiliated party methodology does not apply to the issue of separate rates (*see Tapered Roller Bearings*). Also, according to respondents, the Department's proposed regulations state that the affiliated party methodology does not address the issue of whether a producer or exporter in a nonmarket economy country is entitled to an individual antidumping rate (*see* the Department's *Proposed Regulations*, 61 FR 7330 (February 27, 1996)). Therefore, respondents contend the affiliated party methodology should not be used in the instant case.

DOC Position

We agree with respondents. The Department has a long-standing methodology for determining whether companies in a nonmarket economy are entitled to a separate rate. That methodology is separate and distinct from the ''collapsing'' methodology in both focus and function. On the one hand, the separate rates test focuses specifically on whether there is government control of a nonmarket company's export activities. On the other hand, the ''collapsing'' methodology focuses on the relationship between two or more affiliated companies, not their relationship vis-a-vis the government or other entities. There is no basis for applying a ''collapsing'' analysis in this case.

Comment 3: Assigning a Country-Wide Rate Based on De Jure and De Facto Control Wuxi and AJ

Petitioner contends that Wuxi failed to place evidence on the record showing that it was not subject to de jure government control. Although Wuxi placed on the record certain PRC laws stating that the responsibility for managing companies ''owned by all the people'' has been transferred from the government to the companies themselves, it failed, according to petitioner, to provide documentation showing how these laws are implemented in Jiangsu Province, and how Wuxi is affected by them. In addition, petitioner notes that Wuxi failed to provide documentation demonstrating the absence of export controls on subject merchandise. Petitioner also points out that Wuxi's charter states that the company is to carry out the policy of the state and comply with the provisions of an institute that allegedly is an instrument of the Chinese government. Further, petitioner states that Wuxi has failed to demonstrate the absence of de facto government control. Specifically, petitioner contends that Wuxi failed to: (a) show that it independently negotiated and signed business contracts; (b) demonstrate that it had autonomy in selecting management; (c) demonstrate that it had the authority to borrow freely; and (d) show how foreign currency and company profits were used. Thus, petitioner claims Wuxi failed to demonstrate the absence of de facto government control. Therefore, petitioner maintains that the Department should assign Wuxi a country-wide rate.

Petitioner claims AJ failed to provide any evidence to support its assertion that there are no controls on exports of the subject merchandise to the United States. Petitioner notes that AJ's charter states that the company should follow state rules which, when read in conjunction with the Circular, indicates that AJ is subject to de jure government control.

Petitioner contends that AJ did not establish the absence of *de facto* control regarding management selection because the company failed to identify the shareholders of its parent corporation whose board of directors appoints and approves AJ's top managers. Because shareholders of the parent corporation were not identified, petitioner claims the Department has no way of knowing whether a government entity, as a shareholder of the parent corporation, has control over the selection of AJ's top managers. On the basis of *de jure* and *de facto* control over AJ by the PRC government, petitioner maintains the Department should assign AJ a country-wide rate.

Wuxi and AJ maintain that they established the lack of *de jure* government control by submitting copies of various laws and regulations that were used to establish the absence of such control in past cases. Specifically, respondents note that they submitted the April 13, 1988, regulations on industrial enterprises ''owned by all the people,'' the August 23, 1992, regulations regarding deregulation of state-owned industrial enterprises, and the December 29, 1993, law governing publicly held companies. Respondents argue that the implementation of such laws at the provincial level was established by the absence of *de facto* government control. Further, respondents assert that their charter provisions, which require the companies to comply with state policies, simply means that the companies must follow the law. Respondents also assert that the Department found no evidence of export controls during verification. AJ further claims that the lack of *de jure* government control is evidenced by the fact that its parent company is a publicly traded company. According to AJ, the absence of a list of its shareholders does not overcome this finding. Regarding *de facto* control, respondents claim the Department examined the disposition of foreign currency and profits and reviewed documentation relating to sales negotiations, contracts, loans, and management selection, and found no evidence of government control.

Guangdong and ICC

Petitioner argues that the Department should assign, as adverse facts available, a single country-wide antidumping duty rate to Guangdong because Guangdong is owned by the Chinese provincial government and the company failed to provide evidence demonstrating the absence of *de jure* and *de facto* government control. Regarding *de jure* control, petitioner maintains the interim procedures[4] on export licensing that Guangdong placed on the record merely address the issuance of export licenses, not the decentralization of government control of export activities. Petitioner also maintains that Guangdong failed to provide documentation showing how the ''Company Law of the People's Republic of China'' and the ''Temporary Provisions for Administration of Export Commodities'' are implemented in the province where Guangdong is located. Regarding *de facto* control, petitioner claims that the documents Guangdong submitted to prove that it independently sets prices and negotiates contracts are merely correspondence between ICC and ICC (Hong Kong) Ltd. (ICC is a customer of Guangdong) regarding persulfate purchases and do not support a finding that Guangdong acts independently. Petitioner points out that Guangdong has absolutely no autonomy in selecting managers because the Chinese provincial government appoints the general manager who, in turn, selects all the other managers. According to petitioner, the fact that the provincial government selects Guangdong's general manager is enough to require the Department to assign a country-wide antidumping duty rate to Guangdong (*see Notice of Preliminary Determination of Sales at Less Than Fair Value: Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China*, 61 FR 15037, 15038 (April 14, 1996) (''*Natural*

[4] ''Interim Procedures of the State Import-Export Commission and the Ministry of Foreign Trade of the People's Republic of China Concerning the System of Export Licensing''

Bristle Paint Brushes and Brush Heads'')). Finally, petitioner claims Guangdong did not demonstrate its independence from government control with respect to financial management of the company. Petitioner notes that the general manager, who is appointed by the Chinese provincial government, is the only individual who decides how to use company profits and has access to the company's bank account. Hence, petitioner urges the Department to apply a country-wide antidumping duty rate to Guangdong.

ICC and Guangdong maintain that petitioner's arguments for a single antidumping duty rate fail for several reasons. First, according to ICC and Guangdong, the separate rates test does not apply to them because USP should be based on ICC's prices and ICC is an American-owned company located in the United States (*see* Comment 27). Second, even if the Department bases USP on Guangdong's sales to ICC, Guangdong and ICC claim petitioner's argument for a single antidumping duty rate fails because the Department verified the absence of both *de jure* and *de facto* government control of Guangdong. Regarding *de jure* control, Guangdong and ICC maintain that the laws they placed on the record establish the absence of such control. Regarding *de facto* control, respondents contend that the record shows that Guangdong sets prices and negotiates contracts independently of the central and provincial government. While Guangdong and ICC acknowledge that the Chinese provincial government owns Guangdong and appoints the company's top managers, respondents claim the record shows that the provincial government is not involved in the day-to-day management of Guangdong and the government's appointment of top managers did not adversely affect the company's independence in export activities. In addition, respondents maintain that *Natural Bristle Paint Brushes and Brush Heads* did not address the appointment of top management by the provincial government and, thus, the case does not support petitioner's argument for a country-wide rate based on the provincial government's appointment of Guangdong's top managers. Respondents also note that the Department reversed its position in the preliminary determination of *Natural Bristle Paint Brushes and Brush Heads*, cited by petitioner, and found, in the final determination, that a separate rate was appropriate because the general manager was selected through a poll of the employees that was ratified by the provincial government. Thus, that case is not relevant to this determination. Lastly, Guangdong and ICC contend that the question before the Department is whether Guangdong is sufficiently independent from the central government, not the provincial government. According to respondents, the record shows Guangdong operates completely independent of the central government.

DOC Position

AJ and Wuxi

We have found that AJ is a publicly held company and Wuxi is ''owned by all the people.'' AJ and Wuxi submitted to the Department copies of the 1988, 1992, and 1993 laws under which they were organized. Each of these laws establishes the absence of *de jure* control in that they grant these companies the right to negotiate prices and sell products, make production decisions, make investment decisions and form joint ventures. Further, the information on the record relating to provincial and local governments shows that their activities with regard to AJ, Wuxi, and AJ Works are limited to such functions as taxation, business licensing, and the collection of export statistics. During verification, we found no evidence that the government controlled export prices or interfered with other aspects of conducting business with the United States.

We analyze below the issue of de facto control based on the criteria set forth in *Silicon Carbide*.

In the course of verification, we confirmed that AJ's and Wuxi's prices are not set, or subject to approval, by any government authority. This point was supported by the companies' sales documentation and correspondence. Through an examination of sales documents pertaining to U.S. persulfates sales, we noted that both AJ and Wuxi have the authority to negotiate contracts, including price, with its customers without government interference.

We confirmed, through an examination of bank and financial documents, that both AJ and Wuxi have the authority to borrow funds and to distribute the proceeds from the export sales freely, independent of government authority. Further, we have determined that both AJ and Wuxi have autonomy from the central government in making decisions regarding the selection of management.

AJ's general manager is selected by the board of directors of AJ's parent corporation whose shares are publicly traded and widely held. We found no evidence of government involvement in the selection of management.

Based on an analysis of all these factors, we have determined that AJ and Wuxi are not subject to *de facto* control by governmental authorities.

Guangdong

Respondent placed copies of laws on the record that established the absence of *de jure* control by the central government. The general manager is appointed by a bureau of the provincial government, not the central government. As noted above, there are no other exporters under the control of the provincial government. Thus, we have concluded that Guangdong is entitled to a separate rate (*see Silicon Carbide*).

Comment 4: Assigning a Country-Wide Rate to AJ

Petitioner contends the Department should, as adverse facts available, assign AJ a China-wide rate because, during verification, AJ did not provide the Department with copies of the long-term contracts for its sales to the United States. According to petitioner, AJ's failure to provide the contracts prevented the Department from verifying the completeness of the company's sales response. Because the company's failure to cooperate prevented the Department from completing a critical component of the verification, petitioner argues that the Department should apply the China-wide rate to AJ.

AJ maintains that the sales confirmations it provided the Department at verification are the long-term contracts referred to in its questionnaire responses. In addition, AJ maintains the Department compared the total quantity and value of its sales with sales reported in the company's audited financial statement and sales ledger and noted no discrepancies. AJ also maintains that the Department verified that during 1996 there were no more sales or shipments to the United States subsequent to the last reported sale. Thus, AJ claims the Department verified the completeness of AJ's sales response.

DOC Position

We agree with AJ. Although AJ reported that it sold the subject merchandise pursuant to long-term contracts, at verification we found AJ's sales confirmations for each sale to be contracts. To verify sales completeness we examined sales confirmations, traced the reported sales to invoices, sales ledgers, and the audited financial statement, and looked for unreported sales in AJ's 1996 accounting records. We noted no discrepancies. Therefore,

the use of adverse facts available for AJ is not warranted.

Comment 5: Assigning Antidumping Duty Rates to Manufacturers

If the Department assigns separate antidumping duty rates in this investigation, petitioner contends the rates should apply not only to the exporters but also to the manufacturers whose factors of production formed the basis for the separate rate. Petitioner maintains that this approach is appropriate because: (a) it is a logical approach which avoids the inaccurate assessment of cash deposits when the exporter enters subject merchandise into the United States that was produced by other manufacturers; and (b) it prevents other manufacturers from selling subject merchandise through an exporter with a low antidumping duty margin. Although petitioner acknowledges that the Department's recent practice as noted in *Coumarin* and *Lighters* has been to assign antidumping rates only to exporters, petitioner urges the Department to return to its policy outlined in *Sulfur Dyes* (*see Notice of Final Determination of Sales at Less Than Fair Value: Coumarin From the Peoples Republic of China,* 59 FR 66895 (December 28, 1994); *Notice of Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters From the People's Republic of China,* 60 FR 22359 (May 5, 1995); and *Notice of Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes From the People's Republic of China,* 58 FR 7537 (February 8, 1993)). Specifically, petitioner notes that in *Sulfur Dyes* the Department determined that any margin calculated using data from a specific producer and exporter ''would only be representative of transactions involving these two parties and are only to be applied to imports of the listed manufacturer or producer which are exported by the listed exporter.'' Petitioner also notes that in *Certain Cased Pencils* the Department assigned a zero margin only to imports of subject merchandise that are sold by the exporter and manufactured by the producers whose factors formed the basis for the zero margin (*see Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China* 59 FR 55625 (November 8, 1994)). Furthermore, petitioner claims that assigning antidumping duty rates to manufacturers participating in the investigation prevents non-participating manufacturers from selling through exporters with separate rates that are normally lower than the country-wide rates assigned to non-participants. Petitioner argues that administrative reviews do not provide an effective remedy to the problem of manufacturers selling through exporters with a low duty rate because the first administrative review is not concluded until at least two years after the final determination in the investigation. During this time, petitioner contends that the manufacturer can export to the United States using the lowest rate available. In addition, petitioner claims it should not bear the burden of assessing whether an exporter has become a conduit for new manufacturers. Thus, if the Department assigns separate rates, petitioner requests that the Department assign an antidumping rate to both the exporter and the manufacturer.

Respondents contend that the Department should assign antidumping duty rates to the exporters and not the producers in this investigation because the provision for administrative reviews will prevent the exporters from selling the merchandise of producers that may have yielded greater antidumping duty margins than the producers participating in the investigation. Respondents point out that the Department's practice is to assign antidumping duty rates only to exporters.

DOC Position

We agree with respondents. The Department's practice in cases involving NME countries is to assign rates to exporters rather than producers because the exporters actually determine the price at which the subject merchandise is sold to the United States. The Department does not ''pair'' exporters with producers in our instructions to Customs except where a company is excluded from an antidumping order (*see, e.g., Pencils,*[5], *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From the People's Republic of China,* 61 FR 14057 (March 29, 1996) (''*PVA*''), and *Notice of Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China,* 62 FR 9160, (February 28, 1997) (''*Brake Drums*'')). Thus, if ''low-margin'' exporters source from less efficient producers and fail to adjust prices accordingly, this will be reflected in the assessment and future cash deposits.

[5] In *Pencils,* the Department did distinguish between suppliers for one exporter, and identified separate pairings of suppliers for that exporter, because the exporter had a zero margin on sales of merchandise from one supplier.

Comment 6: Selecting the Surrogate Producer for Overhead, SG&A and Profit

Because none of the parties in this investigation, nor the Department, could obtain financial data for Indian persulfate producers, petitioner contends the Department should base surrogate factory overhead, SG&A and profit on the financial data of a hydrogen peroxide producer because the production processes for hydrogen peroxide and persulfates are comparable. Specifically, petitioner proposes valuing surrogate overhead, SG&A and profit using the data of the Indian company; National Peroxide.

Petitioner claims that most persulfate producers also manufacture hydrogen peroxide because persulfates are manufactured using the same electrolytic process by which hydrogen peroxide has historically been manufactured. According to petitioner, much of the persulfate production capacity results from conversion of older catalytic hydrogen peroxide production facilities. Thus, petitioner maintains that many of the existing persulfate producers have business units which are organized around peroxygen chemistry and have shared management, sales, and distribution resources dedicated to both hydrogen peroxide and persulfates.

Petitioner notes that ''comparable'' merchandise, as defined by the Department, encompasses a larger set of products than ''such or similar'' merchandise, and in past cases, the Department has identified comparable merchandise on the basis of similarities in production factors (physical and non-physical) and factor intensities. (*See Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the People's Republic of China,* 59 Fed. Reg. 55424 (Nov. 7, 1994) (''Pure Magnesium''), and *Bicycles*).

Petitioner argues that none of the production processes used by the surrogate company proposed by respondents (Sanderson) have any similarity to the electrolytic process technology common to hydrogen peroxide and persulfates. According to petitioner, the production processes for the products manufactured by Sanderson involve simple chemical reactions based on the production of sulfuric acid. Further, petitioner maintains that Sanderson's production processes require very little, if any, technical support. On the other hand, petitioner notes that hydrogen peroxide and persulfates have oxidative functions that require application and process

technology support to ensure product safety. Accordingly, petitioner advocates using the data of National Peroxide as a better source of SG&A, overhead and profit.

AJ Works argues that the Department should base surrogate factory overhead, SG&A, and profit on data for the Indian metals and chemicals industry because none of the companies proposed as surrogates actually produce the subject merchandise. Because the proposed surrogate companies do not produce the subject merchandise, AJ Works contends their financial data may not be representative of the industry of which AJ Works is a part. Moreover, AJ Works maintains that recent Departmental practice in PRC cases is to value factory overhead, SG&A, and profit using the metals and chemicals industry data from the *Reserve Bank of India Bulletin* (''RBI''). (*see e.g. Coumarin, Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China* (''*Saccharin*''), *Notice of Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the People's Republic of China* (''*Sebacic Acid*''), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Paper Clips from the People's Republic of China,* (''*Paper Clips*'')). However, AJ Works argues that if the Department decides to base surrogate overhead, SG&A, and profit rates on the data of a single company, the Department should continue to use Sanderson's financial data, because Sanderson uses a production process similar to the one used to produce persulfates. AJ Works claims there is no justification for using National Peroxide's financial data because there are significant differences between the production process of hydrogen peroxide and persulfates. Zhujiang argues that the Department should continue to base surrogate factory overhead, SG&A, and profit on Sanderson's financial statements rather than National Peroxide's data because Sanderson's and Zhujiang's operations are comparable. Further, Zhujiang contends that its operation is quite lean compared to petitioner's description of persulfate producers with business units organized around peroxygen chemistry and shared management, sales, and distribution resources dedicated to hydrogen peroxide. Therefore, Zhujiang claims it would be inappropriate to base its factory overhead, SG&A and profit on values derived from the National Peroxide hydrogen peroxide. Finally, Zhujiang argues that the Department would double-count SG&A if it bases its SG&A on National Peroxide's financial data because, unlike Zhujiang, National Peroxide has a huge array of sales and distribution staff. Specifically, Zhujiang notes that it relies on ICC for sales and distribution services and the Department has already accounted for ICC's SG&A in its analysis of U.S. price. Hence, Zhujiang argues the Department will double-count SG&A if surrogate values are obtained from a producer that does not conduct business in a manner similar to Zhujiang.

DOC Position

Based on the submitted information, verification findings, and the Department's own research, we agree with petitioner that the financial data from National Peroxide's *Annual Report* for the fiscal year-ending March 31, 1995, is the most appropriate surrogate information available to use for our final determination. The record indicates that the production process for hydrogen peroxide most closely resembles the production process for persulfates. Both products require large capital outlays for production, storage, technical support and special safety requirements. Although we found in the preliminary determination that National Peroxide's financial information, particularly SG&A expenses, were inconsistent with that of certain other Indian chemical producers, we have no information showing that the production processes of those producers resemble the production process for persulfates. Thus, we have determined that inconsistencies between the financial data for National Peroxide and these other Indian producers does not provide a basis for rejecting National Peroxide's financial data. In addition, we have no information showing that National Peroxide's financial data is inconsistent with that of other producers of hydrogen peroxide. Further, because both production processes have similar characteristics (*e.g.,* large capital outlays, special safety requirements) which may impact SG&A, it is reasonable to conclude that National Peroxide's SG&A is comparable to that of a company producing persulfates (see Final Valuation Memorandum for further discussion regarding the similarities of the production process for hydrogen peroxide and persulfates). In addition, the product line of the respondents resembles the product line of National Peroxide. As in the preliminary determination, the Department made an extensive attempt in the final determination to obtain the financial statements for an Indian persulfates producer. However, the only known, existing persulfates producers are privately held. Consequently, they do not issue public financial data about their operations. We did not use data for the Indian metals and chemicals industry from the RBI to value factory overhead and SG&A because the more industry-specific data (*i.e.,* National Peroxide) is preferable to a broad RBI data, which includes metals as well as chemicals producers. Thus, following, the Department's past practice of valuing factory overhead, SG&A and profit using surrogate values for the industry-specific experience closest to that of the subject merchandise, we used National Peroxide's financial data in the final determination because we concluded that National Peroxide's production is closer to that of the subject merchandise than Sanderson's production. *(See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium and Nitrided Vanadium From the Russian Federation,* 60 FR 27957, (May 20, 1995) (''Ferrovanadium''); and *Notice of Final Determination of Sales at Less Than Fair Value: Magnesium from Ukraine* 60 FR 16432, (March 30, 1995) (''Magnesium from Ukraine'')).

Comment 7: Using Skill-Specific Labor Rates

Petitioner maintains that the Department should not have used skill-specific labor rates from *Coumarin* in the preliminary determination because the Department's current practice is to assign to skilled, semi-skilled, and unskilled workers the single labor rate reported in the *Yearbook of Labor Statistics* (''YLS''). Petitioner contends a single labor rate has been used for different skill levels in every PRC investigation and administrative review since *PVA*. Furthermore, petitioner argues for the use of a single labor rate because the two producers in this investigation classified laborers at different skill levels. Petitioner contends this inconsistency between the producers calls into question the skill levels reported by respondents. Thus, petitioner urges the Department to use a single labor rate for all skill levels rather than the separate rates used in the preliminary determination.

Zhujiang, which reported that all its workers were skilled, did not comment on this issue.

AJ Works maintains that it reported different skill levels for its workers and the Department should use this information in its analysis.

DOC Position

We agree with petitioner. Although we used the skill-specific rates derived in *Coumarin* in the preliminary

determination, recent Departmental practice has been to apply the labor rate from the YLS to all reported labor skill levels because skill levels are not identified in the YLS. (*see Brake Drums*). In *Coumarin* the Department followed the methodology adopted in the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From the People's Republic of China* (''*Helical Spring Lock Washers*'') (58 FR 48833 (September 20, 1993)) . In the *Helical Spring Lock Washers* investigation the parties agreed to treat the labor rate from the YLS as a semi-skilled rate which was then adjusted to derive a skilled and unskilled rates. However, in the instant case there is no agreement among the parties to assume that YLS's labor rate is representative of any particular skill level. Therefore, there is no basis on which to calculate the skilled and unskilled labor rate. Therefore, for the final determination, we have used one labor rate for all reported skill levels.

Comment 8: Additional Packing Materials

AJ

Petitioner requests that the Department include all additional packing material identified at verification in the factors of production for AJ Works.

AJ Works maintains its factors of production should include only the additional packing materials that were identified in the company's revisions presented at verification, not the additional ''unreported'' packing materials identified in the Department's verification report. AJ Works claims it does not use the ''unreported'' packing materials and thus, these materials should not be added to the factors of production.

Zhujiang

Petitioner maintains the factors of production should include the unreported packing material discovered at verification.

Zhujiang did not comment on this issue.

DOC Position

We agree with petitioner. Section D of the Department's questionnaire concerning the factors of production request for information requires the respondent to report ''each type of packing material * * * used to pack the subject merchandise for export to the United States''.

Because AJ Works and Zhujiang failed to report all the packing materials as requested by the Department, for the final determination, we have included the unreported packing material in the factors of production (*see* the Final Valuation Memorandum; also *see* the Memorandum to the File reporting the results of the verification of AJ Works dated March 31, 1997).

Company Specific Comments

AJ Works

Comment 9: Recalculating Factors of Production for Sodium Persulfate

Petitioner asserts that AJ Works' reported incorrect factors of production for sodium persulfate because the reported factors were only for the production of sodium persulfate exported to the United States rather than for the total production of sodium persulfate. Petitioner claims that reporting factors solely for exported subject merchandise is contrary to the instructions in the Department's questionnaire and, in the instant case, has resulted in inaccurate reporting. Specifically, petitioner claims that the Departments' questionnaire contemplates that the supplier will base per-unit factor amounts on total production. Petitioner claims this intent is evidenced by the questionnaire requirement that producers with multiple production facilities must report factors for each facility even if the exported subject merchandise is only produced in one facility.

Petitioner also claims that AJ Works' reporting methodology resulted in inaccuracies because the company reported the factors of production for export grade sodium persulfate without having the capability to ensure that only export grade sodium persulfates were shipped to the United States during the POI. Elaborating on this claim, petitioner notes that AJ Works' export and domestic grade sodium persulfates differ in that AJ Works used internally-produced ammonium persulfate to produce export grade sodium persulfate and purchased ammonium persulfate to produce domestic grade sodium persulfate. Although the Department found that AJ Works' differentiated between export and domestic grade sodium persulfate in its production records, petitioner maintains that the company demonstrated no method for physically distinguishing between export and domestic grade sodium persulfate. In fact, petitioner claims export and domestic grade sodium persulfates were commingled in AJ Works' finished goods warehouse. Because the type of ammonium persulfate used to produce sodium persulfate has a significant impact on margin calculations and AJ Works cannot ensure that only sodium persulfates produced with internally-produced ammonium persulfate were shipped to the United States, petitioner claims that it would be incorrect to base NV for sodium persuflate solely on factors for export grade subject merchandise. Thus, petitioner recommends calculating per-unit factors of production for sodium persulfate using the factor and production quantities for total production.

In calculating NV for sodium persulfate from total production amounts, petitioner recommends, as adverse facts available, that the Department value both purchased and internally-produced ammonium persulfate using the Indian surrogate price. In the alternative, petitioner recommends calculating a weighted-average NV for sodium persulfate based on the percentage of sodium persulfate produced using purchased ammonium persulfate and the percentage produced using internally-produced ammonium persulfate. If the Department uses petitioner's alternative recommendation, petitioner urges the Department to include the factor of production, the packing material, and the labor required to pack and transport internally-produced ammonium persulfates within AJ Work's factory.

AJ Works argues that it maintains an excellent method, which was verified by Department officials, for keeping track of the products produced using internally-produced ammonium persulfate and purchased ammonium persulfate in both its accounting system and at the production site. Further, AJ Works states that because it uses internally-produced ammonium persulfate to produce sodium persulfates for the export market and purchased ammonium persulfate to produce sodium persulfate for the domestic market, it must separately track the amounts produced for each market. Thus, it is not necessary to resort to a surrogate value to value the internally-produced ammonium persulfate used to produce sodium persulfate for export. Rather, the Department should continue to calculate the NV for sodium persulfate based on AJ Works' factors of production for internally-produced ammonium persulfate.

DOC Position

We agree with petitioner and applied the same methodology used in past Department cases (*see e.g., Coumarin*) for the final determination. We determined that the weighted-average cost is more representative of the company's cost of production during the

POI than to assume that it produced all of the input material. Because the reported data for the persulfates sold in the PRC includes inputs which have a different cost than the input for exported subject merchandise, the reported data for the factors of production used to calculate the margin would be skewed if only factors for exported merchandise were used. Further, since AJ Works tracks its use of internally produced ammonium persulfate in its accounting system but not in its production system, there is no way to prove which ammonium persulfate, the internally-produced or purchased, was used in the production of the sodium persulfate exported to the United States.

Accordingly, to calculate the antidumping margin we used the weighted-average cost of factors of production for subject merchandise.

Comment 10: Surrogate value for purchased ammonium persulfate

Petitioner requests that, in order to calculate the NV for subject merchandise, the Department should continue to value purchased ammonium pursulfate using the ammonium persulfate value provided to the Department by the petitioner in its July 11, 1996, submission because it is a publicly available quote of the domestic price from an Indian producer of ammonium persulfate in India (Rajendra Chemicals (P) Ltd.) Insofar as petitioner points out that it did not solicit this price quote, petitioner claims that this source is both reliable and contemporaneous with the POI. (*See Memorandum from Dave Muller, Office of Policy to Louis Apple* dated August 1, 1996).

AJ Works argues that the Department should not use the surrogate value information from India to value a raw material input such as ammonium persulfate used to produce potassium persulfate because the value submitted from the *Chemical Weekly* by petitioner is an export price and is artificially high. AJ Works contends that, according to the Department's past practice, *see, e.g., Furfuryl Alcohol,* and *Coumarin,* the Department's first preference in determining normal value in a nonmarket economy investigation is the calculation of the value of factors of production. Since the Department has verified the actual factor inputs used to produce ammonium persulfates, surrogate values for those inputs is the most accurate way to value ammonium persulfate to calculate normal value for all three products under investigation.

DOC Position

We agree with petitioner. In accordance with the statute's direction to measure and value ''the factors of production utilized in the production of the merchandise'' (*see* Section 773(c)(1) of the Act) and the Department's practice to value inputs which were purchased in a non-market economy using surrogate values from a market economy at a similar stage of development (*see,* e.g., *Coumarin,* and *Brake Drums*), we continued to treat the purchased ammonium persulfate used in the production of potassium persulfates as a completed input and we valued it on the basis of a surrogate. Further, the Department has made significant independent efforts throughout the investigation to obtain publicly available information for ammonium persulfate and was unable to obtain such information. Thus, for both the preliminary and final determinations, our selection of surrogate values was based on the only information on the record, which was a price quote from an Indian producer of persulfates (*see* Final Valuation Memo).

Comment 11: Normal Value for Sodium Persulfate

Petitioner contends that the Department should value sodium persulfate using the constructed value in the petition because Zhujiang failed to demonstrate at verification that it used internally-produced, rather than purchased, ammonium persulfate in the production of sodium persulfate. Because the verifiers noted Chinese-labeled bags of ammonium persulfate at the sodium persulfate production facility, petitioner concludes that some of the ammonium persulfate used to produce sodium persulfate was purchased from other persulfate factories in China. Thus, as adverse facts available, petitioner urges the Department to value sodium persulfate using the constructed value in the petition. However, if the Department uses Zhujiang's factors of production to value sodium persulfate, petitioner requests that the Department include as factors the packing material and labor required to transport ammonium persulfate within Zhujiang's factory.

Zhujiang maintains that there is no record evidence showing it produced sodium persulfate using ammonium persulfate purchased from outside companies. According to Zhujiang, it used Chinese-labeled bags for production that was either consumed within the factory or sold in the domestic market. Thus, Zhujiang states there was no need to label the bags in English. Zhujiang argues that Chinese labels provide no indication that it purchased ammonium persulfate from another factory. Moreover, Zhujiang maintains that the Department thoroughly examined factory records and found no evidence of purchases of ammonium persulfate. Lastly, Zhujiang points out that the petitioner's affidavit, indicating Zhujiang used purchased ammonium persulfate to produce sodium persulfate, referred to production that occurred well before the POI.

DOC Position

We agree with Zhujiang. At verification we found that the labeling on the Chinese-labeled bags in question was the same as the labeling on bags used to pack internally produced ammonium persulfate. Moreover, we found no evidence of ammonium persulfate purchases in Zhujiang's accounting records. Therefore, for the final determination, we valued sodium persulfate using surrogate values.

However, we agree with petitioner that Zhujiang failed to report factors of production for the materials used to pack the internally produced ammonium persulfate used in sodium persulfate production. Therefore, for the final determination, we have included these packing materials in the factors of production for sodium persulfate. We did not include additional factors for the labor required to transport internally produced within Zhujiang's factory because this labor is already included in the reported labor factors.

Comment 12: Average Surrogate Prices

Respondents argue that, in the preliminary determination, the average surrogate values that the Department calculated from Indian prices were simply a function of the *Chemical Weekly* issues the Department happened to have on hand and they did not reflect the average price during the POI. Respondents recommend that the Department calculate average POI surrogate prices by dividing monthly prices for the POI by the number of months in the POI.

Petitioner contends that, contrary to respondents' assertion, in the preliminary determination, the Department correctly derived average surrogate values by dividing monthly prices by the number of months for which the prices were provided. Because this methodology eliminates distortions and is precisely the methodology recommended by respondents, petitioner urges the Department to continue using this methodology in the final determination.

DOC Position

We agree with petitioner. In the preliminary determination the Department calculated average surrogate prices for certain factors using prices from all of the *Chemical Weekly* issues on the record, which were provided by both parties and acquired through the Department's research. Although respondents claim the Department's calculation of average surrogate values is skewed because the *Chemical Weekly* issues used in the average may be issues from months with the highest prices, respondents failed to place *Chemical Weekly* issues on the record which supported their assertion. Further, the average price the respondents calculated from Indian *Chemical Weekly* prices did not differ materially from the prices the Department calculated from information on the record. Therefore, in the final determination, we will rely on the information on the record.

Comment 13: Correction of a ministerial error

AJ requests that, for the final determination, the Department include one U.S. transaction that the Department inadvertently omitted from the calculation of average U.S. price when making its preliminary determination.

Petitioner did not comment on this issue.

DOC Position

We agree with respondent. As noted in the Ministerial Error Memorandum, the Department inadvertently omitted one transaction when calculating the average U.S. price for the preliminary determination. We have corrected for this error in the final determination.

Comment 14: Electricity Consumption

As adverse facts available, petitioner urges the Department to base electricity consumption for AJ Works on amounts contained in the petition rather than the amounts AJ Works reported to the Department because the company failed to support the accuracy of the reported consumption. Petitioner notes that AJ Work's electricity meter readings had to be multiplied by an adjustment factor of either 120, 360, or 30 to derive the actual amount of electricity consumed because the capacity of the meters prevented the full amount of electricity used by the factory to flow through the meters. Petitioner claims AJ Works failed to demonstrate the reasonableness of the adjustment factors and, thus, the Department should base electricity consumption on information contained in the petition.

AJ Works claims the Department should use the reported and verified factors of production to calculate electricity costs. AJ Works points out that it is common practice in the electricity industry to use a multiplier to calculate total electricity consumption from electricity meter readings. Thus, AJ Works maintains the use of the adjustment factor was reasonable, accurate, and resulted in a verified consumption figure.

DOC Position

We agree with respondent. The Department verified the total amount of the electricity consumed. Further, the Department contacted an independent energy specialist, who confirmed that an adjustment factor is commonly used in the electrical industry (*see* Memorandum to the File dated April 18, 1996, for further discussion of this subject). Therefore, in our final determination, we included the verified amount of electricity consumed in the factors of production and used the adjustment factor.

Comment 15: Adjusting Caustic Soda Prices

AJ Works contends that, in the preliminary determination, the Department incorrectly adjusted the surrogate price for caustic soda because it incorrectly assumed that the surrogate price was for a caustic soda solution with a 48 percent concentration. AJ Works contends the surrogate price, which was from India's *Chemical Weekly*, is the price per kilogram of caustic soda, not the price of a caustic soda solution. AJ Works claims that if the price was for a solution, it would be critical for *Chemical Weekly* to identify the concentration of the solution. However, AJ Works notes that the publication did not do so. In keeping with past Departmental practice, AJ Works maintains the Department should not assume the surrogate price was for anything less than a 100 percent concentration (*see* page 2 of the Factor Values Memorandum in Antidumping Investigation of *Polyvinyl Alcohol From China*) (''PVA Factors Values Memorandum''). Thus, AJ Works recommends calculating the surrogate cost for caustic soda by multiplying the surrogate unit price by the reported consumption and the actual concentration used in production.

Petitioner did not comment on this issue.

DOC Position

We agree with respondent. We adjusted the concentration level of the caustic soda priced in *Chemical Weekly* in the preliminary determination calculation. Based on further analysis, and in accordance with Departmental practice, for the final determination we assumed that the chemical concentration is 100 percent, because there is no information on the record specifying the chemical concentration. Therefore, we derived chemical input values by multiplying the surrogate price by the concentration and amount used in production. (*See* PVA Factors Values Memorandum).

Comment 16: Correcting Control Numbers

Wuxi requests that for the final determination, the Department correct control numbers in the company's sales listing, which were inadvertently reversed through its own clerical error.

Petitioner did not comment on this issue.

DOC Position

We agree with respondent. Verification findings confirmed that Wuxi inadvertently reversed control numbers in its sales listing, and we have corrected for this error in the final determination.

AJ

Comment 17: International Freight Expenses

Petitioner maintains that the Department should use, as adverse facts available, the highest international freight expense incurred by AJ during the POI to value international freight expenses for several invoices because AJ was unable to explain the methodology used to determine the freight expenses for those invoices. According to petitioner the Department was unable to verify the international freight expenses for the invoices in question.

Respondents argue that, other than the invoices cited by petitioner, the Department verified international freight expenses for all of the invoices examined. Consequently, the Department should accept the reported international freight amounts for all transactions. Respondents also argue that, even though company officials could not explain how international freight was allocated to the invoices in question, the allocation was performed in the ordinary course of business and, thus, it should be accepted. However, respondents suggest that if the Department rejects the allocation methodology presented during the verification, it has in its verification exhibits the total freight expense and the total tonnage for the invoices in question, which it can use to allocate the international freight expenses

among the invoices on a strict per-ton basis.

DOC Position

We agree with respondents that there is no need to resort to adverse facts available to value international freight for the invoices in question. Section 776(b) of the Act provides that the Department may use an inference that is adverse to the interests of a party in selecting among facts otherwise available if the party failed to cooperate by not acting to the best of its ability to comply with requests for information. In the instant case AJ attempted, to the best of its ability, to explain how international freight was allocated to the invoices in question; however it was unable to support its explanation. Therefore, for the final determination, the Department allocated the freight among the invoices in question on a per-ton basis.

Comment 18: Inland Freight, Brokerage and Handling

Petitioner notes that although Wuxi reported freight and handling charges two days before the preliminary determination, the Department made no adjustments to Wuxi's U.S. sales for those charges. Petitioner contends that although the Department did not adjust U.S. price for those charges in the preliminary determination, the Department should make an adjustment to U.S. price for inland freight and brokerage and handling in the final determination because the Department verified that Wuxi incurred such charges. Petitioner notes that the Department's policy as outlined in *Brake Drums* is to strip all movement charges, including foreign inland freight, from the U.S. price being compared to normal value. In addition, petitioner claims the Department should use adverse facts available to value the charges Wuxi reported for emergency loading, and highway and bridge fees which are separate fees from brokerage and handling charges.

Respondent states that the Department should make adjustments to U.S. price for inland freight and brokerage and handling based on the factors submitted by Wuxi and verified by the Department. Wuxi maintains the use of adverse facts available with regard to emergency loading and highway and bridge fees is not called for because such fees are included in inland freight fees.

DOC Position

We agree with petitioner and respondent, in part. Petitioner is correct that the Department should make an adjustment to U.S. price for inland freight and brokerage and handling. Further, due to the fact that these amounts were reported in PRC currency and were based on an NME service provider, in accordance with the Department practice in an NME case, for the final determination, we used a surrogate value for inland freight transportation and brokerage and handling for certain fees reported by Wuxi. We agree with respondent that the emergency loading expense is included in inland freight fees (*see* Final Valuation Memo).

Comment 19: Value for Ammonia

Petitioner requests that the Department reject the Indian ammonia pricing information submitted to the Department by the respondents ICC, Zhujian and Guangdong in their April 4, 1997, submission. Petitioner points out that this pricing information is not representative of prices during the POI because it only covers three weeks and, as the respondents stated in their April 4, 1997 letter, ammonia prices fluctuate substantially. Thus, as petitioner maintains, given that the price for ammonia fluctuates substantially, three weeks is not an accurate indicator of the average value for ammonia during the six-month POI. Therefore, petitioner requests that the Department use petitioner's information because it's the most representative of prices during the POI.

Respondents did not comment on this issue.

DOC Position

We agree with petitioner. The Department used the Indian values provided by the petitioner because these values are most representative of surrogate prices for ammonia during the POI.

Comment 20: Ammonium Persulfate Spoilage

Petitioner maintains that spoilage of ammonium persulfate used in the production of sodium persulfate should have been included in the reported production factors for sodium persulfate. Petitioner notes that, at verification, the Department identified unreported amounts for ammonium persulfate spoilage in Zhujiang's overhead expense accounts. Because this was spoilage of ammonium persulfate used to produce sodium persulfate, petitioner requests that the Department include the amount of the spoilage in the total amount of ammonium persulfate consumed to produce sodium persulfate.

Respondents did not comment on this issue.

DOC Position

We agree with petitioner. Ammonium persulfate is a direct material used to produce sodium persulfate. Thus, spoilage of this product should be included in the cost of production of sodium persulfate. Hence, for the final determination, we included the amount of ammonium persulfate spoilage in the factors of production for sodium persulfate.

Comment 21: Adjustments for By-Products

According to petitioner, the Department should not adjust persulfate factors of production to account for by-products because the by-products are discarded. Petitioner notes that at verification the Department found that all the by-products generated from producing the subject merchandise are waste that are neither sold nor used in further production. Because the by-products are not sold, petitioner claims that the Department should not adjust the factors of production to account for by-products.

Respondents did not comment on this issue.

DOC Position

We agree with petitioner. The record shows that Zhujiang did not use or sell the by-products it generated from producing persulfates. Thus, there is no economic benefit associated with the by-products. Therefore, in accordance with past practice, for the final determination we did not adjust factors of production for by-products (*see Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Ukraine* 60 FR 16432, 16435 (March 30, 1995), and *Coumarin*).

Comment 22: Sulfuric Acid Used in Sodium Persulfate Production

Petitioner asserts that sulfuric acid should have been reported in Zhujian's response as a factor of production for sodium persulfate because it is an input in the sodium persulfate production process. Petitioner bases its assertion on company officials' statement at verification that sulfuric acid is used to absorb ammonia gas (a by-product) generated from producing sodium persulfate. Thus, petitioner contends sulfuric acid is a material input in the sodium persulfate production process.

Zhujiang claims it reported sulfuric acid as a factor of production and the Department verified the amount reported.

DOC Position

We agree with Zhujiang. Zhujiang reported sulfuric acid as one of the inputs used in sodium persulfate production and we included the amount reported in our NV calculation in the final determination.

Comment 23: Water Used in Sodium and Ammonium Persulfate Production

Petitioner requests that the Department base the quantity of water consumed in production on adverse facts available because Zhujiang failed to report water consumption in its submissions and did not provide water consumption figures in response to Department officials' request at verification.

Zhujiang states that the Department's well-established practice is to consider water consumption part of factory overhead (*see Coumarin* Comment 9 and *Saccharin*). In the instant case, Zhujiang urges the Department not to divert from its normal treatment of water consumption.

DOC Position

The Department's normal practice is to presume, absent evidence to the contrary, that the surrogate value for factory overhead includes water consumption (*see Sulfanilic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review* 61 FR 53711, 53716 (October 15, 1996)). However, in the instant case, the record shows that the cost of water was not included in the expenses used to compute surrogate factory overhead. Therefore, we have included a factor for water in Zhujiang's factors of production. In addition, because Zhujiang failed to provide the requested water consumption figures, and Section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate, as adverse facts available, we have based the amount of water consumption on the greatest reported POI per-unit water consumption figures in the petition or in the public versions of the other respondent producers submissions in this investigation.

Comment 24: Supplier Distances

According to petitioner, during verification Zhujiang failed to support the percentage of inputs purchased from each supplier. Thus, petitioner argues that the Department cannot use the reported distances between suppliers and the factory because the Department does not know what percentage of the input came from each supplier. Petitioner therefore urges the Department to use as adverse facts available for Zhujiang, the greatest reported distance between the factory and a supplier of an input as the distance between the factory and all suppliers of that input.

Respondents did not comment on this issue.

DOC Position

We agree with petitioner. Section 776(a)(2)(D) of the Act provides that if an interested party provides information that cannot be verified, the Department shall, subject to Section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. In addition, Section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. Department officials made numerous requests over the course of the verification for documentation supporting the reported percentage of inputs purchased from each supplier. Despite the requests, Zhujiang failed to provide supporting documentation. Therefore, for the final determination, we have used the greatest reported distance between the factory and a supplier of an input as the distance between the factory and all suppliers of that input.

Guangdong

Comment 25: Identifying the Appropriate Sales for USP—Knowledge of Destination

Petitioner claims Guangdong's sales to ICC must serve as the basis for calculating USP because the sales meet the definition of export price sales. Specifically, petitioner notes that the transaction between Guangdong and ICC constitutes the first sale of subject merchandise to an unaffiliated purchaser in the United States. In addition, petitioner notes that most of the persulfates that Guangdong sold to ICC were shipped to the United States entered the customs territory of the United States. According to petitioner, merchandise within the scope of a proceeding that is entered into the customs territory of the United States is subject to antidumping duties. Thus, petitioner asserts that Guangdong cannot claim its sales to ICC are not U.S. sales simply because ICC resold some of the merchandise to customers outside the United States. Moreover, petitioner maintains that the ultimate destination of the merchandise in question is irrelevant in the instant case because the merchandise first entered the customs territory of the United States. Alternatively, petitioner argues that there is ample evidence that Guangdong knew the destination of the merchandise it sold to ICC.

ICC argues that the entry into the customs territory of the United States is not sufficient to create a U.S. sale. ICC argues that it is in the same position as a third-country reseller of merchandise purchased from Guangdong and that the Department's reseller methodology should apply. ICC argues that it imports the merchandise into its warehouse in New Jersey, but then resells the merchandise. It may resell it to a customer in the United States, or it may resell the merchandise to a customer outside the United States. ICC argues that because it functions as a reseller in this manner, the Department should determine who had knowledge that the merchandise was destined for customers in the United States. Because Guangdong had no knowledge of the ultimate destination of the merchandise, ICC asserts, the Department should use ICC's prices to its customers in the United States as the U.S. price.

DOC Position

We disagree with ICC that it is in the same position as a third-country reseller. EP is based on the first sale, prior to importation, to an unaffiliated purchaser in or for exportation to the United States. Because ICC is an unaffiliated purchaser in the United States, whether the merchandise is resold by ICC to a U.S. customer or to a customer outside the United States is immaterial. The Department cannot disregard U.S. sales based on the destination of merchandise after it is sold to an unaffiliated purchaser in the United States. Therefore, we will use as EP the price ICC paid Guangdong for merchandise entering the United States for consumption. Where there is a direct sale to an unaffiliated purchaser in the United States there is no issue of knowledge. Guangdong sold the merchandise directly to an unaffiliated purchaser (ICC) in the United States. Thus we have determined that Guangdong is the appropriate respondent in this investigation. Because sales from Guangdong to ICC are the relevant transactions, we did not summarize or address issues raised regarding ICC's U.S. sales.

We also note that entry into the Customs territory is not sufficient to constitute a U.S. sale; merchandise must be entered for consumption before it may considered a U.S. sale (*see Titanium Metals Corporation* v. *United States*, 901 F. Supp. 362 (CIT 1995). According to ICC, it would have to pay cash deposits when its merchandise enters the United States; under this

condition it is being entered for consumption and being re-exported later.

Comment 26: Adjusting USP for Transportation Expenses

Petitioner contends that the Department should reduce USP by the expenses the Zhujiang factory incurs to transport persulfates from the plant to the factory's warehouse where ICC takes possession of the merchandise. Petitioner claims that reducing USP by these transportation expenses is in accordance with the Department's policy outlined in *Brake Drums*. Because Zhujiang did not submit factors for these expenses, petitioner requests that the Department use, as facts available, the greatest amounts incurred by any respondent in this investigation for inland freight and brokerage and handling.

Respondents argue that USP should not be adjusted by intra-factory transportation expenses because these expenses are part of factory overhead. Respondents maintain that intra-factory transportation costs are inherently part of factory overhead and it would be very unusual for the Department to reduce USP by such costs, particularly without determining whether the costs have been excluded from the surrogate value for factory overhead. Further, respondents claim *Brake Drums* does not support petitioner's position because in that case the Department reduced factory overhead by the surrogate cost of transportation expenses before deducting foreign inland freight costs from USP. Respondents also note that the facts in the instant case are similar to the facts in *Titanium Sponge From Russia* where the Department did not reduce USP by foreign inland freight expenses (*see Titanium Sponge From the Russian Federation: Notice of Final Results of Antidumping Duty Administrative Review* FR 61 58525, 58529 (November 15, 1996) (''*Titanium Sponge From Russia*'')). Specifically, respondents note that like the instant case, in *Titanium Sponge From Russia,* the non-market economy producer, who did not know the ultimate destination of the subject merchandise, incurred foreign inland freight expense selling the subject merchandise to a market economy exporter who took physical possession of the merchandise. Thus, respondents contend the Department should not reduce USP by intra-factory transportation expenses.

DOC Position

We agree with respondents that USP should not be reduced by intra-factory transportation expenses. Section 772 (c)(2)(A) of the Act states that USP should be reduced by expenses which are included in USP and ''incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States'' (emphasis added). When a reseller is the exporter rather than the producer, it is the Department's practice to consider the place from which the reseller shipped the merchandise as the ''original place of shipment'' (*see Titanium Sponge From Russia*). Hence, in the instant case the ''original place of shipment'' is Zhujiang's warehouse because the reseller/exporter, Guangdong, shipped the subject merchandise from that point. Thus, transportation costs incurred to bring the merchandise from the plant to the factory's warehouse should not be deducted from USP.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of persulfates from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of our notice of the preliminary determination in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or posting of bond equal to the weighted-average amount by which the NV exceeds EP as indicated in the chart below. This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weight-average margin percentage
Sinochem Jiangsu Wuxi Import & Export Corporation	40.97
Shanghai Ai Jian Import & Export Corporation	42.18
Guangdong Petroleum Chemical Import & Export Trade Corporation	43.93
China-wide Rate	134.00

The China-wide rate applies to all entries of subject merchandise except for entries from exporters that are identified individually above.

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 determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: May 12, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–13060 Filed 5–16–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil; Extension of Time Limit for Antidumping Duty Administrative Review

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

ACTION: Silicon metal from Brazil; Extension of time limit for antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for its preliminary results in the administrative review of the antidumping order on silicon metal from Brazil. The review covers the period July 1, 1995, through June 30, 1996.

EFFECTIVE DATE: May 19, 1997.

FOR FURTHER INFORMATION CONTACT: Alexander Braier or James C. Doyle, AD/CVD Enforcement, Group III, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave. N.W., Washington, D.C. 20230; telephone: (202) 482–3818.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the original time limit, the Department is extending the time limit for the completion of the preliminary results to July 31, 1997, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA). (See Memorandum from