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MEMORANDUM FOR: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the 2003-2004 Antidumping
Duty Administrative Review of Persulfates from the People's
Republic of China

Summary

We have analyzed the comments of the interested parties in the antidumping duty administrative review of persulfates from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes in the margin calculations as discussed in the "Margin Calculations" section of this memorandum. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments and rebuttals by interested parties:

- Comment 1: Whether to Use Financial Data from Indian Peroxide Producers to Derive Surrogate Financial Ratios
- Comment 2: Whether to Include Financial Data from Gujarat Alkalies and Chemicals Co., Ltd. to Derive Surrogate Financial Ratios
- Comment 3: Whether to Include Employee Benefits in Overhead Ratio
- Comment 4: Surrogate Labor Rate
- Comment 5: Surrogate Value for Water
- Comment 6: Surrogate Value for Electricity
- Comment 7: Surrogate Value for Caustic Soda
- Comment 8: Whether the Department Should Apply Total Adverse Facts Available
- Comment 9: Whether the Department Should Disregard as Untimely Certain Record Information
- Comment 10: Whether the Department Should Reopen the Record to New Factual Information
- Comment 11: Application of Adverse Facts Available in Preliminary Results Margin Program

Background

On August 10, 2005, the Department of Commerce (“the Department”) published the preliminary results of the seventh administrative review of persulfates from the PRC. *See Persulfates from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 46476 (August 10, 2005) (“*Preliminary Results*”). The period of review (“POR”) is July 1, 2003, through June 30, 2004. We invited parties to comment on the preliminary results. On September 23, 2005, FMC Corporation (“FMC”), and Shanghai AJ Import & Export Corporation (“Shanghai AJ”) and Degussa-AJ (Shanghai) Initiators Co., Ltd. (“Degussa-AJ”) (collectively “Shanghai AJ/Degussa-AJ”), filed case briefs. On September 30, 2005, both FMC and Shanghai AJ/Degussa-AJ provided rebuttal comments responding to issues raised in the other’s case brief.

Margin Calculations

We calculated export price and normal value using the same methodology stated in the preliminary results, except as follows:

- In accordance with the Department’s policy, we used the most contemporaneous expected NME wages for this segment of the proceeding. Using the Department’s revised expected NME wage rate (November 2005), we revised the surrogate labor rate from \$0.93 to \$0.97. *See Comment 4.*
- We corrected the application of partial adverse facts available to three unreported U.S. sales discovered at verification. To these three sales, we are applying the highest overall transaction-specific calculated margin. *See Comment 11.*
- We corrected the value assigned to ammonium persulfates as an input into the production of potassium and sodium persulfates. In the preliminary results, we inadvertently assigned the normal value of a single sale of ammonium persulfates instead of the weighted-average normal value of all sales of ammonium persulfates. In the final results, we have assigned the weighted-average normal value of all sales of ammonium persulfates as an input to the production of potassium and sodium persulfates. *See Analysis Memorandum for Final Results for Shanghai AJ Import and Export Corporation.*
- We corrected our categorization of certain line items in the derivation of surrogate financial ratios. Specifically, we moved “Contribution to Provident and Other Fund(s),” “Gratuity,” and “Workmen and Staff Welfare Expense(s)” from labor to manufacturing overhead in order to be consistent with the Department’s methodology for calculating the expected wage rate for China. *See Comment 3.*

Comment 1: Whether to Use Financial Data from Indian Peroxide Producers to Derive Surrogate Financial Ratios

Shanghai AJ/Degussa-AJ notes that in each of the first five administrative reviews of this proceeding the Department refused FMC's requests that the Department reject the financial statements of Indian persulfate producers Gujarat Persalts, Ltd. ("Gujarat") and Calibre Chemicals Pvt., Ltd. ("Calibre") as sources for deriving surrogate financial ratios. Instead, Shanghai AJ/Degussa-AJ states, in each of those reviews the Department explained that its preference for surrogate value sources was "producers of identical merchandise, provided that the data are not distorted or otherwise unreliable," citing *Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review*, 63 FR 3085, 3088 (January 21, 1998) (*Magnesium*). Shanghai AJ/Degussa-AJ points out that in the 2002-2003 administrative review of this proceeding, the Department changed its practice with respect to this issue and determined that Gujarat and Calibre were no longer valid surrogate value sources, and switched to the financial statements of National Peroxides Ltd. ("NPL") and Asian Peroxides Ltd. ("APL"), two Indian producers of comparable merchandise, as more appropriate sources for deriving surrogate financial ratios.

Shanghai AJ/Degussa-AJ claims that in the 2001-2002 review, the Department noted flaws in FMC's attempts to demonstrate distortions in using Gujarat's information based on a comparison of "standard raw material factors" and Gujarat's raw material usage. When the Department conducted a comparison of the "standard raw material factors" presented by FMC with Degussa-AJ's raw material consumption, Shanghai AJ/Degussa-AJ argues that the Department found that the theoretical differences suggested by FMC and Gujarat's actual consumption was reduced by about three-fifths. Furthermore, according to Shanghai AJ/Degussa-AJ, the Department noted that FMC had failed to account for Gujarat's significant amount of work-in-progress and the raw materials consumed in the production of these semi-finished goods. Shanghai AJ/Degussa-AJ contends that in neither the 2002-2003 review nor the instant review did the Department test the credibility or reliability of the "standard" factors presented by FMC's comparison, as it had done in the 2001-2002 review, nor did the Department explain why such a test was no longer needed.

Shanghai AJ/Degussa-AJ asserts that until the final results of the 2002-2003 review, the Department had never rejected a surrogate producer of identical merchandise as distortive or unreliable simply because the production process differed from that of the nonmarket economy ("NME") respondent. Actually, Shanghai AJ/Degussa-AJ suggests, once the Department establishes that a surrogate company produces identical merchandise, it need not duplicate the exact production experience of the NME producers. See *Nation Ford Chemical, Co. vs. United States*, 166 F. 3d 1373, 1377 (Fed. Cir. 1999). In fact, according to Shanghai AJ/Degussa-AJ, in the 2000-2001 review, the Department adjusted Calibre's financial data in order to account for differences between the production of subject versus non-subject merchandise so the Department could continue to use financial ratios based on a surrogate producer of identical merchandise.

According to Shanghai AJ/Degussa-AJ, the Department's rationale for rejecting the financial statements of Gujarat and Calibre is based on the "mischaracterization" of Degussa-AJ, APL and NPL as "continuous-process" producers, and of Gujarat and Calibre as "batch-process" producers. In describing differences between continuous and batch producers in the 2002-2003 review, the Department noted "significantly higher equipment costs, and thus higher fixed capital investment, for continuous-process producers and significantly higher raw material, energy, and labor costs for batch-process producers."¹ Shanghai AJ/Degussa-AJ argues that record evidence did not support such a conclusion. Specifically, Shanghai AJ/Degussa-AJ contends that there was no record evidence that identified any of the equipment used by the Indian producers in their respective production processes. Instead, according to Shanghai AJ/Degussa-AJ, the Department's conclusion in this regard was based on "assumptions and speculation of non-Indian data."

More to the point, according to Shanghai AJ/Degussa-AJ, where FMC was able to point to a relative gap in equipment costs or raw material costs, such differences were not due to differences in efficiencies between continuous versus batch production processes, but rather to differences in the material inputs used to produce persulfates versus those used to produce peroxides. Likewise, Shanghai AJ/Degussa-AJ contends that differences in overhead expenses are due to the basic differences in the physical and chemical characteristics between persulfates and peroxides. Shanghai AJ/Degussa-AJ asserts that such differences in the chemical properties of persulfates and peroxides affect the respective types of equipment used, the handling requirements during the production process, and the transportation and storage costs which, in turn, lead to greater overhead expenses for peroxide producers compared with those of persulfate producers.

Moreover, according to Shanghai AJ/Degussa-AJ, record evidence indicates that it should not even be described as a "continuous-process" producer. On the contrary, Shanghai AJ/Degussa-AJ claims, each batch of persulfates produced has a unique batch number corresponding with each purchase order, and each production batch has a unique inspection report/certificate of analysis. Shanghai AJ/Degussa-AJ cites the August 1, 2005, Memo to the File from Erin Begnal and Frances Veith, International Trade Compliance Analysts: Antidumping Duty Administrative Review: Persulfates from the People's Republic of China - Verification of Shanghai AJ Import & Export Corporation and Degussa-AJ (Shanghai) Initiators Co., Ltd. ("Verification Report"), at Exhibits 9 and 16, as evidence that each production batch can be traced through storage and delivery by means of the relevant batch number. Accordingly, Shanghai AJ/Degussa-AJ argues that it should be properly characterized as a batch-process producer.

FMC counters that the Department has determined twice before during this proceeding that hydrogen peroxide producers in India are appropriate surrogates for the production process

¹ See *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005) ("*Persulfates 6*"), and accompanying Issues and Decision Memorandum at Comment 1.

employed by PRC persulfate producers: the original investigation and the administrative review immediately preceding the instant review. While acknowledging that the Department was unable to obtain financial statements from Indian persulfate producers for consideration in the original investigation, FMC states that based on the available record information the Department explained 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.”² The Department further explained that “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.”³ Therefore, according to FMC, the Department in the original investigation unequivocally determined Indian hydrogen peroxide producers to be reliable surrogate companies for purposes of calculating financial ratios.

FMC argues that in the 2002-2003 review, the Department properly determined that hydrogen peroxide producers NPL and APL are reliable surrogates and that Indian persulfate producers are unreliable surrogates. According to FMC, the Department considered virtually all of the arguments put forth by Shanghai AJ/Degussa-AJ in reaching its final results for the 2002-2003 review. FMC argues that there is no new record evidence in the instant review that would support a reconsideration of those arguments in the instant review. Absent any new facts or evidence that would warrant revisiting determinations made in the previous review, FMC maintains that to do so would be contrary to the Department’s well-established policy.⁴

FMC states that Shanghai AJ/Degussa-AJ devotes several pages of its case brief citing prior reviews where the Department declined using Indian hydrogen peroxide producers’ financial statements and instead used the financial statements of Indian persulfates producers to calculate surrogate financial ratios. In FMC’s opinion, the “prior reviews are irrelevant and are proof of nothing more than the fact”⁵ that FMC had failed to provide the Department with sufficient evidence in earlier reviews to convince it to abandon Indian persulfate producers in favor of Indian hydrogen peroxide producers as surrogates. FMC submits that this is in keeping with the

² See *Notice of Final Determination of Sales at Less Than Fair Value: Persulfates From the People's Republic of China*, 62 FR 27222, 27229 (May 19, 1997).

³ *Id.*

⁴ FMC cites *Pure and Alloy Magnesium From Canada; Final Results of the Third (1994) Countervailing Duty Administrative Reviews*, 62 FR 18749 (April 17, 1997); *Live Swine From Canada; Final Results of Countervailing Duty Administrative Review*, 63 FR 2204 (January 14, 1998); *Stainless Steel Sheet and Strip in Coils From France: Final Results of Countervailing Duty Administrative Review*, 67 FR 62097 (October 3, 2002); *Stainless Steel Wire Rod From Korea; Final Results of Antidumping Duty Administrative Review*, 67 FR 6685 (February 13, 2002); and *Final Results and Partial Recission of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products From Canada*, 67 FR 67388 (November 5, 2002).

⁵ See FMC case brief at 7.

Department's longstanding practice, upheld by the courts, of treating each segment of a proceeding as independent, with separate records, which lead to independent determinations.⁶

Moreover, according to FMC, when Shanghai AJ/Degussa-AJ argued in its case brief (at 3) that the Department's stated preference for surrogate value sources was "producers of identical merchandise, provided that the data are not distorted or otherwise unreliable," Shanghai AJ/Degussa-AJ was stating the precise legal standard that provided the Department with the basis for its decision to reject Indian persulfate producers in favor of Indian hydrogen peroxide producers. Contrary to Shanghai AJ/Degussa-AJ's assertion that the Department's decision was based on a "handful of facts," FMC argues that the Department determined in the 2002-2003 review that there was substantial evidence for a finding that Indian hydrogen peroxide producers are the best surrogate producers for this case. FMC adds that, assuming, *arguendo*, that Shanghai AJ/Degussa-AJ is correct about the Department's analysis in the prior review, the proper forum for that argument was the U.S. Court of International Trade, and Shanghai AJ/Degussa-AJ failed to pursue that option.⁷

According to FMC, virtually the entire argument proffered by Shanghai AJ/Degussa-AJ consists of an assault – with no supporting evidence – on the record of the 2002-2003 review, and should be rejected by the Department. FMC adds that each of the arguments set forth by Shanghai AJ/Degussa-AJ on this regard was considered, and rejected, by the Department in the prior review. Where Shanghai AJ/Degussa-AJ does reference record information from the instant review in an effort to distinguish hydrogen peroxide production from persulfate production (specifically, Exhibit 2 of Shanghai AJ/Degussa-AJ's September 12, 2005, surrogate value submission, containing a Solvay Chemicals technical bulletin addressing a hydrogen peroxide passivation procedure), FMC maintains that the document in question contains no information to support Shanghai AJ/Degussa-AJ's argument, but instead merely details a step-by-step description of a passivation procedure for hydrogen peroxide. In addition, where Shanghai AJ/Degussa-AJ presents a chart in its case brief (at 10) purportedly showing that the overhead ratio of peroxide producers will naturally be greater than the overhead ratio for persulfate producers due to the fundamental nature of persulfates compared to peroxides, FMC argues that there is no source given for the information contained in the chart, and suggests that the chart was fabricated by counsel for Shanghai AJ/Degussa-AJ, is inaccurate, consists solely of argument, and should be given no evidentiary weight whatsoever.

⁶ See *Gourmet Equipment (Taiwan) Corp. v. United States*, 24 CIT 572 (2000) and *E.I. Dupont de Nemours & Co. v. United States*, 22 CIT 19 (1998). See, also, *Shandong Huarong Machinery Co. v. United States*, 2005 CIT Lexis 57, Slip. Op. 2005-54, (May 2, 2005) ("As Commerce points out 'each administrative review is a separate segment of proceedings with its own unique facts'.")

⁷ See *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764 (March 16, 1998) (where the Department refused to revisit an argument from an earlier segment of the proceeding, noting that the party did not appeal the Department's decision to the appropriate court and the statute of limitations for doing so had expired).

Finally, FMC discounts Shanghai AJ/Degussa-AJ's claims that it is a batch producer on the grounds that there is no persuasive evidence to support the claim. First, FMC states that in the respondent's section D response, Shanghai AJ/Degussa-AJ characterizes itself as neither a batch- nor a continuous-process producer. Second, FMC refutes the respondent's suggestion that the verification report supports Shanghai AJ/Degussa-AJ's claim that it is a batch-process producer. According to FMC, the statement in the verification report (at 5) that "each batch of persulfate has a unique inspection report/certificate of analysis" merely means that Shanghai AJ/Degussa-AJ uses numbers to trace shipments. FMC states that the fact that Shanghai AJ/Degussa-AJ labels production shipments by number is not evidence that it is a batch-process producer. In fact, FMC argues that all continuous-process producers, itself included, break down and tag final product shipments while continuing to engage in upstream continuous production of persulfates. Third, FMC points out that the certificate of analysis included in Exhibit 1 of Shanghai AJ/Degussa-AJ's supplemental section D response shows that in the normal course of business the company traces shipments by "lot," not by "batch." Finally, FMC claims that it thoroughly examined verification Exhibits 9 and 16 and found nothing in either that would support an argument that Degussa-AJ uses a batch production process.

In conclusion, FMC asserts that because Shanghai AJ/Degussa-AJ failed to place on the record any evidence in support of its argument, the Department should reject the respondent's argument and refuse to reconsider its decision in the 2002-2003 review that NPL and APL are the best available surrogate companies.

Department's Position

We agree that there is no new information on the record of the current review that would cause us to reconsider the decision that the financial statements of APL and NPL were the most suitable for deriving surrogate financial ratios for Degussa-AJ. Shanghai AJ/Degussa-AJ is correct in that the Department's preference for surrogate value sources are "producers of identical merchandise, provided that the data are not distorted or otherwise unreliable." *See Magnesium*. As FMC points out, however, it is precisely because the financial information from the Indian persulfate producers is distortive that the Department determined it would be inappropriate to rely on it for deriving surrogate financial ratios for Degussa-AJ. As we stated in the sixth review,

"The facts placed on the record in this segment of the proceeding support a determination . . . that the significant difference in size, scale, and production process between Gurajat and Degussa-AJ would distort the factory overhead and SG&A ratios if Gujarat's production experiences were applied to Degussa-AJ. . . . For the same reason, because the record indicates that Calibre is not a large continuous-process producer, its overhead ratio would likewise not be a reliable representation of Degussa-AJ's overhead ratio"⁸

Notwithstanding the deficiencies the Department found in FMC's arguments in prior reviews, after the preliminary results in the sixth review, the Department determined that the information

⁸ *See Persulfates 6* at Comment 1.

on the record was sufficiently convincing that a change in practice was warranted. In the final results, we stated that,

“based upon information placed on the record prior to and subsequent to the Preliminary Results, we agree with FMC that Gujarat is a batch-process producer and Degussa-AJ is a large continuous-process producer. We also agree that these differences are significant enough to cause us to rely on the financial data of the surrogate producers using the same type of production process as Degussa-AJ.”⁹

Moreover, Shanghai AJ/Degussa-AJ has not presented any new factual information on the record of this segment of the proceeding addressing the issues that served as the basis for our determination in the prior segment that would warrant a reversal of that decision. Finally, we do not find Shanghai AJ/Degussa-AJ’s assertion convincing that it is also a batch-process producer simply because it sells product in “batch” or “lot” numbers. As FMC correctly states, such numbers are for tracing shipments and do not negate the fact that the upstream manufacturing process is continuous.

As in the previous review, because we do not have financial information on the record for any continuous-process producers of identical merchandise, we determine that it is appropriate to look to producers of comparable merchandise that use the same type of production process as that used by Degussa-AJ. For purposes of the final results, therefore, we are continuing to rely on the financial statements of APL and NPL, two continuous-process producers of comparable merchandise, to derive surrogate financial ratios.

Comment 2: Whether to Include Financial Data from Gujarat Alkalies and Chemicals Co., Ltd. to Derive Surrogate Financial Ratios

Shanghai AJ/Degussa-AJ argues that if the Department continues to use the financial statements of Indian peroxide producers to calculate surrogate financial ratios, it should include the financial statements of Gujarat Alkalies and Chemicals Co., Ltd. (“Gujarat Alkalies”). Shanghai AJ/Degussa-AJ contends that while Gujarat Alkalies produces other products in addition to hydrogen peroxides, the Department should consider it to be a producer of comparable merchandise based on the criteria applied in making this determination with respect to APL and NPL. In other words, where the Department determined that the process for production of hydrogen peroxide closely resembled that of continuous-process production of persulfates because “{b}oth products require large capital outlays for production, storage, technical support, and specialty safety requirements,”¹⁰ Shanghai AJ/Degussa-AJ argues that the same rationale applies to Gujarat Alkalies’ production of other chemicals.

⁹ *Id.* at Comment 1.

¹⁰ *Id.* at Comment 1.

Shanghai AJ/Degussa-AJ also suggests that Gujarat Alkalies' ability to take advantage of its large-scale operations and economies of scale makes it more like the continuous-process producers. This is by virtue of the fact that its captive electricity-generating capacity is evidence of a large capital outlay, one of the criteria identified by the Department as distinguishing continuous-process producers from batch-process producers.

As further support for its argument, Shanghai AJ/Degussa-AJ adds that the production process for ammonium persulfates is similar to that for sodium hydroxide (*i.e.*, caustic soda). Specifically, Shanghai AJ/Degussa-AJ states that both products are manufactured using an electrolysis process; raw materials (ammonium sulfate for persulfates and sodium chloride for sodium hydroxide) are pretreated by "dissolving," removal of impurities and filtration before their preparation as a solution to be input into the anode of the electrolyte cell; both products use electrolytic cells as the main equipment for the chemical production process; the output of rough products from the electrolytic cell is similar for both products in that the mother liquid from the anode and the cathode is used as a circulating medium for both products; both products use comparable levels of electricity to power the electrolyte cell; for both products, hydrogen is produced as a by-product of the electrolyzing process; and both products are toxic and irritating to the skin on contact.¹¹

In acknowledgment of the fact that hydrogen peroxide production is a relatively small percentage of Gujarat Alkalies' total production, Shanghai AJ/Degussa-AJ argues that other major chemical producers around the world (including Solvay Chemicals, DC Chemical, and even FMC itself) produce hydrogen peroxide along with a range of chemical products similar to that produced by Gujarat Alkalies, and that it would be inappropriate for the Department to disregard such producers simply because of the diversity of their product mix. In other words, according to Shanghai AJ/Degussa-AJ, to the extent that the Department found hydrogen peroxide to be comparable to persulfates due to large capital outlays for production, storage, technical support, and special safety requirements, those same criteria apply to Gujarat Alkalies' production of other chemical products. Thus, while Gujarat Alkalies differs from APL and NPL in that it is not primarily a hydrogen peroxide producer, Shanghai AJ/Degussa-AJ asserts that Gujarat Alkalies' other chlor-alkali products should also be considered comparable to persulfates on the same basis as that by which the Department determined hydrogen peroxide to be comparable to persulfates.

According to FMC, the Department's practice is to use as a surrogate company a producer that manufactures only the identical or similar product,¹² and record evidence shows that Gujarat

¹¹ See respondent's September 25, 2005, case brief at 13 - 14.

¹² See 19 CFR 351.408(c)(4). See, also, *Heavy Forged Hand Tools from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination to Revoke in Part*, 66 FR 48026, 48029 (September 17, 2001), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 67 FR 36570 (May 24, 2002).

Alkalies is primarily a producer of neither persulfates nor hydrogen peroxides.¹³ Rather, FMC states that the record shows that Gujarat Alkalies is primarily a producer of commodity chemicals such as caustic soda, chlorine gas and hydrochloric acid. FMC argues that since commodity chemicals account for approximately 94 percent of Gujarat Alkalies' total chemical production and more than 54 percent of its total sales revenue, it is unsuitable as a surrogate for a producer of a specialty chemical such as persulfates.

FMC also claims that Shanghai AJ/Degussa-AJ's comparison of Gujarat Alkalies to other large multinational corporations such as FMC, Solvay Chemicals and DC Chemicals is irrelevant for two reasons. First, none of these companies comes from a country that is recognized as a suitable surrogate for the PRC. Second, comparing Gujarat Alkalies to these companies misses the point of the entire discussion, *i.e.*, whether Gujarat Alkalies' business experience and production process is similar to that of Degussa-AJ. According to FMC, they are not comparable.

FMC points out that Gujarat Alkalies' annual report indicates that it has a high level of integration and uses products it produces as inputs for the production of other products, giving it a large competitive advantage; whereas Degussa-AJ produces only persulfates. FMC maintains that in choosing surrogate companies the Department places a high priority on the comparability of the surrogate's experience to that of the respondent,¹⁴ and rejects "financial statements of producers whose production process is not comparable to the respondent's production process."¹⁵

It is worth noting, FMC asserts, that Shanghai AJ/Degussa-AJ has placed no evidence on the record to demonstrate that Gujarat Alkalies' production process for hydrogen peroxide is comparable to Degussa-AJ's production process for persulfates. Instead, FMC maintains that Shanghai AJ/Degussa-AJ's case brief contains unsupported and irrelevant speculation. For example, FMC argues that in referring to the SRI report contained in FMC's September 12, 2005, submission, the respondent argues that the production process for ammonium persulfates is comparable to that for caustic soda; however, according to FMC, the SRI report only addresses caustic soda and makes no reference to ammonium persulfates. FMC claims that all arguments by respondent's counsel regarding the comparability of these products are unsupported. Furthermore, FMC submits that these arguments are contradicted by expert testimony contained

¹³ FMC notes that information from Gujarat Alkalies' annual report shows that during the 2003-2004 fiscal year hydrogen peroxide accounted for only 1.3 percent of Gujarat Alkalies' total production.

¹⁴ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China*, 69 FR 70997 (December 8, 2004), and the accompanying Issues and Decision Memorandum at Comment 9F.

¹⁵ See *Persulfates 6* at Comment 1. See, also, *Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Belarus*, 66 FR 33528 (June 22, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China*, 66 FR 22183 (May 3, 2001); and *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005).

in FMC's June 29, 2005, submission¹⁶ demonstrating significant differences between the production of persulfates and that of caustic soda. Citing several court decisions, FMC argues that mere speculation and conjecture are no basis for an antidumping determination,¹⁷ but that a determination must be made on the basis of record evidence. FMC asserts that because there is no record evidence demonstrating comparability of the production processes of Gujarat Alkalies and Degussa-AJ, the Department should disregard Gujarat Alkalies' financial statements for purposes of the final results.

Department's Position

The Department has developed a two-prong test for determining whether a given producer is appropriate as a surrogate company for purposes of deriving financial ratios. First, the Department must consider whether the product itself is comparable to the merchandise under review. Second, the Department must consider whether the production process is similar, *i.e.*, in this case, whether the company is a continuous-process producer.¹⁸

Regarding the first test, we acknowledge Shanghai AJ/Degussa-AJ's comparison of the production process of ammonium persulfates to that of sodium hydroxide. However, we find this comparison insufficient to convince the Department that the two chemicals themselves are comparable. We find Shanghai AJ/Degussa-AJ's attempt to compare Gujarat Alkalies' "product mix" to that of other large chemical companies by focusing on the companies' large capital outlays irrelevant because the comparability of the product mix is at issue. In other words, simply stating that Gujarat Alkalies produces chemical products requiring large capital outlays for production, storage, technical support, and special safety requirements does not mean its "product mix" is necessarily comparable to that of other large chemical producers whose products also require large capital outlays for production, storage, technical support, and special safety requirements. The Department required FMC, over the course of several reviews, to submit on the record significant technical data and analysis, which included expert testimony, before the Department was able to determine that it was appropriate to abandon Indian persulfates producers as surrogate companies in favor of Indian peroxide producers. Shanghai AJ/Degussa-AJ must be held to the same standard. While Shanghai AJ/Degussa-AJ discussed this issue, it did not provide any factual or technical data and analysis to support its discussion.

Regarding the second test, Shanghai AJ/Degussa-AJ claims that Gujarat Alkalies is "more like" a continuous-process producer than a batch-process producer.¹⁹ However, except for asserting that

¹⁶ See John Rovison Statement at Attachment 4 of FMC's Rebuttal Case Brief.

¹⁷ See *Chung Ling Co., Ltd. v. United States*, 16 CIT 636 (1992); *Asociacion Colombiana de Exportadores de Flores v. United States*, 13 CIT 13, 15, 704 F. Supp. 1114, 1117 (1989); and *China National Arts and Crafts Import and Export Corporation, Tianjin Branch v. United States*, 15 CIT 417, 771 F. Supp. 407 (1991).

¹⁸ See *Persulfates 6* at Comment 1.

¹⁹ See Shanghai AJ/Degussa-AJ's case brief at 13.

the same characteristics the Department used to describe continuous-process producers in the sixth review also apply to Gujarat Alkalies, Shanghai AJ/Degussa-AJ has not provided any support or evidence for this assertion. In addition, Gujarat Alkalies' large capital outlay for electricity production, cited by both Shanghai AJ/Degussa-AJ and FMC, is not relevant in this regard as it is not directly associated with the manufacture of the merchandise.

In the absence of sufficient support showing that the financial statements of Gujarat Alkalies are equally suitable for deriving surrogate financial ratios for Degussa-AJ, the Department is declining to use them in its calculations for the final results.

Comment 3: Whether to Include Employee Benefits in Overhead Ratio

On February 2, 2006, the Department invited interested parties to comment on the Department's proposal to include in the final results factory overhead calculation three items from the surrogate financial statements. These items were treated as direct labor for purposes of calculating the surrogate overhead and SG&A ratios in the preliminary results. FMC filed comments on February 3, 2006. Given the statutory deadline for completion of this review, we informed parties that there would be no opportunity for rebuttal comments on this issue.

FMC argues that, just as the Department determined in *Folding Metal Tables and Chairs*,²⁰ it is appropriate to move the three items in question from direct labor to manufacturing overhead in order to be consistent with the Department's regression-based methodology for calculating the expected PRC wage rate. FMC states that in calculating its regression-based wage rate for the PRC the Department relies on Chapter 5 of the International Labour Organization's ("ILO") *Yearbook of Labour Statistics* ("YLS"). FMC asserts that, because Chapter 5 is exclusive of employee benefits, it is appropriate that the Department add these employee benefit categories to factory overhead in order to ensure that they are captured in the calculation of normal value. Further, FMC states that the three employee benefits categories listed in APL's financial statements and the two categories listed in NPL's financial statements²¹ represent the same labor cost items identified in *Tables and Chairs*. Thus, in order to be consistent with that decision, FMC submits that the Department should move the items in question from direct labor expenses to factory overhead for the final results.

Shanghai AJ/Degussa AJ did not comment on this issue.

Department's Position

²⁰ See *Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 18, 2006) ("*Tables and Chairs*") and the accompanying Issues and Decision Memorandum at Comment 1B.

²¹ The three labor cost items in APL's financial statements are: contribution to provident and other funds, gratuity, and workmen and staff welfare expenses; the NPL financial statements include contribution to provident and other funds and workmen and staff welfare expenses.

As we explained in *Tables and Chairs*, moving the relevant employee benefits categories from direct labor to manufacturing overhead is consistent with our regression-based expected PRC wage rate calculation. The Department based its calculation of the expected PRC wage rate on the ILO's categorization of information provided by the countries it surveys. Information from the ILO website defines wages and labor costs separately. Specifically, Chapter 5, "Wages," are defined thusly:

The concept of earnings, as applied in wages statistics, relates to remuneration in cash and in kind paid to employees, as a rule at regular intervals, for time worked or work done together with remuneration for time not worked, such as for annual vacation, other paid leave or holidays. Earnings exclude employers' contributions in respect of their employees paid to social security and pension schemes and also the benefits received by employees under these schemes. Earnings also exclude severance and termination pay.²²

On the same web page, Chapter 6, "Labour Costs," are defined as including employee benefits:

For the purposes of labour cost statistics, labour cost is the cost incurred by the employer in the employment of labour. The statistical concept of labour cost comprises remuneration for work performed, payments in respect of time paid for but not worked, bonuses and gratuities, the cost of food, drink and other payments in kind, cost of workers' housing borne by employers, employers' social security expenditures, cost to the employer for vocational training, welfare services and miscellaneous items, such as transport of workers, work clothes and recruitment, together with taxes regarded as labour cost. . . .²³

It is clear that the wages category (Chapter 5) is exclusive of employee benefits such as pension and social security, while the labor cost category (Chapter 6) is inclusive of these employee expenses. As we stated in *Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology*, 70 FR 37761, 37762 (June 30, 2005) the Department based its calculation of the regression-based expected PRC wage rate on data from Chapter 5B of the *YLS*. In the instant review, the detailed and well-defined surrogate financial data permitted the Department to easily segregate labor expenses into "Wages" (which corresponds to Chapter 5B of the ILO database and, therefore, to the Department's expected NME wage rate), and the other aforementioned labor costs (which are not included in the Department's calculated NME wage rate). Accordingly, to be consistent with the methodology employed in calculating the expected PRC wage rate, and as articulated in *Tables and Chairs*, we have determined that it is appropriate in the instant review to include these employee benefit categories in factory overhead in order to ensure that they are captured in our calculation of normal value.

²² <http://laborsta.ilo.org/> (emphasis added).

²³ *Id.*

Comment 4: Surrogate Labor Rate

Shanghai AJ/Degussa-AJ contends that the wage rate used by the Department in the preliminary results was inaccurate, distorted and inconsistent with the Department's statutory directive to value wages using rates from a surrogate country that is at a level of economic development comparable to that of the PRC. For the final results, Shanghai AJ/Degussa-AJ asserts that the Department should use its recalculated 2002 surrogate wage rate, but with further corrections, as Shanghai AJ/Degussa-AJ maintains that the recalculated rate is still flawed.

According to Shanghai AJ/Degussa-AJ, the Department acknowledged that its original calculation of the 2002 expected wage rate was erroneous, and consented to remand on this issue in connection with two other cases.²⁴ In August 2005, the Department recalculated its 2002 expected PRC wage rate and posted the corrected results on its website.²⁵ Shanghai AJ/Degussa-AJ submits that, while the corrected wage rate properly included source data from the correct time period, it remains flawed because it still includes, without explanation, data points from countries that are not economically comparable to the PRC, such as Switzerland, the United Kingdom, Norway, and Germany, and at the same time excludes countries that are economically comparable to the PRC.

Shanghai AJ/Degussa-AJ points out the Department's claim in promulgating the current regulation is that the regression-based wage rate methodology "enhances the accuracy, fairness, and predictability of {the Department's} AD calculations in NME cases,"²⁶ but that the claimed predictability cannot be achieved where it includes or excludes certain countries' wages from the analysis. In order to comply with its statutory obligation to use surrogate values from countries economically comparable to the PRC, Shanghai AJ/Degussa-AJ argues that the Department should include the 29 additional market-economy countries specified in its case brief (at 18).

Additionally, Shanghai AJ/Degussa-AJ contends that the Department's calculation is flawed because the PRC wage rate is derived from data regarding nominal per-capita gross national income ("GNI"). Shanghai AJ/Degussa-AJ asserts that the underlying basis for GNI must assume that the price levels within the PRC are valid. Specifically, Shanghai AJ/Degussa-AJ maintains that the Department's calculation is dependent on the assumption that per-capita GNI for the PRC is valid in that it multiplies this figure by the results of the regression-based wage rate calculation. According to Shanghai AJ/Degussa-AJ, an assumption that PRC prices are

²⁴ See *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 67313 (November 17, 2004) ("Furniture"), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China*, 69 FR 70997 (December 8, 2004).

²⁵ See <http://ia.ita.doc.gov/wages/corrected02wages/02wages-corrected.html>.

²⁶ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27295, 27637 (May 19, 1997).

valid is contrary to the Department's entire NME methodology, which is premised upon the theory that PRC prices are unusable because they are not market-economy prices.

Shanghai AJ/Degussa-AJ asserts that in order to avoid the NME distortions presumed by the Department to exist within PRC prices, the Department should, in its 2002 wage calculation for the final results, include only market-economy countries that are economically comparable to the PRC.

FMC argues that the Department already reevaluated its long-standing methodology for calculating the regression-based wage rates. *See, Wooden Bedroom Furniture from the People's Republic of China: Final Results of Remand Determination Pursuant to Court Remand Orders*, Court Nos. 05-00003 (June 1, 2005); 05-00083 (June 20, 2005). According to FMC, as a result of this reevaluation, the Department corrected the basket of countries used to calculate the regression-based wage rates, and no further modifications are necessary.²⁷

Further, FMC asserts that since the preliminary results, where the Department applied a regression-based wage rate of \$0.93 based on 2002 data, the Department has made public the regression-based wage rates for 2003.²⁸ Therefore, FMC asserts that the Department should apply the 2003 regression-based wage rate of \$0.98 for the PRC in its final results of this review because this information is more contemporaneous with the period of review.

Department's Position

We disagree with Shanghai AJ/Degussa-AJ that the Department's calculation of the PRC wage rate is flawed and inaccurate and overstates the labor rate. Section 351.408(c)(3) of the Department's regulations directs the Department to value labor in cases involving NME countries as follows:

For labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in non-market economy proceedings each year. The calculation will be based on current data, and will be made available to the public.

Accordingly, recalculating the regression analysis, using a different basket of countries, would amount to a significant change in the Department's current methodology. The Department declines to do so in the context of the current review. We note that the Department has invited and received comments from the general public on this matter in a proceeding separate from the

²⁷ *See Expected Non-Market Economy Wages: Request for Comments on Calculation Methodology*, 70 FR 37761 (June 30, 2005).

²⁸ *See* <http://ia.ita.doc.gov/wages/03wages/03wages.html>.

current review of this order.²⁹

As indicated by FMC, the Department recalculated its expected NME wage rates pursuant to the remand redetermination in *Furniture*. Additionally, since the *Preliminary Results*, the Department has revised its calculation of expected wages of selected NME countries. See <http://ia.ita.doc.gov>. The Department's revised calculation of expected NME wages is consistent with its normal methodology and is based on the most current data available as of November 2005. Furthermore, the Department believes that its current calculation of expected NME wages is reasonable and correct. Accordingly, for the final results of this review, we have valued labor with the Department's expected NME wage rate for the PRC at USD \$0.97 per hour.³⁰

Comment 5: Surrogate Value for Water

Shanghai AJ/Degussa-AJ contends that the surrogate value for water used by the Department in the preliminary results is inappropriate because it is only from one province in India and is not a representative value for water that a PRC respondent would have to pay if it were in an economically comparable market-economy country. Shanghai AJ/Degussa-AJ argues that additional record evidence from public Indian sources³¹ establishes that values from one province are not necessarily representative of the water values in India and that water rates in different Indian provinces differ on average from the average used by the Department in the preliminary results of this review.

According to Shanghai AJ/Degussa-AJ, the Department's stated practice for calculating normal value in accordance with section 773(c) of the Act is to use publicly available data which is representative of a range of prices. Moreover, Shanghai AJ/Degussa-AJ contends that the courts have upheld the Department's practice "to use surrogate price data which is: (1) an average non-export value; (2) representative of a range of prices within the POR . . . or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive."³² In keeping with that practice, Shanghai AJ/Degussa-AJ suggests that for the final results the average of water usage rates for Kerala should be included in the calculation of the average surrogate value for water, adding that

²⁹ See *Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology*, 70 FR 37761 (June 30, 2005).

³⁰ The rate proposed by FMC, \$0.98, was based on a sample calculation.

³¹ See Degussa-AJ's September 12, 2005, submission of publicly available surrogate value information, containing water rates for Kerala, another Indian province

³² See *Taiyuan Heavy Machinery Import and Export Corp. v. United States*, No. 98-02-00411, Slip op. 99-103 (CIT 1999). See, also, *Shandong Huarong Gen. Corp. v. United States*, 159 F. Supp. 2d 714, 728 (CIT 2001); *Coalition for the Pres. Of the Am. Brakedrum and Rotor Aftermarket Mfrs. v. United States*, 44 F. Supp. 2d 229, 259 (CIT 1999) (quoting *Union Camp Corp. v. United States*, 941 F. Supp. 108, 116 (1996)).

the Department is able to adjust the Kerala average value to be fully contemporaneous with this review period.

FMC points out that the Department based its calculation of the cost of water on the 2003 water rates for the Indian province of Maharashtra. FMC argues that the Kerala water rate is less contemporaneous than the Maharashtra water rate used by the Department in the preliminary results and, therefore, should not be included in the Department's calculation of the cost of water. However, FMC states, if the Department includes the Kerala water rate in its calculation, it should use only the industrial users' rate – not the average of water rates, which includes the rate for non-domestic users – and inflate the price so that it is contemporaneous with this review period.

Department's Position

We agree with FMC that the Maharashtra water rate used in the preliminary results remains the most appropriate surrogate value for water, and we have declined to average the Maharashtra rate with the Kerala water rate suggested by Shanghai AJ/Degussa-AJ. In determining the most appropriate surrogate values the Department's stated practice is "to use investigation or review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data."³³

Pursuant to this practice, we considered whether to average the Kerala rate with the Maharashtra rate used in the preliminary results. We believe that continuing to use only the Maharashtra rate for purposes of the final results best comports with the Department's stated practice, as well as recent case precedent.³⁴ Because it is from a publicly available source, is contemporaneous with the POR,³⁵ and incorporates multiple data points within a large area of India, the primary surrogate country, we have selected the Maharashtra data to determine the surrogate value for water for the final results. We have declined to use the Kerala industrial consumers tariff rate, placed on the record by Shanghai AJ/Degussa-AJ. Although the Kerala document indicates that the tariff rates are for "Revised Water Charges" that are in "Effect from 1 April 1999", there is no record evidence to indicate the time period for which those rates remained in effect.³⁶ The effective time period for the Maharashtra rate, from June 2003, is much more contemporaneous

³³ See Import Administration Policy Bulletin No. 04.1: "Non-Market Economy Surrogate Country Selection Process," dated March 1, 2004.

³⁴ See *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005) (where the Department used the Maharashtra rate for the final results and declined to include the Kerala rate because it was less contemporaneous.)

³⁵ The Maharashtra data are from June 1, 2003.

³⁶ See Shanghai AJ/Degussa-AJ's September 12, 2005, submission of publicly available information regarding the valuation of factors at exhibit 12.

with the POR, which began July 1, 2003. Therefore, for the final results, we continue to consider the data from the Maharashtra state as the best available information to value water for the instant case.

Comment 6: Surrogate Value for Electricity

Shanghai AJ/Degussa-AJ argues that for the final results the Department should adjust the surrogate value for electricity to reflect the actual electricity rates paid by the surrogate producers of comparable merchandise. According to Shanghai AJ/Degussa-AJ, the statute requires that “the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries” deemed appropriate by the Department.³⁷ Furthermore, “{i}n determining the valuation of the factors of production, the critical question is whether the methodology used by Commerce is based on the best available information and establishes antidumping dumping margins as accurately as possible.”³⁸ Shanghai AJ/Degussa-AJ maintains that the surrogate value for electricity used by the Department in the preliminary results is not the best available information in this review because the record includes alternative electricity values that are superior in terms of contemporaneity and are more representative of the industry subject to this review.

Shanghai AJ/Degussa-AJ points out that the record evidence includes data on the value of electricity purchased by the two surrogate producers used by the Department in the preliminary results for the purpose of calculating surrogate financial ratios. It follows then, argues Shanghai AJ/Degussa-AJ, that if the financial statement data for APL and NPL are valid for purposes of calculating surrogate overhead, SG&A and profit ratios, those same financial statements should also be deemed valid for purposes of calculating a surrogate electricity value. In addition, Shanghai AJ/Degussa-AJ points out that the record also includes data from other Indian chemical manufacturers (Gujarat Alkalies and Hindustan Organic Chemicals Limited) showing similar values for purchased electricity.

Shanghai AJ/Degussa-AJ contends that the data from the International Energy Agency (“IEA”) Prices and Taxes - Quarterly Statistics (Second Quarter 2003) used by the Department in the preliminary results are not contemporaneous this POR because the data are from 2000. Shanghai AJ/Degussa-AJ also claims that the IEA data distinguish only between electricity for industrial and household purposes, not for different types of industrial sectors (*i.e.*, chemical, steel, textile, automotive, food, etc.). Finally, Shanghai AJ/Degussa-AJ states that the Indian producers for whom there is record information regarding purchased electricity are located throughout India and, therefore, the data are broad enough to be representative of any comparable chemical producer in India.

³⁷ See section 773(c) of the Act.

³⁸ See *Yantai Oriental Juice Co. v. United States*, 26 CIT 605, Slip Op. 02-56 (2002) (citing *Shakeproof Assembly Components v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001)).

FMC argues that using the potential surrogate producers to value electricity would be contrary to the Department's long-standing practice of using industry-wide average electricity rates. According to FMC, the Department has addressed this issue in the past, stating the "the Department prefers publicly available statistical averages rather than company-specific data."³⁹ Thus, FMC argues that for the final results the Department should continue to rely on the electricity prices from the IEA for purposes of calculating the surrogate value for electricity.

Department's Position

We disagree with Shanghai AJ/Degussa-AJ that surrogate values for electricity costs should be based on company-specific data of the Indian producers on the record. In valuing inputs such as raw materials, the Department prefers publicly available statistical averages rather than company-specific data. In the past, the Department has considered this issue in general and has declined to adopt it. In fact, the Department addressed its reasoning on this matter in the preamble to its regulations, stating that "{w}hen compared to a publicly available price that reflects numerous transactions between many buyers and sellers, a single input price reported by a surrogate producer may be less representative of the cost of that input in the surrogate country." See *Antidumping Duties: Countervailing Duties: Final Rule*, 62 FR 27296, 27366 (May 19, 1997). Consequently, the Department has maintained its practice of "relying on publicly available data (which will not normally be producer-specific) for material inputs, while relying on producer- or industry-specific data for manufacturing overhead, general expenses, and profit."⁴⁰ In practice, the Department has explained frequently that it normally uses and prefers a country-wide electricity rate to reflect a broad-base cost for electricity which ensures a fair representation of electricity costs country-wide.⁴¹ Therefore, for the final results, we will continue to use the most recent data from the IEA, adjusted for inflation.

Comment 7: Surrogate Value for Caustic Soda

FMC claims that the surrogate value used by the Department in the preliminary results for caustic soda is aberrational. FMC states that it compared the full year 2003 and 2004 World Trade Atlas ("WTA") import statistics for India with those of other potential surrogate countries (*i.e.*,

³⁹ See *Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000) ("*Aspirin*"), and the accompanying Issues and Decision Memorandum at Comment 6.

⁴⁰ *Id.*

⁴¹ See, *e.g.*, *Aspirin* Issues and Decision Memorandum at Comment 6; see, also, *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 66 FR 42628 (August 14, 2001), and accompanying Issues and Decisions Memorandum at Comment 2; and *Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China*, 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum at Comment 7.

Indonesia, Philippines, and Sri Lanka).⁴² FMC notes that for the other potential surrogate countries it found caustic soda values ranging from \$0.23 to \$0.28, based on the 2003 and 2004 WTA caustic soda imports of 37 and 28 million kilograms, respectively, compared to the caustic soda surrogate value of \$0.15 used by the Department, based on nine million kilograms of imports into India. FMC submits that, based on this analysis, the WTA Indian import value for caustic soda is aberrational.⁴³

FMC suggests that the Department value caustic soda using the POR-average price derived from information reported in *Chemical Weekly* and placed on the record in FMC's June 10, 2005, surrogate value submission. First, FMC states that the Department relied on *Chemical Weekly* in each of the previous segments of this proceeding. Next, FMC contends that the POR-average price from *Chemical Weekly* – \$0.29 net of taxes – is consistent with the prices derived from the import statistics of the other potential surrogate countries. Moreover, FMC asserts that the *Chemical Weekly* prices more accurately reflect the price of caustic soda in India because several producers of caustic soda in India are not taken into account when relying solely on India's WTA import statistics. For example, FMC claims that record evidence indicates that the largest Indian caustic soda producer sold 115 million kilograms of caustic soda flakes at an average price of \$0.28 per kilogram.⁴⁴

Additionally, FMC maintains that the *Chemical Weekly* value is further supported by a study of the Indian caustic soda market performed by the Centre for Monitoring Indian Economy ("CMIE"), an independent think tank located in Mumbai, India. According to FMC, the CMIE's study of monthly Indian domestic market prices of different caustic soda products demonstrates that they are consistent with the prices reported in *Chemical Weekly*. Therefore, FMC argues that the Department use the prices reported in *Chemical Weekly*, adjusted to net out sales and excise taxes, consistent with the methodology employed by the Department in previous segments of this proceeding.

Shanghai AJ/Degussa-AJ states that for the final results, the Department should continue to calculate the surrogate value for caustic soda using Indian import statistics. According to Shanghai AJ/Degussa-AJ, the Department's practice is to use Indian import statistics as a surrogate value source provided that the data are not clearly aberrational.⁴⁵ Furthermore, while the Department may have used *Chemical Weekly* in previous segments of this proceeding,

⁴² See Memorandum from Ron Lorentzen to Wendy Frankel, dated March 7, 2005.

⁴³ FMC noted that while Egypt is also listed as a potential surrogate country, the WTA does not include data for Egypt.

⁴⁴ See FMC's case brief at 10.

⁴⁵ See *Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China*, 69 FR 67304 (November 17, 2004), and the accompanying Issues and Decision Memorandum at Comment 3.

Shanghai AJ/Degussa-AJ argues that the Department is not bound to using the same surrogate source from prior reviews; it may change surrogate value sources.⁴⁶

With regard to caustic soda import values from other potential surrogate countries, Shanghai AJ/Degussa-AJ first states that the Department's practice is to ascertain surrogate values from the primary surrogate country – in this case India – and to not “mix and match” surrogate values from other potential surrogate countries. Although import values from the other surrogate values may be higher than the Indian import value for caustic soda, Shanghai AJ/Degussa-AJ contends, that alone does not prove that the Indian values are aberrationally low. Moreover, with respect to FMC's September 12, 2005, submission providing average unit values derived from other potential surrogate countries, Shanghai AJ/Degussa-AJ claims that there is no indication of whether FMC excluded from the data 1) import values from NME countries, 2) values from countries that the Department has found to have generally available export subsidies, or 3) values that are from countries with low quantities and/or distorted values.

As for the values reflected in the financial statements of Gujarat Alkalies, a large Indian producer of caustic soda, Shanghai AJ/Degussa-AJ asserts that the Department has stated its preference for industry-wide values – wherever possible – to the value from a single company “because industry-wide values are more representative of prices/costs of all producers in the surrogate country.”⁴⁷

Additionally, Shanghai AJ/Degussa-AJ argues that the *Chemical Weekly* data are from only one city in India, Mumbai, and, as a result, are too regional to be representative of industry-wide caustic soda prices for India during the POR. Finally, Shanghai AJ/Degussa-AJ argues that the CMIE study is not reliable for several reasons: there is no information regarding how the market study was performed, what sources were considered by CMIE, or whether the prices are for the solid or liquid form of caustic soda. Consequently, Shanghai AJ/Degussa-AJ suggests that it should not be used as a benchmark to discredit the reliability of the Indian import data.

Department's Position

We find that FMC has not established that the Indian import values for caustic soda are distorted or clearly aberrational.

We acknowledge that – as FMC noted – the Department relied on *Chemical Weekly* in prior segments of this proceeding. However, as stated in Policy Bulletin 04.1, it is the Department's

⁴⁶ See *Rhodia, Inc. v. United States*, 185 F. Supp. 2d 1343, 1351-52 (CIT 2001) (citing *Manganese Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 66 FR 15076 (March 15, 2001)).

⁴⁷ See *Notice of Final Determination of Sales at Less Than Fair Value; Honey From the People's Republic of China*, 66 FR 50608 (October 4, 2001), and the accompanying Issues and Decision Memorandum at Comment 2; see, also, *Honey From the People's Republic of China: Final Results of First Antidumping Duty Administrative Review*, 69 FR 25060 (May 5, 2004), and the accompanying Issues and Decision Memorandum at Comment 3.

stated practice to use investigation or review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data. The best available data to meet all of these criteria are the WTA import statistics. The *Chemical Weekly* prices are a less appropriate alternative here, as they include sales and excise taxes. Moreover, the Department often changes sources when it determines one surrogate value source to be more appropriate and more reliable than a previously used source. A surrogate value which is the best available information during one investigation or review does not necessarily remain the best available information during subsequent reviews.⁴⁸

Regarding FMC's claims that the surrogate value for caustic soda is aberrational based on a comparison with other surrogate countries' import statistics, we find that FMC's comparison methodology is flawed. First, FMC included in its comparison total import statistics, instead of adjusting for imports from countries believed to have generally available export subsidies. Second, FMC compared the sum of three countries' 2003 and 2004 annual caustic soda imports to India's POR imports, rather than comparing each of the countries to India individually.

Because the Department does not have access to monthly WTA data for the other potential surrogate countries, we compared their 2003 and 2004 annual data to the corresponding annual data for India, net of imports from NME countries, as well as countries identified by the Department as possibly having generally available export subsidies. It is inconclusive that Indian imports were clearly aberrational. Actually, we found that there is a wide range of average unit values among the potential surrogate countries.

Therefore, we determine that the WTA import data, used in the preliminary results to value caustic soda, is not aberrational and should be used in the final results of this review.

Comment 8: Whether the Department Should Apply Total Adverse Facts Available

FMC argues that the Department should base the final results on total adverse facts available ("AFA") because, it alleges, Shanghai AJ/Degussa-AJ has failed to cooperate throughout this review by not providing timely, complete and reliable data to the Department.

FMC submits that the Department routinely applies adverse inferences in factual situations such as those present in the instant review, *i.e.*, where a respondent fails to respond to the Department's requests for information in a timely manner, fails to accurately report material usage, or provides the Department with untimely new factual information.⁴⁹ FMC maintains that

⁴⁸ See *Baoding Yude Chemical Industry Co., Ltd. v. United States*, 25 C.I.T. 1118, 1123 (2001).

⁴⁹ FMC cites *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 70 FR 38872 (July 6, 2005), where the Department applied total AFA where a respondent inaccurately reported blend ratios; *National Candle Association v. United States*, 366 F. Supp. 2d 1318, 1321, 1322 (2005), where the Department applied total AFA where a respondent failed to report one

to base the final results of the instant review on anything less than total AFA would reward Shanghai AJ/Degussa-AJ for failing to provide information requested by the Department. More specifically, FMC claims that Shanghai AJ/Degussa-AJ has consistently underreported material usage, failed to report the use of certain materials and inputs such as packing and labor, failed to report all POR sales of subject merchandise, filed untimely new information, and misreported purity and grade levels.

As support for its argument, FMC argues that in the preliminary results the Department recognized Shanghai AJ/Degussa-AJ's failure to cooperate, leading the Department to state "that Shanghai AJ did not act to the best of its ability because it neither included nor notified the Department in a timely manner"⁵⁰ of unreported sales discovered by the Department at verification, which "demonstrates that Shanghai AJ/Degussa-AJ failed to put forth the maximum effort."⁵¹ According to FMC, the respondent's repeated failure to report timely, accurate and complete data demonstrates that its data are unreliable and should not be used for the final results. FMC claims that if the Department does not decide to apply total AFA, then it should apply partial AFA with respect to unreported sales, grade and purity levels, packing, labor and material usage.

As an initial matter, Shanghai AJ/Degussa-AJ states that FMC incorrectly cited section 776(a)(2) of the Act in support of calling for the Department to apply total AFA for this review. Shanghai AJ/Degussa-AJ notes that section 776(a) refers only to criteria for the application of facts available, whereas section 776(b) is the relevant statutory provision for the application of adverse inferences. That notwithstanding, Shanghai AJ/Degussa-AJ argues that record evidence demonstrates that the use of facts available would not be warranted in this review and the use of AFA would be unjustified because it has timely and fully responded to all of the Department's requests for information in the form and manner requested and, furthermore, the Department verified all such information.

According to Shanghai AJ/Degussa-AJ, FMC complains generally about underreported material usage, missing materials and inputs, untimely information and misreported purity and grade levels, but it fails to cite a specific instance where these issues were not addressed by Shanghai AJ/Degussa-AJ's responses to the Department's supplemental questionnaires. Because none of the information it submitted was inadequate, untimely, or unverifiable, Shanghai AJ/Degussa-AJ asserts, there is no basis for the application of facts available. Moreover, Shanghai AJ/Degussa-AJ notes that pursuant to section 776(b) of the Act, adverse inferences are warranted only where

production order until the first day of verification; and *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003), where the Department applied total AFA where a respondent withheld information related to affiliations.

⁵⁰ *Persulfates from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 46476, 46477 (August 10, 2005) (*Preliminary Results*).

⁵¹ *Id.*

a respondent has “failed to cooperate by not acting to the best of its ability to comply with a request for information from” the Department, and because it has cooperated fully with the Department and complied with all of the Department’s requests for information in questionnaires or at verification, there is no basis for the application of AFA for the final results.

Department’s Position

Before we can consider an adverse inference of facts available, we must first assess whether the use of facts available is justified. Sections 776(a)(1) and (2) of the Act provide that the Department shall apply “facts otherwise available” if, *inter alia*, necessary information is not on the record or an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Other than the three unreported sales discovered at verification for which the Department is already applying partial AFA, Shanghai AJ/Degussa-AJ has responded to all requests for information from the Department, has provided that information within the deadlines established and in the form and manner requested, has not impeded the proceeding, and has provided information that is verifiable and which, in fact, was verified by the Department. Thus, we find that there is no basis for resorting to total facts available and, as a result, the question of the application of an adverse inference thereto does not arise.

With respect to the three unreported U.S. sales identified during verification, we agree that that information should have been reported to the Department. For purposes of the final results, therefore, the Department is continuing to apply partial AFA only to the unreported sales discovered at verification.

Comment 9: Whether the Department Should Disregard as Untimely Certain Record Information

FMC argues that for the final results the Department should disregard and remove from the administrative record all untimely filed information provided by Shanghai AJ/Degussa-AJ. FMC maintains that Shanghai AJ/Degussa-AJ has often ignored the Department’s requests for information, only to later provide the requested information “hidden in supplemental questionnaire exhibits addressing different issues, under the pretense of minor corrections to verification or even as verification exhibits.”⁵² Further, FMC claims that rejecting Shanghai AJ/Degussa-AJ’s “untimely information” would be consistent with the Department’s practice of

⁵² See FMC’s September 23, 2005, case brief at 4. In its brief FMC also identified (at 4 - 5) specific examples of what it considered to be untimely submissions of factual information on the part of Shanghai AJ/Degussa-AJ.

not allowing parties to manipulate or hinder administrative reviews by untimely responding to information requests.⁵³

Furthermore, FMC asserts that Shanghai AJ/Degussa-AJ's July 6, 2005, submission, presented to the Department prior to verification as minor corrections, does not qualify as such because the submission included "untimely new information, as well as revisions to previously submitted information, which substantially altered respondents' previous questionnaire responses."⁵⁴ FMC maintains that it is the Department's practice to accept only minor corrections at the beginning of verification.⁵⁵ According to FMC, the Department rejects other corrections as untimely new information.⁵⁶

According to FMC, if the Department does not apply total AFA as argued in comment 8 above, it should disregard all untimely information and substitute the application of partial AFA.

Shanghai AJ/Degussa-AJ counters that information submitted in accordance with the Department's instructions cannot be considered untimely simply because it is submitted past the deadline for the filing of factual information established pursuant to 19 CFR 351.301(b)(2). According to Shanghai AJ/Degussa-AJ, all of the information deemed untimely by FMC was submitted in response to a supplemental questionnaire, in a minor correction provided prior to the start of verification, which is in accordance with the Department's instructions in the verification outline, or in exhibits accepted by the Department at verification. As a result, Shanghai AJ/Degussa-AJ states that the Department should reject FMC's argument that certain information submitted by Shanghai AJ/Degussa-AJ should be removed from the record.

⁵³ FMC cites *Industria de Fundicao Tupy v. United States*, 20 CIT 870, 880, 936 F. Supp. 1009, 1018 (1996); *Mitsuboshi Belting Limited v. United States*, 21 CIT 247, 250 (1997); *Toyota Motor Sales, U.S.A. Inc. v. United States*, 22 CIT 643, 633, 15 F. Supp. 2d 872, 886 (1999); and *Pistachio Group of the Ass'n. of Food Ind. v. United States*, 11 CIT 668, 679, 671 F. Supp. 31, 40 (1987).

⁵⁴ See FMC's case brief at 7.

⁵⁵ FMC cites *Final Determination of Sales at Less Than Fair Value: Nitromethane from the People's Republic of China*, 59 FR 14834, 14835 (March 30, 1994) (*Nitromethane*), where the Department considered the revelation of unidentified materials, even though the relative amounts were small, not to be a "minor correction"; *Tapered Roller Bearings, Four inches or Less in outside Diameter, and Certain Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Review*, 56 FR 65228 (December 16, 1991), where the Department stated that "while the Department may generally accept minor corrections to errors uncovered at verification, the purpose of a verification is to ascertain the accuracy and completeness of the information submitted, not to allow wholesale revision of the nature required by Isuzu's deficient response."

⁵⁶ FMC cites *Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Pipe and Tube from Turkey*, 70 FR 33084, 33086 (June 7, 2005), where the Department rejected the belated correct reporting of warranty expense; *National Candle Association v. United States*, 366 F. Supp. 2d 1318, 1322 (2005), where the Department treated the reporting of one production order presented by respondents to the Department for the first time at the beginning of verification as a "minor correction" as untimely new information.

Regarding its July 6, 2005, submission, Shanghai AJ/Degussa-AJ contends that FMC has merely stated that the corrections were not minor but provided no factual analysis to support this assertion. Shanghai AJ/Degussa-AJ states that the information it submitted did in fact constitute minor corrections because it “merely corroborated, supported or clarified information already on the record.”⁵⁷ According to Shanghai AJ/Degussa-AJ, acceptance of such information is consistent with the Department’s practice.⁵⁸ Shanghai AJ/Degussa-AJ also argues that the Department “recognizes that minor discrepancies occur during the preparation of questionnaire responses” and cites *Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys From the Republic of Kazakhstan*, 62 FR 2648 (January 17, 1997), where the Department corrected minor discrepancies discovered during verification and, as it “did not identify any attempts to mislead the Department or to distort information on the record,” the Department determined that the application of total AFA was not warranted.⁵⁹

Department’s Position

While Shanghai AJ/Degussa-AJ did place certain information on the record after the regulatory deadline for submission of factual information, all of it was submitted pursuant to the Department’s supplemental questionnaires or verification outline instructions, and prior to the completion of verification. Pursuant to 19 CFR 351.301(b)(2), a submission of factual information for the final results of an administrative review is due no later than 140 days after the last day of the anniversary month, *except that factual information requested by the verifying officials from a person normally will be due no later than seven days after the date on which the verification of the person is completed.* (Emphasis added.)

Specifically, regarding the change in the reported total consumption and consumption ratio of potassium hydroxide, the reported labor hours, and the additional packing inputs, each of these changes was reported to the Department on July 6, 2005, as minor corrections in accordance with the Department’s verification outline instructions. The Department’s verification outline, sent to Shanghai AJ/Degussa-AJ on June 27, 2005, states that at the beginning of verification, the respondent should present minor changes, if any, to the responses resulting from verification preparation.⁶⁰ The change in the consumption of potassium hydroxide was 0.6 percent.⁶¹ The

⁵⁷ See Shanghai AJ/Degussa-AJ’s rebuttal brief at 6.

⁵⁸ Shanghai AJ/Degussa-AJ cites *Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30664, 30680 (June 8, 1999); *Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8928 (February 23, 1998); *Fresh Cut Roses from Colombia*, 60 FR 6980, 7002 (February 6, 1995).

⁵⁹ See Shanghai AJ/Degussa-AJ’s rebuttal brief at 7.

⁶⁰ See the Department’s letter to Shanghai AJ/Degussa-AJ Re: Administrative Review of the Antidumping Duty Order on Persulfates from the People’s Republic of China, dated June 27, 2005.

⁶¹ See Shanghai AJ/Degussa-AJ’s July 6, 2005, submission at Attachment 1.

change in the total labor hours was 2 percent.⁶² In the Department's estimation, these corrections are, in fact, minor.

In addition, we find the effect on Shanghai AJ/Degussa-AJ's margin of the two additional packing materials (*i.e.*, paper and string) to be so minor as to be insignificant. Nevertheless, at verification, the Department collected information on the amount of string and paper used in packing the subject merchandise. In the preliminary results, the Department applied surrogate values to the factors for paper and string and included their cost in the buildup of normal value. The Department did not find the application of FA or AFA to be warranted. This is consistent with the Department's practice. *See Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China*, 69 FR 67304 (November 17, 2004), and accompanying Issues and Decision Memorandum at Comment 15, where the adjustment is insignificant.

FMC cites *Nitromethane* where the Department stated that the revelation of unidentified materials at verification, even if the relative amounts used per unit of product are small, cannot be considered "minor corrections." In that case, however, the two unrevealed inputs were raw materials (specifically, additives) in the production process, whereas in the instant review, the previously unreported inputs are packing materials used in only certain packing schemes for the subject merchandise. Furthermore, in *Nitromethane*, the respondents refused to reveal the identity of the additives, thereby preventing the Department from determining their value in a surrogate economy.⁶³ The Department stated that "only in knowing the precise identity and quantity can we judge the materials' importance, and thereby the gravity of their omission."⁶⁴ In the present case, conversely, the Department was able to not only measure the amount of each packing input used but also obtain a reasonable Indian surrogate value. In light of the above, we are not changing our treatment of these materials in the final results.

Regarding the reference to a prior administrative review in Shanghai AJ/Degussa-AJ's supplemental section D response, this information was submitted in response to a question from the Department on Shanghai AJ/Degussa-AJ's reported purity/grade levels. As the information helped to clarify a point of confusion, the Department chose to keep it on the record. Finally, regarding Exhibit 11 of the verification documents which FMC claims contains an untimely rebuttal to a technical report submitted by FMC, it is the Department, not the respondent, that determines what information is gathered at verification as exhibits. In reviewing technical issues related to input purity and grade levels, the Department asked Shanghai AJ/Degussa-AJ to identify materials on its records that would address these items and to present them for verification. At the verification of Shanghai AJ/Degussa-AJ, the Department determined that it

⁶² *Id.* at Attachment 1.

⁶³ *See Nitromethane*, 59 FR at 14835.

⁶⁴ *Id.* at 14835.

was appropriate to include this information in the verification exhibits and, at the Department's request, Shanghai AJ/Degussa-AJ placed all of the verification exhibits on the record on July 14, 2005. Pursuant to section 19 CFR 351.301(b)(2), the verifying officials may request that information be placed on the record up to seven days past the completion of verification.

Because we have determined that none of the alleged untimely information is in fact untimely, it remains on the record and the Department finds no grounds for applying total AFA or applying partial AFA for any of the items discussed herein.

Comment 10: Whether the Department Should Reopen the Record to New Factual Information

FMC contends that Degussa-AJ's platinum usage rate is not reconcilable to its production numbers for ammonium persulfates. FMC states that it first brought this problem to the Department's attention during an August 22, 2005, meeting with Department officials, and again on September 2, 2005, in a telephone conference with Department officials. FMC claims that it requested permission from the Department to supplement the record with its new findings based on the fact that the numbers in question were first made available to FMC in verification exhibits on platinum, but the Department denied this request.

FMC maintains that the platinum numbers currently on the record strongly indicate that it would be impossible for Degussa-AJ to have produced the amount of ammonium persulfates reported to the Department given the platinum usage it has reported to the Department, meaning that Degussa-AJ must have supplemented its ammonium persulfate sales with ammonium persulfates purchased from outside suppliers. FMC insists that the platinum issue must be resolved before the final results as resolution of this issue would have a significant impact on the margin calculation and, FMC submits, could well require the application of total AFA.

Shanghai AJ/Degussa-AJ states that although it is within the Department's authority to reopen the record, allowing FMC to submit new factual information after the preliminary results, after parties have submitted case and rebuttal briefs, and after the public hearing, would unnecessarily complicate matters. Shanghai AJ/Degussa-AJ speculates that allowing FMC to submit new factual information would likely lead to a supplemental questionnaire and a response from Shanghai AJ/Degussa-AJ, the possibility of another verification, and another round of briefing by the parties, severely impacting the Department's ability to meet the statutory deadlines for completing the review. Further, FMC's charges notwithstanding, Shanghai AJ/Degussa-AJ asserts that at verification the Department specifically examined issues related to Degussa-AJ's platinum usage in the production process. First, according to Shanghai AJ/Degussa-AJ, the Department noted that Degussa-AJ uses an outside vendor to perform maintenance on the electrolysis machines, which includes the replacement of platinum.⁶⁵ Second, Shanghai AJ/Degussa-AJ explains that Degussa-AJ does not treat platinum as a material input but, rather,

⁶⁵ See Verification Report at 5.

as part of the service fee paid to the company that does the maintenance work on the electrolysis machines.⁶⁶ Shanghai AJ/Degussa-AJ characterizes FMC's request to reopen the record as simply one more "speculative attempt to conjure up a highly technical excuse to apply total adverse facts available" to Shanghai AJ/Degussa-AJ.

Department's Position

We believe the record information is sufficient to determine whether Degussa-AJ purchased ammonium persulfate. As to the question of whether Degussa-AJ's platinum usage can be reconciled to its production numbers for ammonium persulfates using Verification Exhibit 18, we believe that FMC may have misinterpreted the exhibit. Exhibit 18 contains a POR listing of platinum replaced during maintenance of the electrolysis machines. It is not a listing of platinum consumed during the POR. Therefore, whether the platinum identified as maintenance in Exhibit 18 can be reconciled to production does not lead to a conclusion that Degussa-AJ purchased ammonium persulfates.

Additionally, during verification the Department pursued this issue at length as a result of FMC's urging. FMC raised the issue with the Department during a tour of FMC's production facility on March 31, 2005, and again in pre-verification comments filed with the Department on July 6, 2005. At verification, we found no evidence that supported FMC's claims that (1) Degussa-AJ made purchases of ammonium persulfates, prior to, or during the POR; or (2) Degussa-AJ's production of ammonium persulfates during the POR was not sufficient to support the quantity of ammonium persulfates sold.⁶⁷

Because we have determined that the information on the record is sufficient, the Department finds no grounds to reopen the record to allow FMC to submit new information on platinum usage rates.

Comment 11: Application of Adverse Facts Available in Preliminary Results Margin Program

FMC asserts that if the Department applies partial AFA, as opposed to total AFA, for the final results, it must correct the partial AFA rate applied to three unreported sales found by the Department at verification. The Department stated in the preliminary results that as partial AFA it was "applying the highest transaction margin for Shanghai AJ from the current administrative review."⁶⁸ According to FMC, the Department's margin calculation program applied an incorrect

⁶⁶ See Verification Exhibit 18.

⁶⁷ See Verification Report at 9, 10, and 11.

⁶⁸ See Preliminary Results at 46478.

rate to these sales, and to correct this for the final results the Department should apply the highest transaction-specific margin calculated in the final results.

Because the details of Shanghai AJ/Degussa-AJ's arguments concerning this comment are business proprietary, we are unable to include them here. For a full discussion of this issue, *see* the Analysis Memorandum for the Final Results for Shanghai AJ Import and Export Corporation from Tisha Loeper-Viti to the File, dated February 6, 2006, at page 2.

Department's Position

We agree with FMC. It was the Department's intention for the preliminary results to apply the overall highest transaction-specific margin to the three unreported sales discovered at verification. Therefore, for these final results, we are applying to the sales in question the highest Shanghai AJ/Degussa-AJ transaction-specific margin from this administrative review.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of the review and the final dumping margin for the reviewed firm in the Federal Register.

Agree _____

Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration

Date