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MEMORANDUM TO: Faryar Shirzad  
Assistant Secretary  
for Import Administration

FROM: Susan Kuhbach  
Acting Deputy Assistant Secretary, Group I  
Office of AD/CVD Enforcement

DATE: February 3, 2003

SUBJECT: Issues and Decision Memorandum for the 2000-2001 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: Separate Rates
- Comment 2: Use of Adverse Facts Available
- Comment 3: Ocean Freight
- Comment 4: Marine Insurance
- Comment 5: Steam, Coal and Water Consumption
- Comment 6: Use of Indian Data to Value Wood Pallets
- Comment 7: Packing Labor
- Comment 8: Whether the Financial Statements of Calibre Chemicals Pvt., Ltd. (Calibre) and Gujarat Persalts (P) Ltd. (Gujarat) Are Publicly Available Information
- Comment 9: Whether Gujarat's Financial Statements Are an Appropriate Source for Factory Overhead (FOH), Selling, General, and Administrative (SG&A) Expenses, and Profit
- Comment 10: Whether Calibre's Financial Statements Are an Appropriate Source for FOH, SG&A, and Profit

Comment 11: Adjustments to SG&A

Background

On August 6, 2002, the Department of Commerce (the Department) published the preliminary results of the fourth administrative review of persulfates from the PRC. See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Partial Recision 67 FR 50866 (Aug. 6, 2002) (Preliminary Results). We invited parties to comment on the preliminary results. On September 13, 2002, the petitioner, FMC Corporation, filed a case brief. On September 18, 2002, the respondent, Shanghai Ai Jian Import and Export Corporation and Shanghai Ai Jian Reagent Works (collectively Ai Jian), filed a rebuttal brief. The period of review (POR) is July 1, 2000, through June 30, 2001.

Margin Calculations

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

1. We revalued labor based on the regression-based wage rate for 2000 in accordance with 19 CFR 351.408(c)(3);
2. We revised the surrogate value for wood pallets using Indian import statistics for the period July 2000 through June 2001. See Comment 6;
3. We based factory overhead (FOH), SG&A expenses, and profit on the financial statements of Gujarat alone, rather than calculating these expenses as an average of the experience of Calibre and Gujarat. See Comment 9;
4. We adjusted the calculation of the surrogate FOH ratio for Gujarat by excluding the cost of traded goods from the denominator of the ratio. See Comment 9; and
5. We adjusted the calculation of the surrogate SG&A ratio for Gujarat. We excluded movement expenses originally included in the cost of manufacture used as the denominator for the surrogate SG&A ratio, as well as certain interest expenses used to offset financing costs. See Comment 11.

Discussion of the Issues

Comment 1: *Separate Rates*

According to the petitioner, Ai Jian reported that it held four bank accounts during the POR. However, the petitioner notes that at verification the Department discovered a number of additional bank accounts that were not previously disclosed to the Department. The petitioner argues that Ai Jian's attempt to conceal the existence of these additional bank accounts undermines Ai Jian's entitlement to a separate rate in this administrative review.

The petitioner maintains that a key *de facto* criterion in determining whether a respondent is entitled to a separate rate is whether a respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. See Brake Rotors from the People's Republic of China: Preliminary Results and Partial Recision of Fifth New Shipper Review, 66 FR 29080, 29081 (May 29, 2001) (Brake Rotors Prelim). The petitioner notes that, in Brake Rotors Prelim, the Department denied one company a separate rate because the Department concluded that it was unable to ascertain whether that company: (1) retained all of its proceeds from the sale of subject merchandise; (2) made decisions regarding the dispositions of its proceeds from the sale of subject merchandise; and (3) made decisions regarding the dispositions of profits or financing of losses. See Brake Rotors Prelim, 66 FR at 29081.

In this review, the petitioner contends that the Department was unaware until verification that the respondent had bank accounts in addition to those noted in its March 7, 2002, supplemental response. The petitioner maintains that Ai Jian could, for example, launder funds through these additional accounts, thereby concealing the ultimate disposition of profits or financing of losses. Therefore, the petitioner argues that the Department should deny Ai Jian's request for a separate rate and should, instead, apply the PRC-wide rate of 119.02 percent for the final results of this review.

Ai Jian concedes that a discrepancy existed between the number of bank accounts reported to the Department and the actual number of bank accounts disclosed at verification. However, Ai Jian argues that this discrepancy is the result of a minor clerical error which should not affect its entitlement to a separate rate. Ai Jian disagrees that it attempted to conceal the presence of additional bank accounts, but rather it points out that it prepared a listing of all accounts held during the POR for verification. See memorandum from Robin V. Moore to Louis Apple entitled "Verification in Shanghai, People's Republic of China ("PRC"), of the Questionnaire Responses of Shanghai AJ Import and Export Corporation ("AJ Import Export") in the Antidumping Duty Administrative Review of Persulfates from the People's Republic of China," dated July 31, 2002, (sales verification report) at page 5 and exhibit 7. Therefore, Ai Jian contends the record shows that it voluntarily disclosed the existence of these accounts at verification instead of "concealing" their existence from the Department.

Ai Jian maintains that the petitioner's argument is based on speculation which is unsupported by the evidence on the record of this case.<sup>1</sup> Indeed, Ai Jian notes that at verification the Department tied the value of all sales of subject and non-subject merchandise to the company's audited financial statements without discrepancy. See the sales verification report at pages 8 and 9. Ai Jian concludes that the tying of all of its sales to the audited financial statements represents substantial evidence that it is not laundering or concealing any funds.

Similarly, Ai Jian asserts that there is no evidence on the record demonstrating that Ai Jian does not retain the proceeds of its export sales or make independent decisions regarding the disposition of its profits or financing of losses. In contrast, Ai Jian notes that the sales verification report indicates that the Department found no discrepancies between the information reported to the Department in Ai Jian's questionnaire responses and the information presented at verification with respect to Ai Jian's request for a separate rate. For example, Ai Jian notes that the Department confirmed that: 1) Ai Jian accurately reported information related to the company's corporate structure and financial statements; 2) the company's business license permitted the company to import and export products free of state coordination; and 3) the government imposed no restriction on the purchase or sale of foreign currencies.

Finally, Ai Jian argues that the petitioner's reliance on Brake Rotors Prelim is misplaced. Ai Jian maintains that, in Brake Rotors Prelim, the respondent was unable either to provide its bank statements for the Department's review or to reconcile its bank receipts with any other independent reference document. As a consequence, Ai Jian notes that the Department was unable to verify the respondent's claim that the disposition of the proceeds from its sales was outside of the government's control. See Brake Rotors Prelim, 66 FR at 29082. In contrast, Ai Jian contends that, in this case, the Department's verification report does not indicate that the Department was unable to verify Ai Jian's financial information or that Ai Jian was unable to produce primary reference documents, such as bank statements. Consequently, Ai Jian argues that it is entitled to a separate rate, consistent with both the Department's preliminary findings in this review and in every prior segment of this proceeding.

#### Department's Position:

We agree with Ai Jian that it is entitled to a separate rate in this proceeding. In its questionnaire responses, Ai Jian provided sufficient documentation to establish that the PRC government does not exercise control over its business operations, on either a *de facto* or a *de jure* basis. We examined this information at verification, and other than a clerical error in the number of bank accounts held during the

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<sup>1</sup> According to Ai Jian, the Court of International Trade (CIT) has specifically held that speculation is not an appropriate basis for a determination by the Department. See Asociacion Columbiana de Exportadores de Flores v. United States, 704 F. Supp. 1114, 1117 (CIT 1989), aff'd 901 F.2d 1089 (Fed. Cir. 1990)

POR, we found no discrepancies in the information reported. See the sales verification report at page 5. Accordingly, we preliminarily determined that Ai Jian met the criteria for separate rates treatment in this administrative review, and we accorded it such in the Preliminary Results. See the Preliminary Results, 67 FR at 50867.

We disagree with the petitioner's allegation that Ai Jian's initial misidentification of the number of bank accounts is meaningful. First, we note that Ai Jian not only voluntarily disclosed the existence of its additional accounts at verification, but it also accorded us unrestricted access to information about these accounts. See the sales verification report at page 5. Upon review of the transactions in these accounts, we found no evidence that Ai Jian was laundering money (as suggested by the petitioner) or otherwise concealing financial transactions germane to the company's separate rate request. We similarly found no evidence that showed that any entity other than Ai Jian controlled the disposition of the company's export revenues, profits, or finances. See the sales verification report at page 4 and 5.

We disagree that the facts in this case are similar to those in Brake Rotors Prelim. In that case, the Department denied one respondent's request for a separate rate because the company was unable to demonstrate that it had ultimate control over the disposition of its proceeds from sales made during the review period. See Brake Rotors Prelim, 66 FR at 29082. In contrast, Ai Jian was able to demonstrate at verification that it alone controlled the disposition of its profits, which is one of the necessary criteria for determining that a company is eligible for separate rates treatment.

Therefore, we find no reason to alter our finding that the PRC government did not exercise either *de facto* or *de jure* control over Ai Jian. Consequently, we have continued to grant Ai Jian a separate rate for the final results of this administrative review.

Comment 2:    *Use of Adverse Facts Available*

The products covered by this antidumping duty order are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively,  $(\text{NH}_4)_2\text{S}_2\text{O}_8$ ,  $\text{K}_2\text{S}_2\text{O}_8$ , and  $\text{Na}_2\text{S}_2\text{O}_8$ . According to the petitioner, the scope of the order includes reagent persulfate products, as well as non-reagent persulfates.

The petitioner asserts that the Department found at verification that Ai Jian classified reagent persulfates as non-subject merchandise and, thus, it failed to report sales or factors of production information for these products.<sup>23</sup> The petitioner concludes that, because Ai Jian redefined the scope to include only

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<sup>23</sup> Specifically, the verification report states: "AJ Works produces five products: ammonium persulfate, sodium persulfate, potassium persulfate, reagent ammonium persulfate and reagent potassium persulfate. Only the three former products are subject merchandise." See the memorandum

ammonium, potassium, and sodium persulfates, it intentionally excluded sales and usage factors for reagent ammonium and potassium persulfates. According to the petitioner, this omission renders Ai Jian's submitted data both unreliable and unusable by the Department.

The petitioner contends that, in accordance with 19 CFR 351.308(a) of the Department's regulations, the Department may make determinations on the basis of facts available whenever a respondent withholds or fails to provide information requested in a timely manner, significantly impedes a proceeding, or places the Department in a position that it is unable to verify submitted information. Furthermore, the petitioner maintains that, pursuant to 19 CFR 351.308(a), if the Department finds that a respondent has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the respondent when selecting from the facts otherwise available. According to the petitioner, because Ai Jian: 1) failed to provide information in a timely manner by excluding sales and factor data for reagent ammonium and reagent potassium persulfates from its questionnaire responses; and 2) unilaterally decided to narrow the scope of this review, Ai Jian failed to act to the best of its ability to comply with the Department's request for information. Consequently, the petitioner argues that the Department has no choice but to apply adverse facts available.

Ai Jian argues that, contrary to the petitioner's assertions, it did not sell either reagent ammonium or reagent potassium persulfates to the United States during the POR. Ai Jian contends that it is not required to report sales and factors of production data for products that were not sold by its company to the U.S. market. Ai Jian notes that, at verification, the Department confirmed that there were no sales of either reagent ammonium or reagent potassium persulfates to the United States. Specifically, Ai Jian notes that the Department found no discrepancies in its reconciliation of the total quantity and value reported in the U.S. sales listing to the company's financial statements, nor did it find any omitted sales of subject merchandise during its completeness tests. See the sales verification report at pages 6-7. Consequently, Ai Jian argues that there is no basis to apply adverse facts available in the calculation of its dumping margin.

#### Department's Position:

We disagree with the petitioner's contention that Ai Jian made U.S. sales of reagent ammonium and reagent potassium persulfates during the POR. This contention stems from the petitioner's

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from Robin V. Moore to Louis Apple entitled "Verification of Questionnaire Responses of Shanghai Ai Jian Reagent Works (AJ Works) in the Antidumping Administrative Review of Persulfates from the People's Republic of China (PRC), dated July 31, 2002 (factors verification report) at page 3.

<sup>3</sup> In a letter dated October 11, 2002, the petitioner requested that the Department confirm with the U.S. Customs Service whether Ai Jian sold reagent persulfates to the United States during the POR.

misinterpretation of a statement made in the factors verification report. In that report, we identified ammonium, potassium, and sodium persulfates as “subject merchandise” because we had confirmed at the verification of Ai Jian’s sales data that the respondent had sales of ammonium, potassium, and sodium persulfates to the United States during the POR and that these sales alone constituted the “subject merchandise” during the POR. See the factors verification report at page 3. This statement was not intended to signify that Ai Jian exported reagent persulfates to the United States but failed to classify them as subject merchandise. Indeed, we found no evidence at verification that Ai Jian failed to report any sales of subject merchandise.<sup>4</sup>

Specifically, at verification, we reconciled the total quantity and value of all sales of subject merchandise reported in Ai Jian’s U.S. sales listing to the amounts recorded in the company’s books and records, in accordance with our normal verification procedures. In addition, we conducted various completeness tests to ensure that all sales of subject merchandise were properly reported during the POR. In our verification report, we indicated that we followed the verification procedures listed in our verification outline; we then noted the following results:

Company officials provided a quantity and value of sales package for fiscal years 2000 and 2001. This package included one worksheet showing company-wide sales and another separating subject merchandise from non-subject merchandise for each month of the POR. Sales within the POR were added and totaled to demonstrate quantity and value of sales. We noted that the sales ledger is organized by salesperson. There was only one salesperson involved in the sale of subject merchandise. We noted no discrepancies. The worksheets examined at verification are contained in verification exhibit 4. The income statements from FY 2000 and 2001 are contained in verification exhibit 5 . . . We noted no discrepancies.

See the sales verification report at pages 6 and 7. In addition, we reviewed the company’s invoice listing and confirmed that no U.S. sales of persulfates (either reagents or non-reagents) were omitted from the U.S. sales listing. See the sales verification report at page 7. Based on these results, we confirmed that Ai Jian reported all sales of subject merchandise during the POR. Accordingly, because Ai Jian complied with all requests for information in a timely manner and we confirmed the validity of this information at verification, we find that there is no basis to reject Ai Jian’s response in this administrative review.

Finally, regarding the petitioner’s request that we independently confirm our verification findings with the U.S. Customs Service, we disagree that such an action is either necessary or appropriate. We thoroughly examined Ai Jian’s sales records at verification and found no evidence that the company

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<sup>4</sup> In making this argument, the petitioner assumed that the Department’s verifiers were unaware that reagent persulfates were included in the scope of the antidumping duty order. This assumption is not correct.

exported reagent persulfates to the United States during the POR. Based on our thorough review, we are satisfied that Ai Jian completely reported all sales of subject merchandise. Therefore, we have relied on Ai Jian's reported information for purposes of the final results.

Comment 3:    *Ocean Freight*

For purposes of the preliminary results, the Department valued Ai Jian's ocean freight during the POR using the actual expenses reported by the respondent, based on a finding that the freight services in question were provided by a market economy supplier and paid for in a market economy currency. The petitioner argues that the Department should not rely on Ai Jian's reported ocean freight expenses because Ai Jian was unable to provide adequate documentation to demonstrate that payment was actually made in a market-economy currency.

Specifically, the petitioner alleges that Ai Jian failed to link the ocean freight invoices contained in the questionnaire response to relevant payment documentation. Rather, the petitioner asserts that Ai Jian merely provided "internal payment advices," and that it never demonstrated that deposits were made into the shipper's bank account, that there were any debits to Ai Jian's accounts, or that the amounts paid were consistent with the invoices.

The petitioner further argues that Ai Jian failed to demonstrate at verification the reliability of its reported ocean freight expenses. Specifically, the petitioner claims that, because the amount shown on one invoice selected for verification differed significantly from Ai Jian's reported value, the entirety of Ai Jian's reported freight expenses are not reliable. The petitioner contends that in a previous segment of this proceeding, the Department rejected Ai Jian's claims that payments for ocean freight were made in a market economy currency and to a market economy carrier. Instead, the petitioner notes that the Department valued ocean freight using rates obtained in Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 64 FR 69503, 69507 (Dec. 13, 1999) (*Sebacic Acid*). See Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Administrative Review, 65 FR 18963 (Apr. 10, 2000), and that, given the similar circumstances, it should do so again here.

The petitioner contends that, if the Department continues to use the ocean freight expenses reported by Ai Jian, the Department should adjust the submitted freight amount. The petitioner claims that, at verification, the Department selected two sales from Ai Jian's sales listing to trace the reported per-unit freight expenses to source documents. In one of those two traces, the petitioner notes that the Department discovered a discrepancy between the reported freight charge and the actual freight charged to Ai Jian. The petitioner argues that, given the fact that a discrepancy was discovered for one of the two freight traces conducted at verification, the Department must adjust all remaining invoice charges upward by the difference noted at verification. Alternatively, at a minimum, the petitioner argues that the results of verification require the conclusion that at least fifty percent of the reported freight charges are underreported and should be upwardly adjusted by the amount in question.



Ai Jian argues that the Department should continue to value its ocean freight expenses using the amounts reported in its U.S. sales listing. Ai Jian maintains that it provided sufficient documentation at verification to substantiate that ocean freight services were provided by a market economy supplier and paid for in a market economy currency. Ai Jian disagrees with the petitioner's characterization of the documentation provided as "internal payment advices" and claims that these documents represent reliable proof of payment as recorded in Ai Jian's accounting system in the normal course of business. Specifically, Ai Jian notes that it provided bank advices, payment receipts, and bank statements at verification and, after reviewing these documents, the Department concluded that "international freight services were provided by a market-economy carrier and were paid in U.S. dollars." See the sales verification report at page 8.

Department's Position:

In accordance with 19 CFR 351.408(c)(1), in non-market economy (NME) cases the Department values inputs which a respondent purchased from a market economy supplier in a market economy currency using the actual price paid by the respondent. In this case, we examined this issue at verification and found that, for every transaction examined, Ai Jian purchased freight from a market economy carrier and paid for it in a market economy currency. See the sales verification report at page 8.

Regarding the petitioner's claim that these expenses were shown to be unreliable at verification, we disagree. We examined several ocean freight transactions at verification in addition to the two cited by the petitioner.<sup>5</sup> We note that, while we did find a discrepancy with one of these transactions, the discrepancy was minor (i.e., the actual value was understated only by approximately 10 percent) and appeared to be the result of a clerical error. Therefore, because we found no significant or pervasive errors at verification in the ocean freight data reported by Ai Jian, we have continued to accept it (corrected for our findings at verification) for purposes of the final results.

Comment 4:    *Marine Insurance*

For the preliminary results, we valued marine insurance using a price quote obtained by the Department from a U.S. provider of marine insurance. The petitioner contends that the Department correctly valued marine insurance using this surrogate value because Ai Jian failed to demonstrate that it purchased marine insurance from a market economy provider and paid for it in a market economy currency.

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<sup>5</sup> Although the verification report only specifically identifies two transactions, the documents related to an additional three are contained in sales verification exhibits 8B, 8C, and 8G. In addition, documents relating to the remaining two transactions are contained in sales verification exhibits 11A and 11B. We performed the same procedures at verification with respect to all five of these transactions.

Ai Jian did not comment on this issue.

Department's Position:

For the final results of this review, we have continued to value marine insurance using a price quote obtained from the U.S. company in question because Ai Jian failed to demonstrate that it used a market economy provider during the POR and paid for these services in a market economy currency.

Comment 5:    *Steam, Coal and Water Consumption*

The petitioner asserts that the Department found at verification that Ai Jian's reported steam, coal and water consumption figures do not reflect actual production experience during the POR, but instead were based on past production experience. See factors verification report at 9 and 10. The petitioner concludes that this verification failure requires the application of partial adverse facts available for these factors of production. The petitioner does not indicate what constitutes the appropriate facts available, however.

Ai Jian contends that the petitioner misunderstands the Department's verification report and that the Department verified the actual amounts of steam, coal, and water consumed by Ai Jian in the production of the subject merchandise during the POR. Ai Jian maintains that the reference to "past" usage rates refers to usage rates during the POR, which was in the past at the time of the verification. Accordingly, Ai Jian maintains that the Department should continue to use the data for steam, coal, and water consumption for purposes of calculating the final dumping margin in this review, because it found no discrepancies in reported data at verification.

Department's Position:

We disagree with the petitioner's claim that we should apply partial facts available for Ai Jian's reported steam, coal, or water consumption figures. As an initial matter, we note that we have classified steam as part of FOH, and as a consequence we have not valued it separately in our calculation of normal value. Therefore, any issues related to the amount of steam consumed during the POR are not relevant to the final results, and we have not addressed them here.

Regarding coal and water, we reviewed Ai Jian's calculation methodology at verification. We found that this calculation methodology contained two parts: 1) the determination of the actual amount of

each input used during each month of the POR; and 2) the allocation of these actual amounts to specific product lines using ratios developed prior to the POR.<sup>6</sup> See the factors verification report at page 9.

We disagree with the petitioner that the reported consumption figures for either coal or water are based on pre-POR production. At verification, we traced the reported figures to actual invoices issued during the POR, as well as to the company's POR inventory and purchase ledgers. See the factors verification report at pages 9 and 10. Based on these procedures, we confirmed that Ai Jian accurately reported the total quantity of coal and water consumed in its production operations during the POR (i.e., part one above).

Regarding Ai Jian's allocation of this total to the various products produced during the POR (i.e., part two above), we agree that Ai Jian's allocation ratios were based on past experience. However, we found no evidence at verification that these ratios were in any way distortive or that they improperly shifted consumption of either water or coal to the production of "non-subject" products.<sup>7</sup> Indeed, we found that Ai Jian used these ratios to allocate costs to specific products in the ordinary course of business. Because: 1) the record does not indicate that these ratios are unrepresentative of Ai Jian's POR production experience; and 2) Ai Jian relies on these ratios to determine product-specific costs in its normal books and records, we have accepted them for purposes of the final results.<sup>8</sup> Therefore, we find that there is no basis to apply partial facts available for Ai Jian's coal or water consumption in calculating its final dumping margin.

Comment 6:    *Use of Indian Data to Value Wood Pallets*

In this case, we have three sources of data to value wood pallets: 1) 1998 Indonesian import statistics; 2) Indian import statistics covering the months April 2000 through February 2001 (placed on the record by the petitioner in its November 30, 2001, surrogate value submission); and 3) Indian import statistics covering the POR (placed on the record by the Department in December 2002).<sup>9</sup>

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<sup>6</sup> These formulas were referenced in the verification report as "past production experience." See factors verification report at pages 9 and 10.

<sup>7</sup> Specifically, the persulfates products exported to the United States included ammonium, potassium, and sodium persulfates (termed in the verification report as "subject merchandise"), while products sold to other markets included reagent potassium persulfates and reagent ammonium persulfates (termed as "non-subject merchandise").

<sup>8</sup> Contrary to the petitioner's argument, the fact that these ratios were calculated using pre-POR data does not in and of itself render the ratios unreliable.

<sup>9</sup> Because this latter data constitutes new factual information, we allowed parties ten days to comment on it. Although Ai Jian submitted a letter reiterating the arguments presented in its rebuttal

In the preliminary results, we relied upon Indonesian import statistics from 1998 to value wood pallets, rather than using the Indian import data noted in item 2 above. The petitioner contends that the Department's decision to use Indonesian data was not only inadequately explained, but it was also inconsistent with a recent decision involving a virtually identical period of review. See Bulk Aspirin from the People's Republic of China: Preliminary Results of Antidumping Administrative Review and Changed Circumstances Review, 67 FR 51167, 51170 (Aug. 7, 2002) (Bulk Aspirin) (where the Department valued wood pallets using Indian import statistics).<sup>10</sup> The petitioner contends that, because the Indian import statistics are contemporaneous with the POR, whereas the Indonesian import statistics are not, use of the Indian import statistics obviates the need to adjust this data for inflation. Thus, the petitioner argues that it is more appropriate to use Indian import data that are contemporaneous with the POR than dated Indonesian data to value wood pallets for the final results.

Ai Jian argues that the Department correctly used the Indonesian import data to value wood pallets. Ai Jian notes that in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part, 66 FR 1953, 1955 (Jan. 10, 2001) (TRBs XI) the Department determined that Indian import statistics were aberrational. Ai Jian also notes that the decision in Bulk Aspirin cited by the petitioner only pertains to the preliminary results of that proceeding, and thus does not represent the Department's final determination on that issue. As such, Ai Jian contends that the Department's preliminary decision in Bulk Aspirin does not provide an appropriate basis for the Department to reverse its practice in this proceeding. Additionally, because the decision in Bulk Aspirin is a preliminary one, Ai Jian contends that the Department may, in fact, change its mind in Bulk Aspirin and not use the Indian import statistics for pallets in the final calculations of that review.

In any event, Ai Jian contends that the Indian import statistics are not reported in a quantity that can be used for the purposes of calculating a surrogate value. Specifically, Ai Jian notes that the Indian import data are reported in "NO" or units, whereas its factor data is reported in kilograms. Ai Jian maintains that, because no party to this proceeding has provided any evidence that would allow for the conversion of "NO" or units into kilograms, the Department should continue to use Indonesian import data to value wood pallets as it did in the preliminary results.

#### Department's Position:

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brief (see below), we received no comments on the quality of the data itself.

<sup>10</sup> The data used in Bulk Aspirin covered the time period April 2000 through March 2001 and was included in the petitioner's original case brief. However, because this information was new factual information that was untimely filed, we removed it from the record of this case. Nonetheless, as noted above, we subsequently placed this data on the record ourselves.

In valuing the factors of production in a nonmarket economy case, the Department must use the best available information. See section 773(c)(1) of the Tariff Act of 1930, as amended (the Act). For purposes of selecting surrogate values, the Department chooses the data that represent the best available information on a case-by-case basis. In this case, we have two viable options for valuing wood pallets: 1) 1998 Indonesian data (stated in Rupias per kilogram); and 2) Indian data covering the POR (stated in Rupees per pallet).<sup>11</sup> Both sets of data were placed on the record in a timely manner - the former by Ai Jian and the latter by the Department in December 2002.

For the preliminary results, we valued wood pallets using the 1998 Indonesian data. At that time, we were unable to consider using the Indian data provided by the petitioner because: 1) this data was stated on a per-pallet basis and Ai Jian's reported factor information was stated on a per-kilogram basis; and 2) we were unaware of a way of converting the per-pallet data to a per-kilogram value (or vice versa). Therefore, we reviewed the per-kilogram data available to value pallets in the most recently completed segment of this proceeding and determined that the Indian import statistics for that segment (which were stated on a per-kilogram basis) were aberrational and thus were unreliable as a surrogate value. See memorandum from Gregory Kalbaugh to the File entitled: "Preliminary Valuation of Factors of Production," dated July 31, 2002 (prelim factor values memo) at pages 5 and 6. See also TRBs XI at Comment 10.

For the final results of this review, we have reconsidered our finding that the POR Indian import statistics on the record of this proceeding are unuseable because they could not be converted from a per-pallet to a per-kilogram basis. In Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1997-1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review, 64 FR 61837 (Nov. 15, 1999) (TRBs X), the Department found that a pallet weighs approximately ten kilograms. Because no information has been placed on the record to contradict this finding, we have used the TRBs X conversion factor as a reasonable method of converting numbers of pallets to kilograms, which now permits us to apply the Indian surrogate value to the reported factor information.

We disagree with Ai Jian that the fact that the Department found the 1998 Indian import statistics used to be aberrational in TRBs XI requires a finding here that the 2000-2001 Indian import statistics are similarly unreliable. We find no reason to conclude that the Indian import statistics are unreliable in general, but rather merely that they could not be relied on for the specific time period examined in TRBs

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<sup>11</sup> We note that the petitioner submitted Indian data covering the period April 2000 through February 2001 in its November 2001 surrogate value submission. Because the data placed on the record in December 2002 is from the same source but is coincident with the POR, we have considered this data instead of the data contained in the petitioner's submission.

XI. In examining the POR Indian import statistics, we find that the data is not aberrational.<sup>12</sup> Indeed, we have relied on these statistics in other proceedings. See, e.g., Bulk Aspirin<sup>13</sup> and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of New Shipper Reviews, 67 FR 10665 (Mar. 8, 2002) and accompanying decision memorandum at Comment 3; Heavy Forged Hand Tools From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 67 FR 57789 (Sept. 12, 2002).

In choosing among the available information, it is the Department's practice to select surrogate values that are from the primary surrogate country and contemporaneous with the POR. See TRBs XI, 64 FR at 61839. In this case, India is our primary surrogate country. Therefore, because we find that the Indian import statistics for wood pallets are: 1) neither aberrational nor otherwise unreliable, and 2) contemporaneous with the POR (unlike the Indonesian import statistics), we have used these statistics to value wood pallets for purposes of the final results.

Comment 7: Packing Labor

According to the petitioner, the factors verification report indicates that Ai Jian determined the number of hours required to pack one ton of subject merchandise during the POR using a time and motion study conducted in 1995 and 1996. See the factors verification report at page 7. The petitioner contends that at verification the Department requested that Ai Jian substantiate these figures using data from 2000 and 2001, but it was unable to do so. Therefore, the petitioner maintains that the Department should reject the reported data and instead apply partial facts available for this factor of production. The petitioner does not indicate what constitutes the appropriate facts available.

Ai Jian disagrees that it determined its packing labor hours using a time and motion study. Rather, Ai Jian maintains that it reported the total actual hours incurred and that it merely used the time and motion

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<sup>12</sup> In TRBs XI, the Indian import statistics represented prices that were as much as 2400 percent higher than either the Indonesian or U.S. import data. See TRB XI at Comment 10. However, in this review, we find that the 2000-2001 Indian import statistics are comparable to both Indonesian and U.S. import statistics when converted from a per-unit value to a per-kilogram value. Specifically, the Indian import statistics for the POR show a per-kilogram price of \$0.83, whereas the U.S. import price (used as a benchmark) for the period January through December 2000 shows a price of \$0.70 per kilogram. Therefore, for the final results of this review, we find that the Indian data is not aberrational.

<sup>13</sup> We disagree with Ai Jian's argument that Bulk Aspirin does not represent reliable precedent on this issue because the Department's determination in that case is only preliminary. We note that we have independently reached the same conclusion as in Bulk Aspirin on the reliability of the data in question.

study as a benchmark to demonstrate the reasonableness of this data. Moreover, Ai Jian asserts that, while the Department found minor clerical discrepancies at verification in the reported figures, the verification report contains nothing to suggest that this information was either incorrect as a whole or unreasonable. Therefore, Ai Jian argues that the Department should continue to use the reported packing labor data, adjusted for minor errors discovered at verification, in the calculation of its final dumping margin.

Department's Position:

We disagree with petitioner that the use of partial facts available is appropriate to determine Ai Jian's packing labor hours. At verification, we reviewed the methodology that Ai Jian used to report the number of labor hours used to pack subject merchandise during the POR. We found that Ai Jian cumulated the number of actual packing hours for each product on a monthly basis and reported these figures in its questionnaire response.<sup>14</sup> See the factors verification report at page 7. Ai Jian then aggregated these monthly figures into a POR total amount, by product, and then divided the resulting numbers by the total POR production of each product. See factors verification exhibit W-13.

At verification, we reviewed the reported data and noted only minor discrepancies in Ai Jian's calculations. Moreover, because Ai Jian based these calculations on its actual labor hours employed during the POR, we find that Ai Jian's methodology is reasonable. Consequently, for the final results of this review, we have continued to base packing labor hours on the actual, verified data in calculating Ai Jian's final dumping margin.

Comment 8:    *Whether the Financial Statements of Calibre and Gujarat are Publicly Available Information*

For the preliminary results, we valued FOH, SG&A expenses, and profit using the financial statements of two Indian persulfates producers, Calibre and Gujarat. The petitioner argues that, because neither Calibre nor Gujarat is a public company, their financial statements are proprietary information. As a consequence, the petitioner contends that the Department may not rely upon them in this proceeding.

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<sup>14</sup> We note that the verification report did not accurately describe the methodology used to compute the number of reported hours. Upon review of the data contained on the record, we agree with Ai Jian that the figures contained in the response represent the actual number of hours, rather than a theoretical number derived from a prior time and motion study. Specifically, we find that the number of hours per metric ton reflected on the worksheet in Ai Jian's November 29, 2001, submission are derived from actual data, because these numbers differ from the standard number of hours per ton in the time and motion study. Had Ai Jian used the time and motion study as the basis for the number of hours per metric ton, these figures would have been identical.

The petitioner contends that, pursuant to 19 CFR 351.408(c)(4), the Department will normally use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country to value FOH, SG&A, and profit. The petitioner concedes that Calibre's and Gujarat's financial statements were made available under an Indian statute requiring companies to file financial statements with India's Registrar of Companies. Nonetheless, the petitioner asserts that, because these companies are private companies, their financial information is non-public.

Specifically, the petitioner claims that, according to the Indian Companies Act of 1956, no person other than a member of the company is entitled to inspect or obtain copies of the profit and loss account for a private company which is not a subsidiary of a public company. The petitioner concludes that, because public disclosure of this financial information is prohibited by Indian statute, the financial information of both companies is proprietary. The petitioner asserts that this conclusion is bolstered by the facts that: 1) Calibre refused to provide its financial statements to the petitioner on the grounds that the information is confidential; and 2) Gujarat may have inadvertently, not willingly, filed its financial information with the Indian Registrar. The petitioner speculates with regard to Gujarat in particular that the respondent's inability to provide Gujarat's most recent financial statements proves that the Gujarat financials on the record do not constitute publicly available information.

According to the petitioner, the fact that Calibre's and Gujarat's financial statements are not open to public scrutiny renders them unreliable. The petitioner implies that the presentation of the data in these financial statements may be skewed (even though it acknowledges that Gujarat's financial statements are audited) because they were prepared for a private audience with the common interest of showing a low-cost, profitable enterprise. The petitioner maintains that the Department's regulations require the use of non-proprietary information precisely to avoid this type of distortion.

The petitioner contends that, when the Department is unable to locate financial data from a publicly-traded producer of identical merchandise, the Department may rely on financial data from a publicly-traded producer of comparable merchandise. See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 67 FR 51822, 51827 (Aug. 9, 2002). Therefore, the petitioner contends that the Department should value FOH, SG&A, and profit using the financial data of National Peroxide, Ltd. (National Peroxide) as it did in the less-than-fair-value (LTFV) investigation in this proceeding. 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) (Persulfates Investigation Final). According to the petitioner, National Peroxide's data is preferable for the additional reason that it more closely corresponds to the POR than does Calibre's or Gujarat's. Specifically, the petitioner notes that National Peroxide's financial statements cover the period April 1, 2000, through March 31, 2001, whereas the Calibre and Gujarat financials are for the period April 1, 1999, through March 31, 2000.

Ai Jian contends that the Department correctly treated Calibre's and Gujarat's financial statements as publicly-available information for the preliminary results, despite the fact that neither company is a



public corporation. See Preliminary Results, 67 FR at 50869. As a threshold matter, Ai Jian notes that this information is “publicly available” because it is available in the Department’s public central records unit. According to Ai Jian, the Department routinely treats information as public once it has been placed on the public record, regardless of whether a company requests confidential treatment for such information.<sup>15</sup> Therefore, because Ai Jian placed this information on the public record of this case, Ai Jian contends that it is by definition available to the public.

In any event, Ai Jian notes that the Department requires that the financial statements of a private company be submitted as public if the private company has made such financial statements available to the public. Ai Jian notes that it obtained Gujarat’s financial statements from a public source, the Indian Registrar of Companies, simply by paying the requisite filing fee. Thus, Ai Jian asserts that there is no basis for treating Gujarat’s data as proprietary.

Ai Jian contends that the petitioner’s argument stems from a basic misunderstanding of the Indian Companies Act. Ai Jian notes that, under this law, Indian companies are required to file with the Registrar of Companies copies of their annual accounts, including their balance sheets and profit and loss statements. Ai Jian notes, while profit and loss statements of private companies may be eligible for confidential treatment under the Indian Companies Act, the balance sheets of these companies are always publicly available information. Ai Jian points out, however, that if a private company files both its balance sheet and profit and loss statement together - either deliberately or through inadvertence - Indian law provides that the confidential treatment of the profit and loss statement is waived and it will be released to the public on request.

Moreover, Ai Jian disagrees with the petitioner’s assertion that, because both Calibre and Gujarat are privately held, their financial statements are inherently less reliable. Ai Jian contends that the petitioner not only ignores the fact that the financial statements of both companies are audited, but it also offers no factual basis for its claim that the financial statements of publicly-traded companies are more accurate. Indeed, Ai Jian maintains that this assertion has been disproven by the large number of recent and highly-publicized cases involving fraudulent financial practices of publicly-traded companies (e.g., Enron).

Finally, Ai Jian states that Calibre’s and Gujarat’s financial statements cover the fiscal year that ends in March 2000, which is only four months prior to the POR, and are equally contemporaneous. See Preliminary Results, 67 FR at 50869. Consequently, Ai Jian contends that the Department should continue to rely on the financial statements of both Calibre and Gujarat in order to value FOH, SG&A, and profit for the final results of this review.

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<sup>15</sup> For example, Ai Jian notes that the Department treats all information in public versions of proprietary documents as public information, even if that information was placed in the public version by error.

Department's Position:

In the Preliminary Results, we stated:

We note that the financial statements of Gujarat and Calibre indicate that both produce persulfates and both are equally contemporaneous (*i.e.*, these financial statements cover the fiscal period April 1999 through March 2000). We disagree with the petitioner's argument that Gujarat's financial statements are not publicly available because Gujarat is not a public corporation. Gujarat's financial statements were submitted as public information. In addition, we note that these statements were audited. Therefore, for these preliminary results, we have relied upon the financial statements of both Gujarat and Calibre in order to calculate the surrogate factory overhead, SG&A, and profit ratios.

See the Preliminary Results, 67 FR at 50869.

Pursuant to 19 CFR 351.105(b)(1), public information consists of factual information of a type that has been published or otherwise made available to the public by the person submitting it. In this case, Ai Jian submitted on the record of this review financial information from both Calibre and Gujarat. While Indian law may allow privately-held companies to treat their profit and loss statements as confidential if they are filed separately with the Registrar of Companies, we note that such treatment is waived if the profit and loss statements are filed together with the companies' balance sheets. See Ai Jian's February 13, 2002, submission at pages 6 and 7.

In this case, the financial statements of both Calibre and Gujarat are in the public realm because the information was submitted to the Public Registrar in India.<sup>16</sup> Therefore, we continue to find that the financial information of both Calibre and Gujarat is publicly available. Accordingly, we find that these statements can be used to value FOH, SG&A, and profit for the final results of this review.

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<sup>16</sup> We disagree with the petitioner that Calibre's refusal to provide its most recent financial statements to the petitioner proves that the financial statements on the public record of this case should be treated as confidential. First, we note that Calibre is entitled to withhold its financial statements from the public under Indian law; the fact that it may do so in one year is in no way relevant to the issue before us. Rather, the relevant fact is that the financial statements for the year in question are available to the public. Second, based on the correspondence attached to the petitioner's case brief, it appears that Calibre believed that the person making the inquiry to be a potential competitor, and thus we find it not only unsurprising, but also entirely reasonable, that the company refused to release any financial information to the petitioner.

We disagree with the petitioner that financial statements of public corporations are inherently more reliable than those of private companies, especially in cases where the financial statements are audited by public accounting firms. Such a conclusion would only be valid if international auditing principles permitted the application of different (and lower) auditing standards for privately-held companies. Because this simply is not true, this conclusion provides no legitimate basis to reject the financial statements of Calibre and Gujarat.

Finally, we agree with the petitioner that National Peroxide's financial statements are more contemporaneous to the POR than Calibre's and Gujarat's. However, this advantage in contemporaneity does not overcome the Department's clear preference for selecting surrogate value sources that are producers of identical merchandise, provided that the surrogate data is not distorted or otherwise unreliable.<sup>17</sup> Because there is no evidence on the record that the financial statements of either Calibre or Gujarat are distorted or otherwise unreliable, we have continued to consider them for purposes of our final analysis. For further discussion, see Comments 9 and 10, below.

Comment 9:    *Whether Gujarat's Financial Statements Are an Appropriate Source for FOH, SG&A, and Profit*

The petitioner argues that the Department should not use the information from the financial statements of Gujarat to calculate surrogate values for FOH, SG&A, and profit for Ai Jian because Gujarat derives a significant proportion of its revenue from resales. According to the petitioner, this alone makes Gujarat's experience unrepresentative of a company engaged in the sale of its own production, such as AJ Works (i.e., Ai Jian's persulfates supplier). Specifically, the petitioner contends that Gujarat's purchases for resale accounted for 32 percent of its total cost of materials. Although the petitioner acknowledges that it is common practice for manufacturers to purchase a small quantity of finished and semi-finished goods to meet their customers' needs, the petitioner maintains that purchased goods as a percentage of total cost of materials is normally much lower.

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<sup>17</sup> Although the Department generally prefers data which is more contemporaneous with the POR, contemporaneity is not the only criterion taken into consideration. See Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 65 FR 49537 (Aug. 14, 2000). The Department's NME practice establishes a preference for selecting surrogate value sources that are producers of identical merchandise. See Persulfates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 66 FR 42628 (Aug. 14, 2001) and accompanying decision memorandum at Comment 5 (Persulfates Third Review Final); see also Antidumping Duties; Countervailing Duties; Notice of Proposed Rule Making and Request for Public Comments, 61 FR 7308, 7342 (Feb. 27, 1996). Therefore, in accordance with our practice, we consider the financial statements of identical producers to be the best available information, notwithstanding the fact that a comparable producer's financial statements are more contemporaneous.

The petitioner contends that, in selecting the source of surrogate values and in adjusting surrogate values, the Department must exercise its discretion in a way that ensures the values ultimately applied most accurately reflect the actual operations of an NME producer. See section 773(c)(1)(B) of the Act. In Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China, 63 FR 72255, 72265 (Dec. 31, 1998) (Mushrooms from the PRC), the petitioner notes, the Department rejected the financial statements of one mushroom producer as unrepresentative because the company's cost of materials included items other than raw materials. As a result, the petitioner maintains, the Department was unable to calculate total materials cost consistent with its methodology designed to properly calculate FOH, SG&A, and profit ratios from the company's financial statements. Thus, the petitioner asserts that the Department exercised its discretion to disregard financial statements of producers of identical merchandise in the surrogate country if it determines that these financial statements do not provide the most representative information regarding the relevant surrogate values.

In this case, the petitioner contends that the FOH calculated using Gujarat's financial statements is distorted by the inclusion of purchased materials in the denominator of the calculation. Specifically, the petitioner maintains that Gujarat did not incur any factory overhead expenses relating to purchased material, and as a consequence factory overhead expenses are being attributed to merchandise that has no relation to manufacturing operations. The petitioner also contends that, similarly, the SG&A and profit ratios calculated from Gujarat's financial statements are distorted because cost of materials is the largest component of the denominator used to allocate those values. Therefore, the petitioner argues that the Department should reject Gujarat's financial statements for purposes of valuing FOH, SG&A, and profit. In the alternative, the petitioner argues that the Department should continue to value FOH using the adjusted FOH of Calibre or National Peroxide because this information is more reflective of the production experience of AJ Works during the POR.

The petitioner contends that, if the Department continues to use Gujarat's financial statements to calculate FOH, it should adjust the calculations to allocate these expenses over the cost of materials, consistent with the calculation methodology applied to Calibre. The petitioner notes that, in the preliminary results, the Department calculated Gujarat's factory overhead expenses as a percentage of the sum of the cost of materials, energy, labor, and freight, thereby understating Gujarat's overhead ratio. The petitioner argues that the Department should correct this error by dividing Gujarat's factory overhead expenses by the sum of Gujarat's raw material costs.

Ai Jian disagrees that Gujarat's production experience and operations are not representative of Ai Jian's own experience. According to Ai Jian, the Department confirmed at verification that, like Gujarat, it both produces persulfates and is involved in the resale of finished goods. See the sales verification report at page 6. Ai Jian concludes that, to the extent that Gujarat's financial statement includes proceeds from resales, Gujarat's financial statement more accurately reflects the actual experience of Ai Jian.

Ai Jian also disagrees that Mushrooms from the PRC applies in this case. Ai Jian notes that, in Mushrooms from the PRC, the Department used the financial statements of one producer of identical merchandise while rejecting the financial statements of two other producers of identical merchandise in its selection of surrogate values for FOH, SG&A, and profit. Ai Jian points out that, in contrast, here the petitioner is asking the Department to reject the financial statements of a producer of persulfates in favor of a producer of hydrogen peroxide. Ai Jian asserts that choosing a producer of comparable merchandise over a producer of identical merchandise would be contrary to law and the Department's practice. Therefore, Ai Jian argues that the Department should continue to rely on the financial statements of Gujarat for valuing FOH, SG&A, and profit for the final results of this review.

Department's Position:

In accordance with 19 CFR 351.408(c)(4), the Department normally values FOH, SG&A, and profit using "non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country." Where there are multiple sources of such information on the record of a proceeding, the Department generally has a preference for data from producers of identical merchandise. (For further discussion, see Comment 8, above.) In addition, the Department may also consider the representativeness of the production experience of the surrogate producers in relation to the respondent's own experience. See, e.g., 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) and accompanying decision memorandum at Comment 4. We disagree with the petitioner that the facts in Mushrooms from the PRC are similar to those present here. In Mushrooms from the PRC, the Department did not rely on the financial statements of one producer of identical merchandise because the cost of materials for that producer included packing expenses. In that case, the Department was unable to break out these expenses from the denominator used to calculate the FOH. In contrast, here we are able to adjust the calculation of FOH to break out the cost of traded goods. (See below for further discussion.)

After analyzing the data on the record, we disagree with the petitioner that Gujarat's financial statements are not an appropriate source of surrogate value data in this proceeding. During Gujarat's 1999-2000 fiscal year, the majority of the company's business involved the production and sale of persulfates, with the remainder related to the purchase and resale of other products. Furthermore, as Ai Jian points out, this situation is similar to Ai Jian's own experience, in that Ai Jian's factory produces only persulfates and Ai Jian purchases material for resale. See the sales verification report at page 6. Contrary to the petitioner's assertions, the fact that Gujarat purchases material for resale does not automatically render its financial statements unuseable.

Regarding FOH, we agree with the petitioner that we should not allocate any of the surrogate FOH to goods purchased for resale because no FOH expenses would be incurred with respect these goods. See Redetermination Pursuant to Court Remand: Rhodia, Inc. v. United States and Jilin Pharmaceutical Co. Ltd.; Shandong Xinhua Pharmaceutical Factory, LTD., Consolidated Court No. 00-08-00407

(Mar. 29, 2002) where the Department corrected its calculation of the overhead ratio by removing traded goods from the denominator. Consequently, we have corrected our calculation to remove traded goods from the denominator of the FOH ratio.

However, we disagree with the petitioner that we should make the additional adjustment of allocating Gujarat's FOH expenses over its cost of materials, consistent with the calculation methodology applied to Calibre. For the preliminary results, we calculated Gujarat's FOH ratio in accordance with the Department's standard methodology (i.e., by dividing total FOH by total materials, energy, and labor costs). See Persulfates First Review Final, 64 FR at 69498. In contrast, our allocation methodology for Calibre's FOH expenses represented a departure from the "standard" methodology because raw materials costs were the only costs shown in Calibre's financial statements which were specific to persulfates.<sup>18</sup> Because similar circumstances do not exist for Gujarat, we have continued to divide Gujarat's total overhead expenses by total materials, energy, and labor costs (less the cost of traded goods), in accordance with the Department's standard methodology.

Regarding SG&A, we find that the magnitude of Gujarat's resales is not of significant concern in this case when calculating the SG&A ratio. Gujarat's cost of sales is primarily composed of sales of self-produced persulfates. Moreover, it has long been the Department's practice to treat general expenses as costs that relate to the company's overall operations, rather than to the operations of a division within the company or to a single product line (i.e., without differentiating between products manufactured by a company and those purchased and resold). For this reason, our long-standing practice in both market- and non-market economy cases with respect to allocating general expenses to individual products is to calculate a rate by dividing the company's general expenses by its total cost of sales, as reported in the respondent's audited financial statements. See the Department's standard Section D Cost of Production and Constructed Value questionnaire at page D-16. See also, e.g., Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Final Results Antidumping Duty Administrative Review, 66 FR 11555 (Feb. 26, 2001) and accompanying decision memorandum at Comment 5 (LNPP from Japan); Final Determinations of Sales at Less Than Fair Value: Certain Hot- Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products From Japan, 58 FR 37154, 37166 (July 9, 1993); and Notice of Final Determination of Sales at Less Than Fair

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<sup>18</sup> As explained in our preliminary results, we determined that it was more appropriate to allocate Calibre's FOH expenses to each of the company's specific product lines because of the differing cost structures between Calibre's production of persulfates and other products. In order to calculate Calibre's FOH ratio, we expressed the persulfate-specific FOH expenses as a percentage of the raw materials costs for persulfates. We were unable to include energy and labor in the denominator of this calculation because Calibre's energy and labor costs were not broken down in its financial statements by product line (unlike the cost of raw materials).

Value: Stainless Steel Wire Rod From Sweden, 63 FR 40449, 40459 (July 29, 1998). Specifically, in LNPP from Japan, we stated the following:

Neither the SAA nor the Act prescribes a specific method for allocating G&A expenses to specific products. We further note that U.S. GAAP does not address the allocation of period costs such as G&A to individual products. When a statute is silent or ambiguous on the manner in which the Department must perform its calculations, the determination of a reasonable and appropriate method is left to the discretion of the Department. Thus, the Department has, over time, developed a consistent and predictable practice for calculating and allocating G&A expenses. This consistent and predictable method is to calculate the rate based on the company-wide G&A costs incurred by the producing company allocated over the producing company's company-wide cost of sales and not on a divisional or product line basis. This practice is identified in sections D & E of the Department's standard antidumping questionnaire, which instructs that the G&A expense rate should be calculated as the ratio of total company-wide G&A expenses divided by cost of goods sold.

Consequently, because Gujarat produced only persulfates during its fiscal year – making its experience representative of that of a persulfates producer – and made purchases for resale – approximating the NME respondent's actual experience, we have continued to use Gujarat's financial statements for calculating surrogate FOH, SG&A, and profit ratios for the final results of this review.

Finally, we disagree with the petitioner's contention that we should calculate the surrogate FOH and profit ratios based on Calibre's or National Peroxide's financial statements, while using Gujarat's data (in part) to calculate SG&A. Gujarat's financial statements provide the best information for all three ratios. Furthermore, a company's profit amount is a function of its total expenses. The use of Calibre's or National Peroxide's financial data for FOH, while using a different source for SG&A, would result in our applying a profit ratio that would bear no relationship to the SG&A ratio.<sup>19</sup> In addition, we find that this approach would increase the potential for double-counting or under-counting of expenses because different companies may classify expenses differently. In any event, as noted above, we adjusted the calculation of Gujarat's FOH ratio to account for resales, and thus we believe that we have adequately addressed any concerns in this regard.

Comment 10: *Whether Calibre's Financial Statements Are an Appropriate Source for FOH, SG&A, and Profit*

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<sup>19</sup> We note that the Department's preference is to value FOH, SG&A, and profit using a single source where possible. Nonetheless, we recognize that, in cases where the preferred financial statements do not reflect a profit for a given period, we may use an alternative source for profit in accordance with our practice. See Silicomanganese from Brazil, Final Results of Antidumping Administrative Review, 62 FR 37877-37878 (July 15, 1997).

As noted in Comment 8, above, for purposes of the preliminary results we based the SG&A expense ratio in part on the experience of an Indian producer of persulfates, Calibre. The petitioner argues that, if the Department continues to use Calibre's information to value FOH and profit, it should not rely on this information to value SG&A. Instead, the petitioner contends that, while it is possible to cure the distortions in Calibre's financial statements for FOH, there is no methodology available that would allow the Department to cure distortions in Calibre's SG&A data.

The petitioner contends that Calibre's financial statements show that over 90 percent of the company's raw material costs are exclusively related to raw material costs for non-identical merchandise. The petitioner implies that, as a result, Calibre's cost of goods sold is primarily composed of costs related to the company's production of non-identical merchandise, causing the company's SG&A expenses improperly to be shifted away from persulfates. In order to demonstrate this, the petitioner provides an example in which it posits that, if labor, FOH, and SG&A costs are equal for two product lines, but material costs are higher for one, then the amount of SG&A allocated to the product line with the higher materials costs will be correspondingly higher. See the petitioner's case brief at pages 14 and 15.

According to the petitioner, the Department acknowledged the distortion in Calibre's financials with respect to valuing FOH and adjusted the data to eliminate it. See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 66 FR 18439, 18443 (Apr. 9, 2001) (Persulfates Third Review Prelim). However, the petitioner asserts that the Department is unable to remedy the distortion in calculating SG&A expenses, because there is no "cost driver" (as for FOH) that would enable the Department to allocate Calibre's SG&A expenses between persulfates and other products produced by the company. As a consequence, the petitioner concludes that Calibre's financial statements are an inaccurate and unreliable basis for calculating the SG&A ratio for persulfate production. Therefore, the petitioner contends that the Department must rely upon the financial data of National Peroxide, an Indian producer of comparable merchandise, to value SG&A for the final results of this review.<sup>20</sup>

The petitioner concedes that the Department prefers using producers of identical merchandise when selecting surrogate value sources but argues that the Department will not rely on producers of identical merchandise for surrogate values when the data is distorted or otherwise unreliable. See Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China, 66 FR 49345 (Sept. 27, 2001) (Granular Magnesium from the PRC). The petitioner maintains that National Peroxide's information is the most accurate surrogate data available and contends that the Department will use alternate data to derive surrogate values if the

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<sup>20</sup> According to the petitioner, if the Department prefers to rely on the financial statements from the same company to value FOH, SG&A, and profit, it should use the financial statements of National Peroxide for all of those valuations.



information is superior in terms of specificity, quality and contemporaneity. See Mushrooms from the PRC, 63 FR at 72265.

The petitioner notes that the Department relied on National Peroxide's SG&A expenses in a previous segment of this proceeding, finding that the capital outlay and production process for hydrogen peroxide closely resembled the production process for persulfates. See Persulfates Investigation Final, 62 FR at 27229. Moreover, the petitioner states that National Peroxide's financial statements are for the period April 1, 2000, through March 31, 2001, a period that is contemporaneous with the POR.

Ai Jian argues that the Department correctly based SG&A expenses on Calibre's financial statements. Ai Jian contends that the petitioner has not demonstrated that Calibre's data is either incomplete or distorted for purposes of calculating the surrogate SG&A expense ratio for the final results. Ai Jian notes that the Department addressed the identical issue in the Persulfates Third Review Final and rejected the petitioner's argument squarely in that segment of the proceeding. See Persulfates Third Review Final at Comment 5.

Ai Jian contends that, by admitting there is no cost driver to allocate Calibre's SG&A, the petitioner implicitly acknowledges that there is no valid basis to differentiate SG&A on a product-line basis. Moreover, Ai Jian maintains that the Department has a long-standing practice which recognizes that SG&A expenses are general in nature, and as such they cannot be differentiated by product; therefore, there is no support for the petitioner's argument that Calibre's SG&A expense ratio is unreliable. Finally, Ai Jian maintains that, to the extent that the Department would consider Calibre's data to be tainted by the production of non-identical merchandise, it must find that the use of National Peroxide's data is useless in its entirety because National Peroxide produces no persulfates at all.

In any event, Ai Jian contends that use of National Peroxide's information to value SG&A expenses is inappropriate in this case. Ai Jian argues that, not only does National Peroxide not produce persulfates, the Department has already explicitly rejected National Peroxide as an appropriate surrogate in previous segments of this proceeding because use of its financial data would distort the calculation of SG&A. See Persulfates Third Review Final at Comment 5.

Finally, Ai Jian agrees that the Department selects the surrogate values that are the best quality, the most specific, and the most contemporaneous, but it disagrees that National Peroxide's information satisfies these criteria. First, Ai Jian notes that the Department questioned the quality of National Peroxide's 1999-2000 financial statements in a previous segment of this review; moreover, Ai Jian asserts that the petitioner has not proven that National Peroxide's 2000-2001 statements are superior to those of Calibre. See Persulfates Third Review Final at Comment 5. Second, Ai Jian notes that National Peroxide's financial statements are not specific to the product at hand, given that National Peroxide does not produce persulfates. Finally, Ai Jian contends that, while National Peroxide's financial statements are contemporaneous with the POR, Calibre's financial statements are as well, given that they cover the fiscal year that ends in March 2000. Therefore, Ai Jian concludes that the

Department should continue to use Calibre's financial statements to value FOH, SG&A, and profit for the final results of this review.

Department's Position:

For the final results, we have not used Calibre's financial statements to value FOH, SG&A, or profit because we find that Gujarat's experience more closely approximates the production experience of the respondent in this case. See Comment 9, above. Nonetheless, we disagree with the petitioner that Calibre's financial data is unuseable merely because the company incurs different raw material costs on its various product lines. After examining the data in detail, we find that there is no basis to conclude that the data in Calibre's financial statements is distorted or otherwise unreliable and, thus, that these financial statements should not be accorded full consideration in this proceeding.

The petitioner's argument is premised on certain inaccurate assumptions. The first of these assumptions is that our FOH allocation methodology was chosen in order to "cure" certain distortions in Calibre's financial statements. The petitioner concludes that, in not allocating FOH over the company's total raw materials costs (as has been done in other NME cases), the Department recognized that the disparity in the materials costs among product lines is somehow distortive. The petitioner uses this assumption to posit that, because the cost of raw materials used to produce persulfates is distortively low, any allocation performed using the cost of materials will improperly shift costs away from persulfates. None of these assumptions is valid.<sup>21</sup>

Significantly, we do not concede that a distortion exists in Calibre's materials costs. In fact, we have no reason to believe that these costs are not an accurate reflection of the company's actual production experience. While we have characterized the materials costs incurred to produce persulfates as "low" and those costs incurred to produce other products as "high," we have never termed these costs as distortive. Indeed, we note that the types of distortions which would cause us to reject a company's financial statements are not present here. For example, the company did not experience anything unusual in its production process during its fiscal year (e.g., the start up of a new production line or facility or other events causing abnormally low production volumes)<sup>22</sup> nor did any extraordinary events occur (e.g., fires or floods that would resulted in long shut down periods or the replacement of expensive capital equipment). Rather, it appears that Calibre experienced normal production operations during the fiscal year in question.

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<sup>21</sup> Similarly, we find that the petitioner's example is also flawed. It is mathematically not possible to have two products with different cost of goods sold but the same absolute unit amount of SG&A costs under the Department's current SG&A allocation methodology. Moreover, we find no basis to presume that the SG&A costs should be equal in instances where the costs of two products differ.

<sup>22</sup> See, e.g., Granular Magnesium from the PRC at Comment 3.

Moreover, we disagree with the petitioner that our preferred method for allocating FOH should bear any relationship to our preferred method for calculating SG&A expenses. FOH costs are fundamentally different than SG&A costs, because FOH costs bear a direct relationship to the production activity of the company (and by extension to particular product lines).<sup>23</sup> In contrast, general expenses are costs that relate to the company's overall operations, rather than to the operations of a division within the company or to a single product line. For further discussion, see Comment 9, above.

The Department's NME practice establishes a preference for selecting surrogate value sources that are producers of identical merchandise, provided that the surrogate data is not distorted or otherwise unreliable. In this case, we have on the record the financial statements of two Indian producers of identical merchandise – Calibre and Gujarat – both of which cover the period April 1, 1999, through March 31, 2000. As noted above, we have concluded that the data of each of these companies is not distorted or otherwise unreliable.<sup>24</sup> However, in examining these financial statements for the final results, we find that Gujarat's experience more closely approximates the production experience of the respondent in this case because Gujarat produces only persulfates (like AJ Works). Therefore, we have used only Gujarat's data to calculate the FOH, SG&A, and profit ratios for purposes of the final results, in accordance with our practice. See Mushrooms from the PRC, 63 FR at 72265.

Comment 11: Adjustments to SG&A

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<sup>23</sup> In this review, the financial statements of Calibre indicate that, although it does produce other products, the majority of raw materials consumed in the production process are related to the production of persulfates. Therefore, in calculating FOH, we used a throughput methodology rather than allocating these costs over the total cost of raw materials. Under this methodology, we allocated FOH using the relative quantity of materials consumed in production, rather than the cost of these materials. Contrary to the petitioner's assertion, we did not select this methodology in order to correct a distortion in Calibre's data, but rather because it most rationally relates the costs under consideration (*i.e.*, primarily depreciation on production machinery) with the costs which are the subject of the allocation. Because the majority of the raw materials put into production related to persulfates, we assigned the majority of the costs to persulfates. We find that this methodology is a reasonable method of allocating processing costs across Calibre's product lines. We note that the only legitimate conclusion to be drawn from the use of this methodology is that more processing occurs for persulfates than for Calibre's other products.

<sup>24</sup> In contrast, we find that using National Peroxide's financial statements may introduce distortions into the calculation of the SG&A ratio due to the fact that the company incurred certain expenses related to property development. See, *e.g.*, note 5 on page 8 of National Peroxide's financial statements. Because these financial statements do not reflect a cost of sales related to property development, any expenses associated with this line of business would be borne by hydrogen peroxide and the company's other products, and, consequently, the SG&A ratio for hydrogen peroxide would be overstated by this amount.

The petitioner contends that if the Department continues to rely on both Calibre's and Gujarat's financial statements to calculate a surrogate SG&A ratio, the Department should make several adjustments to SG&A expenses to properly calculate this ratio. First, the petitioner argues that the Department should remove certain charges for "goods inward, outward, and loding (sic)" from the denominator used to calculate Gujarat's SG&A ratio. The petitioner argues that, because outgoing freight and loading expenses relate to shipping merchandise to the customer, they should not be included in the materials, labor, and energy costs used as the denominator for the SG&A ratio. The petitioner asserts that the lack of differentiation between incoming and outgoing freight expense requires that the Department exclude the expenses in their entirety.

Second, the petitioner argues that the Department should not offset Gujarat's SG&A expenses with interest income. The petitioner claims that interest income only offsets SG&A expenses where the income is short-term in nature and earned on investment activity related to the subject merchandise. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China 63 FR 63842, 62853 (Nov. 17, 1998). In this review, the petitioner contends that there is no evidence linking Gujarat's short-term interest income earned to its persulfates operations. Therefore, the petitioner argues that the Department should not offset SG&A expenses with interest income in its calculation of a surrogate SG&A ratio.

Finally, the petitioner contends that the Department should add to the SG&A expenses an amount for SG&A salaries and wages. The petitioner claims that, for financial reporting purposes, Indian companies report expenses based on the nature of the expense (e.g. materials, salaries & wages, other expenses, etc.) rather than using cost components such as cost of goods sold and general expenses. Consequently, the petitioner notes that both Calibre's and National Peroxides' financial statements reflect one total amount for all salaries and wages for manufacturing, selling and administrative personnel, and thus the SG&A expenses of these companies must be increased to account for salaries of selling and administrative personnel.

Ai Jian disagrees that the Department should adjust Gujarat's SG&A ratio to remove freight expenses from the denominator. Ai Jian asserts that this ratio is applied to Ai Jian's factors for materials, energy, and freight, thus necessitating the inclusion of freight expenses in the denominator of the ratio in order to make a proper comparison. Regarding interest income, Ai Jian contends that the petitioner has offered no factual or legal basis sufficient to cause the Department to change its calculations.

According to Ai Jian, the petitioner's proposed adjustments for SG&A labor expenses is contrary to Department practice. Ai Jian notes that the Department concluded in a similar situation in Mushrooms from the PRC that the labor component of the normal value calculation is intended to reflect all labor costs. Thus, Ai Jian asserts that the Department does not include in the factor overhead or SG&A rate any labor expense component in order to avoid double counting in the normal value calculation. See Mushrooms from the PRC, 63 FR at 72264. In line with this determination, Ai Jian notes that in the most recently completed segment of this proceeding the Department found that Calibre's financial

statements lacked sufficient data to determine in which category SG&A labor was included, and thus it declined to make this adjustment in order to avoid double-counting of labor costs for Ai Jian. See Persulfates Third Review Final at Comment 5. In any event, Ai Jian argues that the Department does not make adjustments to data from financial statements of surrogate producers when calculating SG&A expenses. See Rhodia Inc. v. United States, Consol. Court No. 00-08-00407, (CIT 2002), at 7-9. Thus, Ai Jian contends that the Department should not adjust the surrogate SG&A ratios of either Calibre or Gujarat in accordance with the Department's practice and Court precedent.

Department Position:

We agree that movement expenses should not be included in the denominator of the calculation of the surrogate SG&A ratio. These expenses appear to relate to the movement of either: 1) finished goods from the factory to the customer (*i.e.*, "goods outward" and "loading"); or 2) goods purchased and resold (*i.e.*, "goods inward"). Because these types of freight expenses are not included in the base to which the SG&A ratio is applied, we have removed them from the calculation of the SG&A ratio for purposes of the final results.

With respect to the interest income in Gujarat's financial statements, we disagree with the petitioner that short-term interest income should only be used to offset interest expenses when it relates to the production of the identical merchandise. Our long-standing practice with respect to calculating net interest expense is to include all interest expenses incurred during the fiscal year and to offset this amount with any interest income earned on short-term investments of working capital. See the Department's standard Section D Cost of Production and Constructed Value questionnaire at page D-13. Nonetheless, we have reexamined Gujarat's financial statements on the record of this case and find that certain of the interest income items shown on these statements do not appear to relate to the company's short-term investments. Specifically, we note that one of the items in question relates to interest revenue on accounts receivables (*i.e.*, income from "overdue bills") and there is insufficient information to determine the source of another (*i.e.*, interest income from "G.V.P.L."). See Schedule 13 of Gujarat's 1999-2000 financial statements. Therefore, we have disregarded the amount of these revenues when calculating Gujarat's SG&A ratio.<sup>25</sup>

Finally, with respect to SG&A labor, this issue is moot for both Calibre and National Peroxide because we have not relied on their data. Nonetheless, regarding Gujarat, we find that this company's financial statements do not contain sufficient detail which would allow us to determine under which category SG&A labor is included. As a consequence, any allocation of the expenses reflected in the "Salary,

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<sup>25</sup> Gujarat's financial statements reflect one additional category of interest income which is related to bank deposits. Because this interest income appears to be generated from short-term investments of working capital, we have continued to offset Gujarat's financing expenses using this amount for purposes of the final results.

Wages & Bonus” and “Staff & Worker Welfare” categories could potentially result in the double-counting of labor costs for Ai Jian. For this reason, we did not calculate SG&A labor as a separate component in our factors of production calculation, as requested by the petitioner. Rather, we are continuing to make a reasonable assumption that SG&A labor is included in the surrogate SG&A ratio, consistent with our decision on this issue in the three most recently completed segments of this proceeding. See, e.g., Persulfates First Review Final, 64 FR at 69500.

#### 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 review and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

\_\_\_\_\_  
Faryar Shirzad  
Assistant Secretary  
for Import Administration

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(Date)