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MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Jeffrey May
Deputy Assistant Secretary, Group I
Office of AD/CVD Enforcement

DATE: November 28, 2003

SUBJECT: Issues and Decision Memorandum for the 2001-2002 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: Production Process of the Proposed Surrogate Producer and Whether National Peroxide Ltd. is a More Appropriate Surrogate Producer
- Comment 2: Experience of Other Chemical Producers As Compared to that of the Proposed Surrogate Producer
- Comment 3: Whether the Proposed Surrogate's Receipt of Government Subsidies Distorts Its SG&A Ratio
- Comment 4: Reported Scope of the Proposed Surrogate's Business
- Comment 5: Whether to Apply a Purity Adjustment to Ai Jian's Use of a Particular Input

Background

On July 31, 2003, the Department of Commerce (the Department) published the preliminary results of the fifth administrative review of persulfates from the PRC. See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review 68 FR 44921 (Jul. 31, 2003) (Preliminary Results). We invited parties to comment on the preliminary results. On September 17, 2003, the petitioner, FMC Corporation, filed a case brief.

On September 23, 2003, the respondent, Shanghai Ai Jian Import and Export Corporation (Ai Jian), filed a rebuttal brief. The period of review (POR) is July 1, 2001, through June 30, 2002.

Margin Calculations

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

- We removed a figure which was inadvertently included in the denominators of both the selling, general and administrative expense (SG&A), and profit ratio calculations. See Comment 1.
- We eliminated the purity adjustment applied to one of the inputs used by Ai Jian in the production of persulfates because Ai Jian failed to provide adequate support for that adjustment. See Comment 5.

Comment 1: *Production Process of the Proposed Surrogate Producer and Whether National Peroxide Ltd. Is a More Appropriate Surrogate Producer*

In the preliminary results, the Department relied on the experience of a producer of identical merchandise, Gujarat Persalts (P) Ltd. (Gujarat) to calculate the factory overhead (FOH), SG&A and profit for the respondent, Ai Jian. Consistent with our practice, we did not rely on the financial statements of a producer of comparable merchandise, National Peroxide Ltd. (National Peroxide), as requested by the petitioner, because this producer did not produce persulfates during its fiscal year, and there was no information on the record to cause us to alter this decision.

The petitioner disagrees with this decision to select Gujarat as the surrogate producer, and it argues that, instead, the Department should rely on the financial statements of National Peroxide for valuing FOH, SG&A expenses, and profit for the final results of this administrative review. Specifically, the petitioner contends that: 1) the production process of Gujarat is dramatically different from that of Ai Jian; 2) Gujarat's production volume is significantly lower than Ai Jian's; 3) Gujarat's financial ratios are aberrational when compared to various Indian chemical producers as well as various global persulfates producers; 4) Gujarat's receipt of government subsidies causes its SG&A ratio to be distorted and unuseable; and 5) Gujarat's failure to report production of sodium chlorite in its financial statements calls into question the veracity these statements. The first two issues are discussed in detail below. For further discussion of items three through five, see Comments 2, 3, and 4.

As noted above, the petitioner contends that: 1) the production process of Gujarat is dramatically different from that of Ai Jian; and 2) Gujarat's production volume is significantly lower. The

petitioner asserts that these two factors combine to distort unreasonably the financial ratios of the surrogate producer.

Specifically, the petitioner contends that its analysis of Gujarat's financial statements reveals that Gujarat uses a batch production process that results in substantial raw material waste. In contrast, the petitioner asserts that Ai Jian uses a continuous process to produce the subject merchandise. The petitioner contends that, because Gujarat employs an inefficient batch production process, the materials/labor/energy component of the denominators for FOH, SG&A expenses, and profit is overstated, resulting in substantially lower ratios.

As support for its conclusion, the petitioner relies upon a letter prepared by FMC's chemical process group technology director, in which this official sets forth an interpretation of certain data contained in Gujarat's financial statements. See FMC submission dated September 3, 2003 (FMC letter). Specifically, this official reviewed the financial statements of both Ai Jian and Gujarat, and noted that Ai Jian produces considerably more persulfates than does Gujarat. Moreover, he stated that Gujarat's low production volume must indicate the use of a batch production process, and its higher raw material usage, compared to the "standard," indicates that the company generates a substantial amount of waste. As a result, the petitioner argues that the dramatic difference in the production volumes of Gujarat and Ai Jian results in significantly different cost structures (thereby resulting in substantially lower FOH, SG&A, and profit ratios as noted above), rendering Gujarat unfit as a surrogate producer. On the other hand, the petitioner claims that because National Peroxide uses a similar, continuous production process and produces in volumes commensurate with Ai Jian's production volumes, National Peroxide is a better surrogate for valuing FOH, SG&A, and profit for the final results of this administrative review.

The petitioner maintains that the Department's practice is not to rely on the financial statements of a producer where that company is substantially different from the respondent company. For example, the petitioner cites Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Belarus, 66 FR 33528 (June 22, 2001) and accompanying decision memorandum at Comment 2 (Rebar from Belarus), where the Department rejected the use of the financial statements of a potential surrogate producer because the potential surrogate was an integrated mineral and metals producer, whereas the respondent was a mini-mill.

In addition, the petitioner contends that the Department has recognized that producers with high material costs are not appropriate surrogates in this proceeding. Specifically, the petitioner maintains that the Department adjusted the FOH in the first three administrative reviews of this proceeding for a different surrogate producer, Calibre Chemicals Pvt. Ltd. (Calibre), by allocating overhead expenses between subject and non-subject merchandise on the basis of raw material consumption. See, e.g., Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 64 FR 69494 (Dec. 13, 1999) and accompanying decision memorandum at Comment 4. The petitioner maintains that the Department recognized in those reviews that Calibre's FOH had to be adjusted in order to remove distortions related to

high material costs for non-subject merchandise. In contrast, the petitioner contends that Gujarat's FOH is flawed but cannot be similarly adjusted. As a result, the petitioner argues that the Department should disregard Gujarat as a surrogate and use National Peroxide, a producer of hydrogen peroxide, as the surrogate producer for deriving the FOH, SG&A, and profit ratios.

The petitioner argues that National Peroxide's financial statements are a better source of surrogate data in this case, and that the Department has the discretion to use them here. Specifically, the petitioner notes that the Department will use alternate data to derive surrogate values if the information is superior in terms of specificity, quality, and contemporaneity. See 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). According to the petitioner, in the original investigation, the Department found the production process for hydrogen peroxide to be sufficiently similar to the process used to manufacture persulfates, allowing the Department to use National Peroxide as a source of surrogate values. 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). Further, the petitioner asserts that, in contrast to Gujarat, the production volume of National Peroxide is indicative of a continuous production process similar to that of Ai Jian. Finally, the petitioner notes that the financial statements of National Peroxide are contemporaneous with the POR, unlike those of Gujarat.

The petitioner maintains that, in past segments of this proceeding, the Department has found that National Peroxide's ownership of apartments would distort the calculation of the SG&A ratio due to the fact that National Peroxide incurred certain expenses related to property development. The petitioner contends, however, that National Peroxide's 2001-2002 financial statements show that National Peroxide sold all but one of the apartments it owned. The petitioner argues that National Peroxide's investment in real estate is now minor in comparison to its hydrogen peroxide operations, thereby minimizing any potential distortion to the SG&A ratio.

Nonetheless, the petitioner argues that, if the Department continues to use the financial statements of Gujarat to value FOH, SG&A, and profit, the Department should adjust its calculations to correct the denominator used to allocate SG&A expenses and profit. The petitioner contends that, in the preliminary results, the Department calculated Gujarat's SG&A expenses as a percentage of the sum of the cost of materials, energy, labor, and overhead, in accordance with its practice. However, based on the Department's calculation methodology, the petitioner asserts that the denominator used to calculate the SG&A and profit ratios is overstated by Rs. 2,681,300, thereby understating these ratios. To correct this error, the petitioner contends that the Department should reduce the denominators used to calculate the SG&A and profit ratios by Rs. 2,681,300.

Ai Jian argues that the Department should continue to rely on Gujarat's financial statements to calculate FOH, SG&A, and profit. According to Ai Jian, the Department has a long-standing practice of using surrogate producers of identical merchandise, and there is no reason to depart from this practice here. Ai Jian contends that the petitioner's argument mandating identical

production processes for Chinese and surrogate producers is unreasonable and should be rejected because: 1) it creates an unintended additional surrogate methodology burden; and 2) it conflicts with the Department's policy for calculating the general expense portion of normal value in NME cases. Ai Jian notes 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. Ai Jian maintains that the Department has on numerous occasions stated that the goal of this exercise is not to match precisely the experience of the PRC producer, but instead, to calculate the ratios for overhead, SG&A, and profit in general. See Notice of Final Determination of Sales at Less Than Fair Value; Honey From the People's Republic of China, 66 FR 50608 (Oct. 4, 2001) and accompanying decision memorandum at Comment 3 (Honey from the PRC); see also Notice of Final Determinations of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the Russian Federation, 60 FR 16440 (Mar. 30, 1995).

Ai Jian contends that the preamble to the Department's antidumping regulations specifically confirms this principle. Ai Jian notes that, in response to a suggestion that the Department compare the overhead, general expenses, and profit values of the surrogate producer against the experience of the NME producers under investigation, the Department stated that it is not appropriate to check surrogate values against the NME respondents' experience. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27368 (May 19, 1997). As further support for this position, Ai Jian notes that in Coalition for the Preservation of Brake Drums and Rotors Aftermarket Mfrs. V. United States, CIT at 44 F. Supp 2d at 255, the Court of International Trade (CIT) confirmed the Department's finding that all companies invariably incur different types of overhead and general expenses, and the intent of the surrogate procedure must therefore be to obtain only an estimated amount for profit and general expenses.

Moreover, Ai Jian asserts that in Bulk Aspirin from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 68 FR 48337 (Aug. 13, 2003) and accompanying decision memorandum at Comment 2 (Second Bulk Aspirin Final), the Department addressed this exact issue. Specifically, in the Second Bulk Aspirin Final, the Department recognized that the surrogate producer was not identical to the PRC producers under review because it does not produce a major input into aspirin, acetic anhydride. However, the Department held in that case that a surrogate producer need not be a replica of the NME producers under review. Ai Jian notes that this practice has been upheld by the courts. See Rhodia II, 240 F. Supp. 2d 1247, 1250-1251 (CIT 2002)(Rhodia II); see also Bulk Aspirin from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 68 FR 6710-02 (Feb. 10, 2003) and accompanying decision memorandum at Comment 2 (First Aspirin Review Final).

Furthermore, Ai Jian disagrees that Rebar from Belarus applies here, because in that case, unlike here, the Department had the option of using surrogate data from several producers of identical merchandise.

In any event, Ai Jian contends that the petitioner's argument is flawed because the petitioner has confused the issue of absolute numbers and relative numbers. Specifically, Ai Jian asserts that,

while companies may have different absolute costs, it does not necessarily follow that they will have different relative cost ratios. According to Ai Jian, even assuming that Gujarat's smaller production volume establishes that Gujarat uses a batch production process, there is no evidence on the record to show that the financial ratios derived from Gujarat's financial statements are necessarily distortive or otherwise unreliable as a proxy for a persulfates producer. Moreover, Ai Jian notes that the petitioner assumes that Gujarat's alleged batch process results in a greater volume of raw materials consumed, which would affect the denominator of the surrogate value calculations. However, Ai Jian notes that the corollary to this argument is that, were the batch process as inefficient as claimed by the petitioner, it would also result in greater overhead expenses, thereby affecting the numerator as well.

As regards the use of National Peroxide's financial statements to value FOH, SG&A, and profit as suggested by the petitioner, Ai Jian argues that the Department's NME practice establishes a preference for selecting surrogate value sources that are producers of identical merchandise, and National Peroxide is not a producer of identical merchandise. See Preliminary Results, 68 FR at 44923. While Ai Jian acknowledges that National Peroxide's financial statements are more contemporaneous with the POR, it asserts that contemporaneity is not the sole determinative factor. Rather, according to Ai Jian, the Department is required to use data which are representative based on quality, specificity, and contemporaneity. As support for this assertion, Ai Jian cites to Brake Rotors From the People's Republic of China: Preliminary Results of Third New Shipper Review and Preliminary Results and Partial Rescission of Second Antidumping Duty Administrative Review, 64 FR 73007, 73011 (Dec. 29, 1999) (Brake Rotors from the PRC), where the Department used financial data from surrogate producers covering multiple fiscal years. In that case, Ai Jian notes that the Department stated its intention to calculate averages which are representative of the experience of surrogate country producers, rather than rely upon the data of a sole producer merely because that producer's data are more contemporaneous with the POR.

Finally, Ai Jian notes that in both the third and fourth administrative reviews of the persulfates order, the Department stated that the use of National Peroxide's financial statements would distort the calculation of the SG&A ratio due to the fact that National Peroxide incurred significant expenses related to property development. Ai Jian argues that, despite the fact that National Peroxide has sold all but one of the apartment buildings it owned, there is no factual basis to characterize the remaining real estate investments as insignificant, as the cost of sales related to real estate remains unidentified in the financial statement.

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 using data from producers of identical merchandise. See Persulfates from the People's Republic of China: Final

Results of Antidumping Duty Administrative Review, 68 FR 6712 (Feb. 10, 2003) and accompanying decision memorandum at Comments 8 and 9 (Persulfates Fourth Review Final). In addition, the Department may also consider, when possible, 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 (Bulk Aspirin Final Determination).

In the previous segment of this proceeding, we relied on the financial statements of Gujarat because we found that these were the best information available as Gujarat produced only identical merchandise. In this segment, the petitioner argues that this reliance is no longer appropriate given certain fundamental differences between Gujarat's and Ai Jian's production processes. In evaluating this claim, we note that the petitioner's conclusion that Gujarat's financial ratios are distorted is based on an analysis of Gujarat's financial statements conducted by an FMC official. See FMC letter. Specifically, this official reviewed Gujarat's financial statements, and deduced that Gujarat uses a batch production process rather than a continuous production process, and that Gujarat discards unconverted raw materials instead of recycling them. The official then concluded such a batch process is inefficient based on his own calculations which showed that Gujarat's consumption of raw materials was 53 percent greater than that of a "standard" producer.

These conclusions rely heavily on "Standard Raw Material Factors" to which Gujarat's purported raw material usage is compared. See FMC letter. These factors, multiplied by Gujarat's product-specific production volume, are the underlying basis for the petitioner's other assertions, such as that Gujarat operates a very inefficient, one-pass batch process, and it discards unconverted raw materials instead of reusing them. However, there is no support on the record of this proceeding demonstrating the basis upon which these factors were calculated, nor does the petitioner provide the source of its data.

In an attempt to assess the reasonableness of these figures, we compared the "standard" factors proffered by petitioner to the actual raw material consumption of Ai Jian. We found that the figures varied substantially. See Memorandum to the File from Greg Kalbaugh entitled "Comparison of Actual Raw Material Usage to Expected Raw Material Usage," dated November 28, 2003, which is on file in the Central Records Unit (CRU), Room B099 of the main Commerce building. When Ai Jian's consumption rates are substituted into the petitioner's calculations, we find that the difference between the theoretical amounts posited by the petitioner and Gujarat's actual consumption is reduced by approximately three-fifths.

Moreover, we do not find this "remaining" difference to be of substantial concern, given that Gujarat produced a significant amount of work-in-process during the fiscal year, and the petitioner failed to account for the raw materials consumed by such semi-finished products in its analysis. Thus, we find that the petitioner's conclusions were based on inaccurate and/or

incomplete assumptions. For the foregoing reasons, we find that this letter does not provide sufficient evidence that the data in Gujarat's financial statements is distorted.

In any event, as articulated in First Aspirin Review Final, the surrogate producer from whom we derive FOH, SG&A, and profit ratios need not be a replica of the NME producer. Rather, once the Department establishes that the surrogate produces identical or comparable merchandise, approximating the NME producer's experience, the Department merely uses the surrogate producer's data. The CIT has affirmed this principle:

Commerce does not generally adjust the surrogate values used in the calculation of factory overhead. See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 61 FR 14057, 14060 (Mar. 29, 1996); Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value, 65 FR 25706, 25706-07 (May 3, 2000); Certain Helical Spring Lock Washers From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 64 FR 31143, 31143 (May 16, 2000); Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from the People's Republic of China, 62 FR 51410, 51413, 51417 (Oct. 1, 1997). Rather, once Commerce establishes that the surrogate produces identical or comparable merchandise, closely approximating the nonmarket producer's experience, Commerce merely uses the surrogate producer's data. 19 U.S.C. §1677(c)(4) (2000); 19 C.F.R. §351.408(c)(4) (2001). Furthermore, Commerce is neither required to 'duplicate the exact production experience of the Chinese manufacturers,' Nation Ford Chem. Co. v. United States, 166 F.3d. 1373, 1377 (Fed. Cir. 1999), nor undergo 'an item-by-item analysis in calculating factory overhead.' Magnesium Corp. of Am. v. United States, 166 F. 3d. 1364, 1372 (Fed. Cir. 1999). Moreover, Commerce need not use 'perfectly conforming information,' only comparable information. Antidumping Duties: Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 61 Fed. Reg. 7308, 7344 (Feb. 27, 1996).

See Rhodia II at 1250-1251.

We disagree with the petitioner that Rebar from Belarus applies here. In Rebar from Belarus, the Department determined that, while South Africa and Thailand were both comparable to Belarus in terms of economic development, and both South Africa and Thailand were significant producers of rebar, the product under investigation, the Department continued its use of Thailand as the surrogate country because:

"(1) the South African value for scrap steel, the main input for rebar, is not reliable, (2) some South African factor values are not on the record, and (3) the South African financial statement on the record is not an appropriate financial statement, for purposes of this analysis we find no compelling reason to change surrogate countries for the final determination."

See Rebar from Belarus at Comment 1. Therefore, contrary to the petitioner's contention, the Department did not specifically reject the use of financial statements of a potential surrogate producer because that producer was substantially different from the NME producer, but rather we rejected the use of South Africa as the potential surrogate country based on the totality of the circumstances in that case (*i.e.*, 1) the South African surrogate values for the main input for the production of the merchandise in question were found to be unreliable, as they varied significantly from the other surrogate values for scrap steel on the record, were primarily based on imports from one country, and were based on a relatively low quantity of imports; 2) various South African factor values were not on the record; and 3) the use of the financial statements of the proposed surrogate company was not appropriate as the respondent was an individual mini-mill, and the proposed surrogate was an integrated minerals and metals group).

Further, we also disagree with the petitioner's contention that the differences in production volumes of Gujarat and Ai Jian render Gujarat unfit as a surrogate producer. Simply because the production process of the surrogate producer results in smaller production volumes does not render it unfit as a surrogate. While the petitioner points out that Gujarat produced approximately 509 metric tons (MTs) during its 2000-2001 fiscal year, we note that this represented 85 percent of the plant's capacity (600 MTs). Moreover, given the facts noted above, we find no basis to conclude that the ratios derived from Gujarat's financial statements are distorted by the size of the company. Rather, the fact that Gujarat has a smaller production capacity than Ai Jian does not lead to the automatic conclusion that its overhead rate is different, but simply that it may incur less overhead (in the numerator) and consume fewer raw materials (in the denominator). Finally, while the overall production volume may be lower than that of Ai Jian, we note that the types of distortions which would cause us to reject a company's financial statements due to low production volume are not present in this segment of the proceeding.¹

We also disagree with the petitioner's contention that the Department has acknowledged, in prior segments of this proceeding, that "high" raw material costs incurred by a surrogate producer create distortions in that company's financial statements, and that, for this reason, we cannot rely on Gujarat's financial statements in this proceeding. Indeed, we addressed this issue squarely in the final results of the most recent segment of this proceeding. Specifically, we stated:

¹ For example, in Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China and accompanying decision memorandum at Comment 3, 66 FR 49345 (Sept. 27, 2001) (Granular Magnesium from the PRC), the Department noted that the financial statements of a proposed surrogate specifically indicated that due to the fact that the company suffered a major disruption in the sourcing of a critical material resulting in substantially decreased production for the year, the company experienced a production volume that was substantially lower than normal, which resulted in an increase in the company's FOH rate of over thirty percent from the previous year. The Department concluded that these data were not representative of the normal production experience of the potential surrogate, and instead used this same company's data from a prior year to value surrogate FOH and SG&A ratios.

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)² nor did any extraordinary events occur (e.g., fires or floods that would have 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.

See Persulfates Fourth Review Final at Comment 10.

We disagree with the petitioner that National Peroxide's financial statements are a better source in valuing the surrogate FOH, SG&A, and profit ratios. National Peroxide is not a producer of identical merchandise. While we agree that National Peroxide's financial statements are more contemporaneous with the POR than Gujarat's, we note that 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.³ For the reasons discussed above and in Comments 2 through 4 below, we do not find Gujarat's data distorted or otherwise unreliable, and therefore have continued to utilize its financial statements in calculating surrogate FOH, SG&A, and profit ratios for purposes of the final results.

² See, e.g., Granular Magnesium from the PRC at Comment 3.

³ 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 Persulfates Fourth Review Final at Comments 8 & 9; 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.

Finally, we agree with the petitioner's contention that the denominators used to calculate SG&A and profit were overstated by Rs. 2,681,300 due to clerical error. As a result, we have adjusted our calculation of the SG&A and profit ratios to remove this amount from the denominators of both calculations.

Comment 2: Experience of Other Chemical Producers As Compared to that of the Proposed Surrogate Producer

The petitioner argues that Gujarat is an unacceptable surrogate for valuing FOH, SG&A and profit ratios because its ratios are aberrational when compared to various Indian chemical producers as well as global persulfates producers. The petitioner asserts that the Department should use the experience of these chemical producers as a benchmark against which to gauge the reasonableness of using Gujarat as a surrogate in this case. In support of its reliance on benchmarking, the petitioner 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 (Jan. 10, 2001) (TRBs from the PRC), and Timkin Co. V. United States, 59 F. Supp. 2d 1371, 1376 (CIT 1999), the Department used U.S. import data to benchmark the surrogate value for each of the tapered roller bearing components (i.e., cups, cones, rollers, and cages) in order to assess the reasonableness of the surrogate values in question. Moreover, the petitioner notes that in Honey from the PRC, the Department considered the use of U.S. profit levels as a benchmark, ultimately rejecting the U.S. profit data because the respondents in that proceeding were unable to show that the U.S. producers' experience was more representative of respondents' experience than that of the surrogate producer's experience. See also Notice of Final Determination of Sales at Less Than Fair Value: Refined Antimony Trioxide from the People's Republic of China, 57 FR 6801, 6803 (Feb. 28, 1992).

Specifically, the petitioner compared the FOH, SG&A, and profit ratios of Gujarat with those of three chemical producers in India: National Peroxide, Tata Chemicals (Tata), and Bayer (India) Limited (Bayer). Among these three Indian chemical producers, the average FOH, SG&A and profit ratios ranged from two to three times those of Gujarat.

Finally, the petitioner notes that the FOH ratios of six worldwide persulfates producers, located in the United States, Germany, Japan, Taiwan and Turkey, are also significantly higher than that of Gujarat. Therefore, the petitioner argues that, in light of the financial experience of National Peroxide, Bayer, and Tata, and world-wide persulfates producers, Gujarat's financial experience must be viewed as aberrational.

Ai Jian contends that the petitioner's comparisons of the Indian producers noted above are inappropriate because National Peroxide does not produce merchandise that is identical to the subject merchandise, and Tata and Bayer do not produce merchandise that is comparable. Furthermore, Ai Jian asserts that a review of the financial statements of each of these companies

indicates that, in light of the much broader activities and products produced by these companies, none of these companies themselves are comparable to Ai Jian.

Similarly, Ai Jian argues that the Department should also reject petitioner's comparisons of Gujarat's financial ratios with those of producers of persulfates from non-surrogate countries. Ai Jian notes that, in Second Bulk Aspirin Final, the petitioner claimed that a surrogate Indian producer's financial data was inappropriate because it was dissimilar to the financial experience of certain U.S. producers. Ai Jian asserts that the Department squarely rejected this argument in that case because: 1) section 773(c)(4) of the Tariff Act of 1930, as amended (the Act) directs the Department to value factors of production in a country that is economically comparable to the NME; and 2) the United States is not economically comparable to the PRC. See Second Bulk Aspirin Final at Comment 2. Ai Jian argues that the Department should continue to reject this argument in the instant case.

Department's Position:

Section 773(c)(4) of the Act directs the Department to value the factors of production utilizing, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are: (A) at a level of economic development comparable to that of the nonmarket economy country; and (B) significant producers of comparable merchandise. In the instant case, we have selected India as the appropriate surrogate country because it is at a level of economic development comparable to that of the PRC and is a significant producer of comparable merchandise. See the November 20, 2002, memorandum from Jeffrey May to Louis Apple entitled "Antidumping Duty Administrative Review of Persulfates from the People's Republic of China (PRC): Request for a List of Surrogate Countries," which is on file in the CRU; see also Preliminary Results, 68 FR at 44922.

On the record of this review, we have the financial statements of three Indian producers: 1) Gujarat, a producer of identical merchandise, 2) Calibre, a producer of both identical and comparable merchandise, and 3) National Peroxide, a producer of comparable merchandise. 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. See Persulfates Fourth Review Final at Comment 8. Of the three, we continue to find that Gujarat is the best source for surrogate data in this case, as it produces only persulfates. Since we have not found Gujarat's financial information to be distorted or otherwise unreliable, we have continued to rely on these financial statements for the final results of this administrative review.⁴ For further discussion, see Comment 1, above.

⁴ In any event, we disagree with the petitioner that National Peroxide (a producer of comparable merchandise) would be the logical choice of surrogate producer, were we to find it inappropriate to select Gujarat. As noted above, we have on the record of this proceeding the financial data of Calibre (a producer of identical merchandise). Not only did we specifically address (and confirm) the reliability of Calibre's data in the most recent segment of this

With respect to benchmarking, although the Department has in the past used non-surrogate country data as a benchmark to determine the reliability of surrogate data, the purpose of such test is not to demonstrate that differences exist, but rather to determine whether surrogate data is distorted or otherwise unreliable under certain specific circumstances. For example, in TRBs from the PRC, the Department had reason to believe the surrogate values from India may be distorted, as the Indian Harmonized Tariff Schedule (HTS) categories were not specific enough to isolate the necessary surrogate value, bearing quality steel, within any Indian sub-category. The Department used U.S. import data as a benchmark because the U.S. HTS category was the only HTS customs category specific enough to capture an appropriate bearing-quality steel import value. These data were then used to gauge the reliability of the less-specific Indian import values. See TRBs from the PRC at Comment 5.

Similarly, in Honey from the PRC, the Department rejected the benchmarking of surrogate value data, stating:

We disagree with respondents that the 1999-2000 data must be rejected because they exceed the profit experience of U.S. processors/packers for a similar time period. The Department generally selects a country as a surrogate for the PRC that is at a comparable level of economic development. Normally, the Department would not rely on the U.S. surrogate data when there is surrogate value information available for a country that is at a more comparable level of economic development, such as India. In this case, respondents have not demonstrated that these data, profit levels of U.S. processors/packers, are more representative of the PRC experience than the data from the MHPC. Therefore, the Department has determined that profit levels shown by the MHPC are more representative than the U.S. profit levels respondents propose as a benchmark.

See Honey from the PRC at Comment 3.

In the instant case, the petitioner's proposed benchmarks (i.e., the financial data of producers of various chemical products in India, as well as producers of persulfates in countries that are not economically comparable to the level of development of the PRC) demonstrate only that these data are different from those of Gujarat. However, the petitioner has not demonstrated that the financial experience of these chemical producers is representative of the experience of the persulfates industry in India.

In any event, we note that the petitioner has not attempted to address the reliability of the proposed financial statements. Significantly, we find that two of the petitioner's proposed "benchmark" companies in India to be inappropriate as benchmarks, because Tata experienced both an earthquake and a major fire during its fiscal year, while Bayer produces a significant

proceeding (see Persulfates Fourth Review Final at Comment 10), but this finding has been upheld by the CIT. See FMC Corporation v. Unites States, No. 03-15, slip op. at 27-28 (CIT Feb. 11, 2003).

amount of a variety of non-comparable products (e.g., cement and clinker). See Memorandum to the File from Greg Kalbaugh entitled “Relevant Portions of the Financial Statements of Tata Chemicals and Bayer (India) Limited,” dated November 28, 2003, which is on file in the CRU, Room B099 of the main Commerce building.

Moreover, we find that even assuming, arguendo, that this type of comparison were appropriate, the ratios presented do not support the petitioner’s conclusions. Specifically, when these data provided by the petitioner are examined individually, rather than in the aggregate, Gujarat’s ratios fall within the range of some of these data, while National Peroxide’s ratios fall outside the range of some of these data.⁵ Further, when Gujarat’s ratios are compared to Calibre’s, we find that the ratios are comparable.⁶

For the foregoing reasons, we find that the comparisons presented by the petitioner do not demonstrate distortion or unreliability in the financial ratios of Gujarat, a producer of identical merchandise in a surrogate country at a level of economic development comparable to the PRC, nor do they prove that National Peroxide’s data are more reliable than that of Gujarat. Consequently, for the final results of this review, we have continued to rely upon the financial statements of Gujarat to calculate surrogate FOH, SG&A, and profit ratios.

Comment 3: *Whether the Proposed Surrogate’s Receipt of Government Subsidies Distorts Its SG&A Ratio*

The petitioner argues that Gujarat’s financial statements are distorted by its receipt of government subsidies. The petitioner notes that Gujarat’s interest expense, at one percent of its cost of goods sold, is lower than the interest expense ratios for other Indian chemical producers (e.g., National Peroxide, Tata, and Bayer), which are 18.05 percent, 14.60 percent and 4.5 percent, respectively. Gujarat’s lower rate of interest expense, the petitioner asserts, is attributable to the government subsidies the company received for capital investment, allowing Gujarat to avoid borrowing the funds necessary to finance plant expenditures.

According to the petitioner, it is the Department’s practice to reject the financial statements of surrogate producers receiving government subsidies. To support this contention, the petitioner cites to Rebar from Belarus (where the Department declined to use a Thai company’s financial statements when it found that the company was undergoing a debt restructuring and could only

⁵ For example, National Peroxide’s profit ratio is 31.70 percent (outside the range), compared to 17.58 percent for Tata, 4.88 percent for Bayer and 9.22 percent for Gujarat (well within the range).

⁶ We restated Calibre’s FOH and SG&A ratios on the basis of a percentage of materials, labor, and energy to put it on the same basis as Gujarat. Specifically, Calibre’s FOH, SG&A, and profit ratios are 3.44, 3.58, and 14.32 percent, respectively, while Gujarat’s are 16.47, 15.54, and 10.36 percent, respectively.

obtain loans at a high interest rate, contributing to an abnormally high SG&A expense ratio), and Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003) (Frozen Fish Fillets from Vietnam) (where the Department declined to use the financial statements of an Indian company to value financial ratios due to evidence the company had received a government subsidy).

Ai Jian contends that the petitioner's argument should be rejected because it is not based on substantial evidence and is contrary to Department practice. Specifically, Ai Jian disagrees that Rebar from Belarus applies here, because it did not address the issue of surrogate-related subsidies. Rather, Ai Jian argues that the companion case, Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From the People's Republic of China, 66 FR 33522 (Jun. 22, 2001) (Rebar from the PRC), is more on point as the Department directly addressed the issue of government subsidization of potential surrogate producers. Specifically, Ai Jian notes that in Rebar from the PRC, the Department held that the fact that a potential surrogate producer is found to have received government subsidies does not necessarily render the financial ratios unusable. Ai Jian argues that, while Gujarat may have received financial assistance from the Indian government, there is no basis to support a conclusion that receipt of such a subsidy skewed Gujarat's financial ratios to the point of rendering them unusable.

Department's Position:

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 Act. The Department's strong preference is to rely upon the data of a producer of identical merchandise in the primary surrogate country, as long as the resultant financial data is not distorted or otherwise unreliable. In the case of a potential surrogate in receipt of government subsidies, the existence of a subsidy is not, in and of itself, sufficient evidence of such distortion. See Rebar from the PRC at Comment 8. While the petitioner cites several instances where the Department has declined to use financial data from a potential surrogate which received government subsidies, in none of those cases was the receipt of subsidies either the sole or the primary reason for this decision.

For example, in Frozen Fish Fillets from Vietnam, the Department declined to use the financial statements of an Indian surrogate producer due mainly to the fact that the primary surrogate country in that case was Bangladesh, and it is the Department's strong preference to value factors of production (including the surrogate financial ratios) from the primary surrogate country. See Frozen Fish Fillets from Vietnam at Comment 3. The Department further noted that "the Department is particularly reluctant to use financial ratios outside of the surrogate country when virtually all other factors of production used are from the surrogate country." See Id. The Department noted the fact that the surrogate was not an integrated producer but simply a processor of identical and comparable merchandise. While its receipt of government subsidies

was noted in a footnote as an *additional* disqualifying factor, it is clear that this was neither the sole nor primary reason for its exclusion as a source of surrogate information.

Similarly, in the Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China, 66 FR 49632 (Sept. 28, 2001) (Hot-Rolled Steel from the PRC), the Department's decision not to use surrogate value information from a company receiving government subsidies was based not on this fact alone, but on the totality of the evidence. In that case, the Department stated:

There are several factors concerning SAIL's 1999-2000 financial statements which, when considered together, lead to a determination that they are not an appropriate basis on which to value surrogate overhead, SG&A, and profit. SAIL's 1999-2000 financial statements are not contemporaneous with the POI, SAIL did not make a profit in fiscal year 1999-2000, and SAIL embarked on a substantial government sanctioned financial and business restructuring plan during fiscal year 1999-2000, which envisaged the waiver of loans, write-down of assets, and government subsidies. See SAIL's 1999-2000 Annual Report at 2, Petitioners' March 26, 2001 submission.

See Hot-Rolled Steel from the PRC, at Comment 4.

In this case, Gujarat's financial statements show that the company received certain government capital investment assistance which it maintains as "Capital Reserve." Given the treatment of this revenue (i.e., as a reserve), there is no reason to believe Gujarat's actual borrowing costs were impacted by its receipt of capital investment assistance. Specifically, we note that Gujarat did not use the subsidy in question to finance its normal commercial operations during its fiscal year, but rather it placed these funds in a capital account. See schedule 19, note 11, of Gujarat's financial statements. Thus, any conclusion that Gujarat's financial expense ratio is understated due to the subsidy is speculative at best.⁷

Moreover, the mere fact that a company may receive a government subsidy is insufficient basis upon which to reject its financial statements. As noted above, the Department has rejected the use of financial statements of surrogate producers receiving government subsidies because of the totality of the circumstances rather than the sole fact that the surrogate producer was being subsidized.

In this case, the totality of the circumstances we have on the record indicate that Gujarat is: 1) a producer of identical merchandise in the primary surrogate country; and 2) its financial information is not distorted or otherwise unreliable. As such, it is the best available information

⁷ We also disagree with the petitioner's argument that the Department should reject Gujarat's financial statements because the company's financial expense ratio is significantly lower than the ratios of other chemical companies in India. We find that this comparison is not meaningful here. For further discussion, see Comment 2, above.

on the record. Therefore, we have continued to rely on the financial statements of Gujarat for calculating the surrogate FOH, SG&A, and profit ratios for the final results.

Comment 4: *Reported Scope of the Proposed Surrogate's Business*

The petitioner argues that it has placed on the record information indicating that Gujarat is engaged in the production of non-subject merchandise, thereby calling into question the veracity of Gujarat's financial statements. Specifically, the petitioner placed on the record print-outs from website www.embindia.org showing that Gujarat identified itself as having a "business interest" in sodium chlorite at a trade conference in Venezuela. The petitioner asserts, because Gujarat produces sodium chlorite but did not disclose this information on its financial statements, this fact raises questions as to the overall credibility of these financial statements.

Ai Jian contends that the petitioner has misstated Gujarat's business scope. Ai Jian asserts that Gujarat's financial statements show that it produced only persulfates during its fiscal year, and that while the information submitted by petitioner states that Gujarat has a "business interest" in sodium chlorite, it does not state that it is a producer of sodium chlorite. Ai Jian notes that the Department has previously acknowledged that "the majority of {Gujarat's} business involved the production and sale of persulfates, with the remainder related to the purchase and resale of other products." See Persulfates Fourth Review Final at Comment 9.

Department's Position:

Gujarat's audited financial statements clearly show that it manufactured only persulfates during its fiscal year. Contrary to the petitioner's claim, we find that the fact that sodium chlorite is merely identified as a "product" of Gujarat on a third-party website in no way calls into question the credibility of these audited financial statements. Further, even if Gujarat itself had identified sodium chlorite as a "product" during the course of its attendance at a trade conference, we find no basis to conclude that Gujarat actually produced this product during the fiscal year in question. Indeed, there are many plausible alternative conclusions which could be reached, such as: 1) Gujarat simply desired to gauge market interest in this chemical; or 2) Gujarat intended to begin production of this chemical at some point in the future; or 3) Gujarat intended in the future to purchase the product and offer the product for resale; or 4) Gujarat intended to broker the sale of this product, etc.

As Gujarat's financial statements have been independently audited in accordance with generally accepted accounting standards in India, and we have no reason to question the veracity of these auditing standards or procedures, we have continued to utilize the financial statements of Gujarat for calculating surrogate FOH, SG&A, and profit ratios for the final results of review.

Comment 5: *Whether to Apply a Purity Adjustment to Ai Jian's Use of a Particular Input*

For purposes of the preliminary results, we adjusted the surrogate values for certain inputs to account for differences between the purity of the surrogate value and the purity of the factor of production used by Ai Jian. The petitioner argues that there is no information on the record supporting a purity adjustment for one of these inputs, and therefore, the Department should not continue to make a purity adjustment to this input for purposes of the final results.⁸ The petitioner notes that, in its supplemental questionnaire dated January 6, 2003, the Department requested that Ai Jian provide invoices and certificates of analysis to confirm the purity levels of the direct materials used in the production of the subject merchandise. According to the petitioner, Ai Jian failed to provide any documentation with respect to this particular input.

Ai Jian contends that the Department not only has the discretion to make a purity adjustment to this input, but it is also appropriate to do so given that Ai Jian has provided factual certifications in its submissions that the data provided is accurate and complete. Ai Jian asserts that respondents are not held to a standard of absolute perfection, and it notes that, as this is the fifth administrative review, the Department is familiar with Ai Jian's production process and record keeping.

Department's Position:

During the course of this review, we requested that Ai Jian provide invoices and certificates of analysis to confirm the purity levels of the direct materials used in the production of the subject merchandise. Ai Jian failed to provide the requested documentation for the input in question. Therefore, we do not have the necessary evidence on the record of this segment of the proceeding to support a purity adjustment for this input.

Section 776(a) of the Act provides that the Department may use facts available in a determination if an interested party either withholds requested information or supplies information which cannot be verified. Section 776(b) of the Act permits the Department to make adverse inferences in cases where it finds that the interested party failed to cooperate by not acting to the best of its ability. We find that the use of facts available is appropriate for Ai Jian's use of this input, in accordance with section 776(a) of the Act. Moreover, Ai Jian failed to provide the documents in question upon request, although these documents were maintained in the ordinary course of business, as evidenced by the fact that Ai Jian was able to provide such documents as requested for the other inputs. Accordingly, we find that Ai Jian did not act to the best of its ability in reporting the purity adjustment for this input, and as a consequence, we have based the purity adjustment on adverse facts available, in accordance with section 776(b) of the Act. As adverse facts available, we have revised the calculations from the preliminary results by eliminating the purity adjustment applied to this particular input.

⁸ Because Ai Jian claimed business proprietary treatment for this input, we are unable to identify it here. For further discussion, see the petitioner's case brief at pages 15 and 16.

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 _____

James J. Jochum
Assistant Secretary
for Import Administration

(Date)