IV. Decision and Order

Based on review of the administrative record and for the reasons stated above, the order of the ALJ granting summary decision on the written record; assessing a civil penalty of $8,000 for violating § 769.2(d)(1)(iv) and a civil penalty of $2,000 for violating § 769.6 against Stair Cargo Services, Inc.; and denying Stair Cargo's request to dismiss the charges and to present oral argument and submit additional evidence is hereby AFFIRMED.

Dated: October 30, 1995.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 95–27377 Filed 11–3–95; 8:45 am]

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International Trade Administration

[A–570–840]

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

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

EFFECTIVE DATE: November 6, 1995.

FOR FURTHER INFORMATION CONTACT: David Boyland or Daniel Lessard, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4198 or (202) 482–1778.

Final Determination

We determine that manganese metal from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930 (''the Act''), as amended. The estimated sales at less than fair value are shown in the ''Suspension of Liquidation'' section of this notice.

Applicable Statute and Regulations

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

Case History

Since the preliminary determination (60 FR 31282, June 14, 1995), the following events have occurred. The Department published an amended preliminary determination correcting a ministerial error (60 FR 37875, July 24, 1995). We conducted verification of the questionnaire responses in the PRC between July 24, 1995 and August 11, 1995, of the following respondents: China National Electronics Import & Export Hunan Company (CEIEC), China Hunan International Economic Development Corp. (HIED), China Metallurgical Import & Export Hunan Corporation (CMIECHN/CNIECHN), Minmetals Precious & Rare Minerals Import & Export Co. (Minmetals), and Great Wall Industry Import and Export Corporation (GWIIEC). Case and rebuttal briefs were filed by petitioners and respondents on October 2, 1995, and October 4, 1995, respectively. On October 6, 1995, the Department held a public hearing.

Scope of the Investigation

The subject merchandise in this investigation is manganese metal, which is composed principally of manganese, by weight, but also contains some impurities such as carbon, sulfur, phosphorous, iron and silicon. Manganese metal contains by weight not less than 95 percent manganese. All compositions, forms and sizes of manganese metal are included within the scope of this investigation, including metal flake, powder, compressed powder, and fines. The subject merchandise is currently classifiable under subheadings 8111.00.45.00 and 8111.00.60.00 of the Harmonized Tariff schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

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

Best Information Available

We have based the PRC-wide rate on best information available (BIA). In administrative proceedings involving merchandise from nonmarket economy countries, the Department's consistent practice has been to treat all exporters as part of the government and assign to them the single government rate, known as the country-wide rate, unless an exporter affirmatively demonstrates that it is separate from the government and entitled to its own rate. If a non-market economy exporter does not respond to the Department's request for information, the Department has no basis to treat that exporter separately from the government and, as a result, the government (which includes the exporter) receives a margin based on best information available because one of its entities failed to respond.

In this case, the evidence on the record indicates that the respondents identified during the investigation do not account for all of the exports of the subject merchandise to the United States. As a result, it is reasonable for the Department to conclude that it did not receive responses from all exporters. In the absence of responses from all exporters, we are basing the country-wide deposit rate on BIA, pursuant to section 776(c) of the Act. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From Ukraine* (61 FR 16433, March 30, 1995)).

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. As outlined in the *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium* (58 FR 37083, July 9, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.

In this investigation, we are assigning to any PRC company, other than those specifically identified in the ''suspension of liquidation'' section the PRC-Wide deposit rate of 143.32 percent, *ad valorem*. This margin represents the highest margin in the petition, as recalculated by the Department for purposes of the initiation (*see Initiation of Antidumping Duty Investigation: Manganese Metal from the People's Republic of China* 59 FR 61869 (December 2, 1994)).

GWIIEC

The Department has decided to disregard the sales made by GWIIEC to the United States during the POI (*see* Comment 2 below for interested party comments on this issue). The Court of International Trade has stated the if evidence demonstrates to the Department that a respondent has

$10,000 penalty for Stair Cargo's violation of § 769.2(d)(1)(iv) of the Regulations. See United States Department Of Commerce Reply To Respondent's Appeal From Administrative Law Judge's Order, p. 31, n. 16.

''artificially orchestrated an export scheme involving artificially set prices,'' the agency has the discretion to disregard the U.S. sales as not resulting from a bona fide transactions. *Chang Tieh Industry Co., Ltd.* v. *U.S.*, 840 F. Supp. 141, 146 (CIT 1993). The timing of these sales relative to the filing of the petition coupled with the fact that the prices were significantly higher than the world market price of this commodity and prices observed in the United States at the time of the sale, led the Department to gather additional information from the U.S. purchaser to determine whether the sales were bona fide transactions. Certain facts asserted by parties to these transactions during this subsequent inquiry did not verify. *See* the October 27, 1995, Confidential Memorandum to File Re: Bona Fide Sales. Based on the totality of the circumstances, viewed in light of the discrepancies found, the Department determines, based on substantial evidence on the record (much of which is proprietary), that these were not bona fide sales for commercial purposes and, therefore, would not provide an appropriate basis for determining GWIIEC's pricing behavior for sales to the United States. Therefore, these sales have been disregarded.

Separate Rates

CEIEC, HIED, CMIECHN, and Minmetals have requested separate antidumping duty rates. In cases involving nonmarket economies, the Department's policy is to assign a rate, separate from the country-wide rate, only when an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. In determining whether companies should receive separate rates, we focus our attention on the exporter rather than the manufacturer, as our concern is the manipulation of dumping margins.

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

The business licenses of all respondents being considered for separate rates indicate that they are owned ''by all the people.'' As stated in *Silicon Carbide*, ''ownership of a company by all the people does not require the application of a single rate.'' Accordingly, these respondents are eligible to be considered for a separate rate.

De Jure Control

The respondents submitted a number of documents to demonstrate the absence of *de jure* control of their business activities by the PRC central government. The documents include the following:

- *Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People* (April 13, 1988) This law granted autonomy to state-owned enterprises by separating ownership and control (Article 2). It also granted enterprises the right to set prices and the right to decide what type of commodity to produce (Article 22–26).
- *Excerpts from PRC's State Council Decree: Provisions on Changing the System of Business Operation for States Owned Enterprises* (December 31, 1992) This decree superseded the April 13, 1988 law and codified existing practice. It also gave state-owned enterprises the right to establish ''production, management, and operational policies'' and the right to set prices, sell products, purchase production inputs, make investment decisions, and dispose of profits and assets. These rights apply specifically to an enterprise's import and export activities (Provision 12).
- *Order from MOFERT, No. 4, 1992* and *Temporary Provision for Administration of Export Commodities* (*Export Provisions*) (December 21, 1992) The *Export Provisions* indicate those products subject to direct government control. Electrolytic manganese metal does not appear on the *Export Provisions* list and, hence, the subject merchandise under investigation is not subject to export constraints. We note that the *Emergent Notice on Changes in Issuing Authority for Export Licenses Regarding Public Bidding Quota for Certain Commodities* (MOFTEC #140) (Effective April 1994) canceled previous export licenses for certain commodities. Manganese metal was not among these commodities.

In addition to the above laws and regulations, respondents provided the following documents:

- *PRC's Enterprise Legal Person Registration Administrative Regulations* (June 13, 1988) This regulation sets forth the procedure for registering enterprises as legal persons.
- *Law of the People's Republic of China on Enterprise Bankruptcy* (December 2, 1986) This law sets forth bankruptcy procedures for state-owned enterprises.
- *GATT Document Concerning Transparency of China's Foreign Trade Regime* (February 12, 1992) This document listed the PRC central government's response to questions by a GATT committee regarding the PRC's foreign trade regime.

Consistent with *Silicon Carbide*, we determine that the existence of the above-referenced laws and regulations demonstrates that CEIEC, HIED, CMIECHN, and Minmetals are not subject to *de jure* central government control with respect to export sales and pricing decisions. However, there is some evidence that the provisions of the above-cited laws and regulations have not been implemented uniformly among different sectors and/or jurisdictions within the PRC (*see* ''PRC Government Findings on Enterprise Autonomy,'' in Foreign Broadcast Information Service-China—93–133 (July 14, 1993)). As such, the Department has determined that a *de facto* analysis is necessary to determine whether the respondent companies are subject to central government control over export sales and pricing decisions.

De Facto Control

During verification, our examination of correspondence and sales documentation revealed no evidence that the export prices of respondents being considered for separate rates are set, or subject to approval, by any governmental authority. It was evident from our examination of correspondence and written agreements and contracts that these respondents have the authority to negotiate and sign contracts and other agreements

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

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

independent of any government authority. We also noted that the respondents retained proceeds from their export sales and made independent decisions regarding disposition of profits and financing of losses (based on our examination of financial records and purchase invoices). Finally, we have determined that these respondents have autonomy from the central government in making decisions regarding the selection of management, based on our examination of internal management selection documents.

Conclusion

Given that the record of this investigation demonstrates a *de jure* and *de facto* absence of governmental control over the export functions of all respondents being considered for separate rates, we determine that these respondents should receive a separate rate.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producers' factors of production, to the extent possible, in one or more market economies that (1) Are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise.

The Department has determined that India is the most suitable surrogate for purposes of this investigation (*see* Comment 1). Based on available statistical information, India is at a level of economic development comparable to that of the PRC, and is a significant producer of comparable merchandise.

Fair Value Comparisons

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

United States Price

For CEIEC, HIED, CMIECHN, and Minmetals, we based USP on purchase price, in accordance with section 772(b) of the Act, because manganese metal was sold directly to unrelated parties in the United States prior to importation into the United States, and because exporter's sales price (ESP) methodology was not indicated by other circumstances.

Where appropriate, we calculated purchase price based on packed, C&F and CIF prices to unrelated purchasers in the United States. We made deductions to these prices for foreign inland freight, foreign inland insurance, brokerage and handling expenses, ocean freight, and marine insurance, as appropriate (*see* Comment 13). Generally, costs for these items were valued in the surrogate country. However, where transportation services were purchased from market economy suppliers and paid for in a market economy currency, we used the cost actually incurred by the exporter.

Foreign Market Value

In accordance with section 773(c) of the Act, we calculated FMV based on the factors of production reported by the factories in the PRC which produced the subject merchandise for the four exporters analyzed in this determination. The factors used to produce manganese metal include materials, labor and energy. To calculate FMV, the reported factor quantities were multiplied by the appropriate surrogate values.

In determining which surrogate value to use for each factor of production, we selected, where possible, an average non-export value which was representative of a range of prices within the POI, or most contemporaneous with the POI, specific to the input in question, and tax-exclusive.

We first note that because business proprietary treatment was requested by respondents for certain factor inputs, we have named these inputs (''A'' through ''F''). A key to these letter assignments is provided in the attachments to the October 27, 1995 calculation memorandum.)

With the exception of Factor F, we obtained surrogate values from the following Indian sources: *Chemical Weekly* (September–November 1994), the *Monthly Trade Statistics of Foreign Trade of India,* Volume II—Imports, August 1994, (*Indian Import Statistics*); and the *Indian Minerals Yearbook: 1993* (*see* Comments 4 through 6). For Factor F, we relied upon information submitted by the petitioners (taken from the June–October 1994 *Chemical Marketing Reporter*) for a similar input (*see* Comment 7). We are no longer using the surrogate value for manganese ore which was used at the preliminary determination. We are using a surrogate value for manganese ore from the Indian Minerals Yearbook 1993 because this ore has a manganese content that is comparable to the ore used by the PRC producers and also represents a domestic price in India. We adjusted the value of the manganese ore to reflect a delivered price (*see* Comment 4).

For the reasons outlined in the June 6, 1995 preliminary determination concurrence memorandum, we are using the April 1992 through March 1993 average tax-exclusive price for industrial electricity in India, as provided by the World Bank, to value electricity (*see* Comments 9 and 10). To value PRC labor costs, we used data on Indian wage rates from the *Yearbook of Labor Statistics* (*see* Comment 8). Because indirect labor was not reported by respondents and was not included in the surrogate value for manufacturing overhead, we have added an amount for indirect labor (*see* Comment 9).

We adjusted the factor values, when necessary, to the POI using wholesale price indices (WPI's) published by the International Monetary Fund (IMF). Labor rates have been adjusted using consumer prices indices (CPI's).

To value factory overhead, we calculated the ratio of factory overhead expenses to the cost of material, labor, and energy for industries involved in ''Processing and Manufacture—Metals, Chemicals and products thereof,'' as reported in the September 1994 Reserve Bank of India Bulletin's (RBI Bulletin) (*see* Comment 11). This same source was used to calculate selling, general and administrative (SG&A) expenses as a percentage of cost of manufacturing. Because the calculated SG&A percentage from the RBI was greater than the minimum 10 percent required by the statute, we used the SG&A percentage from the RBI Bulletin for each company (*see* Comment 12). With respect to profit, we used the statutory minimum of eight percent of materials, labor, energy, overhead, and SG&A costs calculated for each factory.

At the verification of certain producers, we learned that there were multiple suppliers of raw materials. In order to calculate the inland freight cost for these inputs, we derived the relative percentages obtained from each source and then, assuming that the input was consumed in these same proportions, used the distances from each of the sources to compute the cost per unit of output.

Interested Party Comments

As discussed above, the Department has not analyzed GWIIEC's sales for this investigation. Therefore, comments specifically related to GWIIEC have not been addressed in this notice.

Comment 1: Cometals, an interested party, argues that based on the criteria set forth in 773(c)(4), India should not be considered the surrogate country in this investigation. First, India is not at

the same level of economic development as China, as reflected in India—s lower per capita gross domestic product measured in terms of purchasing power parity. Second, India should not be considered a market economy given its protected markets and centralized control of economic activity. Third, since a surrogate country must be disqualified if the comparable merchandise is being subsidized, the Department should reject India because —the Indian economy is characterized by heavily protected markets and regulated prices of essential products including energy and industrial inputs.'' Finally, since ferromanganese (one of two products considered by the Department to be comparable to the subject merchandise) uses high grade ore, in contrast to the subject merchandise which can use lower grade ore, and also is made pursuant to a different production process, it should not be considered comparable to the subject merchandise. According to Cometals, South Africa does fit the Department's criteria pursuant to 773(c)(4) (i.e., it is at a level of economic development similar to the PRC, it is a market economy, and it produces subject merchandise without subsidies); therefore, it should be considered the surrogate country in this investigation.

DOC Position: It is the Department's longstanding practice in selecting surrogate countries to rely on market-exchange-rate-based per capita income figures as a rough indicator of economic development. While some arguments can be made for relying, instead, on purchasing power parity (PPP) per capita income figures, Cometals has not provided information which demonstrates why this measure would be preferable to the data normally relied on by the Department. Therefore, the Department continues to rely primarily on exchange-rate-based per capita income figures and continues to find India (with a per capita income of approximately US$300 in 1993) at a level of economic development comparable to that of China (with a per capita income of approximately US$500 in 1993). The Department also finds on the basis of exchange-rate-based income figures that South Africa (with a per capita income of approximately US$3,000 in 1993) is not at a level of economic development comparable to that of China.

With regard to government involvement in the Indian economy, it has been and remains our longstanding practice to treat India as a market economy under the antidumping law. In antidumping cases involving Indian products, we have accepted Indian prices and costs as market determined. We do not find Cometal's arguments concerning government involvement in India's economy sufficient grounds to reject India as and appropriate surrogate market economy.

With respect to the allegation that the comparable merchandise in India is subsidized, we note that any subsidies which may be provided on the final product generally would be of concern to the Department only if foreign market value is based on export prices of the final product from the surrogate country. Here, foreign market value is not based on exports from India of the final product but rather on domestic input prices in India. There is no evidence on the record indicating that the input prices in the instant investigation are subsidized.

Finally, regarding the comparability of manganese metal and ferromanganese, the Department analyzes the comparability in terms of following four criteria: (1) Manufacturing process, (2) production inputs (3) intensity of input usage and (4) normal end-uses and applications. As noted in a May 5, 1995 Memorandum to Dave Mueller, Director of the Office of Policy, we found that ferromanganese is comparable to manganese metal based on several of the above criteria. This finding of comparability does not mean that the two products are identical in terms of the four criteria. It means that the two products are sufficiently similar that the Department can reasonably assume that commercial production of the merchandise under investigation can occur in the surrogate. Therefore, we do not agree that the possible dissimilarities between manganese metal and ferromanganese described by Cometals are sufficient to render the products non-comparable. Furthermore, the decision to select India as a surrogate country was based on its production of both ferromanganese and electrolytic manganese dioxide (EMD), the latter of which we consider to be another comparable product.

Comment 2: Petitioners contend that GWIIEC's U.S. sales are not bona-fide and should be excluded from the antidumping calculations. Petitioners argue that GWIIEC's accounting system inhibited the Department from verifying the legitimacy of the suspect terms surrounding GWIIEC's U.S. sales. Also, according to petitioners, *Chang Tieh Industry Co.* v. *United States,* 840 F. Supp 141, 146 (1993) demonstrates that the Department should disregard sales as not resulting from a bona fide transaction if evidence demonstrates that a respondent ''orchestrated an export scheme involving artificially set prices for purposes of dumping after the investigative period.''

GWIIEC argues that the Department verified the terms of its U.S. sales characteristics of the product sold. GWIIEC also argues that petitioners by conceding that Bureau of the Census import data showed imports of manganese metal in February 1995 from the PRC at a volume and average value consistent with that it reported, confirmed GWIIEC's U.S. sales.

According to respondent, the precedent cited by petitioners in *Chang Tieh* is misstated and actually supports using GWIIEC's U.S. sales. Furthermore, GWIIEC points to the U.S. International Trade Commission preliminary determination which found that ''substantial volumes of manganese metal are purchased for non-price reasons, end-users face difficulties in maintaining supplies, atypical transactions are significant in the marketplace, and prices are subject to sharp changes.''

DOC Position: As stated above, we have decided to disregard the sales made by GWIIEC (*see*, the *GWIIEC* section of this notice).

Comment 3: With respect to all respondents, petitioners argue that the record on *de facto* control remains deficient because the Department's separate rates questionnaire addressed to the central and provincial governments remains unanswered. Petitioners add that this deficiency is important in light of the National People's Congress' mandate to MOFTEC to ''take charge of the foreign trade work in the whole country,'' and in light of other administrative practices such as foreign exchange targets set by the central or local government.

Respondents CEIEC, HIED, CMIECHN, and Minmetals state that the laws placed on the record establish that the responsibility for managing the business activities of ''owned by all the people'' companies has been transferred from the central and provincial governments to the companies themselves; *i.e.*, there is an absence of *de jure* control by the central or provincial governments. Additionally, respondents contend that during the course of verification it was demonstrated that the activities of CEIEC, HIED, CMIECHN, and Minmetals ''are not subject to governmental control nor direction.'' Respondents also note that the Department confirmed at verification that they are allowed ''to borrow freely, to make independent business decisions regarding the disposition of profit or losses, and have autonomy from the central or provincial

government in making decisions regarding the selection of management.''

Finally, these respondents disagree with petitioners— claim that the responses to the government portion of the separate rates questionnaire do not reflect the totality of government knowledge. Respondents note that Department personnel met with PRC government officials and that the Department could have obtained additional information.

DOC Position: We first note that, CEIEC, HIED, CMIECHN, and Minmetals, provided certifications from both MOFTEC and the appropriate municipal authorities stating that the responses to the separate rates questionnaire were accurate. Moreover, based on the test described in *Silicon Carbide*, we have sufficient information on the record to award separate rates to the four analyzed companies.

Notwithstanding MOFTEC's mandate with respect to foreign trade work and the other administrative practices alleged by petitioners, we found no evidence of MOFTEC's or other government agencies' involvement in the export operations of these companies. While statements such as that quoted by petitioners may serve to support a presumption that a single rate should be applied to all exporters in the PRC, the specific evidence in this case rebuts that presumption for the four exporters in question.

Comment 4: The petitioners state that the Department should include an amount for freight between the PRC manganese metal producers and their ore suppliers. According to petitioners, the surrogate value for manganese ore should be viewed as an ex-mine price because there is no factual information in the record that establishes the location of the Goan mine (the Indian mine from which the surrogate value for manganese ore was derived) or its distance from the port. Petitioners also argue that for every other price quote of Indian ore, ''FOB'' meant FOB plant, which by definition, excludes freight.

Respondents claim that petitioners' argument that the surrogate value is an ex-mine price is not supported by the record. According to respondents, the manganese ore in question was shipped via a ''berth,'' which means the buyer took possession of the goods at the port, not at the plant. Accordingly, the price quoted is FOB port, as opposed to FOB plant. Therefore, the Department would be double counting freight if it were to include the distance between the PRC producers and their suppliers.

DOC Position: We have not used the same source to derive the surrogate value for manganese ore as the one used for the preliminary determination (*see Foreign Market Value* section above). Therefore, the cite by respondents stating that the surrogate value included freight is not relevant. For the reasons stated in the October 18, 1995 Memorandum from team to Susan G. Esserman, we have used a domestic price quote in India taken from the *Indian Mineral Yearbook 1993*. This publication, at page 497, states that price is quoted on a ''Free On Rail Mine Siding'' basis. Therefore, the Department is adding a freight expense to the surrogate value of manganese ore.

Comment 5: Respondents claim that the Department should use a particular form of Factor B for the surrogate value instead of the form used in the preliminary determination. Respondents argue that the form of Factor B used at the preliminary determination is incorrect because it is not the form used by the PRC producers. Further, respondents note that there is a significant price differential between the two forms of Factor B. Even if the Department uses the correct form of Factor B, respondents claim that it is still necessary to adjust the surrogate value to reflect the content levels of Factor B used by the PRC producers. Respondent suggest that the Department employ the same adjustment methodology it applied to manganese ore in the preliminary determination.

DOC Position: We agree with respondents. We verified that the input actually used by the respondents was a particular form of Factor B. Accordingly, we have used a surrogate value for this particular form. We have also adjusted the surrogate value for this factor to reflect the producer-specific content levels.

Comment 6: Respondents argue that the surrogate values for certain chemicals (Factors C and D) which were based on prices reported in a 1993 *Chemical Weekly* publication and *Indian Import Statistics*, respectively, do not comport with economic reality and, therefore, should not be used in the final determination. Furthermore, respondents note that these values are higher than the delivered factor values in the *Chemical Marketing Reporter*, as submitted by petitioners and should, therefore, be considered aberrational. Respondents suggest that the Department use the values considered reasonable by petitioners, as obtained from the *Chemical Marketing Reporter.*

Petitioners argue that respondents did not provide any information to indicate what ''economic reality'' is with respect to these surrogate values. Regarding Factor C, petitioners argue that respondents did not correct the reported *Chemical Marketing Reporter* value for content, thereby invalidating their comparison to the *Chemical Weekly.* As regards Factor *D,* petitioners assert that the form of Factor D from the *Chemical Marketing Reporter* cited by respondents is not comparable to the Factor *D* used by the Department, as obtained from *Indian Import Statistics.* Additionally, petitioners note that respondents failed to provide publicly available published information (PAPI) information, which is preferred by the Department for valuing factors, and that the *Chemical Marketing Reporter* represents U.S. prices, as opposed to PAPI from the surrogate country. Finally, petitioners argue that respondents are drawing an unfair comparison between non-delivered prices from the *Chemical Marketing Reporter* and the delivered prices from the *Chemical Weekly* and *Indian Import Statistics.*

Petitioners also argue that the Department incorrectly adjusted the input cost for Factor C for HIED in the preliminary determination.

DOC Position: We do not agree with respondents' claim that the Indian values for Factor C and D are aberrational and do not comport with economic reality. After adjusting the *Chemical Weekly* price for Factor C to account for Indian taxes, it is very close to the price reported in the *Chemical Marketing Reporter.* With respect to Factor D, the *Chemical Marketing Reporter* price suggested by respondents is not for the form used by respondents in the production of subject merchandise, as noted by petitioners. Therefore, we have used the data from the *Chemical Weekly* and the *India Import Statistics* to value these factors.

Finally, we agree with petitioners that we did not correctly adjust HIED's input cost for Factor C in the preliminary determination. We are making the correct adjustment for HIED's specific content level for Factor C, as verified by the Department.

Comment 7: According to respondents, the price of a chemical submitted by petitioners and used by the Department as a substitute for a PRC Factor of production was not properly adjusted at the preliminary determination. Respondents note that petitioners, as producers of subject merchandise, know what prices are reasonable for their industry and cannot be biased in favor of the respondents. Therefore, according to respondents, the adjusted price submitted by petitioners should be used by the Department in the final determination.

Petitioners argue that they did not provide a value for the chemical used by

respondents because this input was never specified. Petitioners assert that the Department should not adjust the price that they submitted because the figures used in their calculations were based on chemicals used in their production process. Accordingly, these values are not applicable to the PRC production process.

DOC Position: Because we have been unable to develop valuation information for the actual chemical used by PRC respondents, we are continuing to use a substitute chemical based on information provided by petitioners. Further, we agree with respondents and have made the necessary adjustments to the price of this substitute chemical to reflect the appropriate concentration level.

Comment 8: Respondents challenge the Department's valuation of skilled labor. Specifically, they argue that the surrogate value for skilled labor should be based on the upper range of the ''skilled worker'' category instead of being based on the upper range of the ''industrial worker'' category. Respondents state that ''given the fact that the lower range of the industrial category chosen by the Department for unskilled labor corresponds to the lowest monthly wage for the unskilled worker category, it would be logical and fair for the Department to use the lower range of the skilled worker category for determining the average monthly wage for skilled labor.'' Finally, they state that the Department's decision to use the upper range of the ''industrial worker'' category is not supported by the record.

Petitioners argue that the ''industrial worker'' rate should continue to be used by the Department because the production of subject merchandise is an industrial process and ''skilled workers'' represents a category which includes workers who are not engaged in an industrial process.

DOC Position: As noted in the Foreign Market Value section above, the Department is using Indian labor wages from the *Yearbook of Labor Statistics* to value PRC labor costs (*see* October 17, 1995 memorandum from David R. Boyland, Import Compliance Specialist, to case file). Therefore, because the comments above are concerned with information from a source the Department is no longer using, these comments are moot.

Comment 9: Petitioners argue that respondents incorrectly classified skilled and supervisory labor as indirect labor and did not report indirect labor hours needed to produce the merchandise. Petitioners argue that skilled, supervisory and clerical labor should be considered direct labor because they are directly related to the manufacturing operations. Petitioners support their claim by referring to *Plant Design and Economics for Chemical Engineers (Plant Design),* and note that according to this source, the cost of direct supervisory and clerical labor should be 15 percent of the cost of unskilled and skilled operating labor.

Additionally, petitioners argue that all respondents, except GWIIEC, under-reported their labor usage. Petitioners state that the respondents' production process is less automated than that of petitioners' and, hence, should reflect higher labor intensiveness. Petitioners suggest that the Department correct for this by using GWIIEC's labor hours for the other respondents.

Respondents argue that for one of the producers, the Department verified that certain workers were not involved in direct labor activities and, hence, only a part of their labor cost should be used to calculate FMV. Further, respondents argue that the skilled and unskilled labor hours were verified by the Department and, as such, should be used in the final determination. According to respondents, *Plant Design* classifies costs based on the fixed or variable nature of a particular expense, with the result that these costs are treated as direct costs. However, a cost accounting approach would define items such as ''maintenance and repairs'' and supervisory labor as a part of factory overhead. Respondents urge the Department to follow the cost accounting approach. In support of this position, respondents point out that the Department's standard cost of production questionnaire for market economies treats supervisory labor as part of factory overhead.

DOC Position: Because there is no indirect labor component in the Department—s factory overhead surrogate, we reject respondents' argument that only a portion of verified indirect labor hours be included in the FMV. With the exception of GWIIEC, all respondents, as requested by the Department in its questionnaire, reported direct labor hours, as opposed to direct and indirect labor hours. Pursuant to information gathered at verification, the Department was able to quantify some of the indirect labor hours incurred by respondents, as well as identify other indirect labor functions performed. Because we do not have complete indirect labor information for respondents and, as noted above, our factory overhead surrogate does not include a component for indirect labor, we have estimated the amount of indirect labor that was not quantified by the Department and have used this value to calculate FMV (*see* October 27, 1995 calculation memorandum).

While petitioners have argued that total labor is under-reported based on their own experience, we have not rejected the labor component of CEIEC's, HIED's, CMIECHN's and Minmetals' responses in favor of GWIIEC's data. Instead, we have relied on these companies' verified amounts of labor usage adjusted for indirect labor as discussed above in our final determination.

Comment 10: Petitioners argue that electricity consumption for the majority of respondents is unrealistically low. Petitioners claim that the use of certain inputs (*i.e.*, Factor A) does not explain respondents' low electricity consumption and that respondents' electricity consumption should not be less than the minimal amounts indicated as being necessary to produce manganese metal based on the *Kirk-Othmer Encyclopedia of Chemical Technology (2nd Edition) (Kirk-Othmer).* Additionally, according to petitioners, respondents' less efficient economies of scale should result in higher electricity consumption. Given that the production process employed and the raw materials consumed by each of the respondents are basically the same, petitioners also argue that the wide range of electricity usage rates reported by these respondents indicates that the reported electricity consumption is suspect for all of them. Petitioners contend that the Department should use the electricity consumption reported by GWIIEC's producer for all producers in this investigation since GWIIEC's manganese metal producer reported electricity consumption within minimum operational requirements. Respondents, argue that the electricity consumption extrapolated from *Kirk Othmer* by petitioners is based on the electricity consumption in 1967 of two companies no longer producing manganese metal and should be considered outdated. Therefore, the verified electricity usage of the individual producers should be used by the Department in its final determination.

DOC Position: While the domestic and PRC production processes are fundamentally the same, there are some important differences between the two. For example, the PRC producers use a certain input (Factor A) which improves electricity current efficiencies; *i.e.*, all things being equal, the electrolysis stage of the process requires relatively less electricity in the presence of Factor A.

Given the large number of variables (*e.g.*, different production processes and inputs), it is unknown whether the use of Factor A can fully explain the

difference in the electricity consumption reported by producers and the levels submitted by petitioners. However, based on information supplied by the U.S. Bureau of Mines, we have determined that the electricity usage reported by respondents is not outside the range that would be expected for a producer using Factor A (*see* the October 16, 1995 memorandum to Barbara R. Stafford, Deputy Assistant Secretary, Import Administration). Therefore, the Department has used the verified amounts of electricity consumption.

Comment 11: Respondents argue that indirect material costs were double counted by the Department when it valued minor process chemicals and also included the ''stores and spares consumed'' category from the RBI Bulletin as a component of factory overhead. Respondents argue that either the ''stores and spares consumed'' component should be eliminated from the surrogate factory overhead or the Department should avoid directly valuing process chemicals. Respondents also argue that inputs that are considered as ''consumables'' in the accounting systems of the producers should be treated as indirect materials.

Respondents also disagree with petitioners' interpretation of the term ''stores and spares consumed'' listed in the RBI Bulletin, arguing that the Department can reasonably assume that the ''stores and spares consumed'' category includes an element for indirect materials. They point out that the reference to *Plant Design* cited by petitioners distinguishes between ''raw materials,'' which are direct materials, and ''catalysts and solvents, which are not direct materials.'' The chemicals in question, according to respondents, are ''catalysts and solvents.'' Respondents also note that the Department's recognition of variable overhead in market economy cases contradicts petitioners' assertion that all variable inputs must be direct materials. Finally, since the chemicals in question are not physically incorporated into the finished goods or are used in very small quantities (*i.e.*, the antithesis of the cost accounting definition of direct materials), these chemicals should be considered indirect materials which are included in factory overhead.

Petitioners argue that the ''stores and spares consumed'' line item in the RBI Bulletin should be considered ''operating supplies,'' as the term is used in *Plant Design; i.e.*, ''miscellaneous supplies * * * needed to keep the process functioning.'' Petitioners note that *Plant Design* states that ''[r]aw materials are all items that must be supplied in the manufacturing process for each unit of product produced.'' According to petitioners, to the extent that process chemicals are variable inputs, they must be considered ''raw materials'' for which surrogate values must be attributed. Therefore, petitioners state that because these items are not included in the surrogate factory overhead in the ''stores and spares consumed'' line item, the Department should value these chemicals separately from overhead.

DOC Position: Both petitioners and respondents have attempted to explain what the RBI ''stores and spares consumed'' category contains, but neither side has persuaded us. Based upon our own analysis, we have concluded that only those chemicals used after the metal has been produced or those chemicals used for cleaning purposes unrelated to the actual production process should be included in factory overhead (*see* October 16, 1995 Memorandum to Barbara R. Stafford, Deputy Assistant Secretary, Import Administration). With respect to the other chemicals in question, while respondents' accounting systems may treat them as an element of factory overhead, these materials are more appropriately considered direct materials because they are required for a particular segment of the production process. Based on this analysis, we have treated certain of the so-called ''process chemicals'' as indirect materials which are covered by the surrogate value for factory overhead and the remainder have been valued as direct materials.

Comment 12: Petitioners argue that the Department omitted certain expense categories (*i.e*, ''selling commission,'' ''rates and taxes,'' ''other provisions,'' and ''financing interest'') which should have been included in the surrogate SG&A value. Additionally, if the Department continues to exclude ''financing interest'' from the SG&A value, it should use ''gross operating profit'' instead of ''operating profit.'' Finally, according to petitioners, regardless of how PRC producers categorize certain items, costs cannot be assigned to factory overhead or SG&A categories unless the above-referenced RBI Bulletin table attributes the cost to factory overhead or SG&A.

Respondents argue that the Department should not include ''rates and taxes'' in SG&A because the surrogate input values are exclusive of internal taxes or duties. Also, according to respondents, because the Department does not normally adjust for credit expenses in NME cases, it should not include a value for credit expenses (''financing costs''). Moreover, since the cost of producing manganese metal is determined at the producer level, ''selling commissions'' should not be included as the producer does not sell the merchandise, only the exporter does. Generally with respect to SG&A, respondents claim that because the Indian surrogate information is for a broad group of industries and India has no manganese metal industry, the Department should include in its surrogate SG&A only those expenses incurred by the PRC producers. As an alternative to determining what should be included in the surrogate SG&A value, respondents suggest that the Department use the statutory minimum of 10 percent. With respect to profit, respondents argue that the Department's normal practice is to use operating profits.

DOC Position: We agree with petitioners that we incorrectly omitted certain SG&A expense categories listed in the RBI table. We have included these amounts in our final determination.

We disagree with respondents that financing costs should be removed from the SG&A. The Department does not adjust for differences in selling expenses because we do not know enough about the selling expenses included in the surrogate SG&A to make the adjustment. However, the lack of an adjustment does not mean that these costs should be excluded from FMV. We also disagree with respondents regarding selling commissions. Section 773(c)(1) clearly requires the Department to include an amount for general expenses in the FMV. Therefore, regardless of whether the FMV is being constructed at the producer or exporter level, it is appropriate to add an amount for selling expenses.

Further, we disagree with respondents' argument that we should use only those elements of the surrogate SG&A that correspond to expenses incurred by the PRC producers. It is the Department's consistent practice to use a surrogate amount for the entirety of SG&A as calculated using the RBI Bulletin, as opposed to basing the surrogate SG&A percentage on actual expenses incurred by respondents.

Finally, following our normal practice, we considered operating rather than gross profit. Because this amount was less than 8 percent of COM and SG&A, we used the statutory minimum.

Comment 13: Respondents claim that the Department verified that certain charges deducted in the preliminary determination were not incurred by respondents. Therefore, these amounts should not be deducted for the final determination. Moreover, respondents reject petitioners' claim that it is

common practice in the PRC to include insurance as part of inland freight.

Specifically, for CEIEC, respondents claim that the Department verified that foreign brokerage charges were included in ocean freight and hence, this expense should not be valued separately. Regarding CEIEC's ocean freight, the charges were incurred in U.S. dollars. Therefore, respondents argue that CEIEC's actual shipping should be used.

For HIED, respondents claim that the Department verified that foreign inspection charges were not incurred. Hence, no deduction should be made for this expense in the final determination.

Finally, for Minmetals' ocean freight, respondents ask the Department to take the average amount Minmetals paid in U.S. dollars for shipping on most of its U.S. sales on market carriers and use that amount to value the shipping for its remaining sale.

Petitioners argue that an amount for insurance should be added to foreign inland freight because the Department found numerous situations where insurance was included as part of the freight charges paid by the respondents. Regarding the specific exporters, petitioners generally refute respondents' claims. Much of their discussion is proprietary in nature. Hence, the details are not presented here.

DOC Position: We have made deductions for all expenses incurred in shipping the merchandise to the United States (*see* CFR 353.41(d)(2)(i)). If an expense was not incurred, no deduction was made. With respect to insurance for foreign inland freight, we have made deduction only where we verified that insurance was included in the inland freight charge.

We have not used CEIEC's actual freight because an NME carrier was used. We have made the adjustment by using a surrogate ocean freight which includes brokerage and handling. No additional deduction for brokerage and handling was made. Thus, there is no double counting of brokerage and handling.

For HIED, we disagree that we made any deduction for inspection charges at the preliminary determination. As stated in Comment 12, the Department does not adjust for differences in selling expenses because we do not know enough about the selling expenses included in the surrogate SG&A to make an adjustment. Thus, for the final determination, the Department has continued not to make a deduction for this expense for any respondent.

Finally, for Minmetals, we used the shipping rate proposed by respondents for the single U.S. sale where shipping was paid in RMB.

Comment 14: Respondents argue that a type of packing material identified by the Department in its verification report of CMIECHN/CNIECHN's supplier should not be used to calculate FMV because this packing material was not used for POI sales.

DOC Position: The sales in question were not found to be outside the POI, as respondents claim. Therefore, we have calculated the FMV for these sales using the estimated weight of the packing material used for these sales.

Comment 15: According to respondents, both the statute and the Department's regulations require that internal taxes remitted or refunded upon export are to be excluded from the calculation of the constructed value. Further, these respondents argue that the Department verified that the value added tax (VAT) paid by the exporters to the manganese metal producers is reimbursed by the PRC government upon exportation of the merchandise. Therefore, according to respondents, the Department should deduct VAT from all direct material inputs used to determine the cost of manufacture and which were refunded by the PRC government when subject merchandise was exported. The respondents also submit an alternative suggestion for a VAT adjustment in which the Department increases the export price by the amount of the VAT they receive from the PRC government upon exportation of the merchandise.

The petitioners claim that the PRC government does not refund VAT on material inputs, rather, the refund is on the final product. Additionally, the VAT is not incorporated in the FMV calculation, because the inputs are valued using Indian surrogate values which do not incorporate a VAT. Petitioners claim that respondents' alternative to increase the U.S. price is without merit, and that the Department correctly excluded VAT from the U.S. price-to-FMV comparison.

DOC Position: The Department's factors of production calculation uses Indian surrogate values which are exclusive of Indian taxes. Because the FMV is net of taxes, neither a downward adjustment to FMV nor the alternative upward adjustment to USP suggested by respondents is necessary.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to suspend liquidation of all entries of manganese metal from the PRC, as defined in the ''Scope of the Investigation'' section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percent
CEIEC	10.27
CMIECHN/CNIECHN	0.86
HIED	3.72
Minmetals	4.36
PRC-wide Rate	143.32

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether these imports are causing material injury, or threat of material injury to the industry in the United States, within 45 days. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an Antidumping Duty Order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

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

Dated: October 27, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–27369 Filed 11–3–95; 8:45 am]

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COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Pakistan

October 31, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.