

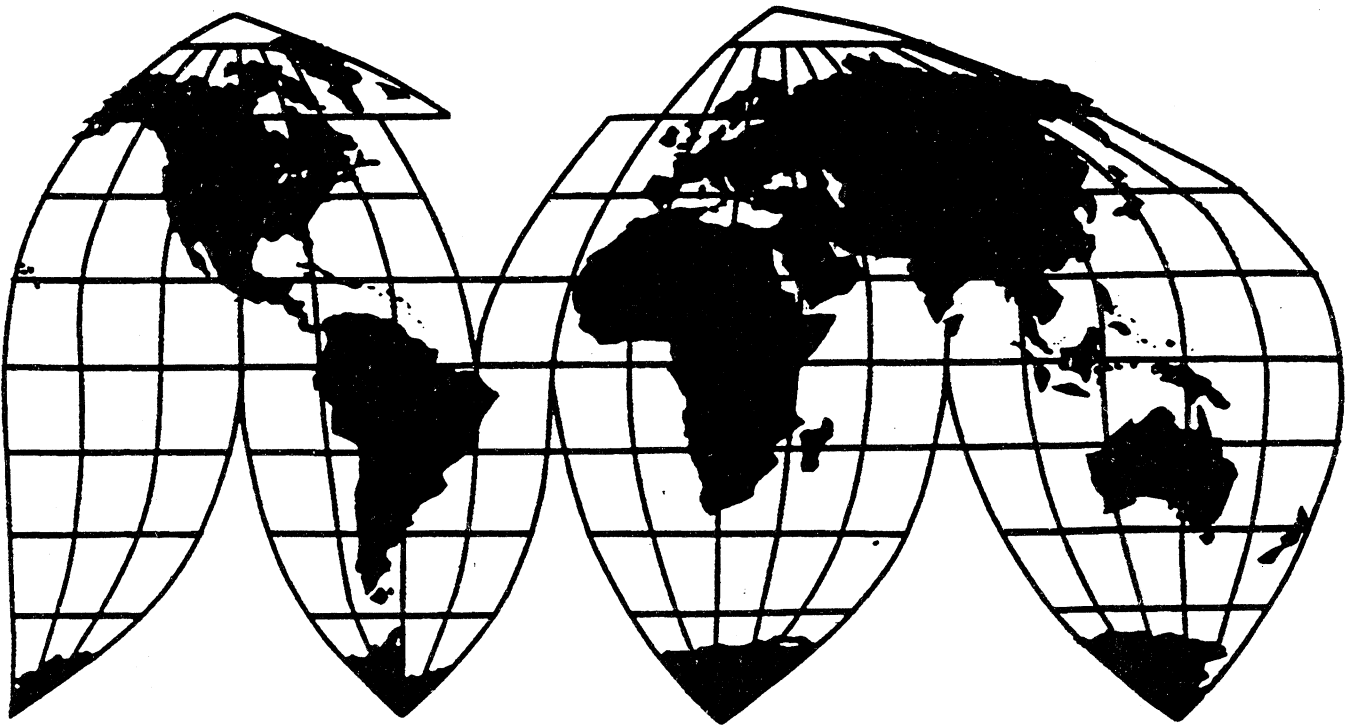
Persulfates From China

Investigation No. 731-TA-749 (Final)

Publication 3044

June 1997

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-749 (Final)

PERSULFATES FROM CHINA

DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of persulfates provided for in subheadings 2833.40.60 and 2833.40.20 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted this investigation effective July 11, 1996, following receipt of a petition filed with the Commission and the Department of Commerce by FMC Corporation, Chicago, IL. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of persulfates from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of January 23, 1997 (62 FR 3526). The hearing was held in Washington, DC, on May 14, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

VIEWS OF THE COMMISSION

Based on the record in this investigation, we determine that an industry in the United States is materially injured by reason of imports of persulfates from China that have been found by the Department of Commerce ("Commerce") to be sold in the United States at less than fair value ("LTFV").

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of subject merchandise, the Commission must first define "the domestic like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930 ("the Act") defines the relevant industry as the "producers as a whole of a domestic like product, or those producers whose collective output of the domestic like product constitutes a major proportion of the total domestic production of that product."¹ In turn, the Act defines "domestic like product" as: "[a] product that is like, or in the absence of like, most similar in characteristics and uses with the article subject to investigation."²

Our decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and we apply the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.³ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁴ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.⁵ Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.⁶

In its final determination, the Department of Commerce defined the imported articles subject to investigation as follows:

persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(\text{NH}_4)_2\text{S}_2\text{O}_8$, $\text{K}_2\text{S}_2\text{O}_8$ and $\text{Na}_2\text{S}_2\text{O}_8$.⁷

¹ 19 U.S.C. § 1677(4)(A).

² 19 U.S.C. § 1677(10).

³ See Nippon Steel Corp. v. United States, 19 CIT ___, Slip Op. 95-57, at 11 (Apr. 3, 1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer or producer perceptions; and, where appropriate, (6) price. See Nippon Steel at 11 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

⁴ See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

⁵ Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991).

⁶ Hosiden Corp. v. Advanced Display Manufacturers, 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

⁷ 62 Fed. Reg. 27,222, 27,223 (May 19, 1997).

Persulfates are salts that are produced in the form of a dry white crystalline powder that is odorless. The typical merchandise sold has a persulfate content of 98 percent or above. They are all derived from a common source, persulfuric acid, and the active ingredient for all three salts is the persulfate anion. Persulfates have two major applications: (1) as catalysts or "initiators" in the process of polymerization and (2) as oxidants in cleaning, microetching and plating processes. The polymerization application accounts for about *** percent of the demand for persulfates when measured by volume, with oxidation applications accounting for the remaining *** percent. Persulfates as catalysts are primarily used in latex for carpet backing and paper coating, acrylic latex paint, water treatment, and other acrylics and polyvinyls used in adhesives. Persulfates as oxidants are primarily used in printed circuit boards, textiles, film processing, and soil stabilization.⁸

B. Domestic Like Product

In the preliminary phase of this investigation, the Commission examined one domestic like product issue: whether persulfates should be defined as a single domestic like product, or as three, *i.e.* ammonium, potassium and sodium persulfates. The Commission found these three types of persulfates to constitute one domestic like product, citing similarities in physical characteristics, general interchangeability and the identical channels of distribution, as well as common manufacturing facilities, production processes and production employees, and producer perceptions.⁹ In this final phase of the investigation, respondents ICC Chemical Corporation ("ICC"), Shanghai Ai Jian Reagent Works, Shanghai Ai Jian Import & Export Corporation and Sinochem Jiangsu Wuxi Import & Export Corporation (collectively "Ai Jian") and Aceto Corporation ("Aceto") argue that the Commission should determine that there are three separate like products. However, they have presented no new evidence in this final phase of the investigation that would warrant changing our determination.

In view of the similarities in physical characteristics and uses,¹⁰ the common manufacturing facilities and production employees,¹¹ producer perceptions of the products as similar,¹² evidence of interchangeability among the three products,¹³ and common channels of distribution,¹⁴ we once again determine that there is one domestic like product consisting of ammonium, sodium and potassium persulfates.

C. Domestic Industry and Related Parties

In considering the effect of the subject imports on the domestic industry, the Commission's practice has been to include within the domestic industry all domestic production, whether toll-produced, captively

⁸ Confidential Report ("CR") at I-2 - I-3, Public Report ("PR") at I-2.

⁹ Persulfates from China, Inv. No. 731-TA-749 (Preliminary), USITC Pub. 2989 (Aug. 1996), at 4-5 ("Preliminary Determination").

¹⁰ CR at I-2 - I-3, PR at I-2.

¹¹ CR at I-3, PR at I-2 - I-3.

¹² CR at I-4, PR at I-3.

¹³ CR at I-4, PR at I-3 - I-4.

¹⁴ CR at I-5, PR at I-4.

consumed, or sold in the merchant market.¹⁵ Based on our definition of the domestic like product, we determine that the domestic industry consists of petitioner, FMC Corporation ("FMC"), which is the sole domestic producer of ammonium, sodium and potassium persulfates.¹⁶

As noted in our preliminary determination, FMC imported very small amounts of Chinese persulfates in 1994 and 1995, and thus falls within the purview of the related parties provision.¹⁷ In the preliminary phase of this investigation, we determined that appropriate circumstances did not exist to exclude FMC from the domestic industry, primarily because the amounts imported were minuscule.¹⁸ Further, FMC's interest is clearly in production, not importation. There is no new evidence of additional imports of Chinese persulfates by FMC, or any other developments that warrant a different outcome now.¹⁹ Accordingly, we again find that "appropriate circumstances" do not exist to exclude FMC from the domestic industry.

II. CONDITION OF THE DOMESTIC INDUSTRY

In assessing whether a domestic industry is materially injured or threatened with material injury by reason of LTFV imports, we consider all relevant economic factors that bear on the state of the industry in the United States.²⁰ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."²¹

¹⁵ See United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).

¹⁶ CR at VI-1, PR at VI-1.

¹⁷ FMC imported ***. CR at III-2, PR at III-1. See 19 U.S.C. § 1677(4)(B). In addition, ***. CR at III-2, PR at III-1. ***. Petitioner's Post-Hearing Brief, Exh. 6. Therefore, petitioner would not be subject to the related parties provision of the statute on this basis.

We note that, in the preliminary phase of the investigation, petitioner acknowledged that it had imported *** sample quantities of persulfates from China in *** that were in the one- to two-kilo range, *i.e.* roughly 5 to 10 pounds. Petitioner's Postconference Brief, Exh. 23; Tr. at 31-32. The slight discrepancy in the amounts imported and the dates of importation does not, in our opinion, compel a different result.

¹⁸ Preliminary Determination at 6.

¹⁹ Because there is one domestic producer, the figures pertaining to its production and financial condition are confidential. *** pounds of persulfates were imported from China in 1994, *** pounds in 1995 and *** pounds in 1996. CR at IV-3, PR at IV-2, Table IV-1. Petitioner shipped *** pounds in 1994, *** pounds in 1995 and *** pounds of persulfates in 1996. See CR at IV-5, PR at IV-2, Table IV-2.

²⁰ 19 U.S.C. § 1677(7)(C).

²¹ Id.

Several conditions of competition are pertinent to our analysis of the U.S. persulfates industry.^{22 23} First, as respondents have indicated, petitioner is the sole domestic producer of persulfates,²⁴ although competition in the market comes from both subject and non-subject imports. Second, the demand for persulfates is cyclical and is closely tied to trends in general economic conditions in industries such as housing, automotive and packaged goods markets.²⁵ Third, in August 1995, FMC experienced a warehouse fire in its only manufacturing plant. The fire destroyed 800 tons of its inventory and shut down production for six weeks. FMC asserts that there was no short-supply situation in the United States as a result of the fire, although respondents dispute this claim.²⁶ We note that the quantity of inventory destroyed in the fire amounted to *** percent of FMC's total production in 1995.²⁷ Nonetheless, there is evidence in the record that, after the fire, many purchasers sought to develop alternate sources of supply of persulfates other than FMC.²⁸ Fourth, at approximately the same time as the fire, the European Union imposed an antidumping duty of 83.3 percent on imports of persulfates from China. The provisional duty was imposed in June 1995, and the final antidumping duty, also 83.3 percent, was imposed in December 1995.²⁹

²² Commissioner Crawford joins her colleagues in this investigation in a discussion of the "condition of the industry" even though she does not make her determination based on industry trends. Rather she views the discussion as a factual recitation of the data collected concerning the statutory impact factors.

²³ Commissioner Crawford notes that the information in this investigation concerning the domestic industry is entirely information related to petitioner, the sole domestic producer. Consequently, virtually all of the information relevant to the "condition of the industry" is in petitioner's control. However, the information provided by petitioner often does not address forthrightly apparent inconsistencies and contradictions. For example, petitioner's characterization of the state of its persulfates business in this proceeding differs from its optimism for its business as expressed in other public fora. In addition, petitioner's cost allocations and responses to questions concerning its financial condition are carefully worded, but most often leave one wondering whether more complete and useful information is available. Overall, it is most accurate to say that petitioner most often responds to, rather than answers, questions. Nonetheless, since Commissioner Crawford's determination is based on whether petitioner would have been materially better off if the subject imports had not been dumped, rather than on the trends in its financial condition, petitioner's approach to providing information to the Commission, while troubling, does not affect her determination.

²⁴ CR at III-1, PR at III-1. There is information on the record that Huron Tech Corporation has announced its intention to construct a persulfate plant. Tr. at 85.

²⁵ CR at IV-2, PR at IV-2.

²⁶ CR at III-1 - III-2, PR at III-1.

²⁷ CR at III-1, CR at III-4, Table III-1; PR at III-2 & Table III-1.

²⁸ See CR at II-7, PR at II-4; CR at V-17 - V-22, PR at V-4 - V-5.

²⁹ CR at VII-2 - VII-3, PR at VII -2. We also note that petitioner internally consumes a small amount of persulfates for the production of downstream articles. Thus, we must determine whether to apply the statutory captive production provision in this investigation, 19 U.S.C. § 1677(7)(C)(iv), although no parties have argued that the captive production provision should apply. This provision applies only if significant production of the domestic like product is internally transferred and significant production is sold in the merchant market. 19 U.S.C. § 1677(7)(C)(iv). As we did in the preliminary phase of this investigation, we conclude that the requirements that mandate a captive production analysis are not met.

Internal transfers of persulfates amounted to *** percent of total production of persulfates in 1994, 1995 and 1996 respectively. CR at III-4, PR at III-2, Table III-1; CR at III-6, PR at III-2, Table III-2. These figures are approximately the same as in the preliminary phase of the investigation. Petitioner then reported that between ***

(continued...)

Total apparent consumption increased irregularly during the period of investigation.³⁰ The domestic industry's share of consumption fluctuated, but showed a slight overall increase between 1994 and 1996.³¹ U.S. producer's shipments increased steadily during this period.³² Whereas domestic capacity to manufacture persulfates was steady throughout the period of investigation, production and, therefore, capacity utilization increased.³³

End-of-period inventories decreased irregularly over the period of investigation.³⁴ The average ratio of inventories to production and the average ratio of inventories to U.S. shipments decreased by *** between 1994 and 1995, then increased somewhat in 1996, but decreased overall during the period of investigation.³⁵

The number of production and related workers declined over the period of investigation³⁶ while hours worked and average hourly wages rose steadily³⁷ and unit labor costs increased slightly.³⁸

²⁹ (...continued)

percent of its persulfates production was captively consumed in 1995. Petitioner's Postconference Brief, Exh. 24. Based on the actual shipment data obtained from petitioner's questionnaire response, internal shipments accounted for *** percent of total shipments in 1995. Preliminary CR at III-5, PR at III-2, Table III-2. Thus, we find that significant production of the domestic like product is not internally consumed.

³⁰ By quantity, apparent consumption increased from *** pounds in 1994 to *** pounds in 1995, then fell slightly to *** pounds in 1996. By value, apparent consumption increased from *** in 1994 to *** in 1995, then decreased to *** in 1996. CR at IV-5, PR at IV-2, Table IV-2.

³¹ By quantity, the domestic industry's market share declined from *** percent in 1994 to *** percent in 1995, then increased to *** percent in 1996. By value, the domestic industry's market share fell from *** percent to *** percent between 1994 and 1995, then rose to *** percent in 1996. CR at IV-5, PR at IV-2, Table IV-2.

³² U.S. producer's shipments increased from *** pounds in 1994 to *** pounds in 1995, then rose further to *** pounds in 1996. CR at IV-5, PR at IV-2, Table IV-2.

³³ Throughout the period of investigation, U.S. producer's capacity remained at *** pounds. Production increased from *** pounds in 1994 to *** pounds in 1995, then increased to *** pounds in 1996. Between 1994 and 1995, capacity utilization increased from *** percent to *** percent, then increased further to *** percent in 1996. CR at III-4, PR at III-2, Table III-1. Respondent ICC Chemical Corporation claimed that petitioner misled the Commission with respect to its total capacity to produce persulfates. ICC's Posthearing Brief at 3-4. There is evidence on the record that petitioner made an investment allowing it to produce more sodium persulfate, but it did so at the expense of ammonium persulfate and other salts, and thereby did not increase overall capacity. Tr. at 27-28, 139-40.

³⁴ Between 1994 and 1995, end-of-period inventories decreased from *** pounds to *** pounds, and then increased to *** pounds in 1996. CR at III-9, PR at III-3, Table III-3.

³⁵ The average ratio of inventories to production decreased from *** percent in 1994 to *** percent in 1995, then increased to *** percent in 1996. The average ratio of inventories to U.S. shipments declined from *** percent in 1994 to *** percent in 1995, then rose to *** percent in 1996. CR at III-9, PR at III-3, Table III-3.

³⁶ The number of production and related workers decreased from *** to *** between 1994 and 1995, and remained at *** in 1996. CR at III-10, PR at III-3, Table III-4.

³⁷ Hours worked increased from *** to *** between 1994 and 1995, and increased further to *** in 1996. Average hourly wages increased from *** in 1994 to *** in 1995, then to *** in 1996. CR at III-10, PR at III-3, Table III-4.

³⁸ Unit labor costs were *** per pound in 1994 and 1995, and were *** per pound in 1996. CR at III-10, PR at III-3, Table III-4.

The quantity and value of net sales increased slightly during the period of investigation,³⁹ while the unit value of cost of goods sold (COGS)⁴⁰ and the ratio of COGS to net sales both showed large increases.⁴¹ Gross profit decreased steadily over the period, while selling, general and administrative (SG&A) expenses increased steadily.⁴² From 1994 to 1995, operating income declined by ***. In 1996, the domestic industry experienced an operating loss.⁴³ Capital expenditures *** over the period of investigation, while research and development expenses also increased greatly.^{44 45}

III. MATERIAL INJURY BY REASON OF PERSULFATES FROM CHINA^{46 47}

In the final phase of antidumping investigations, the Commission determines whether an industry in the United States is materially injured by reason of the LTFV imports under investigation.⁴⁸ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product and their impact on domestic producers of the domestic like product, but only in the context of

³⁹ Total net sales increased in quantity from *** pounds in 1994 to *** pounds in 1995, then increased further to *** pounds in 1996. CR at VI-3, PR at VI-1, Table VI-1. In terms of value, total net sales increased from *** in 1994 to *** in 1995, then increased further to *** in 1996. CR at VI-3, PR at VI-1, Table VI-1.

⁴⁰ Between 1994 and 1995, the unit value of COGS increased from *** per pound to ***, then increased to *** in 1996. CR at VI-3, PR at VI-1, Table VI-1.

⁴¹ The ratio of COGS to net sales increased from *** percent to *** percent between 1994 and 1995, then increased to *** percent in 1996. CR at VI-3, PR at VI-1, Table VI-1.

⁴² Gross profit decreased from *** to *** between 1994 and 1995, then decreased further to *** in 1996. SG&A rose from *** in 1994 to *** in 1995, then rose again to *** in 1996. CR at VI-3, PR at VI-1, Table VI-1.

⁴³ Operating income was *** in 1994 and *** in 1995, and there was an operating loss of *** in 1996. CR at VI-3, PR at VI-1, Table VI-1. We note that respondents have taken issue with petitioner's allocation of various costs and expenses and urged us to examine gross profits when making our determination. Respondents' recalculations continue to show, however, that both gross profit and operating income show declines over the period of investigation. *See, e.g.*, ICC's Comments on New Information at 8, 12 (Tables A & B); *see also* Ai Jian's Final Comments at 13-14.

⁴⁴ Capital expenditures increased from *** in 1994 to *** in 1995, then increased again to *** in 1996. Research and development expenses increased from *** in 1994 to *** in 1995, then declined slightly to *** in 1996. CR at VI-9, PR at VI-3, Table VI-3.

⁴⁵ Based on the foregoing, Commissioner Newquist concludes that the domestic industry producing persulfates is experiencing material injury.

⁴⁶ In the preliminary phase of the investigation, Vice Chairman Bragg found that there was no reasonable indication of material injury by reason of the allegedly LTFV subject imports. She did, however, along with the majority of the Commission, find that there was a reasonable indication of a threat of material injury. *See* Preliminary Determination, Additional Views of Vice Chairman Lynn M. Bragg. She notes that her determination in the final phase of the investigation that the domestic industry is materially injured is based upon an evaluation of all the evidence in the record, including data for all of 1996.

⁴⁷ Commissioner Crawford does not join this section of these Views. *See* her Additional Views.

⁴⁸ 19 U.S.C. § 1673d(b). The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant." 19 U.S.C. § 1677(7)(A).

U.S. production operations.⁴⁹ Although the Commission may consider causes of injury to the industry other than the LTFV imports,⁵⁰ it is not to weigh causes.^{51 52}

For the reasons discussed below, we determine that the domestic persulfates industry is materially injured by reason of LTFV imports from China.

⁴⁹ 19 U.S.C. § 1677(7)(B)(I). The Commission “may consider such other economic factors as are relevant to the determination,” but shall “identify each [such] factor . . . and explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B).

⁵⁰ Alternative causes may include the following:

[T]he volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry. S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979). Similar language is contained in the House Report. H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979).

⁵¹ See, e.g., Gerald Metals, Inc. v. United States, 937 F. Supp. 930, 936 (Ct. Int’l Trade 1996); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int’l Trade 1988).

⁵² Commissioner Newquist further notes that the Commission need not determine that imports are “the principal, a substantial, or a significant cause of material injury.” S. Rep. No. 249, at 57, 74. Rather, a finding that imports are a cause of material injury is sufficient. See, e.g., Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 741 (Ct. Int’l Trade 1989); Citrosuco Paulista, 704 F. Supp. at 1101.

A. Volume of Subject Imports⁵³

The total quantity of shipments of subject imports more than doubled between 1994 and 1995, and then increased significantly between 1995 and 1996, for a nearly threefold increase over the period of investigation. The value of the subject import shipments followed the same trend, tripling between 1994 and 1996.⁵⁴

Subject imports also made significant gains in market share over the period of investigation. By quantity, subject import market share effectively doubled between 1994 and 1995, and increased by almost another third between 1995 and 1996, for a nearly threefold increase between 1994 and 1996. In terms of value, subject imports' market share more than doubled over the period of investigation.⁵⁵

⁵³ We have considered ICC's argument that, in making its injury determination, the Commission must examine only imports that enter U.S. commerce. That is, shipments that are sent to the United States where they enter a warehouse and are sold to a non-U.S. destination should not be examined because if they are sold to a non-U.S. destination, ICC applies for duty drawback and receives a refund on the U.S. duty. ICC maintains that these represent a substantial amount of its imports and if the Commission considers them in making its injury determination it would violate the statute and the obligations of the United States under the Antidumping Agreement. ICC's Prehearing Brief at 35-36. ICC asserts that imports that are reexported do not meet the statutory requirement that injury must be by reason of the imported merchandise that Commerce has found to have been sold at less than fair value. *Id.* at 38.

We note that the statute requires us to make our injury determination based on "the merchandise with respect to which the administering authority has made an affirmative determination." 19 U.S.C. § 1673d(b)(1). Commerce made its final determination with respect to all merchandise and did not exclude reexports. 62 Fed. Reg. at 27,234. The Commission has rejected in other investigations arguments that it should look only at the level of import shipments in the United States, and not imports into the United States, because a significant portion of the imports were merely warehoused and reexported. In these cases the Commission noted that the statute required it to examine the level of "imports," and not import shipments in the U.S. market, although it may be appropriate to consider the degree to which imports are held in inventory instead of being immediately sold as a factor in assessing the significance of imports. *See Ferrosilicon from Kazakhstan and Ukraine*, Invs. Nos. 731-TA-566 & -569 (Final), USITC Pub. 2626 (Mar. 1993), at 22-23; *Ferrosilicon from Brazil and Egypt*, Invs. Nos. 731-TA-641-642 (Preliminary), USITC Pub. 2605 (Feb. 1993). Accordingly, we have considered all subject imports -- examining subject import shipment data as opposed to data pertaining simply to imports -- in making our determination, and have determined that the reexportation of imports has not vitally affected our assessment of the significance of the imports. We received data on reexportation from three importers: ICC, ***. The data show that, throughout the period of investigation, a large amount of subject imports were *not* reexported. In 1994, by quantity *** percent of these three firms' imports were not reexported; in 1995, *** percent of their imports were not reexported; and in 1996, *** percent of their imports were not reexported. By value, in 1994, *** percent of the three firms' imports were not reexported; in 1995, *** percent of their imports were not reexported; and in 1996, *** percent of their imports were not reexported. *See* ICC's, *** Questionnaire Responses. Respondent *** did not raise this issue, nor did any other importer. In view of the foregoing, we find that any reexportation does not significantly affect our analysis.

⁵⁴ In terms of quantity, shipments of imports of persulfates from China increased from *** pounds in 1994 to *** pounds in 1995, and then to *** pounds in 1996. The value of these imports increased from *** in 1994 to *** in 1995, and then to *** in 1996. CR at IV-5, PR at IV-2, Table IV-2.

⁵⁵ The quantity of subject imports' market share increased from *** to *** percent between 1994 and 1995, and then to *** percent between 1995 and 1996. The value of their market share nearly tripled over the period of investigation, rising from *** percent to *** percent between 1994 and 1995, and to *** percent in 1996. CR at IV-5, PR at IV-2, Table IV-2.

In assessing the significance of the volume of subject imports and the increase in that volume, we note that the European Union ("EU") imposed a provisional antidumping duty of 83.3 percent on imports of Chinese persulfates in June 1995 and a final antidumping duty of the same percent in December 1995.⁵⁶ There is no dispute amongst the parties that U.S. imports of persulfates from Germany declined as German producers redirected their shipments back to the EU to fill the market share vacated by Chinese persulfates following the imposition of the antidumping duties by the EU.⁵⁷ Consequently, higher-value non-subject imports in the United States were supplanted by LTFV imports from China in 1995 and 1996. In this regard, although the domestic industry captured a small portion of market share previously held by non-subject imports, the vast majority was captured by LTFV imports.⁵⁸

Finally, we have taken note of respondents' argument that the volume of imports began to decline before the petition was filed.⁵⁹ However, subject imports remained at significant levels through the end of the period of investigation, in view of the fact that the decline began from a high peak of over one million pounds imported in January 1996. Moreover, we also note that a significant decline in imports occurred after the petition was filed in July 1996.⁶⁰

In light of the foregoing, we find the absolute volume of subject imports and the increase in that volume, as well as their share of domestic consumption, to be significant.

B. Price Effects of Imports

In evaluating the price effects of subject imports, we note at the outset that price was reported by most purchasers to be a very important factor in their purchasing decisions.⁶¹ This is not surprising given that, once a persulfate producer's product has been certified or prequalified by a purchaser, it meets that purchaser's needs and specifications.⁶² In short, persulfates are very much commodity-like products.

⁵⁶ CR at VII-2, PR at VII-2.

⁵⁷ See CR at IV-1, PR at IV-1.

⁵⁸ The domestic industry's market share increased from *** percent to *** percent over the period of investigation. The LTFV imports' market share increased from *** percent to *** percent during the same period. CR at IV-5, PR at IV-2, Table IV-2.

⁵⁹ Ai Jian's Posthearing Brief at 13-14; Tr. at 72-73. Ai Jian also argues that total import shipments as a percentage of U.S. consumption declined, both in terms of value and volume, after making up for the lost U.S. production due to the August 1995 fire. Ai Jian's Prehearing Brief at 3.

⁶⁰ Staff Graph, Persulfates: U.S. Imports from China, by months, 1994-96 (source: official statistics of the U.S. Dept. of Commerce). We note that the statute directs us to consider whether any changes in volume, price effects or impact are related to the pendency of the investigation. If we determine that this is so, the statute gives us the discretion to reduce the weight accorded to the information, although we are not required to do so. 19 U.S.C. § 1677(7)(I). We have given less weight to the declines in import volume following the filing of the petition than to the volumes of imports before the petition was filed.

⁶¹ Fourteen of 18 purchasers listed price as one of the three most important factors in purchasing decisions, and 10 of 20 purchasers reported that they actively seek lower-priced persulfate sources to leverage better pricing from an incumbent supplier. CR at II-3 - II-4, PR at II-2 - II-3. The numerous confirmed instances of lost sales and revenues further demonstrate the importance of pricing in sales negotiations. See CR at V-17 - V-22, PR at V-4 - V-5.

⁶² See CR at II-3, PR at II-2. There is little evidence to support respondents' contention that there are significant quality differences between the subject imports and domestic persulfates. Indeed, to the contrary, most importers reported Chinese and domestic persulfates are used interchangeably in the same applications. CR at II-

(continued...)

Consequently, many purchasers reported that they actively seek and use the availability of lower-priced persulfates to obtain more favorable prices from an incumbent supplier.⁶³ The numerous confirmed instances of lost sales and revenues is consistent with reports that purchasers use lower-priced product as leverage in their price negotiations.⁶⁴

Pricing data for the period examined showed that FMC's sales prices to distributors were ***.⁶⁵ FMC's sales prices of ***.⁶⁶ Prices for subject imports were flat or increasing.⁶⁷ Although prices for Chinese products increased in certain instances, they nonetheless undersold domestic persulfates in 56 of 57 pricing comparisons by margins as high as 50.4 percent.⁶⁸ In light of the high degree of interchangeability between domestic and Chinese persulfates and the clear importance of price to purchasers, even smaller margins of underselling are significant in our view.

Based on the foregoing, we find that LTFV imports suppressed domestic prices to a significant degree. FMC encountered significant increases in its operating costs in 1995 and 1996,⁶⁹ but because of the large presence of dumped imports of persulfates from China was unable to raise its prices to help offset these increasing costs.

C. Impact of Subject Imports^{70 71 72}

As our discussion concerning the condition of the domestic industry indicates, some indicators of industry performance showed improvement over the period of investigation, including production,

⁶² (...continued)

7, PR at II-5.

⁶³ CR at II-4, PR at II-3.

⁶⁴ CR at V-17 - V-22, PR at V-4 - V-5.

⁶⁵ CR at V-5 - V-7, PR at V-3, Tables V-1 - V-3.

⁶⁶ CR at V-11 - V-15, PR at V-4, Tables V-4 - V-6.

⁶⁷ CR at V-5 - V-15, PR at V-3 - V-4, Tables V-1 - V-6.

⁶⁸ CR at V-3, PR at V-3; CR at V-5 - V-15, PR at V-3 - V-4, Tables V-1 - V-6. Moreover, half of the purchasers of subject imports stated that those prices would have had to be three to 40 percent higher, with an average of 21 percent, before they would have purchased the domestic product, indicating not only the importance of price in purchasing decisions, but also the inability of the domestic industry to increase its prices. CR at II-6, PR at II-4.

⁶⁹ See CR at VI-3, PR at VI-1, Table VI-1, and discussion *infra*.

⁷⁰ The statute specifies that the Commission consider "the magnitude of the margin of dumping" in its evaluation of the impact of imports on the domestic industry. 19 U.S.C. § 1677(7)(C)(iii)(V); see also 19 U.S.C. § 1677(35)(C); URAA Statement of Administrative Action (SAA), H.R. Rep. No. 316, 103d Cong., 2d Sess., vol. 1, at 850. The margins of dumping found by Commerce prior to the closing of the Commission's administrative record are 40.97 for Sinochem Jiangsu Wuxi Import & Export Corporation, 42.18 for Shanghai Ai Jian Import & Export Corporation, 43.93 for Guangdong Petroleum Chemical Import & Export Trade Corporation, and a China-wide rate of 134.00. 62 Fed. Reg. at 27,235.

⁷¹ For Vice Chairman Bragg's evaluation of the dumping margin, see her Separate and Dissenting Views in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968, at 35 & nn.16-17 (June 1996).

⁷² Commissioner Newquist notes that, in his analytical framework, "evaluation of the magnitude of the margin of dumping" is not generally helpful in answering the questions posed by the statute: whether the domestic industry is materially injured and, if so, whether such material injury is by reason of the dumped subject imports.

shipments and net sales.⁷³ Domestic consumption also increased during the period.⁷⁴ As noted above, however, gross profit⁷⁵ declined steadily and substantially throughout the period of investigation.⁷⁶ Operating income declined throughout the investigation period and became an operating loss in 1996.⁷⁷ Unit sales values increased only slightly during the period, while at the same time unit COGS and unit SG&A increased steadily and significantly.⁷⁸ The rise in the volume and value of LTFV imports

⁷³ See text and accompanying notes, *supra*.

⁷⁴ Apparent consumption increased from *** million pounds in 1994 to *** million pounds in 1996. CR at IV-5, PR at IV-2, Table IV-2.

⁷⁵ Respondents argue that petitioner is a “monopolist” and has experienced profits throughout the period of investigation. See, e.g., ICC’s Prehearing Brief at 1; ICC’s Posthearing Brief, Exh. B; Aceto’s Posthearing Brief at 5; Ai Jian’s Posthearing Brief at 3-5 & Att.2. The statute does not differentiate between industries involving sole domestic producers and those in which there are multiple competitors. Further, importers take the domestic industry as they find it. See Iwatsu Elec. Co. v. United States, 758 F. Supp. 1506, 1518 (Ct. Int’l Trade 1991). Moreover, petitioner is the sole domestic producer, but it is not a monopolist, as imports from a number of countries supply the market to a significant degree. Both subject and non-subject imports were continuously present in sizeable measures in the market throughout 1994 to 1996. See CR at IV-5, PR at IV-2, Table IV-2.

Both petitioner and respondents attempted to compare the industry in this investigation to those in investigations concerning coated groundwood paper and semiconductors. We decline to place much reliance on these comparisons because the industries are very different from one another. Further, the statute and case law clearly indicate that our analysis is to be based on the industry producing the like product. 19 U.S.C. § 1677(7)(B)(I); Gen’l Motors Corp. v. United States, 827 F. Supp. 744, 780 (Ct. Int’l Trade 1993). Thus, the Commission generally does not assess injury issues on the basis of cross-sectoral comparisons to other industries. See Softwood Lumber from Canada, Inv. No. 701-TA-312 (First Remand), USITC Pub. 2689 (Oct. 1993), at 11-12 (“We agree with the panel that a comparison of the performance of the . . . domestic industry . . . with that of some other industry, for the purpose of determining whether the industry under investigation is materially injured, or whether material injury is by reason of imports, is inappropriate.”). Rather, each investigation and each industry is *sui generis*. See, e.g., Nippon Steel Corp. v. United States, 19 CIT ___, Slip Op. 95-57 at 11 (Apr. 3, 1995); Kern-Liebers USA, Inc. v. United States, 19 CIT ___, Slip Op. 95-9 at 25 (Jan. 27, 1995), *aff’d sub nom.*, United Steel Group v. United States, 96 F.3d 1352 (Fed. Cir. 1996).

⁷⁶ CR at VI-3, PR at VI-1, Table VI-1. As noted above, respondents have urged us to consider gross profits rather than operating income in making our determination. An examination of gross profits still shows petitioner’s steadily declining profitability, however. Staff made significant adjustments to the SG&A data submitted by the petitioner during the verification process. Petitioner’s original SG&A expenses were ***. CR at VI-5, PR at VI-2; see Verification Report at 2-3, 6 & Exh. II.

With respect to respondents’ argument that petitioner’s low export prices contributed to its decline in profitability, see Tr. at 122-24; ICC’s Comments on New Information at 10-13; Ai Jian’s Final Comments at 13-14, we first note that actual domestic and export prices were similar ***. CR at VI-2, PR at VI-1. Further, we must not weigh causes in making our material injury determination, provided that there is a sufficient causal nexus between subject imports and the material injury being suffered by the domestic industry. Nor does the fact that petitioner may have made voluntary rather than mandatory cost investments, see Ai Jian’s Final Comments at 8-12, ICC’s Comments on New Information at 5-10, require any change to our determination that imports contributed to the domestic industry’s deteriorating financial condition.

⁷⁷ Operating income declined by *** between 1994 and 1995, then became a loss in 1996. CR at VI-3, PR at VI-1, Table VI-1.

⁷⁸ CR at VI-3, PR at VI-1, Table VI-1. Although the unit net sales value increased from *** over the period of investigation, CR at VI-3, PR at VI-1, Table VI-1, the domestic portion of the unit sales value decreased from ***. CR at III-7, PR at III-2, Table III-2.

commensurate with the decline in the volume and value of non-subject imports⁷⁹ increased the severity of the adverse price effects. It is evident that subject imports have hampered the domestic industry's ability to recoup at least some of its rising costs.⁸⁰ The sharp increase in subject import volume and market share at LTFV prices that often were significantly below prices for comparable domestic products⁸¹ largely prevented the domestic industry from offsetting at least some of its increased costs with price increases. The fact that large purchasers have frequently turned to subject imports when offered lower prices⁸² is additional evidence of the adverse impact that LTFV imports of persulfates have had on the domestic industry, particularly in terms of its financial decline.⁸³

CONCLUSION

Based on the significant volume of LTFV subject imports, their significant price-suppressing effects, the steady and substantial decline in the domestic industry's gross profits, its steadily declining operating income between 1994 and 1995, and the operating loss it experienced in 1996, its inability to increase prices to offset its rising costs, and the confirmed lost sales and revenues, we find that the domestic persulfates industry is materially injured by reason of LTFV imports from China.

⁷⁹ Over the period of investigation, the quantity of shipments of non-subject imports decreased from *** pounds in 1994 to *** pounds in 1996, while LTFV subject imports increased from *** pounds to *** pounds. In terms of value, the non-subject imports declined from *** in 1994 to *** in 1996, while LTFV subject imports rose from *** in 1994 to *** in 1996. CR at IV-5, PR at IV-2, Table IV-2.

⁸⁰ A great deal of attention was given by respondents to FMC's operating costs, COGS and SG&A. Respondents argued, in effect, that these cost increases should be disallowed. See CR at VI-5, PR at VI-2; ICC's Prehearing Brief at 16-33; Ai Jian's Prehearing Brief at 3-6; ICC's Posthearing Brief at 6-7; Ai Jian's Posthearing Brief at 1-2; Tr. at 105-09. However, we have carefully examined the financial data and find no reason either to disregard the cost increases or give them reduced weight in our analysis.

⁸¹ CR at IV-5, PR at IV-2, Table IV-2; CR at V-5 - V-15, PR at V-3 - V-4, Tables V-1 - V-6.

⁸² CR at V-17 - V-22, PR at V-4 - V-5.

⁸³ In view of the foregoing, the fact that petitioner's plant was shut down for six weeks as a result of the August 1995 fire does not affect our determination that the industry is materially injured by reason of the LTFV subject imports. The costs attributable to the fire had little effect on gross profits or operating income. See CR at VI-4, PR at VI-2.

ADDITIONAL VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of information obtained in this investigation, I determine that the industry in the United States producing persulfates is materially injured by reason of imports of persulfates from the People's Republic of China ("China") that are sold in the United States at less-than-fair-value ("LTFV"). I join my colleagues in finding a single like product, consisting of ammonium persulfate, sodium persulfate and potassium persulfate, and I join their discussion of the condition of the domestic industry. These additional views provide an explanation of my determination that the industry in the United States producing persulfates is materially injured by reason of the LTFV imports of persulfates from China.

I. ANALYTICAL FRAMEWORK

In determining whether a domestic industry is materially injured by reason of the LTFV imports, the statute directs the Commission to consider:

- (I) the volume of imports of the merchandise which is the subject of the investigation,
- (II) the effect of imports of that merchandise on prices in the United States for like products, and
- (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States . . .¹

In making its determination, the Commission may consider "such other economic factors as are relevant to the determination."² In addition, the Commission "shall evaluate all relevant economic factors which have a bearing on the state of the industry . . . within the context of the business cycle and conditions of competition that are distinctive to the affected industry."³

The statute directs that we determine whether the domestic industry is "materially injured by reason of" the dumped imports. Thus we are called upon to evaluate the effect of the dumped imports on the domestic industry and determine if they are causing material injury. There may be, and often are, other "factors" that are causing injury. These factors may even be causing greater injury than the dumping. However, the statute does not require us to weigh or prioritize the factors that are independently causing material injury. Rather, the Commission is to determine whether any injury "by reason of" the dumped imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effects of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry."⁴ It is important, therefore, to assess the effects of the dumped imports in a way that distinguishes those effects from the effects of other factors unrelated to the dumping. To do this, I compare the current condition of the industry to the industry conditions that would have existed without the dumping, that is, had subject imports all been fairly priced. I then determine whether the change in conditions constitutes material injury. Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the "statutory language fits very well" with

¹ 19 U.S.C. § 1677(7)(B)(i).

² 19 U.S.C. § 1677(7)(B)(ii).

³ 19 U.S.C. § 1677(7)(C)(iii).

⁴ S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987)(emphasis added).

my mode of analysis, expressly holding that my mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports.⁵

In my analysis of material injury, I evaluate the effects of the dumping⁶ on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of the dumping on domestic prices, I compare domestic prices that existed when the imports were dumped with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the effects of dumping on the quantity of domestic sales,⁷ I compare the level of domestic sales that existed when imports were dumped with what domestic sales would have been if the imports had been priced fairly. The combined price and quantity effects translate into an overall domestic revenue impact. Understanding the impact on the domestic industry's prices, sales and overall revenues is critical to determining the state of the industry, because the impact on other industry indicators (e.g., employment, wages, etc.) is derived from the impact on the domestic industry's prices, sales, and revenues.

I then determine whether the price, sales and revenue effects of the dumping, either separately or together, demonstrate that the domestic industry would have been materially better off if the imports had been priced fairly. If so, the domestic industry is materially injured by reason of the dumped imports.

For the reasons discussed below, I determine that the domestic industry producing persulfates is materially injured by reason of LTFV imports of persulfates from China.

II. CONDITIONS OF COMPETITION

To understand how an industry is affected by unfair imports, we must examine the conditions of competition in the domestic market. The conditions of competition constitute the commercial environment in which the domestic industry competes with unfair imports, and thus form the foundation for a realistic assessment of the effects of the dumping. This environment includes demand conditions, substitutability among and between products from different sources, and supply conditions in the market.

A. Demand Conditions

An analysis of demand conditions tells us what options are available to purchasers, and how they are likely to respond to changes in market conditions, for example an increase in the general level of prices in the market. Purchasers generally seek to avoid price increases, but their ability to do so varies with conditions in the market. The willingness of purchasers to pay a higher price will depend on the importance of the product to them (e.g., how large a cost factor), whether they have options that allow them to avoid the price increase, for example by switching to alternative products, or whether they can exercise buying power to negotiate a lower price. An analysis of these demand-side factors tells us whether demand for the product is elastic or inelastic, that is, whether purchasers will reduce the quantity of their purchases if the price of the product increases. For the reasons discussed below, I find that the overall elasticity of demand for persulfates is relatively low.

⁵ United States Steel Group v. United States, ___ F.3d ___, Slip Op. 95-1245 at 21 (Fed. Cir. Aug. 29, 1996), *aff'g* 873 F.Supp. 673, 694-695 (Ct. Int'l Trade 1994).

⁶ As part of its consideration of the impact of imports, the statute as amended by the URAA now specifies that the Commission is to consider in an antidumping proceeding, "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V).

⁷ In examining the quantity sold, I take into account sales from both existing inventory and new production.

Importance of the Product and Cost Factor. Key factors that measure the willingness of purchasers to pay higher prices are the importance of the product to purchasers and the significance of its cost. In the case of products that are incorporated into other products (e.g., a component), the importance will depend on its cost relative to the total cost of the product in which it is used. When the price of the component is a small portion of the total cost of the product in which it is used, changes in the price of the component are less likely to affect its purchase.

Record evidence shows that persulfates account for less than one percent of the price of most of the downstream products in which they are used, and less than ten percent of the cost of other downstream products.⁸ This small cost share indicates an inelastic demand for persulfates.

Alternative Products. Another important factor in determining whether purchasers would be willing to pay higher prices is the availability of viable alternative products. Often purchasers can avoid a price increase by switching to alternative products. If such an option exists, it can impose discipline on producer efforts to increase prices.

Only 1 of 16 purchasers reported that there are any substitute products that offer the same functionality in use as persulfates. This purchaser reported that organic peroxides can function similarly to persulfates in some latex formulations.⁹ Thus, there are very limited substitute products.

Based on the small cost share of persulfates in downstream products and the limited availability of alternative products, I find that the overall elasticity of demand for persulfates is relatively low. That is, purchasers will not reduce significantly the amount of persulfates they buy in response to a general increase in the price of persulfates.

B. Substitutability

Simply put, substitutability measures the similarity or dissimilarity of imported versus domestic products from the purchaser's perspective. Substitutability depends upon 1) the extent of product differentiation, measured by product attributes such as physical characteristics, suitability for intended use, design, convenience or difficulty of usage, quality, etc.; 2) differences in other non-price considerations such as reliability of delivery, technical support, and lead times; and 3) differences in terms and conditions of sale. Products are close substitutes and have high substitutability if product attributes, other non-price considerations and terms and conditions of sale are similar.

While price is nearly always important in purchasing decisions, non-price factors that differentiate products determine the value that purchasers receive for the price they pay. If products are close substitutes, their value to purchasers is similar, and thus purchasers will respond more readily to relative price changes. On the other hand, if products are not close substitutes, relative price changes are less important and are therefore less likely to induce purchasers to switch from one source to another.

Because demand elasticity for persulfates is relatively low, overall purchases will not decline significantly if the overall prices of persulfates increase. However, purchasers can avoid price increases from one source by seeking other sources of persulfates. In addition to any changes in overall demand for persulfates, the demand for persulfates from different sources will decrease or increase depending on their relative prices and their substitutability. If persulfates from different sources are substitutable, purchasers are more likely to shift their demand when the price from one source (i.e., subject imports) increases. The magnitude of this shift in demand is determined by the degree of substitutability among the sources.

⁸ C.R. at II-3; P.R. at II-2.

⁹ C.R. at II-3; P.R. at II-2.

Purchasers have three potential sources of persulfates: domestically produced persulfates, subject imports, and nonsubject imports. Purchasers are more or less likely to switch from one source to another depending on the similarity, or substitutability, between and among them. I have evaluated the substitutability among persulfates from different sources as follows.

Based on the evidence in the record, I find that subject imports, nonsubject imports and domestic persulfates are all moderate substitutes for each other. Thus, a shift in demand away from subject imports likely would increase demand for both nonsubject imports and domestic persulfates.

Overall, domestic persulfates, subject imports and nonsubject imports are at least moderate substitutes for each other. Almost all purchasers require their suppliers to be certified or prequalified, and persulfates from all sources generally are used in the same applications, both of which establish a basic degree of substitutability. However, there are differences among the products that decrease the substitutability among them.

Two purchasers stated that domestic persulfates and subject imports cannot always be used in the same applications, one because only petitioner's ammonium persulfate is qualified and the other because subject imports cannot be used in hair bleach. However, persulfates used in hair bleach applications account for only about *** percent of demand,¹⁰ so the effect on the substitutability is small. In addition, 4 of 20 purchasers state that at least one supplier of subject or nonsubject imports has failed to qualify its product. Nonetheless, 18 of 20 purchasers bought both subject imports and the domestic product, while 9 of these purchasers also bought nonsubject imports. Finally, a number of significant purchasers specifically stated that it is important to have more than one source of supply, a nonprice factor that reduces the substitutability between domestic persulfates and subject imports.¹¹

A majority of purchasers reported that domestic persulfates and subject imports are comparable in the vast majority of the bases for comparison. However, these purchasers stated that the prices of the two are not comparable, and that petitioner provides superior technical and support service and has shorter lead times for delivery.¹² In addition, there is evidence that subject imports are of poorer quality than domestic persulfates, with particle size and caking limiting the use of subject imports in certain applications.¹³

***. Similarly, petitioner reported that ***. In addition, there is evidence that nonsubject imports from Germany and Japan are of similar quality to domestic persulfates, while subject imports are of lower quality than nonsubject imports, even though all are used in the same applications.

For these reasons, I find that subject imports, nonsubject imports, and domestic persulfates are moderate substitutes for each other. Therefore, all else being equal, it is likely that purchasers would have switched from purchases of subject imports to purchases of both nonsubject imports and domestic persulfates had subject imports been fairly priced.¹⁴

¹⁰ C.R. at II-3, note 3; P.R. at II-3, note 3.

¹¹ C.R. at II-5; P.R. at II-3. ***.

¹² C.R. at II-5; P.R. at II-4. Three-quarters of responding purchasers stated that domestic persulfates were priced higher than subject imports.

¹³ C.R. at II-6; P.R. at II-4.

¹⁴ As discussed below, the record demonstrates that, notwithstanding the substitutability among the products, demand for the subject imports likely would not have shifted to nonsubject imports had subject imports been fairly priced.

C. Supply Conditions

Supply conditions in the market are a third condition of competition. Supply conditions determine how producers would respond to an increase in demand for their product, and also affect whether producers are able to institute price increases and make them stick. Supply conditions include producers' capacity utilization, their ability to increase their capacity readily, the availability of inventories, the availability of products for export markets that can be diverted to the domestic market, production alternatives, and the level of competition in the market. For the reasons discussed below, I find that the elasticity of supply of persulfates appears to be moderate to high.

Capacity Utilization and Capacity. Unused capacity can exercise discipline on prices, if there is a competitive market, as no individual producer could make a price increase stick. Any attempt at a price increase by any one producer would be beaten back by its competitors who have the available capacity and are willing to sell more at a lower price. In 1996, *** percent of the domestic industry's capacity to produce persulfates was not used and therefore was available to increase production.¹⁵ Available unused capacity exceeded the total quantity of subject imports in 1996.¹⁶ Thus, the domestic industry had sufficient capacity available to supply the demand for subject imports.¹⁷

Inventories and Exports. The domestic industry had *** pounds of persulfates in inventories available at the end of 1996 which it could have shipped into the U.S. market.¹⁸ In addition, the domestic industry's exports are significant, accounting for *** percent of shipments in 1996.¹⁹ Thus, the domestic industry had available inventories and exports that could have filled the domestic demand supplied by subject imports.

Level of Competition. The level of competition in the domestic market has a critical effect on producer responses to demand increases. A competitive market is one with a number of suppliers in which no one producer has the power to influence price significantly. There is only one domestic producer of persulfates, the petitioner, and thus there is no competition within the domestic industry in the U.S. market. However, nonsubject imports have been a substantial presence in this market, accounting for up to *** percent of consumption during the period of investigation.²⁰ Nonetheless, the record indicates that competition from nonsubject imports is not significant. Consequently, I find that there is not a significant level of competition in the U.S. market for persulfates.

Based on the domestic industry's ability to supply the demand for subject imports, I find that the elasticity of supply is moderate to high, but that the sole domestic producer could have exercised some market power.

¹⁵ Table III-1, C.R. at III-4; P.R. at III-2.

¹⁶ Table III-1 and table IV-2, C.R. at III-4 and IV-5; P.R. at III-2 and IV-2.

¹⁷ The fire at petitioner's plant in 1995 somewhat affected its ability to supply the market in 1995, but not in 1996.

¹⁸ Table III-3, C.R. at III-9; P.R. at III-3.

¹⁹ C.R. at II-2; P.R. at II-2.

²⁰ Table IV-2, C.R. at IV-5; P.R. at IV-2.

III. MATERIAL INJURY BY REASON OF LTFV IMPORTS OF PERSULFATES FROM CHINA

The statute requires us to consider the volume of subject imports, their effect on domestic prices, and their impact on the domestic industry. I consider each requirement in turn.

A. Volume of Subject Imports

Subject imports of persulfates increased from *** pounds in 1994 to *** pounds in 1995, and then decreased to *** pounds in 1996. The value of subject imports was \$*** in 1994, \$*** in 1995, and \$*** in 1996.²¹ By quantity, subject imports held a market share of *** percent in 1994, *** percent in 1995, and *** percent in 1996. Their market share by value was *** percent in 1994, *** percent in 1995, and *** percent in 1996.²² While it is clear that the larger the volume of subject imports, the larger the effect they will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of its price effects and impact. Based on the market share of subject imports and the conditions of competition in the domestic market, I find that the volume of subject imports is significant in light of its price effects and impact.

B. Effect of Subject Imports on Domestic Prices

To determine the effect of subject imports on domestic prices, I examine whether the domestic industry could have increased its prices if the subject imports had not been dumped. As discussed, both demand and supply conditions in the persulfates market are relevant. Examining demand conditions helps us understand whether purchasers would have been willing to pay higher prices for the domestic product, or buy less of it, if subject imports had been sold at fairly traded prices. Examining supply conditions helps us understand whether available capacity and competition among suppliers to the market would have imposed discipline and prevented price increases for the domestic product, even if subject imports had not been unfairly priced.

If the subject imports had not been dumped, their prices in the U.S. market would have increased significantly. Thus, if subject imports had been fairly priced, they would have become more expensive relative to domestic persulfates. In such a case, if subject imports are good substitutes with other persulfates, purchasers would have shifted towards the relatively less expensive products.

In this investigation, the dumping margins for subject imports from China are quite large, between 40 percent and 44 percent for three firms and 134 percent for all other firms, and thus subject imports likely would have been priced significantly higher had they been fairly traded. Subject imports and domestic persulfates are moderate substitutes for each other, and thus some of the demand for subject imports likely would have shifted to domestic persulfates had subject imports been fairly traded.²³ Nonsubject imports and subject imports also are moderate substitutes for each other, and thus some of the demand for subject imports might be expected to have shifted to nonsubject imports as well, since they are a significant presence in the market. However, it is unlikely that nonsubject imports would have captured much, if any, of the demand for subject imports. The record shows that imports from Germany have declined as the European market expanded, and that Japanese firms have shown no interest in increasing

²¹ Table IV-1, C.R. at IV-3; P.R. at IV-2.

²² Table IV-2, C.R. at IV-5, P.R. at IV-2.

²³ As discussed above, purchasers find it important to have more than one source of supply, and thus some of the subject imports may have continued to be sold even at fairly traded prices.

their presence in the U.S. market.²⁴ In addition, the parties agree that most or all of the demand for subject imports would have shifted to domestic persulfates, had subject imports been fairly traded.²⁵ Since subject imports held a market share of *** percent by quantity in 1996,²⁶ the shift in demand away from subject imports would have been significant, although not extremely large. Nonetheless, the elasticity of demand indicates that the domestic producer should have been able to increase prices in response to this shift in demand.

As discussed above, the domestic producer would not have competed significantly with suppliers of nonsubject imports for the demand satisfied by subject imports, had the subject imports been fairly traded. Therefore, competition from nonsubject imports would not have enforced price discipline in the market. In effect, petitioner would have been the only supplier for this portion of the market, and thus would have been able to raise its prices, at least somewhat, in response to the increase in demand for domestic persulfates. Consequently, I find that subject imports are having at least some effects on prices for domestic persulfates.

C. Impact of Subject Imports on the Domestic Industry

To assess the impact of subject imports on the domestic industry, I consider output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors.²⁷ These factors together either encompass or reflect the volume and price effects of the dumped imports, and so I gauge the impact of the dumping through those effects.

The domestic producer would have been able to increase its prices somewhat if subject imports had been sold at fairly traded prices. In addition, the impact of the dumped imports on the domestic industry's output and sales would have been significant.

As discussed above, had subject imports not been dumped, competition from nonsubject imports would not have prevented the domestic producer from capturing most or all of the demand satisfied by subject imports. Thus, the increase in demand for the domestic product likely would have been significant. The domestic producer could have increased its production and sales to satisfy the increased demand. Lacking competition from nonsubject imports, the domestic producer likely would have captured enough of the demand for subject imports that its output and sales would have increased significantly had subject imports not been dumped. Consequently, based on the combined effects on petitioner's prices, output and sales, and therefore its revenues, I conclude that the domestic industry would have been materially better off if the subject imports had been fairly traded.

IV. CONCLUSION

On the basis of the foregoing analysis, I determine that the domestic industry producing persulfates is materially injured by reason of LTFV imports of persulfates from the People's Republic of China.

²⁴ C.R. at IV-1; P.R. at IV-1.

²⁵ Petitioner's Posthearing Brief at Ex. 15; ICC's Posthearing Brief at Ex. A at A-3.

²⁶ Table IV-2, C.R. at IV-5; P.R. at IV-2.

²⁷ 19 U.S.C. § 1677(7)(C)(iii).

PART I: INTRODUCTION

BACKGROUND

This investigation results from a petition filed by FMC Corporation, Chicago, IL, on July 11, 1996, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (LTFV) imports of persulfates¹ from China. Information relating to the background of the investigation is provided below.²

<i>Date</i>	<i>Action</i>
July 11, 1996	Petition filed with Commerce and the Commission; institution of Commission investigation
July 31, 1996	Commerce's notice of initiation
August 26, 1996	Commission's preliminary determination
December 26, 1996	Commerce's preliminary determination; scheduling of Commission final investigation (62 FR 3526, January 23, 1997)
May 12, 1997	Commerce's final determination (62 FR 27222, May 19, 1997) ³
May 14, 1997	Commission's hearing ⁴
June 17, 1997	Commission's vote
June 25, 1997	Commission determination transmitted to Commerce

SUMMARY DATA

A summary of data collected in the investigation is presented in appendix C, tables C-1-4.⁵ U.S. industry data are based on the questionnaire response of the only firm producing persulfates in the United States, FMC Corporation. Except as noted, U.S. imports are based on questionnaire responses from 17 firms, and are believed to account for the vast majority of imports of the subject merchandise during the period examined.

¹ For purposes of this investigation, Commerce has defined the product as persulfates, including ammonium, potassium, and sodium persulfates. The chemical formulae for these persulfates are, respectively, $(\text{NH}_4)_2\text{S}_2\text{O}_8$, $\text{K}_2\text{S}_2\text{O}_8$, and $\text{Na}_2\text{S}_2\text{O}_8$. Ammonium and potassium persulfates are classified in subheading 2833.40.60 of the Harmonized Tariff Schedule of the United States (HTS), with a 1997 MFN duty rate of 3.1 percent *ad valorem* applicable to imports from China. Sodium persulfate is classified in subheading 2833.40.20, with a 1997 MFN duty rate of 3.7 percent *ad valorem*.

² *Federal Register* notices cited in the tabulation are presented in app. A.

³ Commerce calculated final LTFV margins to be as follows: Sinochem Jiangsu Wuxi Import & Export Corporation at 40.97 percent, Shanghai Ai Jian Import & Export Corporation at 42.18 percent, Guangdong Petroleum Chemical Import & Export Trade Corporation at 43.93 percent, and a China-wide rate of 134.00 percent.

⁴ A list of witnesses appearing at the hearing is presented in app. B.

⁵ Data on each of the 3 persulfate salts are presented in app. D.

THE PRODUCT

The imported products subject to this investigation are peroxydisulfates, which consist of a group of chemicals commonly known as persulfates. There are three salts included within the persulfates definition: ammonium persulfates, potassium persulfates, and sodium persulfates. The chemical formulae for these persulfates are, respectively, $(\text{NH}_4)_2\text{S}_2\text{O}_8$, $\text{K}_2\text{S}_2\text{O}_8$, and $\text{Na}_2\text{S}_2\text{O}_8$. This section presents information on both imported and domestically produced persulfates, as well as information related to the Commission's "domestic like product" determination.⁶

The petitioner argues that domestically produced persulfates are similar to persulfates imported from China. Petitioner also argues that all three salts comprise one like product--persulfates. Furthermore, the petitioner argues that there are no functional substitute products for persulfates. Respondents argue that the Chinese product is inferior to the domestically produced product, that the three salts are distinct like products, and that there are functional substitutes for persulfates. In its preliminary determination, the Commission found one domestic like product consisting of ammonium, sodium, and potassium persulfates.

Physical Characteristics and Uses

Persulfates are produced in the form of a dry white crystalline powder that is odorless. The typical merchandise sold has a persulfate content of 98 percent or above. The three salts are indistinguishable when subject to a visual or tactile exam. They are all derived from a common source, persulfuric acid. The active ingredient for all three salts is the persulfate anion.⁷

Persulfates have two major applications: (1) as catalysts or "initiators" in the process of polymerization and (2) as oxidants in cleaning, microetching, and plating processes. The polymerization application accounts for about *** percent of the demand for persulfates, with the remaining *** percent accounted for by the oxidation application. Persulfates as catalysts are primarily used in producing latex for carpet backing and paper coating, acrylic latex paint, water treatment, and other acrylics and polyvinyls used in adhesives. Persulfates as oxidants are primarily used in printed circuit boards, textiles, film processing, and soil stabilization.⁸

Manufacturing Facilities and Production Employees

The manufacturing processes for ammonium, potassium, and sodium persulfates are similar. Production begins in an electrolytic cell where liquid ammonium persulfate is produced as an intermediate product. This liquid ammonium persulfate is then crystallized into a wet cake, which is fed into the ammonium, sodium, and potassium persulfate downstream production, in which the wet cake is further processed in a fluid bed dryer and then packaged for shipment. One difference between the salts is the removal and recycling of the ammonia that is released in the sodium and potassium persulfate production processes. The recycling of ammonia is a critical material-balance issue which requires that the ammonium persulfate line be running in order to produce sodium or potassium persulfate. The three salts are

⁶ The Commission's decision regarding the appropriate domestic products that are "like" the subject imported products is based on a number of factors including (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and, where appropriate, (6) price.

⁷ Petition, pp. 4 and 7.

⁸ Petition, p. 6.

manufactured in the same plant, using the same or similar equipment and production workers. There appear to be no significant differences in the persulfate production processes used in China and the United States, although the Chinese process may be slightly less automated.⁹

*** percent of FMC's persulfates production was captively consumed in the production of downstream products each year during 1994-96. These downstream products are produced in a separate facility, using different production workers than are used for persulfates. One of these downstream products is used as a repulping agent in paper recycling. The market for repulping agents is extremely narrow, according to FMC.¹⁰

Interchangeability and Customer and Producer Perceptions

Issues Related to the Three Salts

According to the petitioner, while there are slight solubility and active oxygen content differences among the salts, all three salts can be and are used interchangeably because their essential characteristics are the same. According to the hearing testimony of respondents ICC Chemical Corporation ("ICC") and Aceto Corporation, importers of the subject merchandise, the persulfates are not interchangeable.¹¹ However, in its questionnaire response, Aceto stated the three salts ***. Every purchaser that responded to the questionnaire reported that there are functionality differences among ammonium, potassium, and sodium persulfates that would preclude substituting one salt for another, and only one reported that it has actually substituted among these salts.¹²

The petitioner asserts that the higher-cost sodium and potassium persulfates are used in place of ammonium persulfate for two reasons: (1) there are environmental issues associated with the ammonium anion that is released in most customer processes and the customers want to avoid the high costs of treating ammonia and (2) customers formulate with the particular persulfate that works best in their laboratories, causing their reliance on that persulfate to mitigate the effect of any price difference among the three salts.¹³

Issues Related to the Domestic and Imported Products

The petitioner claims the domestic and imported products are fully interchangeable. Aceto argues that Chinese persulfates are not interchangeable with domestically produced persulfates in a number of applications, due to problems with caking or lumping from moisture, particle size, and off-white color from black specks. Aceto claims Chinese persulfates are not suitable for oil recovery and cosmetics applications, and have limited use in emulsion polymerization and printed circuit board industries. ICC contends that imports from China are interchangeable with the domestic product. FMC argues that caking is a problem with persulfates of any origin, and that imports from China may be used in oil recovery and cosmetics. In any event, FMC argues that these two applications account for only 2-3 percent of demand for persulfates. Furthermore, FMC argues that customers perceive the Chinese persulfates as interchangeable with domestic product, and that competition among these products exists across all

⁹ Conference transcript, pp. 48 and 62.

¹⁰ Conference transcript, p. 26.

¹¹ Hearing transcript, pp. 82 and 98.

¹² *** reported that it tried substituting in the past in an emergency situation but that neither sodium nor potassium persulfate worked as well as ammonium persulfate in its reaction.

¹³ Conference transcript, p. 14; petition, p. 5; and FMC's postconference brief, p. 6.

segments of the market.¹⁴ Information concerning purchasers' perceptions regarding interchangeability between domestic and imported persulfates is discussed in Part II.

Substitute Products

According to the petitioner, there is no chemical that competes with persulfates in the oxidation market. Hydrogen peroxide is one distant competitor as a gross etchant when manufacturers want to quickly remove copper from areas where it is not wanted. However, hydrogen peroxide is not a functional substitute in this application as it is too aggressive an etch, which polishes the surface and leads to poor adhesion and scrap. Another chemical that competes distantly in the oxidation market is a trade-named product from Dupont called Oxone, which is a stable caroate. This is not a functionally equivalent chemical as it is a highly reactive oxidizer that also results in poor adhesion and scrap. One importer, ***, said for latex polymers, benzoyl peroxide and azobis-isobutylnitrile can be used, although they are considered less efficient and more hazardous.

Channels of Distribution

Both domestic and imported persulfates are sold in substantial quantities to end users as well as distributors. All parties agree that the channels of distribution for Chinese and domestic products are the same.

Price

The petitioner argues that sodium and potassium persulfates are not always higher priced than ammonium persulfate.¹⁵ Aceto asserts that the three salts are priced differently, with ammonium persulfate being the lowest priced.¹⁶ FMC's pricing data show that potassium persulfate was generally priced the highest of the three salts, sodium persulfate was priced next highest, and ammonium persulfate was priced the lowest. However, while prices often followed this pattern, there were some quarters in which ammonium persulfate was priced higher than either sodium or potassium persulfate. For a detailed discussion of pricing, see Part V.

¹⁴ Conference transcript, pp. 16, 30, 38, and 96-97; and FMC's postconference brief, pp. 12-14 and exh. 22.

¹⁵ FMC's postconference brief, p. 10.

¹⁶ Aceto's postconference brief, p. 6.

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

MARKET SEGMENTS

Persulfates are used in a variety of end uses including polymerization applications in products such as plastics and rubber, structural materials, inorganic chemicals and minerals, and soil stabilization; oxidation applications such as printed circuit boards, semiconductors, plating and coating processes, cosmetics, and pharmaceuticals; and other applications including adhesives, gas and oil production, mining, and textiles.¹ FMC estimates that polymerization applications account for *** percent of persulfates demand, printed circuit board oxidation accounts for about *** percent, and other oxidization applications including textiles, oil wells, hair bleach, film-processing solution, soil stabilization, production of catalysts, and paper production account for the remaining *** percent.²

Persulfates are sold both directly to end users and through distributors. The Commission received purchaser questionnaires from 11 end users and 9 distributors of persulfates.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on the available information, staff believes that FMC has some ability to respond to price changes with changes in the quantity shipped to the U.S. market. The existence of some excess capacity, inventories, and alternate markets suggests that FMC has a moderate amount of flexibility to adjust shipments to the U.S. market.

Industry capacity

FMC's capacity utilization increased from *** percent in 1994 to *** percent in 1996.

Alternative products

* * * * *

Inventory levels

As a percentage of U.S. shipments, inventories declined from *** percent in 1994 to *** percent in 1995 and then increased to *** percent in 1996.

Export markets

Export sales decreased from *** percent of total U.S. producer shipments in 1994 to *** percent in 1996. However, ***.

¹ FMC's prehearing brief, exh. A (FMC's Persulfates Technical Bulletin, p. 4).

² FMC's postconference brief, pp. 7-8.

U.S. Demand

Demand Characteristics

Overall demand for persulfates in the United States increased by *** percent from 1994 to 1995 and then fell by *** percent from 1995 to 1996. Based on the available information regarding substitute products and the small percentage of the cost of the final end-use products accounted for by persulfates, it is likely that the quantity of persulfates demanded will not change significantly with changes in the price level of persulfates.

Substitute Products

Only one of 16 purchasers reported that there are any substitute products which offer the same functionality in use as persulfates. This purchaser reported that organic peroxides can function similarly to persulfates in some latex formulations.

Cost Share

Most end users reported that persulfates account for a very small percentage of the cost of the final products in which they are used. *** reported that persulfates account for less than one percent of the price of end-use polymers, printed circuit boards, textiles, film processing, soil stabilization, starch modification in paper production, and catalysts; and less than 10 percent of the cost of products used in hair bleach formula and oil well applications.

SUBSTITUTABILITY ISSUES

Almost all of the purchasers reported that they require their suppliers to be certified or prequalified. Four of 20 purchasers stated that at least one supplier had failed in an attempt to qualify with the purchaser since 1994. Two firms stated that Chinese persulfates had not qualified, one stated that German product had not qualified, and the fourth stated that some import samples of unknown origin had failed to qualify. Seven purchasers reported that they sometimes grant waivers to product specifications. The process usually involves approval by the laboratory or technical manager.

Almost all purchasers reported that imported and domestic persulfates are used in the same applications.³ Fourteen of 18 purchasers listed price as one of the three most important factors in their purchase decision for persulfates, although quality was most often listed as the most important factor. Availability was also frequently cited as one of the most important factors considered by purchasers.

Ten of 20 purchasers reported that they actively seek lower-priced persulfate sources to leverage better pricing from an incumbent supplier. Most reported that the incumbent supplier is then given an opportunity to meet a lower price offered by another source. However, only 3 of 20 purchasers stated that the lowest price offered for equivalent persulfates will always win a contract or sale.

³ Two purchasers stated that U.S.-produced and Chinese persulfates cannot always be used in the same applications. One purchaser stated that regular ammonium persulfate is approved from both U.S. and Chinese sources but that screened ammonium persulfate is only qualified from FMC. The other purchaser stated that Chinese product could not be used in hair bleach.

According to FMC, persulfates for hair bleach applications account for *** percent of total domestic shipments of persulfates. FMC's prehearing brief, p. 4.

Thirteen of 20 purchasers reported that one or more suppliers were unable to supply persulfates to their firms during 1994-96. None reported that their operations were shut down due to lack of supply. Eight of 16 firms that purchased persulfates from FMC in 1995 reported supply problems connected with the FMC fire.⁴ *** stated that its distributor of U.S.-produced persulfates "cutback their supply to us dramatically," *** said that FMC "encouraged us to buy from other sources until their plant was back at full rates," *** said the fire "slowed the supply of ammonium persulfates," *** said the fire supported the need for multiple sources, *** said the fire "caused a supply shortage which was filled by other sources," and *** said delivery problems with persulfates from FMC and a supplier of Chinese product "created a near plant shutdown at our customer." Two firms stated that the fire caused supply problems but did not give a detailed explanation.

Purchasers also reported supply problems with persulfates imported from China, Germany, and Japan. Two firms reported supply problems with the German supplier Degussa. Another two firms reported problems with the Japanese supplier Mitsubishi. Specifically, *** said that Mitsubishi's lack of U.S. inventory "forced us to look to other sources" and *** stated that Mitsubishi was unable to supply its total requirements and that it therefore made alternate arrangements. Two firms reported supply problems with Chinese persulfates. Specifically, *** stated that one supplier of Chinese product was unable to supply persulfates in 1996 but that it was able to qualify Aceto, another importer of Chinese product. Also, *** reported supply problems with a Chinese supplier as described previously.

Eighteen of 20 purchasers reported that they purchased both U.S.-produced persulfates and persulfates imported from China. Nine of these purchasers also purchased persulfates imported from nonsubject countries. While most purchase from more than one source, most also reported that they infrequently change suppliers. Five purchasers specifically stated that it is important to have more than one source of supply.⁵

Comparison of Domestic Products and Subject Imports

Purchasers were asked to evaluate the importance of 14 factors in their purchase decisions for persulfates and to compare U.S.-produced persulfates to imported Chinese persulfates on the basis of these factors.⁶ The majority of purchasers rated seven factors as very important. These factors, in order of those most often ranked as very important are: availability, product quality, product consistency, reliability of supply, delivery time, lowest price, and delivery terms.

For all of the 14 factors except for lowest price and technical support and service, the majority of purchasers reported that U.S.-produced and Chinese persulfates were comparable.⁷ Three-quarters of responding purchasers stated that U.S.-produced persulfates were priced higher than Chinese persulfates and two-thirds of purchasers stated that the U.S. producer provided superior technical support and service to importers of Chinese product.

Purchasers were asked to state how much higher the price of imported Chinese product would have to have been before they would have purchased domestic product. Ten firms cited a percentage, ranging from 3 to 40 percent higher, with an average of 21 percent. Some companies stated that they

⁴ The fire at FMC is discussed in Part III of this report.

⁵ Purchasers were not specifically asked about the importance of having more than one source of supply but offered these answers in response to other more general questions. The purchasers were ***.

⁶ These factors were availability, delivery terms, delivery time, discounts offered, lowest price, minimum quantity requirements, packaging, product consistency, product quality, product range, reliability of supply, technical support/service, transportation network, and U.S. transportation costs.

⁷ Fourteen of 16 purchasers reported that domestic and Chinese persulfates were comparable in terms of product quality and 13 of 16 reported that they were comparable in terms of product consistency.

would not switch to FMC product if import prices increased. One company stated that FMC was disqualified as a source; one stated that prices for imported and domestic were the same; two stated that they were not distributors of FMC product; and another stated that not being dependent on one source of supply was the issue, not price.

In the questionnaire, purchasers were asked whether the persulfates they purchased from various sources met the following criteria: assay above 98 percent, insolubles below 100 ppm, lead levels below 5 ppm, and particle size - 100 percent through number 8 mesh. For each of these factors, most purchasers reported that both domestic and Chinese persulfates met the criteria or reported that both did not meet the criteria.

Lead times from U.S. warehouses were similar for FMC and importers of Chinese product, while lead times from China were much longer. FMC reported a lead time of 5 days while importers reported lead times of 1 to 10 days for shipments from U.S. inventories and 6-8 weeks for shipments from China.

FMC reported that while it ***.⁸ It stated that any differences between domestic and Chinese products are minor. It maintained that all persulfates, including domestically produced persulfates, have a tendency to lump and cake and that particle-size differences are insignificant and can be easily altered.⁹ It further stated that any lack of substitutability in oil exploration and cosmetics is not significant since these applications account for a minor share of persulfates demand.¹⁰

Respondents cited several quality differences between the domestic and Chinese products, specifically the tendency of the Chinese product to cake and lump up, off-color material and black specks in the Chinese product, and differences in particle size.¹¹ Seven of nine importers reported that domestic and Chinese persulfates are used interchangeably. Two of the nine stated that they are not used interchangeably because of quality problems with the Chinese product. In particular, one importer said that particle size restrictions and caking limited the use of Chinese product in the oil recovery industry, cosmetics industry, and some emulsion polymerization and printed circuit board industries. Importers also cited the importance of Chinese persulfates as an alternative source of supply, particularly after the fire at FMC. Additionally, one importer stated that U.S.-produced persulfates were superior to Chinese persulfates in terms of quality, fast delivery, and service and another stated that U.S.-produced persulfates have better crystal size and are more free flowing than imports.

* * * * *

Comparison of Domestic Products and Subject Imports to Nonsubject Imports

Nonsubject sources of persulfates include Germany, Japan, and Taiwan. As stated previously, almost all purchasers stated that persulfates from all sources (i.e., the United States, China, and nonsubject sources) are used in the same applications. ***.

Seven of eight importers of Chinese product stated that nonsubject persulfates and Chinese persulfates are used interchangeably. *** stated that Chinese product was of lower quality than products from Germany and Japan, which were of similar quality to the U.S.-produced product. *** reported that price is the key factor in its sales of nonsubject persulfates. It stated that after price, quality, availability, and technical support may also be considered.

⁸ FMC's questionnaire response.

⁹ FMC's postconference brief, pp. 12-13.

¹⁰ FMC's postconference brief, p. 30.

¹¹ Aceto's postconference brief, p. 4.

¹² ***.

¹³ ICC's postconference brief, exh. A ***.

ELASTICITY ESTIMATES

The following elasticity estimates are used in the COMPAS analysis presented in appendix E.

U.S. Supply Elasticity¹⁴

The domestic supply elasticity for persulfates measures the sensitivity of quantity supplied by U.S. producers to a change in the U.S. market price of persulfates. The elasticity of domestic supply depends on several factors including the level of excess capacity, the ease with which producers can alter capacity, producers' ability to shift to production of other products, the existence of inventories, and the availability of alternative markets for U.S.-produced persulfates.¹⁵ Analysis of these factors earlier indicates that the U.S. industry has some ability to increase or decrease shipments to the U.S. market. Staff estimates that supply elasticity is between 2 and 5.

Petitioner agreed with staff's estimate of domestic supply elasticity.¹⁶ Respondents did not comment.

U.S. Demand Elasticity

The U.S. demand elasticity for persulfates measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of persulfates. This estimate depends on factors discussed earlier such as the existence, availability, and commercial viability of substitute products, as well as the component share of persulfates in the production of downstream products. There are few practical substitutes for persulfates and persulfates generally account for a small percentage of the final cost of the end-use products in which they are used. Based on available information, demand for persulfates is likely to be inelastic, estimated to be in the range of -0.3 to -0.7.

Petitioner agreed with staff's estimate of demand elasticity.¹⁷ Respondents did not comment.

Substitution Elasticities

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.¹⁸ Product differentiation, in turn depends upon such factors as quality (e.g., particle size, purity, adherence to specifications) and conditions of sale (e.g., service and availability). Based on available information, the elasticity of substitution between U.S.-produced persulfates and subject imported persulfates is likely to be in the range of 3 to 5. Staff has increased its elasticity estimate from its 2 to 4 prehearing estimate after further consideration of all available information.

¹⁴ A supply function is not defined in the case of a non-competitive market.

¹⁵ Domestic supply response is assumed to be symmetrical for both an increase and a decrease in demand for the domestic product. Therefore, factors affecting increased quantity supplied to the U.S. market also affect decreased quantity supplied to the same extent.

¹⁶ FMC's prehearing brief, p. 31.

¹⁷ FMC's prehearing brief, p. 31.

¹⁸ The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and U.S. like products to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject product (or vice versa) when prices change.

Petitioner disagreed with staff's estimate of substitution elasticity, recommending an elasticity of 6 to 8.¹⁹ It pointed out the following factors: domestic and Chinese persulfates are used in the same applications, a majority of purchasers are indifferent as to the country of origin of the persulfates they purchase, and both domestic and Chinese persulfates meet the same technical quality standards.²⁰ In addition, petitioner argued that availability problems were reported for persulfates from all sources and that this does not differentiate the products.

While staff agrees that there is a high degree of substitutability among persulfates from all sources, it does not believe that an elasticity of 6 to 8 is warranted. While no supplier may necessarily be superior in terms of availability of product, availability problems have reportedly caused at least some purchasers to use more than one supplier. The fact that most purchasers choose to source from more than one supplier despite some differences in price indicates that the products are not entirely substitutable.

Respondents did not comment on staff's substitution elasticity estimate.

¹⁹ FMC's prehearing brief, p. 34.

²⁰ FMC's prehearing brief, pp. 32-33.

PART III: CONDITION OF THE U.S. INDUSTRY

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the margins of dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or Part VI and (except as noted) is based on the questionnaire response of the only firm producing persulfates in the United States.¹

U.S. PRODUCER

The FMC Corporation, Chicago, IL, is a \$5 billion diversified manufacturing company, producing industrial, agricultural, and specialty chemicals; defense products; food processing machinery; and energy and transportation equipment. The Peroxygen Chemicals Division of the Chemical Products Group of FMC is the entity responsible for manufacturing persulfates. Its headquarters is in Philadelphia, PA, and its only manufacturing plant is located in Tonawanda, NY. FMC has seven shipping warehouses located throughout the United States.²

In August 1995, FMC experienced a warehouse fire in its Tonawanda plant that destroyed 800 tons of its inventory and shut down production for six weeks. FMC claims that there was no short-supply situation in the United States as a result of the fire for a number of reasons: (1) the timing of the fire coincided with FMC's scheduled annual maintenance, so that customers and FMC were already building inventories in anticipation of a two-week shutdown; (2) FMC diverted its exports back to the United States to fulfill customer requirements; and (3) ***.³ FMC states that it did not put customers on formal allocation, and that there were only two customers who experienced spot shortages of one day, due primarily to communication problems. Aceto and ICC state that there was indeed a short-supply situation, which resulted in their increased imports from China.

***.⁴ ***.⁵ FMC has produced persulfates in both ***.⁶ With its affiliate ***. FMC has recently ended its formal relationship with the company. FMC also maintained a ***. That facility was shut down in 1996.

U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

In order to comply with environmental regulations, in 1995-96 FMC made an investment at the Tonawanda plant to eliminate the effluent discharge from the sodium persulfate production. As a side effect, FMC was able to produce more sodium persulfate and decrease costs because the investment allowed the capture of sodium persulfate that otherwise was lost in the effluent. Cell capacity defines the limit on FMC's production capacity for total persulfates. The investment did not expand FMC's cell

¹ Respondent ICC reported at the hearing that Huron Tech Corporation has announced its intention to construct a persulfate plant. Hearing transcript, p. 85. Huron Tech Corporation, founded in 1965, is a privately owned chemical manufacturing company with operations in the United States and Canada. The company was an 86-percent-owned subsidiary of Huron Technologies, Inc., Toronto, Canada, from 1965 to Dec. 15, 1996, when those shares were spun off. FMC's posthearing brief, exh. 16, att. A.

² FMC's posthearing brief, exh. 12.

³ ***.

⁴ FMC's producer questionnaire response, p. 10.

⁵ FMC's importer questionnaire response, p. 8.

⁶ FMC's posthearing brief, exh. 9.

capacity. Rather, the increase in production of sodium persulfate corresponded with a decrease in production of ammonium persulfate.⁷ FMC reported that ***.⁸

Data regarding U.S. capacity, production, and capacity utilization are summarized in table III-1 and figure III-1. Capacity remained steady during 1994-96 while production increased slightly, resulting in an increase in capacity utilization. FMC testified they have the capability to supply U.S. demand should duties be placed on Chinese imports.⁹

Table III-1

Persulfates: U.S. producer's capacity, production, and capacity utilization, by salts, 1994-96

* * * * *

Figure III-1

Persulfates: U.S. capacity, production, and capacity utilization, 1994-96

* * * * *

U.S. SHIPMENTS

Data on FMC's shipments of persulfates are presented in table III-2 and figure III-2. Commercial shipments increased in both quantity and value during 1994-96, but the average unit value of such shipments decreased during the period. Internal shipments which were used to produce several downstream products, including repulping agents for the paper recycling industry, also increased during the period. Conversely, export shipments declined during 1994-96.¹⁰

Table III-2

Persulfates: U.S. producer's shipments, by salts and by types, 1994-96

* * * * *

Figure III-2

Persulfates: U.S. producer's shipments, by types, 1994-96

* * * * *

U.S. PRODUCER'S INVENTORIES

Data on FMC's inventories are presented in table III-3. Inventories fell to a low level in 1995, consistent with the loss of 800 tons of persulfates in the August 1995 fire.

⁷ Hearing transcript, p. 27.

⁸ FMC's prehearing brief, p. 48.

⁹ Hearing transcript, p. 58.

¹⁰ FMC's export markets include ***.

Table III-3

Persulfates: U.S. producer's end-of-period inventories, by salts, 1994-96

* * * * *

U.S. EMPLOYMENT, COMPENSATION, AND PRODUCTIVITY

FMC's employment and productivity data are presented in table III-4. Employment decreased slightly during 1994-96, while hours worked, wages paid, productivity, and unit labor costs increased.

Table III-4

Average number of production and related workers producing persulfates, hours worked, wages paid to such employees, and hourly wages, productivity, and unit labor costs, by salts, 1994-96

* * * * *

PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS

There are 18 known importers of persulfates from China and all other sources (primarily Germany and Japan). Seventeen provided usable data, accounting for about 100.3 percent of total imports reported in official statistics of the U.S. Department of Commerce for 1996. There were nine firms importing only from China, six firms importing only from all other countries, and two firms importing from both. Imports from China were concentrated among four firms: Aceto Corporation, Lake Success, NY; ICC Industries, Inc., New York, NY; Samirian Chemicals, Inc., Cupertino, CA; and WEGO Chemical & Mineral Corporation, Great Neck, NY. Imports from all other sources were concentrated among three firms: Aztec Peroxides, Inc., Houston, TX; Degussa Corporation, Ridgefield Park, NJ; and Mitsubishi International Corporation, New York, NY.

U.S. IMPORTS

Data on U.S. imports of persulfates as collected by the Commission through its questionnaires are presented in table IV-1 and figure IV-1.¹ The quantity of imports from China increased irregularly during 1994-96, while the value of imports from China increased steadily. The quantity and value of imports from all other sources decreased irregularly. There is disagreement over why imports from China increased during the period. The petitioner cites unfair competition and a diversion of Chinese exports from the European Community in the wake of dumping duties imposed in July 1995, while respondents claim that the short-supply situation caused by the August 1995 fire at FMC forced purchasers to look to China for an alternate and reliable source of supply. The parties all agree that U.S. imports from Germany have declined as the European market has expanded, and that the Japanese have shown no interest in increasing their presence in the U.S. market. The German product moved to fill the market share vacated by imports of Chinese persulfates once antidumping duties were applied in Europe. In addition, the petitioner reports that exchange rates and much higher costs of power worked against both German and Japanese imports. Persulfates production is a very energy-intensive process, and FMC benefits from ***.²

The following tabulation presents Department of Commerce U.S. import data for persulfates in half-year increments (in 1,000 pounds):

<u>Period</u>	<u>Imports from—</u>		<u>Total</u>
	<u>China</u>	<u>All other sources</u>	
Jan. - June 1994	913	5,566	6,479
July - Dec. 1994	2,590	5,959	8,548
Jan. - June 1995	1,533	5,091	6,624
July - Dec. 1995	3,323	5,089	8,412
Jan. - June 1996	3,281	3,727	7,007
July - Dec. 1996	1,923	3,641	5,565

¹ Data on U.S. imports, apparent consumption, and market shares by salts are presented in app. D.

² FMC's posthearing brief, exh. 15.

Table IV-1

Total persulfates: U.S. imports, by sources, 1994-96

* * * * *

Figure IV-1

Persulfates: U.S. imports, by sources, 1994-96

* * * * *

APPARENT U.S. CONSUMPTION

Data on apparent consumption of persulfates are presented in table IV-2 and figure IV-2. Both the quantity and value of apparent consumption increased irregularly during 1994-96. Demand is cyclical, and is closely tied to trends in general economic conditions in industries such as housing, construction, automobiles, and packaged goods.³

Table IV-2

Total persulfates: U.S. shipments of domestic product, U.S. import shipments, by sources, apparent U.S. consumption, and U.S. market shares, 1994-96

* * * * *

Figure IV-2

Persulfates: Apparent U.S. consumption, by sources, 1994-96

* * * * *

U.S. MARKET SHARES

Market shares based on the U.S. producer's and U.S. importers' shipments are presented in table IV-2 and figure IV-3. Imports from China gained substantial market share from 1994 to 1996, while imports from all other sources decreased. The U.S. producer's market share increased irregularly at the same time.

Figure IV-3

Persulfates: Shares of the quantity of U.S. consumption, by sources, 1994-96

* * * * *

³ Hearing transcript, p. 25.

PART V: PRICING AND RELATED DATA

FACTORS AFFECTING PRICING

Transportation Costs to the U.S. Market

Transportation charges from China to the U.S. market are estimated to be 10.3 percent of the c.i.f. value.

U.S. Inland Transportation Costs

FMC reported that U.S. inland transportation costs account for *** percent of the total delivered price of persulfates while importers reported that these transportation costs account for 2 to 13 percent of the cost of persulfates.

Importer Markups

In 1996, the percentage difference in unit values between U.S. shipments of Chinese persulfates and U.S. imports of Chinese persulfates was 22 percent.

Commerce Margins of Dumping

Commerce found company-specific dumping margins as follows: Shanghai Ai Jian Import and Export Corporation - 42.18 percent, Sinochem Jiangsu Wuxi Import and Export Corporation - 40.97 percent, and Guangdong Petroleum Chemical Import and Export Trade Corporation - 43.93 percent. The estimated "all others" margin is 134.00 percent.

Tariff Rates

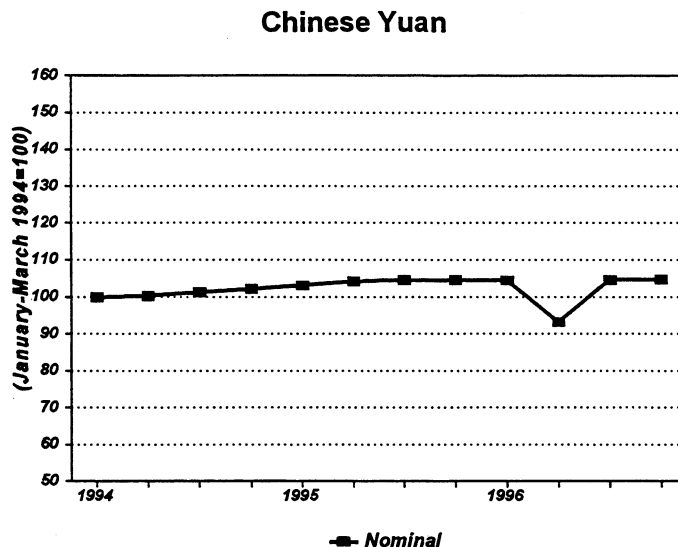
Sodium persulfate is covered by subheading 2833.40.20 of the HTS with an MFN duty rate of 3.7 percent *ad valorem* in 1996. Ammonium and potassium persulfates are covered by subheading 2833.40.60 with an MFN duty rate of 3.1 percent *ad valorem* in 1996. The weighted-average duty rate for all persulfates in 1996 was 3.5 percent.

Exchange Rates

Quarterly exchange rates reported by the International Monetary Fund for China during the period January 1994-December 1996 are shown in figure V-1.

Figure V-1

Exchange rates: Index of nominal exchange rates of the Chinese yuan relative to the U.S. dollar, by quarters, Jan. 1994-Dec. 1996



Source: International Monetary Fund, *International Financial Statistics*, April 1997.

PRICING PRACTICES

FMC ships persulfates in 55-pound bags and intermediate bulk containers (IBCs), and in 225-pound fiber drums ***. FMC reported ***. ***. FMC reported that price differences among the three persulfates reflect differences in manufacturing costs.

Importers generally negotiate prices on a transaction-by-transaction basis. However, 3 of 10 responding importers of Chinese persulfates reported that they use price lists. ***'s January 1997 price list showed that ½ a pallet of ammonium persulfate was listed for \$0.68 per pound while sodium persulfate was listed for \$0.87 per pound. This firm does not sell potassium persulfate.

FMC sells persulfates on an f.o.b. basis. Six of ten importers sell on a delivered basis, three sell on an f.o.b. basis, and one sells on both a delivered and an f.o.b. basis. Standard terms for persulfates from FMC and all importers are net 30 days.

FMC reported that *** percent of its sales are on a contract basis and that the average contract is for ***. Half of the responding importers indicated that they sell persulfates on a contract basis.

PRICE DATA

The Commission requested the U.S. producer and importers to provide quarterly quantity and value data between January 1994 and December 1996 for the following products: potassium persulfate (product 1), ammonium persulfate (product 2), and sodium persulfate (product 3). Data were collected separately for sales to end users and sales to distributors. Pricing data are presented in tables V-1 to V-6 and figures V-2 to V-7.

FMC's prices showed varying trends while prices of Chinese imports were flat or increasing. FMC's sales prices to distributors were ***. FMC's sales prices of ***. Prices of Chinese ammonium

persulfates generally increased while prices of potassium and sodium persulfates were generally flat during 1994-96.

Chinese persulfates were priced lower than U.S.-produced persulfates in all but one possible price comparison. Margins of underselling ranged from 3.0 percent to 50.4 percent. Price differences between U.S.-produced and Chinese ammonium persulfates were larger than those between U.S.-produced and Chinese potassium and sodium persulfates. The average margins of underselling by type of persulfate were as follows: potassium persulfate - 15.5 percent, ammonium persulfate - 28.2 percent, and sodium persulfate - 10.8 percent.

Table V-1

Potassium persulfate sold to distributors: Weighted-average net U.S. f.o.b. prices and quantities, as reported by the U.S. producer and importers, and margins of underselling/(overselling), by quarters, Jan. 1994-Dec. 1996

* * * * *

Figure V-2

Weighted-average net f.o.b. prices (per pound) of potassium persulfate sold to distributors, by quarters, Jan. 1994-Dec. 1996

* * * * *

Table V-2

Ammonium persulfate sold to distributors: Weighted-average net U.S. f.o.b. prices and quantities, as reported by the U.S. producer and importers, and margins of underselling/(overselling), by quarters, Jan. 1994-Dec. 1996

* * * * *

Figure V-3

Weighted-average net f.o.b. prices (per pound) of ammonium persulfate sold to distributors, by quarters, Jan. 1994-Dec. 1996

* * * * *

Table V-3

Sodium persulfate sold to distributors: Weighted-average net U.S. f.o.b. prices and quantities, as reported by the U.S. producer and importers, and margins of underselling/(overselling), by quarters, Jan. 1994-Dec. 1996

* * * * *

Figure V-4

Weighted-average net f.o.b. prices (per pound) of sodium persulfate sold to distributors, by quarters, Jan. 1994-Dec. 1996

* * * * *

Table V-4

Potassium persulfate sold to end users: Weighted-average net U.S. f.o.b. prices and quantities, as reported by the U.S. producer and importers, and margins of underselling/(overselling), by quarters, Jan. 1994-Dec. 1996

* * * * *

Figure V-5

Weighted-average net f.o.b. prices (per pound) of potassium persulfate sold to end users, by quarters, Jan. 1994-Dec. 1996

* * * * *

Table V-5

Ammonium persulfate sold to end users: Weighted-average net U.S. f.o.b. prices and quantities, as reported by the U.S. producer and importers, and margins of underselling/(overselling), by quarters, Jan. 1994-Dec. 1996

* * * * *

Figure V-6

Weighted-average net f.o.b. prices (per pound) of ammonium persulfate sold to end users, by quarters, Jan. 1994-Dec. 1996

* * * * *

Table V-6

Sodium persulfate sold to end users: Weighted-average net U.S. f.o.b. prices and quantities, as reported by the U.S. producer and importers, and margins of underselling/(overselling), by quarters, Jan. 1994-Dec. 1996

* * * * *

Figure V-7

Weighted-average net f.o.b. prices (per pound) of sodium persulfate sold to end users, by quarters, Jan. 1994-Dec. 1996

* * * * *

LOST SALES AND LOST REVENUES

FMC reported *** lost revenues allegations totaling \$*** and *** pounds and *** lost sales allegations totaling \$*** and *** pounds. The specifics of these allegations are shown in tables V-7 and V-8. A discussion of purchaser comments based on the allegations follows.

Table V-7
 Lost sales allegations reported by FMC

* * * * *

Table V-8
 Lost revenues allegations reported by FMC

* * * * *

* * * * * *1 2 3 4 5 6 7 8 9 10

¹ ***'s questionnaire response.

² ***'s questionnaire response.

³ ***'s questionnaire response.

⁴ ***.

⁵ Telephone conversation with *** and ***'s questionnaire response.

⁶ ***'s questionnaire response.

⁷ ***'s questionnaire response.

⁸ ***'s questionnaire response.

⁹ Telephone conversation with ***.

¹⁰ ***'s questionnaire response.

PART VI: FINANCIAL EXPERIENCE OF THE INDUSTRY

BACKGROUND

FMC, the sole U.S. producer of persulfates, provided income-and-loss data on its combined persulfate operations and data on its capital expenditures, assets, and research and development expenses. Its fiscal year ends December 31.

FMC is a large global producer of chemicals and machinery. All of its persulfates are produced at one plant in Tonawanda, New York.¹ There was a fire in the company's warehouse (adjacent to the plant) in August 1995. Production was shut down for approximately six weeks. ***. This plant was part of the Peroxygen Chemical Division, which was part of FMC's Industrial Chemical Products Group.² Industrial Chemicals, Performance Chemicals, Machinery & Equipment, and Defense Systems are FMC's major operating groups. FMC's operating income was \$515.6 million in 1996, on revenues of \$4,969.4 million.

The company was ***. During the period of investigation, ammonium persulfate accounted for *** percent of total sales, potassium persulfate represented *** percent, and sodium persulfate accounted for *** percent.

* * * * *

OPERATIONS ON PERSULFATES

Income-and-loss data on FMC's persulfates business are shown in table VI-I. ***.^{4 5}

***.^{6 7} FMC reported that, "FMC's prices in its export market are lower than its domestic market because FMC sells at a different level of trade in its export markets. For export sales, FMC sells through distributors or master wholesalers whereas for domestic sales, FMC sells through an extensive distribution chain as well as through its own sales force. FMC has seven warehouses throughout the United States which supply inventory to various customers. Obviously, these distribution costs are substantial and are not incurred on export sales."^{8 ***.⁹}

Table VI-1

Income-and-loss experience of FMC on its operations producing persulfates, calendar years 1994-96

* * * * *

¹ The staff conducted a verification of FMC's questionnaire submission at its Tonawanda, NY plant on April 14-15, 1997. Income-and-loss adjustments are included in this report.

² In 1996 FMC separated the Peroxygen Chemical Division into 2 new divisions. One is the Hydrogen Peroxide Division and the other, known as the Active Oxidants Division, includes persulfates. Refer to p. 31 (electronic filing) of FMC's 1996 annual report.

³ Refer to the unit shipment values in table III-2.

⁴ ***.

⁵ ***. Staff report in the preliminary phase of the investigation, table VI-1.

⁶ Refer to the unit export sales values in table III-2.

⁷ Discussion with R. Hows King, Peroxygens marketing manager for FMC, Apr. 14, 1997.

⁸ FMC's posthearing brief, exh. 12.

⁹ Ibid.

* * * * *

. In the in-camera session of the hearing, Charles Ryan (FMC controller) stated that "*" ¹⁰
***.

The summary which follows shows a breakdown for each of the cost of goods sold elements (see table VI-1) for each of the three years (on a dollars-per-pound basis):

* * * * *

There were staff adjustments to the SG&A data submitted by the petitioner. *** ^{11 12 13}

* * * * *

A breakdown of staff's revised SG&A expenses by selling and general and administrative is shown below (in 1,000 dollars):

* * * * *

***. A breakdown of SG&A expenses by selling and general and administrative, on a dollars-per-pound basis, is shown below:

* * * * *

*** ¹⁴ In its posthearing brief, petitioner provided profit data from the Coated Groundwood Paper and DRAMs investigations to support its cyclical industry analysis and claim of material injury. ¹⁵ Respondents stated that the Coated Groundwood Paper investigation as well as comparisons with the financial reports of other chemical producers supports their claim of no material injury. ¹⁶

The variance analysis is shown in table VI-2. ***.

Table VI-2
Variance analysis for persulfate operations, calendar years 1994-96

* * * * *

¹⁰ Transcript of the in-camera session of the hearing, pp. 134-135.

¹¹ This is discussed in the verification report.

¹² Staff conversations with various FMC officials and consultant, Apr. 25 and 28, 1997.

¹³ Note: ***.

¹⁴ Transcript of the in-camera session of the hearing, pp. 149-151.

¹⁵ FMC's posthearing brief, exh. 13.

¹⁶ Posthearing briefs of Dorsey & Whitney (various companies), att. 2, and ICC Chemical, exh. B.

**INVESTMENT IN PRODUCTIVE FACILITIES, CAPITAL EXPENDITURES,
AND RESEARCH AND DEVELOPMENT EXPENSES**

The value of fixed assets (property, plant, and equipment), capital expenditures, and research and development costs are shown in table VI-3. ***^{17 18}

* * * * *

Table VI-3
Value of assets, capital expenditures, and research and development expenses of FMC on its persulfate operations, calendar years 1994-96

* * * * *

CAPITAL AND INVESTMENT

The Commission requested FMC to describe any actual or potential negative effects of imports of persulfates from China on its growth, investment, ability to raise capital, and its development efforts (including efforts to develop a derivative or more advanced version of the product). Its response is as follows:

* * * * *

¹⁷ ***.

¹⁸ Hearing transcript, pp. 139-140.

PART VII: THREAT CONSIDERATIONS

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(I)). Information on the dumping margins was presented earlier in this report; information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on the U.S. producer's existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

THE INDUSTRY IN CHINA

There are four known producers of any significance in China: Shanghai Ai Jian Reagent Works ("Ai Jian"), Shaanxi Baoji Chemical Factory ("Shaanxi"), Guangzhou Zhujiang Electrochemicals ("Guangzhou"), and Fujian Fuan Pesticide Factory ("Fuan").¹ In reference to the more extensive list of Chinese producers provided in the petition, the China Chamber of Commerce reports that some of the producers have shut down, some never existed, and some have been consolidated into one of the companies providing information to the Commission.² Respondents claim that aside from the four producers mentioned above, there are five more producers of persulfates in China, four of which produce 100 tons or less per year (mostly of a laboratory, non-commercial grade), and one of which has nearly 100 percent captive production.³

* * * * *

Two firms responded to Commission questionnaires, Ai Jian and Guangzhou.^{5 6} Data concerning foreign production and shipments of Ai Jian and Guangzhou are presented in table VII-1. During 1994-96, capacity, production, and capacity utilization increased in line with the increase in home market shipments and exports to the United States and other non-European markets.⁷ Capacity and production are projected to remain flat during 1997 and 1998, while exports to the United States are projected to decrease.

¹ Commerce sent questionnaires to 18 companies identified in the petition as potential respondents, and received responses from only two producers and three exporters. As indicated previously, Commerce calculated the LTFV margins to be as follows: Sinochem Jiangsu Wuxi Import & Export Corporation ("Wuxi") at 40.97 percent, Shanghai Ai Jian Import & Export Corporation ("AJ") at 42.18 percent, Guangdong Petroleum Chemical Import & Export Trade Corporation ("Guangdong") at 43.93 percent, and a China-wide rate of 134.00 percent. Ai Jian is the producer for exporters AJ and Wuxi; Guangzhou is the producer for exporter Guangdong; and, ICC is Guangdong's U.S. customer.

² Hearing transcript, p. 68.

³ Dorsey & Whitney posthearing brief, att. 4, p. 5.

⁴ FMC's prehearing brief, p. 41.

⁵ Ai Jian and Guangzhou accounted for *** percent of 1996 imports from China.

⁶ While Shaanxi and Fuan did not submit data to the Commission, respondents report that the two companies collectively produce 1,350 metric tons per year and have a capacity of 1,550 metric tons per year. Dorsey & Whitney posthearing brief, att. 4, p. 5.

⁷ ***'s primary export markets other than the United States include ***.

Table VII-1

Data for Chinese producers of persulfates, 1994-96 and projected 1997-98

* * * * *

U.S. INVENTORIES OF PERSULFATES FROM CHINA

Importers' inventories are presented in table VII-2. Of the 11 firms reporting imports of persulfates from China, nine carried end-of-period inventories of those imports at some point during 1994-96. In its questionnaire the Commission requested importers to list any expected deliveries of persulfates from China after December 31, 1996. Responding importers reported an approximate total of *** pounds of anticipated imports.

Table VII-2

Persulfates: U.S. importers' end-of-period inventories of imports from China, by salts, 1994-96

* * * * *

DUMPING IN THIRD-COUNTRY MARKETS

The European Union imposed a provisional antidumping duty of 83.3 percent on imports of persulfates from China in June 1995.⁸ The final antidumping duty of 83.3 percent was imposed in December 1995.⁹ Petitioner reports that outside of Western Europe, Japan, the United States, and China, there is very little demand in other regions that could absorb the Chinese exports that had to be diverted from Western Europe as a result of the dumping order.¹⁰ Respondents report that the diverted Chinese exports will be absorbed in the Asia market where demand is expanding due to the large increase in high tech manufacturing.¹¹

⁸ The antidumping complaint filed by the European Chemical Industry Council in the European Union listed 14 producers of persulfates in China. FMC's posthearing brief, exh. 8.

⁹ FMC's prehearing brief, p. 1.

¹⁰ FMC's posthearing brief, exh. 9.

¹¹ Hearing transcript, p. 69.

APPENDIX A
FEDERAL REGISTER NOTICES

E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207), as amended by 61 FR 37818, July 22, 1996.
EFFECTIVE DATE: December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202-205-3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov> or <ftp://ftp.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of persulfates from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on July 11, 1996, by FMC Corporation, Chicago, IL.

Participation in the Investigation and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO

[Investigation No. 731-TA-749 (Final)]

Persulfates From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731-TA-749 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of persulfates, provided for in subheadings 2833.40.20 and 2833.40.60 of the Harmonized Tariff Schedule of the United States.¹

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through

¹ For purposes of this investigation, Commerce has defined the subject merchandise as persulfates, including ammonium, potassium, and sodium persulfates. The chemical formulae for these persulfates are, respectively, (NH₄)₂S₂O₈, K₂S₂O₈, and Na₂S₂O₈.

issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on May 1, 1997, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on May 14, 1997, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 6, 1997. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 8, 1997, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is May 8, 1997. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 22, 1997; witness testimony must be filed no later than three days before the

hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 22, 1997. On June 10, 1997, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 12, 1997, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: January 14, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97-1639 Filed 1-22-97; 8:45 am]

BILLING CODE 7020-02-P

Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3330, (202) 482-0629, or (202) 482-5193, respectively.

THE APPLICABLE STATUTE: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act ("URAA").

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

Case History

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

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

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

DEPARTMENT OF COMMERCE

International Trade Administration
[A-570-847]

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

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

EFFECTIVE DATE: May 19, 1997.

FOR FURTHER INFORMATION CONTACT: James Maeder, Barbara Wojcik-Betancourt, or Howard Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

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

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

In February and March 1997 we verified the respondents' questionnaire responses. Additional publicly available information on surrogate values was submitted by petitioner and respondents on April 4, 1997. Petitioner and respondents submitted case briefs on April 4, 1997, and rebuttal briefs on April 9, 1997². A public hearing was held on April 11, 1997.

Scope of the Investigation

The products covered by this investigation are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(\text{NH}_4)_2\text{S}_2\text{O}_8$, $\text{K}_2\text{S}_2\text{O}_8$, and $\text{Na}_2\text{S}_2\text{O}_8$. Ammonium and potassium persulfates are currently classified under subheading 2833.40.60 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Sodium persulfate is classified under HTSUS subheading 2833.40.20. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

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

Separate Rates

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

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

To establish whether a firm is sufficiently independent from

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

1. Absence of De Jure Control

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

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

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

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices ("EP") are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (see *Silicon Carbide* and *Furfuryl Alcohol*).

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

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

rate³. This determination is consistent with our recent decision in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results and Partial Termination of Antidumping Duty Administrative Review*, 62 FR 6173, 6174 (February 11, 1997) ("*Tapered Roller Bearings*"). Consequently, we have determined that Wuxi, AJ, and Guangdong have met the criteria for the application of separate rates.

China-Wide Rate

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

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

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

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

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

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

Regarding normal value ("NV"), petitioner used publicly available information from India to value the factors of production. Petitioner, based factory overhead, selling, general and administrative ("SG&A") and profit

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

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

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

Fair Value Comparisons

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

United States Price

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

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

1. Wuxi

We calculated EP in accordance with our preliminary calculations, ~~except~~

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

2. AJ

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

3. Guangdong

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

Normal Value

Factors of Production

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

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

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

Verification

As provided in section 782(i) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

General Comments

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

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

Respondents claim the Circular is hortatory and aspirational and does not constitute a change either in the legal status or in the de facto operations of companies in China. Furthermore, respondents claim the Circular does not apply to the instant investigation because it was issued six months after the close of the POI. Finally, respondents argue it would be an error for the Department to ignore the

company-specific information on the record pertaining to independence and rely on petitioner's speculations regarding the future effect of the Circular.

DOC Position

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

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

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

one entity and assigned a single country-wide rate.

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

DOC Position

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

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

Petitioner contends that Wuxi failed to place evidence on the record showing that it was not subject to de jure government control. Although Wuxi placed on the record certain PRC laws stating that the responsibility for managing companies "owned by all the people" has been transferred from the government to the companies themselves, it failed, according to petitioner, to provide documentation showing how these laws are implemented in Jiangsu Province, and how Wuxi is affected by them. In addition, petitioner notes that Wuxi failed to provide documentation demonstrating the absence of export controls on subject merchandise. Petitioner also points out that Wuxi's charter states that the company is to carry out the policy of the state and comply with the provisions of an institute that allegedly is an instrument of the Chinese government. Further, petitioner states that Wuxi has failed to demonstrate the absence of de facto

government control. Specifically, petitioner contends that Wuxi failed to: (a) show that it independently negotiated and signed business contracts; (b) demonstrate that it had autonomy in selecting management; (c) demonstrate that it had the authority to borrow freely; and (d) show how foreign currency and company profits were used. Thus, petitioner claims Wuxi failed to demonstrate the absence of de facto government control. Therefore, petitioner maintains that the Department should assign Wuxi a country-wide rate.

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

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

Wuxi and AJ maintain that they established the lack of de jure government control by submitting copies of various laws and regulations that were used to establish the absence of such control in past cases. Specifically, respondents note that they submitted the April 13, 1988, regulations on industrial enterprises "owned by all the people," the August 23, 1992, regulations regarding deregulation of state-owned industrial enterprises, and the December 29, 1993, law governing publicly held companies. Respondents argue that the implementation of such laws at the provincial level was established by the absence of de facto government control. Further, respondents assert that their charter provisions, which require the companies to comply with state policies, simply means that the companies must follow the law. Respondents also assert that the Department found no evidence of export controls during verification. AJ further

claims that the lack of de jure government control is evidenced by the fact that its parent company is a publicly traded company. According to AJ, the absence of a list of its shareholders does not overcome this finding. Regarding de facto control, respondents claim the Department examined the disposition of foreign currency and profits and reviewed documentation relating to sales negotiations, contracts, loans, and management selection, and found no evidence of government control.

Guangdong and ICC

Petitioner argues that the Department should assign, as adverse facts available, a single country-wide antidumping duty rate to Guangdong because Guangdong is owned by the Chinese provincial government and the company failed to provide evidence demonstrating the absence of de jure and de facto government control. Regarding de jure control, petitioner maintains the interim procedures⁴ on export licensing that Guangdong placed on the record merely address the issuance of export licenses, not the decentralization of government control of export activities. Petitioner also maintains that Guangdong failed to provide documentation showing how the "Company Law of the People's Republic of China" and the "Temporary Provisions for Administration of Export Commodities" are implemented in the province where Guangdong is located. Regarding de facto control, petitioner claims that the documents Guangdong submitted to prove that it independently sets prices and negotiates contracts are merely correspondence between ICC and ICC (Hong Kong) Ltd. (ICC is a customer of Guangdong) regarding persulfate purchases and do not support a finding that Guangdong acts independently. Petitioner points out that Guangdong has absolutely no autonomy in selecting managers because the Chinese provincial government appoints the general manager who, in turn, selects all the other managers. According to petitioner, the fact that the provincial government selects Guangdong's general manager is enough to require the Department to assign a country-wide antidumping duty rate to Guangdong (see *Notice of Preliminary Determination of Sales at Less Than Fair Value: Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China*, 61 FR 15037, 15038 (April 14, 1996) ("Natural

⁴ "Interim Procedures of the State Import-Export Commission and the Ministry of Foreign Trade of the People's Republic of China Concerning the System of Export Licensing" A-9

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

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

provincial government. Thus, that case is not relevant to this determination. Lastly, Guangdong and ICC contend that the question before the Department is whether Guangdong is sufficiently independent from the central government, not the provincial government. According to respondents, the record shows Guangdong operates completely independent of the central government.

DOC Position

AJ and Wuxi

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

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

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

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

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

evidence of government involvement in the selection of management.

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

Guangdong

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

Comment 4: Assigning a Country-Wide Rate to AJ

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

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

DOC Position

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

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

Comment 5: Assigning Antidumping Duty Rates to Manufacturers

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

rates assigned to non-participants. Petitioner argues that administrative reviews do not provide an effective remedy to the problem of manufacturers selling through exporters with a low duty rate because the first administrative review is not concluded until at least two years after the final determination in the investigation. During this time, petitioner contends that the manufacturer can export to the United States using the lowest rate available. In addition, petitioner claims it should not bear the burden of assessing whether an exporter has become a conduit for new manufacturers. Thus, if the Department assigns separate rates, petitioner requests that the Department assign an antidumping rate to both the exporter and the manufacturer.

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

DOC Position

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

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

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

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

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

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

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

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

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

SG&A on National Peroxide's financial data because, unlike Zhujiang, National Peroxide has a huge array of sales and distribution staff. Specifically, Zhujiang notes that it relies on ICC for sales and distribution services and the Department has already accounted for ICC's SG&A in its analysis of U.S. price. Hence, Zhujiang argues the Department will double-count SG&A if surrogate values are obtained from a producer that does not conduct business in a manner similar to Zhujiang.

DOC Position

Based on the submitted information, verification findings, and the Department's own research, we agree with petitioner that the financial data from National Peroxide's *Annual Report* for the fiscal year ending March 31, 1995, is the most appropriate surrogate information available to use for our final determination. The record indicates that the production process for hydrogen peroxide most closely resembles the production process for persulfates. Both products require large capital outlays for production, storage, technical support and special safety requirements. Although we found in the preliminary determination that National Peroxide's financial information, particularly SG&A expenses, were inconsistent with that of certain other Indian chemical producers, we have no information showing that the production processes of those producers resemble the production process for persulfates. Thus, we have determined that inconsistencies between the financial data for National Peroxide and these other Indian producers does not provide a basis for rejecting National Peroxide's financial data. In addition, we have no information showing that National Peroxide's financial data is inconsistent with that of other producers of hydrogen peroxide. Further, because both production processes have similar characteristics (e.g., large capital outlays, special safety requirements) which may impact SG&A, it is reasonable to conclude that National Peroxide's SG&A is comparable to that of a company producing persulfates (see *Final Valuation Memorandum* for further discussion regarding the similarities of the production process for hydrogen peroxide and persulfates). In addition, the product line of the respondents resembles the product line of National Peroxide. As in the preliminary determination, the Department made an extensive attempt in the final determination to obtain the financial statements for an Indian persulfates producer. However, the only known, existing persulfates producers

are privately held. Consequently, they do not issue public financial data about their operations. We did not use data for the Indian metals and chemicals industry from the RBI to value factory overhead and SG&A because the more industry-specific data (i.e., National Peroxide) is preferable to a broad RBI data, which includes metals as well as chemicals producers. Thus, following the Department's past practice of valuing factory overhead, SG&A and profit using surrogate values for the industry-specific experience closest to that of the subject merchandise, we used National Peroxide's financial data in the final determination because we concluded that National Peroxide's production is closer to that of the subject merchandise than Sanderson's production. (See e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Ferrovandium and Nitrided Vanadium From the Russian Federation*, 60 FR 27957, (May 20, 1995) ("Ferrovandium"); and *Notice of Final Determination of Sales at Less Than Fair Value: Magnesium from Ukraine* 60 FR 16432, (March 30, 1995) ("Magnesium from Ukraine")).

Comment 7: Using Skill-Specific Labor Rates

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

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

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

DOC Position

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

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

Comment 8: Additional Packing Materials

AJ

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

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

Zhujiang

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

Zhujiang did not comment on this issue.

DOC Position

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

Because AJ Works and Zhujiang failed to report all the packing materials as requested by the Department, for the

final determination, we have included the unreported packing material in the factors of production (see the Final Valuation Memorandum; also see the Memorandum to the File reporting the results of the verification of AJ Works dated March 31, 1997).

Company Specific Comments

AJ Works

Comment 9: Recalculating Factors of Production for Sodium Persulfate

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

Petitioner also claims that AJ Works' reporting methodology resulted in inaccuracies because the company reported the factors of production for export grade sodium persulfate without having the capability to ensure that only export grade sodium persulfates were shipped to the United States during the POI. Elaborating on this claim, petitioner notes that AJ Works' export and domestic grade sodium persulfates differ in that AJ Works used internally-produced ammonium persulfate to produce export grade sodium persulfate and purchased ammonium persulfate to produce domestic grade sodium persulfate. Although the Department found that AJ Works' differentiated between export and domestic grade sodium persulfate in its production records, petitioner maintains that the company demonstrated no method for physically distinguishing between export and domestic grade sodium persulfate. In fact, petitioner claims export and domestic grade sodium persulfates were commingled in AJ Works' finished goods warehouse. Because the type of ammonium persulfate used to produce sodium persulfate has a significant impact on margin calculations and AJ Works

cannot ensure that only sodium persulfates produced with internally-produced ammonium persulfate were shipped to the United States, petitioner claims that it would be incorrect to base NV for sodium persulfate solely on factors for export grade subject merchandise. Thus, petitioner recommends calculating per-unit factors of production for sodium persulfate using the factor and production quantities for total production.

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

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

DOC Position

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

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

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

Comment 10: Surrogate value for purchased ammonium persulfate

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

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

DOC Position

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

Comment 11: Normal Value for Sodium Persulfate

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

Zhujiang maintains that there is no record evidence showing it produced sodium persulfate using ammonium persulfate purchased from outside companies. According to Zhujiang, it used Chinese-labeled bags for production that was either consumed within the factory or sold in the domestic market. Thus, Zhujiang states there was no need to label the bags in

English. Zhujiang argues that Chinese labels provide no indication that it purchased ammonium persulfate from another factory. Moreover, Zhujiang maintains that the Department thoroughly examined factory records and found no evidence of purchases of ammonium persulfate. Lastly, Zhujiang points out that the petitioner's affidavit, indicating Zhujiang used purchased ammonium persulfate to produce sodium persulfate, referred to production that occurred well before the POI.

DOC Position

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

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

Comment 12: Average Surrogate Prices

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

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

DOC Position

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

Comment 13: Correction of a ministerial error

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

Petitioner did not comment on this issue.

DOC Position

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

Comment 14: Electricity Consumption

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

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

DOC Position

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

Comment 15: Adjusting Caustic Soda Prices

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

Petitioner did not comment on this issue.

DOC Position

We agree with respondent. We adjusted the concentration level of the caustic soda priced in *Chemical Weekly*

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

Comment 16: Correcting Control Numbers

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

Petitioner did not comment on this issue.

DOC Position

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

AJ

Comment 17: International Freight Expenses

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

Respondents argue that, other than the invoices cited by petitioner, the Department verified international freight expenses for all of the invoices examined. Consequently, the Department should accept the reported international freight amounts for all transactions. Respondents also argue that, even though company officials could not explain how international freight was allocated to the invoices in question, the allocation was performed in the ordinary course of business and, thus, it should be accepted. However, respondents suggest that if the Department rejects the allocation methodology presented during the verification, it has in its verification exhibits the total freight expense and the total tonnage for the invoices in question, which it can use to allocate the international freight expenses.¹⁵

among the invoices on a strict per-ton basis.

DOC Position

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

Comment 18: Inland Freight, Brokerage and Handling

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

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

DOC Position

We agree with petitioner and respondent, in part. Petitioner is correct that the Department should make an

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

Comment 19: Value for Ammonia

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

Respondents did not comment on this issue.

DOC Position

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

Comment 20: Ammonium Persulfate Spoilage

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

Respondents did not comment on this issue.

DOC Position

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

Comment 21: Adjustments for By-Products

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

Respondents did not comment on this issue.

DOC Position

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

Comment 22: Sulfuric Acid Used in Sodium Persulfate Production

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

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

DOC Position

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

Comment 23: Water Used in Sodium and Ammonium Persulfate Production

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

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

DOC Position

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

Comment 24: Supplier Distances

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

available for Zhujiang, the greatest reported distance between the factory and a supplier of an input as the distance between the factory and all suppliers of that input.

Respondents did not comment on this issue.

DOC Position

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

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

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

there is ample evidence that Guangdong knew the destination of the merchandise it sold to ICC.

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

DOC Position

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

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

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

Comment 26: Adjusting USP for Transportation Expenses

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

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

DOC Position

We agree with respondents that USP should not be reduced by intra-factory

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

Continuation of Suspension of Liquidation

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

The weighted-average dumping margins are as follows:

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

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

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether

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

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

Dated: May 12, 1997.

Robert S. LaRussa,
Acting Assistant Secretary for Import Administration.

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

BILLING CODE 3510-DS-P

APPENDIX B

LIST OF WITNESSES APPEARING AT THE HEARING

CALENDAR OF HEARINGS

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject : PERSULFATES FROM CHINA
Inv. No. : 731-TA-749 (F)
Date and Time : May 14, 1997 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main Hearing Room 101, 500 E Street, S.W., Washington, D.C.

Opening Remarks

Petitioner (Thomas V. Vakerics, Perkins Coie, and Jeffrey W. Carr, International Counsel, FMC Corporation)

Respondent (Jeffrey S. Neeley, Ross and Hardies, and L. Daniel Mullaney, Dorsey and Whitney)

**In Support of the Imposition
of Antidumping Duties:**

Perkins Coie
Washington, D.C.
on behalf of

FMC Corporation

Linda J. Myrick, Division Manager, FMC Corporation

Charles Ryan, Division Controller, FMC Corporation

Eugene Woychyshyn, Chief Accounting Manager, FMC Corporation

Jeffrey W. Carr, International Counsel, FMC Corporation

Bruce Malashevich, President, Economic Consulting Services, Incorporated

Thomas V. Vakerics)
)--OF COUNSEL
Mark T. Wasden)

**In Opposition to the Imposition of
Antidumping Duties:**

Ross and Hardies
Washington, D.C.
on behalf of

ICC Chemical Corporation

Susan Greenhalgh, Product Manager, ICC Chemical Corporation

Jeffrey S. Neeley--OF COUNSEL

Dorsey and Whitney
Washington, D.C.
on behalf of

Shanghai Ai Jian Reagent Works
Shanghai Ai Jian Import and Export Corporation
Sinochem Jiangsu Wuxi Import and Export Corporation

Chen Lian Ying, Deputy Director, China Chamber of Commerce

Ni Jian Ping, Director, Shanghai Ai Jian Reagent Works

L. Daniel Mullaney--OF COUNSEL

Singer and Singh
Washington, D.C.
on behalf of

Aceto Corporation

Indie K. Singh--OF COUNSEL

APPENDIX C
SUMMARY DATA

Table C-1

Total persulfates: Summary data concerning the U.S. market, 1994-96

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Table C-2

Ammonium persulfate: Summary data concerning the U.S. market, 1994-96

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Table C-3

Potassium persulfate: Summary data concerning the U.S. market, 1994-96

* * * * *

Table C-4

Sodium persulfate: Summary data concerning the U.S. market, 1994-96

* * * * *

APPENDIX D

**U.S. IMPORTS, APPARENT CONSUMPTION,
AND MARKET SHARES, BY SALTS**

Table D-1

Persulfates: U.S. imports, by salts and by sources, 1994-96

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Table D-2

Ammonium persulfate: U.S. shipments of domestic product, U.S. import shipments, by sources, apparent U.S. consumption, and U.S. market shares, 1994-96

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Table D-3

Potassium persulfate: U.S. shipments of domestic product, U.S. import shipments, by sources, apparent U.S. consumption, and U.S. market shares, 1994-96

* * * * *

Table D-4

Sodium persulfate: U.S. shipments of domestic product, U.S. import shipments, by sources, apparent U.S. consumption, and U.S. market shares, 1994-96

* * * * *

APPENDIX E
COMPAS PRESENTATION

ASSUMPTIONS

The COMPAS model is a supply and demand model that assumes that domestic and imported products are less than perfect substitutes. Such models, also known as Armington models, are relatively standard in applied trade policy analysis and are used extensively for the analysis of trade policy changes both in partial and general equilibrium. Based on the discussion contained in Part II of this report, the staff selects a range of estimates that represent price-supply, price-demand, and product-substitution relationships (i.e., supply elasticity, demand elasticity, and substitution elasticity) in the U.S. persulfates market. The model uses these estimates with data on market shares, Commerce's estimated margin of dumping, transportation costs, and current tariffs to analyze the likely effect of unfair pricing of subject imports on the U.S. like product industry.

FINDINGS¹

Estimated effects of the LTFV imports on the U.S. persulfates industry are as follows: 8.4 percent to 10.5 percent reduction in revenue, 5.7 percent to 7.8 percent reduction in output, and 1.8 percent to 3.6 percent reduction in price. More detailed effects of the dumping and the modeling assumptions used for the full range of scenarios are shown in tables E-1 and E-2. The first table shows the effects of those imports which were exported by the three companies investigated by Commerce; the second table shows the effect of the remaining imports (i.e., "all others").

Table E-1

The effects of LTFV pricing of imports from China from Sinochem Jiangsu Wuxi Import and Export Corp., Shanghai Ai Jian Import and Export Corp., and Guangdong Petroleum Chemical Import and Export Trade Corp.

* * * * *

Table E-2

The effects of LTFV pricing of imports from China from all other sources

* * * * *

¹ Estimates are based on 1996 data, the year which corresponds closest with Commerce's period of investigation (January-June 1996).

