HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

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

Best Information Available

As stated in the preliminary determination, we have based the duty deposit rate for all other exporters in the PRC ("the 'PRC-wide' rate") on best information available ('BIA''). The evidence on record indicates that the responding companies may not account for all exports of the subject merchandise.

In the case of Hunan Chemicals, verification revealed that, for its sole POI sale to the U.S., there was no evidence that Hunan Chemicals knew at the time of its sale to its customer that the merchandise was destined for the United States. Therefore, we have not treated that transaction as a sale by Hunan Chemicals to the United States. Accordingly, Hunan Chemicals will be subject to the "PRC-wide" deposit rate for manganese sulfate. (see Comment 2, "Interested Party Comments" section of this notice).

Because information has not been presented to the Department to prove otherwise, other PRC exporters not participating in this investigation are not entitled to separate dumping margins. In the absence of responses from all exporters, therefore, we are basing the country-wide deposit rate on BIA, pursuant to section 776(c) of the Act. (See, e.g., Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From Ukraine (61 FR 16433, March 30, 1995).

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

the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. In this investigation, we are assigning to any PRC company, other than those specifically identified below, the "PRC-Wide" deposit rate of 362.23 percent, ad valorem. This margin represents the highest margin in the petition, as recalculated by the Department for purposes of the final determination. In the preliminary determination, we adjusted the BIA rate by reassigning the value for ocean freight based on the highest reported ocean freight charge incurred by a responding company-CNIEC-because the surrogate value cited for ocean freight in the petition appeared to be aberrational (e.g., the unit charge for ocean freight deducted from gross unit price equals 68 percent of the gross unit price). (See Calculation Memorandum for the Preliminary Determination of Sales at Less Than Fair Value: Manganese Sulfate from the People's Republic of China (59 FR 25885, May 16, 1995)). For the final determination, we determined CNIEC's reported ocean freight charges are based on non-market economy rates (see Comment 7, "Interested Party Comments" section of this notice). Therefore, we adjusted the PRC-wide rate, as recalculated in the preliminary determination, to reflect the market economy rate determined by the Department as the appropriate surrogate value for ocean freight in final margin calculation for CNIEC.

Separate Rates

CNIEC and Hunan Chemicals have each requested a separate rate. Because, as explained above, we determined that Hunan Chemicals had no reported sales to the U.S. during the POI, Hunan Chemicals is precluded from being considered for a separate rate, the request of this company will not be further analyzed (see Final Determination of Sales at Less Than Fair Value: Nitromethane from the People's Republic of China (59 FR 14834, March 30, 1994)).

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

CNIEC's business license indicates that it is owned "by all the people." As stated in the Silicon Carbide, "ownership of a company by all the people does not require the application of a single rate." Accordingly, CNIEC is eligible to be considered for a separate rate.

De Jure Control

CNIEC has submitted copies of the following laws in support of its claim of absence of de jure control: "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988 ("1988 Law"); "Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises," approved on August 23, 1992 ("1992 Regulations"); and the 'Temporary Provisions for Administration of Export Commodities," approved on December 21, 1992 ("Export Provisions"). The 1988 Law states that enterprises have the right to set their own prices (see Article 26). This principle was restated in the 1992 Regulations (see Article IX). The Export Provisions list those products subject to direct government control. Manganese sulfate does not appear on the Export Provisions list and is not, therefore, subject to the constraints of these provisions. The 1994 Quota Measure supersedes earlier laws dealing with the export of the named commodities. Manganese sulfate was not named in the 1994 Quota Measure and does not, therefore, appear to be subject to the export quota

regulation of this measure. The Department stated in Silicon Carbide that the existence of the 1988 Law and the 1992 Regulations support a finding that the respondents are not subject to *de jure* control either by the central government or otherwise. However, we found in Silicon Carbide

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

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