Comment 2: Hunan Chemicals' Status as Respondent

Petitioner contends that the Department has no basis for determining a company-specific margin for Hunan Chemicals. According to petitioner, evidence on the record for its only reported sale indicates that Hunan Chemicals did not know, at the time of sale, that the merchandise it sold to the third country trading company was ultimately destined for the United States. All documentary evidence on the record indicates that Hunan Chemicals only learned that the merchandise was destined for the United States at the time of shipment, after the sale had already been made.

Respondents argue that the Department should continue to treat Hunan Chemicals' only reported sale as a U.S. sale and, therefore, assign Hunan Chemicals a separate rate for the final determination because of the following evidence on the record: (1) The bill of lading for the shipment in question listed the destination as a U.S. port; (2) PRC Customs export statistics' printout of exports to the United States showed that this shipment was sent to the United States; and, (3) correspondence from a company in New York with respect to this shipment was dated before the issuance of this sales contract.

DOC Position

We agree with petitioner. Based on the evidence on the record, we determine that this transaction was not a U.S. sale made by Hunan Chemicals. The sales contract for the reported sale did not stipulate the ultimate destination. The customer listed on the sales contract was a non-U.S. trading company. The actual sales documents (i.e., sales contract, invoice, bill of lading), sales records, or accounting records do not mention the name of the company with the New York address found on the facsimile correspondence dated before the issuance of the sales contract. Further, the sales correspondence up to and including the date of sale does not mention the identity of the U.S. customer or the ultimate destination as the United States. The terms of delivery on the sales invoice were not to the United States. The fact that the bill of lading lists the U.S. port as destination of the shipment does not prove that Hunan Chemicals knew the ultimate destination at the time of the sale because this shipping document was issued well after the date of the sales contract which established the date of sale in this case. The PRC Customs

export statistics do not provide any supporting evidence as to the company's knowledge at the date of the sale that the destination of the shipment was the United States. Even though Hunan Chemicals cooperated in supplying the requested information and permitting verification, absence of a viable U.S. sale made by Hunan Chemicals gives the Department no choice but to reject the company as a respondent in this investigation. Therefore, based on the record of this investigation, the Department did not calculate a separate margin for Hunan Chemicals for the final determination. Accordingly, Hunan Chemicals will be subject to the "PRC-wide" rate.

Comment 3: Surrogate Value for Factor X

(*N.b.*, Due to the proprietary nature of this issue, the following discussion is presented in non-confidential form. A more detailed analysis of the interested parties' positions and the Department's position is given in the September 28, 1995, decision memorandum to the file.)

Petitioner asserts that the surrogate value for factor X from the Indian Minerals Yearbook ("Yearbook") used in the preliminary determination is aberrational and should not be used in the final determination. In support of its assertion, petitioner (1) cites to past cases where the Yearbook value was not chosen as the surrogate value; (2) observes that the Yearbook value is significantly lower than other values on the record for comparable material, including a price quotation from a PRC supplier; and (3) notes that there is no evidence on the record of any company in India purchasing the material at the price listed in the Yearbook.

Moreover, petitioner argues that the type of material respondents claim to use is different from the type of material priced in the Yearbook. Based on these reasons, petitioner requests the Department to use publicly available published value information in the TEX Report (for a material that petitioner characterizes as similar to that used by the PRC producers) and adjust the price to account for any differences.

Respondents assert that the material used by the PRC producers is in fact the same material as priced in the Yearbook. Contrary to petitioner's claims, respondents contend that the Department has no basis for determining the Yearbook price as aberrational since the Yearbook price reflects a publicly available, published domestic price in the chosen surrogate country based on credible source used in past cases. Accordingly, respondents request that the Department use the Yearbook unit

price as the appropriate surrogate value for factor X in the final determination.

DOC Position

We have determined to use the Yearbook price for valuing factor X. Contrary to petitioner's suggestion, the Yearbook has been used repeatedly by the Department as a reasonable source of publicly available public information for factor valuation. Additionally. information submitted by petitioner does not establish that the value is aberrational. Specifically, with the exception of one price provided by petitioner, all other prices apply to products which are less comparable to the input used by the PRC producers than the product described in the Yearbook. Hence, those values are not appropriate to value factor X; and, the evidence provided does not allow us to use them to test whether the Yearbook price is correct. With respect to the one price provided by petitioner that is for a comparable product, the information is not publicly available published information. Therefore, consistent with our policy (see Notice of Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Certain Carbon Steel Butt-Weld Pipe Fittings From the PRC (57 FR 21062, May 18, 1992)), we will give preference to the Yearbook price.

Further, a comparison of the Yearbook price to a non-market export price quotation for the comparable material, as petitioner suggested, cannot be considered a reasonable or meaningful test of whether a surrogate value is aberrational. It has been the Department's practice not to rely on prices set in non-market economies due to state controls imposed on prices, wages, currency and production as well as the absence of market forces in the economy. Petitioner asserts that a nonmarket economy price quotation would be an understatement of the market price due to price controls. However, the Department cannot be certain that the quoted export price is in fact an understatement due to the market distortions existing in a non-market economy.

Comment 4: Surrogate Value for Factor

(*N.b.*, Due to the proprietary nature of this issue, the following discussion is presented in non-confidential form. A more detailed analysis of the interested parties' positions and the Department's position is given in the September 28, 1995, decision memorandum to the file.)

Respondents argue that the Chemical Weekly price used to value factor Z in the preliminary determination is an