Comment 10: Adjusted Calculation to Reflect Actual Working Days in India for Surrogate Labor Rate

Petitioner requests that, if the Department chooses to rely upon the reported labor factor amounts in the questionnaire responses, the Department adjust the factors to account for labor practices in India. According to petitioner, if the PRC producers report that their workers worked more hours than the total number of hours worked in India during a normal work week, the Department should value the excess hours at double the normal labor rate as "overtime."

Respondents assert that there is no basis under law, precedent or practice to value PRC producers' "excess" hours at double the rate the Department decides to use as its surrogate value based on labor practices in India. Further, respondents counter that there is no indication on the record that any of the PRC producers' employees work over the hours calculated based on Indian labor practices. Accordingly, respondents request that the Department reject such a request.

## DOC Position

We agree with respondents. While the Department does use information on labor practices in India to convert daily, weekly, and monthly wage rates from India into hourly wage rates, it is not Department practice to apply the surrogate country's overtime policies in valuing NME labor. Further, because our questionnaire did not require NME producers to report potential "overtime" hours worked as a component of "regular" hours, there was no opportunity for this issue to be fully analyzed, verified, and commented upon by interested parties.

## Critical Circumstances

In our preliminary determination, we found that critical circumstances existed for all non-responding trading companies, but not for Hunan Chemicals or CNIEC.

Under 19 CFR 353.16(a), critical circumstances exist if (1) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of this investigation; or the importer knew or should have known that the producer or reseller was selling the merchandise which is the subject of this investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise which is the subject of this investigation over a relatively short period.

In determining whether imports have been massive over a short period of time, 19 CFR 353.16(f) instructs consideration of: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports.

Further, 19 CFR 353.16(f)(2) states that imports will not generally be considered massive unless they have increased by at least 15 percent over the imports during the immediately preceding period of comparable duration.

In accordance with 19 CFR 353.16, we preliminarily determined that critical circumstances did not exist for CNIEC and Hunan Chemicals based on the following criteria: (1) The finding of no imputed knowledge of dumping to importers because the estimated dumping margins were less than 15 percent (the threshold where, as here, only ESP sales are involved) and (2) the adverse assumption, based on BIA, that massive imports of manganese sulfate occurred over a relatively short period of time. (See Preliminary Determination Notice of Sales at Less Than Fair Value: Manganese Sulfate from PRC (59 FR 25885, May 16, 1995)).

For the final determination, we continue, as BIA, to determine that critical circumstances exist for all non-respondent exporters. The "PRC-wide" margin of 362.23 percent for those exporters exceeds the 25 percent threshold for imputing a knowledge of dumping to the importers of the merchandise. In addition, we have adversely assumed, as BIA, a massive increase in imports from these non-respondent exporters. We, therefore, determine that critical circumstances exist for all non-respondent exporters in this investigation.

Since the preliminary determination, we have determined that Hunan Chemicals is not a respondent and will not be assigned a separate rate. Therefore, we extend to Hunan Chemicals the same BIA-based determination of critical circumstances applied to the non-responding trading companies.

Additionally, CNIEC submitted shipment information following the preliminary determination which has now been verified. While CNIEC's margin (32.48%) does indicate that importers knew, or should have known, that CNIEC's merchandise was being sold at LTFV prices, CNIEC's shipment data shows that there has been no massive increase in the shipments from CNIEC in the period following the filing of the petition. Accordingly, for CNIEC, we determine that critical circumstances do not exist.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1)and 735(c)(4)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of manganese sulfate from the PRC from all non-responding trading companies, that are entered, or withdrawn from warehouse for consumption, on or after February 14, 1995, which is the date that is 90 days prior to the date of publication of our notice of preliminary determination in the Federal Register. This retroactive suspension will now also apply to Hunan Chemicals. In addition, we are instructing Customs to suspend liquidation from the date of publication of this notice in the Federal Register for all entries of manganese sulfate from the PRC sold by CNIEC. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

| Manufacturer/pro-<br>ducer/exporter | Margin<br>percentage | Critical<br>cir-<br>cum-<br>stances |
|-------------------------------------|----------------------|-------------------------------------|
| CNIEC" "PRC-Wide" Rate              | 32.48<br>362.23      | No.<br>Yes.                         |

## 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 within 45 days determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. 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 cancelled. 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, for consumption on or after the effective date of the suspension of liquidation.

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