the repair of the tunnel behind the falls and removal of the temporary flume structure. A Supervisory Control and Data Acquisition system will be implemented to allow remote data collection and operation of key components. Technical and financial assistance will be provided to Hamakua and Waipio Valley farmers to implement soil and water conservation measures.

The record of decision documents that the Lower Hamakua Ditch Watershed project uses all practicable means, consistent with other essential considerations of national policy, to meet the goals established in the National Environmental Policy Act. The FEIS has been prepared, reviewed, and accepted in accordance with the National Environmental Policy Act.

For further information or single copies of this record of decision contact Kenneth M. Kaneshiro, State Conservationist, Natural Resources Conservation Service, 300 Ala Moana Blvd., Room 4–118, P.O. Box 50004, Honolulu, Hawaii, 96850. Telephone 808–541–2600 ext. 100.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: November 1, 1999.

Kenneth M. Kaneshiro,

State Conservationist.

[FR Doc. 99–32896 Filed 12–17–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–852]

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

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

EFFECTIVE DATE: December 20, 1999.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv, Rosa Jeong, or Ryan Langan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4207, (202) 482–3853, and (202) 482–1279, respectively.

Final Determination

We determine that creatine monohydrate (''creatine'') from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''). The estimated margins of sales at LTFV are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

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 Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to the regulations at 19 CFR Part 351 (April 1, 1998).

Case History

Since the preliminary determination (64 FR 41375, July 30, 1999), the following events have occurred:

During September and October 1999, we conducted verification of the questionnaire responses of the respondents: Blue Science International Trading (Shanghai) Co., Ltd. (''Blue Science''); Nantong Medicines and Health Products Import and Export Co., Ltd. d/b/a Nantong Foreign Trade Corporation Medicine and Health Products Department (''Nantong''); Shanghai Desano International Trading Co., Ltd. (''Desano''); Shanghai Freemen International Trading Co., Ltd./Shanghai Greenmen International Trading Co., Ltd. (''Freemen''); Suzhou Sanjian Fine Chemical Co., Ltd. (''Sanjian''); and Tianjin Tiancheng Pharmaceutical Co., Ltd. (''Tiancheng''). We also verified information provided by the producers who supplied the respondents with the subject merchandise during the POI, including Jiangsu Shuang Qiang Chemical Co. and Wuxian Agricultural Chemical Factory (collectively ''SQ'') and several other producers whose identities have been treated as business proprietary information and cannot be publicly summarized. We issued reports on our findings of these verifications during October and November 1999.

The petitioner, Pfanstiehl Laboratories, Inc., and the respondents filed case and rebuttal briefs on November 17, 1999, and November 23, 1999, respectively. On November 29, 1999, the Department held a public hearing. On November 30, 1999, pursuant to the Department's request, the petitioner submitted supplemental information regarding the surrogate value of one input. On December 1, 1999, the respondents commented on the supplemental information.

Scope of the Investigation

For purposes of this investigation, the product covered is creatine monohydrate, which is commonly referred to as ''creatine.'' The chemical name for creatine monohydrate is N-(aminoiminomethyl)-N-methylgycine monohydrate. The Chemical Abstracts Service (''CAS'') registry number for this product is 6020–87–7. Creatine monohydrate in its pure form is a white, tasteless, odorless powder, that is a naturally occurring metabolite found in muscle tissue. Creatine monohydrate is provided for in subheading 2925.20.90 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading and the CAS registry number are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of this investigation (''POI'') is July 1 through December 31, 1998, which corresponds to each exporter's two most recent fiscal quarters prior to the filing of the petition.

Nonmarket Economy Country and Market Oriented Industry Status

The Department has treated the PRC as a nonmarket economy (''NME'') country in all past antidumping investigations. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China,* 63 FR 72255 (December 31, 1998) (''*Mushrooms*''). Under section 771(18)(C) of the Act, this NME designation remains in effect until it is revoked by the Department.

The respondents in this investigation have not requested a revocation of the PRC's NME status and no further information has been provided that would lead to such a revocation. Therefore, we have continued to treat the PRC as an NME in this investigation.

Separate Rates

All responding exporters have requested separate, company-specific antidumping duty rates. Blue Science has stated, and we verified, that it is a trading company which is wholly-owned by persons in Hong Kong. Therefore, in accordance with our past practice, we determine that this exporter qualifies for a separate rate. *See, e.g., Notice of Final Determination of Sales*

at Less Than Fair Value: Disposable Pocket Lighters From the People's Republic of China, 60 FR 22359, 22360 (May 5, 1995). The other responding exporters have stated, and we verified, that they are privately owned companies with no element of government ownership or control.

The Department's separate rate test is not concerned, in general, with macroeconomic/ border-type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value,* 62 FR 61754, 61757 (Nov. 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (Nov. 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value,* 60 FR 14725, 14726 (March 20, 1995).

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 arising out of 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*''), as modified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The respondents have placed on the record a number of documents to demonstrate absence of *de jure* government control, including the ''Foreign Trade Law of the People's Republic of China'' and the ''Company Law of the People's Republic of China.''

The Department has analyzed these laws in prior cases and found that they establish an absence of *de jure* control. *See, e.g., 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); *see also Notice of Final Results of New Shipper Review: Freshwater Crawfish Tail Meat from the People's Republic of China,* 64 FR 27961 (May 24, 1999). We have no new information in this proceeding which would cause us to reconsider this determination. Accordingly, we determine that, within the creatine industry, there is an absence of *de jure* government control over export pricing and marketing decisions of firms.

2. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See, e.g., Sparklers.* 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.

As discussed in the preliminary determination, the responding exporters claim to have the autonomy to set prices at whatever level they wish through independent price negotiations with their foreign customers without government interference. During verification, our examination of correspondence and sales documentation revealed no evidence that any of the responding exporters' export prices are set, or are subject to approval by, any governmental authority. Based on our review of written agreements and contracts, it appears that these exporters have the authority to negotiate and sign contracts and other agreements independent of any government authority. Moreover, we have determined that the responding exporters have autonomy from the central government in making decisions regarding the appointment of management. Finally, based on our examination of financial records and purchase invoices, we have concluded that the responding exporters retained proceeds from their export sales and made independent decisions regarding disposition of profits and financing of losses.

This information supports a finding that there is an absence of *de facto* governmental control of the export functions of Desano, Freemen, Nantong, Sanjian and Tiancheng. Consequently, we determine that the responding exporters in this investigation should be assigned individual dumping margins.

PRC-Wide Rate

As stated in the preliminary determination, information on the record of this investigation indicates that there may be producers and exporters of the subject merchandise in the PRC in addition to the companies participating in this investigation. Also, U.S. import statistics indicate that the total quantity of U.S. imports of creatine from the PRC is greater than the total quantity of creatine exported to the United States as reported by all PRC creatine exporters that submitted responses in this investigation. Given this discrepancy, it appears that not all PRC exporters of creatine responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate—the PRC-wide rate—to all exporters in the PRC, other than those specifically identified below under the ''Continuation of Suspension of Liquidation'' section of this notice. We apply this single rate based on our presumption that the export activities of the companies that failed to respond to the Department's questionnaire are controlled by the PRC government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China,* 61 FR 19026 (April 30, 1996) (''*Bicycles*'').

Use of Facts Available

As explained in the preliminary determination, the PRC-wide antidumping rate is based on adverse facts available, in accordance with Section 776 of the Act. 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 or the Commission under this title, (B) fails to provide such information by the deadlines for 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 and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.'' Use of facts available is warranted in this case because the exporters other than those under investigation have failed to respond to the Department's questionnaire.

Section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The exporters that decided not to respond in any form to the Department's questionnaire failed to act to the best of

their ability in this investigation. Further, absent a response, we must presume government control of these and all other PRC companies for which we cannot make a separate rates determination. Thus, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted.

As adverse facts available, we are assigning the highest margin in the petition, 153.70 percent, which is higher than any of the calculated margins.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316 (1994) (''SAA''), states that ''corroborate'' means to determine that the information used has probative value. *See* SAA at 870. As discussed in the preliminary determination, we determine that the calculations set forth in the petition have probative value. *See also* Comment 2.

In addition to the PRC-wide rate, we have also used partial facts available in calculating the dumping margins for two responding exporters. As discussed below in comment 2, certain producers which supplied the subject merchandise Blue Science and Freemen did not provide complete factors of production information. We find that neither Blue Science, Freemen, nor the suppliers in question have cooperated to the best of their abilities in providing complete factors of production information.

Accordingly, as adverse facts available, we have applied a margin of 153.70 percent, the highest margin from the petition, to those sales for which factor information was not provided (*see* Comment 2).

Fair Value Comparisons

To determine whether sales of the subject merchandise by Blue Science, Desano, Freemen, Nantong, Sanjian and Tiancheng to the United States were made at LTFV, we compared the export price (''EP'') to the normal value (''NV''), as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to weighted-average NVs.

Export Price

We used EP methodology in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and CEP methodology was not otherwise appropriate. We calculated EP based on packed c.i.f. or c&f prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for billing adjustments, inland freight from the plant/warehouse to port of exit, brokerage and handling in the PRC, marine insurance and ocean freight. Because certain domestic brokerage and handling, marine insurance, and inland freight were provided by NME companies, we valued those charges using surrogate rates from India (*see* ''Normal Value'' section for further discussion). In addition, we made corrections for certain clerical errors found at verification (*see* calculation memoranda for individual respondents).

Normal Value

1. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. The Department has determined that India, Pakistan, Sri Lanka, Egypt, Indonesia, and the Philippines are countries comparable to the PRC in terms of overall economic development (*see* memorandum from Jeff May, Director, Office of Policy, to Susan Kuhbach, Senior Director, AD/CVD Enforcement, Office 1, March 26, 1999). Moreover, we have determined that both India and Indonesia are significant producers of comparable merchandise. As discussed in the preliminary determination, although we have no information to indicate that India and Indonesia produce creatine, they do produce other products within the same customs heading and other fine chemicals with nutritional characteristics.

For purposes of our final determination, we have continued to rely on India as our primary surrogate country for this investigation. Because India is frequently used as a surrogate in cases involving the PRC, its use in this proceeding enhances predictability, one of the Department's goals in administering the NME provisions (*see* preamble to proposed 19 CFR § 351.408, 61 FR 7308, 7344 (February 27, 1996)). Also, India produces and exports more merchandise than Indonesia under United National Standard International Trade Classification Revised number 514.82, ''carboxyamide-function compounds (including saccharin and its salts) and imine-function compounds,'' the heading which includes creatine. Thus, we have relied primarily on Indian values to calculate NV. When Indian values were not available or determined to be aberrational, we used Indonesian values.

2. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the companies in the PRC which produced creatine for the responding exporters during the POI.

To calculate NV, the verified per-unit factor quantities were multiplied by publicly available surrogate values. We then added amounts for labor, overhead, selling, general and administrative expenses (including interest) (''SG&A''), profit, and packing expenses incidental to placing the merchandise in packed condition and ready for shipment to the United States.

We calculated NV based on the same methodology used in the preliminary determination. In addition, we made corrections for certain clerical errors found at verification (*see* calculation memoranda for individual respondents).

3. Surrogate Values

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. Where a producer did not report the distance between the material supplier and the factory, as facts available, we used either the distance to the nearest seaport (if an import value was used as the surrogate value for the factor) or the farthest distance reported for a supplier. Where distances were reported, we added to Indian and Indonesian c.i.f. surrogate values a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the PRC factory, or from the domestic supplier to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401 (Fed. Cir. 1997).

For those values not contemporaneous with the POI and quoted in a foreign currency, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics.*

(1) *Material Inputs:* Many of the inputs in the production and packing of

creatine are considered business proprietary data by the respondents. Thus, we are unable to discuss individual inputs in this notice. In general, the chemical inputs were valued using data reported in the following sources: *Monthly Statistics of the Foreign Trade of India,* the Indian publication *Indian Chemical Weekly* (''ICW'') and *Monthly Statistics of the Foreign Trade of Indonesia.* For a complete analysis of surrogate values, see ''Factors of Production Valuation'' memoranda dated July 22, 1999 and December 13, 1999.

(2) *Labor:* We valued labor using the method described in 19 CFR § 351.408(c)(3).

(3) *Electricity:* To value electricity, we used the 1995 electricity rates reported in the publication *Energy Prices and Taxes,* 4th quarter 1998. We based the value of coal on prices reported in *Energy Prices and Taxes,* 2nd quarter 1998.

(4) *Overhead, SG&A and Profit:* We based factory overhead, SG&A, and profit on the financial statements of Sanderson Industries, Ltd. (''Sanderson''), an Indian chemical producer (*see* comments 1 and 4).

(5) *Inland Freight:* To value truck freight rates, we used price quotes obtained by the Department from Indian truck freight companies in November 1999. For inland water transportation, we valued boat and barge transportation using the surrogate values provided in an August 1993 cable from the US Embassy Bombay. With regard to rail freight, we based our calculation on price quotes obtained by the Department from an Indian rail freight company in November 1999.

(6) *Packing Materials:* For packing materials we used import values from the *Monthly Foreign Trade Statistics of India; Volume II Imports.*

(7) *Brokerage and Handling:* To value foreign brokerage and handling, we relied on public information reported in the case record for a new shipper review of stainless wire rod from India. *See Certain Stainless Steel Wire Rod From India; Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews,* 63 FR 48184 (Sept. 9, 1998).

(8) *Marine Insurance:* For marine insurance, we used public information collected for *Tapered Roller Bearing and Parts Thereof, Finished and Unfinished, from the PRC; Final Results of 1996–1997 Antidumping Administrative Review,* 63 FR 63842, 63847 (Nov. 17, 1998) (*''TRBs–10''*), which was obtained through queries made directly to an international marine insurance provider.

(9) *Ocean Freight:* For ocean freight, we relied on public information used in *TRBs–10,* which was obtained through queries made directly to an international freight provider.

Critical Circumstances

In the preliminary determination, we found that critical circumstances, within the meaning of section 733(e)(1) of the Act, exist for Desano, Freemen and all other PRC exporters except Blue Science, Nantong, Sanjian and Tiancheng. Our decision was based on the analysis of shipment data submitted by the respondents and available import statistics, as well as evidence of importer knowledge of dumping and the likelihood of resultant material injury. As discussed in the preliminary determination, the Department normally considers margins of 25 percent or more and a preliminary International Trade Commission (''ITC'') determination of material injury sufficient to impute knowledge of dumping and the likelihood of resultant material injury.

In the final determination, Desano's calculated dumping margin is less than 25 percent. Therefore, because there is no longer sufficient evidence to impute knowledge of dumping, we have reversed our preliminary finding of critical circumstances for Desano. With regard to other exporters, no new information has been provided to warrant a reconsideration of our finding. Therefore, we have determined that critical circumstances exist for Freemen and all other PRC exporters except Blue Science, Desano, Nantong, Sanjian and Tiancheng.

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.

Interested Party Comments

Comment 1: Surrogate Value for Overhead, SG&A and Profit

Blue Science, Freemen, Nantong, SQ and Sanjian argue that the Department should reject the data used in the preliminary determination to calculate factory overhead, SG&A, and profit. The respondents argue that these data from the *Reserve Bank of India Bulletin* (''RBI'') are stale and unreliable because they relate to 1992–1993 and include data drawn from an aggregation of over 600 companies from dissimilar industries. The respondents claim that the Department has rejected the use of RBI data in past cases for these same reasons (*see, e.g., Tapered Roller Bearing and Parts Thereof, Finished and Unfinished, from the PRC; Final Results of Antidumping Administrative Review,* 62 FR 6189, 6206 (Feb. 11, 1997) and *Pure Magnesium from the PRC,* 63 FR 3085 (Jan. 21, 1998) (''*Magnesium*'')).

Instead, the respondents urge the Department to use the financial statement of an Indian producer of bulk drugs, Kopran Limited (''Kopran''), to derive overhead, SG&A, and profit. While Kopran does not produce creatine, the respondents assert that it is in the same general industry category as creatine and, thus, Kopran's experience is more comparable to the experience of PRC creatine producers.

In the alternative, the respondents argue that the Department should use the data from Sanderson, an Indian producer of sulfuric acid and other chemicals. Sanderson's ratios were used in *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Persulfates from the PRC,* 61 FR 68232 (Dec. 27, 1996) (''*Persulfates (Preliminary)*'') (Sanderson's data were not used for the final determination). In that case, according to the respondents, the Department selected Sanderson's industry-specific data over the broad-based RBI data.

The petitioner contends that the Department should continue to use the RBI ratios used in the preliminary determination. The petitioner argues that the financial data of both Kopran and Sanderson are inappropriate because neither company produces creatine. Moreover, use of this data would be contrary to the Department's practice of using publicly available statistical averages rather than relying on company-specific data. *See TRBs-10.* Where the Department has relied on the financial data from a single producer or the average of a small group of surrogate producers, the petitioner contends that the producers involved have been producers of the like merchandise (*see, e.g., Mushrooms; Certain Cut-to-Length Carbon Steel Plate from the PRC,* 60 FR 61964 (Nov. 20, 1997); *Freshwater Crawfish Tail Meat from the PRC,* 62 FR 41347 (Aug. 1, 1997)).

Concerning *Persulfates (Preliminary),* the petitioner contends that the Department used company-specific information in that case only after extensive information was placed on the record concerning the specific production processes of the Indian chemical producers. In the present case, according to the petitioner, no such evidence exists with respect to the

production processes. The petitioner adds that the respondents' ''cherry-picking'' one particular Indian company is inherently unreliable.

Department's Position

It is the Department's preference, where information is available, to derive the overhead, SG&A and profit values from producers of merchandise that is identical or comparable to the subject merchandise. *See* section 351.408(c)(4) of the Department's regulations. Because the RBI data cover a wide range of industries, and because we now information relating to a producer of a narrower category of products which includes comparable merchandise, we have determined that it would be inappropriate to rely on the RBI data used in the preliminary determination.

After reviewing publicly available information submitted for the record and available to the Department in this investigation, we have determined that Sanderson's financial data provide the best basis for valuing overhead, SG&A and profit. The products produced by Sanderson appear to be manufactured using bulk chemical processes, similar to the processes used by the PRC creatine producers. In contrast, Kopran produces high-grade pharmaceutical products. Given this, we have concluded that Sanderson better reflects the overhead, SG&A and profit levels that would be incurred by the producers of creatine.

We disagree with the petitioner's arguments against the use of company-specific data to calculate overhead, SG&A and profit. First, the Department does not require that these ratios be calculated using data from producers of a like product. As noted above, section 351.408(c)(4) of the Department's regulations establishes that, for purposes of valuing manufacturing overhead, general expenses, and profit, the Department normally will use ''non-proprietary information gathered from producers of identical or *comparable* merchandise in the surrogate country'' (emphasis added). Second, the petitioner's assertion that the Department's practice is to use publicly available statistical averages rather than relying on company-specific data is misplaced. While it is correct that we prefer average values for valuing inputs such as raw materials, we prefer producer- or industry-specific data for overhead, SG&A and profit. This is explained in the preamble to the Department's regulations:

> When compared to a publicly available price that reflects numerous transactions between many buyers and sellers, a single input price reported by a surrogate producer may be less representative of the cost of that input in the surrogate country. For these reasons, we have continued the general schema . . . of relying on publicly available data (which will not normally be producer-specific) for material inputs, while relying on producer- or industry-specific data for manufacturing overhead, general expenses, and profit.

62 FR 27296, 27366 (May 19, 1997). We note that in TRBs-10, cited by the petitioner, the value at issue was labor (prior to the Department's adoption of the present regression-based methodology), rather than overhead, SG&A and profit. Finally, regarding the petitioner's concern that the respondents may have submitted data favorable to them, we note that the petitioner also had the opportunity to submit data relating more specifically to creatine than the RBI data. In any case, since we have not used the Kopran data, the petitioner's point is moot.

Comment 2: Use of Partial Facts Available for Freemen and Blue Science

Freemen and Blue Science argue that the Department's use of adverse facts available for certain sales was overly punitive given that Freemen and Blue Science have cooperated fully in the investigation and that the sales in question account for a small percentage of their total U.S. sales. Freemen and Blue Science assert that section 351.308(a) of the Department's regulations requires that to warrant an adverse inference, the Department must find that the interested party has impeded the investigation. Moreover, Freemen and Blue Science contend that pursuant to section 351.308(e), the Department should consider the factors information submitted by other suppliers of the two exporters because the information meets all conditions of section 782(e) of the Act. The respondents assert that in cases such as *Allied-Signal Aerospace Co.* v. *United States,* 996 F.2d 1185 (Fed. Cir. 1994) and *Olympic Adhesives, Inc.* v. *United States,* 899 F.2d 1565 (Fed. Cir. 1990), the courts have consistently held that a company cannot be penalized for failing to provide information that it does not have.

The respondents also argue that the petitioner's petition data, on which the adverse facts available rate was based, cannot be corroborated because the petition data uses the price of a more expensive grade of one chemical input rather than the price of the less expensive industrial grade that is used by all respondents.

The petitioner contends that the Department should continue to apply adverse facts available to the sales for which Freemen and Blue Science have not provided complete and accurate production data. Citing *TRBs-10* (at 61846), the petitioner argues that the suppliers, who are interested parties, have failed to provide factors of production data and, thus, have not acted to the best of their ability. According to the petitioner, both *Allied-Signal* and *Olympic Adhesives* are distinguishable because the cases involved a genuine lack of ability on the part of interested parties to respond. In the instant case, the petitioner contends that there is no evidence on the record demonstrating that the non-responsive suppliers of Blue Science and Freemen were genuinely unable to respond.

Department's Position

We have continued to apply adverse facts available for those Freemen and Blue Science sales for which these exporters did not supply factors of production data. As noted above, in accordance with section 776(b) of the Act, an adverse inference is appropriate where a party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information.'' As further explained below, both Freemen and Blue Science and certain of their suppliers failed act to the best of their abilities in providing factors of production information from those certain suppliers.

As respondents are aware, our practice is to require convincing evidence from exporters claiming that their suppliers cannot supply requested factors of production information. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1997–1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review,* 64 FR 61837, 61846 (November 15, 1999) (''*TRBs–11s*'') (''In this case, we determine that Premier has not acted to the best of its ability. Premier was unable to provide letters from all of its suppliers responding to Premier's request for information.''). While Freemen and Blue Science argue that they did attempt to secure the requested factors information from their suppliers, their explanations are not persuasive. Specifically, Freemen claims that it made repeated demands for this information on one supplier, and that this supplier responded that it would not participate in the investigation. However, Freemen provided no documentation confirming its efforts, or the supplier's refusals. Similarly, Blue Science claims that its supplier only produced the subject merchandise on a trial basis. This is not an adequate

explanation, as the mere cessation of production of a particular product does not mean that relevant records are no longer available. We also emphasize that neither Freemen nor Blue Science provided any additional information regarding their efforts to obtain the requested information upon our application of adverse facts available for these sales in the preliminary determination.

As we explained in *TRBs–11,* suppliers to respondent exporters are interested parties, and their failure to provide factors information prevents the Department from calculating accurate dumping margins. Moreover, we must ensure that an exporter does not benefit by selectively providing factors of production information from low-cost producers. In cases such as this, we are precluded from measuring the costs of those suppliers who refused to cooperate, and cannot assume that their costs resemble those of other suppliers who did cooperate. For this reason, too, an adverse inference in warranted.

In the case of Freemen, even if it is true that the supplier in question refused to provide the necessary information, it is not acceptable for a producer to withhold such information. As there is no acceptable explanation on the record for the supplier's failure to provide factors of production information, an adverse inference in applying facts available is warranted due to the supplier's failure to act to the best of its ability. Similarly, there is no acceptable explanation on the record for the failure of Blue Science's supplier to provide the necessary factors of production information, and therefore, an adverse inference is warranted.

Freemen and Blue Science's argument concerning section 782(e) of the Act is misplaced. Section 782(e) directs the Department to use information submitted by a respondent, where possible, with respect to that respondent. In this case, we have used the factors of production information that was submitted to the extent that is applicable. Section 782(e) of the Act does not, however, direct the Department to apply one company's information to another company. Section 782(e) does not require us to substitute the suppliers' information we have on the record for those suppliers that failed to provide factors of production information.

Finally, we disagree with respondents' contentions that the petition data upon which the adverse facts available rate is based cannot be corroborated due to the fact that the petitioner uses a more expensive grade of one input than do respondents. Because there are a variety of production processes for creatine, it would be inappropriate to isolate the value of a single input in determining whether a petition rate is valid for facts available purposes. Furthermore, the constructed NV used in the petition is generally within close range of NVs calculated in this investigation, suggesting that the petition data do indeed have probative value.

Comment 3: Sales by Desano and Sanjian

Desano argues that certain sales of creatine supplied by Sanjian and exported by Desano should be considered Sanjian's sales and excluded from Desano's U.S. sales data. Desano asserts that the invoices from Sanjian to Desano indicate that Sanjian knew the merchandise was destined for the United States at the time it made the sale to Desano. Additionally, Desano argues out that the sales, which were denominated in U.S. dollars, are the first market-based sales in the chain of distribution for export to the United States. In support of its argument, Desano cites *Polyvinyl Alcohol from the PRC,* 61 FR 14057 (March 29, 1996) and *Fresh Garlic from the PRC,* 62 FR 23758 (May 1, 1997) (''*Garlic*''), where the Department based the exclusion or inclusion of the sale on whether the sale constituted the first market-based sale and whether the supplier had knowledge of the U.S. destination.

Sanjian contends that it properly reported all of its U.S. sales and the sales in question are Desano's sales. Sanjian asserts that its sales were reported based on the contract date as the date of sale because the contract date better reflects the date on which the material terms of its sales were established. According to Sanjian, there was no change in price, quantity or the terms of payment between the contract and the subsequent invoice. Sanjian argues that at the time of the sale to Desano (*i.e.,* the contract date), Sanjian did not know the merchandise was ultimately destined for the United States and was only asked to identify the port of destination on the invoice to Desano.

Department's Position

We agree with Sanjian that the sales in question should be considered Desano's U.S. sales. First, we disagree with Desano that the transaction between Sanjian and Desano is the first market-based transaction. Both Sanjian and Desano are companies located in the PRC, in terms of physical location, place of incorporation and the place of business. As discussed in *Garlic,* our knowledge test ''is restricted with regard to NME cases, since we will not base export price on internal transactions between two companies located in the NME country.'' 62 FR at 23759. Whether Sanjian knew the merchandise was destined for the United States is irrelevant in this instance, as the appropriate starting point for the application of the knowledge test is the first transaction with a market-based entity (*i.e.,* Desano's transaction with the U.S. customer). Accordingly, we have continued to treat these sales as Desano's sales.

Comment 4: Factory Overhead and SG&A Labor

The petitioner asserts that the Department failed to include factory overhead and SG&A labor in its calculations.

The respondents disagree. According to the respondents, they included all relevant labor hours in their initial questionnaire responses. This is evidenced by the fact that at verification, the Department asked that indirect labor be broken down into indirect factory labor, overhead and SG&A labor. To adopt petitioner's position would effectively double-count the labor costs for overhead and SG&A, in respondents' view.

Department's Position

Based upon our verification, we have concluded that factory overhead and SG&A labor hours were not included in the total labor figures. For Tiencheng, although overhead and SG&A labor hours were included in the indirect labor amount used for the preliminary determination, this labor has since been reclassified and removed. Therefore, for our final determination, we have included overhead and SG&A labor in the overhead and SG&A ratios calculated from Sanderson's financial statement. Since only surrogate overhead and SG&A labor hours are included in normal value, there is no double-counting.

Comment 5: Indonesian Import Values

The respondents contend that the Department improperly adjusted Indonesian values. Because Indonesian import values were reported in U.S. dollars, they are not subject to Indonesian inflation and no adjustment is necessary.

The petitioner asserts that the Department has consistently adjusted source data for inflation in numerous NME cases using the wholesale price index (''WPI'') of the country from which the source data is obtained. The petitioner claims that the Indonesian WPI is the best information available to

make this adjustment. Furthermore, the petitioner argues that the stability of the U.S. dollars is irrelevant because the dollar is also subject to inflationary forces.

Department's Position

We agree with the respondents that the Indonesian import statistics were improperly adjusted for inflation in the preliminary determination because we used the Indonesian WPI to make the adjustment. For the final determination, we have adjusted the data (which predates the POI by two-and-a-half years) using the U.S. WPI. This is consistent with our practice in several cases (*see, e.g., TRBs–10).*

Comment 6: Material Input ''A'

The respondents contend that the Department should not use the ICW data to value material input A. First, they argue that the prices listed in ICW for material input A are aberrational when compared to a price quote obtained by the respondents. Second, the ICW data may, in fact, be for a different grade of material input than that used by the respondents. Third, the respondents claim that the ICW data are ''highly suspect'' because they are based on sales by a company with an interest in the outcome of this investigation. The respondents conclude, therefore, that the only public data available to value this input is unusable. For this reason, the respondents ask the Department to construct a surrogate value for material input A by valuing the various inputs used by one respondent in producing material input A.

The petitioner contends that the price quote obtained by the respondents does not prove the ICW data to be aberrational and may even support the ICW price. The petitioner notes that the price quote obtained by respondents is for a 12 percent solution and that the ICW price is for a 50 percent solution. According to the petitioner, when adjustments for differences in concentration are made, the resulting U.S. dollar per kilogram values do not differ enough to prove ICW data aberrational. The petitioner also contends that the respondents' accusation that the ICW data is highly suspect is entirely implausible. Finally, the petitioner asserts that the ICW data are based on sales executed by unrelated companies and reflect arms-length pricing.

Department's Position

We agree with the petitioner that the price quote obtained by the respondents does not prove ICW data to be aberrational. When appropriate adjustments are made to account for the differences in solution concentrations between the prices listed in ICW and in the price quote, the U.S. dollar per kilogram values for material input A are close. Moreover, additional ICW price quotes (provided to the Department by the petitioner upon the Department's request at the November 29, 1999 public hearing) refute the respondents' allegations concerning the legitimacy of the ICW data used in the preliminary determination. Thus, we have no reason to believe that the ICW data do not reflect sales made at arm's-length.

We note that, in a change from our preliminary determination, we have adjusted the ICW price to reflect the different solution concentrations used by the PRC respondents. With this adjustment, and because we have determined that the ICW prices are neither aberrational nor suspect, we do not believe that it is necessary to pursue the alternative methodology suggested by the respondents for valuing this input.

Comment 7: Under-Reported Labor at Tiancheng

The petitioner asserts that Tiancheng under-reported indirect labor due to a mathematical error in its June 2, 1999, questionnaire response. The petitioner further contends that Tiancheng did not report labor hours for one month during the POI and failed to report certain labor that was classified incorrectly as not being related to the production of the subject merchandise. The petitioner urges the Department to include any unreported labor in Tiancheng's labor calculations.

Department's Position

We agree with the petitioner that Tiancheng miscalculated indirect labor in its factors of production response and that labor data for one month of the POI were not reported. However, the two errors mentioned above were corrected during verification.

Concerning petitioner's claim that certain labor was not reported because it was improperly classified as not being related to production of the subject merchandise, we note that the verification exhibit upon which the petitioner has based its argument does not correspond to the factory in question.

Comment 8: Valuation of Inland Shipping Rates

The respondents argue that the surrogate value used by the Department for inland boat rates was incorrect because the rate used by the Department reflects the cost of shipping on large vessels while the respondents used small barges.

Department's Position

The only information on the record with respect to inland boat rates is the value used in the preliminary determination. No parties have submitted any alternative values. Therefore, in the absence of information, we have continued to value inland shipping rates in the same manner as that in the preliminary determination.

Other Comments

The respondents have raised several additional arguments concerning the calculation of inputs that are being treated as business proprietary information. The petitioner did not comment on these issues. We have agreed with the respondents' arguments and have made applicable changes to our calculations for the final determination. Because the proprietary nature of these inputs precludes any meaningful discussion of these comments, we have included the detailed discussion in the respective calculation memoranda for each company, rather than in this notice.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all imports of subject merchandise from the PRC, except for subject merchandise exported by Nantong and produced by its proprietary producer and merchandise produced and exported by Tianjin (which have zero weighted-average margins), that are entered, or withdrawn from warehouse, for consumption on or after July 30, 1999, the date of publication of the preliminary determination in the **Federal Register**. In addition, for Freemen, as well as for companies subject to the PRC-wide rate, we are directing Customs to continue suspending liquidation of any unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after May 1, 1999, the date 90 days prior to the date of publication of the preliminary determination in the **Federal Register**, in accordance with our critical circumstances finding. Furthermore, we will instruct the Customs Service to refund all bonds and cash deposits posted on subject merchandise exported by Desano that was entered or withdrawn from warehouse for consumption prior to July 30, 1999.

The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage	Critical circumstances
Blue Science International Trading (Shanghai) Co., Ltd	58.10	No
Nantong Medicines and Health Products Import and Export Co., Ltd	0.00	No
Shanghai Desano International Trading Co., Ltd	24.84	No
Shanghai Freemen International Trading Co., Ltd and Shanghai Greenmen International Trading Co., Ltd	44.43	Yes
Suzhou Sanjian Fine Chemical Co., Ltd	50.32	No
Tianjin Tiancheng Pharmaceutical Co., Ltd	0.00	No
PRC-wide Rate	153.70	Yes

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

ITC Notification

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 canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–32916 Filed 12–17–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above (DRAMs) From the Republic of Korea: Postponement of Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Extension of time limit, for preliminary review results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the preliminary review results of the administrative review of the antidumping duty order on dynamic random access memory semiconductors of one megabit or above (''DRAMs'') from the Republic of Korea, covering the period May 1, 1998, through April 30, 1999, since it is not practicable to complete the review within the time limit mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act'').

EFFECTIVE DATE: December 20, 1999.

FOR FURTHER INFORMATION: John Conniff, Antidumping Duty and Countervailing Duty Enforcement, Group II, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington DC 20230, telephone 202/482–1009.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act. In addition, unless stated otherwise, all citations to the Department's regulations are to the current regulations codified at 19 CFR 351 (1998).

Background

On June 30, 1999 (64 FR 35124), the Department initiated an administrative review of the antidumping duty order on DRAMs from the Republic of Korea, covering the period May 1, 1998 through April 30, 1999. On November 17, 1999, Micron Technology, Inc. (''Micron''), the petitioner, submitted a request for postponement of the preliminary determination on DRAMs from Korea, citing the number and the complexity of the issues involved in the administrative review, including many complex accounting issues.

Postponement of Preliminary Result of Review

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) allows the Department to extend this time period to 365 days and 180 days, respectively.

We determine that it is not practicable to complete the preliminary review results within the original time frame (January 30, 2000) because of the complex legal and methodological issues involved in this review segment (*see* December 10, 1999, Memorandum from Holly Kuga, Deputy Assistant Secretary to Robert LaRussa, Assistant Secretary). Accordingly, the deadline for issuing the preliminary results of this review is now no later than May 30, 2000. The final determination will occur within 120 days of the publication of the preliminary results.

These extensions are in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675 (a)(3)(A)).

Dated: December 13, 1999.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Import Administration, Group II.

[FR Doc. 99–32793 Filed 12–17–99; 8:45 am]

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