

	Period to be re- viewed		Period to be re- viewed		Period to be re- viewed
THE PEOPLE'S REPUBLIC OF CHINA: Cased Pencils <sup>2</sup> A-570-827	12/1/95- 11/30/96	Golden Way Trading Company Guangzhou Foreign Trade Group Hianan Provincial Foreign Trade Haiwang Enterprises Company, Ltd. Han Maritime Jin Hai Jei Air International For- warding Heilongjiang Light Industrial Products I/E Corporation Ideal Consolidators (Hong Kong) Ideal Ocean Lines (Hong Kong) Inteks Transport International Jacky Maeder (Hong Kong) Jiangsu Light Industrial Prod- ucts I/E Group Corporation Jilin Provincial Machinery & Equipment I/E Corporation King Sun (Hong Kong) Kwok Luen Plastic Manufactur- ing Lailon Enterprises (Hong Kong) LEP Guangzhou Delegation Of- fice LEP Transport International Liaoning Light Industrial Prod- ucts I/E Corp. Licken Industrial (Hong Kong) Maritime International Onan Shipping (Hong Kong) Orwave Panalpina Panalpina (Hong Kong) Perpetual Product Development Po Shing Industrial Premier Shipping Qingdao Light Industrial Prod- ucts I/E Corporation Regent C&C Shanghai Office Regent Express Shandong Light Industrial Prod- ucts I/E Corporation Shantou Light Industrial Prod- ucts I/E Corporation Shantou Stationery & Sporting Goods I/E Corporation Shanxi Light Industrial Products I/E Corporation Shenyang Light Industrial Prod- ucts I/E Corporation Shum Yip (Shenzen) Industry & Trade Development Corpora- tion Translink Transportation Sichuan Light Industrial Prod- ucts I/E Corporation Sui Jun International (Hong Kong) THI (Hong Kong) The Merton Company, Ltd. (Hong Kong) Tianjin Beifeng Corporation Tianjin Stationery & Sporting Goods I/E Corporation Tony Trading (Hong Kong) Trade Power (Taiwan) Trinity Mark Industries Tru Blue Products UT Consolidators (Hong Kong) Wah Luen Stationery Supplies		Y.K. Shipping International Yangjiang Light Industrial Prod- ucts I/E Corporation Zhenjiang Foreign Trade Cor- poration THE PEOPLE'S REPUBLIC OF CHINA: Porcelain-on-Steel Cooking Ware <sup>3</sup> A-570-506  Clover Enamelware Enterprise/ Lucky Enamelware Factory Limited  <b>Countervailing Duty Proceedings</b>  None.	12/1/95- 11/30/96
Anhui Stationery Company, Ltd. China First Pencil Company, Ltd. Shanghai Three Star Stationery Company, Ltd. Guagdong Stationery & Sport- ing Goods Beijing Pencil Factory Dalian Pencil Factory Donghua Pencil Factory Harvin Pencil Factory Jiangsu Pencil Factory Jinan Pencil Factory Juihai Pencil Factory Julong Pencil Factory Quindao Pencil Factory Shenyang Pencil Factory Songnan Pencil Factory China First Pencil Company, Ltd. Shanghai Three Star Stationery Com. Shanghai Foreign Trade Cor- poration Guandong Stationery & Sport- ing Goods I/E Corporation Shanghai Lansheng Co., Ltd. (aka Stationery & Sporting Goods I/E Corporation Shanghai Machinery & Equip- ment I/E Corporation Tianjin Pencil Factory Xinbang Joint Venture Pencil Factory AEMPAC Systems (Hong Kong) Anhui I/E Group Corporation Anhui Light Industrial Products I/E Corp. Anhui Provincial I/E Corporation Applause Products Atico International Atico Overseas Beijing Light Industrial Products I/E Corporation CS Container Line (Hong Kong) Cargo Service (Hong Kong) Cargo Systems Changzhou Foreign Economic Technical & Trading Com- pany Changzhou Foreign Trade Group Chiangshu Foreign Trading China Fujian Foreign Trade Center China National Light Industrial Products I/E Corporation (all branches) China North Industries Tianjin Corporation Dalian Light Industrial Products I/E Corp. China Shenzhen SEZ Foreign Trade El Ocean (Hong Kong) Far East Enterprises Fuji Industrial (Hong Kong) Gansu Provincial Machinery					
<p><sup>1</sup>Inadvertently omitted from previous initi- ation notice.</p> <p><sup>2</sup>All other exporters of certain cased pencils from the People's Republic of China are con- ditionally covered by this review.</p> <p><sup>3</sup>All other exporters of porcelain-on-steel cooking ware from the People's Republic of China are conditionally covered by this review.</p> <p>If requested within 30 days of the date of publication of this notice, the Department will determine whether antidumping duties have been absorbed by an exporter or producer subject to any of these reviews if the subject merchandise is sold in the United States through an importer which is affiliated with such exporter or producer.</p> <p>Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).</p> <p>These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1).</p> <p>Dated: January 15, 1997.</p> <p>Joseph A. Spetrini, <i>Deputy Assistant Secretary for Group III.</i> [FR Doc. 97-1397 Filed 1-16-97; 9:06 am] BILLING CODE 3510-DS-M</p> <hr/> <p><b>[A-834-805]</b></p> <p><b>Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys From the Republic of Kazakhstan</b></p> <p><b>AGENCY:</b> Import Administration, International Trade Administration, Department of Commerce.</p> <p><b>EFFECTIVE DATE:</b> January 17, 1997.</p> <p><b>FOR FURTHER INFORMATION CONTACT:</b> Dorothy Tomaszewski at (202) 482- 0631, or Erik Warga at (202) 482-0922, Office of Antidumping Investigations, Import Administration, International</p>					

<sup>1</sup> Inadvertently omitted from previous initi-  
ation notice.

<sup>2</sup> All other exporters of certain cased pencils  
from the People's Republic of China are con-  
ditionally covered by this review.

<sup>3</sup> All other exporters of porcelain-on-steel  
cooking ware from the People's Republic of  
China are conditionally covered by this review.

If requested within 30 days of the date  
of publication of this notice, the  
Department will determine whether  
antidumping duties have been absorbed  
by an exporter or producer subject to  
any of these reviews if the subject  
merchandise is sold in the United States  
through an importer which is affiliated  
with such exporter or producer.

Interested parties must submit  
applications for disclosure under  
administrative protective orders in  
accordance with 19 CFR 353.34(b) and  
355.34(b).

These initiations and this notice are  
in accordance with section 751(a) of the  
Tariff Act of 1930, as amended (19  
U.S.C. 1675(a)) and 19 CFR 353.22(c)(1)  
and 355.22(c)(1).

Dated: January 15, 1997.

Joseph A. Spetrini,

*Deputy Assistant Secretary for Group III.*

[FR Doc. 97-1397 Filed 1-16-97; 9:06 am]

**BILLING CODE 3510-DS-M**

#### [A-834-805]

#### **Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys From the Republic of Kazakhstan**

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

**EFFECTIVE DATE:** January 17, 1997.

**FOR FURTHER INFORMATION CONTACT:**  
Dorothy Tomaszewski at (202) 482-  
0631, or Erik Warga at (202) 482-0922,  
Office of Antidumping Investigations,  
Import Administration, International

Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230.

#### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Rounds Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to the current regulations, as amended by the interim regulations, published in the Federal Register on May 11, 1995 (60 FR 25130).

#### Final Determination

We determine that beryllium metal and high beryllium alloys ("beryllium") from the Republic of Kazakhstan ("Kazakhstan") are being sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

#### Case History

Since the preliminary determination on August 21, 1996 (61 FR 44293, August 28, 1996 ("preliminary determination")), the following events have occurred:

In October 1996, we verified the respondents' questionnaire responses. Additional publicly available information on surrogate values was submitted by petitioner and respondents on November 15, 1996, and November 22, 1996. Petitioner and respondents submitted case briefs on November 29, 1996 and rebuttal briefs on December 6, 1996. A public hearing was held on December 9, 1996. At the Department's request, additional information was filed by petitioner and respondents on December 10, 1996, and December 12, 1996. On December 19, 1996, and December 23, 1996, the Department received surrogate factor data from the Foreign Commercial Service Office in Lima, Peru.

#### Scope of Investigation

The scope of this investigation is beryllium metal and high beryllium alloys with a beryllium content equal to or greater than 30 percent by weight, whether in ingot, billet, powder, block, lump, chunk, blank, or other semifinished form. These are intermediate or semifinished products that require further machining, casting and/or fabricating into sheet, extrusions,

forgings or other shapes in order to meet the specifications of the end user. Beryllium and high beryllium alloys within the scope of this investigation are classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") 8112.11.6000, 8112.11.3000, 7601.20.9075, and 7601.20.9090. 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 investigation ("POI") is July 1, 1995, through December 31, 1995.

#### Separate Rates

Respondents made no claim for receiving a separate rate. Therefore, lacking any information to support a conclusion that a separate rate is appropriate, the Department assigned a single Kazakhstan-wide rate to all producers and exporters.

#### Fair Value Comparisons

To determine whether sales of beryllium from Kazakhstan to the United States were made at less than fair value, we compared Export Price ("EP") to the Normal Value ("NV"), as specified in the "Export Price" and "Normal Value" sections of this notice.

#### Export Price

We calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation. Although respondents have a U.S. subsidiary, Beryllium Metals International Ltd. ("BMI"), calculation of constructed export price ("CEP") under section 772(b) is not otherwise warranted for purposes of the final determination based on the facts of this investigation. It has been the Department's longstanding and well-recognized practice that a transaction will be considered an export price sale, despite the involvement of an affiliate in the United States where: (1) The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the physical inventory of the related selling agent; (2) this was the customary commercial channel for sales of this merchandise between the parties involved; and (3) the related selling agent in the United States acted only as a processor of documentation and a communication link with the unrelated buyer. (See, e.g., *Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing*

*Presses and Components Thereof, Whether Assembled or Unassembled, From Germany* (61 FR 38166, 38175, July 23, 1996)). Verification findings confirm that the merchandise is not taken into the physical inventory of the U.S. subsidiary. Because there has only been one sale, we conclude that there is no "customary commercial channel." Therefore, we are continuing to disregard this criterion for purposes of this final determination. Finally, verification findings confirmed the limits on BMI's authority to finalize sales and that BMI is acting solely as a processor of documentation and communications link (see November 8, 1996, verification report at page 6). Therefore, we conclude that the sale in question is properly characterized as an EP sale.

We calculated EP based on packed, CIF U.S. port prices to unaffiliated purchasers in the United States, as appropriate, based on the same methodologies in the preliminary determination with the following exceptions: we made minor corrections to certain movement charges pursuant to verification findings.

#### Normal Value

When the Department is investigating imports from a non-market economy ("NME"), section 773(c)(1) of the Act directs us to base NV on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. Therefore, as in the preliminary determination, we calculated NV based on factors of production reported by the Kazak Joint-Stock Company of Ulba Metallurgical Plant ("Ulba"), the sole Kazakstani producer of subject merchandise.

To calculate NV, the verified per-unit factor quantities were first multiplied by Peru values; the resulting products were then summed. We then added amounts for overhead, general expenses (including interest) ("SG&A"), profit, and, packing expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

We made adjustments to the reported factors of production to reflect actual production experience for 1991 and 1993, based on verification findings.

#### Valuation of Factors

As in our preliminary determination, we have relied on Peru as the primary surrogate country in accordance with section 773(c)(4) of the Act. Accordingly, we have continued to calculate NV using Peru prices for the Kazakstani producer's factors of

production. We have obtained and relied on publicly-available information wherever possible.

Except as noted below, we applied surrogate values to the factors of production in the same manner as in our preliminary determination. For a complete discussion of surrogate values, see the *Calculation Memorandum*, dated January 10, 1996. Surrogate overhead was based on the experience of a silicomanganese producer in Brazil; SG&A and profit were based on the experience of an aluminum producer in Peru; and packing expenses were based on 1995 Peru import statistics data.

#### Kazakstan-Wide Rate

Kazakstan identified what we believe to be the only Kazakstani exporter, Kazak Joint-Stock Company of Atomic Energy and Industry ("KATEP"), and producer, Ulba, that sold beryllium to the United States during the POI. Both have responded in this investigation. We compared the respondents' sales data with U.S. import statistics for time periods including the POI and found no indication of unreported sales. Accordingly, we have based the Kazakstan-wide rate on the weighted-average of the margins calculated in this proceeding, excluding zero or de minimis margins, if any.

#### Verification

As provided in section 776(b) 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: Use of Respondents' Verified Data*

Petitioner argues that the discrepancies uncovered at verification between the factor information submitted and the factor information verified, as well as the discovery of information never reported, would support a decision by the Department to reject respondents' data in favor of basing the final determination on facts otherwise available (*i.e.*, the information submitted in the petition).

Respondents assert that the Department has no basis for rejecting its sales and factors of production information on the record. According to respondents, all sales and production data were submitted in a timely manner to the Department and verified. While its reported factor data was modified during verification, respondents argue

that these revisions should not be rejected as "untimely" because the revisions were a result of adjusting reported standard factor input information to reflect actual factor input information. Finally, respondents argue that even if its revised factor information was deemed untimely, the verified data should nevertheless be used as "facts otherwise available."

#### *DOC Position*

Certain minor discrepancies in respondents' reported sales and factors of production data were discovered during verification. While the Department is always concerned over such discrepancies, we did not identify any attempt to mislead the Department or to distort information on the record, nor does the record indicate that respondents did not cooperate to the best of their ability. Accordingly, such errors will be corrected individually by the Department using revised information and do not warrant an overall application of adverse facts available for the final determination. (See, *e.g.*, *Certain Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Review* 61 FR 18558 (April 26, 1996).) The details of these errors and steps taken to correct them are set forth in the January 10, 1997, *Final Determination Calculation Memorandum*.

##### *Comment 2: Selection of Appropriate Surrogate Country*

Petitioner argues that the Department should select Brazil as the primary surrogate country because (1) Brazil is comparable to Kazakstan in economic development and (2) Brazil is one of the few sources of the primary factor input required in the production of beryllium, beryl ore.

Respondents counter that, since the preliminary determination, no new information has been placed on the record to justify the change in the surrogate country for Kazakstan from Peru to Brazil.

#### *DOC Position*

We agree with respondents and continue to use Peru as the primary surrogate country for purposes of valuating Kazakstan's factors of production. Section 773(c)(4) of the Act requires the Department to value the 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. As noted in the

preliminary determination, Peru is at a level of economic development comparable to Kazakstan in terms of per-capita gross national product ("GNP") levels and distribution of the labor force in the varying sectors of the economy. Brazil's 1993 per-capita annual income was \$2930 versus \$1560 for Kazakstan and \$1490 for Peru. Even though Brazil is endowed with the primary material input (beryl ore) used to produce beryllium, Brazil does not produce beryllium.

As discussed in the preliminary determination, none of the potential surrogate countries produces merchandise comparable to the subject merchandise. Indeed, Kazakstan and the United States are the only known producers of beryllium. Absent information on a market economy country which produces beryllium and is at a level of economic development comparable to that of Kazakstan, the Department continues to use Peru as the primary surrogate country based on its comparable level of economic development for purposes of the final determination.

##### *Comment 3: Use of 1995 Surrogate Country Factor Data*

Respondents argue that the Department must determine whether the factor values based on the 1995 UN data are broadly consistent with other measures of market value to ensure that the factor values used in the final margin calculation constitute a reasonable representation of the costs that a NME producer would face if it were to produce in a market economy. In particular, respondents identify five Peru values used in the preliminary determination which they allege to be unreasonable when compared to various broader benchmarks.

Petitioner notes that if the Department were to perform such an exercise, this analysis should be applied in a consistent manner for all direct material factors.

#### *DOC Position*

For the final determination, we have used Peru import statistics based on 1995 UN trade data as the primary source of surrogate factor values. The Department's analysis indicates, however, that several factor values derived from the 1995 Peru import statistics appear to be not reasonable. For example, the unit value based on 1995 Peru import statistics for one material factor is over twenty times the weighted-average unit value based on import statistics from the five countries identified by the Department as

appropriate surrogates for Kazakhstan (see preliminary determination).

In order to assess whether material factor values derived from the 1995 Peru import statistics are reasonable for the purpose of approximating the factor costs in Kazakhstan, we compared all 1995 Peru material values to the weighted-average unit value based on import statistics from all five appropriate surrogate countries (see June 10, 1996, *Memorandum from David Mueller, Director, Office of Policy, to Gary Taverman, Division I Director, Office of Antidumping Investigations*). Where differences between the unit value figures appeared unreasonable, we resorted to the weighted-average based on the five surrogate countries' data. (See January 10, 1996, *Calculation Memorandum* for further details).

*Comment 4: Time Period for Factors of Production*

Respondents state that Ulba produced the subject merchandise through 1991 and had several months of production of subject merchandise in 1993; however, Ulba ceased production of subject merchandise at the end of 1993. Respondents note that the factors of production used in 1991 differ from those used in 1993. Under these circumstances, respondents argue that the Department should use 1991 factor input data to calculate normal value because 1991 data reflects input usages applied for an entire year of uninterrupted production and, therefore, better reflects actual production experience. Respondents also contend that 1991 data be used because it is closest to the year that the subject merchandise sold during the POI was produced. In contrast, respondents argue, 1993 factor data (the last calendar year in which there was significant production) is an unreliable indicator of respondents' production process because the Kazakstani production facility was in the process of shutting down; therefore, the 1993 usages were unusually high when compared to usage rates during previous years.

Petitioner argues that the Department should use the 1993 data because these factor quantities best reflect the factors that respondents would have used if they had produced beryllium during the POI. Petitioner asserts that contemporaneity is an important factor in determining which year's factors to use. According to petitioner, the fact that production data for 1993 reflects higher usage levels in comparison to 1991 is not a result of irregular production for that year; rather, it is the particular chemistry of inputs used in any particular year that will affect input

usage. Therefore, petitioner maintains that the factors of production should be based on the production information closest in time to the POI—1993.

*DOC Position*

The subject merchandise sold to the United States during the POI was produced long before the POI (although the actual time period of production is unknown). Not only is it unclear when the merchandise imported during the POI was produced, there is no evidence of which factors were used. Therefore, we must choose between the two years for which we have factor information, both of which are long removed from the period of production.

Where necessary information is not available on the record, and where a respondent has cooperated to the best of its ability, Section 776 of the Act directs the Department to use non-adverse facts available in place of unavailable information. In these circumstances, we do find it significant that the 1993 period is closer in time to the POI. Therefore, we determine that the use of 1993 factor input data is appropriate in calculating normal value.

*Comment 5: Overhead and SG&A*

Petitioner contends that its production experience as a beryllium producer is the only reasonable basis on which to value factory overhead and SG&A for a beryllium producer. In support of this argument, petitioner notes that (1) no data exists for either factory overhead or SG&A from a Peru producer of subject merchandise and (2) the Department determined that there is no other product comparable to beryllium in terms of production processes or inputs. Given these circumstances, petitioner asserts that the only market-economy producer of beryllium available for valuing these costs is the U.S. producer (*i.e.*, petitioner).

Additionally, petitioner argues that its overhead costs do not account for expenses incurred for certain materials used by respondents, although the Department believed these expenses were included in the petitioner's overhead rate for the preliminary determination. Finally, petitioner contends that the Department should adjust petitioner's reported overhead rate to account for capacity and utilization.

Respondents counter that the information on the record concerning petitioner's calculation of its overhead and SG&A rates confirms that the factory overhead and SG&A rates that petitioner reported are unreasonably high. According to respondents, it

appears that petitioner's calculation of its overhead and SG&A rates included line item expenses irrelevant to the production of subject merchandise. In the event that the Department decides to use petitioner's information, respondents recommend that the Department consider (1) the clerical error noted by petitioner in calculating its overhead rate and (2) the respondents' revised calculation of the SG&A rate based on petitioner's financial data for 1994 and 1995.

*DOC Position*

In evaluating appropriate surrogate factor rates for SG&A and overhead, it is important to note that information does not exist on overhead and SG&A figures from a beryllium producer in a country that is economically comparable to Kazakhstan. As discussed above and in the preliminary determination, the only known beryllium producer in the world, other than the Kazakstani producer, is the U.S. petitioner. The Department's regulations provide clear instructions that U.S. surrogate values are to serve only as a last resort (see 19 CFR 353.52(b)). This is true even when such values are not available from an industry producing the same merchandise (see 19 CFR 353.52(b)(1)).

Given that the only source of industry-specific overhead and SG&A rates is the petitioner, we considered the economic comparability of the surrogate country to Kazakhstan an important criterion for selecting appropriate surrogate factor data to approximate Kazakhstan's overhead and SG&A rates. While the specific processes differ, the complexity and duration of the production processes for different light metals are comparable and thus, unlikely to generate differences in overhead and SG&A between the beryllium industry and other light metals industries. Therefore, in this case, we determine that overhead and SG&A figures based on production experience of a light metal industry (*e.g.*, aluminum, silicomanganese) in an appropriate surrogate country are a reasonable approximation of Kazakhstan's overhead and SG&A costs incurred in the production of beryllium. For SG&A and profit, we applied ratios based on financial data from a Peru aluminum producer. Absent detailed overhead data from Peru, we applied an overhead ratio based on financial data from a silicomanganese producer in Brazil for the final determination. While Brazil, as noted earlier, is not among the five countries most similar to Kazakhstan in terms of economic development, we determine that it is comparable, and far

more similar to Kazakhstan than is the United States. Moreover, the regulations, at 19 CFR 353.52(b)(2), indicate that even a foreign country which is not a level of economic development comparable to the home market country is preferable to the United States as a source of surrogate value information.

*Comment 6: Basket-Product-Category Import Statistics*

Petitioner contends that the Department should apply product-specific world-market prices to value beryllium-containing material inputs rather than data on Peru imports under broad basket categories. Because there is no beryllium producer or beryllium industry in Peru, petitioner notes that it is highly unlikely that Peru import statistics used to value beryllium-containing material inputs in the preliminary determination contain any imports of beryllium-containing materials. Instead, petitioner recommends the use of world market prices based on U.S. import statistics which provide more representative values available for the beryllium-containing inputs.

Respondents counter that the Department should reject petitioner's alternative source of data to calculate surrogate values for beryllium-containing materials. According to respondents, the Department's policy and practice provide no justification to abandon data obtained from the primary surrogate country because some alternative country (*i.e.*, the United States) offers more product-specific price information. Further, with respect to the U.S. Geological Survey ("USGS") data used to value beryl ore in the preliminary determination, respondents maintain that petitioner did not provide any reason to question the accuracy of this data source. Therefore, respondents recommend continued use of USGS data for valuing beryl ore in the final determination.

*DOC Position*

We agree, in part, with petitioner. For those beryllium-containing inputs for which we used UN import statistics based on basket product-categories in the preliminary determination, we used for the final determination 1995 import statistics from the European Union with more product-specific categories as data which more accurately reflects the values for these inputs.

With respect to the USGS value for beryl ore, the unit value based on USGS data is specific to the particular material input used in the production process. Further, there is no information on the

record to dispute the validity of this data. Therefore, we continued to rely on the USGS data for valuing beryl ore in the final determination.

*Comment 7: Incorrect Surrogate Values for Certain Material Inputs*

Petitioner contends that the Department incorrectly valued a certain material input using import data for a different material. For the final determination, petitioner urges the Department to use 1994 U.S. data specific to the material input in question to value the material input.

*DOC Position*

We agree, in part, with petitioner. Verification findings indicated that two varying types of the material in question were used in the production of beryllium from Kazakhstan. It was possible to identify product categories that correspond to each type of material input. Given that data corresponding to the materials from the primary surrogate country is available for consideration, the use of U.S. data suggested by petitioner was not required. Therefore, for the final determination, we are valuing the two material inputs based on 1995 Peru import data with corresponding product categories.

*Comment 8: Adjustment to the Surrogate Labor Rate*

Petitioner contends that the surrogate labor rate used in the preliminary determination was understated and should be adjusted to account for (1) normal hours and days worked in Peru; (2) salary bonuses mandated by law in Peru; and (3) a skilled level of labor, as used in the beryllium industry in Kazakhstan.

*DOC Position*

We agree with petitioner and have adjusted the labor rate used at the preliminary determination to account for (1) normal hours and days worked in Peru and (2) annual salary bonuses mandated by law. As noted in Price Waterhouse's publication, *Doing Business in Peru*, eight hours is a normal work day in Peru with a work week not exceeding 48.11 hours. In order to avoid overstating the number of hours worked per day, we based our calculation of number of hours worked per day on a six-day work week to reflect an eight-hour work day. Additionally, annual salary bonuses mandated by Peruvian law were not reflected in the labor rate used in the preliminary determination. Therefore, we are also adjusting the labor rate in the final determination to reflect this portion of labor cost.

However, we continued to use the International Labor Organization's ("ILO") earnings per day rate as the base for the labor rate because it is a labor rate for manufacturing specific to the non-ferrous basic metal industry in Peru. The Price Waterhouse "skilled" average monthly wages in Peru, recommended by petitioner as a preferable rate to the ILO rate because it is a skilled labor rate, is not specific to any industry. Further, it is not clear whether the average monthly wages are gross or net of employee contributions; it is clear from information on the record that the ILO rate reflects gross earnings (*i.e.*, employee's contributions are included in this earnings figure). Therefore, we continued to use the ILO rate as the base labor rate for the final determination.

*Comment 9: Circumstance-of-Sale Adjustments*

Petitioner contends that the Department is required by the Act to adjust normal value to account for differences in circumstances of sale. In particular, petitioner argues that imputed credit expenses and the value of a price markup between the Kazakstani producer and its U.S. subsidiary should be added to NV.

Respondents counter that verification findings show that payment for the reported sale was received from the U.S. customer in advance of the payment terms agreed to in the sales contract; therefore, there is no basis on which to calculate imputed credit expenses for the reported U.S. sales transactions. Additionally, respondents assert that petitioner's request to adjust NV to account for an alleged commission payment should also be denied because there is no evidence on the record that a commission was made at arm's length.

*DOC Position*

We agree with respondents. Section 773 (a) (6) (C) of the Act allows NV to be increased or decreased for differences in circumstances of sale as long as "it has been established to the satisfaction of the administering authority" that such adjustments are warranted. (See, also *Notice of Final Determination: Bicycles from the PRC*, 61 FR 19031, 19032 (April 30, 1996)).

An adjustment to NV for imputed credit expense is not warranted in this case. Because such expenses are usually included in the financial statements used as the basis for calculating SG&A, it is assumed any credit expense is captured in the SG&A figure calculated under the factors of production methodology, unless demonstrated otherwise. (See, *Sulfanilic Acid from the*

*PRC: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 61 FR 53702, 53709 (1996) and *Final Determination of Sales at Less Than Fair Value: Helical Spring Lock Washers from the PRC*, 58 FR 48833, 48839 (1993)).

Further, the price markup reflected in sales invoice documentation between the Kazakstani producer and its U.S. subsidiary is considered an intra-company transfer and does not warrant any adjustment to NV. As respondents correctly note, the Department generally allows adjustments only for commission payments to unaffiliated parties; however, in this case, the Kazakstani producer and the U.S. subsidiary are considered to be affiliated parties for purposes of this investigation. (See, also, *Federal Mogul Corp. v. United States*, 918 F. Supp. 386, 413-414 (CIT 1996)). Therefore, no adjustment to NV for commissions is warranted because the record does not provide any information to suggest that any commission payment from the Kazakstani producer to its U.S. subsidiary was made at arm's length.

*Comment 10: U.S. Sales Transactions in the Final Margin Calculation*

Petitioner asserts that all U.S. sales transactions involving Kazakstani beryllium invoiced and shipped during the POI should be included in the final margin calculation. In particular, petitioner argues that the Department should continue to consider the sale of certain off-specification beryllium as part of the reported U.S. sale transaction because verification findings confirmed that the price adjustments at issue were post-sale price adjustments, rather than new sales occurring outside the POI. In support of this argument, petitioner notes that respondents stated for the record that the date of sale was unaffected by any modifications to the sale contract after shipment. Finally, petitioner argues that the Department should include the unreported U.S. sales transaction discovered at verification.

Respondents assert that the sale of the off-specification material did not meet the specifications of the sales contract within the POI but was only shipped at the same time as the POI contract's merchandise. According to respondents, because of the lengthy negotiations following the shipment of the off-specification merchandise, the final sale (and agreement to price) of this merchandise was not formally concluded until after the POI.

Additionally, respondents argue that the unreported U.S. sale discovered at verification constitutes a sample

shipment of insignificant quantity of merchandise outside of the scope of the investigation (i.e., not characterized as ingot, billet, powder, lump, chunk, blank, or other semi-finished form). Therefore, respondents recommend the Department to disregard this sale for purposes of the final margin calculation.

*DOC Position*

We agree with petitioner and continue to include the reported sales of off-specification merchandise with post-sale price adjustments in the final margin calculation. Verification findings indicated that the merchandise in question was sold pursuant to the sales contract and invoice issued during the POI.

With respect to the unreported sale discovered at verification, respondents are correct in characterizing this sale as a transaction of insignificant quantity. Therefore, we have excluded this transaction from the final margin calculation.

*Comment 11: Verified International Freight and Customs Expenses*

For the final determination, petitioner asserts that the Department should adjust export price for (1) line item expenses omitted from reported international freight charge and (2) under-reported Customs duties payments.

*DOC Position*

We agree with petitioner and used the verified international freight and Customs duties charges in the final margin calculation.

*Comment 12: Inflation Adjustment for Non-Contemporaneous Data*

Respondents maintain that in the preliminary determination the Department erred in converting 1994 values to 1995 values by multiplying U.S. dollar-denominated prices by foreign currency inflation rates without adjusting for changes in the value of the foreign currency relative to the U.S. dollar. Respondents argue that, where appropriate, the Department should account for both foreign currency inflation and exchange rate fluctuations.

*DOC Position*

We agree with respondents and, where appropriate, adjusted factor values to account for both foreign currency inflation and exchange rate fluctuations between the U.S. dollar and the foreign currency.

*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 beryllium from Kazakstan, that are entered, or withdrawn from warehouse for consumption, on or after August 28, 1996 (the date of publication of the preliminary determination in the Federal Register). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Ulba Metallurgical Plant/KATEP .....	16.56
Kazakstan-Wide Rate .....	16.56

The Kazakstan-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 International Trade Commission ("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 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.

Dated: January 10, 1997.

Robert LaRussa,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 97-1258 Filed 1-16-97; 8:45 am]

BILLING CODE 3510-DS-P