

in a particular market by a single respondent, we, therefore, are choosing invoice date as the date of sale for Suzhou. This choice is consistent with our regulatory presumption in favor of invoice date, and with the fact that material sales terms sometimes are not set until invoice date for this particular exporter.

#### Fair Value Comparisons

To determine whether sales of saccharin to the United States by Suzhou and Shanghai Fortune were made at LTFV, we compared the export price (EP), for Shanghai Fortune, and the constructed export price (CEP), for Suzhou, to normal value (NV), as discussed in the *Decision Memorandum, Final Determination in the Antidumping Duty Investigation of Saccharin from the People's Republic of China: Analysis of Suzhou Fine Chemicals Group Co., Ltd.*, from Mark Hoadley, through Sally Gannon, to the File (May 12, 2003) (*Suzhou Analysis Memorandum*), *Final Determination in the Antidumping Duty Investigation of Saccharin from the People's Republic of China: Analysis of Shanghai Fortune Chemical Co., Ltd.*, from Javier Barrientos, through Sally Gannon, to the File (May 12, 2003) (*Shanghai Fortune Analysis Memorandum*), and *Antidumping Duty Investigation of Saccharin from the People's Republic of China: Factor Valuation*, Memorandum from Sebastian Wright, Case Analyst, through Mark Hoadley, Senior Analyst, Office VII, to the File (May 12, 2003) (*Factor Valuation Memorandum*). In accordance with section 777A(d)(1)(A)(i) of the Act, for Shanghai Fortune, we calculated a weighted-average margin based on EP. *See also* "Use of Facts Otherwise Available" section of this notice. With regard to Suzhou, in accordance with section 777A(d)(1)(A)(ii) of the Act, we calculated a weighted-average margin based on CEP.

#### Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Pursuant to section 782(e), the Department shall not decline to consider such information if all of the following requirements are

met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

As discussed above, section 776(a)(2)(A) of the Act requires the Department to use facts available when a party withholds information which has been required by the Department. On September 10, 2002 and again on November 4, 2002, the Department requested that Shanghai Fortune report all sales of saccharin to the United States during the POI. The Department requested that Shanghai Fortune provide this sales information, whether the date of sale was based on purchase order/contract date or invoice date. On October 25, 2002 and November 25, 2002, Shanghai Fortune submitted to the Department what it reported to be all sales of saccharin sold to the United States during the POI, based upon both purchase order/contract date, as well as invoice date. After the preliminary determination, but prior to verification, Shanghai Fortune had additional opportunities to provide the Department with all sales information. At Shanghai Fortune's verification, the Department discovered an unreported sale of saccharin to the United States during the POI. Therefore, application of facts available is appropriate pursuant to 776(a)(2)(A), because Shanghai Fortune withheld information the Department requested, namely, one of its sales.

Once the Department determines that the use of facts available is warranted, section 776(b) of the Act further permits the Department to apply an adverse inference if it makes the additional finding that "an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information." The Department finds that Shanghai Fortune's failure to report this sale constitutes a failure to cooperate to the best of its ability and that the use of adverse facts available is appropriate under section 776(b) for the following reasons. The Department requested on two occasions that Shanghai Fortune report all of its sales during the POI (first, on the basis of what Shanghai Fortune believed to be the date of sale, and, second, on the basis of both purchase order/contract date and invoice date). In filing its second supplemental, Shanghai Fortune certified that it had reported all sales on both a purchase order/contract date

basis and an invoice date basis. Shanghai Fortune explained at verification that it inadvertently failed to report this sale. *See Shanghai Fortune Verification Report* at 10 and 16. For this reason, and because it failed to report only this one sale, the Department finds that the application of partial, rather than total, adverse facts available for the missing POI sale is appropriate in this case. Section 776(b) of the Act states that adverse facts available may include information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. As adverse facts available, and in accordance with section 776(b), the Department is applying the highest rate from the petition for an export price sale to the quantity of Shanghai Fortune's missing sale for the final determination. *See Shanghai Fortune Analysis Memorandum*. As discussed in "The PRC-Wide Rate" section of this notice, the Department has adjusted the petition rate, and the petition rate has been corroborated. Moreover, we determine that the highest rate from the petition is relevant to Shanghai Fortune, given that it represents a sale of a product also sold by Shanghai Fortune, made on the same sales basis (export price) as Shanghai Fortune.

#### Changes Since the Preliminary Determination

Based on our findings at verification and on our analysis of the comments received, we have made adjustments to the calculation methodologies used in the preliminary determination. In particular, we have made changes involving the following issues: surrogate valuation, concentration strength of inputs, byproduct offset, normal value financial ratios, Suzhou USA's indirect selling expenses, and date of sale, as well as several miscellaneous calculation issues. These changes are discussed in detail in the *Decision Memorandum, Suzhou Analysis Memorandum*, and *Shanghai Fortune Analysis Memorandum*. In addition to the *Decision Memorandum*, public versions of the *Suzhou Analysis Memorandum* and *Shanghai Fortune Analysis Memorandum* are on file in the Central Records Unit, Room B-099, of the main Commerce Building.

#### Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Bureau of Customs and Border Protection (BCBP) to continue to suspend liquidation of all entries of