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**Public Document**
IA08: Team

August 8, 2007

**MEMORANDUM TO:** David Spooner
Assistant Secretary
for Import Administration

**FROM:** Stephen Claeys
Deputy Assistant Secretary
for Import Administration

**SUBJECT:** Issues and Decision Memorandum for the 2004 - 2005 Administrative Review of Wooden Bedroom Furniture from the People's Republic of China

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**SUMMARY:**

We have analyzed the case and rebuttal briefs of interested parties in the antidumping duty administrative review of wooden bedroom furniture from the People's Republic of China. The period of review is June 24, 2004, through December 31, 2005. As a result of our analysis, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. We recommend that you approve the positions that we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments and rebuttal comments by the parties:

**I. General Issues**

Comment 1: Surrogate Country Selection
- A. Economic Comparability
- B. Significant Producer
- C. Data Considerations
- D. Burden and Predictability

Comment 2: Labor Rate Methodology
Comment 3: Application of the 33 Percent Threshold for Market Economy Purchases
Comment 4: Zeroing
Comment 5: Department Should Apply Combination Rates to Separate Rate Companies
Comment 6 : Use of Values Versus Quantities to Determine the Weighted-Average Separate Rate Margin

Comment 7: Incorporation of Zero, De Minimis, and Total Adverse Facts Available Margins in Non-selected Respondents' Rate
Comment 8: Standard for Accepting Respondents Factor Descriptions and Appropriate Harmonized Tariff Schedule of India Categories
Comment 9: Time Period used to Calculate Surrogate Values
Comment 10: Ministerial Error in the Valuation of Polymers of Styrene
Comment 11: Exclusion of Myanmar and Bhutan Data in the Surrogate Value Calculation for Plywood
Comment 12: Surrogate Value Source for Mirrors
Comment 13: HTS Classification for Corrugated Paper
Comment 14: HTS Classification for Cardboard
Comment 15: Surrogate Value Source for Electricity
Comment 16: Electricity and Coal Inflator

**II. Surrogate Financial Ratio Issues**

Comment 17: Use of Certain Financial Statements for the Calculation of Surrogate Financial Ratios

A. Ahuja
B. Evergreen
C. Huzaifa (2005 - 2006)
D. IFP (2004-2005 and 2005-2006)
E. Imperial (2006)
F. Jayabharatham (2006)
G. Newton (2005)
H. Nikhil (2005)
I. Nizamuddin (2005-2006)
J. Raghbir (2004-2005 & 2005-2006)
K. Usha Shriram (2005 & 2006)

Comment 18: Treatment of Polish, Contract Manufacturing, and Manufacturing Glass in Ahuja's Financial Statement
Comment 19: Treatment of Job Work Expense in Huzaifa and IFP's Financial Statement
Comment 20: Treatment of Labor-Related Expenses in Multiple Surrogate Financial Statement
Comment 21: Treatment of Consumables in Akriti's Financial Statement
Comment 22: Treatment of "Designing Charges," Consumables, and Profit on Sale of Assets in Imperial's 2004-2005 Financial Statements
Comment 23: Treatment of Nizamuddin's 2004-2005 Financial Statement and Treatment of Manufacturing Charges Labour in Nizamuddin's 2005-2006 Financial Statement
Comment 24: Use of 2004-2005 Data from Jayabharathan's 2005-2006 Financial Statements
Comment 25: Treatment of Octroi Expenses in Huzaifa's Financial Statement

**VIII. Starcorp-Specific Issues**

Comment 49: Total Labor Hour Consumption
Comment 50: Market Economy Purchases, Wood Materials and Wood Screws
Comment 51: Department's Conduct at Verification
Comment 52: Timing of Verification Outline
Comment 53: Appropriateness of Plant-Specific versus Combined FOP Data and Valuation of the Appropriate Data
Comment 54: Application of Partial Adverse Facts Available for CONNUMs Consisting of Sets and "Sold But Not Produced"
Comment 55: Starcorp's Financial Statements
Comment 56: Raw Material Consumption Methodology
Comment 57: Non-Wood Materials
Comment 58: Valuation of Thinner
Comment 59: Electricity
Comment 60: Packing Materials
Comment 61: Minor Corrections
Comment 62: Application of Total Adverse Facts Available

**IX. Separate Rate Company-Specific Issues**

Comment 63: Separate-Rate Status for New Four Seas
Comment 64: Separate-Rate Status for Winny and Triple J
Comment 65: Separate-Rate Status for ZY Wooden/MY Trading

**LIST OF ABBREVIATIONS AND ACRONYMS**

For convenience purposes, we are providing a list of abbreviations used in this document.

| | |
|---|---|
| Act | Tariff Act of 1930, as amended |
| AFA | Adverse facts available |
| Agro Dutch | Agro Dutch Industries Limited's |
| Ahuja | Ahuja Furnishers Pvt. Ltd. |
| Akriti | Akriti Perfections India Pvt. Ltd |
| APO | Administrative Protective Order |
| Aosen | Shanghai Aosen Furniture Co., Ltd. |
| ASI | Annual Survey of Industries, 2003-04, Vol. I: Statistics on Employment and Labour Cost |
| AUV | Average Unit Values |
| Baigou Crafts | Baigou Crafts Factory of Fengkai |
| BLS | Bureau of Labor Statistics |
| BOM | Bill of Materials |
| CAFC | Court of Appeals for the Federal Circuit |
| CBP | Customs and Border Protection |
| CEA | Central Electric Authority of India |
| CEP | Constructed Export Price |
| CIT | Court of International Trade |
| Conghua | Conghua J.L. George Timber and Co., Ltd. |
| CONNUM | Control Number |
| Dare Group | collectively, Fujian Lianfu Forstry Co., Fujian Wonder Pacific Inc., Fuzhou Huan Mei Furniture Co., Ltd., Jiangsu Dare Furniture Co., Ltd. |
| Decca | Decca Hospitality Furnishings, LLC |
| Department | the Department of Commerce |
| EDI | Electronic Data Interface |
| Emerald | Emerald Home Furnishings, Inc. |
| EP | Export Price |
| Evergreen | Evergreen International Ltd. |
| Fengkai | Fengkai Hengsheng Furniture Co., Ltd. |
| Fine Furniture | Fine Furniture (Shanghai) Limited |
| First Wood | Tianjin First Wood Co., Ltd. |
| FOP(s) | Factor(s) of production |
| Four Seas HK | Four Seas Furniture Manufacturing Ltd. |
| Fusion | Fusion Designs Private Ltd. |
| GAAP | Generally Accepted Accounting Principles |
| GDP | Gross Domestic Product |
| GNI | Gross National Income |
| GOI | Government of India |
| GSB IP Group | collectively, Emerald Home Furnishings; Dongguan Mingsheng |

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|---|---|
| | Furniture Co., Ltd.; Dongguan Sunpower Enterprise Co., Ltd; Hung Fai Wood Products Factory Ltd.; Hwang Ho International Holdings Limited; King Wood Furniture Co., Ltd.; Qingdao Shengchang Wooden Co., Ltd.; Shenzhen Shen Long Hang Industry Co., Ltd.; Transworld (Zhangzhou) Furniture Co., Ltd.; Wan Bao Cheng Group Hong Kong Co., Ltd.; Zhongshan Gainwell Furniture Co., Ltd. |
| Guanqui | Foshan Guanqui Furniture Co., Ltd. |
| HTS | Harmonized Tariff System |
| Huzaifa | Huzaifa Furniture Industries Pvt. Ltd. |
| ICE | Immigration and Customs Enforcement |
| IEA | International Energy Agency, Key World Energy Statistics (2003 edition) |
| IFP | Indian Furniture Products Ltd. |
| ILO | International Labour Office |
| IMF | International Monetary Fund |
| Imperial | Imperial Furniture Company Pvt. Ltd. |
| Indian | Indian Furniture Products, Ltd. |
| James Andrew Newton | James Andrew Newton Art Exports Pvt. Ltd. |
| Jayabharatham | Jayabharatham Furniture & Appliances Pvt. Ltd. |
| Kemp | Kemp Enterprises, Inc. |
| KGS | Kilograms |
| King Kei | King Kei Furniture Factory |
| Kunwa | Kunwa Enterprise Company |
| KWH | Kilowatt Hours |
| LTFV | Less Than Fair Value |
| M3 | Meters cubed |
| Maria Yee | collectively, Guangzhou Maria Yee Furnishings Ltd. and Pyla HK Limited |
| ME | Market Economy |
| MDF | Medium Density Fiber Board |
| ML&E | Materials, Labor and Energy |
| MSFTI | Monthly Statistics of the Foreign Trade of India |
| Nanaholy | Zhejiang Niannian Hong Industrial Co., Ltd. |
| New Four Seas | Guangdong New Four Seas Furniture Manufacturing Ltd. |
| NSR | New Shipper Review |
| NIC | Indian National Industrial Classification |
| Nikhil | Nikhil Decore Industries Pvt. Ltd. |
| Nizamuddin | Nizamuddin Furnitures Pvt. Ltd. |
| NME | Non Market Economy |
| NV | Normal Value |
| OLS | Ordinary Least Squares |
| OP | Office of Policy |

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|---|---|
| Orin | Orin Furniture (Shanghai) Co., Ltd. |
| Petitioners | American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. |
| POR | Period of review |
| POI | POI |
| PRC | People's Republic of China |
| P&L | Profit and Loss |
| Q&V | Quantity and Value |
| Raghbir | M/s Raghbir Interiors Pvt. Ltd |
| RTO | Regression through the Origin |
| SAA | Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, 838 (1994) |
| SG&A | Selling, General and Administrative Expenses |
| Shanghai Starcorp | Shanghai Starcorp Furniture Co., Ltd. |
| SEC | U.S. Security and Exchange Commission |
| SF | Squared Feet |
| SRA | Separate Rate Application |
| SRC | Separate Rate Certification |
| Star | Shanghai Star Furniture Co., Ltd. |
| Starcorp | collectively, Shanghai Starcorp Furniture Co., Ltd, Starcorp Furniture (Shanghai) Co., Ltd, Orin Furniture (Shanghai) Co., Ltd., Shanghai Star Furniture Co., Ltd., and Shanghai Xing Ding Furniture Industrial Co., Ltd. |
| Statute | Tariff Act of 1930, as amended |
| SV | Surrogate Value |
| TERI Data | Tata Energy Research Institute's Energy Data Directory & Yearbook (2003/2004 edition) |
| Top Art/Ngai Kun | Top Art Furniture/Ngai Kun Trading |
| Triple J | collectively, Triple J Enterprises Co., Ltd and Mandarin Furniture (Shenzen) Co., Ltd. |
| UAE | United Arab Emirates |
| UK | United Kingdom |
| USD | U.S. Dollars |
| Usha Shriram | Usha Shriram Enterprises Pvt. Ltd. |
| USTR Study | 2006 National Trade Estimate Report on Foreign Trade Barriers |
| WBF | Wooden Bedroom Furniture |
| Winny | collectively, Zhongshan Winny Furniture, Ltd. and Winny Overseas, Ltd. |
| WPI | Wholesale Price Index |
| WTA | World Trade Atlas® Online (Indian import statistics) |
| WTO | World Trade Organization |
| WUS | WUS Furniture Co., Ltd. |
| YLS | Yearbook of Labour Statistics |

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|---|---|
| ZY Wooden/MY Trading | Zhongshan Youcheng Wooden Arts & Crafts Co., Ltd./Macau Youcheng Trading Co. |

## CASES AND LITIGATION CITES

### Determinations and Reviews

("Activated Carbon 10/11/2006") Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Activated Carbon From the People's Republic of China, 71 FR 69721 (October 11, 2006)

("Ammonium Nitrate 7/25/2001") Notice of Final Determination of Sales At Less Than Fair Value: Solid Agricultural Grade Ammonium Nitrate From Ukraine, 66 FR 38632 (July 25, 2001)

("ARG 10/21/2004") Automotive Replacement Glass Windshields From the People's Republic of China: Final Results of Administrative Review, 69 FR 61790 (October 21, 2004)

("Artist Canvas 3/30/06 Memo") Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China, 71 FR 16116 (March 30, 2006), and accompanying Issues and Decision Memorandum

("Brake Drums 2/28/97") Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China, 62 FR 9160 (February 28, 1997)

("Brake Rotors Memo 11/14/06") Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review, 71 FR 66304 (November 14, 2006), and accompanying Issues and Decision Memorandum

("Carbazole Violet Pigment 5/9/06") Carbazole Violet Pigment 23 from India: Notice of Rescission of Antidumping Duty New Shipper Review, 71 FR 26926 (May 9, 2006)

("Carbon Steel Products from Brazil 7/11/84") Final Determination of Sales at Less Than Fair Value: Carbon Steel Products from Brazil, 49 FR 28296 (July 11, 1984)

("Certain Polyester Staple Fiber 04/19/2007 Memo") Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China, 72 FR 19690 (April 19, 2007), and accompanying Issues and Decision Memorandum

("Chlorinated Isocyanurates") Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decisions Memorandum.

("Chrome-Plated Lug Nuts 10/7/1998") Chrome-Plated Lug Nuts from the People's Republic of

China: Final Results of Antidumping Duty Administrative Review, 63 FR 53872 (October 7, 1998)

("Coated Free Sheet Paper 4/9/07") Coated Free Sheet Paper from the People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination, 72 FR 17484 (April 9, 2007)

("Coated Free Sheet Paper 6/4/07") Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination of Coated Free Sheet Paper from the People's Republic of China, 72 FR 30758 (June 4, 2007)

("Color Televisions 4/16/04") Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China, 69 FR 20594 (April 16, 2004)

("Crawfish Tail Meat 05/24/1999") 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)

("Crawfish 2/10/2006") Freshwater Crawfish Tail Meat from the People' Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 71 FR 7013 (February 10, 2006)

("Crawfish Tail Meat 2/10/06 Memo") Freshwater Crawfish Tail Meat from the People' Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 71 FR 7013 (February 10, 2006), and accompanying Issues and Decision Memorandum

("Diamond Sawblades 5/22/06 Memo") Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006), and accompanying Issues and Decision Memorandum

("Extruded Rubber Thread From Malaysia 3/16/98") Extruded Rubber Thread From Malaysia: Final Results of Antidumping Duty Administrative Review, 63 FR12752 (March 16, 1998)

("Ferrovanadium 11/29/2002 Memo") Final Determination of Sales at Less Than Fair Value: Ferrovanadium from the People's Republic of China, 67 FR 71137 (November 29, 2002), and accompanying Issues and Decision Memorandum

("Fish Fillets from Vietnam 3/21/07 Memo") Partial Rescission and Notice of Intent To Rescind, in Part, and Partial Extension of Time Limit for Preliminary Results of the Third Antidumping Duty Administrative Review: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam, 72 FR 13242 (March 21, 2007), and accompanying Issues and Decision Memorandum

("Fish Fillets Vietnam 3/21/2007") Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Second Administrative Review, 72 FR 13242 (March 21, 2007)

("Folding Metal Tables and Chairs 12/3/01") Notice of Preliminary Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs From the People's Republic of China, 66 FR 60185 (December 3, 2001)

("Folding Metal Tables and Chairs 4/24/02") Notice of Final Determination of Sales at Less Then Fair Value: Folding Metal Tables and Chairs from the People's Republic of China, 67 FR 20050 (April 24, 2002)

("Folding Metal Tables and Chairs 1/18/06 Memo") Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 2905 (January 18, 2006), and accompanying Issues and Decision Memorandum

("Forged Stainless Steel Flanges 3/7/07") Certain Forged Stainless Steel Flanges From India: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission and Intent To Rescind, 72 FR 10142 (March 7, 2007)

("Fresh Cut Flowers from Colombia 6/10/98") Certain Fresh Cut Flowers From Colombia: Final Results of Antidumping Duty Administrative Review, 63 FR 31724 (June 10, 1998), and accompanying Issues and Decision Memorandum

("Fresh Garlic 12/4/02 Memo") Fresh Garlic from the People's Republic of China: Final Results of the Antidumping Duty New Shipper Review, 67 FR 72139 (December 4, 2002) and accompanying Issues and Decisions Memorandum

("Fresh Garlic 4/28/04") Fresh Garlic from the People's Republic of China: Rescission of Antidumping Duty New Shipper Review, 69 FR 23171 (April 28, 2004)

("Fresh Garlic 6/22/2007") Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews, 72 FR 34438 (June 22, 2007)

("Glycine 8/12/05 Memo") Glycine form the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 41176 (August 12, 2005) and accompanying Issues and Decisions Memorandum

("Hand Trucks and Certain Parts Thereof 10/14/04 Memo") Hand Trucks and Certain Parts Thereof from the People's Republic of China, 69 FR 60980 (October 14, 2004), and accompanying Issues and Decision Memorandum

("Hand Trucks and Certain Parts Thereof 05/15/2007 Memo") Hand Trucks and Certain Parts

Thereof from the People's Republic of China: Final Results of Administrative Review and Final Result of New Shipper Review, 72 FR 27287 (May 15, 2007), and accompanying Issues and Decision Memorandum

("Hardware 11/8/88") Preliminary Determination of Sales at Less Than Fair Value: Certain Headwear from the People's Republic of China, 53 FR 45138 (November 8, 1988)

("Heavy Forged Hand Tools 09/12/02 Memo") Heavy Forged Hand Tools from the People's Republic of China: Final Results of and Partial Rescission of Antidumping Duty Administrative Review and Determination to Revoke in Part, 67 FR 57789, and accompanying Issues and Decision Memorandum (September 12, 2002)

("Heavy Forged Hand Tools 09/10/03 Memo") Heavy Forged Hand Tools, Finished or unfinished, With or Without Handles, From The People's Republic of China, 68 FR 53347 (September 10, 2003), and accompanying Issues and Decision Memorandum

("Honey 10/4/01 Memo") Final Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China, 66 FR 50608 (October 4, 2001), and accompanying Issues and Decision Memorandum

("Honey 2/15/05") Honey from the People's Republic of China: Rescission of Antidumping Duty New Shipper Review, 70 FR 7714 (February 15, 2005)

("Honey 6/16/06 Memo") Honey from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review, 71 FR 34893 (June 16, 2006), and accompanying Issues and Decision Memorandum

("Honey 7/31/06") Honey from the People's Republic of China: Rescission of Antidumping Duty New Shipper Review, 71 FR 43110 (July 31, 2006)

("Hot Rolled Carbon Steel from Brazil 01/25/84") Hot Rolled Carbon Steel Plate and Hot-Rolled Carbon Steel Sheet from Brazil: Final Determination of Sales at Less than Fair Value, 49 FR 3102 (January 25, 1984)

("Iron Construction Castings 6/5/90") Iron Construction Castings From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 55 FR 22939 (June 5, 1990) (affirmed Sigma Corp. v. United States, 17 CIT 1288 (December 8, 1993)) (reversed, in part, on other grounds, Sigma Corp. v. United States, 117 F.3d 1401 (July 7, 1997))

("Iron Construction 1/24/91") Iron Construction Castings from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 56 FR 2742 (January 24, 1991)

("Iron Metal Castings from India 08/05/81") Iron Metal Castings from India: Final Determination of Sales at Not Less Than Fair Value, 46 FR 39869 (August 5, 1981)

("Magnesium from Russia 9/27/01 Memo") Final Determinations of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation, 66 FR 49347 (September 27, 2001), and accompanying Issues and Decision Memorandum

("Mushrooms 9/9/04") Certain Preserved Mushrooms From the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review, 69 FR 54635 (September 9, 2004)

("Non-Malleable Cast Iron Pipe Fittings 02/18/03") Notice of Final Determination of Sales at Less Than Fair Value: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China, 68 FR 7765 (February 18, 2003)

("Persulfates 2/14/06 Memo") Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 7725 (February 14, 2006), and accompanying Issues and Decision Memorandum

("Persulfates 2/9/05 Memo") Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 6836 (February 9, 2005), and accompanying Issues and Decision Memorandum

("Pistachios 2/14/05") Final Results of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios from Iran, 70 FR 7470 (February 14, 2005)

("Pistachios 2/14/05 Memo") Final Results of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios from Iran, 70 FR 7470 (February 14, 2005), and accompanying Issues and Decision Memorandum

("Potassium Permanganate 09/07/01 Memo") Potassium Permanganate From the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 66 FR 46775 (September 7, 2001), and accompanying Issues and Decision Memorandum

("Polyethylene Retail Carrier Bags 3/19/07 Memo") Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 12762 (March 19, 2007), and accompanying Issues and Decision Memorandum

("Pure Magnesium 10/17/06") Pure Magnesium from the People's Republic of China: Final Results of 2004-2005 Antidumping Duty Administrative Review, 71 FR 61019 (October 17, 2006)

("Pure Magnesium 3/30/95") Final Determinations of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the Russian Federation, 60 FR 16440 (March 30, 1995)

("Rebar from Belarus 6/22/01") Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From Belarus, 66 FR 33528 (June 22, 2001)

("Saccharin 05/20/03") Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China, 68 FR 27530 (May 20, 2003)

("Silicomanganese 5/23/02") Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Orders: Silicomanganese from India, Kazakhstan, and Venezuela, 67 FR 36149 (May 23, 2002), and accompanying Issues and Decision Memorandum

("Silicomanganese Kazakhstan 4/2/02") Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From Kazakhstan, 67 FR 15535 (April 2, 2002)

("Silocomanganese from Kazakhstan 4/2/02 Memo") Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From Kazakhstan, 67 FR 15535 (April 2, 2002) and accompanying Issues and Decision Memorandum

("Softwood Lumber from Canada 12/12/05") Notice of Final Results of Antidumping Administrative Review: Certain Softwood Lumber Products from Canada, 70 FR 73437 (December 12, 2005)

("Steel Wire Rope 02/28/01 Memo") Steel Wire Rope from the People's Republic of China, 66 FR 12759, (February 28, 2001), and accompanying Issues and Decision Memorandum

("Structural Steam Beams From Luxembourg 5/20/02 Memo") Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Luxembourg, 67 FR 35488 (May 20, 2002)

("Sulfanilic Acid from Portugal 9/25/02 Memo") Notice of Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from Portugal, 67 FR 60219 (September 25, 2002), and accompanying Issues and Decision Memorandum

("Tomatoes from Canada 2/26/02") Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada, 67 FR 8781 (February 26, 2002), and accompanying Issues and Decision Memorandum

("TRBs 2/11/97a") Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results and Partial Termination of Antidumping Duty Administrative Review, 62 FR 6173 (February 11, 1997)

("TRBs 2/11/97b") Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China, 62 FR 6189 (February 11, 1997)

("TRBs 01/17/06") Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003-2004 Administrative Review and Partial Rescission of Review, 71 FR 2517 (January 17, 2006)

("WBF 11/17/04") Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China, 69 FR 67313 (November 17, 2004)

("WBF 11/17/04 Memo") Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China, 69 FR 67313 (November 17, 2004), and accompanying Issues and Decision Memorandum

("WBF Amended 01/04/05") Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China, 70 FR 329 (January 4, 205)

("WBF AR1 Initiation Notice") Notice of Initiation of Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China, 71 FR 11394 (March 7, 2006)

("WBF NSR Memo 11/21/06") Memorandum from Stephen J. Claeys to David M. Spooner: Issues and Decision Memorandum for the New Shipper Reviews of Wooden Bedroom Furniture from the People's Republic of China Covering the period June 24, 2004 through June 30, 2005 (November 21, 2006)

("WBF NSR 12/6/06 Memo") Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2004-2005 Semi-Annual New Shipper Reviews, 71 FR 70739 (December 6, 2006), and accompanying Issues and Decision Memorandum

("Preliminary Results") Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Administrative Review, Preliminary Results of New Shipper Reviews and Notice of Partial Rescission, 72 FR 6201 (February 9, 2007)

("WBF Remand 5/25/07") Final Results of Redetermination Pursuant to Court Remand Dorbest Limited, et al. v. United States, Court No. 05-00003, Slip Op. 06-160 (CIT October 31, 2006) (May 25, 2007) (also referred to as the Dorbest Remand Redetermination)

**Litigation**

Allegheny Ludlum Corp. v. United States, 112 F. Supp. 2d 1141 (CIT 2000) ("Allegheny Ludlum Corp. ")

Tube & Conduit Corp. v. United States, 898 F.2d 780 (Fed. Cir. 1990) ("Allied Tube")

Allied Pac. Food (Dalian) Co. v. United States, 435 F. Supp. 2d 1295 (CIT 2006) ("Allied Pac. Food")

Am. Silicon Techs. v. United States, 240 F. Supp. 2d 1306 (CIT 2002) ("Am. Silicon Techs.")

American Alloys, Inc. v. United States, 30 F.3d 1469 (Fed. Cir. 1994) ("American Alloys")

Aramide Maatschappij V.o.F. v. U.S., 901 F. Supp. 353 (CIT 1995) ("Aramide")

Bowe-Passat v. United States, 17 CIT 335 (1991) ("Bowe-Passat")

Bowe Passat Reinigungs- und Waschereitechnik GmbH v. United States, 926 F. Supp. 1138 (CIT 1996) ("Bowe-Passat Reinigungs")

Cargill, Inc. v. United States, 318 F. Supp. 2d 1279 (CIT 2004) ("Cargill")

Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984) ("Chevron")

Citrosuco Paulista, S.A. v. United States, 12 CIT 1196, 1209, 704 F. Supp. 1075 (CIT 1988) ("Citrosuco Paulista, S.A.")

Corus Staal BV v. United States Department of Commerce, 259 F. Supp. 2d 1253 (CIT 2003) ("Corus Staal 1")

Corus Staal BV v. Department of Commerce, 395 F.3d 1343 (Fed Cir. 2005), cert denied, 126 S. Ct 1023, 163 L. ED.2d 853 (January 9, 2006) ("Corus Staal 2")

Corus Eng'g Steels LTD v. United States, CIT Slip Op. 2003-110 (August 27, 2003) ("Corus Eng'g Steels LTD")

Daewoo Elecs. Co., Ltd. v. Int'l Union of Electronic, Elec., Tech., Salaries & Mach. Workers, 6 F.3d 1511 (Fed. Cir. 1993) ("Daewoo Elecs.")

Davila-Bardales v. INS, 27 F.3d 1, 5 (1st Cir. 1994) ("Davila Bardales")

Dorbest Ltd. v. United States, 462 F. Supp. 2d 1262 (CIT 2006) ("Dorbest Ltd.")

Fujian Machinery & Equipment Import & Export Corp. v. United States, 178 F. Supp. 2d 1305 (CIT 2001) ("Fujian ")

Hebei Metals & Minerals Import & Export Corp. v. United States, 2004 CIT, Slip Op. 2004-88 (July 19, 2004) ("Hebei")

Helmerich & Payne, Inc. v. United States, 24 F. Supp. 2d 304 (CIT 1998) ("Helmerich")

Hercules, Inc. v. United States, 673 F. Supp. 454 (CIT 1987) ("Hercules")

Heveafil Sdn. Bhd v. United States, 25 CIT 147 (2001), aff'd 58 Fed. Appx. 843 (Fed. Cir. 2003) ("Heveafil")

Hussey Copper, Ltd. v. United States, 17 CIT 993, 834 F. Supp. 413 (CIT 1993) ("Hussey Copper")

Kerr-McGee Chem. Corp. v. United States, 739 F. Supp. 613 (CIT 1990) ("Kerr-McGee")

Koyo Seiko Co. v. United States, 36 F.3d 1565 (Fed. Cir. 1994) ("Koyo Seiko 1")

Koyo Seiko Co. v. United States, 543 U.S. 976 (2004) ("Koyo Seiko 2")

Lii de Cecco di Filippo Fara S. Marino S.p.A. v. United States, 216 F.3d 1027 (Fed. Cir. 2000) ("Lii de Cecco di Filippo Fara S. Marino S.p.A. ")

Luoyang Bearing Corp. v. United States, 347 F. Supp. 2d 1326 (CIT 2004) ("Luoyang")

Mannesmannrohren-Werke AG v. United States, 120 F. Supp. 2d 1075 (CIT 2000) ("Mannesmannrohren-Werke")

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Royal Thai Government v. United States, 441 F. Supp. 2d 1350 (CIT 2006) ("Royal Thai ")

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Shakeproof Assembly Components, Division of Illinois Tool Works, Inc. v. United States, 268 F. 3d 1376 (Fed. Cir. 2001) ("Shakeproof")

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Surrogate Country Selection in Proceedings Involving Non-Market Economy Countries: Request for Comment, 72 FR 40842 (July 25, 2007)

**Other Department Memoranda**

("AFA Memo: First Wood") Application of Adverse Facts Available for Tianjin First Wood Co. Ltd. ("First Wood") in the Preliminary Results in the New Shipper Review of Wooden Bedroom Furniture From the People's Republic of China from Hallie Noel Zink to Wendy Frankel, Office Director, at 9 (February 9, 2007)

("Memoranda in Response to Starcorp's Affidavit") Memorandum to David M. Spooner, Assistant Secretary for Import Administration, from Wendy J. Franke, Director, Office 8, Regarding Affidavit of Thomas J. Trendl, dated July 2007, on Behalf of Starcorp

("Memo to the File: Ex-Parte Meeting, 6/25/07") Memorandum to the File From Robert Bolling: Ex-Parte Meeting, dated June 25, 2007

("Polyethylene Retail Carrier Bags Preliminary Factor Memo 8/31/2006") Preliminary Results of the 2004-2005 Administrative Review of Polyethylene Retail Carrier Bags from the People's Republic of China: Surrogate Value Memorandum," (August 31, 2006)

("Starcorp AFA Memo") Application of Adverse Facts Available for Shanghai Starcorp Furniture Co., Ltd, Starcorp Furniture (Shanghai) Co., Ltd., Orin Furniture (Shanghai) Co., Ltd., Shanghai Star Furniture Co., Ltd., and Shanghai Xing Ding Furniture Industrial Co., Ltd. in the Final

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("Verification Report: Baigou Crafts") Memorandum from Hallie Noel Zink, through Wendy Frankel and Robert A. Bolling regarding: Antidumping Administrative Review of Wooden Bedroom Furniture from the People's Republic of China: Verification of Baigou Crafts Factory of Fengkai

("WBF NSR Preliminary Factor Valuation Memorandum 11/21/06") "Wooden Bedroom Furniture from the People's Republic of China: Factor Valuation Memorandum for the Final Results of the Semi-Annual New Shipper Review," (November 21, 2006)

("WBF Preliminary Factor Valuation Memorandum 1/31/07") "First Administrative Review of Wooden Bedroom Furniture from the People's Republic of China: Factor Valuation Memorandum for the Preliminary Results," (January 31, 2007)

("WBF Dare Group Preliminary Results Analysis Memo 1/31/07") "Analysis Memorandum for the Preliminary Results of Administrative Review of Wooden Bedroom Furniture from the People's Republic of China for Fujian Lianfu Forestry Co., Ltd., Fuzhou Huan Mei Furniture Co. Ltd., and Jiangsu Dare Furniture Co, Ltd." (January 31, 2007)

("WBF AFA Memo 2/8/07") "Application of Adverse Facts Available for Tianjin First Wood Co. Ltd. ("First Wood") in the Preliminary Results in the New Shipper Review of Wooden Bedroom Furniture From the People's Republic of China from Hallie Noel Zink to Wendy Frankel, Office Director" (February 9, 2007)

("WBF Starcorp Verification 6/11/07") "Memorandum to the File through Robert Bolling, Program Manager, from Wendy J. Frankel, Director, Nazakhtar Nikakhtar, Special Assistant to the Senior Enforcement Coordinator, and Lilit Astvatsatrian, International Trade Compliance Analyst regarding, "Verification of the Sales and Factors Response of Shanghai Starcorp Furniture Co., Ltd., Starcorp Furniture (Shanghai) Co., Ltd., Orin Furniture (Shanghai) Co., Ltd., Shanghai Star Furniture Co., Ltd., and Shanghai Xing Ding Furniture Industrial Co., Ltd. in the Antidumping Review of Wooden Bedroom Furniture from the People's Republic of China" (June 11, 2007)

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("Pearl2 Study") Canadian International Development Agency study State of the Sector Report on Philippine Furniture 2004

Uruguay Round Agreements Act (URAA) of 1994 Public Law Pub. L. No. 103-465, 103d Cong., 2d Sess., 108 Stat. 4809

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Yearbook of Labour Statistics ("YLS") Chapter 5 published by the International Labour Organisation, available at http://laborsta.ilo.org/

**BACKGROUND:**

On February 9, 2007, the Department published its preliminary results of review. See Preliminary Results. On June 18, 2007, the Department received case briefs from Petitioners, Starcorp, Dare Group, Guanqiu, First Wood, Decca, Emerald, NFS, Kemp, Maria Yee, Triple J, Winny, and ZY Wooden). On June 26, 2007, Petitioners, Starcorp, Dare Group, Guanqiu, Aosen, Decca, and Baigou Crafts, each submitted a rebuttal brief.

The Department has prepared a detailed analysis memorandum for each mandatory respondent for which it calculated a margin using the respondents' information. All such memoranda are dated August 8, 2007, and can be found on the record of this administrative review located in the Central Records Unit.

**DISCUSSION OF THE ISSUES:**

**I. General Issues**

**Comment 1: Surrogate Country Selection**

Dare Group, Starcorp, Decca and Kemp argue that the selection of India as the surrogate country in this review would be incompatible with the Act, the Department's regulations and Department policy because India is not economically comparable to the PRC. These respondents argue, further, that the Department should select the Philippines as the surrogate country because it is economically comparable to the PRC, is a significant producer of WBF, and has superior data with which to value FOPs. Respondents contend, furthermore, that the Department cannot decline to select the Philippines based on issues of burden to the Department or predictability. Petitioners argue that the Department should continue to use India as the surrogate country for the final results and maintain that the Department's surrogate country methodology is consistent with the statute and the Department's regulations and policy, that India is a significant producer of WBF, that Indian data are not less accurate than Philippine data, and that selection of the Philippines as the surrogate country for the final results will cause significant burden to the Department and reduce predictability.

*A. Economic Comparability*

Dare Group and Decca argue that the Department erred in selecting India as the surrogate country and should instead select the Philippines because India is not economically comparable to the PRC, and because Indian data are not superior to Philippine data. Both Dare Group and Decca cite section 773(c)(4) of the Act, which requires the Department to value FOPs using "to the extent possible, the prices or costs of factors of production in one or more market economy countries that are (A) at a level of economic development comparable to that of the non-market economy country; and (B) significant producers of comparable merchandise." While both of the respondents acknowledge that the second requirement is met by both India and the Philippines

(i.e., significant producers), they argue, however, that India does not meet the first criterion of economic comparability.

Dare Group argues that in evaluating the first requirement, economic comparability, pursuant to 19 CFR 351.408(b), the Department places primary emphasis on per capita GNI. Dare Group states that the Department's March 1, 2004, Policy Bulletin 04.1 states that, if there is more than one significant producer from the list of countries provided, "the country with the best factors data is selected as the primary surrogate country." Dare Group notes that the Policy Bulletin further states that when analyzing which country's factor data are "the best," the Department's objective is to use (1) "period-wide price averages," (2) "prices that are net of taxes and import duties," (3) "prices that are contemporaneous with the period of investigation," (4) "publicly available data," and (5) "prices specific to the input in question." Stating that the import data from India and the Philippines come from the same source, i.e., the WTA, Dare Group concludes that they are equivalent in terms of items 1-4 above. Dare Group contends that the Department's main reason for selecting India over the Philippines relates to item 5, the purported greater specificity, and therefore, accuracy, of the Indian data over the Philippines. Dare Group argues that the Department's preliminary conclusion that Indian data are more accurate than Philippine data is incorrect.

Starcorp argues that the Department did not justify its basis for selecting India as the surrogate country. Citing to Dare Group's October 3, 2006, comments on surrogate country selection, and incorporating by reference Dare Group's comments and its affirmative case brief, Starcorp argues that India is not economically comparable to the PRC. Starcorp further argues that the Department has an obligation to provide a rational explanation of its determination.

Kemp argues that the Department erred in selecting India as the surrogate country. Kemp contends that section 773 of the Act provides that the Department shall value FOPs using the best available information, i.e., a surrogate country that is at a level of economic development comparable to that of the NME country. Kemp argues that, even though the Department is not constrained to selecting the most economically comparable country as a surrogate, the Department's selection of India is improper because India differs too greatly from the PRC in terms of GNI to be considered economically comparable. Kemp asserts that the Philippines is the appropriate choice as a surrogate country because it is more economically comparable to the PRC in terms of GNI per capita. Kemp also incorporates and adopts the arguments raised by Dare Group regarding surrogate country selection.

Dare Group argues that the precedent that the Department and the Petitioners have relied on for the proposition that the statute does not require the Department to select the most comparable surrogate country, Tehnoimportexport, does not apply in the instant case. Dare Group points out that in Tehnoimportexport, the CIT stated that the Department was not required to use a specific country as the surrogate merely because its figures are slightly closer to those of the host country. Dare Group notes, however, that while the difference in the GDP of the two proposed surrogate countries in the Tehnoimportexport case was only five percent (i.e., slight), the difference in the

GNI between India and the Philippines, in the instant case, is 80 percent, thus the choice here is not between two countries that themselves are economically comparable.

Decca argues that the Philippines is far more economically comparable to the PRC than is India according to 2005 data submitted by Dare Group which indicate that the PRC's per capita GNI was 140 percent greater than India's, but only 34 percent greater than the Philippines. Decca notes that these numbers were even more in favor of the Philippines in 2004, and do not support the idea that India and the Philippines are equally comparable to the PRC.

Dare Group argues that the Department should use GNI per capita data for 2005, rather than the 2004 data it is currently using. Noting that the 2007 World Development Report, containing 2005 data, has been available since September 23, 2006, and that Dare Group put it on the record on March 15, 2007, Dare Group argues that the Department should use these data because they cover 12 months of the POR, while the 2004 data cover only six months. Citing Ferrovanadium 11/29/2002 Memo at Comment 19, Dare Group asserts that the Department should update a value if data that cover additional months within the POR become available between the preliminary and final determination.

Dare Group and Decca argue that the Department's inclusion of India on the list of countries economically comparable to the PRC is arbitrary because in selecting India the Department skips 16 countries that are more economically comparable to the PRC based on their respective GNIs. Dare Group notes that India's GNI was only USD 620, less than half of the PRC GNI of USD 1290 in 2004. According to Dare Group, India is so far removed from the PRC in GNI that it is not defensible for the Department to claim that the two countries are economically comparable. Dare Group argues, further, that India cannot be characterized as equally comparable as the countries that the Department skipped over that are much closer to the PRC in terms of GNI, and suggests that India should not be on the Department's list of comparable countries at all.

Dare Group argues that leaving countries off the list that are more economically comparable is particularly egregious because the Department only considers countries that are on the list (except where none of those countries are significant producers of comparable merchandise). Therefore, Dare Group argues, this list is effectively a filter of potential surrogate countries and is inconsistent with the Department's regulations.

Dare Group and Decca point out that while the other four countries on the list from the Office of Policy are classified as middle-income countries by the World Bank, the Department chose India, even though it is classified by the World Bank as a low income country. Decca also criticizes the Department's lack of explanation why the Office of Policy chose only one country, Egypt, with a higher GNI than the PRC for inclusion on the list of comparable countries and further notes that the World Bank classifies India in a different economic stratum, as a low-income country, than the PRC, which it classifies as a middle-income country. Furthermore, Dare Group notes that the Department recently relied on these same World Bank criteria in defining the group of countries to be used for bench marking loans in the PRC Coated Free Sheet Paper case. See Coated Free

Sheet Paper. See also Novachem at 787 (noting that the DOC's selection of Thailand as a surrogate country was appropriate where, inter alia, "the World Bank places Thailand in the same economic classification as two of the countries listed in the 1990 memorandum."). Decca questions the Department's logic in relying on World Bank GNI data to measure economic comparability while ignoring the World Bank's analysis of economic comparability.

Dare Group argues that the Department's position that both India and the Philippines are comparable because they are both part of a broad continuum of economies is unreasonable. Citing Dorbest Ltd., Dare Group contends that "considering all countries on the list as "equivalent" ignores the concept that comparability is an "elastic concept." Moreover, according to Dare Group, the Department's position is tantamount to stating that differences in GNI have no meaning. This, according to Dare Group, would render the Department's governing regulation meaningless and would be inconsistent with past practice. See, e.g. Silocomanganese from Kazakhstan, Issues and Decision Memorandum at Comment 5.

Decca argues that, even if India and the PRC are economically comparable, the Philippines remains more economically comparable. Decca argues that the Department's contention that all market-economy countries within a broad per-capita GNI range are equally economically comparable is incompatible with the Department's obligations under the Act to calculate margins as accurately as possible. Decca contends that for the economic comparability standard to have any meaning the Department is obliged to select the most economically comparable country as the surrogate country, as that will provide the most accurate margins.

Petitioners argue that, contrary to respondents' assertions, the statute does not require the Department to select the country that is most comparable to the PRC. Petitioners argue that Tehnoimportexport, cited by Dare Group, clearly states that "the law does not require the ITA to choose the most comparable country, but rather a comparable country." Tehnoimportexport, 766 F. Supp. at 1175.

Petitioners argue that Dare Group mischaracterizes the CIT's holding in Tehnoimportexport. Petitioners contend that in Tehnoimportexport, the CIT established that once a threshold requirement of economic comparability is established, the statutory criterion is met, and that it will not overturn the Department's selection of the surrogate country simply because another country that also satisfied the threshold requirement is at a closer level of economic comparability to the NME country. Petitioners assert, therefore, that because India and the Philippines both meet the threshold requirement of economic comparability, it is within the Department's discretion to select India as the appropriate surrogate country.

Petitioners argue that the cases cited by Dare Group as examples of when the Department used the Philippines as the surrogate country are not applicable to the present review. Petitioners point out that, in Iron Construction Casings 1/24/91, the Department stated that the Philippines was the only country at a comparable economic level for which the Department could locate appropriate information. Additionally, in Certain Hardware 11/8/88, Petitioners note that India

was not among the countries identified as a potential surrogate, and the only manufacturer from the potential surrogates that responded to the questionnaire was from the Philippines.

Petitioners contend that respondents' allegations that India is not at a level of economic development comparable to that of the PRC is incorrect. Petitioners argue that neither the Act nor the Department's regulations require the Department to consider every country that may be economically comparable to the non-market economy country when compiling its list of potential surrogates. Petitioners state that the Office of Policy selects five countries that are economically comparable to the NME based on GNI, and once countries are on the list, they are not further ranked. Petitioners argue that this is in accordance with the Department's established and long-standing practice pursuant to section 773 of the Act, which states that the "valuation of the factors of production shall be based on the best available information regarding the value of such factors in a market economy country or countries considered to be appropriate by the administering authority."

Petitioners rebut Dare Group's argument that India should be disregarded because it is classified as a low-income country by the World Bank, while the PRC is classified as a middle-income country as invalid. Petitioners argue that this classification is a narrow classification for lending purposes, while for antidumping purposes the Department considers potential surrogates in the broader context of the spectrum of economic development across the world. Further, Petitioners claim that Dare Group's complaints that the Department skipped over 16 countries closer to the PRC in terms of GNI to reach down to India are misplaced. Petitioners argue that the unavailability of data from these countries makes them unsuitable as surrogate countries.

**Department's Position:** As stated in the Department's January 22, 2007, memorandum, "First Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China: Surrogate Country Selection - Period of Review 6/24/04 - 12/31/05" ("Surrogate Country Selection Memo"), and described in Policy Bulletin 04.1, the Department's practice is not to rank-order countries' comparability according to how close their per capita GNI is to that of the NME country in question. The Office of Policy creates a list of possible surrogate countries which are to be treated as equally comparable in evaluating their suitability for use as a surrogate country. The statute only requires the Department to use a surrogate country that is at a level of economic development comparable to that of the NME country. Policy Bulletin 04.1 notes:

> IA's current practice reflects in large part the fact that the statute does not require the Department to use a surrogate country that is at a level of economic development most comparable to the NME country.

While the Department's regulations at 19 CFR 351.408 instruct the Department to consider per capita income when determining economic comparability, neither the statute nor the Department's regulations define the term "economic comparability." As such, the Department does not have a set range within which a country's GNI per capita could be considered economically comparable. In the context of the World Development Report, which contains

approximately 180 countries and territories, the difference in GNI per capita between India and the PRC is minimal. As previously stated in the Surrogate Country Selection Memo, "while the difference between the PRC's USD1290 per capita GNI and India's USD620 per capita GNI in 2004 seems large in nominal terms, seen in the context of the spectrum of economic development across the world, the two countries are at a fairly similar stage of development." For example, in the World Development Report the four countries immediately higher than China in per capita GNI were Egypt (which was on the list of potential surrogate countries), Morocco, Columbia, and Bosnia. Their per capita GNIs were higher than China's by USD20, USD230, USD710, and USD750, respectively. India's GNI per capita was only USD670 lower than China's. Therefore, the Department disagrees with the contention that India is no longer economically comparable to the PRC.

Using this understanding of economic comparability, the Department currently formulates a non-exhaustive list in each proceeding of about five countries economically comparable to the NME country that, in the Department's experience, are most likely to offer data necessary to conduct the proceeding. In selecting the list of potential surrogate countries, the Department does not consider NMEs and non-state territories such as "West Bank/Gaza." The Department also did not include on its list ten countries which the Department believes would not have as much available and reliable data as India (i.e., Syria, Angola, Ivory Coast). Nevertheless, if parties suggest the consideration of another economically comparable country that did not appear on this initial list, the Department will also consider the appropriateness of using that country in its analysis. In this case, the country argued for by Respondents, the Philippines, was already included on the list and was considered equally with the other countries on the list including Indonesia, Sri Lanka, Egypt, and the chosen surrogate country, India.

As to whether the Department should have used the 2007 World Development Report as its source for the per capita GNI figures on which it bases economic comparability, the Department has an established practice to use the most current annual issue of the World Development Report that is available at the stage in the proceeding in which the Office of Policy issues its memo of potential surrogate countries. The Department relies on the most current printed issue of the World Development Report available at this early stage of the proceeding, and not on information that becomes available later in subsequent publications or online to allow the Department to meet other statutory deadlines. The Department cannot wait for a new World Development Report to be released before issuing the list of potential surrogate countries nor can it change the list if a new World Development Report is released during a proceeding. It is important for the Department to issue the list of potential surrogate countries in a timely manner so that interested parties have sufficient time to comment and to move the case forward. Moreover, even if the Department had used the 2005 data in this proceeding it would still have considered India economically comparable to the PRC and would have put India on the list and considered it equally with the other countries on the list.

The Department has an established practice for selecting a surrogate country in NME cases as explained in Policy Bulletin 04.1. In the instant case, the Department followed its normal

practice of choosing a list of countries that it considered economically comparable which have in the past provided reliable data while still allowing parties to argue for inclusion of other countries on the list. This practice is fully consistent with our statutory and regulatory obligations, and we find that, to date, our method of surrogate country selection has proven an extremely reliable means of obtaining sufficient amounts of reliable data from a comparable country with which to value factors of production in NME countries. Currently, the Department is examining its practice of selecting surrogate countries and is considering comments and suggestions from the public. All parties wishing to comment further on the broader issue of the Department's current surrogate country selection practice and proposed changes are welcome to participate in that process. See Surrogate Country Request for Comment, see also Antidumping Methodologies in Non-Market Economy Countries.

*B. Significant Producer*

Dare Group contends that the Philippines is a significant producer of comparable merchandise as defined by section 776 of the Act and argues that the Department must apply this section of the Act consistent with (1) its obligation to calculate dumping margins as accurately as possible, (2) the intent of Congress articulated in the Conference Report to the 1988 Omnibus Trade and Competitiveness Act, H.R. Conf. Rep. No. 100-567 (1988) ("Conference Report"), and (3) Commerce' Policy Bulletin 04.1 on "Non-Market Economy Surrogate Country Selection Process." Dare Group further states that the Conference Report, at 590, explains that the term "significant producer" of comparable merchandise includes a country that is a "significant net exporter" of comparable merchandise. Dare Group notes that Policy Bulletin 04.1 explains that if identical merchandise is produced by a country, then it qualifies as a producer of comparable merchandise. Dare Group argues that it has submitted evidence, discussed below, that demonstrates that the Philippines meets both of these criteria and is, therefore, clearly a significant producer of comparable merchandise as defined by the Department.

Dare Group and Decca submit that there is substantial record evidence supporting the conclusion that the Philippines is a significant producer of comparable merchandise. Specifically, in its October 3, 2006, comments, Dare Group notes that it put on the record a publicly available market study by an international furniture research firm, CSIL Milano, entitled "The Furniture Industry in the Philippines" ("CSIL Study"), that stated that the Philippines has thousands of producers of furniture of a wide range of materials including wood.[1] Dare Group states that the

[1] Dare Group asserts that the study states that there are 15,000 furniture manufacturers in the Philippines (CSIL at 12), more than the Department stated were in India when it found that India was a significant producer in the LTFV Investigation. See WBF Amended, 1/04/05 at 40. There are numerous US furniture brands present in the Philippine market, such as Ethan Allen (CSIL Study at 18), Maitland-Smith (id. at 21), and purchasers such as Pier 1 Imports, La-Z-Boy, Idea, Pottery Barn, and Crate and Barrel (Pearl2 Study (attached as Exhibit 6 to Dare Group's October 3, 2006 Response) at 57). Department stores such as JC Penny, Macy's and Marshall Fields "buy directly from the Philippine exporters" (id.). All this indicates that the Philippine industry is oriented toward producing furniture of a type competitive in the U.S. market and the world trade in furniture in general. Dare Group notes that, in 2004, 67 percent of Philippine furniture exports were destined for the United States (Pearl2 Study at 26), which

CSIL Study also indicates that the Philippines' home market consumes approximately 500 million U.S. dollars worth of furniture.

Dare Group and Decca argue further that evidence shows that the Philippines is a net exporter of WBF.[2] Dare Group notes that United Nations' statistics (available at http://unstats.un.org/unsd/comtrade) show that in 2005, the Philippines was a net exporter of wooden bedroom furniture classified under 940350 of the HTS (i.e., identical merchandise), both in terms of dollars and pieces. Dare Group contends that the Canadian International Development Agency study State of the Sector Report on Philippine Furniture 2004 at 9 (attached as Exhibit 6 to Dare Group's October 3, 2006, Response) states that the Philippines' industry produces items such as beds and chests of drawers.

Petitioners assert that India is a significant producer of comparable merchandise.

**Department's Position:** In the Department's Surrogate Country Selection Memo we determined, based on the record evidence, that both India and the Philippines are significant producers of comparable merchandise for purposes of surrogate country selection in this review. No party has challenged this determination in this review, and no evidence has been put on the record to change our analysis. Accordingly, the Department continues to find that both India and the Philippines are significant producers of comparable merchandise.

*C. Data Considerations*

Dare Group argues that the Department's statement in its Surrogate Country Selection Memo at 10-11, that using India as a surrogate country in the original investigation was upheld in Dorbest Ltd., is not relevant to the instant proceeding. Dare Group contends that in the original investigation, the alternate surrogate country advocated by respondents was Indonesia, not the Philippines, and that the Department's selection of India over Indonesia was based on flaws and inaccuracies in the Indonesia data. Furthermore, Dare Group asserts that the CIT did not hold that the Department is required to use India as the surrogate country in every case, or that India is preferable to the Philippines and reiterates its request that the Department use the Philippines data for the final results.

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Dare Group claims confirms that Philippine furniture is of a quality and design that is competitive in the U.S. market and thus reflects the characteristics of world production of, and trade in, the merchandise. Dare Group argues that the foregoing demonstrates that the Philippines qualifies as a "significant producer of comparable merchandise" consistent with the statute, the Conference Report, and the Department's Policy Bulletin.

[2] The Philippine Exporters Confederation lists hundreds of members from the "Furniture Sector." See Exhibit 8 to Dare Group's October 3, 2006, Response. The Philippine Board of Investments lists 23 companies as being partly owned by foreign investors. Pearl2 Study, Exhibit 6 to Dare Group's October 3, 2006, Response at 10.

Dare Group and Starcorp argue that the Department's reasons for selecting India rather than the Philippines on the basis of data considerations are unsupported. Dare Group and Starcorp note that the Department made four incorrect factual findings in the Preliminary Results in support of the conclusion that the Indian data are more specific, more comprehensive, and are the best available public data for calculating an accurate normal value. Dare Group and Starcorp contend that these findings are either erroneous, or the deficiencies have been corrected by evidence put on the record by Dare Group.

First, Dare Group argues that the Department was incorrect when it stated that FOP-specific HTS data for birch lumber and pine lumber are available in the Indian HTS data, but are not available in the Philippine HTS data. Dare Group contends that it submitted Philippine HTS data in its October 24, 2006, submission. Second, Dare Group argues that the Department erroneously stated that the Philippine HTS statistics lack contemporaneous data for imports of mahogany lumber, because no party has used mahogany in this review. Third, Dare Group argues that the Department incorrectly stated that there are no Philippine surrogate value data on the record for brokerage and handling. Dare Group notes that it submitted the Philippine government-established brokerage and handling value as well as contemporaneous information corroborating the accuracy of that value in Dare Group's March 15, 2007, response at 4-6 and in Exhibits 6-7, and it provided a calculation of the necessary conversion rate.

Finally, Dare Group contends that the Department was misleading when it stated that the Indian HTS data cover 21 separate categories of lumber whereas the Philippine HTS data cover only ten separate HTS categories. Dare Group notes that only 11 of the 21 Indian categories shown on the Department's printout had imports during the POR, while the other categories either had no activity or were phased out prior to the POR. Dare Group further contends that, of the 11, the Department only used eight: 4407.99.90, 4407.92.00, 4407.10.90, 4407.29.90, 4407.10.10, 4407.91.00, 4407.10.20, and 4407.99.10. Dare Group further submits that Philippine lumber imports are actually reported under six 8-digit HTS codes, in comparison to eight Indian categories used by the Department.

Dare Group argues that the Indian WTA data used by the Department are not accurate because the Indian import classification system is fraught with inaccuracies. Dare Group cites Exhibit 13 of its March 15, 2007, response, which contained an April 2006 study by the Research and Information System for Developing Countries which was conducted as part of the Asia-Pacific Research and Training Network on Trade (ARTNet) called, "Trade Facilitation Priorities in India and Commitments at WTO: An Overview of Current Trends." This study, according to Dare Group, recounts a separate study by the Indian Ministry of Commerce and Industry finding that wrong product classifications in 11 percent of the imports studied. Dare Group notes that in this study, when EDI (electronic data interface entries) are considered, the number of wrong product classifications was up to 30 percent for imports. Additionally, Dare Group cites to a separate United Nations study that noted misclassifications of over 30 percent. See An Exploration of the Need for and Cost of Selected Trade Facilitation Measures in Asia and the Pacific in the Context

of WTO Negotiations (United Nations publication 2006) at 20, in Dare Group's March 15, 2007, Submission at Exhibit 15 ("United Nations Study").

Furthermore, Dare Group argues that, in addition to classification inaccuracies, studies show that Indian customs valuations are inaccurate. Dare Group cites a 2006 study conducted as part of the UNESCAP/ARTNet and United Nations Development Program that found that 15-18 percent of the total trade transactions in India may represent transactions involving "misdeeds" such as under invoicing, third-country invoicing, double invoicing, adjustable selling prices, mis-grading of material composition, and different values declared in third-country invoices. See Customs Valuation in India: Identifying Trade Facilitation Related Concerns at 20 and 25, Box III.1: "Nature of Under Invoicing in Different Cases" submitted as Exhibit 14 to Dare's March 15, 2007, submission. Dare Group further states that the March 31, 2006, report by the Office of the U.S. Trade Representative found that "the GOI appears to apply discretionary customs valuation criteria to import transactions." Dare's March 15, 2007, Submission at Exhibit 17 (2006 National Trade Estimate Report on Foreign Trade Barriers at 302) ("USTR Study"). The report also indicated that declared transaction value was frequently rejected and that the GOI reverted to "reference prices" for soybeans due to alleged under-invoicing.

Citing Petitioners Pre-Preliminary Results comments at 22, Dare Group argues that Indian Customs ignores proper classification of goods at the eight-digit level where the tariff rates are the same. Dare Group cites to its January 23, 2007, and March 15, 2007, submissions where Dare Group submitted evidence that, with respect to the 161 factors which the Department valued for Dare Group using surrogate values from India, 139 of them showed identical tariff rates at the eight-digit level under the applicable six-digit subheading. Dare Group contends that this leads to the logical conclusion that 139 of Dare Group's FOPs were valued with HTS categories that contained misclassified material.

Dare Group argues that, in addition to the studies discussed above, the record is replete with confirmed instances of actual misclassifications and inaccuracies during the POR with respect to the HTS categories needed to value significant FOPs, such as mirrors, lumber, plywood, and cardboard. Dare Group notes that for plywood, the Department excluded data from two countries that it concluded were aberrational. Dare Group contends that for mirrors, InfoDrive data shows that Indian importers classify rear-view mirrors in the same classification as unframed mirrors. Dare Group argues that for certain packing materials, Indian importers classify "Elboard" and "pre-compress pressboard" under both 4808.10.00 and 4808.90.00. Dare Group further argues, citing the Department's Preliminary Factor Value Memorandum at 8, that in the Preliminary Results the Department had so little confidence in the accuracy of the Indian HTS's distinction between "box" and "carton" at the eight-digit level that the Department collapsed the two breakouts. And for lumber, Dare Group argues that, of the eight Indian HTS codes for lumber used by the Department to value factors in the Preliminary Results (i.e., 4407.10.10, 4407.10.20, 4407.10.90, 4407.29.90, 4407.91.00, 4407.92.00, 4407.99.10, and 4407.99.90) InfoDrive data submitted by Dare Group on March 15, 2007, (exhibit 29) confirm that misclassifications within the 8-digit breakouts appear in seven of the HTS categories.

Dare Group further argues that, on the other hand, complete and accurate information from the Philippines to value FOPs is available and on the record of this review from the WTA, the same source used by the Department to access Indian trade data. Moreover, Dare Group contends that none of the above-mentioned inaccuracies exist within these data from the Philippines. Specifically, Dare Group asserts that it put on the record:

- The complete Harmonized Tariff Schedule of the Philippines
- General information about the Philippines industry (i.e., Furniture Industry Studies submitted in October 3, 2006, Submission and Doing Business in the Philippines submitted in Dare's October 24, 2006, Submission)
- Exchange Rate Calculation for the Philippines
- AUVs for 200 different inputs used in the production of wooden bedroom furniture from the WTA (the exact same source used by the Department to derive AUV figures for Indian imports)
- Surrogate values for electricity and inland freight from publicly available sources
- Five financial statements from Philippine producers, obtained from the SEC of the Philippines (see Exhibits 90, 92, 93, 95, and 97 of Dare Group's October 24, 2006, Submission (Philippines))
- Information confirming that each of the five financial statements is from a company that produces subject or comparable merchandise (see Exhibits 91, 94, 96 and 98 of Dare Group's October 24, 2006, Submission (Philippines)).
- Surrogate value for brokerage/handling (see Dare Group's March 15, 2007, submission at 4-7 and Exhibits 6-7)

Petitioners argue that the respondents have not established that the data from India are less accurate than data from the Philippines. Petitioners note that the Indian and Philippine data come from the same source, the WTA and, therefore, alleged inaccuracies of the former's data would also exist for the latter. Petitioners allege that Dare Group has acknowledged as much in its case brief, at 5. Also, citing to Dorbest Ltd., Petitioners claim that the CIT has stated that India provides reliable data for the valuation of FOPs. Lastly, Petitioners note that all parties were able to provide Indian data to value their FOPs.

Moreover, Petitioners argue that the Department cannot rely on Infodrive data to analyze the accuracy of Indian WTA data because Infodrive data are distorted, incomplete and unreliable. Citing to Dorbest, Petitioners note that the Department has expressed that because Infodrive data normally do not account for all imports under HTS headings, and do not report data in uniform units, it will not use Infodrive data as a benchmark to analyze MSFTI data unless the datasets are virtually identical. See Dorbest Ltd., 462 F. Supp. 2d at 52. Petitioners submit that in the present case there are significant inconsistences between the WTA and Infodrive data for many of the HTS classifications used in this review, which renders Infodrive unusable as a benchmark to determine the reliability of the WTA data.

Furthermore, Petitioners argue that the independent studies cited by Dare Group as evidence that Indian HTS data are unreliable are either invalid or irrelevant to this review. Petitioners note that the study by the Indian Ministry of Commerce and Industry (Dare Group's Final Phase Factor Values Data at Exhibit 13 (March 15, 2007), which states that wrong product classifications have been found in 11 percent of cases, is only vaguely cited as "Business Standard, 25th August 2005" and does not provide the time period for the data examined nor how they were collected. In addition, Petitioners contend that EDI data demonstrating errors as high as 30 percent reflect exports, and the quote from the United Nations study is not supported by citation.

Regarding valuation, Petitioners contend that the study cited by Dare Group, Customs Valuation in India, is not reliable because it is described as a "pilot" or benchmark" study that was focused only on certain products and was not comprehensive, that no structured questionnaire was circulated to the interviewing firms in the study, and that the study recognized that the effects of the under-invoicing are different for different sectors. Additionally, Petitioners argue that of the chapters reported, the ones relating most closely to WBF do not account for the alleged degree of problems.

Petitioners contend that the USTR Study referenced by Dare Group is cited out of context. Petitioners assert that the report merely states that "the GOI appears to apply discretionary customs valuation," that specifically declared transaction values may be rejected for automotive parts, and that the USTR Study noted a problem with reference prices for soybeans. Petitioners contend that Dare Group inappropriately tries to expand these statements to Indian Customs as a whole.

In addition, Petitioners contend that the "25 Chapters of Indian HTS" that Dare Group submitted in its March 15, 2007, submission as evidence of identical tariff rates at the eight-digit HTS level cover excise tariff rates, not import duty rates. Petitioners argue, therefore, that any conclusions drawn from these data are invalid.

Finally, Petitioners state that Dare Group's claim that Petitioners admit that Indian customs ignores HTS classifications at the eight-digit level, and ignores classifications entirely unless there is a difference in tariff amount is a misrepresentation of Petitioners' arguments taken out of context. Petitioners argue, further, that Dare Group misrepresented Petitioners' arguments regarding Indian importers' inconsistent classification of, for example, elboard and precompressed pressboard under both HTS 4808.10.00 and 4808.90.00, and when it stated that Petitioners agree that there are serious flaws in the Indian import regime. Petitioners assert that they were pointing to specific limited problems in response to classifications proposed by respondents in this review, and urge the Department to disregard Dare Group's argument with respect to the Indian import statistics.

**Department's Position:** The Department has continued to find that for this review, India has the best available public data for valuing respondents' FOPs. In this review, the Department was

successful in finding publicly available data specific to the inputs in question, net of taxes and import duties, and contemporaneous with the POR, for the vast majority of inputs.

The Department does not find that the studies relating to Indian HTS classification and valuation put on the record by Dare Group as evidence that the Indian HTS system is not accurate are sufficiently specific to the inputs in this case to qualify as evidence of inaccurate surrogate value data in this review. For example, the USTR Study relates to automotive parts and soybeans, the United Nations Study makes only parenthetical reference to India in relation to misclassifications and is not supported by citation, and the ARTNet Study does not appear to be specific to any inputs in this review.

Nor does the Department concur that Dare Group's submitted evidence of 14 Indian FOPs with allegedly distortive data implies that all Indian data are inaccurate. Dare Group asserts that record evidence shows distortions in the Indian data used to value plywood, mirrors, corrugated paper/cardboard, and Indian lumber HTS classifications 4407.10.10, 4407.10.20, 4407.10.90, 4407.29.90, 4407.91.00, 4407.92.00, 4407.99.10, 4407.99.90, 4408.10.20, 4408.90.90, and 4410.31.10. However, upon analysis of Dare Group's submitted evidence, that Department finds that Dare Group greatly overstates its case. Of the 14 Indian surrogate values that Dare Group alleges are distorted, the Department finds that there is credible record evidence only to determine that three surrogate values were inaccurate. The Department has determined that the Indian HTS 4412.14.90, used to value plywood in the Preliminary Results, is distorted by aberrational data, and has excluded these data from its calculation. See Comment 11: Exclusion of Myanmar and Bhutan Data in the Surrogate Value Calculation for Plywood. The Department has also determined that Indian HTS 7009.91.00, used to value mirrors, is distorted by misclassified products, and has determined to value this FOP with alternate data. See Comment 12: Surrogate Value Source for Mirrors. Lastly, examination of the data submitted by Dare Group shows possible distortion of one of the lumber Indian HTS categories alleged to be distorted, as discussed further, below.

Of the ten Indian HTS codes for lumber and veneer for which Dare Group claims to have submitted Infodrive evidence of distortion, analysis of the evidence supports the claim of distortion for only one input. For four of the HTS classifications the Infodrive data themselves either appear aberrational, by showing greater total value than the WTA data, or cover an insufficient amount of the WTA data to be a useful gauge of their accuracy: 4407.10.10 (Infodrive shows more total value than WTA); 4407.10.20 (Infodrive is only four percent of WTA value, after excluding Infodrive data for Austria, which are not even included in WTA); 4407.10.90 (Infodrive is only 20 percent of WTA, and report from 220 percent to 4000 percent higher value than WTA for four countries); 4407.2990 (Infodrive data are only 37 percent of WTA, and reports higher value than the WTA for three countries). Additionally, for five of the HTS classifications the Infodrive data demonstrated misclassifications too small to qualify as distortive, ranging from approximately 0.3 to eight percent: 4407.92.00, 4407.99.90, 4408.10.20, 4408.90.90 and 4410.31.10. In fact, the Dare Group evidence seems to support its argument of

misclassification for only one of the lumber HTS classifications, 4407.99.10.[3] Thus, in total, Dare Group has submitted evidence on the record that supports its claims of distortion of specific Indian data for only three surrogate values. In light of the many hundreds of factors successfully valued in this review using Indian data,[4] the Department does not consider respondent's evidence that Indian data are distortive for only three factors as sufficient evidence that Indian data are inadequate.

The Department finds that Dare Group again overstates its case when it claims to show that the four specific findings cited by the Department as reasons that Indian data were determined to be superior to Philippine data in the Surrogate Country Selection Memo were incorrect or no longer valid. Dare Group's assertion that it submitted Philippine HTS data for the inputs "pine" and "birch" is misleading at best. The HTS numbers that Dare Group submitted were both general basket categories, not specific to these inputs at all: 4407.10.00 ("coniferous wood") for pine, and 4407.99.00 ("other woods") for birch.

Further, Dare Group's contention that the Department mischaracterized the data when it claimed that Indian HTS data covered 21 categories of wood while Philippine HTS data cover ten, is not supported. The fact is that the Indian HTS has 21 categories, while the Philippine HTS has ten. Dare Group compares the Indian HTS categories actually used to value inputs, to all of the Philippine HTS categories, whether they would have been used or not, to conclude that the accurate characterization is that Indian HTS data cover eight categories, to the Philippines' six. We note that even Dare Group's conclusion shows that the Indian HTS is more specific to wood inputs than the Philippine HTS. However, we also note that Dare Group's argument skews the comparison of the two datasets because there is no reason to believe that all of the Philippine categories would be applicable. For example, Philippine HTS 4407.92.00 would certainly not be used, just as this Indian HTS was not used. Therefore, the comparison would be eight Indian categories versus, at the very most, five Philippine HTS categories.

Additionally, of the five Philippine HTS categories for lumber that may be applicable to this review, three of them are broad basket categories: 4407.99.00 ("other woods ..."), 4407.10.00 ("coniferous wood ..."), and 4407.29.00 (other tropical woods ... "). That leaves only two Philippine HTS classifications specific to a particular wood: 4407.91.00 ("oak"), and 4407.92.00 ('beech"). On the other hand, there are five Indian HTS categories specific to a particular type of wood: 4407.99.90 ("beech"), 4407.10.10 ("douglas fir"), 4407.91.00 ("oak"), 4407.10.20 ("pine"), and 4407.99.10 ("birch"). Each of these specific categories was used in this review. Accordingly, we continue to find that Indian HTS covers lumber inputs significantly more thoroughly than the Philippine HTS.

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[3] No party has submitted comments arguing that the Department should not use Indian HTS 4407.99.10 as a surrogate value, thus, we do not reach that conclusion here.

[4] Not including Starcorp, the Department has valued approximately 400 FOPs for the remaining four respondents.

We agree that because no party to this review used the input "mahogany," it is irrelevant in this review that the Philippine HTS data do not cover this input. Also, we agree that Dare Group later corrected one of the deficiencies cited by the Department in our Surrogate Country Selection Memo when it submitted a Philippine surrogate value for brokerage & handling on the record after the Preliminary Results. We note that this information was submitted on March 15, 2007, long after the Surrogate Country Selection Memo was written, and after the Preliminary Results. However, we continue to find that Indian HTS data are more specific to the inputs in this review than Philippine HTS data. In particular, Dare Group has acknowledged that the Indian HTS classifications for lumber, the most significant input in this review, are more specific by a margin of eight to six. In fact, as discussed above, analysis of the data shows that Indian HTS classifications are far more specific to the lumber inputs than Dare Group conceded. Furthermore, the presence of data for brokerage and handling from the Philippines does not negate the other concerns cited as to the Philippine data, and does not, by itself, alter our conclusion that India, overall, provides more reliable data.

Additionally, though Dare Group claims to have submitted Philippine data to value electricity and truck freight, the submissions are inadequate. In Dare Group's first submission of electricity data, there is no indication of how the electricity data were compiled, nor do the data appear to be nationwide, apparently covering only four areas. See October 24, 2007, submission of Philippine surrogate value data, at Exhibit 88. Further, the Department has declined to use the CEA data submitted by Fine, and later by Dare Group, based primarily on concerns regarding how the data were compiled. See Comment 15: Surrogate Value Source for Electricity.

The freight data proffered by Dare Group consist exclusively of the line "Cargo Truck (10 wheeler) Naga ? {sic} Manila (rates vary depending on truck load and exact destination) 12,000 - 15,000." Further, the only indication that Dare Group provides to explain from where the two-page exhibit providing these data came is to cite "a report called 'Cost of Doing Business' in Camarines Sur." See October 24, 2007, submission of Philippine surrogate value data, at 15 and Exhibit 89. These freight data are clearly not representative of a broad market average, as they pertain to only one route: Naga to Manila. It is not clear from the data source whether they are tax-exclusive or contemporaneous with the POR and, because the source of these data is not properly cited, the Department is unable to investigate these matters further.

Accordingly, because the Department was able to find accurate data from India to value virtually all of the many FOPs in this review, because we find that these data are more input-specific than those from the Philippines, and because there are no viable Philippine surrogate value data on the record for several inputs, including electricity and truck freight, we continue to find that India has the best available public data for calculating an accurate normal value in this review.

*D. Burden and Predictability*

Dare Group argues that changing the surrogate country to the Philippines for the final results will cause no undo burden on the Department, especially since, due to an alleged error in the

calculation of the Indian surrogate values, the Department will have to re-calculate all of the surrogate values anyway. Additionally, Dare Group argues, because the Philippines' data are obtainable from the same source as the Indian data, the Department will only have to make minor changes in its program to extract the Philippine data. Furthermore, according to Dare Group, the Department has used the Philippines as the surrogate country in previous other antidumping cases. See Iron Construction Castings; Certain Hardwear from the People's Republic of China.

Dare Group contends that the Department has an obligation to calculate antidumping duties as accurately as possible, and that any difficulty arising from changing the surrogate country does not relieve the Department of that obligation. Dare Group cites to Tehnoimportexport and Kerr-McGee as precedent that the CIT has rejected the argument that a change in the surrogate country between the preliminary results and the final results is unfair. Further, Dare Group contends that all parties have been on notice that Dare Group advocates the use of the Philippines' data, and therefore would not be wrongly prejudiced if the Department were to use the Philippine data for the final results. And finally, Dare Group argues that if the Department selects the Philippines as the surrogate country for the final results, then the Department should use the Philippine HTS classifications proposed by Dare Group in their entirety.

Dare Group notes that Petitioners have argued that the Department should continue to use India as the surrogate country because it fosters predictability. However, Dare Group argues that predictability is not a sufficient reason to deny accuracy in margin calculation. Citing Dorbest Ltd., Dare Group argues that predictability is not sufficient reason for the Department to use a methodology that is inaccurate. Dare Group also points out that, unlike for wage rates which the Department will only recalculate once a year, it is Department practice to review anew the choice of surrogate country for each proceeding and to select the best surrogate country for that proceeding based on the record evidence. Dare Group argues, further, that the Department will even change the surrogate country within the same proceeding, citing to Tehnoimportexport, 15 CIT at 255, Kerr-McGee Chem. Corp. v. United States, 21 CIT at 28, Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China, 62 FR 6189, 6195 (Feb. 11, 1997), affirmed Peer Bearing Company v. United States, 25 CIT 1199 (October 25, 2001); Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results and Partial Termination of Antidumping Duty Administrative Review, 62 FR 6173 (February 11, 1997), affirmed The Timken Co. v. United States, 23 CIT 509 (July 30, 1999).

Petitioners argue that if the Department were to select the Philippines as the surrogate country for the final results, it could not, as Dare Group contends, use the Philippine data submitted by Dare Group in its entirety to value all FOPs. Petitioners state that several rounds of supplemental questionnaires were necessary to establish the correct classifications within the Indian HTS categories, and that the same would be necessary with Philippine data. Furthermore, Petitioners argue that it is not the Department's practice to use one respondent's reported factor inputs to value another respondent's normal value. See Folding Metal Tables and Chairs 4/24/02.

Petitioners contend, therefore, that it would be a significant burden upon the Department to switch surrogate countries from India to the Philippines for the final results.
Contrary to Dare Group's assertions, Petitioners argue they have not claimed that predictability is more important than accuracy in this review. Petitioners argue that predictability is, however, a valid goal in the conduct of the review, and that use of India as the surrogate country will enhance predictability.

**Department's Position:** We agree that burden and/or predictability are not sufficient bases for the Department to choose a surrogate country that does not meet the criteria described in the Department's Policy Bulletin 04.1, and we have not based our selection on these factors in this review.

Accordingly, based on the above, we continue to find that India is the most appropriate surrogate country for determining surrogate values in the instant administrative review, based on our determinations that: 1) India is at a comparable level of economic development to the PRC; 2) India is a significant producer of comparable merchandise; and 3) India provides the best opportunity to use contemporaneous publicly available data to value all FOPs.

**Comment 2: Labor Rate Methodology**

Dare Group argues that the Department's regulation covering the calculation of the wage rate surrogate value is ultra vires and conflicts with section 773(c)(4) (A) of the Act. Dare Group argues that the Act stipulates that the Department shall, to the extent possible, calculate surrogate values using data from market economy countries that are at a level of economic development comparable to that of the nonmarket economy country and which are significant producers of comparable merchandise. That 19 CFR 351.408(c)(3) does not require the Department to calculate the surrogate value for labor using data from market economy countries at a comparable level of economic development or that are significant producers of comparable merchandise, according to Dare Group renders the regulation contrary to the statute and to Congressional intent. Moreover, Dare Group contends that the Department could comply with the statutory intent as evidenced by the fact that the Department utilizes data from such countries in its calculation of the labor surrogate value. According to Dare Group, the Department intended to include language in 19 CFR 351.408(c)(3) restricting the source of data used to calculate the labor surrogate value to data from market economy countries at a comparable level of economic development, but inadvertently failed to include such language in the final draft of 19 CFR 351.408(c)(3). Dare Group argues that as originally proposed and released for public comment in 1996, 19 CFR 351.408(c)(3) read as follows:

> "Labor. For labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries found to be economically comparable to the nonmarket economy country under section 773(c)(4)(A) of the Act. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The

calculation will be based on current data, and will be made available to the public."

See Proposed Rule at 7345. Dare Group claims that in the preamble to Proposed Rule the Department stated " . . . paragraph (c)(3) directs the Department to use what is essentially an average of wage rates in market economy countries viewed as being economically comparable to the NME." See Proposed Rule at 7345. From this Dare Group concludes that the following language was mistakenly not included in the final regulation: " . . . found to be economically comparable to the nonmarket economy country under section 773(c)(4)(A) of the Act." In support of this contention, Dare Group argues that when the final regulations were published they stated "After a further review of paragraph (c)(3) and the comments relating thereto, we have left paragraph (c)(3) unchanged." See Final Rule at 27367. Moreover, Dare Group argues that while the Department affirmatively rejected a proposal to limit countries used to calculate the surrogate value for labor to significant producers it did not affirmatively reject a limit with respect to countries at a comparable level of economic development.

In addition, Dare Group contends that the Department's last step in the wage rate calculation introduces theoretical distortion into the result. Dare Group argues that the Department will not use NME costs and prices in antidumping calculations based on the theory that such prices and costs are distorted by government intervention, yet it uses the PRC's GNI in the last step of its regression-based wage rate analysis where the PRC per-capita GNI is multiplied by the market economy regression coefficient for the per-capita GNI variable. Dare Group contends that GNI is a figure based on national income, "which necessarily is a function of costs and prices . . .," the very elements the Department deems unreliable.

Citing an opinion and supporting analysis from an economist, Dan Klett,[5] Dare Group argues that the surrogate value calculated for labor using the Department's "constant slope" approach is distorted. Dare Group claims that this methodology consistently overestimates the wages for lower income countries. Dare Group contends that the Department's methodology results in wage rates overstated by 20 percent on average for countries with wage rates lower than USD1.00. Dare Group claims this distortion is corroborated by data comparing the Department's constant slope approach with an approach based on " . . . a constant elasticity between wages and GNI." Dare Group claims that one reason for this distortion is that the Department's calculation includes a built-in minimum wage due to the "Y-intercept of USD0.09" which imputes a positive wage rate to a country with a GNI of zero. In addition, Dare Group argues that the dataset used by the Department is heavily weighted towards upper-middle and higher-income countries. Dare Group contends that of the 58 countries used in the Department's calculation, 2 are low-income, 14 are low-middle-income , and 42 are upper-middle and higher-income countries. Dare Group argues that 70 percent of the data points in the Department's regression analysis are based on wage/GNI data from countries far above the PRC in terms of economic comparability.

[5] See March 16, 2007 and April 5, 2007 submissions from Dare Group, Starcorp, Aosen and Foshan.

Dare Group argues that the graph on the Department's website demonstrates that the surrogate value calculated by the Department using an OLS methodology is distorted. Dare Group contends that the heteroscedasticity observed with respect to the higher-wage countries has a disproportionate effect on the slope of the line depicting "predicted inflated wages." Dare Group claims the heteroscedasticity shown in the graph on the Department's website results in a lower slope of the predicted inflated wage line and increases the Y-intercept, thus inflating the wages for the lower-wage countries closer to the X-Y intercept. See http://ia.ita.doc.gov/wages/index.html.

Dare Group argues that the distortions in the Department's approach can be reduced or eliminated by using several alternative calculations, including the Log-Log approach and Regression through Origin approach. Dare Group asserts that the Department's regulations do not require the Department to use the OLS approach, rather, the regulations stipulate only that the Department will use "regression-based wage rates."

Dare Group argues that in using the OLS approach the Department assumes a linear relationship between per-capita GNI and hourly wages. That is, a one dollar increase in per-capita GNI is associated with a certain constant increase in the hourly wage. Dare Group asserts that other relationships are possible, e.g., a one percent change in income could be associated with a varying percent change in hourly wages. Dare Group claims that this relationship assumes a constant elasticity between the wage and GNI rather than a constant slope. Dare Group claims that a review of the calculation of GNI and per-capita GNI demonstrate that a linear relationship may not exist between per-capita GNI and hourly wages. According to Dare Group, the correct functional form of the regression analysis must be linked to the a priori expected relationship. Dare Group asserts that the basic formula for calculating GNI is GNI = Labor Compensation (L) + net taxes on production (T) + operating surplus plus mixed income (S). Dare Group claims that this formula can be restated to calculate per-capita GNI as follows: per-capita compensation of labor (L/P) = per-capita GNI (GNI/P) - per-capita resource income (R/P). Dare Group argues that this demonstrates that wage earnings, (L), are strongly related to per-capita GNI, but that the amount of non-labor income, (R/P), is also an important determinant. Dare Group argues that variation across countries of per-capita resource income (R/P), different national conventions regarding wage earnings as opposed to benefits, and different employment rates explain a significant portion of the variability of the wage-to-per-capita GNI relationship across countries.

Dare Group argues that there are two other reasons why the constant elasticity approach appears preferable to the constant slope approach embodied in the Department's methodology. First, the equations for GNI discussed by Dare Group above, suggest that a zero value for per-capita GNI is unlikely and that a positive value for wages as GNI reaches zero is untenable. Further, Dare Group argues that the linear relationships modeled by the Department imply negative resource earnings that exactly offset labor earnings to produce a zero GNI. Furthermore, Dare Group argues that although a GNI of zero is unlikely, the fact that the Department's equations not only allow for, but consistently produce, an internally inconsistent result suggests that the Department's functional form is incorrect. Second, Dare Group argues that the consistent over-

estimation of wages for low-income countries by the constant slope OLS estimator suggests that the relationship between wages and GNI is elasticity based. Dare Group claims that this type of relationship would be consistent with the expanding role of benefits relative to cash wages in many advanced, higher income countries. Dare Group claims that when the constant slope approach is applied to U.S. time series data on GNP per-capita and wages data, an hourly wage exists when per-capita GNP is zero, repeating the flaw in the Department's wage rate regressions.[6] Dare Group argues that regardless of the data set analyzed, the OLS methodology results in over-estimation of wages at lower incomes and implied wages at zero income.

Additionally, Dare Group argues that the functional form required to implement the constant elasticity approach is the "log-log" functional form. Dare Group describes the process by which this form is used to calculate a surrogate value for labor as follows. First, the data set is transformed by taking the natural log of both hourly wages and per-capita GNI. Then an OLS regression is run on the transformed datastet. Dare Group states that the resulting estimator contains a constant and a coefficient for per-capita GNI that can be interpreted as an elasticity, the percent change in the hourly wage given a one percent change in per-capita GNI. Dare Group claims that the NME wage is estimated by inserting the per-capita GNI of the NME country into the equation and then the predicted NME wage is transformed back into dollars and cents by taking the exponent of the wage, which is in the form of a natural log. Dare Group claims that when this methodology is applied to the Department's 2004 dataset, the resulting predicted wage is USD0.703 per hour. Dare Group claims that using this methodology, calculation of a per-capita GNI of zero is not possible because a natural log can only transform a number greater than zero. Also, Dare Group claims, testing a number close to zero, i.e., 0.001, using the log-log estimator yields a wage rate of 0.0000005, which is only slightly larger than zero. Further, Dare Group claims that applying the Department's conversion factor implies an annual wage of approximately USD0.01 which is consistent with the per-capita GNI used in the equation. Dare Group asserts that, therefore, the log-log estimator produces theoretically sound and internally consistent results. Dare Group claims that an additional advantage of the log transformation is that the constant elasticity functional form has less variation than the constant slope functional form and thus rids otherwise sound equations of heteroscedasticity. Furthermore, Dare Group claims that the log-log functional form is flexible and accurate. Dare Group claims that in any given year if the relationship between per-capita GNI and the hourly wage is linear, as the Department's methodology assumes, the log-log estimator, if it includes an assumption that the relationship between GNI per capita in 2004 and wage rates is perfectly linear, would result in the calculation of a surrogate value very similar to that calculated by the Department using OLS. Dare Group claims that using 2004 wage and GNI data used by the Department in its OLS calculation, and using the log-log estimator it calculated a labor rate surrogate value of USD0.834 almost exactly the same value as calculated by the Department, USD0.832.

[6]Dare Group relied on U.S. GNP and wage data from the Economic Report of the President for 2007, available at http://www.whitehouse.gov/cea/pubs.html covering data from the period 1964 to 2005 and calculated an hourly wage of USD1.92 per hour when per-capita GNP is zero.

Moreover, Dare Group argues that an alternative methodology available to address the statistical anomaly of positive wages at zero GNI is a technique known as RTO. Dare Group claims that this methodology is appropriate when there is strong reason to believe that when the independent variable is zero, the dependent variable is also zero. Dare Group contends that this methodology is appropriate because there is an expectation that when a country's GNI is zero, the wage rate would also be zero. Dare Group asserts that three diagnostic tests indicate that RTO is a more appropriate estimator than standard OLS. First, the constant of the OLS regression, tested for significance using the dataset's "t" statistic, indicates that the value of zero is well within the 95 percent confidence interval for the constant. Second, a comparison of the OLS and RTO equations, as well as the standard errors of the GNI slope coefficients demonstrates that the standard error of the RTO equation is lower than the standard error of the OLS equation. In addition, Dare Group argues that the standard error for the GNI slope coefficient is also lower for the RTO estimator. Further, Dare Group contends that the confidence interval for the GNI slope coefficient in the RTO estimator is narrower. Dare Group argues that applying this methodology to the 2004 wage and GNI data used by the Department in its OLS calculation, it calculated a surrogate labor rate of USD0.745 per hour.

Dare Group argues that the Department's estimated wage rate exceeds the actual wage rates for the PRC. Dare Group states that an August 2005 study by BLS concluded that the average hourly wage for the PRC in 2002 was USD0.57 per hour. Dare Group claims that the Department's estimated wage rate covering the same period was USD0.85 per hour. Dare Group contends that for 2004 the BLS estimated the PRC's manufacturing wage rate to be USD124.00 per month, or USD0.67 per hour. Dare Group claims that the Department's estimated wage rate covering the same period was USD0.83 per hour, evidencing a 24 percent distortion.

In the alternative, Dare Group concludes that if the Department does not correct the methodological flaws outlined above, in the final results it must use the more updated labor rate (February 2, 2007) from its website of USD0.83 per hour.

Petitioners argue that 19 CFR 351.408(c)(3) is not ultra vires or contrary to the Department's intent. Petitioners argue that the CIT rejected this same argument in Dorbest Ltd. and that Dare Group has provided no new information or argument that would require the Department to reconsider this issue. Additionally, Petitioners argue that sections 773(c)(1), 773(c)(3), and 773(c)(4) of the Act afford the Department substantial discretion to define the FOPs and to select the appropriate methodology to value FOPs. Petitioners argue that the CIT held that the "statute does not direct Commerce to use a specific method in its valuation of labor."[7] Moreover, Petitioners contend that where no specific methodology is required by a statute, the agency's interpretations "are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute."[8] Petitioners contend that, therefore, the Department may interpret and

[7]Petitioners cite Luoyang.

[8]Petitioners cite Chevron.

implement the statute in its role as the administering authority, so long as it acts "rationally."[9] Petitioners argue that in 1996 the Department proposed regression-based analysis to replace existing ad-hoc practices to calculate the surrogate value for labor. Petitioners contend that in its request for comments, the Department stated that its practice at the time, to use labor data from only one surrogate country, resulted in wage rate variations and unpredictable margin calculations.[10] Petitioners contend that after carefully considering interested party comments as to whether regression-based analysis was appropriate in this respect, the Department implemented 19 CFR 351.408(c)(3), which stated that the Department will use regression-based wage rates to calculate wage rate surrogate values. Petitioners contend that the Department stated that this methodology would enhance the accuracy, fairness, and predictability of the Department's calculations in NME cases.[11]

Petitioners argue that although 19 CFR 351.408(c)(3) allows the use of data applicable to market economy countries that are not economically comparable to the PRC, the regulation is not inconsistent with the statute as claimed by Dare Group. Petitioners argue that the methodology based on 19 CFR 351.408(c)(3) uses data from several market economy countries, whether or not economically comparable to the PRC, only to estimate a statistical relationship between GNI per capita and wage rates, which is then used to calculate a surrogate value for labor related to the PRC's GNI. Petitioners argue that the statute does not suggest that data from non-comparable market economy countries cannot be used for this limited purpose. Petitioners state that the preamble of the final rule states that "by combining data from more than one country, the regression-based approach will yield a more accurate result."[12] Petitioners argue that a statistically valid regression analysis requires the use of sufficient data from many market economy countries.

Petitioners argue that it would be contrary to law to use the Indian wage rate as a surrogate value for labor. Petitioners argue that 19 CFR 351.408(c)(3) requires the use of regression-based analysis using data from market economy countries. Petitioners contend that 19 CFR 351.408(c)(3) was implemented to promote a level of "accuracy, fairness and predictability."[13] Furthermore, Petitioners argue that as the Department noted in Dorbest Ltd., using the wage rate from a single surrogate country "would lead to highly variable results, which would undermine the accuracy, fairness and predictability of the Department's calculations." Petitioners claim that the Department also stated in WBF Remand 5/25/07 that if the Department used a single labor rate from a comparable market-economy country the surrogate value could range from USD0.21 to USD1.43, depending on which comparable country was selected as the surrogate country.

Petitioners argue that the use of the PRC's GNI in the regression analysis is appropriate because the PRC's GNI is published in World Bank Indicators, is the best available metric for

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[9] Petitioners cite Koyo Seiko 1
[10] See Proposed Rule, at 7345
[11] See Final Rule at 27367.
[12] See Final Rule at 27367.
[13] See Final Rule at 27367.

determining economic comparability, and no other metric has been suggested. Moreover, Petitioners claim that using the PRC GNI is conservative because its use in regression analysis is likely to result in understated wages.

Petitioners argue that Dare Group's claim that the Department's regression methodology overstates wages for low income countries was rejected in the WBF Remand 5/25/07. Moreover, Petitioners contend that the report by economist Daniel Klett submitted by Dare Group, in support of this claim, is flawed and does not demonstrate that the Department's methodology is inaccurate or distortive. Petitioners cite comments by Dr. Mark C. Rainey in this respect. Petitioners argue that instead of comparing actual and predicted wages for low income countries, Mr. Klett's analysis compares actual and predicted wages for low wage countries. Moreover, Petitioners claim that the sample used by Mr. Klett is biased because it includes only countries with wages of less than one dollar. Petitioners claim that if Mr. Klett's analysis relied on a sample of low income countries, the bias would be eliminated and the average predicted wage for the lowest income countries would be only a negligible 1.5 cents higher than the average actual wage. Petitioners argue that application of the Department's OLS methodology to the 16 low- and low-middle income countries in the Department's regression analysis sample, yields a predicted PRC wage of USD0.831. Petitioners assert that application of the Department's OLS methodology to all countries in the sample yields a predicted wage rate for the PRC of USD0.832. Petitioners argue that these results show the use of "non-comparable" countries in the regression analysis does not distort the Department's analysis. Moreover, Petitioners state, as the Department stated in the WBF Remand 5/25/07, the regression analysis understates wage rates that fall above the regression line, and overstates wage rates that fall below the regression line.

Petitioners argue that the Department should not test for heteroscedasticity or employ an alternative methodology to account for it. Petitioners maintain that the Department's OLS regression methodology is consistent with the statute and the regulations. Further, Petitioners assert as the Department stated in the WBF Remand 5/25/07, that heteroscedasticity is irrelevant to the Department's calculation of expected NME wage rates. Moreover, Petitioners contend, the presence of heteroscedasticity has benign consequences. Petitioners argue that the only relevant implication of heteroscedasticity is that the Department's methodology would not be the best in the narrow sense of being the minimum variance estimator for a particular year's data. Petitioners state that regardless of any presence of heteroscedasticity, the Department's methodology remains unbiased and consistent. Furthermore, Petitioners claim that heteroscedasticity does not destroy the unbiasedness and consistency properties of the OLS estimators. Thus, Petitioners argue that predictions made using the Department's methodology provide unbiased estimates of wages for NME countries and that "heterscedasticity has never been a reason to throw out an otherwise good model.

Petitioners argue that the Department should not use RTO to calculate the surrogate labor rate. Petitioners cite the WBF Remand 5/25/07 in which the Department stated that RTO should be applied with caution and that while RTO may be an appropriate econometric tool to test

economic hypotheses, the purpose of the Department's regression analysis is to generate a variable average of wages. Furthermore, Petitioners assert that although Dare Group claims that OLS regression analysis predicts a positive wage even for a hypothetical country with zero GNI, thereby overstating wage rates for low income countries, it is totally illogical and implausible to assume that a country exists with either zero GNI or zero wages. Furthermore, Petitioners contend that no reasonable basis exists to expect the relationship between wages and income to be linear at an extremely low income level. Petitioners argue that under RTO the relationship between wages and income is linear, i.e., when wages are zero, income is zero. Petitioners claim that under the RTO assumption, values for wages and income can exist above zero but below the value of wages/income at which subsistence is possible. Petitioners argue that this is impossible because there cannot be wage or income values in this range if income/recipients/wage-earners cannot subsist, i.e, there would be no one to generate/receive income or earn wages. Petitioners cite the WBF Remand 5/25/07 wherein the Department stated " . . . it is neither reasonable nor fair to place a constraint on the calculation that is 'theoretically consistent for a hypothetical country' over a method that provides the best fit with the actual data . . . " Moreover, Petitioners contend that if the true relationship between wage and income is non-linear in the area adjacent to the origin (i.e., wages are zero at zero income, but then increase discretely to exceed the subsistence minimum when income increases, with a linear relationship at observed income levels), then RTO causes a bias that leads to an under-prediction of wages in low income countries. Dare Group claims that this is shown by a comparison of predicted wages calculated for the nine lowest income countries in the Department's regression analysis using 2004 data and applying the Department's methodology and RTO. Petitioners argue that the Department's methodology results in a predicted wage rate that is, on average, USD0.015 different than the average actual wage and that the RTO methodology under-predicts wages for the lowest-income countries by over USD0.07.

Petitioners claim that the surrogate wage rate calculated by the Department is not overstated as claimed by Dare Group. Petitioners argue that an analysis of the 2002 and 2004 estimated PRC wage rates submitted by Dare Group demonstrates that the Department's surrogate wage rate understates the actual wage rate in the PRC. Furthermore, Petitioners claim that the source of the 2002 estimate (USD0.57 per hour) was not the BLS as claimed by Dare Group. Dare Group contends the source was an article written by a private consultant. Petitioners argue that the article states that PRC wages of USD0.40 - USD1.50 per hour, cited in the media, "are within the realm of reasonable estimates." Further, Petitioners argue, the article states that city manufacturing enterprises in the PRC have "powerful incentives" to under-report employee earnings and compensation. Further, Petitioners contend that the article states that employee earnings and compensation are "poorly and partially reported." Moreover, Petitioners claim that the 2004 estimate (USD0.67 per hour) was taken from an article co-authored by the above-mentioned consultant. Additionally, Petitioners argue that the article states that "certain groups are not fully captured" in the data and that there is a significant gap between wages in urban areas and in the rural areas of the PRC. Petitioners contend that wages in the coastal provinces, where furniture manufacturing takes place, are 42 percent higher than wages in the more rural interior

provinces. Finally, Petitioners argue that currency manipulation by the PRC government results in undervaluation of the wage rates cited by Dare Group.

**Department's Position:** The Department disagrees with Dare Group that the Department's regulation covering the calculation of the wage rate surrogate value is ultra vires and conflicts with section 773(c)(4)(A) of the Act because it does not require including only comparable countries in the regression analysis. The Act does not direct the Department to apply a specific methodology when valuing labor, and stipulates that the Department shall, to the extent possible (emphasis added), calculate surrogate values using data from market economy countries that are at a level of economic development comparable to that of the nonmarket economy country and which are significant producers of comparable merchandise. See section 773(c)(4) of the Act. Furthermore, the CIT in Dorbest, rejected the same facial challenge Dare Group raises here. Dorbest, 462 F. Supp. 2d at 1292.

Furthermore, we do not find that Dare Group suggested methodology of only using economically comparable countries renders the most reliable labor valuation. For purposes of valuing labor, limiting the data used to calculate the surrogate wage rate from only economically comparable countries leads to distorted results. As the Department explained in the WBF Remand 5/25/07, " . . . restricting the basket of countries to include only countries that are economically comparable to each NME is not feasible and would undermine the consistency and predictability of the Department's regression analysis." See WBF Remand 5/25/07 at 18. A basket of 'economically comparable' countries would be extremely small. For example, there are only five countries with GNIs less than US USD1,000 in the Department's revised 2004 expected NME wage rate calculation, and many NME countries' GNIs are around this range. A regression based on an extremely small basket of countries would be highly dependent on each and every data point, where a larger basket minimizes the effects of any single data point and thereby better captures the global relationship between wage rates and GNI. More data are, therefore, better than less data for the purposes of the Department's regression analysis, provided they are suitable and reliable. See WBF Remand 5/25/07.

By ensuring the data in the regression includes all earnings data that best reflect the dynamics of contemporaneous labor markets and represents both men and women in all reporting industries, the Department is able to minimize many potential distortions. Therefore, using a large basket of data is less susceptible to both the country-by-country, as well as the year-on-year, variability in data and enables the Department to arrive at the most accurate, predictable, and fair surrogate value for labor. Because reliable wage rate data are available and there exists a consistent relationship between wage rates and GNI over time, the Department is able to avoid periodic variability through the use of a regression-based methodology for estimating wage rates. The Department calculates, in essence, an average wage rate of all market economies, indexed to each NME's level of economic development via its GNI. Using the Department's regression methodology, the value for labor in a particular country remains stable despite the possible

selection of different surrogate countries. This enhances the fairness and predictability of the Department's calculations.[14]

In addition, the regression analysis attains a level of comparability by including the GNI of the NME country in question in the calculation of the wage rate surrogate value. The economic comparability that Dare Group claims is absent in our calculation, is established in the regression calculation through the GNI of the PRC and ensures that the result represents a wage rate for a country economically comparable to the PRC. The Department acknowledges that the GNI of an NME such as the PRC may reflect, at least to some extent, non-market income data, which are inherently unreliable. However, the Department finds that each NME's GNI, as published in the World Bank Indicators, available at http://www.worldbank.org/data , is the 'best available' metric for establishing economic comparability for all surrogate values, including labor.[15]

Furthermore, the Department rejects Dare Group's argument that the language in our Proposed Rule indicates an intent to only use comparable countries within our regression analysis. In substance and in practice, the Department's final regulation and regression methodology reflect the observed global relationship between wages and national income in market economy countries, and is not limited to those comparable to the NME countries for which we are valuing labor. The Department has always viewed this approach as consistent with section 773(c)(4) of the Act, which allows for the Department to use prices or costs in one or more market economy countries. Proposed Rule at 7345; Final Rule at 27367. The Department has further been consistent in its position that more data are better than less data when calculating the wage rate. See id. Therefore, an argument that the Department would have intended to limit the database to only comparable countries is unsupported. There is nothing in the history of the Department's application of its wage rate to suggest that relying on only comparable countries was ever the intended methodology. On the contrary, at the time the Department's regulations were promulgated, the Department published the list of countries it intended to include on its website,

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[14] "While there is no way to ensure that the estimated wage rate for a "hypothetical" market economy is perfect, the Department employs its regression methodology, based solely on the all the actual data that meet the Department's criteria, to minimize potential distortions in its variable average wage calculation. As described above, this includes using all earnings data that best reflect the dynamics of contemporaneous labor markets and represent both men and women in all reporting industries. This large basket of data is less susceptible to both the country-by-country, as well as the year-on-year, variability in data than all other suggested methods, and enables the Department to arrive at the most accurate, predictable and fair surrogate value for labor." See Fresh Garlic 6/22/2007; see also WBF Remand 5/25/07.

[15] "Though the Department cannot ensure that each NME's GNI is untainted from any non-market influence, it can at least rely on third parties such as the World Bank, which is a reputable intergovernmental organization with reliable data collection methods. The World Bank collects national account data and converts GNI into U.S. dollars from national currencies in a consistent manner. GNI data are collected from national statistical organizations and central banks by visiting and resident World Bank missions, and in high-income, developed countries, the World Bank utilizes data from Organization for Economic Co-operation and Development (OECD) data files. The World Bank then applies the Atlas conversion factor to data from all countries alike, in order to reduce the impact of exchange rate fluctuations in the cross-country comparison of national incomes." See Fresh Garlic 6/22/2007; see also WBF Remand 5/25/07.

which included a broad list of 46 countries, many of which are not economically comparable to the PRC. See http://www.ia.ita.doc.gov/wages/95wages. Clearly, it has always been the Department's view that when utilizing the regression methodology, the basket of countries need not be limited to those with similar levels of development to China. See Final Rule at 27367. Therefore, we find Dare Group's arguments that the Department's true intent was always to include only comparable countries when calculating its wage rate to be incorrect.

As more fully explained below, the OLS regression analysis remains the best available methodology because it allows the Department to rely on a simple, easily duplicated methodology that enhances the fairness, predictability and transparency of the Department's antidumping duty calculations, while also ensuring their accuracy. Final Rule at 7345 (the Department stated in Final Rule that it would use OLS to calculate surrogate wage rates); see also WBF Remand 5/25/07. The Department finds that the OLS methodology does not distort or systematically overestimate wage rates in general; rather, the regression line serves to smooth out the differences in the reported wage rates.[16]

Dare Group claims that the Department's surrogate wage rate calculation using regression analysis is distorted due to heteroscedasticity and in addition results in an elevated y-axis intercept.[17] Dare Group suggests the Department correct for this by using RTO or the log-log functional form. First, the Department notes that heteroscedasticity is only relevant when the regression analysis is being used as an econometric tool to test an hypothesis with respect to a sample. In the instant case, because the Department's purpose in trying to value wages is not an econometric exercise, heteroscedasticity (non-uniform variance of the error terms) is also not relevant to the Department's calculation of expected NME wage rates.[18] Here we are not applying OLS as an econometric tool, but rather, the Department is applying OLS regression analysis to a complete data set to derive a regression line showing predicted wages, and is not concerned with the output results that may provide information regarding a theoretical hypothesis. For this reason, the existence of heteroscedasticity in the results is irrelevant to our particular purpose.[19] However, even if the Department's regression analysis were to be

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[16] The Department cannot purport to produce perfect wage rates with its regression methodology, as no estimate ever can claim such precision. However, there is no inherent distortion in the model that would lead to systematic overestimation or underestimation of wages. The Department acknowledges that its regression line provides only an estimate of what an NME's hourly wage rate would be within a mathematically derived margin of error based on the wage rates and GNI data from market economies. As with any estimate based on a pool of data, some data will fall above the estimate and some data will fall below the estimate. See Fresh Garlic 6/22/2007; see also WBF Remand 5/25/07.

[17] Overstated wage rates for low-income countries.

[18] Econometrics relates to the development and application of quantitative or statistical methods to the study of economic principles in order to test economic hypotheses.

[19] See WBF Remand 5/25/07 at 32 (" . . . OLS regression output results (such as the t-statistic, etc.) that provide information about the hypothesis, the econometric model and the underlying assumptions are not relevant for the Department's purposes. The only relevant aspect of the regression is the line itself, which represents the variable average of the entire universe of data. Heteroscedasticity is not relevant to the Department's calculation of expected NME wage rates." ).

characterized as an econometric model, the potential for heteroscedasticity would not affect the unbiasedness of the estimator.[20] Additionally, heteroscedasticity is not easily detected or corrected for, as evidenced by the many tests and potential correction methods presented in the econometric and statistical texts in the exhibits of Dare's March 15, 2007 submission regarding the Department's NME wage methodology or referred to therein. By contrast, OLS is easily replicated in Excel, which enhances the transparency of the Department's regression analysis, and has proven very useful, especially in light of the Department's recently initiated practice to request comment on its annual wage rate calculations.

Moreover, we are not adopting a log-log approach, which respondents assert could correct for potential constant elasticity among the variables, for the same reason that heteroscedasticity is not relevant to our calculation of expected NME wages. As explained above, the Department's goal in using the regression methodology is not to test an econometric model of the relationship between wages and GNI, but rather to arrive at an average that varies with per-capita GNI and can be used in all reviews and in all cases for a given year.

We further disagree with Dare Group's argument that the use of RTO would be more appropriate because OLS would overstate wages for countries with a GNI of zero, and would be presumed to overstate all lower income countries. RTO may be appropriate when the expectation exists that if the independent variable is zero, then the dependent variable is zero. With the RTO, the constant term is suppressed. The wage and income data that underlie the Department's calculations comprise the entire relevant universe of data, i.e., wage and income data that meet the Department's reliability criteria. Because the data points drive the regression line, and because no country has a zero wage rate, the intercept will never, in reality, be zero. The Department has never attempted to estimate a wage for a country with zero GNI, nor does it find a valid purpose in doing so, because such a country does not exist. In some limited cases, testing certain econometric models can involve such theoretical constraints. However, when trying to estimate a labor value, the Department is *not* testing an econometric model. Rather, the Department is using a regression analysis as a statistical tool to generate a *variable* average of wages, i.e., an average wage that varies with per-capita GNI. Simply put, the Department applies the regression in order to draw the most appropriate line (the variable average) through the existing universe of ILO wage data that meet the Department's criteria. The Department's use of OLS implicitly assumes a linear relationship between GNI and the hourly wage rate. We are not testing a hypothesis related to this relationship, but rather, the Department is relying on the relationship between wages and GNI to arrive at a variable average for hourly wage rates, indexed to each NME's GNI. The Department believes that it is neither reasonable nor fair to place a constraint on the calculation that is theoretically consistent for a hypothetical country over the OLS method which provides the best fit with the actual data, with the result to be applied to the actual NME countries and respondents involved.

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[20] See Petitioners' rebuttal brief at 87 citing Basic Econometrics at 381 (Dr. Gujarati's text, cited by both Dorbest and Petitioners, "heteroscedasticity does not destroy the unbiasedness and consistency properties of the OLS estimators," which is to say, that the line is unbiased and consistent).

For our purposes, the regression line must be unconstrained to achieve the best fit of the entire universe of wage and income data. The Department does not theorize on the precise nature of the relationship between wage rates and GNI near the origin. Rather, the Department notes that the universe of relevant data does not indicate that the intercept relating to this universe of data is zero. For this reason, RTO, which represents a theoretical constraint on an econometric model, makes no sense because we rely on actual data, not an econometric model.

For all these reasons, OLS is a reasonable method for the Department to employ to arrive at an unbiased estimator. In both a statistical and overall sense, OLS, which minimizes the sum of errors, is the best averaging tool for the Department's calculation of expected NME wage rates. Thus, for the final results, the Department will continue to use OLS in calculating the expected wage rate.

Finally, Dare Group's argument that the Department's wage rate calculation is distorted because it exceeds PRC's estimated wage rate is without merit. The entire purpose of our regression analysis is to estimate a wage rate for the PRC because the PRC's actual wage rate, being a non market economy, is inherently unreliable. Thus, the PRC's actual wage rate in no way serves as a reliable measure of whether the estimated wage rate is accurate.

For the final results, we agree with Dare Group on the specific issue of the revised wage rate and have determined to use the revised wage rate of US USD0.83 for the PRC in these final results. The expected wage calculation used for the Preliminary Results was calculated in 2005, and based on 2003 GNI data. On February 2, 2007 the Department updated its expected wage calculation using 2004 GNI data. We stated on our website that "These expected NME wages based on 2004 GNI will be used by the Department in all segments of all NME proceedings for which the final determination is due on or after February 16, 2007." Therefore, we have applied the updated 2007 wage rate for this review.

**Comment 3: Application of the Thirty-three Percent Threshold for Market Economy Purchases**

Citing to Antidumping Methodologies: Market Economy Inputs, Expected Non- Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61719 (October 19, 2006) (" Antidumping Methodologies Notice"), Petitioners recommend that the Department apply a standard of using the price from market economy purchases for valuation of a factor of production when the volume of market economy purchases exceeds 33 percent of the total volume of the input purchased from all sources. See Antidumping Methodologies Notice, 71 FR at 61718. Petitioners also cite Shakeproof, where the court upheld the standard of thirty-three percent constituting a "meaningful" quantity consistent with the Department's regulations in a prior case.

In its rebuttal, Starcorp contends that the Department should not apply the thirty-three percent threshold for market economy purchases because (1) it is inconsistent with the Department's

practice in the investigation, (2) does not make logical sense, and (3) the Department has not offered or required information from the parties to rebut any specific presumptions established by the thirty-three percent threshold.

Dare Group also rebuts Petitioners' request for the Department to apply the thirty-three percent threshold to two reported market economy inputs in this review. Group points out that the Department explicitly stated in the Antidumping Methodologies Notice that it would apply the thirty-three percent approach for all segments of NME proceedings that are initiated after the October 19, 2006, publication of the notice in the Federal Register. Antidumping Methodologies Notice, 71 FR at 61716, 61719. Dare Group explains that this administrative review was initiated prior to October 16, 2006, and, thus, it would be improper for the Department to apply the thirty-three percent threshold to this administrative review based on its notice. Additionally, Dare Group states that Petitioners did not articulate a "rational" reason for the Department to stray from its practice. Therefore, Dare Group contends that the Department must reject Petitioners' request to apply the thirty-three percent threshold standard.

**Department's Position:** We agree with Dare Group that the Department stated in its Antidumping Methodologies Notice that it would apply the thirty-three percent approach for all segments of NME proceedings that are initiated after the date of publication (i.e., October 19, 2006) of the notice in the Federal Register. See Antidumping Methodologies Notice, 71 FR at 61719. In this case, the administrative review was initiated on March 7, 2006. See WBF AR1 Initiation Notice. Therefore, a thirty-three percent threshold for accepting market economy purchase prices to value an entire input is not applicable in this case. Accordingly, for the final results, we will continue to treat respondents' reported market economy purchases consistent with the Department's treatment of these inputs in the Preliminary Results.

**Comment 4: Zeroing**

Starcorp suggests that the Department should conform its margin calculation methodology in administrative reviews to the United States' obligations to the WTO and abandon the use of zeroing (i.e., setting non-dumped margins to zero, thus eliminating any negative off-set these margins would have on the overall dumping margin) in the final results of this review.

Citing Corus Staal 1, Timken 2, and Bowe Passat, Starcorp states that the courts have recognized that zeroing is not required by statute and distorts the antidumping calculation. See Corus Staal 1, 259 F. Supp. 2d at 1253, 1261; Timken 2, 354 F.3d at 1334, 1341-42; and Bowe Passat Reinigungs, 926 F. Supp. at 1138, 1149. Starcorp also cites the WTO Appellate Body finding that the U.S. zeroing practice is inconsistent with the Antidumping Agreement on an "as such" and "as applied" basis in administrative reviews. See US-Japan Zeroing, at 137,15,165. Specifically, the WTO Appellate Body found that the U.S. zeroing practice violated Article 2 and Article 9.3 of the Antidumping Agreement. See id. Starcorp also iterates that on February 20, 2007, the United States agreed to comply with its WTO obligations regarding the practice of zeroing and to implement the WTO Appellate Body's decision by December 24, 2007. See Press

Release, U.S. Mission to the United Nations in Geneva, U.S. Statements to the WTO Dispute Settlement Body Meeting 3 (February 20, 2007) and United States - Measures Relating to Zeroing and Sunset Reviews, Agreement under Article 21.3(b) of the DSU, WT/DS322/20 (May 8, 2007).

In fact, Starcorp asserts the Department has already changed its methodology in calculating dumping margins in investigations[21] and has undertaken Section 123 (19 U.S.C. Section 3533) and Section 129 (19 U.S.C. Section 3538) proceedings where it published final determinations with the revised results including revoking some antidumping duty orders that had been established on an affirmative dumping margin using the zeroing practice.

Starcorp avers that the Department is obligated to interpret its statutes in a manner consistent with U.S. legal commitment, as evidenced by Congressional intent outlined in the SAA, and the Charming Betsy doctrine which requires that U.S. laws be interpreted to avoid violation of international obligations wherever possible. See Charming Betsy. In light of the above and consistent with the Charming Betsy doctrine, Starcorp urges the Department to allow offsets from non-dumped sales in calculating dumping margins for the final results of this review.

Similar to Starcorp's arguments, Dare Group also contends that the Department set to "zero" non-dumped transactions in the preliminary results in a manner that "artificially inflated" its dumping margins; a practice it avers is not required by either the statute or regulations. See Timken 2. According to Dare Group, the Department has itself acknowledged this fact. See United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("United States–Zeroing"), WT/DS294 First Written Submission of the United States, para. 77-78 (January 31, 2005). Similar to Starcorp, Dare Group relies on several statutes and regulations to state that the practice of zeroing is not required. See Timken, United States–Zeroing, and sections 751(a)(2)(A) and 751(a)(2)(C) of the Act. Moreover, Dare Group asserts that the Department cannot comply with the statutory mandate to determine the dumping margin for each entry if the Department "ignores" the export price of non-dumped sales. See sections 751(a)(2)(A)(i) and 751(a)(2)(C) of the Act.

Dare Group asserts that it is time for the CAFC's decision regarding zeroing as a reasonable tool to combat masked dumping in Timken 2 and Corus Staal 1, 259 F. Supp. 2d at 1253, 1261 to be reversed or clarified because these cases are pre-URAA cases. Dare Group states that Congress added a specific provision to the URAA in order to combat "targeted" dumping; thus, the Department should not read into the statute a purpose specifically provided for in another section of the law.

Also similar to Starcorp's argument, Dare Group claims that the practice of zeroing violates Article 2 and Article 9.3 of the WTO Antidumping Agreement when it disregards the portion of the product that is sold above fair value for comparison purposes. Dare Group also

[21] Final Results for the Section 129 Determinations, Issues and Decision Memorandum (April 9, 2007).

acknowledges that the Department has recently decided to abandon the practice of zeroing in investigations but continues the practice in administrative reviews. Moreover, Dare Group argues that the Department's recent decision to abandon the practice of zeroing in investigations negates the Court's decision in Timken 2, where the Court found zeroing represented the Department's "longstanding consistent administrative implementation" of the statute arguing that the Department's new decision to zero in reviews, but not in investigations is inherently inconsistent. Dare Group avers that the Department can only defend this decision by arguing that the statute confers a different meaning to the term "weighted average dumping margin" in reviews than in investigations. A distinction Dare Group claims the CAFC expressly rejected in Corus.

Finally, Dare Group incorporates by reference the arguments against zeroing made by Starcorp in this administrative review.

In their rebuttal, Petitioners argue that the practice of zeroing is in accordance with the law, has been upheld by the CAFC (see Timken), and the Department should therefore continue to apply zeroing in the final results. Also, Petitioners state the federal courts have found that WTO Appellate Body reports do not bind U.S. courts in interpreting U.S. law; thus, the Department is not bound by U.S. – Zeroing 2007 or the Charming Betsy doctrine.

Petitioners also refute Dare Group's contention that no court has ever held that the Department may apply zeroing in administrative reviews but not investigations. Citing to Corus Staal 2, Petitioners refer to the CIT statement that "{t}he Section 123 Determination only changes Commerce's practice with respect to antidumping investigations, not administrative reviews . . . The courts have affirmed Commerce's discretion to use zeroing, both in antidumping investigations and administrative reviews." See Corus Staal 2. Based on Corus Staal 1, 259 F. Supp. 2d at 1253, 1261, Petitioners urge the Department to continue the practice of zeroing in the final results of this administrative review.

**Department's Position:** Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export price and constructed export price of the subject merchandise" (emphasis added). Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than export or constructed export price. As no dumping margins exist with respect to sales where normal value is equal to or less than export or constructed export price, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of the statute. See Timken 2, 354 F.3d at 1342, and Koyo Seiko 2. See also Corus Staal 2, 395 F.3d at 1343, 1347.

The Department notes it has taken action with respect to two WTO dispute settlement reports finding the denial of offsets to be inconsistent with the Antidumping Agreement. With respect to US - Softwood Lumber from Canada, consistent with section 129 of the URAA, the United

States' implementation of that WTO report affected only the specific administrative determination that was the subject of the WTO dispute: the antidumping duty investigation of softwood lumber from Canada. See 19 U.S.C. § 3538.

With respect to United States - Zeroing (Japan), the Department recently modified its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations. See Antidumping Proceedings: Calculation for the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006). In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews. See id. at 77724. With respect to the specific administrative reviews at issue in that dispute, the United States has determined that each of those reviews has been superseded by a subsequent administrative review and the challenged reviews are no longer in effect.

As such, the Appellate Body's reports in US - Softwood Lumber from Canada and United States - Zeroing (Japan) have no bearing on whether the Department's denial of offsets in this administrative determination is consistent with U.S. law. See Timken, 354 F.3d at 1342. Accordingly, the Department will continue in this case to deny offsets to dumping based on export transactions that exceed normal value.

Furthermore, the Appellate Body's report in US-Zeroing (Japan) has no applicability here. Congress has adopted an explicit statutory scheme for addressing the implementation of WTO dispute settlement reports. See 19 U.S.C. section 3538. As is clear from the discretionary nature of that scheme, Congress did not intend for WTO dispute settlement reports to automatically trump the exercise of the Department's discretion in applying the statute. See 19 U.S.C. section 3538(b)(4) (implementation of WTO reports is discretionary); see also SAA at 354 ("[a]fter considering the views of the Committees and the agencies, the Trade Representative may require the agencies to make a new determination that is not inconsistent' with the panel or Appellate Body recommendations . . .)." Because no change has yet been made with respect to the issue of "zeroing" in administrative reviews, the Department will continue with its current approach to calculating and assessing antidumping duties in this administrative review.

For the reasons mentioned above, we have not changed our calculation for these final results.

**Comment 5: Department Should Apply Combination Rates to Separate Rate Companies**

Petitioners argue that the Department should assign combination rates to exporters of subject merchandise and their producers covered by this review. Petitioners argue that in this review, combination rates are essential to prevent evasion of antidumping duties. Petitioners argue that this review covers 107 companies and in the Preliminary Results the Department calculated dumping margins ranging from 1.24 to 216.01 percent. Petitioners contend that absent combination rates, the large disparity in dumping margins creates an environment in which firms

that are assigned high dumping margins have significant incentives to shift exports to exporters with low cash deposit rates. Moreover, Petitioners argue that in the SRA and SRC the Department instructs respondents to identify their producers/suppliers and to provide applicable contact information. Petitioners argue that a related footnote, included in both documents, states "{i}f your firm is assigned separate rate status, the rate will only apply to merchandise exported by your firm and supplied by the producers identified here." Petitioners assert that this footnote indicates that the Department intended to construct combination rates in this review. Moreover, citing 19 CFR 351.107(b)(1), Petitioners argue that the Department's regulations provide for the application of combination rates. Quoting the preamble to this regulation, Petitioners argue that the purpose of the regulation is to prevent foreign producers from manipulating the cash deposit rate:

> "Establishing a deposit rate for an exporter and, without regard to the identity of the supplier, applying that rate to all future exports by the exporter could lead to the application of that rate even if other suppliers sold to the exporter with knowledge of exportation to the United States. This would enable a producer with a relatively high deposit rate to avoid the application of its own rate by selling to the United States through an exporter with a low rate."

See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27303 (May 19, 1997).

Citing Policy Bulletin 05.1,[22] Petitioners contend that the Department's practice in NME investigations to automatically calculate a single cash deposit rate for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation to prevent circumvention of cash deposit rates is consistent with this concern. Furthermore, Petitioners argue that the Department has applied combination rates in certain administrative reviews of imports from market economy countries to prevent evasion of antidumping cash deposits. Petitioners cite Pistachios 2/14/05, and accompanying Issues and Decision Memorandum at Comment 2 in which the Department stated "{g}iven the large pool of suppliers of pistachios in Iran and the significant disparity in existing deposit rates and Nima's relatively low margin in this review, we find it appropriate to establish a combination rate reflective of the actual experience of the exporter and producer examined in this review."

Finally, Petitioners argue that the Department should automatically calculate combination rates in NME administrative reviews. Petitioners contend that although Policy Bulletin 05.1 states that it applies to NME investigations only, the Department was evaluating the use of combination rates in NME administrative reviews. Petitioners assert, however, that to date, the Department has not addressed the use of combination rates in NME reviews nor has it used combination rates in

[22]Policy Bulletin 05.1 states "Only by limiting the application of the separate rate to specific combinations of exporters and one or more producers can the Department prevent the 'funneling' of subject merchandise through the exporters with the lowest rates."

NME administrative reviews. Petitioners argue that the Department has rejected the argument that it could not assign a combination rate in an administrative review involving the PRC without going through formal notice and comment procedures.[23] Petitioners maintain that the Department lacks any rational basis for treating administrative reviews differently from how it treats investigations with regard to the application of combination rates. Because concerns about the evasion of antidumping duties apply equally whether the proceeding at issue is an administrative review or an investigation.

Dare Group argues that in its 2005 announcement of change in policy the Department clearly stated that the new combination rates practice "is effective in all NME antidumping investigations initiated on or after the date of publication in the Federal Register of the notice announcing this policy. This practice also applies only to investigations." Dare Group contends that this policy was adopted only after a lengthy comment and rule-making process. Dare Group asserts that it would be improper for the Department to change its practice with respect to the use of combination rates in administrative reviews without first considering public comments. Moreover, Dare Group contends that the application of combination rates in this review would not change the antidumping rates applicable to Dare Group for two reasons. First, Dare Group claims that it is comprised of a group affiliated producers/exporters collapsed by the Department for purposes of assigning a dumping margin. Second, each Dare Group producer made direct exports to the United States and should thus qualify for the rate applicable to the Dare Group as a whole. Further, Dare Group argues that legal argument for the application of combination rates is based entirely on an interpretation of 19 CFR 351.107(b)(1), which on its face relates only to non-producing exporters. Dare Group contends that this regulation is inapplicable here and does not provide any support for the application of combination rates in reviews. Finally, Dare Group argues that there is no possibility of evasion of dumping duties because sales of subject merchandise by a non-producing exporter who shifts sourcing patterns would be subject to review in a subsequent proceeding.

**Department's Position:** We do not believe that producer-exporter combination rates are appropriate given the circumstances in this case as discussed further below, though we disagree with Dare Group that the Department is unable to assign a combination rate in administrative reviews without going through the formal notice and comment period. As set forth under 19 CFR 351.107(b)(1) of the Department's regulations, "{i}n the case of subject merchandise that is exported to the United States by a company that is not the producer of the merchandise, the Secretary may establish a 'combination' cash deposit rate for each combination of the exporter and its supplying producers." In the Pistachios 2/14/05[24] case cited by the Petitioners, the Department assigned a combination rate to the exporter and its supplier of the subject merchandise based on the unique circumstances of that case which included among other things:

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[23] See Freshwater Crawfish Tail Meat from the People' Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 71 FR 7013(February 10, 2006) and accompanying Issues and Decision Memorandum at Comment 2.

[24] See Pistachios and accompanying Issues and Decision Memorandum at Comment 2.

(1) the similarity of exporter's single U.S. sale subject to the review and the exporter's single U.S. sale in the previous new shipper review in which a combination rate was applied; (2) the exporter's normal business practice of selling pistachios only to the U.S. market; (3) the exporter's ability to source the pistachios it sells from a large pool of suppliers; and (4) high cash deposit rates for other producers subject to the order and a high "all-others" rate.

While the Department has exercised its discretion by assigning a combination rate to a respondent in a prior unrelated administrative review, we find that the circumstances do not warrant doing so here. While the respondents in this administrative review may have the ability to source wooden bedroom furniture from a large pool of PRC suppliers, some of which may be subject to a high "PRC-wide" rate, we do not find that the facts in the instant review are persuasive enough to warrant the issuance of a combination rate to all respondents and their producers at this time.

Finally, we disagree with Petitioners' assertion that the Department intended to construct combination rates in this review. The Department's inclusion of the footnote in the SRA and SRC issued in this review stating that the separate rate will only apply to merchandise exported by the firm and its suppliers was an inadvertent error on the Department's part. It was never the Department's intention to assign combination rates in this administrative review and, as noted above, the facts in this review do not warrant the issuance of combination rates at this time. Furthermore, as noted by the Petitioners and Dare Group, Policy Bulleting 05.1 states that the practice of assigning combination rates currently only applies to NME investigations and that the Department is still evaluating the extension of these changes in practice to administrative reviews.[25] Therefore, for the final results, we have not applied combination rates to the respondents (i.e., mandatory and separate-rate status) in this administrative review.

**Comment 6: Use of Values Versus Quantities to Determine the Weighted-Average Separate Rate Margin**

Decca states that the weighting methodology the Department used in the Preliminary Results to derive the margin for separate-rate respondents, based on U.S. quantity in pieces, is flawed, not justified, and should be changed for the final results. Decca states that this is the same methodology the Department used in the LTFV investigation of WBF, but believes the methodology was not reasonable in that segment of the proceeding either. Decca argues that the U.S. sales quantities reported by the five mandatory respondents are reported in pieces or sets and that different pieces or sets have different weights, different cubic foot measurements, are made of different quantities and types of wood, and have different values, and these differences can be significant. Thus, Decca asserts using pieces and sets is not a consistent and uniform measure for weighting the margins of the respective mandatory respondents.

[25] See Policy Bulletin 05.1 at 7.

Decca points out that the Department requested in its Q&V questionnaire that all respondents report their U.S. sales quantities in terms of standard 40-foot containers, not pieces or sets. See Q&V Questionnaire, dated March 7, 2006 ("Q&V Questionnaire"). Decca states the Department requested the 40-foot container measurement in order to compare the respondents' figures consistently. Accordingly, Decca argues that the Department cannot now use sales quantities stated in terms of pieces and sets as the weighting factor in determining the weighted-average separate-rate margin. Additionally, Decca contends using pieces as the weighting factor is not correct because it does not accurately describe the way bedroom furniture is sold. Further, Decca argues that adopting a consistent measure of quantity (i.e., volume or number of containers) as a weighting factor rather than pieces would not solve the problem because it still does not result in a rational basis (i.e., respondents selling heavier or bulkier furniture would be weighted more heavily in the margin calculation).

Decca argues that there is no rational basis for calculating the weighted-average dumping margin for the separate-rate respondents, whether for cash deposit or assessment purposes, on the basis of pieces. Decca contends that the only reasonable weighting factor methodology is using the value of the subject merchandise sold by each respondent. Decca states that section 751(a)(2) of the Act requires the Department to use the difference between normal value and export price (or constructed export price) as the basis for both assessed duties and cash deposits of estimated duties. Decca claims that the Act does not specify a particular divisor when calculating either assessment or deposit rates, and does not require the Department to use the same method of calculation for cash deposit and assessment rates, thus the Department has discretion in choosing its methodology, provided that methodology is a reasonable interpretation of the Act. However, Decca asserts that the methodology the Department used in the Preliminary Results is arbitrary, provides no indicia of accuracy, and is not based on a reasonable interpretation of the Act. Decca points out that with respect to cash deposits, the Act only requires estimates, but assessments must be as accurate as possible. Therefore, the Department's methodology of using pieces as a weighting factor is not accurate because one piece of furniture cannot be equated with any other, non-identical piece of furniture. Consequently, Decca argues that the total net U.S. sales value determined and used by the Department to calculate each mandatory respondent's margin should be used as the weighting factor in determining the separate-rate margin because the sales values provide an accurate, consistent and uniform measure of the respondents and their respective dumping behavior in the U.S. market. Decca states that the simplest and most accurate manner for the Department to determine the separate-rate margin would be to sum the "Total Potential Uncollected Dumping Duty" amounts across all the mandatory respondents and divide that amount by the sum of the "Total Value" amounts across all the mandatory respondents. Decca states that this methodology has been used in prior cases. See Softwood Lumber from Canada 12/12/05, Memorandum to the File, from Alexander De Filippi through Constance Handley, Review-Specific Average Cash Deposit and Assessment Rates, December 5, 2005. Therefore, Decca argues that by using sales values as the weighting factor to determine the separate-rate margin, the Department would be tying the separate-rate margin to the actual amounts used to calculate the mandatory respondents' margins.

Petitioners argue that in the Preliminary Results, the Department properly calculated the rate applicable to separate-rate respondents by determining the weighted-average dumping margins of the mandatory respondents on the basis of quantity in pieces or sets. Petitioners contend that the Department's methodology for calculating a weighted-average margin based on quantity is a reasonable interpretation of the Act. Thus, for the final results, Petitioners argue the Department should continue using quantity as the basis for calculating the separate rate for the separate-rate respondents.

First, Petitioners state that the Department's practice is to use the same factor to calculate company-specific margins and the all-others rate. See Color Televisions 4/16/04. Also, Petitioners note that in the LTFV of wooden bedroom furniture from the PRC, the Department used pieces to calculate the separate rate. See WBF 11/17/04. Additionally, Petitioners contend that Decca's reference to the Department's Q&V reporting requirements is inapposite. Petitioners state that the Department's Q&V questionnaire stated that "the use of the units 'containers' is for Q&V purposes and respondent selection. This does not imply that antidumping duty margins will be calculated based on this unit." See Q&V Questionnaire. Thus, Petitioners argue that using containers to select mandatory respondents does not indicate that using pieces to calculate the separate rate would inadequately reflect production volume, because the mandatory respondents reported quantity in pieces or sets in their questionnaire responses.

Second, Petitioners argue that a value-based weighting methodology, as proposed by respondents is inherently unreliable because it would be based on undervalued figures. In contrast, Petitioners argue that quantity is a neutral measure of the level of dumping. Specifically, Petitioners assert that all of the mandatory respondents were found to have dumped WBF in the preliminary results, and thus it is nonsensical to use values for establishing the separate rate that are known to be undervalued, and therefore, are not reflective of true relative sizes of sales by the mandatory respondents. According to Petitioners, because the issue is how to weight company-specific margins in calculating the separate-rate margin, an issue not addressed by the company-specific dumping levels, pieces rather than value is a more appropriate weighting factor.

**Department's Position:** We disagree with Decca. It is normally the Department's practice to use quantity as the weighting factor in calculating the margin for separate-rate respondents. See Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China, 71 FR 53079 (September 8, 2006), Memorandum to Wendy Frankel through Charles Riggle from Ryan Douglas, "Separate Rates Memorandum for the Final Determination: Certain Lined Paper Products from the People's Republic of China," dated August 30, 2006, and Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004), Memorandum to the File, from Paul Walker, "Calculation of the Weighted Average Section A rate" dated November 29, 2004. See Memorandum to the File from Robert Bolling, "Placing Public Separate Rate Memos on the File from Line Paper from China, Shrimp from Vietnam, and Softwood Lumber from Canada" dated July 23, 2007. Although the Department

requested that potential respondents provide their Q&V responses using 40-foot containers as the measurement for quantity, as the Department noted in its Q&V questionnaire, "the use of the units 'containers' is for Q&V purposes and respondent selection. This does not imply that antidumping duty margins will be calculated based on this unit." See Q&V Questionnaire at 4, footnote 4. Thus, the Department was gathering container information in our Q&V questionnaire only in order to assess the quantity exported to the United States during the POR of potential respondents in this administrative review and not for the purpose of calculating dumping margins. Additionally, the questionnaire we issued to the mandatory respondents specifically instructed mandatory respondents to report their quantity based on the type of piece sold (e.g., beds, dressers with mirrors, and armoires, etc.) and that because "certain piece types are sold both as pieces and as sets (e.g., beds, dressers with mirrors, and armoires) ... the method of reporting pieces or sets must be consistent across all reported sales." See the Department's Questionnaire dated July 28, 2006, at 22. The mandatory respondents either reported sales quantity of subject merchandise based on pieces or sets, but not by container. Thus, in the preliminary results, we based the weighted-average margin on an average of the rates we calculated for the five mandatory respondents (i.e., pieces or sets), excluding any rates that are zero, de minimis, or based entirely on adverse facts available.

We believe quantity and not value is a more accurate measure for calculating the separate-rate margin because value, in the context of a dumping analysis, is normally arbitrary. For example, respondents in this review reported that they sell different pieces of furniture at different prices and that large pieces of furniture could have been sold at prices lower than certain pieces of smaller furniture and vice versa. Thus, if the majority of a given respondent's sales consisted of small pieces of furniture that were sold at higher prices than the largest pieces of furniture, or vice versa, the value would be skewed. Additionally, our margin calculations are based on the value of the respondents' sales. Accordingly, if the respondents are found to have dumped their product, then dumped sales values will be necessarily undervalued and will not reflect the fair value of such sales. As a result, a separate-rate margin calculated using value, as opposed to quantity would also be undervalued. Conversely, because furniture is invoiced and sold by the piece, and because basing the separate-rate margin on the quantity of pieces sold does not lend itself to the same undervaluation concerns, noted above, we find that using quantity to determine the separate rate here provides a more accurate margin.

Further, in this review, we have used pieces or sets to evaluate and calculate each mandatory respondent's U.S. price, normal value, and dumping margin, and we examined the mandatory respondents' quantity and value reconciliations on the basis of pieces or sets. Accordingly, the Department determined that it is reasonable to also calculate the margin applied to separate-rate companies using the weighted-average dumping margins of the mandatory respondents based on the number of pieces or sets the mandatory respondents sold in the United States during the POR. Therefore, for the final results, we have determined to continue calculating the separate-rate weighted-average margin using quantity, based on pieces or sets, as the weighting factor.

In past cases, the Department has used value as a weighting factor to establish a cash deposit or assessment rate for non-review respondents. See Memorandum to the File from Robert Bolling, "Placing Public Separate Rate Memos on the File from Line Paper from China, Shrimp from Vietnam, and Softwood Lumber from Canada" dated July 23, 2007. However, in the instances where the Department determines to use value, it is usually in special circumstances. For example, in Softwood Lumber from Canada 12/12/05, the Department used value because we limited reporting requirements for reviewed companies, thus we believed that using value resulted in the most accurate calculation for cash deposit and assessment. However, in the instant case, we did not limit the reporting requirements of the mandatory respondents, and thus have no need to use value as the weighting factor. Additionally, as we stated above, quantity is the best unit of measure in the instant case because it provides a more accurate reflection of respondents' selling practices.

**Comment 7: Incorporation of Zero, De Minimis, and Total Adverse Facts Available Margins in Non-selected Respondents' Rate**

Emerald, Dongguan Mingsheng, Dongguan Sunpower, Hung Fai Wood, Hwang Ho International, King Wood, Qingdao Shengchang, Shenzhen Shen Long, Transworld (Zhongzhou), Wan Bao Cheng, and Zhongshan Gainwell (hereafter referred to as Garvey Shubert Barer Interested Parties Group ("GSB IP Group")) argue that the margin applicable to the separate-rate companies in the administrative review should follow the Department's long-standing practice of excluding from the calculation margins that are zero, de minimis, or based on total AFA. According to the GSB IP Group, based on the Department's verification report of Starcorp,[26] Starcorp failed its verification and did not act to the best of its ability to provide information required by the Department. Therefore, the GSB IP Group contends that it is necessary for the Department to base Starcorp's margin in the final results on total AFA. Citing Activated Carbon 10/11/2006, the GSB IP Group argues that should the final margins for Starcorp or any of the other mandatory respondents selected for individual review be zero, de minimis, or based on total AFA, such rates should be excluded from the weighted-average margin calculated for the separate-rate companies in the final results.

**Department's Position:** In these final results of the administrative review, we have continued to assign non-selected respondents that are eligible for a separate rate a dumping margin that is the weighted average of the non-zero, non-de minimis dumping margins of the mandatory respondents. We have also excluded from this calculation Starcorp's final margin which is based on total AFA. For further details on the application of total AFA to Starcorp for the final results, see Comment 63. Section 735(c)(5)(A) of the Act, which deals with the analogous "all-others" rate, states that "the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins determined entirely under section 776." See Tomatoes From Canada 2/26/02, and accompanying

[26] See WBF Starcorp Verification Report 6/11/07

Issues and Decision Memorandum at Comment 1. We note that the Act is silent with respect to calculating a rate for non-selected companies in administrative reviews involving limited examination. However, the Department has incorporated the "all-others" rate methodology in the calculation of the "separate rate" margin applicable to non-selected companies in NME reviews involving limited examination via selection of exporters accounting for the largest volume of exports.

In Brake Rotors Memo 11/14/06, at Comment 1C, the Department noted that when it limits its examination by selecting the largest exporters:

> ...there is no expectation in non-random selection of the largest exporters of subject merchandise that the dumping behavior of the selected firms be representative of the population as a whole. Thus, in investigations involving an NME where the Department has limited its investigation by selecting the largest firms, in order to assign a rate to the firms that are not individually investigated, the Department calculates an average of the individual rates, except for zero, de minimis, and AFA.

In this administrative review, we limited our examination to the largest exporters of subject merchandise.[27] Therefore, in accordance with the statute and our stated practice, we did not include zero or de minimis margins or margins based on total AFA in the weighted-average margin assigned to non-selected respondents.

**Comment 8: Standard for Accepting Respondents Factor Descriptions and Appropriate Harmonized Tariff Schedule of India Categories**

Petitioners argue that the respondent bears the burden of providing the necessary information for the Department to calculate accurate margins. See Zenith Elecs. and Mannesmannrohren-Werke. In Exhibits 25 through 27 of their case brief, Petitioners identify all the FOPs that they contend should be reclassified because the respondents provide only a very meager description of each FOP. Petitioners contend that the Department failed to require the respondents in this review to justify their suggested HTS classifications, thus encouraging the respondents to "cherry pick" the HTS classifications to lower the surrogate values of the factors of production. Specifically, Petitioners argue that Dare Group, Guanqiu, and Aosen supplied general descriptions of their factors of production, which are insufficient to justify their proposed eight-digit HTS classifications[28] and recommend that the Department value these FOPs using the four-digit HTS level.

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[27] See Memorandum to Gary Taverman, Acting Deputy Assistant Secretary for Import Administration, from Wendy Frankel, Office Director regarding, "Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China: Selection of Respondents," dated July 3, 2006.

[28] In separate attachments to their brief, Petitioners identified the specific factors as follows:
Aosen: nails, "PLYWOOD," "MDBD," "PINE," "ASHVEN," "EXPLYSHT," and "POLYFOAM."
Dare Group: "PIGMENT_O," "CURVINGWOODY," "VENEERPLY," and WOODSALICACEAE."
Guangqiu: "PLYWOOD," MDF," and "RESIN."

Petitioners argue that the Department should apply total adverse facts available to Starcorp based on other reasons, and therefore did not address Starcorp's specific FOPs here.

In its rebuttal comments, Aosen argues that in its December 21, 2006, and January 25, 2007, submissions it identified the HTS categories that most closely correspond to the materials used to manufacture the subject merchandise. In addition, Aosen contends if the Department applies four-digit HTS categories to the surrogate values, the results would include a myriad of inappropriate products and incorrect surrogate values. Therefore, Aosen recommends that the Department not use the HTS categories proposed by Petitioners in the final results of this administrative review. See Comment 29: HTS Classification for "PLYWOOD," "MDBD," "PINE," "ASHVEN," "EXPLYSHT," and "POLYFOAM"

In its rebuttal comments, Dare Group states that Petitioners failed to provide any evidence that its input descriptions were inadequate to support Dare Group's proposed HTS classification in the selection of surrogate values. According to Dare Group, it submitted thousands of pages of printouts with "item-number-specific descriptions" and explanations of its raw material groupings and, therefore, the Department should reject Petitioners' broad claim that Dare Group's proposed HTS classifications do not support its descriptions.

Starcorp argues that because Petitioners do not directly dispute Starcorp's FOP classifications, they should remain unchanged for the final results of review.

**Department's Position:** The Department disagrees with Petitioners (with the exception of specific instances discussed in company-specific sections of this memo) that broadly applying AFA to all respondents' factor valuations is appropriate. In the questionnaires in this administrative review, the Department asked the respondents to provide descriptions of their FOPs and to propose Indian HTS classifications that most accurately matched their FOP descriptions. The respondents submitted this information in the form of narratives, financial records, invoices, and worksheets. Where the Department deemed it necessary, we issued further supplemental questionnaires. As discussed in the respondent-specific sections, the Department also observed the production process and reviewed financial records of FOPs during verification at certain respondent production plants. The Department has determined in the majority of cases that the respondents submitted sufficient record evidence in their submissions, supplemental questionnaire responses, and during verification for the Department to classify their FOPs in the appropriate HTS categories. Where the input description was too vague, the Department valued that input broadly, using classifications suggested by Petitioners, or determined the proper classification based on the best available information. See, e.g. Comment 45: HTS Classification for Plywood and Comment 47: HTS Classification for Resin. In addition to this broad concern, Petitioners raise more specific concerns with respect to certain inputs, and these concerns are addressed in the appropriate respondent-specific sections below.

**Comment 9: Time Period Used to Calculate Surrogate Values**

Dare Group states that, in accordance with the Department's instructions all respondents reported FOP data for the period July 1, 2004 through December 31, 2005, and that consequently all respondents provided surrogate value information starting July 2004, in order to harmonize with the FOP reporting period. Dare Group asserts, however, that the Department used June 2004 as the starting point for the extractions of data used to calculate surrogate values and thus created a mismatch between the AUV period and the FOP reporting period in the Preliminary Results. Therefore, for the final results, Dare Group urges the Department to re-extract the import statistics data using July 2004 as the starting point.

Guanqiu asserts that the Department inadvertently omitted data from May 2, 2005, to May 31, 2005, and from December 2, 2005, to December 31, 2005, in its surrogate value calculations based on MSFTI data. Guanqiu urges the Department to recalculate each relevant surrogate value to include the missing data for purposes of the final results.

Petitioners agree with the Department's use of the period June 2004 through December 2005 as the basis for its surrogate value calculations arguing that if the Department does not use the June 2004 data, the result would be a significant mismatch between U.S. sales price and the basis for normal value. Petitioners argue that Attachment 4 of the WBF Preliminary Factor Valuation Memorandum 1/13/07 gives the impression that the Department is missing certain May 2005 and December 2005 data in its surrogate value calculation; however, the data used by the Department clearly reflects coverage of the full period. Therefore, Petitioners suggest the Department correct the identified dates in its Final Factor Valuation Memo.

**Department's Position:** We disagree with Dare Group and Guanqiu. The Department does not always require that the FOP data reporting period precisely match the POR. In Section D of the questionnaire, we instructed respondents to report FOP data for the period July 1, 2004, through December 31, 2005, in order to reduce their reporting burden since the POR covers only seven days in June 2004. Also in the Section D questionnaire, we explained that if a respondent company's fiscal year ends within three months of the POR and the respondent wanted to report factors of production based on the company's fiscal year, that would be allowable. For example, Guanqiu reported its FOPs covering the period from February 1, 2004, through December 31, 2005 (i.e., beginning four months prior to the POR), because some subject merchandise sold to the U.S. was produced prior to the POR. See Guanqiu's November 30, 2006, supplemental questionnaire response. Therefore, regardless of whether the surrogate values reflect data starting in June or July 2004, they will not be an exact match for Guanqiu's reported FOPs. Consequently, we have determined that the use of data from June 2004 though December 2005 does not result in inaccurate, faulty, or unreasonable surrogate value calculations. Although there is a slight mismatch in the surrogate value data (June 2004 - December 2005) being compared to FOP data (July 2004 - December 2005), this mismatch will not lend itself to any inaccurate FOPs being calculated because the values of the products from one month to the next month should not

change dramatically. Therefore, for the final results, the Department will continue to use the period June 2004 through December 2005 as the basis for its surrogate value calculations.

Additionally, we have examined the data used in the Preliminary Results and have determined that we did not exclude any data from May 2005 or December 2005. Guanqiu's mistaken observation is based on the fact that the Department's program assigned date variables "1" after each month. The Department's program just labeled these months as May 1, 2005, and December 1, 2005. The Department's program calculated surrogate value data for the entire months of May 2005 and December 2005. Therefore, for the final results, we have changed all relevant label headings to prevent this misconception in the future.

**Comment 10: Ministerial Error in the Valuation Polymers of Styrene**

Petitioners state that the Department failed to include the period from June 2004 to May 2005 in the calculation of the surrogate value for polymers of styrene using HTS 3920.30.90 (i.e., polymers of styrene) in the Preliminary Results. Petitioners urge the Department to correct this ministerial error in the final results, and use the average unit value it provided in its case brief.

No other party commented on this issue.

**Department's Position:** We agree with Petitioners that we inadvertently omitted the data from June 2004 to May 2005 in the calculation of the surrogate value for polymers of styrene under HTS 3920.30.90 in the Preliminary Results. Accordingly, for the final results, we have recalculated the surrogate value for polymers of styrene using data from June 2004 to December 2005. See Final Factor Valuation Memorandum 8/8/07.

**Comment 11: Exclusion of Myanmar and Bhutan data in the Surrogate Value Calculation for Plywood**

Guanqiu and Starcorp state that the Department incorrectly excluded certain imports from Myanmar and Bhutan, which represented more than 95 percent of the total imports of plywood into India under HTS 4412.14.90 during the POR, in its surrogate value calculation for plywood based on an inappropriate conclusion that these data were aberrational.

Starcorp contends that it is mathematically unsound and illogical to find 96 percent of the imports to be aberrational in comparison to the remaining four percent. Starcorp asserts that conversely the four percent should be considered as aberrational because they are different from the 96 percent of imports under this HTS number.

Moreover, Starcorp asserts that the Department's decision to exclude values it found to be aberrational conflicted with its decision to include clearly aberrational import values under HTS 4808.10.00. Starcorp contends that the Department used HTS 4808.10.00 without any exclusion to value cardboard even though HTS 4808.1000 contains mostly non-cardboard imports and

these imports have aberrational values even greater than the prices of complete boxes. Starcorp asserts that while the Department incorrectly excluded imports from Myanmar and Bhutan under HTS 4414.14.90, it should apply the exclusion to the aberrational imports under HTS 4808.10.00 used to value cardboard.

Guanqiu contends that excluding imports from these two countries conflicts with the Department's long standing and specific practice of: (1) disregarding small quantity import data when the per-unit value is substantially different from the per-unit values of larger quantity imports of that product from other countries, (see Hebei); (2) ensuring that a small quantity of imports did not produce a price that is aberrational relative to other sources of the market value, (see Shanghai Foreign Trade Enters. Co.); and (3) excluding low-volume import values substantially different from the values of high-volume imports, (see Ferrovanadium 11/29/2002 Memo at Comment 13).

Additionally, Guanqiu contends that the Department took the opposite position in the original investigation where it refused to exclude import data from Myanmar in its calculation of plywood because no Indian benchmark was on the record to determine whether any of the values from the surrogate-value calculations were aberrational. See WBF 11/17/04 Memo at Comment 18. Specifically, according to Guanqiu, the Department stated, based on the facts of that segment, it could not measure in a reasonable manner whether a value was aberrationally high or low and concluded that it does not generally exclude imports as aberrational solely on the basis that they exceed the average unit value of the merchandise entered under the same HTS classification. See WBF 11/17/04 Memo at Comment 18.

Guanqiu argues the Department's position in this review does not reconcile to its position in the original investigation because the Department failed to explain its basis for considering the Myanmar and Bhutan prices aberrational while determining the other countries' prices were not. To illustrate its point, Guanqiu provided data for six countries which it contends seem to demonstrate that UAE and Finland prices are aberrational. Again citing Hebei, Guanqiu argues that the CIT stated a 1,134 percent price variation appears aberrational on its face in a case with low volume imports. In light of this, Guanqiu urges the Department to follow its long standing practice of not finding those values aberrational where the price is lower for a large percentage of the imports and absent contradictory evidence.

Furthermore, Guanqiu contends the Department's decision to eliminate the only commercially and statistically significant imports from the calculation is arbitrary and inconsistent with the Department's practice of determining whether prices based on a small quantity of imports are aberrational. See Shanghai Foreign Trade Enters. Co.. Therefore, Guanqiu contends that because the record is devoid of evidence to the contrary, the Department must conclude that the prices from Myanmar and Bhutan are not aberrational and should include the imports from these two countries in the calculation for plywood in the final results.

Moreover, Guanqiu states that the Department should follow its past practice of excluding aberrational low-volume, high-value imports from the calculation of plywood. At the least, Guanqiu asserts, if the Department continues its decision to exclude Myanmar and Bhutan from its calculation for plywood, it should also exclude imports from the UAE (8 cubic meters with an average unit value of 25,750 Rs/M3) and Finland (11 cubic meters of plywood with an average unit value of 36,636 Rs/M3), both of which it contends clearly meet the Department's aberrational standard.

Alternatively, Guanqiu suggests for the final results that the Department value plywood using the average unit price of the U.S. imports into India because the United States is a substantial producer of plywood. Furthermore, since the United States exported only one cubic meter of plywood to India during the POR, it is logical to assume that such a small quantity carried a price premium and thus would serve as a benchmark (although high) against which to test the reasonableness of other import prices.

Petitioners state Starcorp and Guanqiu's assertion that the import data from Myanmar and Bhutan constitute 95 percent of the total imports of plywood into India is meaningless because this calculated percentage of imports is based on aberrational and misreported quantities for October 2004 and October 2005. Petitioners allege that the AUVs of the excluded data are clearly aberrational when compared to the AUVs from other countries and from Myanmar and Bhutan's data in other months because these quantities are larger than other entries by magnitudes up to a thousand.

Petitioners argue the Department's policy is to exclude data that are based on aberrational quantities and values when such data are shown to be distortive and that the direction in which the data are aberrational is irrelevant. See Heavy Forged Hand Tools 09/12/02 Memo at Comment 5; Steel Wire Rope 02/28/01 Memo at Comment 1; and see Chrome-Plated Lug Nuts 10/7/1998.

When reviewing the record values, Petitioners assert that the Myanmar October 2004 price of 12 Rs/M3, the Bhutan October 2004 price of 93 Rs/M3, and the Myanmar October 2005 price of 265 Rs/M3 are completely aberrational when compared against Myanmar's prices in all other months of the POR which range from 8,980 - 16,057 Rs/M3 and import prices of plywood under different HTS numbers (i.e., 3,601 Rs/M3 under HTS 4412.13.10; 13,787 Rs/M3 under HTS 4412.13.90; 9,367 Rs/M3 under HTS 4412.14.90; 13,289 Rs/M3; and 10,863 Rs/M3 under HTS 4412.19.90). Furthermore, Petitioners argue that Guanqiu's assertion that the Department has reversed its practice with respect to plywood in the original investigation is without merit. Petitioners contend that the investigation was on a compressed time schedule and intended to estimate cash deposit rates and that therefore, the Department was not considering whether certain data were aberrational, see WBF 11/17/04 Memo at Comments 18 and 70.

Finally, Petitioners rebut Guanqiu's argument that the Department should exclude imports from the UAE and Finland because they represent low-volume, high-value imports. Petitioners

contend a low quantity does not by itself demonstrate that a value is aberrational or distortive. Additionally, Petitioners assert the average unit prices from the UAE and Finland are consistent with each other and are not out of line with the other imports value under HTS 4412, as discussed above. Therefore, Petitioners urge the Department to continue to exclude the relevant Myanmar and Bhutan data from the surrogate value calculation for plywood.

**Department's Position:** We carefully examined the 18 months of POR data for HTS 4412.14.90 and noted that the import data for all but three entries in that time frame seem consistent and are in a similar patten. With respect to the three line items that differ (i.e., Myanmar's October 2004 quantity, Bhutan's October 2004 quantity, and Myanmar's October 2005 quantity), these quantities are larger than all other entries including all other entries from Myanmar and Bhutan by magnitudes up to a thousand. Specifically, Myanmar's October 2004 and October 2005 reported quantities are 29,000 M3 and 2,914 M3, respectively, while its quantities in other months of the POR are: 21, 14, 59, 29, 160, 58 and 30 M3. However, the total import values reported for these three months follow a similar patten as the values in other months even though the reported quantities in these months are dramatically higher than quantities in other months. The calculated per-unit price for Myanmar in October 2004 is 11.90 Rs/M3, for Bhutan in October 2004 it is 92.72 Rs/M3, and for imports from Myanmar in October 2005 it is 265.27 Rs/M3, while the per unit prices from Myanmar in other months of the POR are: 9,000 Rs/M3 for July 2004; 13,000 Rs/M3 for December 2004; 16,050 Rs/M3 for April 2005; 10,413 Rs/M3 for May 2005; 9,837 Rs/M3 for July 2005; and 9,051 Rs/M3 for September 2005. Therefore, based upon our examination of the data, we determine the reported quantities for Myanmar and Bhutan in October 2004 and Myanmar in October 2005 are aberrational.

Further, we examined HTS 4412.14.90 data from June 2003 to May 2004 (i.e., 12 months before the POR) and from January 2006 to December 2006 (i.e., 12 months after the POR) reported in MSFTI. We compared Myanmar's October 2004 and October 2005 data to its reported data in these periods and found the quantities in these two months are inconsistent with the monthly quantities in those periods as well (i.e., 13 M3 in January 2004, 78, 78, 97, 19, 156, 58, 117, 70, 125, 117, 58, and 38 M3 in January through December 2006). We also compared Bhutan's October 2004 quantity (906 M3) to Bhutan total quantities in the 12 months after the POR (22 M3) and found the same significant level of inconsistency.

Exclusion of aberrational data from the calculation of surrogate values is consistent with the Department's practice. In Steel Wire Rope 02/28/01 Memo at Comment 1, the Department excluded imports from one country (i.e., Malaysia) because they were "many times higher" than the values from other countries and are not in line with numerous other prices for the FOP on the record. In Chrome-Plated Lug Nuts 10/7/1998, the Department excluded imports of German steel for a particular month because the value was aberrational in comparison with other imports.

Further, we disagree with respondents' arguments that because these excluded data consist of approximately 95 percent of the total quantities reported, they cannot be aberrational. In this instance, based upon examination of both the quantities and values reported over the POR (as

well as those for one year before and after the POR), it is evident on its face that the huge quantities are the aberration. The Department cannot consider that the quantities and AUVs reported for two countries, in two months, are normal, but consider the quantities and AUVs for those countries and every other country during the entire 18 months of the POR, the 12 months before and the 12 months after the POR, to be aberrational. Furthermore, respondents' argument that the Department's calculation relied on only 4 percent of the total quantities is not persuasive because the "total quantity" upon which respondents base their argument includes the enormous quantities from Myanmar and Bhutan, which we have found to be aberrational, and therefore, unreliable. By extracting the truly aberrational quantities, we are not relying on 4 percent of the data, but actually 100 percent of non-aberrational data. Thus, respondents' assertion is without merit because we are capturing all of the non-aberrational data in our surrogate value calculation of plywood. After excluding the aberrational data, our calculation was based on import statistics from 5 countries (i.e., Myanmar (non-aberrational data), UAE, Finland, Malaysia and United States) comprising total quantities of 1,820 M3 in the POR, which is consistent with the total import quantities in the 12 months preceding and the 12 months following the POR.

We also examined data from Finland and the UAE in response to respondents' argument that these data should be excluded because they are aberrationally low quantities. Finland and the UAE each has reported quantities and values for one month only during the POR, 11 M3 with an AUV of 36,636 Rs/M3 and 8 M3 with an AUV 25,750 of Rb/M3, respectively. Thus we could not compare these two countries' data with their quantities and values in other months during the POR. We compared the reported quantities and values from the UAE and Finland with other countries' data, e.g., for Myanmar in December 2004, 14 M3 with an AUV 13,000 of Rs/M3. Although the UAE and Finland's data represent relatively low volumes, we find those quantities and values are consistent with the data reported for other countries within the POR. Consequently, we do not consider these data aberrational and continue to include them in the calculation.

Therefore, given that the Myanmar October 2004 and 2005, and Bhutan October 2004 data are clearly aberrational, the Department's inclusion of these line items in its calculation for the surrogate value of plywood would result in inaccurate and unreasonable results. In light of the Department's demonstrated history of excluding data based on aberrational quantities and values, the Department finds that it is reasonable to continue to exclude these line items in its calculation of the surrogate value for plywood in the final results.

**Comment 12: Surrogate Value Source for Mirrors**

Guanqiu argues that, consistent with its redetermination pursuant to remand in the LTFV investigation, the Department should value mirrors using price data from the Indian specialty publication Glass Yug, and not from WTA data. Citing to the WBF Remand 5/25/07 Guanqiu states that the Department found Glass Yug data particularly reliable because these data: 1) represent the sales of two large multinational mirror producers, 2) are reasonably representative of the cost of mirrors in India (i.e., they likely reflect a broad range of transactions between

multiple parties), and 3) correspond to the 5mm mirrors that Guanqiu uses in producing its WBF. See WBF Remand 5/25/07 at 56. Guanqiu points out that, as in the WBF investigation, in the instant case Dare Group submitted evidence from Infodrive indicating that almost half of the imports classified under HTS 7009.9100 are misclassified, as they include merchandise such as rear-view automotive mirrors, glass pearl, and other specialty mirrors. Guanqiu asserts that, most importantly, these are not representative of the mirrors used by respondents in the production of subject merchandise. Guanqiu contends that the Department here, as in the WBF Remand 5/25/07 should concede that a substantial portion of the import data are incorrect, that Glass Yug data represent product-specific values for the type of mirrors used by the respondents, and should use data from Glass Yug to value mirrors for these final results.

Citing Dorbest Ltd., Dare Group asserts that it is indisputable that HTS category 7009.9100 contains misclassified products and, further, that the Department abandoned this HTS in favor of Glass Yug following the CIT ruling regarding this exact issue in the original investigation of this case. Dare Group asserts that HTS category 7009.9100 is neither specific to the mirrors used by respondents nor is it accurate, and the Department should value mirrors using Glass Yug data for the final results.

Dare Group asserts that the three reasons cited by the Department in the Preliminary Results for using WTA data instead of Glass Yug data are erroneous. First, Dare Group disputes the Department's determination in the Preliminary Results of this review that "Infodrive data indicates that 54 percent, by value, of the imports of mirrors covered by the MSFTI data {under HTS category 7009.9100}, covers mirror used to produce furniture" because the statement implies that most Indian imports are actually used for furniture production, a fact that Dare Group claims is not supported by the record. Moreover, Dare Group asserts that the flip-side of this statement is that almost half of the Indian-imported mirrors (i.e., the misclassified imports from Taiwan, Germany, Japan, Spain, and the United Kingdom) are not used for furniture production.

Second, Dare Group disputes the Department's conclusion in the Preliminary Results that the AUV of imported mirrors under this HTS category does not appear to be distorted by inclusion of wrong products, because the AUV of the properly included products is similar to that of the non-excluded countries that contain misclassified product. Citing WBF Remand 5/25/07 at 63, Dare Group contends that it is irrelevant that the price of properly classified product happens to be similar to prices of goods that do not belong in this category in the first place. Dare Group claims that the Department should use the source that is most specific to and provides the most accurate reflection of mirror prices, claiming that the source cannot be HTS data which consists of such substantially misclassified information.

Third, Dare Group disputes the Department's reasoning not to use Glass Yug data because the WTA data provide more months of data. Citing Dorbest Ltd., Slip Op. 06-160 at 112, Dare Group contends that the CIT ruled that contemporaneity is but one of several criteria and cannot be the sole basis for rejection when selecting surrogate value information. Further, Dare Group

refers to the WBF Remand 5/25/07 at 64 to demonstrate that the Department rejected the idea that import data must be completely contemporaneous with the period in question and determined that Glass Yug data were sufficiently contemporaneous with the period of investigation in spite of the partial rather than full period overlap.

Dare Group further contends that Petitioners' arguments against the use of Glass Yug data should be rejected. First, Dare Group asserts that Petitioners' argument in their November 22, 2006, comments, that Glass Yug data are unusable because the prices remained stable despite changes in the thickness of the glass, is meritless because the prices quoted were per-millimeter prices and therefore already accounted for differences in the thickness of the glass. Dare Group asserts, further, that the prices in the data did, in fact, fluctuate from 80 – 76 Rupees per millimeter per meter squared. Second, Dare Group disputes Petitioners' argument, that the data in Glass Yug are merely "trend" data, by noting that Petitioners provided no evidence in support of this argument. Third, Dare Group rebuts Petitioners' argument that the prices in Glass Yug are only for glass, rather than mirrors, by noting that while Glass Yug contains prices for mirrors, the prices pointed to by Dare Group are for "world class mirrors." Dare Group argues, further, that the description "world class mirrors" is broad enough to encompass the types of mirrors used in furniture production and, furthermore, Glass Yug data are specific to different thicknesses of mirrors, while WTA data are not. Finally, Dare Group asserts that the Department prefers to use domestic data, such as Glass Yug data, over import values, such as WTA data, and that upon remand the Department reversed its prior decision not to use Glass Yug data in the investigation.

Petitioners contend that the Department properly used WTA data from Indian HTS category 7009.91.00 in the Preliminary Results of this administrative review and should continue to use this HTS category in the final results. Petitioners argue that the Indian import statistics continue to be the best available information to value mirrors. Citing to Dorbest, 462 F. Supp. 2d at 1277, Petitioners contend that the Department's preference is to use Indian import statistics to value factors of production because the Indian import statistics provide accurate and reliable surrogate value information, as recently affirmed in the WBF Remand 5/25/07.

Petitioners contend that the sole basis for Dare Group's and Guanqiu's arguments that the WTA data must include misclassified mirrors, that Infodrive data for the same classifications suggest that the WTA data must include misclassified mirrors, is without merit. Citing to the Preliminary Results of this review, Petitioners assert that the Department determined that nothing on the record demonstrates that the WTA data are so distorted as to render them unreliable to calculate a surrogate value for mirrors. Petitioners contend that nothing has changed since that time to cause the Department to change this conclusion. Additionally, Petitioners assert that the Department has stated that it will not use Infodrive data as a benchmark unless the WTA and Infodrive datasets for HTS category 7009.91.00 were nearly identical, and Petitioners contend that such is not the case in this review.

Further, Petitioners assert that examination of the Infodrive India printout included in Dare Group's October 24, 2006, submission shows that there is no distortion caused by the inclusion

of the allegedly misclassified inputs. Specifically, Petitioners assert, if the Department were to remove the alleged misclassified imports from Taiwan, Germany, Japan, Spain, and Italy from its calculation of the surrogate value of mirrors, the resulting AUV would increase merely 0.67 percent. Furthermore, Petitioners argue that for Taiwan, the only country for which the WTA and Infodrive data are similar, the AUV is actually less than the AUV for the rest of the other countries, thus any misclassification of Taiwanese mirrors would benefit the respondents.

Petitioners assert that 56 percent of the imports listed in the Infodrive data are from the UK, and that 98 percent of these mirrors are identified as Pilkington Optimirrors. Petitioners refer to Pilkington's website to demonstrate that its Optimirror Plus can be placed in "wardrobes and other furniture," and assert further that Dare Group concedes in its case brief that these mirrors in this HTS category could be used in furniture production. Moreover, Petitioners note that the AUV of the UK mirrors is nearly identical to the AUV of all nations' mirrors under HTS category 7009.91.00. Thus, Petitioners conclude, the WTA data are not distorted by the "misclassified" mirrors and there is no impact on the surrogate value.

Petitioners reiterate that the Department should not use Glass Yug data for the final results of this review because the data are not reliable for this POR. Despite Dare Group's exhibit of nearly a thousand pages of Glass Yug information in its October 24, 2006, submission, Petitioners contend that the exhibit contains no actual mirror pricing but only discusses trends for float glass. Petitioners also regard this Glass Yug information as unreliable because Dare Group did not provide information regarding from where the underlying data came, whether the data were countrywide, and how the data were collected. Also, Petitioners contend that Glass Yug reported on pricing trends of the thickness of the mirrors and did not distinguish other pricing factors, such as pattern, shape, beveling, and edging. Therefore, Petitioners suggest that the Department should use WTA data in calculating the surrogate value for mirrors in the final results.

**Department's Position:** For the final results, we have determined to value mirrors using data from Glass Yug. Infodrive data put on the record by Dare Group in its October 24, 2006, submission show that Infodrive data accounts for approximately 80 percent of the total WTA data in the Indian HTS category 7009.9100. Further, for the countries from which the misclassified data originated, the Infodrive data cover significant percentages of the total WTA data (e.g., 100 percent from Taiwan, 51 percent from Italy, and 77 percent from Germany). Infodrive data indicate that all of the entries from these three countries are misclassified. Specifically, all of the mirrors from Taiwan appear to be rearview mirrors imported by Enginetech, a seller of rearview mirrors. Also, virtually all the mirrors from Germany appear to be rearview mirrors imported by Daimler Chrysler. Further, all of the imports from Italy are described as "glass pearl (embroidery material)." In all, almost half of the imports classified under Indian HTS 7009.9100 appear to be misclassified. Accordingly, the Department has determined that Indian HTS 7009.9100 is distorted by misclassified products and thus is not specific to the inputs used by respondents in this review and, therefore, not suitable to value mirrors in this review.

In the absence of reliable import statistics, we find that the Glass Yug data source put on the record by Dare Group represent the best available information on the record with which to value mirrors. The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are publicly available, product-specific, representative of a broad market average, tax-exclusive and contemporaneous with the POR. Glass Yug is a publically available Indian quarterly specializing in the glass industry. See Dare Group's October 24, 2006 submission at 21-22 and Exhibit 115. The data for mirrors are product specific, specifying rupee per millimeter per square meter prices for "world class mirrors" in the 2 to 2.5 mm and 3 to 6mm range, which corresponds to the range of respondents' data in this review. See Dare Group's October 24, 2006 submission at 21-22 and Exhibit 115. The data are comprised of broad market averages of prices offered in the domestic Indian market by three large Indian companies, Gujarat Guardian Ltd., Saint-Gobain Glass India Ltd. and Asahi India Glass. See Dare Group's October 24, 2006 submission at 21-22 and Exhibit 115. Although the Department prefers countrywide data, we find that in the absence of such data, the use of this price information from these three large multinational producers is reasonably representative of the cost of mirrors in India in that Glass Yug likely reflects numerous transactions between many buyers and sellers. Regarding whether the data include taxes, the Glass Yug volumes on the record of this review do not specify if the prices are tax-exclusive; however, we have no reason to conclude that such prices would include tax, and no party has argued that they do include tax. Finally, we also find that the Glass Yug data are sufficiently contemporaneous. While the data do not cover the entire POR, they do fall entirely within the POR, covering 12 months of the POR and require no inflator.

Further, we find there is no record evidence to support Petitioners' contention that Glass Yug data are merely pricing trends, and do not reflect the averages of actual prices. We note that the articles associated with the price charts clearly discuss affects on the market that already took place to cause the prices shown. Also contrary to Petitioners' arguments, we note that the monthly prices reported in Glass Yug do, in fact, change over time. Finally, in regard to Petitioners' criticism that that Glass Yug mirror data do not account for pattern, shaping, beveling, etc., Petitioners have put forth no evidence in support of this claim, and we find that there is no record evidence that Glass Yug's world class mirrors do not include these characteristics. Given the lack of other available data on the record, we do not find this argument to be a sufficient reason to reject Glass Yug data. Therefore, for the final results, we have valued respondents' mirrors using an average value from the Glass Yug data. See WBF Final Factor Valuation Memorandum 8/8/07.

**Comment 13: HTS Classification of Corrugated Paper**

Dare Group and Guanqiu contend that in the Preliminary Results the Department erred in classifying their corrugated paper inputs under HTS category 4808.10.00 rather than 4808.90.00. Both respondents argue that the Infodrive data put on the record by Dare Group demonstrate that HTS category 4808.10.00 is dominated by specialty high value products, such as VCI cardboard infused with corrosion-resistant vapors and pre-compressed pressboard (i.e., insulating material

for transformers); neither of which they use in their production of WBF. Guanqiu reports that the German and Swedish imports account for 78 percent of the imports under HTS category 4808.10.00. Dare Group comments that the Infodrive data under this category does not report one importation of plain corrugated paper of the type used in furniture manufacturing. Dare Group contends that, therefore, the Department should rely on Infodrive data to confirm that Indian importers are classifying corrugated paper under 4808.90.00.

Dare Group demonstrates that imports from Sweden of "pre-compress press board," which it claims is another name for insulation material for transformers or Elboard, can be found under both HTS category 4808.10.00 and HTS category 4808.90.00. However, Dare Group contends that more than half of the imports under HTS category 4808.10.00 are Elboard from Sweden, whereas Infodrive reports only four transactions of Elboard under HTS category 4808.90.00. Moreover, according to Dare Group, imports under HTS category 4808.90.00 clearly reflect items such as cardboard, grey cardboard and other properly classified products, thus indicating that the AUV under HTS category 4808.90.00 is not as distorted as that under 4808.10.00.

Dare Group compares the AUV of HTS 4808.10.00 with the AUV of "finished boxes" under HTS 4819.10.10, asserting that the AUV of finished boxes is less than the AUV of the corrugated paper from which they are made. Dare Group states that it is "illogical" that the AUV of corrugated paper would be higher than that of the finished box.

Guanqiu asserts that HTS 4808.10.00 overstates the value of its corrugated paper because the HTS category includes the specialty materials discussed above. Guanqiu asserts this is contrary to the Department's statement that when selecting surrogate values, it prefers data that are reliable, contemporaneous with the POR, and product specific. See WBF Remand Determination at 40. Guanqiu adds that in that segment, the Department evaluated which HTS category better reflected the respondent's packing cardboard input and determined that HTS category 4808.10.00 included perforated and non-perforated corrugated paper and paperboard, which was inappropriate because it overstated the surrogate value of the respondent's non-perforated cardboard. Guanqiu claims that its corrugated paper is identical to the packing cardboard of the respondent in that case.

Petitioners state that the Department correctly valued corrugated paper using HTS 4808.10.00 based on the descriptions of the respondents' corrugated paper and Indian HTS category headings. First, assert Petitioners, the HTS category 4808.10.00 covers "corrugated paper, whether or not perforated," whereas HTS 4808.90.00 ("other") is a basket category for products other than corrugated paper and the specific items covered by the other subheadings, 4808.20.00 and 4808.30.00. Citing Artist Canvas 3/30/06 Memo at Comment 4 and Crawfish Tail Meat 5/24/99 at 27962, Petitioners assert that it is the Department's practice to rely on a basket HTS category only when no more specific HTS category applies. In further support of its position that the "other" category is inappropriate for use here, Petitioners cite Cargill, 318 F. Supp. 2d at 1287-88, where the CIT confirmed that the term "other" dictates that the basket category should be used only when all other categories have been "exhausted."

Petitioners claim that respondents' argument that the Department should not use HTS 4808.10.00 because it covers "perforated" paperboard, while their inputs do not, is incorrect. Petitioners claim that the CIT ruled in Dorbest Ltd., 462 F. Supp. 2d at 1313, that it is irrelevant for classification purposes if a respondent's cardboard factor is non-perforated because the classification specifically covers all corrugated paper and paperboard, whether or not it is perforated.

Petitioners also refute respondents' arguments regarding the relevance of the Infodrive data to the corrugated paper/cardboard data. Petitioners claim that the Department stated that it will not use Infodrive data as a benchmark to look behind the WTA data unless the datasets are nearly identical. See WBF Remand 5/25/07 at 52. In this case, Petitioners argue that the Infodrive data cited by the respondents in the instant case are not in any way representative of the WTA data. In fact, Petitioners argue, the Infodrive data are unreliable on their face, resulting in the respondents having to make assumptions about the Infodrive data to support their claims. Petitioners contend that the Department would err if it determined in this instance that the Infodrive data were a reliable indicator of the products being classified, as Dare Group has suggested.

Again citing Dorbest Ltd., 462 F. Supp. at 1275, Petitioners assert that using surrogate values to estimate normal value is an inexact science. Thus, in comparing the AUVs of boxes and corrugated paper, Petitioners conclude that the difference in values is negligible, 152 Rs/kg for corrugated paper using HTS 4808.10.00 and 133 Rs/kg for boxes, and this difference may be accounted for by any number of legitimate market factors. Petitioners argue that short of a demonstration of a clear discrepancy in a value under the appropriate HTS classification, that classification must be used to value the input in question.

**Department's Position:** The Department has determined to continue to value corrugated paper with Indian HTS 4808.10.00, as it is the best surrogate value for the corrugated paper used by respondents. In the Preliminary Results, the Department used India HTS 4808.10.00 to value corrugated paper based on what the Department determined to be the closest match to the respondents' descriptions of their inputs. The four-digit HTS classification 4808 covers "paper and paperboard, corrugated (with or without glued flat surface sheets), creped, crinkled, embossed or perforated, in rolls or sheets, other than paper of the kind described in heading 4803." The subclassification 4808.10.00 explicitly covers "corrugated paper, whether or not perforated." Respondents in this review describe their inputs specifically as corrugated paper. Two other subcategories under HTS 4808 cover "sack kraft paper" and "other kraft paper," respectively. The remaining sub-category, HTS 4808.90.00, covers "other," i.e., everything under heading 4808 that is not covered specifically in the first three subcategories. Therefore, we find that HTS 4808.90.00 explicitly does not cover the product "corrugated paper." Additionally, where a category is more specific to an input, we prefer to use that category rather than a basket category. See Cargill, 318 F. Supp. 2d at 1287-88. Accordingly, we continue to find that HTS 4808.10.00 is the correct classification with which to value the respondents' inputs of corrugated paper.

The Department does not agree with the respondents that the use of Indian HTS 4808.10.00 in this segment is contrary to our determination in the WBF remand. In the WBF Remand 5/25/07, the Department stated that because the respondent's corrugated paper was not perforated, and HTS 4808.10.00 included both perforated and non-perforated corrugated paper, HTS category 4808.90.00 was a more accurate classification because it would not include perforated corrugated paper. This reasoning was based on the fact that on the record of that case, the Indian HTS 4808.90.00 classification was "other paper and paperboard corrugated." We specified that "the Department continues to find that both HTS subcategories specifically include paperboard that is corrugated, as the term 'corrugated' is included in the description of both" and since both were specific to corrugated paper, we chose to use HTS 4808.90.00 because it likely did not include perforated corrugated paper. See WBF Remand 5/25/07 at 74; see also Dorbest Ltd., 462 F. Supp. 2d at 1313. In this case, the record evidence indicates that Indian HTS 4808.10.00 covers simply "other." See, e.g., Dare Group's October 24, 2006 submission at Exhibit 73. Accordingly, because the Indian HTS 4808.90.00 classification on the record of this case is simply "other," it does not specifically include corrugated paper, as discussed above, and would not be a better match for the respondents' corrugated paper inputs than HTS 4808.10.00, which specifically includes corrugated paper.

Further, we find there is insufficient evidence on the record to support respondents' argument that the Indian HTS 4808.10.00 is distorted by misclassified products. The Infodrive data put on the record by Dare Group in its November 13, 2006 submission are purported to show that imports from Sweden and Germany are dominated by misclassified "high value" products. However, the Infodrive statistics for Sweden show a total value of 3,689,479.18 Rs, which is 171 percent of the total value reported in WTA for imports from Sweden. Because Infodrive data are purported to be derived from a subset of the WTA data sources, it is not possible for the Infodrive data to accurately report more value than the WTA data. See, e.g., Chlorinated Isocyanurates Memo 5/10/05 at Comment 1 (explaining that Infodrive data "does not account for all of the imports which fall under a particular subheading."). Furthermore, if we disregard the surplus data (i.e., that amount in excess of the amount reported under WTA for Sweden and Taiwan), the Infodrive data cover only 35 percent of the value of the WTA data. As well, Infodrive data for the other country purported to have misclassified imports, Germany, account for only ten percent of the total WTA value of imports for that country. Based on these aberrations and uneven coverage of the WTA data by the Infodrive data, we do not find that Infodrive is a useful tool to analyze this HTS category in this review.

Finally, respondents have not provided any independent basis for evaluating whether the fact that the AUV of the HTS classification for corrugated paper is slightly higher than the AUV of the HTS classification for boxes is aberrational, or whether it simply reflects the range of prices represented by these products. A price differential alone is not sufficient reason to find the HTS classification for corrugated paper is distorted.

Based on the above, we continue to find that Indian HTS category 4808.10.00 is the most specific classification for valuing respondents' corrugated paper and cardboard inputs in this

review. Further, we find there is no reliable evidence on the record that demonstrates that this HTS classification is distorted by misclassified products. Additionally, we have determined that respondents reported their cardboard is made of corrugated paper and paperboard. Therefore, we have determined to value cardboard with the same HTS category as corrugated paper. See Comment 14: HTS Classification for Cardboard. Accordingly, we have used HTS 4808.10.00 to value corrugated paper and cardboard for the final results.

**Comment 14: HTS Classification for Cardboard**

Petitioners contend that the description for HTS 4808.10.00 (i.e., corrugated paper and paperboard) most closely matches respondents' cardboard input because the description of the HTS stated that it applies to "paperboard," which is synonymous with cardboard.

Petitioners challenge the logic behind Dare Group's assertion that its cardboard should be classified under HTS subheading 4808.9000 because the word "cardboard" is not included in the description of 4808.10.00. Petitioners contend that the word "cardboard" does not appear in the description, heading, or any subheading of the 4808 HTS category at all. Rather, Petitioners state, HTS category 4808 uses the term "paper and paperboard" and HTS 4808.10.00 uses the term "corrugated paper and paperboard." Thus, Petitioners argue if cardboard is classified under HTS 4808 as "paperboard," which it claims Dare Group acknowledges is appropriate, then corrugated cardboard should be classified as "corrugated paperboard" under HTS 4808.10.00.

Moreover, Petitioners aver that the HTS classification the Department selected to value respondents' cardboard factor, 4808.90.00, is a basket category for products other than corrugated paper and paperboard, which they argue is evidenced by its description as "other." Petitioners argue that it is the Department's policy to reject basket categories if a more specific classification is available. See Artist Canvas 3/30/06 Memo; Crawfish Tail Meat 05/24/1999. Petitioners assert there is no record evidence to indicate that the respondents' cardboard is not made of corrugated paper and paperboard. In addition, Petitioners assert that respondents could not use a flat cardboard or a non-corrugated paper for packing because only the corrugated cardboard and corrugated paper could provide enough protection to the finished merchandise during transport.

Further, Petitioners rebut certain of the respondents' arguments that the Department should use data from Infodrive to evaluate whether Indian MSFTI data for HTS 4808.10.00 are distorted. Petitioners argue that it is the Infodrive data that are distorted, incomplete and unreliable. In addition, Petitioners assert that the Department is not willing to use Infodrive data as a benchmark to look behind the MSFTI data unless the datasets are nearly identical. See Dorbest Ltd.

In this case, Petitioners assert the MSFTI and Infodrive datasets for HTS 4808.10.00 are so different that the Infodrive data can not be used as benchmark for the following reasons: (1) the Infodrive data account for only 35 percent of the total import value of HTS 4808.10.00 in

MSFTI; (2) data from 7 countries which account for 16 percent of the total import value of the MSFTI do not appear at all in the Infodrive data; (3) imports from Taiwan appear in the Infodrive data but not in MSFTI data; (4) for the countries that do appear in both, the import values differ between one and 171 percent.

Furthermore, Petitioners argue that the Infodrive data for imports from Sweden and Germany are so different from the MSFTI data that they cannot serve as a benchmark. According to Petitioners, with respect to imports from Germany, the respondents assert that the Infodrive data for HTS 4808.10.00 include imports of "volatile corrosion inhibitor cardboard" that helps limit the corrosion of metal. Nevertheless, Petitioners argue that comparing the Infodrive and MSFTI data is meaningless because the values for German-origin products differ between the two sources by more than a factor of 10. Also, Petitioners argue that even if there were imports into India of corrosion-resistant cardboard within 4808.10.00 during the POR, corrosion-resistant packing materials could be used by wooden bedroom furniture manufacturers to ship furniture pieces that incorporate metal parts.

With respect to imports from Sweden, Petitioners state that Dare Group hypothesized the "pre-compressed press board" that was exported from Sweden by "ABB Limited" must be the same product as "Elboard" (which is used as insulating material for power transformers) because ABB Limited produces Elboard, among other products. However, Petitioners contend there are no grounds for Dare Group's speculation that the four other entries of "pre-compressed press board" reported in the Infodrive data must have been Elboard. Petitioners assert that the Infodrive data reported nearly twice the import value for HTS 4808.10.00 than the MSFTI data, concluding that the entries of "pre-compressed press board" reported in the Infodrive data must have been classified elsewhere by the MSFTI data. In fact, Petitioners contend that the Infodrive data Dare Group provided indicate that "Elboard" is imported under the basket category HTS 4808.90.00.

Finally, Petitioners state that even if Infodrive were used for benchmarking purposes, the Infodrive data suggests that HTS item 4808.90.00 contains multiple products that differ from the cardboard used by respondents (e.g., paper roll, crepe papers, wrapping paper, gift boxes, decoration boards, insole sheets for shoes, scented paper, transfer paper, covering paper, book binding board and embossing paper) and thus, is the less reliable category. Therefore, Petitioners urge the Department to use HTS classification 4808.10.00 to value respondents' corrugated cardboard factors.

Starcorp asserts that the Department's decision to value Starcorp's cardboard packing paper, which Starcorp alternately refers to as "cardboard" and "corrugated paper," using HTS classification 4808.10.00, rather than the HTS classification 4808.90.00, is factually incorrect and is inconsistent with the Department's determination in the investigation and the recent remand determination. See WBF 11/17/04 Memo at Comment 28. Specifically, Starcorp states that HTS 4808.90.00 more accurately reflects the actual materials used by Starcorp, which it claims the Department viewed during the verification.

Citing its November 13, 2006 and March 5, 2007 submissions, Starcorp contends the per-unit value derived from HTS 4808.10.00 is extremely distorted because the items imported into India during the POR under HTS 4808.10.00 do not meet the definition associated with this tariff heading (i.e., corrugated paper and paperboard). Specifically, Starcorp contends the items imported into India under HTS 4808.10.00 included items such as: 1) volatile corrosion inhibitor cardboard, a specialty cardboard treated with compounds designed to emit corrosion-inhibiting vapors, that is used to package highly corrodable metal objects; and 2)"pre-compressed press board," a strong, highly glazed composition board resembling vulcanized rubber.

Starcorp asserts that the Department excluded certain import statistics from Bhutan and Myanmar from the overall calculation of the surrogate value for respondents' plywood in Preliminary Results on the argument that the data from these two countries were aberrational and contends that the Department should apply the same logic to value cardboard.

Stating that the value associated with HTS 4808.10.00 is a higher value than that calculated for a more advanced product - boxes and packing cartons (i.e., HTS 4819.10), Starcorp asserts it is illogical that the more simple, less manufactured product (i.e., corrugated packing paper) is more expensive than the more complex, further-manufactured fully formed packing boxes. According to Starcorp, this fact demonstrates that the value associated with HTS 4808.10.00 is distorted.

Moreover, Starcorp states the Department officials verified that its cardboard packing paper is just plain cardboard packing paper without any resemblance to the specialty products imported under HTS 4808.10.00. Starcorp argues that the Department's surrogate value selection is not supported by the record if it does not include or capture the input it is valuing or a reasonably comparable item, as is the case here. See Dorbest Ltd..

Finally, Starcorp argues that with respect to this specific issue the CIT directed the Department to "either explain, with reference to the description of the input, why 4808.90.00 is the appropriate classification, or to change the classification accordingly" to value cardboard. In response, the Department determined to value cardboard packing paper using 4809.90.00 in the remand determination. See Dorbest Ltd. Thus, Starcorp contends the Department's practice with respect to this input is established and there is no material change in fact since the remand determination. Also, Starcorp asserts that parties subject to antidumping orders are entitled to have the law applied consistently and should be able to rely on the agency's legal positions and to make business decisions accordingly. See Davila Bardales; Shaw's Supermarkets; Hussey Copper; and Citrosuco Paulista, S.A. Starcorp concludes that the Department chose the appropriate HTS classification, 4808.9000, in the the remand determination and asserts the Department should continue using this HTS classification to value respondents' cardboard packing paper in the final results of this review.

Dare Group rebuts Petitioners' arguments that the Department should use HTS 4808.10.00 to value cardboard. Dare Group states that InfoDrive data show 78 percent of the imports under HTS 4808.10.00 are dominated by electrical insulating cardboard ("Elboard") from Sweden and

"volatile corrosion inhibitor" cardboard from Germany, and InfoDrive data do not show even a single importation of plain cardboard of the type used in furniture manufacturing. Dare Group contends this has resulted in the AUV of HTS 4808.10.00 being higher than the AUV of HTS 4819.10.10 (i.e., cardboard boxes).

Additionally, Dare Group rejects Petitioners' argument that the Department cannot use InfoDrive data because they covers only 65 percent of imports under the MSFTI. Dare Group contends the purpose of the InfoDrive data in this case is to demonstrate how Indian Customs and the Indian importers actually classified the goods upon importation during POR. Dare Group alleges the InfoDrive data confirm Indian importers classify standard cardboard under HTS 4808.90.00.

Dare Group explains HTS 4808.10.00 includes "VCI Card Board" (i.e., a cardboard infused with corrosion-resistant vapors), which is not the kind of cardboard used by Dare Group. Also, other furniture producers do not require corrosion-resistant vapors because wood does not rust. In addition, Dare Group argues it provided record evidence that HTS 4808.10.00 also includes "pre-compress press board," which it claims is also "Elboard," another specialty product not used by wooden bedroom furniture manufacturers. Moreover, Dare Group asserts that in all of Petitioners' arguments, they do not provide any facts to rebut Dare Group's information. Dare Group acknowledges that "Elboard" appears in both 4808.10.00 and 4808.90.00. However, Dare Group argues, it appears that more than half of the imports under 4808.10.00 are "Elboard" products, while there are only four such transactions under 4808.90.00. Thus, Dare Group alleges HTS 4808.90.00 does not suffer the same level of distortion as HTS 4808.10.00. Moreover, Dare Group assert HTS 4808.90.00 includes items such as cardboard, grey cardboard, cardboard on pallet, cardboard neogrand 22x28, carton sheet, export carton box and cardboard mixed sizes, all of which it contends more closely resemble the cardboard it uses.

Furthermore, Dare Group argues that if the Department values Dare Group's cardboard using HTS 4808.10.00, it will be applying a value that includes perforated cardboard. Dare Group asserts that it provided evidence and confirmations from its cardboard suppliers that it uses non-perforated cardboard. Thus, Dare Group alleges that use of 4808.10.00, which includes high-valued perforated cardboard, would create a mismatch between Dare Group's input and its valuation. Therefore, Dare Group urges the Department to continue using HTS 4808.90.00 to value its cardboard in the final results.

**Department's Position:** We have determined that HTS 4808.10.00 (i.e., corrugated paper and paperboard whether or not perforated) is more appropriate to value respondents' cardboard input. We examined each mandatory respondent's reported packing materials and found only Dare Group and Guanqiu reported "cardboard" and corrugated paper" as two separate inputs. Dare Group provided the same description for its cardboard and corrugated paper as "non-perforated cardboard and corrugated paper sheets" in its October 24, 2006, Supplemental Section D Response. Guanqiu described its cardboard as "corrugated paperboard used to make carton boxes" and its corrugated paper as "folded into an angle and used for protection of the furniture corners." See Guanqiu's December 21, 2006 Supplemental Section D Response. Based on these

descriptions, we conclude the respondents' cardboard is made of corrugated paper and paperboard, and would be properly classified with the same HTS category we are using to value corrugated paper for the final results. Our response to parties' arguments regarding the proper classification for corrugated paper is identical to that expressed in Comment 13 and is therefore not repeated here. We have not addressed Starcorp's description of its cardboard as the Department has determined to base Starcorp's margin on total AFA for other reasons. See Starcorp's AFA Memorandum dated concurrently with this determination.

**Comment 15: Surrogate Value for Electricity**

Dare Group and Starcorp contest the Department's use of 2000 IEA data to value electricity in the preliminary results. Both respondents assert that if the Department continues to use India as the surrogate country for the final results, it should instead value electricity using the CEA data submitted by Fine Furniture.

First, Dare Group and Starcorp rebut the Department's position that Fine Furniture's worksheet does not reflect the underlying data from which it was derived. Specifically, they explain that the figures on page 1 of Exhibit 49 reflect the column providing average rates for electricity for large industry throughout India as of December 1, 2005, while the chart on page 4 of Exhibit 49 shows average CEA electricity rates in India as of October 1, 2006, from CEA's website, which only provides current information on electricity rates. Additionally, Dare Group contends the chart on page 4 confirms that the rate is derived from CEA data.

Second, in response to the Department's statement that Fine Furniture did not provide a narrative explanation of its calculation, Dare Group and Starcorp assert that Fine Furniture averaged the figures from the column for large industry (Pages 9 - 14 of Exhibit 49) to yield an India-wide electricity rate for this category of user, which it converted to a U.S. dollar rate using the exchange rate from the website http://www.xe.com. However, Dare Group contends Fine Furniture should have used the exchange rate as of December 1, 2005, and provided a revised electricity rate accordingly. Dare Group and Starcorp assert the "large industry" (i.e., companies with electricity consumption of 438,000 kwh/month) electricity costs used by Fine Furniture provide the best fit for their monthly electricity usage.

Third, Starcorp and Dare Group assert the Department's statement that Fine Furniture did not indicate whether it had applied an inflator or deflator to the CEA data is irrelevant because the CEA data were current as of December 1, 2005, which is contemporaneous with the POR.

Citing Heavy Forged Hand Tools 09/12/02 Memo at Comment 5 (quoting Potassium Permanganate 09/07/01 Memo at Comment 17), Starcorp contends the Department prefers to select values that are: (1) for products as similar as possible to the input being valued; (2) contemporaneous with or closest in time to the POR; and (3) representative of a range of prices in effect during the POR. Starcorp asserts that the IEA data satisfy none of these criteria while the CEA data satisfy all of them. For the first criterion, Starcorp states that the IEA data present

a single, average electricity value for all Indian electricity users, whereas the CEA data are targeted and provide data for companies with the same profile as Starcorp and the other respondents in this review (i.e., large industry). With respect to the second criterion, Starcorp argues the IEA data are not contemporaneous with the POR while the CEA data are. For the third criterion, Starcorp states that the IEA data are not representative of a range of prices contemporaneous with the POR, while the CEA data are made up of an average of prices for large industry derived from 42 different locations in India during the POR.

Lastly, Starcorp states, in light of the Department's practice to evaluate the quality, similarity, specificity and contemporaneity of data in choosing its surrogate values, no record evidence supports continued using of the IEA data for the final results. See Hand Trucks and Certain Parts Thereof 05/15/2007 Memo at Comment 9.

Petitioners disagree with Dare Group's and Starcorp's argument that the Department should value electricity with rates from CEA. Petitioners argue the Department's practice of using the IEA data to value electricity is well established. While Petitioners acknowledge that the CEA data is contemporaneous with the POR, they assert that the CEA data are only estimated rates, not actual rates and thus are not as reliable as the IEA data.

Additionally, Petitioners state that the CEA values provided by respondents are based on "large industry" usage, which they contend may not reflect the requirements of all respondents in this review. Petitioners urge the Department to continue its practice of using an average rate across all industry sizes to value electricity, but as an alternative, if the Department uses data based on industry size, it should ensure that it uses data reflecting the appropriate size for each respondent.

**Department's Position:** We agree with Petitioners that it is appropriate to continue to use the IEA data to value electricity in the final results. First, the Department's practice of using the IEA data for 2000 and adjusting with an inflator to value electricity is well established. See e.g., TRBs 01/17/06, and Pure Magnesium 10/17/06. Although these data are not contemporaneous, as the Department usually prefers for most surrogate data, the Department has consistently found IEA data, using an inflator, to represent the most reliable, available data for electricity.

Second, the CEA data proposed by Dare Group and Starcorp appear to represent estimated rates for users in India. We examined CEA's official web site www.cea.nic.in and found the electricity rates chart submitted by several respondents was under "Estimated Average Rates of Electricity." In Exhibit 7 of Starcorp's case brief, the title for the electricity data is "Statement Showing Estimated Average Rates of Electricity." Respondents did not explain the difference between "estimated" and "actual" rates. Because we cannot determine what data the GOI agency uses to calculate the "estimated average rate," we do not have confidence in the CEA data proposed by Dare Group and Starcorp.

Starcorp asserts that the CEA data satisfy three criteria the Department uses to select surrogate values in that they are: (1) for products as similar as possible to the input being valued; (2) contemporaneous with or closest in time to the POR; and (3) representative of a range of prices in effect during the POR. However, we disagree that the CEA data satisfy these reliability criteria. While the CEA data proposed by respondents are for "large industry," contemporaneous with the POR and represent a range of prices, from the information provided by respondents and the CEA web site, we could not determine how the CEA data were compiled. The "estimated average rates of electricity" chart did not demonstrate how usage rates were recorded. Further, we could not determine how the GOI agency selected the samples for each category (i.e., commercial, agriculture, industry) for the CEA data. Moreover, although the CEA data are closer in time to the POR, the dates in the column "Tarriff Effective From" of the "estimated average rates of electricity" chart show time frames ranging from April 1, 1999, to October 1, 2006, and we could not determine whether or not the calculated electricity prices were adjusted with an inflator or deflator to be contemporaneous with the POR. Therefore, for the final results, we will continue to use IEA data to value electricity.

**Comment 16: Electricity and Coal Inflator**

Petitioners state that the Department relied on the general wholesale price index ("WPI") as published by the IMF to calculate the inflators for electricity and coal in the preliminary results. Petitioners assert that the GOI published a more specific WPI covering "Fuel, Power, Light & Lubricants" which the Department has used to inflate electricity in other recent trade cases involving products from the PRC. See Memorandum to Wendy J. Frankel, Director, AD/CVD Operations, Office 8, through Charles Riggle, Program Manager, from Laurel LaCivita and Matthew Quigley, International Trade Compliance Analyst regarding: Preliminary Results of the 2004-2005 Administrative Review of Polyethylene Retail Carrier Bags from the People's Republic of China: Surrogate Value Memorandum, at 2. (August 31, 2006) ("PRCBS Preliminary"). Therefore, Petitioners urge the Department to apply as the inflator for surrogate values of electricity and coal the more specific inflator from the GOI.

Dare Group urges the Department to reject Petitioners' request to apply an inflator based on the WPI for "Fuel, Power, Light & Lubricants" to the electricity surrogate value because the inflator suggested by Petitioners reflects inflation data for fuel, power, light and lubricants and, therefore, is not specific to electricity.

Further, Dare Group and Starcorp state that, notwithstanding the decision in PRCBS Preliminary, the Department declined to use a similar inflation factor that was alleged to be more specific to the electricity industry in a more recent case. See Hand Trucks and Certain Parts Therefore 05/15/2007 Memo at Comment 1. Dare Group asserts the Department should follow this recent decision and decline to use the inflator for electricity proposed by Petitioners. Finally, Dare Group alleges the issue will be moot if the Department values electricity using the CEA data that it claims are superior to IEA data.

**Department's Position:** We agree with Dare Group and Starcorp and have continued to apply the WPI inflator to the surrogate value for electricity. As we discuss above in Comment 15: Surrogate Value for Electricity, we continue to use IEA data to value electricity in the final results. The IEA data separate the value for electricity into two separate categories: electricity for industry and electricity for households. The Department used "electricity for industry" in the Preliminary Results. See WBF Preliminary Factor Valuation Memorandum 1/31/07 at Exhibit 6. The "Fuel, Power, Light & Lubricants" index provided by Petitioners does not distinguish between electricity for industrial, residential, or commercial use. Therefore, Petitioners did not provide record evidence to demonstrate that their proposal is better suited to inflate the surrogate value for industrial use electricity than the WPI.

Further, due to the infrequency of precise matching between surrogate values and inflators, as well as the Department's need to inflate different unrelated products in one proceeding, the Department finds it is more appropriate to apply the WPI to inflate all inputs because the WPI data are calculated from a wide range of commodities. See Hand Trucks and Certain Parts Thereof 05/15/2007 Memo at Comment 1. Furthermore, Petitioners did not provide record evidence to demonstrate that the Department's use of the WPI index to adjust the electricity and coal surrogate values for inflation caused inaccuracies or faulty results in the Preliminary Results. Therefore, the Department determines it appropriate to continue to use the WPI to inflate electricity and coal in the final results.

## II. Surrogate Financial Ratio Issues

### Comment 17: Use of Certain Financial Statements for the Calculation of Surrogate Financial Ratios

Petitioners argue that the Department should use a variety of Indian financial statements to determine the surrogate financial ratios to be used in the final results and that several of the financial statements on the record should not be used either because, as the Department recognized in the preliminary results, the financial statements prepared by these companies are not reliable because they would cause distortions in the ratios. See WBF Preliminary Factor Valuation Memorandum 1/31/07 (finding that there are "significant questions as to the reliability of the financial data of Evergreen" and determining not to use the financial statements from Raghbir). Petitioners contend that after excluding inappropriate financial statements, the Department should calculate a single average of the financial ratios from the remaining 2004-2005 and 2005-2006 surrogate financial statements, each of which covers approximately nine months of the 18-month POR. See WBF Preliminary Factor Valuation Memorandum 1/31/07.

Petitioners provided calculation worksheets they believe the Department should use for the final results to derive the financial ratios from the financial statements of companies 1) used in the preliminary results and 2) submitted by them on March 15, 2007 on the record of this review. See Exhibits 8-24 of Petitioners' case brief. Petitioners assert that the worksheets apply the same methodologies that the Department used in the preliminary results, with a few exceptions. The

first exception is that where appropriate, the worksheets allocate personnel expenses in accordance with the methodology discussed in Comments 26 and 27.

Specifically, Petitioners contend that the Department should disaggregate the labor costs from the following financial statements: Ahuja (04-05), Akriti (04-05), Fusion (04-05), IFP (04-05), Imperial (04-05 and 05-06), Jayabharatham (04-05 and 05-06), Nizamuddin (04-05 and 05-06), Nikhil Decore (04-05), and Usha Shriram (04-05 and 05-06).

Decca argues that contrary to Petitioners' assertions, the Department should not disaggregate Ahuja's personnel costs reported as "wages" because Ahuja's financial statement reports salaries of administrative personnel as part of general and administrative expenses. Therefore, Decca argues that Ahuja's "wages" relate solely to manufacturing-related personnel costs and warrant no adjustment. The aggregation issue is addressed further in Comments 26 and 27. Petitioners' remaining proposed changes are discussed in Comments 18 through 25, below.

Dare Group argues that if the Department uses India as a surrogate country, and continues to rely on certain financial statements submitted by Petitioners, then the Department must make adjustments to the financial ratio calculations as proposed by Petitioners. These specific issues are addressed in Comments 18 through 25, below.

Dare Group argues that the Department should not use the financial statements of Ahuja, Huzaifa, IFP, and Imperial to calculate surrogate financial ratios, which the Department discusses below in sections A, C, D, and E, of this comment.

**Department's Position:** Interested parties have placed 19 financial statements on the record of this review for the Department to consider for use in calculating surrogate financial ratios. The Department has reviewed these financial statements and determined that it is appropriate to use 10 of the 19 to calculate surrogate financial ratios for the reasons outlined below in sections A through K. Using the greatest number of financial statements possible will yield the most representative data from the relevant manufacturing sector to calculate accurate surrogate financial ratios. For example, in Fresh Garlic 12/4/02 Memo at Comment 5, the Department stated " . . . use of three financial statements is a more accurate portrayal of the economic spectrum than limiting our reliance on two financial statements." Additionally, in Glycine 8/12/05 Memo at Comment 2, the Department stated " . . . where such information is available, the Department may rely on financial statements of multiple surrogate companies. For example, in the antidumping investigation of shrimp from the PRC, the Department explained that the averaging of financial statements of several surrogate companies resulted in more accurately derived surrogate financial ratios of SG&A, profit and overhead costs."[29]

[29]Citing Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China; 69 FR 70997 (December 8, 2004), and accompanying Issues and Decision Memorandum at Comment 9F.

*A. Ahuja*

Dare Group argues that it is arbitrary for the Department to use Ahuja's financial statement while rejecting Raghbir's, as it did in the Preliminary Results, because both companies have the identical structure - furniture production with interior decorating services. Referencing Ahuja's fixed asset schedule, Dare Group asserts that Ahuja appears to be a service company rather than a manufacturer (i.e., its fixed asset schedule lists no plant or machinery and its factory building represents only one percent of the value of its assets). Dare Group concludes that if the Department rejected Raghbir as a "mixed" company then it must surely disregard Ahuja's financial statement for these final results.

Petitioners argue that Ahuja is a producer of wooden furniture, as evidenced by Schedule VII of its financial statement that refers to Ahuja's turnover of wooden furniture and shows actual production. Additionally, Petitioners contend that Schedule VII of Ahuja's financial statement also lists materials consumed to include "plywood & laminated sheet," "foam sheet & cushion," "teakwood & softwood, redwood etc.," and "stores & spares hardware paints etc," all items Petitioners contend are used in the production of furniture. Petitioners contrast that list to Raghbir's financial statement which it claims does not identify any such materials. Moreover, Petitioners claim that schedule IX of Ahuja's financial statements includes an inventory value for finished goods, and again contrast this to Raghbir's financial statement which does not. Therefore, Petitioners argue that the Department should continue to use Ahuja's financial statement for the final results.

**Department's Position:** We agree with Petitioners. Substantial evidence on the record of this review indicates that Ahuja is a producer of wooden furniture. Schedule VII of Ahuja's financial statement provides detailed information regarding turnover of opening and closing stocks of "wooden furniture." In addition, materials typically used in the production of wooden furniture are listed in Schedule VII under the heading "Detailed information relating to consumption of material." These materials include "plywood and laminated sheet," "Foam sheet & cushion," "Teakwood & softwood," and "Stores & spares, hardware, paints etc." Also, Ahuja's fixed assets schedule lists a factory building and a surfacing machine. Furthermore, Ahuja's website, http://www.ahujafur.com, states that "our two well-equipped and state of the art plants, incorporating machinery from Germany, Italy and other parts of the world, in New Delhi, India, are spread over a total area of 30,000 sqft." The website also states "All manufacturing is available in-house . . . "[30] Thus, for the final results, based on record evidence we have determined that it is appropriate to continue to use Ahuja's financial statement to calculate surrogate financial ratios because the record evidence supports a conclusion that Ahuja is a producer of wooden furniture. See WBF Final Factor Valuation Memorandum 8/8/07.

[30] See Exhibit 16 of Petitioners March 15, 2007 submission.

*B. Evergreen*

Dare Group and Starcorp argue that the Department should use Evergreen's financial statements to calculate surrogate financial ratios for the final results because the Department's concern, expressed in the preliminary results, regarding potential distortions in the allocation of Evergreen's SG&A expenses and profit to merchandise under consideration was based on speculation and was incorrect. Additionally, Dare Group argues that the Department is stuck in the analysis it used for the new shipper review in which the Department rejected Evergreen's financial statement based on concerns that it cannot discern the overhead and SGA ratios properly attributed to furniture production versus leather goods. Nevertheless, Dare Group contends that the facts reflected in the 2004 - 2005 financial statement are different from those in the 2002 - 2003 financial statement used in the new shipper review and unlike the 2002 - 2003 financial statement, Evergreen's 2004 - 2005 financial statement indicates that, the majority of the company's sales are furniture, not leather garments and that the profit levels for the divisions do not differ significantly. Acknowledging Petitioners' argument that the 2002 - 2003 financial statements showed that the raw materials consumed by the furniture division were less than one quarter (by value) of raw materials consumed, while raw materials consumed by the leather division accounted for three-quarters of raw materials consumed, Dare Group argues that the raw material consumption shown in the 2004 - 2005 financial statements is significantly more balanced between the divisions. Accordingly, Dare Group argues that a party leveling a claim of distortion bears the burden of providing some basis for distrusting the reliability of the data and contends that no party has met that burden here. Dare Group argues that it has disproven the concern of distortion with respect to profit and Petitioners have not supported the contention of distortion with respect to overhead and SG&A. Therefore, Dare Group concludes the Department cannot disregard Evergreen's financial statement in its surrogate ratio calculations.

Starcorp argues that the Department claims that it "uses multiple financial statements when they are distortive or otherwise unreliable, to eliminate potential distortions that may arise from using the financial statements of a single producer." Starcorp claims that the Department then contradicts itself by saying that it has an adequate pool of reliable financial statements and does not need to use Evergreen's financial statements. Starcorp argues that the only attempt by the Department to explain its decision to disregard Evergreen's financial statements relates to the "inability to properly allocate Evergreen's SG&A expenses and profit to merchandise covered by the scope description." Thus, Starcorp contends the Department must include Evergreen in its surrogate ratio calculations because the Department has not sufficiently explained why Evergreen was excluded.

Petitioners argue that the Department should not use Evergreen's 2004 - 2005 financial statement to calculate surrogate financial ratios for the final results. Petitioners argue that the Department did not use Evergreen's financial statements for the preliminary results due to concerns that the inability to properly allocate Evergreen's SG&A expenses and profit between its two divisions could create distortions in the calculation of Evergreen's financial ratios. Petitioners contend that it is "telling" that the party that submitted Evergreen's financial statements for the record of this

review, Guanqiu, does not contest the Department's determination in this respect. Further, Petitioners assert that Dare Group and Starcorp provide no new basis for using Evergreen's financial statements. Petitioners claim that because leather sales account for nearly half of Evergreen's business activities, and because the record does not include sufficient data to allocate the company's financial expenditures between Evergreen's leather garment and furniture operations, the Department properly concluded that, to avoid distorted results, it could not use Evergreen's financial statement in the calculation of surrogate financial ratios. Furthermore, Petitioners claim that this determination is consistent with the WBF NSR 12/6/06 Memo in which the Department disregarded Evergreen's financial statement based on the same considerations, and with the Department's consistent practice of not using financial statements from a producer where a significant portion of its business activity is not related to the subject merchandise. See Ammonium Nitrate 7/25/2001 at Comment 4. Moreover, Petitioners argue that of the raw materials consumed during the fiscal year, one third (by value) was consumed by the furniture division while two-thirds was consumed by the leather garment division. Petitioners contend that because Evergreen's financial statements do not allocate depreciation and SG&A between the leather garment division and the furniture division, there is no reliable way to allocate Evergreen's non-material manufacturing expenses included on Schedule L when calculating ML&E.

Petitioners argue that although the Department used Evergreen's 2002 - 2003 financial statements in the LTFV, the LTFV was remanded to the Department and the Department disregarded Evergreen's financial statements in the remand determination.[31] Petitioners argue that even if Dare Group's claim that the 2004 - 2005 Evergreen financial statements reflect profit levels for each division that are not "significantly different," this would still not allow the Department to assume that each division's overhead and SG&A ratios would be similar. Petitioners argue that although Evergreen's 2004 - 2005 financial statements are different from the 2002 - 2003 financial statements, neither rise to the level of reliability required by the Department for use in calculating surrogate financial ratios.

Petitioners claim that Starcorp's argument that the Department did not articulate any concrete rationale for disregarding Evergreen's financial statements is incorrect. Petitioners argue that the Department clearly expressed its concern that it was unable to allocate SG&A expenses and profits to wooden furniture without causing distortion.[32] For the same reasons, Petitioners contend that the Department should continue to reject Evergreen's financial statement for the final results.

**Department's Position:** The Department agrees with Petitioners and has continued to disregard Evergreen's financial statements for the final results. As argued by Petitioners, Evergreen's financial statements do not allocate depreciation and SG&A between the leather garment division and the furniture division, thus there is no reliable way to allocate Evergreen's non-material

[31]Petitioners cite WBF Remand 5/25/07 at 72 - 73.
[32]Petitioners cite WBF Preliminary Factor Valuation Memorandum 1/31/07 at 10.

manufacturing expenses included on Schedule L when calculating ML&E. Respondents argue that, unlike in previous segments of this proceeding, the financial statement on the record of this review lists the profit of each division. However, information on the record does not indicate that there is a correlation between the profit of each division and the SG&A and overhead expenses of each division. Similarly, information on the record does not indicate that there is a correlation between the value of raw materials consumed by each division and the SG&A and overhead expenses of each division. In addition, although the furniture division may have engaged in some subcontracting, the degree to which furniture was subcontracted is not evident from the record. No information on the record describes the type of furniture that may have been subcontracted, nor is there information on the record describing whether subcontracted furniture was assembled, partially assembled, sanded, finished, etc. Thus there is no basis on which the Department can make an allocation of SG&A and overhead expenses between the divisions. In the WBF Remand 5/25/07, the Department stated that the financial statement did not provide the profit of each division. In addition, the Department stated that the leather division was mostly engaged in subcontracting while the furniture division was an "in-house operation" and thus "may employ greater usage of general and administrative expenses." The Department stated that these two factors could lead to distortion in the calculation of surrogate financial ratios. In the instant review, the financial statement reflects the profit of the leather and furniture divisions and further shows that the furniture division purchased (i.e., subcontracted) some furniture; however, Evergreen's financial statement lacks sufficient detailed information to serve as the basis of an informed allocation of SG&A and overhead expenses between the leather and furniture divisions. Moreover, Evergreen has mixed operations and a significant portion of its business activities do not relate to wooden furniture. Because significant concerns remain regarding Evergreen's financial statements, and there are several other reliable financial statements available on the record of this review, there is no reason to rely on Evergreen's financial statement here. Therefore, for the final results, the Department has continued to disregard Evergreen's financial statements.

*C. Huzaifa*

Dare Group argues that the Department should not use Huzaifa's financial statements (2004 - 2005) because, although Huzaifa's financial statement references a "Schedule D," this schedule was not submitted. Citing WBF NSR Memo 11/21/06 at Comment 2,[33] Dare Group argues it is the Department's practice to disregard incomplete financial statements as a basis for calculating surrogate financial ratios where the statement is missing key sections. See Rebar from Belarus 6/22/01, Silicomanganese Kazakhstan 4/2/02 and WBF NSR 12/6/06 Memo. Dare Group claims that Petitioners do not dispute that the financial statement references Schedule D, but suggest it never existed. Dare Group claims that Petitioners argue it is immaterial whether Schedule D is missing since it relates to the balance sheet and not the "P&L." Dare Group claims that Petitioners state that Schedule D relates to a fixed asset line item; however, Dare Group argues that if this is true, then it is not likely Schedule D would be overlooked and it cannot be

[33]Dare Group contends that this policy was upheld in WBF Remand 5/25/07.

immaterial. Dare Group argues that "all five" financial statements submitted by the respondents include a schedule of fixed assets. Furthermore, Dare Group argues that Petitioners recognize that fixed asset schedules are material because, with respect to Raghbir's financial statements (discussed below), Petitioners argue that the fixed asset schedule is an important tool in determining whether a company has sufficient assets to qualify as a producer. Moreover, Dare Group contends that Huzaifa's financial statement should be disregarded for the reasons explained in connection with IFP, above, because it reflects an operating loss. In addition, Dare Group contends that Huzaifa's Balance Sheet is significantly blurred or illegible, further tainting its reliability for this review.

Dare Group argues that the Department should disregard Huzaifa's 2005 - 2006 financial statement. Dare Group claims that this financial statement lacks an income statement and that the Department's practice is to avoid using financial statements that are missing key reports.[34] Dare Group contends that the income statement is a key report and Huazifa's auditors based their opinion on the "Balance Sheet and the Profit & Loss Account" but no "P&L" is included in the information submitted by Petitioners. Dare Group argues that Petitioners' attempt to create an income statement for Huzaifa is based on assumptions that result in at least one disparity in the financial results reported by Huzaifa elsewhere, e.g., Petitioners' deduced amount of "other income" of Rps. 11,657,739 does not match "other income" appearing in Huzaifa's Schedule L. Moreover, Huzaifa incurred a loss on operations. Further, Dare Group argues that the Department should not impute the financial structure of a surrogate company that incurred a loss onto the respondents.

Petitioners contend that Dare Group's arguments against using Huzaifa's 2004 - 2005 financial statements to calculate surrogate financial ratios are without merit. Petitioners argue that schedule E directly follows schedule C on the same page of the financial statements indicating that schedule D does not exist. Additionally, Petitioners claim that schedule D covers balance sheet items which are not used to calculate surrogate financial ratios. Thus, Petitioners claim, even if schedule D were missing, it is not a key section of the financial statements. Further, Petitioners argue that Dare Group's arguments with respect to obscured information on the balance sheet are moot for the same reasons. Moreover, Petitioners argue that although certain information on the balance sheet is partially obscured, it is discernible and consistent with standard Indian reporting practices. Further, Petitioners argue that it does not matter that Huzaifa had a net operating loss during the applicable period because it is the Department's practice to account for a loss by not using the subject financial statement to calculate the profit ratios. Thus, Petitioners argue that the Department should continue to use Huzaifa's financial statement for the final results.

**Department's Position:** We have determined that it is appropriate to continue to use Huzaifa's 2004 - 2005 financial statement to calculate surrogate financial ratios for the final results even

[34]Dare cites WBF NSR Memo 11/21/06 at 6, Rebar from Belarus 6/22/01 and Silicomanganese Kazakhstan 4/2/02.

though Huzaifa had a net operating loss during 2004 - 2005. Huzaifa's 2004 - 2005 financial statement reflects significant closing and opening stocks of finished goods and significant manufacturing expenses. Information from the website http://www.indianpurchase.com indicates that Huzaifa is a producer of wooden furniture.[35] Furthermore, we have noted no distortions in Huzaifa's financial statement data. Also, we find that data from Schedule D is not needed to calculate surrogate financial ratios because Schedule D is not a "key document" in this respect. Further, although Huzaifa incurred an operating loss during the applicable fiscal year, it is the Department's practice to still use these financial statements to calculate surrogate SG&A and overhead ratios. See Fish Fillets Vietnam 3/21/2007 at Comment 9(A), WBF 11/17/04 Memo at Comment 3, and ARG 10/21/2004 at Comment 6. However, the Department determines it is not appropriate to use Huzaifa's 2005 - 2006 financial statement to calculate surrogate financial ratios for the final results. We based our determination on the fact that Huzaifa's 2005 - 2006 financial statement lacks an income statement, and that the income statement is a key document which the Department uses to calculate the surrogate financial ratios. While Huzaifa's 2004 - 2005 financial statement includes a complete income statement (Profit and Loss Account) that is signed and stamped by the company's auditors, the 2005 - 2006 financial statement does not include any similar such document. Additionally, there is no evidence in the Notes to the 2005 - 2006 financial statement to explain the lack of income statements. Furthermore, the income statement constructed by Petitioners, which Petitioners propose the Department use to calculate surrogate financial ratios, partially relies on unsupported data from the Directors' report. For example, Petitioners used two figures from the Directors' report to construct an income statement: "Sales" and "Deferred Tax," but did not support these figures with source documents and did not explain how these figures were calculated. Therefore, for the final results, we have determined that it is appropriate to continue to use Huzaifa's 2004 - 2005 financial statement to calculate surrogate financial ratios. See WBF Final Factor Valuation Memorandum 8/8/07. However, we have not used Huzaifa's 2005 - 2006 financial statement.

*D. IFP*

Dare Group argues that the Department should not use IFP's 2004 - 2005 or 2005 - 2006 financial statements because IFP's financial statements reflect a loss for fiscal years 2003 - 2004, 2004 - 2005, and 2005 - 2006, and because the record of this segment of the proceeding includes financial statements of other Indian producers that realized profits. According to Dare Group, using IFP's statements is tantamount to attributing to respondents the costs of a company that consistently sells its merchandise at less than cost. Dare Group asserts that if the Department nevertheless continues to use IFP's financial statements for the final results, it should use only the factory overhead and SG&A ratios that raise respondents' costs while excluding the negative profit that would lower their costs. Dare Group acknowledges that the Department used IFP's financial statements to calculate surrogate financial ratios in the recent new shipper review, but contends that no party raised the issue of negative profits in that segment of the proceeding as Dare Group is doing now. Dare Group concludes that the Department should not use IFP's

[35] See Petitioners' March 15, 2007 submission at Exhibit 9.

financial statements to calculate surrogate financial ratios, as discussed above, but argues that if the Department uses IFP's 2004 - 2005 financial statements, it should also use IFP's 2005 - 2006 financial statements.

Petitioners argue that the Department should use IFP's financial statements to calculate surrogate financial ratios. Citing to numerous cases, e.g., Fish Fillets Vietnam 3/21/2007 at 13242 and Mushrooms 9/9/04 at 54635, Petitioners claim the Department has a long history of using financial statements that do not report profit to calculate surrogate financial ratios.

**Department's Position:** The Department has determined it is appropriate to continue to use IFP's financial statements to calculate surrogate SG&A and overhead ratios for the final results. The Department's longstanding practice is to use the financial statement of a surrogate company although its profit might be negative or zero. In past cases, we have averaged financial statements to calculate surrogate financial ratios excluding financial statements reflecting a negative or zero profit from the calculation of the surrogate profit ratio, but have used the financial statements with negative or zero profit to calculate surrogate SG&A and overhead ratios. Zero or negative profit will not impact the calculation of the SG&A and overhead ratios. See Fish Fillets 3/21/07 at 13242 and 13246 and WBF 11/17/04 Memo at Comment 3. Furthermore, the Department determines it is appropriate to use both the 2004 - 2005 and 2005 - 2006 financial statements to calculate the surrogate SG&A and overhead ratios for the final results. We find both to be equally contemporaneous. The 2004 - 2005 financial statement covers the first half of the POR (June 2004 to March 2005) and the 2005 - 2006 financial statement covers the second half of the POR (April 2005 to December 2005). Therefore, for the final results, we have used IFP's 2004 - 2005 and 2005 - 2006 financial statements to calculate surrogate SG&A and overhead ratios. See WBF Final Factor Valuation Memorandum 8/8/07.

*E. Imperial*

Dare Group argues that the Department should not use Imperial's 2004 - 2005 financial statement because there is no evidence on the record of this review confirming Imperial is a producer of wooden furniture. Specifically, Dare Group claims that Imperial does not appear on Petitioner's "self-described list of 'hundreds of Indian manufacturers of wooden furniture'" submitted in Petitioners' October 3, 2006 comments on surrogate country selection. Dare Group contends that Petitioners have not submitted any information on the record evidencing that Imperial produces wooden furniture in general, or scope merchandise specifically. Dare Group alleges that the words "plywood" and "timber" in the names of Imperial's creditors does not lead to the conclusion that Imperial produces wooden furniture or subject merchandise. Further, Dare Group argues that Imperial's financial statements reference a schedule G, but schedule G was not submitted, and Petitioners did not dispute this fact. Furthermore, Dare Group contends that Petitioners did not dispute the precedent cited by Dare Group[36] that the Department will not use financial statements missing key sections. Finally, Dare Group argues that although Petitioners

[36]Citing WBF NSR Memo 11/21/06 at Comment 2 and WBF Remand 5/25/07.

downplay the importance of Schedule G and suggest it never existed, the possibility of such a discrepancy within the same financial statement should be enough for the Department to disregard that financial statement.

Additionally, Dare Group argues that the Department should disregard Imperial's 2005 - 2006 financial statement because it is missing the income statement, a key report. Dare Group claims that the balance sheet references "Schedule G," which explains the "Profit and Loss Appropriation" but that Petitioners failed to submit this schedule. In addition, Dare Group claims that the balance sheet references "Schedule J," "Notes on Accounts and Significant Accounting Policies," but this schedule is missing. Dare Group argues that when the financial statement confirms that auditors' notes exist and are relied upon by the auditor and referenced in the financial statement, then if these notes are not submitted, this is adequate reason to disregard the financial statement.[37]

Petitioners discuss Dare Group's arguments regarding Imperial's 2004 - 2005 financial statement as having no merit. Petitioners argue that Imperial produces comparable merchandise, and that the name of the company "Imperial Furniture Company Pvt. Ltd." indicates that Imperial is a furniture producer. Petitioners further argue that as evident by Imperial's list of suppliers in schedule F of its financial statements, which include suppliers of plywood and timber, Imperial is a furniture producer. Furthermore, Petitioners contend that a printout from Hindu Links Universe, http://hindulinks.org identifies Imperial as a "manufacturer of traditional and modern furniture."[38] Finally, Petitioners argue that the "allegedly missing schedule G" relates to a line item value of only USD160.00 as reported on Imperial's balance sheet and thus it is unlikely a schedule was compiled to support this small value. Thus, the Department should continue to use Imperial's financial statement for the final results. Finally, Petitioners argue that Imperial is a furniture producer and its 2005 - 2006 financial statement should be used to calculate surrogate financial ratios.

**Department's Position:** The Department has determined it is appropriate to continue to use Imperial's 2004 - 2005 financial statement to calculate surrogate financial ratios for the final results. Schedule G is not required to calculate surrogate financial ratios. Thus, Schedule G is not a "key document" with respect to calculating surrogate financial ratios. Additionally, the website Hindu Links Universe, http://hindulinks.org identifies Imperial as a "manufacturer of traditional and modern furniture." In addition, given that Imperial purchased materials from companies that have the words "plywood" and "timber" in their names, the Department has drawn the reasonable conclusion that Imperial manufactures wooden furniture. However, the Department determines it is not appropriate to use Imperial's 2005 - 2006 financial statement to calculate surrogate financial ratios for the final results because it lacks an income statement. This is a key document, as data from the income statement is used to calculate the surrogate

[37]Dare cites WBF NSR Memo 11/21/06 at 6, Rebar from Belarus at 33528 at and Silicomanganese Kazakhstan 4/2/02 at 15535

[38]See Petitioners March 15, 2007 submission at Exhibit 12.

financial ratios. Whereas Imperial's 2004 - 2005 financial statement includes a complete income statement (Profit and Loss Account) that is signed and stamped by the company's auditors, the 2005 - 2006 financial statement does not include any similar such document. Moreover, nothing in the Notes to the 2005 - 2006 financial statement explains the lack of an income statement. Also, the income statement constructed by Petitioners to calculate surrogate financial ratios relies on unsupported data from the Directors' report. Furthermore, "Schedule J," "Notes on Accounts and Significant Accounting Policies," which might include an explanation as to why an income statement was not submitted as part of the financial statement, is also missing from the 2005 - 2006 financial statement. Therefore, for the final results, we have determined to use Imperial's 2004 - 2005 financial statement to calculate surrogate financial ratios; however, we have not used Imperial's 2005 - 2006 financial statement because it is missing a key document (i.e., an income statement). See WBF Final Factor Valuation Memorandum 8/8/07.

*F. Jayabarathan*

Petitioners argue that Jayabarathan is a furniture producer and its 2005 - 2006 financial statement should be used to calculate surrogate financial ratios. In addition, Petitioners claim that the Department should calculate surrogate financial ratios for Jayabarathan's 2004 - 2005 fiscal year using data included in the 2005 - 2006 financial statement.

Dare Group argues that Petitioners cite no precedent for extrapolating data from the financial statement of one year to another year. Dare Group asserts that without having the full financial statement, including the auditor's opinion, on the record of the review, the Department lacks information necessary to make a determination as to the veracity of Jayabarathan's books or as to whether the company is a "Sick Industrial Company."

**Department's Position:** The Department has determined it is not appropriate to use Jayabharatham's 2005 - 2006 financial statement to calculate surrogate financial ratios for the final results. Although the website www.gnaol.com classifies Jayabharatham as a furniture manufacturer, other information on the record does not support this classification. First, a narrative description of the company taken from Jayabharatham's own website, http://www.jayabharathamfurniture.in/aboutus.htm, does not state that it is a manufacturer of any type of product and does not claim that it has any manufacturing facilities.[39] Furthermore, Jayabharatham's profit and loss account lists purchases but does not specify whether it purchased material inputs that could be used in the manufacture of furniture or whether it purchased finished furniture. Moreover, the profit and loss account does not specify that any manufacturing expenses were incurred during the applicable period. Additionally, certain line item designations listed in the left column of Jayabharatham's fixed assets schedule, presumed to be titled "description of assets," are missing or are illegible. Thus, our analysis of Jayabharatham's business structure is impaired. Since the Department has determined that it will not rely on the 2005 - 2006 financial statement due to the concerns outlined above, Petitioners's argument that

[39] See exhibit 13 of Petitioners' March 15, 2007 submission to the Department.

the Department should use the 2005 - 2006 financial statement to calculate surrogate ratios applicable to Jayabharatham's 2004 - 2005 fiscal year are not relevant.[40] Therefore, we have not used Jayabharatham's financial statement in the calculation of our surrogate financial ratios.

*G. Newton*

Petitioners argue that Newton is a furniture producer and its 2004 - 2005 financial statement should be used to calculate surrogate financial ratios.

Dare Group argues that the Department should not use Newton's 2004 - 2005 financial statement to calculate surrogate financial ratios because the financial statement shows that Newton made a "significant portion" of its purchases from a related party. Also, Dare Group claims that using data based on "a large proportion of non-market-related transactions with related parties" injects potential distortion into the surrogate financial ratio calculations.

**Department's Position:** The Department has determined that it is appropriate to use Newton's financial statement to calculate surrogate financial ratios for the final results. There is no evidence on the record that the transactions in Newton's financial statement create either actual distortion or would give rise to potential distortion. Dare Group offers no description of any specific distortion and offers no support for its assertion and the Department has found no evidence on the record of this review supporting Dare Group's claim. Therefore, for the final results, we have used Newton's 2004 - 2005 financial statement to calculate surrogate financial ratios. See WBF Final Factor Valuation Memorandum 8/8/07.

*H. Nikhil*

Petitioners argue that Nikhil is a furniture producer and its 2004 - 2005 financial statement should be used to calculate surrogate financial ratios. Dare Group argues that an "infirmity" in Nikhil's structure should cause the Department to disregard this financial statement. Dare Group claims that the amount paid to the company's directors exceeds its sales revenue. Dare Group argues that this, in turn, causes the surrogate financial ratios calculated using Nikhil's financial statement to be aberrational as compared to ratios calculated using other financial statements on the record of this review. Furthermore, Dare Group claims that the company's directors made "huge" loans to the company. Moreover, Dare Group claims that Nikhil had a loss for the year and sold below cost. Finally, Dare Group argues that the Department should not impute the cost structure of a company that sold below cost to the respondents.

**Department's Position:** The Department has determined that it is appropriate to use Nikhil's financial statement to calculate surrogate financial ratios for the final results. In determining which financial statements to select to calculate surrogate financial ratios, the Department is not concerned with the extent to which directors of a company are remunerated except if evidence on

[40] Jayabarathan's 2004 - 2005 financial statement is not on the record of this review.

the record shows that it distorts the Department's surrogate financial ratio calculations. Here, Dare Group has not demonstrated that directors' remuneration has led to distorted results. Dare Group argues that the value of directors' remuneration exceeds sales revenue for the applicable period and that the company had a loss for the year, but as discussed above (i.e., IFP), it is the Department's practice to use financial statements reporting losses to calculate surrogate SG&A and overhead ratios. Moreover, Dare Group has not demonstrated that loans made by the directors to the company result in any distortions of the Department's calculations. Furthermore, Dare Group has not demonstrated that Nikhil sold below cost. Moreover, although Dare Group claims that surrogate ratios calculated using Nikhil's financial statement are aberrational compared to ratios calculated using other financial statements on the record of this review, Dare Group does not make any specific arguments or provide data to support its contention. If the premise of Dare Group's claim is that the surrogate financial ratios calculated using Nikhil's financial statement are aberrational because they vary significantly from the percentage values of ratios calculated using other financial statements, Dare Group has not pointed to any record evidence to support its argument. Moreover, significant variance among values alone does not support a finding that a particular value is aberrational. Depending on the nature of a particular industry and market, such variances can be normal. Thus, such determinations must be case-specific and based on evidence on the record of the review. Therefore, for the final results, we have used Nikhil's 2004 - 2005 financial statement to calculate surrogate financial ratios. See WBF Final Factor Valuation Memorandum 8/8/07.

*I. Nizammudin*

Dare Group argues that the Department should use data from Nizamuddin's 2005 - 2006 financial statement to calculate surrogate financial ratios because the period of review spans two fiscal reporting periods, and the Department recently used financial statements covering both fiscal periods to calculate surrogate financial ratios in WBF NSR 12/6/06 .

**Department's Position:** The Department has determined that it is appropriate to use Nizammudin's 2005 - 2006 financial statement to calculate surrogate financial ratios for the final results.[41] After reviewing the record, we find that this financial statement is contemporaneous with nine months of the POR and is not lacking any key documents. Moreover, information in the financial statement indicates that Nizammudin is a manufacturer of wooden furniture. Additionally, the financial statement includes a list of merchandise produced by Nizamuddin entitled "quantitative details of finished goods manufactured" which lists several items of furniture including "Double bed," "Single bed," "Wooden Almirah," "Wooden kouch," and "Wooden stool." Also, the financial statement includes a list of "Raw material consumed" that includes "Plywood," "Teakwood," "Paint & Polish (Matt)," "Fabrics," and "Hardware (nails)."

[41] We have determined it is not appropriate to use Nizamuddin's 2004 - 2005 financial statement to calculate surrogate financial ratios due to concerns relating to the classification of a line item "job work" in ML&E. See Comment 23 below for further discussion of this issue. However, the 2005 - 2006 financial statement does not reflect the line item "job work" income during the applicable period.

See Dare Group's March 15, 2007 submission at Exhibit 3. Therefore, for the final results, we have determined to use Nizammudin's 2005 - 2006 financial statement to calculate surrogate financial because, according to record evidence, Nizammudin is a producer of wooden furniture. See WBF Final Factor Valuation Memorandum 8/8/07.

*J. Raghbir*

Dare Group argues that the Department should use the 2004 - 2005 financial statement of Raghbir to calculate surrogate financial ratios for the final results. Dare Group argues that the Department provided no rationale for why it disregarded Raghbir's financial statement and presumes that the Department disregarded Raghbir's financial statements based on Petitioners' argument that Raghbir is not a producer of wooden bedroom furniture. Dare Group contends that if this is the case, the Department's determination was not based on substantial evidence and was arbitrary since the Department gave the opposite treatment to another Indian surrogate producer with a similar business structure, Ahuja, as discussed above. Additionally, Dare Group argues that Petitioners' submission of January 18, 2007, Exhibit 14, showing Raghbir as an interior decorator was the result of a "filtered" search, i.e., the search covered only interior decorators and designers and was simply an attempt to diminish the importance of Raghbir's furniture activities versus its interior design activities. Dare Group argues that the results of a search done on the same website using the word "furniture" yielded results categorizing Raghbir under the heading "Furniture/General – Mumbai."

Further, Dare Group asserts that information on the record states that Raghbir's "factory and workshop" is "equipped with latest state-of-art technology used in various stages of production like cutting, polishing, painting, which enables us to deliver quality and quantity products on time and schedule." Next, Dare Group claims that Raghbir's tax statement states that the company is "engaged in the business of Manufacturing & Trading of Furniture" and says nothing about "interior decorating." Dare Group contests Petitioners' position that Raghbir generated a mere one- thousandth of its income from furniture sales, as based on an assumption that Raghbir's "labour charges" and "works contract sale" relate to interior design or some activity other than furniture production and assumes that the words "for services" indicate these items covered services rather than furniture manufacturing. Furthermore, Dare Group argues that Petitioners' contention that because Raghbir's 2004 - 2005 P&L statement lists "sales of loose" furniture and "sale of fixed furniture," all other income shown on the P&L statement is not derived from furniture production is incorrect because none of the income items in Raghbir's P&L statement specifically relate to interior design.

Additionally, Dare Group states that Petitioners attempt to link Raghbir to interior decorating by arguing that Raghbir's financial statements show it made loans/advances to entities likely to be involved in the design and refurbishing of real estate, and that certain of Raghbir's vendors, have nothing to do with the manufacture of furniture. Dare Group contends Petitioners are cherry-picking among Raghbir's vendors and failed to acknowledge Raghbir's purchases of several raw

materials typically used to produce furniture.[42] Dare Group argues that a company's status as a manufacturer cannot be determined based on differing levels of furniture - and manufacturing-related fixed assets reflected in the financial statements, as argued by Petitioners, because the assets could be fully amortized. Thus, Dare Group claims that Raghbir's financial statement shows consumption of furniture-related raw materials as well as labor and reflects a certain level of depreciation that is not determinative of its status as a furniture producer. Dare Group argues that although Raghbir's 2004 - 2005 financial statements were not used in the recently-completed new shipper review, the Department should consider the facts on the record of each segment of the proceeding and reverse its preliminary decision not to use Raghbir's 2004 - 2005 financial statement because it has established that Raghbir is a wooden furniture manufacturer. Finally, Dare Group argues that the Department should also use Raghbir's 2005 - 2006 financial statement.

Starcorp argues that the Department offered no meaningful discussion as to why it disregarded Raghbir's financial statements for purposes of calculating surrogate financial ratios and contends that the discussion to disregard Raghbir's financial statement is unsupported by record evidence. Starcorp argues that the Department must include Raghbir in its surrogate ratio calculation for the final results.

Petitioners argue that the Department's decision to disregard Raghbir's 2004 - 2005 financial statements for Preliminary Results was correct because Raghbir is an interior decorator and designer, not a furniture manufacturer. Petitioners assert that Raghbir's 2005 - 2006 financial statements, submitted by Dare Group after the preliminary results, support this conclusion. Petitioners claim that Raghbir's website identifies its main product as "Interior Decoration." Petitioners further assert that a review of Raghbir's 2004 - 2005 and 2005 - 2006 financial statements demonstrates that if Raghbir produced any wooden bedroom furniture during the period covered by the financial statements, such production was merely incidental to its interior design activities. For example, Petitioners contend that the line items "sale of loose furniture" and "sale of fixed furniture" broken out in Raghbir's 2004 - 2005 P&L statement account for only one-tenth of one percent of Raghbir's reported income and that 95 percent is accounted for by "labour charges" and "works contract sale." Additionally, Petitioners state that in Raghbir's 2005 - 2006 P&L statement sales of "loose furniture" account for only 2.6 percent of total income, and Schedule E of Raghbir's 2004 - 2005 financial statements demonstrates that 73.6 percent of the company's total fixed assets is comprised of office equipment and computers, 13.6 percent is comprised of non-manufacturing items "furnitures & fixtures" and 12.8 percent is comprised of "plant & machinery" and "factory equipment." Petitioners claim that this combination of assets is not characteristic of a furniture manufacturer.

Petitioners claim that the website cited by Dare Group to demonstrate that Raghbir produces wooden furniture, "www.gnaol.com," clarifies that the service provided by Raghbir includes

[42]Raghbir's auditors listed these materials in field 28(b) of its tax filing. According to Dare Group, Field 28(b) applies to a "manufacturing concern."

"Interior Designing & Decoration Interior Decorators/Decorative Items." Also, Petitioners claim that a number of other websites identify Raghbir as an interior decorator and/or designer.[43] Additionally, Petitioners argue that because Raghbir's website indicates that Raghbir has a "factory and workshop" does not mean that it produces furniture. Further, Petitioners contend that the composition of Raghbir's "Project team," referenced on its website, includes professionals from fields related to interior design, such as civil, electrical, air conditioning, painting, etc. and these fields are not relevant to furniture manufacturers. Furthermore, Petitioners assert that although Raghbir's 2004 - 2005 tax/accounting filings suggest that Raghbir is engaged in "manufacturing and trading of furnitures & fixtures," this is only one generic activity among many undertaken by Raghbir including plumbing, painting, and tiling. Petitioners claim that Dare Group did not include similar tax-related documents or the auditors statement with its submission to the record of Raghbir's 2005 - 2006 financial statements. Moreover, Petitioners contend that Dare Group admits in its case brief that Raghbir does interior design work. Therefore, Petitioners argue that the Department should continue not to include Raghbir in the calculation of surrogate ratios for the final results consistent with its practice of disregarding incomplete financial statements.

**Department's Position:** We have determined that it is not appropriate to use Raghbir's 2004 - 2005 or 2005 - 2006 financial statements to calculate surrogate financial ratios for the final results because Raghbir's asset structure is characteristic of a service or trading company. Although the website www.gnaol.com[44] appears to classify Raghbir as a furniture manufacturer, other information on the record does not support this classification. Other internet information submitted by Dare Group itself does not indicate Raghbir is a producer, but lists Raghbir in categories such as "Furniture/General," and "Indian Exporters & Manufacurers - Furniture."[45] Furthermore, Raghbir's 2004 - 2005 financial statement indicates that during the applicable period, 73.6 percent of Raghbir's total fixed assets was comprised of office equipment and computers, 13.6 percent was comprised of non-manufacturing items "furnitures & fixtures," and 12.8 percent was comprised of "plant & machinery" and "factory equipment." Additionally, Raghbir's 2005 - 2006 financial statement indicates that during the applicable period, 76.3 percent of Raghbir's total fixed assets was comprised of office equipment and computers, 11.4 percent was comprised of non-manufacturing items "furnitures & fixtures," and 12.2 percent was comprised of "plant & machinery" and "factory equipment." The classification of Raghbir's income in its financial statements is characteristic of a service or trading company because the vast majority of Raghbir's income reflected in its 2004 - 2005 financial statement, 95 percent, is derived from "works contracts" and "labour charges" and only one-tenth of one percent of Raghbir's income is accounted for by "sales of loose furniture" and "sale of fixed furniture." With respect to the 2005 - 2006 financial statement, 86.7 percent of Raghbir's income during the applicable period is derived from "works contracts" and "labour charges" and 2.6 percent is

[43] Petitioners cite Exhibit 14 of their pre-preliminary comments.

[44] See Dare Group's October 24, 2006 submission at Exhibit 117.

[45] See Dare Group's March 15, 2007 submission at Exhibits 24 and 25 which include printouts from websites http://www.netexpress.co.in and http://www.trade-india.com.

accounted for by "sales of loose furniture."[46] Furthermore, although Raghbir may be listed on a website under the heading "Furniture/General - Mumbai," the website does not indicate that Raghbir is a producer of wooden furniture. Moreover, while Raghbir may have a "factory and workshop," nothing on the record states what, if anything, is manufactured at the "factory and workshop." Additionally, the declaration in Raghbir's tax statement, included in the 2004 - 2005 financial statement, indicates that Raghbir is "engaged in the business of manufacturing and trading of furniture" is ambiguous at best. The use of the word "engaged" leaves open the possibility that Raghbir's involvement in manufacturing could be as an agent, retailer or a distributor with or without links to a manufacturer, whether formal or informal. No such similar document or declaration was submitted with the 2005 - 2006 financial statement. Therefore, for the final results, we have determined not to use Raghbir's 2004 - 2005 or 2005 - 2006 financial statements to calculate surrogate financial ratios because evidence on the record of this review indicates Raghbir is not a producer of wooden furniture, but is primarily an interior design company that may incidentally produce small quantities of furniture or fixtures in connection with its interior design work.

*K. Usha Shriram*

Petitioners argue that Usha Shriram is a furniture producer and its 2004 - 2005 and 2005 - 2006 financial statements should be used to calculate surrogate financial ratios. Dare Group argues that the Department should disregard both of these financial statements for purposes of calculating surrogate financial ratios. Dare Group claims that Usha Shriram has mixed operations in 2004 - 2005, and only 48 percent of Usha Shriram's sales were of furniture. Dare Group claims that in 2005 - 2006, less than 48 percent of Usha Shriram's sales were of furniture, and the 2004 - 2005 financial statement indicates that Usha Shriram had no production. Additionally, Dare Group claims that the 2005 - 2006 financial statement also reflects no production. Furthermore, Dare Group argues that there is no indication in the 2004 - 2005 or 2005 - 2006 financial statements that Usha Shriram consumed raw materials. Moreover, Dare Group argues that for the two years, the value of furniture purchased, shown in Schedule III of the two financial statements, equals the value of "material and other expenses" shown in the P&L statement. Thus, Dare Group claims, Usha Shriram did not purchase any materials needed to produce furniture.

**Department's Position:** The Department has determined that it is not appropriate to use Usha Shriram's 2004 - 2005 or 2005 - 2006 financial statements to calculate surrogate financial ratios for the final results because Usha Shriram is a mixed company, i.e., approximately only 48 percent of its sales during each of the 2004 - 2005 and 2005 - 2006 fiscal periods was of furniture. Because Usha Shriram is a mixed company, the allocation of SG&A, overhead and

[46] "Works Contract Sale" are apparently listed under abbreviations "WC 4percent" and "WC" in the 2005 - 2006 profit and loss account. No other line item in the profit and loss account appears to cover "Works Contract Sale." A line item "Works Contract Sales Tax" is listed on "Schedule 1, Administrative Expenses," indicating that there were "Works Contract Sales" during the period covered by the financial statement. In addition, the 2005 - 2006 financial statement includes a line item for "Loose Furniture" but not "Fixed Furniture."

profit to furniture activities would be problematic. Additionally, in the charts "Quantitative Details of Goods Purchased" and "Stock of Finished Goods and Sales," the quantity of furniture purchased by Usha Shriram in each period exceeds the quantity it sold. Moreover, there is no evidence in the financial statements that Usha Shriram purchased any input materials typically used to produce furniture. Therefore, for the final results, we have determined that there is no indication on the record that Usha Shriram produced furniture during the applicable periods, thus it would not be appropriate to use its financial statements to calculate surrogate financial ratios.

**Comment 18: Treatment of Polish, Contract Manufacturing, and Manufacturing Glass Expenses in Ahuja's Financial Statements**

Dare Group argues that in the event the Department continues to use Ahuja's financial statements to calculate surrogate financial ratios, it should correct certain errors in that calculation. According to Dare Group, "polish" expenses should be treated as a raw material and should be excluded from the overhead ratio as "polish" is a furniture finishing material. Dare Group maintains that the Department classified "paint & polish" for Imperial as a direct material and "polishing charges" as direct labor. Therefore, Dare Group contends that the Department should treat Ahuja's "polish" expenses as a raw material expense in calculating the financial ratios for the final results.

Additionally, Dare Group states that the Department excluded "contract manufacturing" from the calculation of Ahuja's financial ratios. Dare Group argues that "contract manufacturing" is identical to "job work expense" and should be treated as ML&E. Dare Group further maintains that if the Department continues to exclude this expense from the factory overhead calculation, it will create a mismatch between the numerator and denominator in the subsequent stages of calculating SG&A and profit. Dare Group contends that the Department should add "contract manufacturing" to the denominator after the step of calculating manufacturing overhead. Dare Group argues that Ahuja's SG&A charges relate to all goods sold by the company regardless of whether these goods are self-produced, produced by contract manufacturing, or purchased from an outside vendor. Therefore, Dare Group argues that excluding "contract manufacturing" from the denominator at all stages of the Department's calculation creates a mismatch between a numerator which includes all SG&A expenses and profit related to goods, and a denominator which omits that expense entirely.

According to Dare Group, Petitioners, in their proposed financial ratio calculation, incorrectly classified "manufacturing glass" in Ahuja's 2004-2005 financial statements as an overhead item, as opposed to including it in direct materials. Dare Group argues that respondents reported glass and mirrors consumed as direct materials and, in order to avoid creating a mismatch between the respondents' reported direct materials and the classification of the expense item in the Indian producer's financial statement, "manufacturing glass" must be moved from overhead to ML&E if the Department uses Ahuja's financial statements for the final results.

Starcorp concurs with Dare Group's comments above.

Petitioners argue that the Department's preliminary treatment of "polish" expenses as a raw material is correct and contend that Dare Group's assumption that "polish" expenses are similar to "paint & polish" is inaccurate. Petitioners maintain that Ahuja reports it "polish" expenses separately from "raw material consumed" which is where "paint and polish" would be reported, and argue, therefore, that it would be incorrect to reclassify these expenses as raw materials. Petitioners state that the Department should continue to classify "polish" expenses as overhead in the final results.

Petitioners further argue that Dare Group is incorrect in its argument for treating "contract manufacturing" as ML&E prior to calculating the overhead ratio. Petitioners claim that the description of "contract manufacturing" indicates that it refers to payments by Ahuja to third-party vendors for certain products or services. Petitioners conclude that these expenses are not part of the ML&E incurred by Ahuja and, thus, should not be included in the total value of ML&E for purposes of deriving Ahuja's manufacturing overhead ratio.

**Department's Position:** We disagree with Dare Group that we should treat "polish" expenses as manufacturing overhead in the calculation of Ahuja's surrogate financial ratios. First, we find that Ahujas' "polish" expense represents neither a type of raw material, nor direct manufacturing labor. Ahuja's financial statements treat polishing expenses as a manufacturing line-item expense and not as a line-item under "raw materials consumed." Second, we disagree with Dare Group that the treatment of "polish" expenses is similar to Imperial's treatment of polishing charges. Specifically, we saw that Imperial classified its "paint & polish" as a direct material line-item and "polishing charges" as a direct labor line-item in its financial statements. Thus, in our calculation of Imperial's surrogate financial ratios, we treated "paint & polish" and "polishing charges" as direct material and direct labor, respectively. Therefore, for the final results, because Ahuja treated polish expenses as a manufacturing expense and there is no evidence to the contrary, we will continue to treat "polish" expenses as manufacturing overhead in calculating Ahuja's surrogate financial ratios.

Additionally, we disagree with Dare Group that "contract manufacturing" should be treated as ML&E or SG&A expenses in the calculation of Ahuja's surrogate financial ratios. First, Ahuja lists all of its direct wages under "Payment to labours" in its profit and loss statement, whereas "contract manufacturing" is not listed in that section. Also, upon further examination of Ahuja's financial statements, we find that "contact manufacturing" is listed with other manufacturing expenses, such as, stores and repairs and polish expenses. Second, we find that "contract manufacturing" expenses are more akin to overhead expenses, and not SG&A. Thus, we find it appropriate to include "contract manufacturing" in manufacturing overhead. Therefore, for the final results, we have determined neither to exclude "contract manufacturing" from Ahuja's financial ratios, nor to include it in the SG&A ratio, but to include "contract manufacturing" in manufacturing overhead because it is listed with other manufacturing line-items in the surrogate company's financial statements. See Final Factor Valuation Memorandum 8/8/07.

We further disagree that including "contract manufacturing" in overhead, but not in ML&E or SG&A creates a "mismatch" as Dare Group alleges. We find that goods produced by "contract manufacturing" have already been included in the numerator of manufacturing overhead as an expense and, thus, adding "contract manufacturing" to the denominator of the manufacturing overhead ratio will eliminate the mismatch between the numerator and denominator as alleged by Dare Group.

Finally, we disagree with Dare Group that the classification of "manufacturing glass" as manufacturing overhead in Ahuja's surrogate financial ratios is inappropriate. After examining Ahuja's financial statement, we saw that Ahuja listed "manufacturing glass" within the same group as other manufacturing expenses. Therefore, for the final results, we have determined not to treat "manufacturing glass" as ML&E, but will continue to treat Ahuja's "manufacturing glass" as manufacturing overhead.

**Comment 19: Treatment of Job Work Expense in Huzaifa's and IFP's Financial Statements**

Guanqiu states that the Department incorrectly treated the "job work paid" expense as manufacturing overhead in calculating Huzaifa's and IFP's financial ratios, claiming it is the Department's practice to treat the "job work paid" expense as direct labor. See WBF 11/17/04 Memo at Comment 3. Thus, Guanqiu argues for the final results that the Department should include the "job work paid" expense in the ML&E denominator of Huzaifa's and IFP's surrogate financial ratios consistent with its past practice.

Petitioners argue that Guanqiu is incorrect in arguing that the Department should not include the "job work" expense in the overhead ratio for Huzaifa and IFP based on the items they claim each company's financial statements, respectively, included in manufacturing overhead. According to Petitioners, Huzaifa's financial statements list the following line items as manufacturing overhead: "consumable stores," "tools & spares," "repairs & maintenance - P&M," "staff welfare," and "depreciation," and IFP's financial statements list the following line items as manufacturing overhead: "stores & consumable," "repairs & maintenance - buildings," "repairs & maintenance - plant & machinery," "contribution to provident & other funds - employees," gratuity - employees," "staff welfare expenses - employees," and "depreciation."

**Department's Position:** Upon reviewing both financial statements, we found that neither company has a line item entitled "job work paid" in their respective financial statements. Thus, Guanqiu's argument that this line item should be included in ML&E is moot. Accordingly, we have made no changes to Huzaifa's and IFP's financial ratios with regard to the non-existent category "job work paid."

**Comment 20: Treatment of Labor-Related Expenses in Multiple Surrogate Financial Statements**

Guanqiu states that the Department included several labor-related expenses in its overhead ratio, (i.e., bonus (Ahuja and Nizamuddin), staff welfare (Akriti, Huzaifa, Imperial, and IFP), gratuities (Huzaifa and IFP), and employees provident fund (Ahuja, and IFP)). According to Guanqiu, these labor-related expenses should be treated as direct labor and should be included in the ML&E denominator, consistent with the source data used by the Department in its surrogate labor rate calculations.

Specifically, Guanqiu argues that the Department uses data from Chapter 5B of the YLS by the ILO for calculation of expected NME wages, which includes gratuities, bonuses, and staff welfare related expenses. Citing Luoyang, Guanqiu maintains that the CIT also concluded that Chapter 5 of ILO data includes "overtime, bonuses and gratuities, holiday pay, incentive pay, pay for piecework, and cost-of-living allowances." See Luoyang, 347 F. Supp. 2d at 1334.

Guanqiu states that in Luoyang, the CIT upheld the Department's inclusion of the provident funds as part of overhead and SG&A expenses because "Commerce was also presented with specific and undisputed evidence that demonstrated that additional expenses were incurred by employers in the PRC" and because respondents incurred additional labor expenses not captured by the surrogate ratios. Guanqiu maintains that the current record does not contain such evidence and does not warrant the inclusion of these items in the overhead and SG&A ratios.

Guanqiu also argues that the Department recently treated all labor-related expenses as part of ML&E rather than overhead. See Fish Fillets from Vietnam 3/21/07 Memo at Comment 9B. Consequently, Guanqiu concludes that for these final results the Department should include Provident Fund/ESI/Gratuity, bonuses, and staff welfare expenses in direct labor costs when calculating the respective companies' surrogate financial ratios.

Petitioners argue that the Department properly included the above-discussed labor-related expenses in factory overhead because these expenses are not accounted for in the wage rate calculations. Consequently, according to Petitioners, if the Department includes these labor-related expenses in the ML&E denominator, the SG&A and profit amounts calculated for normal value would be understated. Citing Antidumping Methodologies Notice, Petitioners assert that the Department rejected the use of ILO's Chapter 6 data in favor of Chapter 5 with the intention of capturing "all individually identifiable labor costs not included in the ILO's definition of 'earnings' under Chapter 5" as overhead expenses.

Citing Folding Metal Tables and Chairs 1/18/06 Memo at Comment 1B and Persulfates 2/14/06 Memo at Comment 3, Petitioners maintain that consistent with the above-stated policy, whenever items like "salary & other benefit to staff," "ESI expenses," "provident fund expenses," "staff welfare," and other employee benefits can be identified in the surrogate company financial

statements, the Department must classify these expenses as factory overhead. See WBF NSR Memo 11/21/06 at Comment 12.

Additionally, Petitioners state that Guanqiu argues that all labor-related expenses should be classified as ML&E because the record contains no evidence that the Chinese producers incurred labor costs outside the ILO Chapter 5B definition of wages. According to Petitioners, this argument is not relevant to the analysis in light of the Department's recent pronouncement that it intends to "categorize all individually identifiable labor costs not included in the ILO's definition of 'earnings' under Chapter 5 of the YLS as overhead expenses." See Antidumping Methodologies Notice at 61721. Petitioners maintain that the NME methodology recognizes that because not all labor-related expenses are captured in the wage rate, where they are identified in the financial statements, they must be included as overhead. Petitioners further argue that the respondents' own submissions about Chinese wages demonstrate that manufacturers have significant social insurance costs, welfare costs, and other labor costs that are not captured by the surrogate wage rate. Therefore, Petitioners argue that the Department should reject Guanqiu's arguments regarding the treatment of these labor costs.

Petitioners argue that Dare Group's financial ratio calculation based on Nizamuddin's 2005-2006 financial statements incorrectly includes certain employee-related expenses as part of ML&E. Petitioners urge the Department to ignore Dare Group's calculation and instead use the Petitioners' proposed surrogate financial calculation for Nizamuddin.

**Department's Position:** It is the Department's practice and policy to categorize all individually identifiable labor costs not included in the ILO's definition of 'earnings' under Chapter 5 of the YLS as overhead expenses. See Antidumping Methodologies Notice, at 61721. We disagree with Guanqiu that based on Luoyang, Fish Fillets from Vietnam 3/21/07 Memo at Comment 9B, or the description of types labor costs in Chapter 5 of the YLS, we should include Provident Fund/ESI, and staff welfare in ML&E. Guanqiu's own citation of Chapter 5 of the YLS describes earnings as "overtime, bonuses and gratuities, holiday pay, incentive pay, pay for piecework, and cost-of-living allowances." Nowhere in that citation are Provident Fund/ESI and staff welfare listed. Moreover, Chapter 6 of YLS, specifically excluded by the Department, lists Provident Fund/ESI and staff welfare.

Guanqiu also argues that the Department treated all labor-related expenses as part of ML&E rather than overhead in Fish Fillets from Vietnam 3/21/07 Memo at Comment 9B. Guanqui speculates that all labor-related expenses in the surrogate financial statement used in Fish Fillets Vietnam 3/21/2007 were inclusive of all labor items that the surrogate financial statements of the instant review contain. In other words, it is not clear from the published decision Fish Fillets Vietnam 3/21/2007 whether, for example, "contribution to Provident Fund" and "staff welfare expenses" were included in ML&E, or whether the surrogate financial statements simply did not have these line-items. It is possible that "all labor-related expenses" were precisely the manufacturing labor, gratuity, and bonus categories that were included in ML&E. See Fish Fillets Vietnam 3/21/2007. Consequently, the decision in Fish Fillets from Vietnam 3/21/07

Memo at Comment 9B is inconclusive with regard to which exact labor-related items the Department was referring to. Moreover, we disagree with Guanqiu that Luoyang supports inclusion of Provident Fund/ESI and staff welfare in ML&E. In fact, that case supports our inclusion of these items in overhead "because these two types of expenses are not expressly included in Chapter 5 data." See Luoyang, 347 F.Supp. 2d at 1346.

Additionally, we agree with Petitioners, in part, on the application of certain labor costs. Upon further examination of labor costs included in Chapter 5 of the ILO and our classification of Indian producers' labor expenses, we determined that we inadvertently excluded gratuity and bonus from ML&E in the Indian financial statements that separately identify these items. See Preliminary Factor Valuation Memorandum. In the Antidumping Methodologies Notice, at 61721, the Department specifically noted that "...the ILO defines 'earnings' under Chapter 5 of its Yearbook of Labour Statistics as being inclusive of 'wages,' and as including both bonuses and gratuities." In order to ensure that its calculation of expected NME wage rates accurately reflects the remuneration received by workers, the Department has determined to rely on 'earnings,' not 'wages.' Therefore, for the final results, we have included bonus for Ahuja, and gratuity for Huzaifa and IFP in ML&E for these surrogate financial ratio companies. See Final Factor Valuation Memorandum. Finally, we have not revised the financial ratio calculations with regards to provident funds and staff welfare because these items are excluded from Chapter 5 of the ILO, consistent with Folding Metal Tables and Chairs 1/18/06 Memo at Comment 1B, Persulfates 2/14/06 Memo at Comment 3, and Antidumping Methodologies Notice, at 61721.

**Comment 21: Treatment of Consumables in Akriti's Financial Statements**

Petitioners claim Akriti's 2004-2005 financial statements include the line item "Consumables" under "Raw Materials" and that this line item should be included as part of manufacturing overhead, consistent with the Department's treatment of "Consumables" in Ahuja's, Huzaifa's, and IFP's financial statements.

Dare Group stated that true consumables of the type not reported by respondents as direct materials should be properly classified as overhead.

**Department's Position:** We agree with Petitioners that Akriti's "Consumables" should be treated as manufacturing overhead. It is the Department's policy to treat consumables as indirect materials and classify them under manufacturing overhead. See Persulfates 2/9/05 Memo at Comment 4. In Persulfates, we explained that "...it is the Department's practice, absent any information to the contrary, to consider items such as "consumables" generally as an indirect material." Because we have no evidence that "Consumables" can be traced to a particular product, we will follow our general practice and treat "Consumables" as overhead in the calculation of Akriti's surrogate financial ratios. Additionally, Akriti classified its "Consumables" in its Schedule XII "manufacturing Expenses." Therefore, for the final results, we have reclassified "Consumables" from ML&E to manufacturing overhead in Akriti's surrogate financial ratios calculations. See Final Factor Valuation Memorandum 8/8/07.

**Comment 22: Treatment of "Designing Charges," Consumables, and Profit on Sale of Assets in Imperial's 2004-2005 Financial Statements**

Petitioners state that in the preliminary results, the Department's calculation of surrogate financial ratios from Imperial's 2004-2005 financial statements included all expenses booked under the line item "Direct Labour" as part of manufacturing labor. Petitioners argue that Imperial's financial statements, however, include a table entitled "Annexure to Schedule H," which separately reports expenses booked under this header, including an amount relating to "Designing Charges" which, Petitioners assert, should be treated as SG&A for purposes of deriving the surrogate financial ratios in the final results of review. Additionally, Petitioners state that the Department incorrectly included the line item "Consumable Materials" under "Raw Materials" and assert that this line item should be included as part of manufacturing overhead, consistent with the Department's treatment of this item in Ahuja, Huzaifa, and IFP's financial statements. Lastly, Petitioners state that the Department incorrectly included the line item "Profit on sale of assets" as an offset to SG&A expenses. Petitioners argue that because the Department does not have any information on whether the sold assets are financial or production assets, this item should be excluded from the financial ratio calculations in the final results.

Dare Group argues that Imperial's "designing charges" from Annexure to Schedule H should not be separated from the remaining amount of "Direct Labour" reported by Imperial. According to Dare Group, Imperial classified this labor expense as "direct labour" and the Department should not second-guess the Indian producer's statement. Dare Group further argues that "Consumable Materials" should not be classified as overhead, but should remain in ML&E. Dare Group claims that in contrast with Akriti, Imperial's description of this expense item includes the word "materials" which indicates that the Department properly classified the expense as ML&E. Therefore, Dare Group states that Petitioners' requested adjustment should be rejected. Finally, Dare Group points out that the Department made no adjustment to Imperial's SG&A by offsetting it with "profit on sale of assets" and, therefore, Petitioners' argument must be rejected.

**Department's Position:** We agree with Dare Group with regard to "designing charges." Imperial's financial statements listed "designing charges" under the category "Direct Labour." Thus, we have determined that "designing charges" should be treated as direct labor because Imperial treated this expense as labor in its financial statement and no other record evidence indicates otherwise. Therefore, for the final results, we will continue to treat "designing charges" as ML&E.

We further agree with Dare Group with regard to "Consumable Materials" listed in Imperial's financial statements. Imperial's financial statements listed "Consumable Materials" under the category "Direct Expenses Purchases," indicating that Imperial treated "Consumable Materials" as a direct material expense. In past cases, it has been the Department's practice to treat consumables as manufacturing overhead when there is no evidence that consumables can be traced to a particular product. See Persulfates 2/9/05 Memo at Comment 4. However, in the

instant case, Imperial has treated "Consumable Materials" as a direct expense in its financial statement, indicating that this line-item is not an indirect material but rather a direct material. We note Dare Group's argument that the word "materials" in "Consumable Materials" warrants reclassification of this expense as a direct material, but we have not addressed this point because we reached a determination on the treatment of "Consumable Materials" based on Imperial's treatment of this item in its financial statements. Therefore, for the final results, we will continue to include "Consumable Materials" in ML&E.

Finally, we also agree with Dare Group that Imperial's financial statement does not list a line-item entitled "profit on sale of assets." Therefore, exclusion of the line-item "profit on sale of assets" with regard to Imperial's surrogate financial ratios is not relevant.

**Comment 23: Treatment of Nizamuddin's 2004-2005 Financial Statements and Treatment of Manufacturing Charges Labour in Nizamuddin's 2005-2006 Financial Statements**

Petitioners state that the Department excluded Nizamuddin's opening and closing stock values from the calculation of total "Raw Materials" and that these amounts should be included under Raw Materials in the financial ratio calculations for the final results. Conversely, Petitioners state that the Department incorrectly included the revenue line item "Job Work" income as an offset against Manufacturing Overhead, and claim this line item should be excluded from the calculation, consistent with the company's other revenues.

Dare Group maintains that if the Department agrees with Petitioners' request to exclude "job work" income as an offset to the company's overhead, then the Department should reclassify "job work" expenses as ML&E, consistent with its treatment of job work and subcontracting expenses.

Dare Group states that if the Department uses the Nizamuddin 2004-2005 financial statements in the final results, the Department should correct two errors in the calculation proposed by Petitioners. First, Dare Group argues that Petitioners incorrectly treated "manufacturing charges" as SG&A, which is inconsistent with how Nizamuddin classified this expense. Second, Dare Group argues that Petitioners classified "job work paid" expenses as overhead. Dare Group contends that the Department's consistent practice is to include "job work" charges in ML&E.

Further, Dare Group argues that Petitioners incorrectly moved "manufacturing charges" from manufacturing to overhead, which is inconsistent with the company's characterization of this expense. Moreover, according to Dare Group, the company's 2005-2006 financial statements indicate that this expense is actually referred to as "Mfg. charges labour," confirming that it should be treated as ML&E. Dare Group, therefore, asserts that if the Department uses the 2005-2006 financial statement of Nizamuddin in the final results, it should correct this error in the calculation of Nizamuddin's financial ratios.

**Department's Position:** Upon further examination of Nizamuddin's 2004-2005 financial statements, we have determined that Nizamuddin's financial statements do not provide sufficient information to determine whether Nizamuddin's "job work" income is an offset to direct labor, manufacturing income, or simply a revenue item. Therefore, we cannot determine whether it is appropriate to classify "job work" income as an offset to ML&E, manufacturing overhead, or to totally exclude it. First, if we treated "job work" income as an offset to direct labor, our calculation of Nizamuddin's surrogate financial ratios would result in negative labor, thus making Nizamuddin's financial statement unusable. Second, we cannot ascertain whether "job work" income is related to manufacturing overhead because Nizamuddin's financial statements do not indicate which manufacturing expenses generate "job work" income. Thus, we find that continuing to treat "job work" income as manufacturing overhead, as we did in our Preliminary Results, is inappropriate because of our inability to correctly classify "job work" income. See WBF Preliminary Factor Valuation Memorandum 1/31/07 at Attachment 9. Third, if we excluded "job work" income from Nizamuddin's financial ratios, then we should also exclude the manufacturing expenses attributable to "job work" income. As we stated above, Nizamuddin's financial statements do not provide sufficient detailed information (i.e., line-item breakouts) on these type of expenses. Finally, we note that Nizamuddin's 2005-2006 financial statements do not contain a line-item "job work" income, thus, suggesting that the line-item from its 2004-2005 financial statement was a one-time occurrence. Therefore, for the final results, we have determined not to use Nizamuddin's 2004-2005 financial statements because we are unable to correctly classify "job work" income due to limitations of Nizamuddin's financial statement and we are concerned that any reclassification of "job work" income could lead to distortions. Additionally, because we have a significant pool of reliable surrogate financial statements from numerous Indian furniture producers on the record of this review, we find that using Nizamuddin's 2004-2005 financial statements in our surrogate ratio calculations is not required.

Further, we agree with Petitioners that opening and closing stock values should be included in ML&E. This is consistent with our treatment of all other surrogate companies' opening and closing stock values where we included these items in ML&E unless they were identified as opening and closing values of finished goods. However, because we have determined to disregard Nizamuddin's 2004-2005 financial statements, treatment of opening and closing stock is no longer relevant. Finally, because we determined to disregard Nizamuddin's 2004-2005 financial statements, all financial ratio adjustments (i.e., "manufacturing charges" and "job work paid") raised by the interested parties for Nizamuddin are also no longer relevant.

We agree with Dare Group that Nizamuddin's 2005-2006 financial statements identify "Mfg charges labour" as manufacturing labor, unlike 2004-2005 financial statements that listed this expense as "Mfg charges." Therefore, for the final results, we have included "Mfg charges labour" in the ML&E portion of Nizamuddin's 2005-2006 surrogate financial ratios. Finally, we treated "Staff Salary" as SG&A expense. We note that in the preliminary results, we treated this line-item as direct labor in Nizamuddin's 2004-2005 financial ratios.

**Comment 24: Use of 2004-2005 Data from Jayabharatham's 2005-2006 Financial Statement**

Petitioners state that Jayabharatham's 2005-2006 financial statements include the financial data for calculating financial ratios for 2004-2005 and 2005-2006. Thus, Petitioners argue that the Department should calculate separate financial ratios for each of Jayabharatham's reporting periods.

**Department's Position:** Because we have determined not to use Jayabharatham's financial statements in the calculation of the surrogate financial ratios based on other factors (see Comment 27), the issue of how to calculate financial ratios based on Jayabharatham's financial statements is not relevant. See Comments 17F: Jayabharatham (2006).

**Comment 25: Treatment of Octroi Expense in Huzaifa's Financial Statements**

Dare Group and Guanqiu assert that the Department incorrectly included "octroi" expenses in Huzaifa's 2004-2005 SG&A financial ratio. Citing to Honey 10/4/01 Memo at Comment 3, both parties argue it is the Department's practice to exclude "octroi" expenses because movement and transportation expenses are accounted for in the normal value calculation and in adjustments made to the U.S. price. See Honey 10/4/01 Memo at Comment 3. Thus, inclusion of these expenses in SG&A results in double-counting. Dare Group, therefore, urges the Department to exclude this expense from any financial ratio calculation based on Huzaifa's 2004-2005 and 2005-2006 financial statements.

Starcorp concurs with the arguments.

No other party commented on this issue.

**Department's Position:** We agree with respondents that "octroi" expenses are associated with the taxation of movement of goods. Because "octroi" expenses relate to transportation and movement expenses, consistent with our past practice, we determine that inclusion of "octroi" expenses in the calculation of Huzaifa's SG&A ratio would result in double-counting of that ratio because it is already included in the calculation of the normal value. See Honey 10/4/01 Memo at Comment 3. Therefore, for the final results, we have revised Huzaifa's surrogate financial ratios to exclude "octroi" expenses from the numerator of the SG&A expense calculation. See WBF Final Factor Valuation Memorandum 8/8/07.

**Comment 26: Allocation of Aggregated Personnel Expenses in the Calculation of Surrogate Financial Ratios Based on ASI Data**

Petitioners argue that the Department should allocate aggregated personnel expenses among SG&A, ML&E, and overhead in the calculation of surrogate financial ratios. Petitioners explain that while some of the Indian surrogate financial statements provide separate line items for

different components of personnel expenses, many fail to disaggregate non-manufacturing and manufacturing personnel expenses. According to Petitioners, when deriving the financial ratios for a surrogate financial statement that does not disaggregate its personnel expenses, the Department should allocate those expenses using the financial statements containing the disaggregated line-item information. Petitioners allege that a failure to do so would result in an understatement of non-manufacturing personnel expenses and overhead costs, and in an overstatement of manufacturing personnel expenses which violates the statute directive to calculate dumping margins as accurately as possible.

Petitioners stipulate that if the Department uses a wage rate in the final results that is based on its new wage rate calculation methodology (see Comment 2 above), then the Department must also take into account the corresponding part of its rationale for using Chapter 5 ILO data, i.e., that un-captured labor expenses would be reflected in the financial ratios.

Citing to Polyethylene Retail Carrier Bags 3/19/07 Memo, Petitioners contend that the Department recently recognized that financial ratios are "understated" when aggregated personnel expenses are not broken out separately for purposes of the financial ratio calculations. See Polyethylene Retail Carrier Bags 3/19/07 Memo, at Comment 3a. Petitioners maintain that while the Department determined that the factual information on the record of that review was insufficient to disaggregate the personnel expenses in the available surrogate financial statements, the record of this review is significantly more detailed.

Petitioners assert that this record provides two options for disaggregating personnel expenses when calculating financial ratios: (1) rely on Indian Labour Bureau data; or (2) calculate disaggregation ratios from the financial statements on the record that already disaggregate personnel expenses.

Petitioners provided a copy of the ASI published by The Labour Bureau, Ministry of Labour & Employment, Government of India. Petitioners assert that Table 3.2.1 of the ASI data provides data that can serve as a basis for the Department to allocate non-manufacturing personnel expenses to SG&A and manufacturing personnel expenses to ML&E. Using these data, Petitioners calculated the manufacturing personnel expenses to total wages/salary ratio to be 57.57 percent, and the non-manufacturing personnel expenses to total wages/salary ratio to be 42.43 percent and encourage the Department to use these ratios to allocate non-manufacturing personnel expenses to SG&A, and manufacturing personnel expenses to ML&E, where they are not already disaggregated in a surrogate company's financial statements. Petitioners maintain that because all non-manufacturing labor expenses are classified as SG&A expenses, no further allocation of non-manufacturing personnel expenses is necessary. Finally, Petitioners state that for the manufacturing labor component, the calculated amount must be further allocated between wages and overhead costs.

Petitioners state that Table 3.1.1 of the ASI reports the total amounts paid for wages/salaries, bonuses, provident funds, and welfare expenses in Indian industries. Using this table, Petitioners

calculated the proportion of wages/salaries, bonuses, provident funds, and welfare expenses to "total labour costs on employees" as 80.08 percent for wages/salaries, 2.20 percent for bonuses, 13.97 percent for provident funds, and 3.75 percent for welfare expenses. Therefore, Petitioners argue that when relying on financial statements that do not break out these factory overhead components, the Department should apply the overhead percentages listed above to the amount calculated for manufacturing personnel expenses. Finally, Petitioners contend the resulting amounts for bonuses, provident funds, and welfare expenses should be classified as factory overhead.

Petitioners acknowledge that the Department rejected a similar proposal in Polyethylene Retail Carrier Bags 3/19/07 based on data concerns. See Polyethylene Retail Carrier Bags 3/19/07 Memo at Comment 3a. However, Petitioners maintain that they have provided additional information regarding the nature of the Indian statistics that was not on the record of the Polyethylene Retail Carrier Bags 3/19/07 case and address each of the Department's stated concerns. First, Petitioners assert that their submission includes a detailed description of the Indian government's methodology to conduct the survey and to compile the statistics, as well as precise information concerning the scope of the data included, which they claim is collected from 676 Indian furniture manufacturers throughout India (with the exception of Arunachal Pradesh, Mizoram, Sikkim and the Union Territory of Lakshadweep) covering establishments that use power and employ 10 or more workers. Further, Petitioners argue that the three-digit Indian National Industrial Classification ("NIC") code for the furniture industry is far more narrowly defined than the three-digit NIC code for the plastics industry negating the Department's concerns in Polyethylene Retail Carrier Bags 3/19/07 that the data covered a much larger industry than that covered by the Indian producers of like merchandise. Petitioners state that the Department noted in Polyethylene Retail Carrier Bags 3/19/07 that the plastics industry (as captured under the description "Manufacture of Plastic Products") included everything from "suitcases" to "plastic helmets" to "bathing tubs." See Polyethylene Retail Carrier Bags 3/19/07 Memo at Comment 3a. Petitioners contend that the range of furniture products is, by contrast, much more limited. Second, Petitioners maintain that the wages/salaries are reported before exclusion of applicable taxes. Additionally, Petitioners argue that whether the data is tax exclusive or not is irrelevant because taxes would be included in both the numerator and denominator of the ratios used to allocate aggregated personnel expenses.

Third, Petitioners add that the 2003-2004 ASI data are the most recent data available and are comparable to the review period, which includes shipments made for more than six months of 2004. Petitioners state that there is no reason to suppose that ratios of manufacturing to non-manufacturing labor costs fluctuate significantly from year to year. Therefore, according to Petitioners, there is no longer any basis to conclude that the ASI data are "unreliable."

Petitioners assert that the Department routinely accepts surrogate value information that is not contemporaneous with the POR, noting that it "may not always be able to find surrogate values that satisfy each of the {Department's} preferences" and that "specificity outweighs contemporaneity" in many cases. See Diamond Sawblades 5/22/06 Memo, at Comment 11B,

and Honey 6/16/06 Memo at Comment 1. Petitioners contend that the key is to select the best available information, even if that information is not perfect.

Finally, Petitioners reiterate that the ASI data published by the Government of India represent a reasonable and unbiased means by which to accomplish this task, and conclude that because the above-described statistics represent the best available information, the Department should utilize those data to allocate personnel expenses where they have been reported on an aggregated basis. According to Petitioners, this will result in more accurate surrogate financial ratios that fully capture the actual cost of producing the subject merchandise.

Guanqiu and Dare Group assert that the Department rejected similar requests to adjust financial statements for aggregated personnel costs in two recent cases. See Polyethylene Retail Carrier Bags 3/19/07 Memo at Comment 3a and Coated Free Sheet Paper 6/4/07 at 30765. (Citing WBF 11/17/04 Memo at Comment 12, where the Department explained it does not generally adjust financial statement data because of concerns "that such adjustments may introduce unintended distortions.") Guanqiu asserts that Petitioners' argument to disaggregate labor costs for surrogate financial companies that do not itemize these costs presumes that these costs are not included in the Department's calculated surrogate wage rate. Guanqiu refutes this premise, arguing that the Department's labor rate does in fact include labor items such as bonuses, gratuities, and other expenses. According to Guanqiu, adding these personnel labor-related costs to the numerator of the SG&A and overhead ratios would constitute double-counting. Guanqiu argues that this is not appropriate even for the companies that itemized these expenses separately and, therefore, contends that these personnel expenses should be included as part of the ML&E numerator. See Guanqiu's position in Comment 20, above.

Guanqiu further argues that in Polyethylene Retail Carrier Bags 3/19/07, the Department rejected using NIC data because 1) they were too broad to represent the experience of the Indian producers of domestic-like merchandise, 2) there was no precise information in the scope of the NIC codes related to the treatment of labor costs, and 3) the data were not contemporaneous. See Polyethylene Retail Carrier Bags 3/19/07 Memo at Comment 3a. Guanqiu asserts that contrary to Petitioners' claims, there is a continued basis to conclude that the NIC data are unreliable based on the same reasoning outlined in Polyethylene Retail Carrier Bags 3/19/07 Memo at Comment 3a, and that, therefore, the Department should continue to disregard these data. Guanqiu also disputes the appropriateness of Petitioners' proposed alternative methodology to derive allocation ratios based on the surrogate company financial statements that itemize personnel expenses, arguing that this would require the Department to impute the experience of some Indian furniture producers to unrelated companies.

Dare Group contends that Petitioners' argument that nearly all of the Indian financial statements are so inaccurate that they require an across-the-board adjustment to separate non-manufacturing personnel expenses from manufacturing personnel expenses, is without merit. Dare Group maintains that Petitioners admit that when corrected, some of the combined labor ratios of Indian companies will nearly double. According to Dare Group, this indicates that Indian data contain

significant distortions and inaccuracies. In contrast, Dare Group claims that the five financial statements it submitted from the Philippines report "direct labor" separate from "salaries, wages" classified as operating expenses (and treated by Dare Group as SG&A). According to Dare Group, the Department should consider that Petitioners' argument leads to distortions and requires adjustment because Indian importers and Indian Customs routinely disregard the 8-digit classifications of imports, and nearly all of the Indian companies fail to break out labor into components. According to Dare Group, because now even Petitioners are arguing that the financial ratio data from India are inaccurate, the Department must use Philippines data to value Dare Group's inputs.

Dare Group states that ASI data are not contemporaneous because they cover the period April 2003 through March 2004, which is prior to the POR. According to Dare Group, the ASI data are also not specific to the production of subject merchandise because they include the manufacture of: 1) wood, cane, reed furniture, 2) fixtures of metal, 3) furniture and fixtures of plastics, 4) foam mattresses and pillows, and 5) photo frames. See Exhibit 5 of Petitioners' case brief. According to Dare Group, mattresses, pillows, and photo frames are not dissimilar from the kinds of disparate products, i.e., "suitcases," "plastic helmets" and "bathing tubs," that Petitioners acknowledge as items which led to the Department's conclusion that the industry code in Polyethylene Retail Carrier Bags 3/19/07 was not sufficiently specific to the product at issue in that case. Therefore, Dare Group argues, the industry code is too broad to provide an accurate picture of the furniture industry in India specific to WBF. Dare Group further argues that ASI data are not country-wide because they do not include several Indian states, including Arunachal Pradesh, Mizoram, Sikkim, and the Union Territory of Lakshadweep. See Section 1.6 of Exhibit 1 of Petitioners' case brief.

Additionally, Dare Group argues that the methodology used to perform the survey is confusing in that it is unclear whether the survey results upon which Petitioners request the Department to rely include any data for companies employing 100 or more workers, thus, indicating a bias against larger companies in the survey. See Exhibit 1, Section 1.6 of Petitioners' case brief. Dare Group provided a calculation based on data from the study in an attempt to demonstrate the bias. Based on Dare Group's calculation, the study indicates an average of 44.65 workers per factory, which Dare Group concludes means the study covered companies that employed fewer than 45 workers. Thus, Dare Group asserts this corroborates the indication of possible bias in the study's data collection methodology.

Finally, Dare Group states that the Department considers subcontracting labor costs as part of ML&E and that the ASI study provided by Petitioners similarly treats contract labor separately. See Exhibit 1 of Petitioners' case brief. Dare Group claims that Petitioners' calculation, however, presumes that non-manufacturing personnel expenses will result from deducting total workers from total employees. See Exhibit 6 at 2 of Petitioners' case brief. Therefore, Dare Group contends that Petitioners' adjustment creates an additional distortion by assigning contract manufacturing to the non-manufacturing portion of labor expense.

**Department's Position:** We agree in part with Petitioners. We agree that the Department's regression-based calculation of the expected NME wage rate is based on "earnings" and "wages" that are only direct manufacturing wages, i.e., exclusive of non-manufacturing expenses and manufacturing overhead costs. See Antidumping Methodologies Notice, at 61721. We further agree with Petitioners that "it is the Department's practice to categorize all (with the exception of bonus and gratuity discussed in Comment 20) individually identifiable {*emphasis added*} labor costs not included in the ILO's definition of 'earnings' under Chapter 5 of the Yearbook of Labour Statistics as overhead expenses. See Antidumping Methodologies Notice, at 61721. However, in citing this policy, Petitioners ignore the fact that labor costs need to be "individually identifiable." The fact that Petitioners propose a disaggregation methodology that requires fractioning of a portion of aggregate labor cost indicates on its face that the expenses are non-identifiable. We also disagree with Petitioners that if their proposed line-item adjustments are not made, the resulting surrogate financial ratios will be so distorted that the Department cannot accurately calculate a dumping margin. The Department has never put forth the proposition that in calculating financial ratios, we would rely on sources beyond the surrogate financial statements. Further, it is not possible for the Department to dissect the financial statement of a surrogate company because the Department does not have the authority to inquire further into a surrogate company's books and records or verify information from the surrogate company. Accordingly, the Department classifies the line item(s) from each surrogate company's financial statement according to that surrogate company's categorization of its line-item(s).

Moreover, as we have explained in past cases, because we do not know all of the components that contribute to the costs of a surrogate producer, we cannot be certain of the individual components which comprise the various line items in surrogate financial statements. Therefore, adjusting those statements may not make them any more accurate and indeed may only provide the illusion of precision. See Pure Magnesium 3/30/95 at 16446-7. See also Rhodia, 240 F. Supp. 2d at 1250-1251. This reasoning was explained in Pure Magnesium 3/30/95 at 16446-7 as follows:

> While the petitioners may argue that the magnitude of these costs is understated, we have not attempted to make an adjustment to account for this difference because we are unable to make similar and corresponding adjustments to other costs which may have been overstated. Thus, we disagree that making such an adjustment would yield a more accurate result and indeed could introduce unintended distortions into the data.

See Magnesium from Russia 9/27/01 Memo at Comment 2.

Additionally, we disagree with Petitioners that the facts of the instant review are distinguishable from those in Polyethylene Retail Carrier Bags 3/19/07. Analyzing the ASI data and supporting interpretation of the data submitted by Petitioners, it does appear that some of the ambiguities that existed in Polyethylene Retail Carrier Bags 3/19/07 are clarified in the record of the instant review. Those clarifications include the explanation of the methodology used in compiling the data, exclusion of taxes, exclusion of five Indian states from data collection and definition of

labor terms. However, partial clarification does not make the ASI data fully reliable nor the methodology suitable for additional adjustments. We agree with Guanqiu that, despite these clarifications, there are still remaining ambiguities related to the methodology of obtaining labor cost information included in NIC codes. Additionally, we agree with Dare Group that application of the labor ratios derived from the ASI data would add distortions to "contract workers" because it involves allocating a portion of "contract workers" labor to non-manufacturing expenses when it is Department's practice to assign "contract workers" labor to direct or indirect manufacturing labor.

We agree with Petitioners that the Department will, when the facts dictate, accept non-contemporaneous source information, and make adjustments to non-contemporaneous surrogate values by either inflating or deflating the values. However, in the instant case, we cannot make adjustments to surrogate ratios because ratios are mathematical formulas that derive percentages and the resulting percentages are not meant to be inflated or deflated. The Department uses an inflator based on the wholesale price index to inflate surrogate values derived from a period prior to the POR. In the case of a surrogate percentage, the use of an inflator is inapplicable because percentages are not subject to inflation.

In general, we agree with Petitioners that using direct labor that includes, for example, welfare expense, may understate the financial ratio for SG&A because the components of Chapter 5 earnings do not include welfare. However, for the financial statements on the record of this review that would require a labor-related adjustment (i.e., gratuities, bonuses, welfare expenses, etc.), the adjustment has already been made in the respective surrogate companies' SG&A expenses. Also, we cannot state with any certainty that the SG&A-related labor adjustments do not include any manufacturing labor elements which could overstate the SG&A ratio. Therefore, we find that reallocating a portion of direct labor to SG&A would be more likely to overstate the SG&A ratio of the surrogate companies at issue.

Furthermore, we have determined that the components of Chapter 5 earnings include bonuses and gratuities. For the final results, we have reclassified these items as ML&E for those financial statements that list these earnings separately. See Comment 20 for the discussion of the treatment of labor-related expenses. Therefore, Petitioners' proposed 2.20 percent allocation of manufacturing expenses into bonuses and its subsequent classification as overhead would result in double counting of the surrogate overhead ratio. Finally, for these final results, we have not adjusted the Indian surrogate financial companies' personnel expenses based on the ASI, which is consistent with our practice of not adjusting a surrogate producer's audited financial statement because adjusting the data from the financial statement could lead to potential distortions.

Finally, because we disagree with Petitioners' proposed adjustments of the Indian labor-related expenses based on ASI data, we also disagree with Dare Group that using Philippines as the surrogate country is warranted. See detailed discussion of this issue in Comment 1.

**Comment 27: Allocation of Aggregated Personnel Expenses in the Calculation of Surrogate Financial Ratios Based on the Record Financial Statements**

Petitioners argue that if the Department does not use Indian Labour data, in the alternative it should derive allocation ratios from the financial statements on the record that disaggregate personnel expenses. Petitioners propose three such financial statements to be used for this purpose: (1) the 2004-2005 financial statements of Huzaifa, (2) the 2005-2006 financial statements of Huzaifa, and (3) the 2004-2005 financial statements of James Andrew Newton. Petitioners state that, as described above, the resulting ratios can be used to allocate the personnel expenses of the remaining financial statements among SG&A, direct labor, and overhead.

Guanqiu argues that Petitioners' alternative methodology of allocating financial ratios (i.e., based on financial statements that report itemized personnel expenses) is distortive, and Guanqiu asserts that methodology should be rejected because it would require the Department to impute the labor expenses and reporting methodologies of some Indian furniture producers to other unrelated companies.

Dare Group also asserts that Petitioners' alternative request to adjust the aggregated financial statement figures based on the ratios from two companies should be rejected. Dare Group argues that Petitioners' proposed methodology supposes that the experience of two Indian companies approximates the experience of the potential surrogate Indian companies with no basis for such speculation. Dare Group further maintains that the Department should not use the financial statements of Huzaifa or James Andrew Newton for any purpose because the financial data of those two companies should be rejected in their entirety as discussed in Comment 17.

**Department's Position:** We disagree with Petitioners. As we explained in Comment 26, which addresses the use of ASI data as a basis for allocation of labor-related ratios, it is the Department's practice not to adjust a surrogate producer's audited financial statement. Also, we agree with Dare Group that substituting the experience of any surrogate producer with the experience of another surrogate producer is an inappropriate assumption (i.e., if one surrogate company incurred a certain percentage of labor overhead, then the other would incur the same percentage of that expense). Even if the assumption were true, labor-related overhead costs differ from one company to the next. For example, Ahuja and Fusion report their direct wage as "Wages," Akriti reports its direct wages as "Salaries & Benefits to Staff," IFP reports its direct wages as "Salaries, Wages, Bonus & Allowance," Huzaifa reports its direct wage as "Labour Charges," and Nizamuddin reports its direct wages as "Staff Salary." The labor costs reported by the above surrogate companies include various costs as their titles suggest, thus, there is no one-to-one correlation of labor costs among the financial statements. Accordingly, because each company's labor expense contains several different personnel expenses, we cannot derive a ratio that allocates the labor expenses in a rational, meaningful manner. Finally, Petitioners do not cite to any record evidence in the Department's past practice in support of their proposition. Therefore, for the final results, we have not revised the aggregate labor-related costs of certain

surrogate producers to reflect the labor-related costs of the other surrogate producers' disaggregated labor-related expenses.

## III. Aosen-Specific Issues

### Comment 28: Application of Partial AFA for Nails

Petitioners argue that the Department should use AFA to value Aosen's nails. Petitioners contend that the Department determined at verification that Aosen failed to report nails in its FOP database. Petitioners argue that the Department should use HTS item 7317.00.99 to value the unreported nails and the Department should allocate the full purchase/consumption quantities of the unreported nails to the subject merchandise on a CONNUM-specific basis using Aosen's reported wood and board consumption as the basis of the allocation.

Aosen argues that the Department did not determine at verification that it failed to report nails in its FOP database. Aosen claims the verification report does not draw conclusions as to whether the reported information was successfully verified. Additionally, Aosen argues that there is no evidence on the record of this segment of the proceeding indicating that nails were used in the production of subject merchandise. Further, Aosen argues that it made no sales of subject merchandise to the United States during 2005, and its lack of participation in the U.S. market until the conclusion of this administrative review is a natural result of its prohibitive cash deposit rate of almost 200 percent. Therefore, Aosen argues that observations made at verification do not demonstrate that nails were used to produce subject merchandise. Also, Aosen contends that it informed the Department at verification that nails were seldom used in production of subject merchandise because customer specifications generally prohibited the use of nails. Moreover, Aosen asserts that the purchase of pneumatic nails described in the verification report occurred after its sales of subject merchandise to the United States terminated. Furthermore, Aosen claims that the unit measure of nails shown on the inventory ledger page included in Exhibit 14k of the verification report was mis-translated as kilograms instead of pieces, and there is no manufacturing requirement that nails be used in the production of subject merchandise because the use of glue is sufficient. Lastly, Aosen argues that no BOM on the record of this segment of the proceeding includes any reference to brass nails.

**Department's Position:** We agree with Aosen. The Department did not determine at verification that Aosen failed to report nails in its FOP database. At verification, we observed an invoice covering the purchase of nails during the POR, and we reviewed an inventory ledger which indicated a release from inventory of nails during the POR. However, we found no other evidence that nails were used to produce subject merchandise during the POR. Therefore, given that glue is a component used in the production of the subject merchandise, coupled with Aosen's statement that glue is sufficient for the production of subject merchandise, and in light of the inconclusive evidence on the purchase and use of nails during the POR, we have concluded that Aosen did not use nails in its production of the subject merchandise. Thus, we have determined there is no basis on which to apply AFA to Aosen with respect to nails.

**Comment 29: HTS Classification for "PLYWOOD," "MDBD," "PINE," "ASHVEN," "EXPLYSHT," and "POLYFOAM"**

Petitioners argue that the Department's valuation of Aosen's FOPs ( "PLYWOOD," "MDBD," "PINE," "ASHVEN," "EXPLYSHT," and "POLYFOAM") under eight-digit HTS categories is not supported by Aosen's description of these factors. Petitioners contend that during its verification of Aosen, the Department did not verify Aosen's factor descriptions or recommended classifications. Accordingly, Petitioners conclude that the Department should value Aosen's FOPs using the four-digit HTS level (e.g., 4412 for plywood) for the final results of review.

See Aosen's general position as outlined in Comment 8, above. Aosen reiterates that it carefully considered the HTS category that most appropriately described the nature of its materials. More specifically, Aosen contends that if the Department applies the four-digit HTS category to value its FOPs, then the results would include a myriad of inappropriate products. For example, Aosen explains that the HTS category 4412 for plywood would inappropriately include 4412.93 (plywood that has at least one layer of particle board), which would result in use of an incorrect surrogate value and thus would introduce inaccuracy and distortion into the dumping margin calculation. Similarly, the HTS category 3920 includes plates of polymethyl methacrylite, polyesters, and vulcanized fiber, which would result in the use of an incorrect surrogate value for expandable polystyrene sheet. As stated in Comment 8, Aosen asserts that the Department inspected material inputs in several input packages at verification and found no inaccuracies. Therefore, Aosen recommends that the Department not use the four-digit HTS categories, as proposed by the Petitioners, in the final results.

**Department's Position:** For the preliminary results of this administrative review, the Department used the eight-digit Indian HTS category to value Aosen's above-mentioned FOPs because there was no evidence on the record indicating that Aosen's descriptive information does not correspond with its factor inputs. The Department reviewed Aosen's FOPs and finished products at its factories in March 2007. See Aosen Verification Report. At verification the Department toured Aosen's factory to observe the FOPs being used and specifically reviewed the records of numerous FOPs. See Aosen Verification Report at 19-25. The Department confirmed the accuracy of the reported data and noted no discrepancies with the information submitted, as stated in its verification report. Based on the Department's observations at verification that confirmed Aosen's FOP descriptions, the Department continues to classify Aosen's FOPs using eight-digit Indian HTS categories.

## IV. Baigou Crafts

**Comment 30: Application of Total AFA to Baigou Crafts**

Petitioners argue that Baigou Crafts of Fengkai ("Baigou Crafts"), a separate-rates applicant, failed to cooperate to the best of its ability and significantly impeded this proceeding.

Specifically, Petitioners allege that Baigou Crafts: 1) circumvented the antidumping order; 2) submitted erroneous documentation in its Q&V response; 3) failed to disclose affiliates to the Department prior to verification; and 4) provided unverifiable information regarding its price negotiations. Such conduct, Petitioners argue, warrants the application of total AFA when determining Baigou Crafts dumping margin.

Petitioners contend that Baigou Crafts' minor corrections reveal that Baigou Crafts had actual knowledge that the antidumping duty order was being circumvented and further, that neither Baigou Crafts, nor its importer, took the necessary steps to redress the situation. Specifically, Petitioners cite Baigou Crafts revelation that, after preparing its Q&V response using CBP entry documents, it discovered that at least one of its invoices contained erroneous merchandise values. Baigou Crafts stated that it subsequently issued its customer a corrected invoice reflecting the actual merchandise values. Petitioners contend, however, that Baigou Crafts failed to present any evidence that it similarly corrected the CBP entry documents, which would have reflected the erroneous merchandise values from the original invoice. Petitioners also cite Baigou Crafts' statement that, in preparing for verification, it discovered that certain merchandise (i.e., "television armoires" and "night-stands") had been mis-classified, at the time of entry, as non-subject merchandise. Similarly, Petitioners argue that Baigou Crafts neglected to provide evidence that it, or its importer, attempted to correct these fraudulent mis-classifications with CBP. Therefore, in addition to requesting that the Department apply total AFA to Baigou Crafts' exports, Petitioners request that the Department propose to CBP and ICE that they initiate an investigation into Baigou Crafts importing activities, as they relate to subject merchandise.

Baigou Crafts asserts that the minor corrections it submitted at verification reflect its full disclosure and good faith cooperation with the Department's review and that nothing in its disclosure of the invoicing errors merits any kind of adverse assumption, much less the imposition of total AFA. Baigou Crafts explains that the day before verification began, Baigou Crafts' counsel discovered information suggesting that the U.S. broker, used by Baigou Crafts' unaffiliated U.S. customer, may have made some clerical or classification errors on some of the CBP entry documents, which Baigou Crafts relied upon in preparing its Q&V response. Baigou Crafts disclosed these two potential errors to the Department as minor corrections at the beginning of verification. Neither of these errors, Baigou Crafts argues, is evidence of fraud or circumvention, as alleged by the Petitioners.

Baigou Crafts explains that the first minor correction involved its discovery that one of its customer's CBP entry documents reflected an invoice pricing error. Upon discovering the invoice error, Baigou Crafts stated, it issued a revised invoice to its customer. The corrected invoice, which the Department fully examined, was not, as Petitioners imply, part of a fraudulent dual-invoicing scheme aimed at declaring false values to CBP, but rather a result of a clerical error. The second minor correction, Baigou Crafts explains, involved its discovery that certain items classified by the U.S. broker as non-subject merchandise appeared, from the line-item descriptions on the attached invoices, as products that could potentially be considered subject

merchandise. Baigou Crafts then explained to the Department that if its reading of the entry documents was correct, its originally reported quantity should be increased by 0.75 containers.

Baigou Crafts argues that because it was not the importer of record, it was unaware, until the day before verification, that the importer had mistakenly relied upon the original and incorrect invoice in preparing the CBP entry documents and that the U.S. broker may have mis-classified some subject merchandise as non-subject merchandise. Baigou Crafts contends that because of the timing of its discovery of this information (i.e., the day before verification began), on a Sunday, Baigou Crafts was unable to contact the U.S. broker concerning its discoveries. Furthermore, because Baigou Crafts was not the importer of record, and has no affiliation with the importer, it did not have the ability to change or correct the potentially affected CBP entry documents. Baigou Crafts, asserts, however, that on the next business day after the completion of the verification, it informed its customer of the potential errors and advised it to consult its U.S. broker about correcting the CBP entry documents potentially affected by Baigou Crafts' minor corrections.

Additionally, Baigou Crafts argues that as a separate rate-only respondent in an NME proceeding, its minor corrections, both of which slightly affect its originally reported Q&V, have no bearing on the calculation of a dumping margin or the evaluation of Baigou Crafts entitlement to a separate rate. Moreover, Baigou Crafts asserts that its originally reported and corrected export quantities clearly convey that Baigou Crafts was a low-volume exporter, when compared to the other exporters selected for review. Therefore, Baigou Crafts argues, its appropriately disclosed self-reported discrepancies had no impact on the Department's analysis or respondent selection, and thus, Baigou Crafts has not impeded the Department's review.

Petitioners argue that Baigou Crafts had ample opportunity to fully explain to the Department, prior to verification, that its originally submitted Q&V data included erroneous merchandise values from a subsequently invalidated invoice. Petitioners contend that Baigou Crafts' failure to explain this discrepancy to the Department prior to verification demonstrates that Baigou Crafts affirmatively hid this issue from the Department and from Petitioners, thereby preventing the Department from further inquiring into this matter in a supplemental questionnaire.

Baigou Crafts asserts that because it was not the importer, it had no notice of the importer's apparent pricing error on the CBP entry documentation until it compared the entry documents to its own records, hours before verification began. Thus, Baigou Crafts asserts, there was no opportunity to consult with the U.S. broker who made the entry, in order to clarify the situation, prior to verification. Baigou Crafts argues that it fully disclosed and explained to the Department at the beginning of verification this potential error, as it understood it.

Furthermore, Baigou Crafts argues that its discovery and disclosure of this error has no bearing on any matter of relevance in this case. Nevertheless, Baigou Crafts asserts, it wished to correct the record and therefore, disclosed this discrepancy. Specifically, Baigou Crafts notes that both the original and corrected invoices reflect the same, and correct, quantity. Lastly, Baigou Crafts

argues that while its discovery slightly affected the value it originally reported to the Department, the total value of sales is informational only and has no effect on the Department's calculation of Baigou Crafts' dumping margin or its separate-rate analysis.

Petitioners contend that Baigou Crafts disclosure of at least two affiliations (Fengkai Hengsheng Furniture Co., Ltd. ("Fengkai") and WUS Furniture Co., Ltd. ("WUS")) at verification, the existence of which were not disclosed in any of Baigou Crafts' pre-verification submissions, prevented the Department from fully investigating government control, and other issues related to affiliate relationships. Further, Petitioners argue that Baigou Crafts was unable to produce numerous documents related to WUS' production and sale of subject merchandise, as requested by the Department at verification, and failed to substantiate that WUS did not produce or sell subject merchandise during the POR. Petitioners also argue that the Department's verification revealed that WUS and Baigou Crafts intermingled staff, equipment, and office space, which further demonstrate that Baigou Crafts failed to cooperate to the best of its ability in responding to the Department's inquiries. Thus, Petitioners argue that Baigou Crafts' separate-rate application was not verified and that the Department should apply total AFA when assigning Baigou Crafts' dumping margin.

Baigou Crafts argues that it cooperated to the best of its ability in responding to the Department's inquiries regarding its affiliates. Specifically, Baigou Crafts asserts that it completely and accurately answered the questions asked by the Department in its SRA at question 20 and 21, regarding whether Baigou Crafts had any affiliates involved in the production or sale of subject merchandise. Further, Baigou Crafts asserts that unlike a standard Section A questionnaire, which requires a discussion of all affiliates, the Department's newly-developed SRA only explicitly requests information regarding affiliates who produce or export subject merchandise. Baigou Crafts argues that, had the Department asked, in either the SRA or a supplemental questionnaire, about other affiliates not involved in the sale or production of subject merchandise, it gladly would have provided a detailed response regarding its relationship with Fengkai, as well as information regarding Fengkai's production and sales activities.

With regard to WUS (a.k.a. Wushi), Baigou Crafts asserts that it did not begin to shift its production and sales of subject merchandise to its affiliate, WUS, until May 2006, after the end of the POR and after the submission date of Baigou Crafts' March 30, 2006 SRA Response ("SRA Response"). Thus, Baigou Crafts argues, it correctly and truthfully responded to the Department's SRA questions by stating that none of its affiliates had produced or sold subject merchandise. Nevertheless, Baigou Crafts states that it did disclose the existence of its affiliate, WUS, in both its SRA Response and in its November 10, 2006, Supplemental SRA Response. For example, Baigou Crafts points to its 2004 Audited Financial Statement, whereby "Wushi Furniture Co. Ltd." (a.k.a. WUS) is referred to as a related company.

Notwithstanding, Baigou Crafts argues that the post-POR migration of Baigou Crafts' operations to WUS in no way affected Baigou Crafts' independence from the PRC government, which the Department verified. Further, Baigou Crafts asserts that the verification yielded no indication

that WUS is in anyway controlled by the PRC government. In addition, Baigou Crafts surmises that because WUS is owned not only by the same family that owns Baigou Crafts, but also in part by a citizen of Hong Kong, one could argue that WUS is even more separate from the PRC government than Baigou Crafts.

Petitioners contend that Baigou Crafts' failure to produce price negotiation documents from the POR resulted in the Department's inability to verify Baigou Craft's claims that its prices were negotiated outside the influence of the PRC. Specifically, Petitioners argue that it is unconvinced by Baigou Crafts' explanation that it could not provide price negotiation documents for the POR because of a computer crash that occurred in October 2006. Specifically, Petitioners state that Baigou Crafts' submitted its SRA Response on April 18, 2006, when, according to Baigou Crafts' statements, its computer was still working. Thus, Petitioners argue, Baigou Crafts has known since April 2006 that the Department requires price negotiation documentation and had ample opportunity to document its responses. Therefore, Petitioners contend that Baigou Crafts failed to cooperate to the best of its ability by not producing all of its price negotiation documentation when first requested by the Department in the SRA. Finally, Petitioners assert that Baigou Crafts' failure to provide the requested information requires the application of total AFA.

Baigou Crafts argues that the accidental loss, due to a computer crash, of POR e-mail correspondence, electronic copies of Baigou Crafts' and WUS' invoices, and other commercial documents, are not grounds for an adverse assumption, as suggested by Petitioners. Baigou Crafts asserts that it submitted two of the four alternative types of evidence that it independently negotiates prices with its customers without government interference, as provided for in the Department's SRA instructions. First, Baigou Crafts asserts that it informed the Department that it was unable to provide price negotiations from the POR due to an October 2006 computer crash which resulted in the loss of all of its electronic data. Second, Baigou Crafts states that it provided the Department, in its SRA Response, examples of e-mail negotiations between itself and its U.S. customer, as well as examples of purchase orders received from its U.S. customer. Third, Baigou Crafts notes that it provided, in its supplemental SRA Response, an affidavit from its U.S. customer describing the existence of price negotiations between the two over many years, and certifying the independent nature of the negotiations. Additionally, Baigou Crafts argues that the Department, at verification, fully examined Baigou Crafts' sales negotiation process and concluded that there was no indication of any government influence in its price negotiations with customers. Finally, Baigou Crafts argues that the SRA does not require that the price negotiation documents submitted by a separate-rate applicant relate specifically to the POR. Rather, Baigou Crafts asserts, the Department only asks that a SRA respondent provide supporting documentation demonstrating its price negotiations, including: faxes/e-mail correspondence between the respondent and an unaffiliated U.S. customer; purchase orders from an unaffiliated U.S. customer; order confirmations; logs of negotiations conducted over the telephone with an unaffiliated customer, or an affidavit as an alternative.

In addition, Baigou Crafts argues that Petitioners call for AFA, based on Baigou Crafts' inability to immediately provide the Department with certain invoices and other commercial documents related to Baigou Crafts and WUS, must be rejected. Baigou Crafts explains that at verification the Department requested copies of certain documents related to the sale of non-subject merchandise or non-POR sales. However, because all of Baigou Crafts' and WUS' pre-October 2006 electronic documents were lost in the aforementioned computer crash, Baigou Crafts argues that it was unable to immediately provide these documents to the Department. Furthermore, Baigou Crafts contends that the day upon which verification occurred (i.e., Sunday), coupled with the time difference between the PRC and the United States, prevented it from obtaining copies of the requested documents from its customers on the same day. Nevertheless, Baigou Crafts asserts that it offered to obtain the requested documents on the following business day, either in a second day of verification or in a post-verification submission, which the Department declined. Baigou Crafts argues, however, that the Department was able to verify the issues related to WUS' sales by examining its ledgers, and without having to review the requested invoices.

Moreover, Baigou Crafts argues that Petitioners seize on a phrase in the verification report as evidence that Baigou Crafts failed to cooperate to the best of its ability by withholding information about its October 2006 computer crash. Baigou Crafts states that immediately upon receiving the draft verification report from the Department, its counsel contacted the Department and asked that it amend a phrase within the report suggesting that Baigou Crafts first disclosed the full scope of the computer crash at verification, which Baigou Crafts asserts is contradicted by the record of this case. Baigou Crafts states that the Department, however, refused Baigou Crafts' request. Baigou Crafts asserts that it made clear, long before verification in its supplemental SRA Response, at Exhibit 11, that the scope of the computer crash was not limited only to the loss of e-mails, but rather all documents saved in the computer had been lost. Thus, Baigou Crafts argues, Petitioners' call for AFA on this ground must also be rejected. Finally, Baigou Crafts asserts that because all of the separate-rate information was verified and that no facts or documents were found during verification that might cast doubt on the absence of de jure and de facto control by the PRC government over Baigou Crafts production and export activities, the Department should confirm its preliminary determination as to Baigou Crafts, as well as assign Baigou Crafts a separate rate in the final results.

**Department's Position:** After reviewing all of the information on the record we continue to find that Baigou Crafts has demonstrated the absence of both de jure and de facto government control over its export activities. Therefore, we have determined that Baigou Crafts has met the criteria for receiving separate status and is entitled to a separate rate for these final results.

The purpose of the Department's Q&V questionnaire is to identify those companies that exported subject merchandise to the United States during the POR and to determine the quantity and value of their subject merchandise sales in order to select mandatory respondents. See section 777A (c)(2) of the Act. The Department, based upon the Q&V Questionnaire responses submitted by all participating respondents in this review, including Baigou Crafts, selected five companies as

mandatory respondents. The five selected mandatory respondents accounted for the largest volume of subject merchandise exported to the United States. Baigou Crafts, however, was not selected as one of the five mandatory respondents and thus, participated as an SRA-only respondent in this review.

At verification Baigou Crafts explained, as part of its minor corrections, that the quantity and value it reported in its original Q&V response should be revised to reflect just-discovered clerical and mis-classification errors. Specifically, Baigou Crafts stated that the day before verification began, it discovered that one of its U.S. customers had relied upon an invoice containing a pricing error in preparing one of its CBP entry documents and additionally, that the customer's U.S. broker may have mis-classified some subject merchandise as non-subject merchandise on one or more CBP entry documents. See Memorandum from Hallie Noel Zink, through Wendy Frankel and Robert A. Bolling regarding: Antidumping Administrative Review of Wooden Bedroom Furniture from the People's Republic of China: Verification of Baigou Crafts Factory of Fengkai, at 2 ("Verification Report: Baigou Crafts"). Subsequent to these disclosures, the Department examined the invoices and/or CBP entry documents related to these corrections. Using the revised Q&V numbers which Baigou Crafts provided, the Department tied all of the sales amounts and corresponding invoice numbers from the sales reconciliation worksheet for June 2004 and July 2004 to Baigou Crafts' revenue sub-ledgers for June and July 2004. In addition, we tied the sales totals, as reflected in Baigou Crafts' revenue sub-ledgers for June 2004 and July 2004, to Baigou Crafts' January-December 2004 general ledger. Finally, the Department tied the general ledger sales total to Baigou Crafts' December 31, 2004, income statement. See Verification Report: Baigou Crafts, at 1-2 and 8-9.

Baigou Crafts disclosed the errors discussed above at the outset of verification. We emphasize, however, that the Department requires full and accurate responses to the Q&V Questionnaire from all participating respondents, including potential SRA-only participants, in order to ensure that the Department has the requisite information to appropriately select mandatory respondents. See Office of AD/CVD Enforcement Quantity and Value Questionnaire, at 2. After reviewing all of the information on the record, the Department has determined, that Baigou Crafts cooperated to the best of its ability by disclosing discrepancies related to its originally submitted Q&V at the outset of verification. Further, we have determined that even if Baigou Crafts had submitted its revised figures in its original Q&V response, Baigou Crafts would still not have been selected as one of the mandatory respondents because it would not have been of one of the top five exporters by volume. Furthermore, these clerical and classification errors are unrelated to whether or not Baigou Crafts is sufficiently independent from government control in its export activities to be eligible for separate-rate status. Accordingly, we determine that Baigou Crafts' corrections are minor in nature.

Additionally, Petitioners argue Baigou Crafts' minor corrections reveal that it had actual knowledge that the antidumping duty order was being circumvented and that neither Baigou Crafts, nor its importer, took the necessary steps to redress the situation. The Department requires, for all submissions, including briefs, that firms certify that their responses are true and

accurate and do not contain material misrepresentations or omissions of fact. Baigou Crafts specifically states in its case brief that, "On the next business day after the completion of verification, Baigou informed its customer of the possible errors and advised it to consult with its broker about making a revised entry." See Wooden Bedroom Furniture from the PRC: Reply Brief of Baigou Crafts Factory of Fengkai, at 5 (June 26, 2007). Thus, absent a finding of evidence to the contrary, we have determined that Baigou Crafts, a PRC exporter, took affirmative steps to notify its U.S. customer of the discrepancies so that the U.S. customer's broker could correct the entries if necessary. For purposes of the liquidation, the Department will follow up with CBP to ascertain the status of these entries and ensure the proper amount of antidumping duties are collected. See http://cbp.gov.

Baigou Crafts, in its SRA Response, stated that it had no affiliates. See Baigou Crafts' SRA Response, at 13-14. The Department's verification report, however, notes the existence of two companies affiliated with Baigou Crafts: Fengkai and WUS. The Department's SRA instructions state, with regard to affiliation, that, "Firms that are not owned wholly by market-economy entities, however, must only identify any affiliates that exported subject merchandise to the United States during the period of review and any U.S. affiliates involved in the sale of the subject merchandise." See SRA, at 3. At verification, the Department reviewed the history of Baigou Crafts and its affiliates, Fengkai and WUS, including their capital verification reports, business licenses, financial statements, and sales ledgers, in order to determine whether these two affiliates produced or sold subject merchandise during the POR. See Verification Report: Baigou Crafts, at 3-7. Based on our review of these documents at verification, we have determined that neither of Baigou Crafts' affiliates produced or sold subject merchandise during the POR. Therefore, the Department determines that Baigou Crafts' response to the Department's SRA questions regarding affiliation were both complete and accurate.

Further, we agree with Baigou Crafts that our SRA does not specifically state that applicants provide documents showing price negotiation from the POR. However, because the Department limits its consideration of SRAs to NME firms that exported subject merchandise to the United States during the POR, the Department has a reasonable expectation that applicants should be able to demonstrate that they conducted independent negotiations during the POR. While Baigou Crafts provided the Department with emails, purchase orders and a quote sheet, each of these documents is dated outside the POR. Baigou Crafts did, however, submit an affidavit, as provided for in the Department's SRA, from its unaffiliated U.S. customer testifying to independent price negotiations with Baigou Crafts during the 2004-2005 POR. See Baigou Crafts' SRA Response, at Exhibit 11. Therefore, in reviewing this information in total, the Department has determined that Baigou Crafts provided documentation supporting its certification that it conducts independent price negotiations.

In conclusion, the Department has determined that Baigou Crafts has demonstrated an absence of both de jure and de facto government control over its export activities in accordance with the Department's separate-rates test criteria. Therefore, for these final results the Department will continue to assign Baigou Crafts a separate rate.

## V. Dare Group-Specific Issues

**Comment 31: Valuation of "PIGMENT_O."**

Petitioners state that they pointed out in their November 3, 2006 comments that for purposes of valuation, pigments should be classified as organic or inorganic. Petitioners note that Dare Group conceded to this argument and separated its pigments into organic and inorganic groupings. Petitioners state that Dare Group further conceded that its FOP "PIGMENT_O" should be classified under HTS 3204.17 as an organic pigment. Petitioners argue that the Department should, therefore, value this FOP using HTS classification 3204.17

Dare Group agrees with Petitioners.

**Department's Position:** The Department agrees with Petitioners and Dare Group and has changed the HTS classification for valuing the FOP "PIGMENT_O" to HTS classification 3204.17 for the final results.

**Comment 32: HTS Classification for "CURVINGWOODDY" and "VENEERPLY"**

Petitioners argue that the Department incorrectly valued "CURVINGWOODDY" and "VENEERPLY" using HTS classification 4412.14.90 (plywood, veneered panels and similar laminated wood ... plywood consisting solely of sheets of wood, each ply not exceeding 6mm thickness: . . . other, with at least one outer ply of non-coniferous wood:: . . . other).

Petitioners assert that the invoices and other purchasing documents provided by Dare Group in its December 18, 2006 Supplemental Section C & D response at question 24 identify the factor VENEERPLY as consisting of "drawer front of cabinet," "drawer-front of nightstand," "curvingwood drawer front," "curving wood headboard," "bend wood - door panel," and "door panel." Petitioners note that Dare Group's descriptions for CURVINGWOODDY are similar. Petitioners contend that these descriptions show that these FOPs are not simply unworked plywood. Citing to pictures submitted in its Deficiency Comments Concerning Dare Group's Supplemental Sections C & D Questionnaire Responses at Attachment 2 (December 22, 2006), Petitioners further contend that examination of the website of the supplier that produces the majority of these FOPs for Dare Group shows that these FOPs are further worked. Petitioners conclude that the proper classification for these FOPs is either HTS category 4421.90.90 ("other articles of wood ... other: ... other") or HTS category 9403.90.00 ("other furniture and parts thereof ... parts").

Finally, Petitioners argue that if the Department determines to continue to value "CURVINGWOODDY" and "VENEERPLY" with HTS classification 4412.14.90, it should exclude the values that it found to be "aberrational" in the final results, as it did in the preliminary results. See WBF Preliminary Factor Valuation Memorandum 1/31/07 at 8.

Dare Group argues that the FOPs "CURVINGWOODDY" and "VENEERPLY" are properly valued under HTS 4412.14.90, and that it has provided ample evidence on the record in support of this classification. Specifically, Dare Group notes, as it explained in its October 24, 2006 submission at 14 and Exhibit 110, that under Note 4 to Chapter 44 of the Indian HTS, "products of heading No. 44.10, 44.11 or 44.12 may be worked to form the shapes provided for in respect of the goods of heading No. 44.09, curved, corrugated, perforated, cut or formed to shapes other than square or rectangle or submitted to any other operation provided it does not give them the character of articles of other headings." Dare Group maintains that it has consistently identified items reported under the "CURVINGWOODDY" and "VENEERPLY" fields as "curved only, not further worked." See, e.g., Dare Group Revised Lists of Raw Material Groupings and Summary at Exhibit 1, pp. 215-217 and 584-591 (in the field ADDINFO2). Citing its December 18, 2006 submission at 591 of Exhibit 1, Dare Group states that all of the inputs included under VENEERPLY begin with the description "bend wood," and following "bend wood" is the specific application for which that item of bent wood was required, such as "bend wood - side panel" or "bend wood -- drawer front." Additionally, Dare Group notes that it provided pictures of actual examples of the largest raw materials included under this FOP field in Exhibit 50 to Dare Group's Response to Question 24 in its December 18, 2006 submission. Finally, Dare Group notes that it submitted two statements from its main supplier of VENEERPLY (Exhibits 50 and 55 of the December 18, 2006 response), stating that the VENEERPLY was bent but not further worked. Dare Group contends that Petitioners have not contested the relevance of the HTS note discussed above and that Petitioners have not cited to any evidence specific to Dare Group's products that contradicts the information placed on the record by Dare Group.

Citing its November 13, 2006 submission, and Guanqiu's June 18, 2007 case brief, Dare Group maintains that the Department's decision to adjust the AUV to remove quantities from Myanmar and Bhutan in isolated months was unreasonable, inconsistent with past precedent and therefore unlawful.

**Department's Position:** The Department agrees with Dare Group. The Department has determined that Dare Group has submitted substantial record evidence that the FOP inputs "CURVINGWOODDY" and "VENEERPLY" are properly classified using HTS 4412.14.90. Dare Group correctly notes that note 4 to Chapter 44 of the Indian HTS provides that materials classified under HTS 44.12 may be "curved or submitted to any other operation provided it does not give them the character of articles of other headings." We note that Dare Group has consistently reported these inputs as being curved only, and not further worked, and we find no record evidence to dispute Dare Group's explanation that the descriptions on its submitted purchasing documents (e.g., "bend wood - drawer front") refer to the intended use of the FOP. Further, in response to a supplemental questionnaire requesting specific information and documentation of the input VENEERPLY, Dare Group submitted photos of the input and a statement from its supplier affirming that this input is bent but not further worked.

The Department does not find that Petitioners' more general evidence, that the supplier's website shows pieces that would not be classified under HTS classification 4412.14.90, is sufficiently

specific to Dare Group's inputs to rebut Dare Group's submitted evidence. Accordingly, for the final results, we will continue to classify CURVINGWOODDY and VENEERPLY under HTS 4412.14.90.

Furthermore, for reasons that are more fully explained in the Department's position to Comment 11, we continue to find it appropriate to adjust the AUV of HTS 4412.1490 by removing the quantities from Myanmar and Bhutan for isolated months, where we found the quantities to be aberrational. See Comment 11.

**Comment 33: Valuation of "WOODSALICACEAE"**

Petitioners argue that, if the Department values "WOODSALICACEAE" as a non-market economy input, it should not use the HTS classification 4407.99.20 (covering "willow") that was proposed by Dare Group. Petitioners argue that the term "willow" in the HTS refers to the common meaning of willow, not to all wood from the scientific family name salicaceae under which willow is scientifically classified, as used by Dare Group. Petitioners contend that the invoices and purchasing documentation provided by Dare Group in its December 18, 2006 response indicate that this FOP is, in fact, poplar, and that the Department should use HTS classification 4407.99.90 ("other" woods).

Dare Group contends that it is unrebutted that its WOODSALICACEAE FOP includes woods within the genetic family salicaceae, which covers willow, poplar, cottonwood, and aspen. See Dare Group Factor Value Data -- India at 11 (October 24, 2006). Dare Group asserts that it reported consumption of poplar, aspen, and cottonwood under this FOP. Dare Group maintains that the Indian HTS 4407.99.20 for willow, a wood within this same genetic family, is the most specific to the woods grouped by Dare Group under this FOP field. Dare Group argues that the Department should reject Petitioners' claim that the Department should value this input using a basket category of unspecified wood when information is available that is more specific to the family of wood used by Dare Group, even if it is not the exact wood used. According to Dare Group, the HTS for willow is more similar to the wood it consumed than the unspecified wood covered by the HTS category proffered by Petitioners.

**Department's Position:** Because Dare Group purchased a significant portion of this input from a market-economy supplier, in a market-economy currency, and the Department is valuing Dare Group's FOP of WOODSALICACEAE as a market-economy input, it is not necessary to address the above arguments.

**Comment 34: Classification for Box/Carton**

Dare Group disputes the Department's conclusion in the Preliminary Factor Valuation Memo at 8 that the Indian HTS breakouts for boxes and cartons were unclear. Dare Group argues that its FOP is boxes only and the correct Indian HTS number to value its boxes is 4819.10.10. Dare Group points out that in Brake Rotors Memo 11/14/06 at Comment 6, both Petitioners and

respondents had argued to average the box and carton HTS categories as the respondents' FOP constituted a blend of boxes and cartons. See Brake Rotors Memo 11/14/06. In that case, Dare Group claims that Petitioners argued that an average of both categories was appropriate because the two categories contain cartons of different qualities and values. Dare Group contrasts the facts in that case with the facts here, where it avers that its factor consists of boxes, not cartons, as demonstrated by its questionnaire responses.[47] In addition, Dare Group refers to its November 13, 2006 submission where it corrected the field name in its FOP data to "boxpacking" to translate the name as it is written in the Chinese descriptions in the original source files. See Dare Group Second Rebuttal Factor Values Data – India, at 18-19 (November 13, 2006). Therefore, Dare Group argues that the use of the six-digit HTS category 4819.10 overvalues its boxes and should be correctly classified at the eight-digit HTS category 4819.10.10.

Petitioners argue that the Department, in the Preliminary Results, recognized that the distinction between boxes and cartons is unclear. They assert this is further evidenced by Dare Group's November 13, 2006 submission where it originally identified its FOP as cartons and subsequent change to boxes prior to the preliminary results of this review. Based on the confusion of ascertaining whether the inputs were boxes or cartons, Petitioners urge the Department to continue to use the six-digit HTS category 4819.10 covering both boxes and cartons to value respondents' packing boxes and cartons in the final results consistent with its determination in Brake Rotors Memo 11/14/06 at Comment 6.

**Department's Position:** In this review the Petitioners and Dare Group disagree whether the Department should use Indian HTS category 4819.10 or HTS category 4819.10.10 to value Dare Group's boxes. The Indian HTS classification is as follows:

| | |
|---|---|
| 4819 | Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like |
| 4819.10 | Cartons, boxes and cases, of corrugated paper or paperboard |
| 4819.10.10 | Boxes |
| 4819.10.90 | Other |

In the preliminary results, the Department stated that it was using the broad HTS category 4819.10 to value boxes and cartons because the distinction between boxes and cartons is unclear. See WBF Preliminary Factor Valuation Memorandum 1/31/07 at 8. The Department partially based its determination in the preliminary results on the recent final results of administrative review on brake rotors. See WBF Preliminary Factor Valuation Memorandum 1/31/07 at 8 citing Brake Rotors Memo 11/14/06. Upon further review of the facts on the record, the Department recognizes that its reliance on Brake Rotors is misplaced in this administrative review. The issue in Brake Rotors was whether the Department should calculate the value for cartons using the

[47] See Dare Group's October 24, 2006 submission at Question 24, and December 18, 2006 submission at Exhibits 17, 18, 23 and 27.

average of two HTS categories (HTS 4819.10.10 and 4819.10.90) or using the average value for the subheading that encompasses these two HTS categories (HTS 4819.10), based on different types of cartons that the respondents used. Unlike this case, the parties in Brake Rotors did not dispute whether to use one HTS category (4819.10) versus a more specialized eight-digit HTS category to classify the packing container. In this review, Dare Group argues that it used only one type of packing container, boxes. Therefore, the Brake Rotors issue of whether to use an average of two HTS categories for different types of packing containers does not apply in Dare Group's situation. In addition, Dare Group stated in its November 13, 2006 supplemental questionnaire response that it made a translation error in its FOP data and submitted a corrected version, i.e., Dare Group changed the field and input name from "CARTONPACKING" to "BOXPACKING." In addition, there is no evidence on the record to dispute Dare Group's input is boxes. Therefore, for the final results, the Department is accepting Dare Group's classification of its packing containers as boxes and using Indian HTS category 4819.10.10 ("boxes") to calculate a surrogate value for Dare Group's FOP "BOXPACKING."

**Comment 35: Unit of Measure For Dare Group's FOP "TURNINGDY"**

Petitioners argue that the Department incorrectly attributed the unit of measure of kilograms to Dare Group's FOP "TURNINGDY." Petitioners cite Dare Group's October 24, 2006 Factor Values Submission at Exhibit 2, and Dare Group's December 18, 2006 Section D Supplemental Response at Exhibit 18/19 as evidence that this FOP was reported in cubic meters. Petitioners argue that the Department should make the proper conversion from cubic meters to kilograms to value this FOP.

Citing its Section D Response at D-2: Summary of Inputs – Danyang FOP Input Fields and Reporting Unit of Measure at page 2 of 3; and its Response to Questions 24-38 to DOC's 11/22/06 Supplemental Response at Exhibit SD-3: "Summary of FOP Inputs - Danyang" at 2, Dare Group maintains that the unit of measure reported in the FOP file for "TURNINGDY" has consistently been kilograms. Dare Group contends that the surrogate value worksheet cited by Petitioners had a typographical error and that no conversion is necessary.

**Department's Position:** The Department agrees with Dare Group. Both Petitioners and Dare Group cite to worksheets as evidence of their positions. Because there is no evidence on the record that directly contradicts Dare Group's position that the worksheet that it cites is correct and the worksheet cited by Petitioners contains a typo, for the final results we will continue to consider the FOP TURNINGDY as reported in kilograms.

**Comment 36: Dare Group's Program: Assessment Rates Calculations.**

Petitioners contend that in Dare Group's margin calculation program the Department attempted to calculate percentage assessment rates when the entered value of sales were known, and per-piece assessment rates when the entered value for certain sales was unknown. Petitioners argue that the Department's SAS programming resulted in the opposite, i.e., percentage assessment

rates for the certain sales with unknown values, and per-piece assessment rates for the sales with known values. Petitioners contend that the Department should change the SAS language for the final to correct this error.

Dare Group argues that the Department calculated the assessment rates correctly at the Preliminary Results, given that it did not have sufficient time to analyze and apply the corrected data submitted in its January 22, 2007 submission. Dare Group asserts that the Department used the margin program to calculate the entered value figures for certain sales because the Department noted a discrepancy for entered value in the record information for these certain sales only. See Analysis Memorandum for the Preliminary Results of Administrative Review of Wooden Bedroom Furniture from the People's Republic of China for Fujian Lianfu Forestry Co., Ltd., Fuzhou Huan Mei Furniture Co. Ltd., and Jiangsu Dare Furniture Co, Ltd. (January 31, 2007) at 21 for a proprietary discussion of this issue. Dare Group asserts, however, that it corrected the discrepancy noted by the Department in its January 22, 2007 submission, and that the Department should use these corrected data to calculate the margin for the final results. Dare Group argues that it correctly reported entered value figures for sales other than these certain sales based on the normal methodology of reporting gross unit price as a surrogate for the entered value.

**Department's Position:** Our Original Questionnaire directs respondents to report entered value (i.e., U.S. customs value), if known, in the "entered value" field. It is the Department's practice, where the respondent reports the actual entered values for all sales associated with a particular importer in the "entered value" field of the U.S. sales dataset, to use the reported data to calculate an ad valorem assessment rate for sales associated with that importer. Further, where the respondent does not report the actual entered value for all sales associated with a particular importer in the "entered value" field, we calculate the entered value using our margin calculation program to calculate a per-unit assessment rate for all sales associated with that importer.

In the instant case, the Department determined that Dare Group reported inaccurate entered values in the "entered value" field for certain sales and, accordingly, for the Preliminary Results we set the entered values for these certain sales to zero and allowed our margin calculation program to calculate a revised entered value to serve as the basis for the per-unit assessment rate. However, further review of the record shows that Dare Group reported commercial invoice value, rather than the actual entered value, for all sales. See Dare Group's October 2, 2006 submission at 21. Additionally, though Dare Group claims that it corrected the entered value data for the certain sales, these corrected data are still not the actual U.S. customs entered value, but rather an estimate of that value calculated by Dare Group. Therefore, because Dare Group reported commercial invoice value, or self-calculated value, instead of the actual U.S. customs entered value in the "entered value" field for all sales, we have relied on our margin calculation program to calculate per-unit assessment rates for all sales for the final results. See Dare Group's Final Analysis Memorandum.

**Comment 37: Certain Non-scope Merchandise Should Be Excluded from Margin Calculation**

Dare Group argues that pieces identified in its December 18, 2006 submission as PIECEU 36 (uba tuba top granite), PIECEU 42 (desk top), PIECEU 43 (hotel desk), PIECEU 46 (marble top), and PIECEU 49 (side table) should not be included in the margin calculation because they are not within the scope of the Order. More specifically, Dare Group argues that because PIECEU 36 (uba tuba top granite) and PIECEU 46 (marble top) are not made of wood and they have their own SKU numbers, they should be considered separate from the desks that they are paired with, and therefore not within the scope of the Order.

Dare Group further contends that PIECEU 43 (hotel desk) should also be excluded because hotel desks are not within the scope of the Order. In addition, Dare Group argues that since PIECEUs 42 and 46 go with PIECEU 43 (hotel desk), which is not within scope, they also are not included in the scope of the Order and should be removed from the Department's margin calculation. Finally, Dare Group contends that PIECEU 49 (side table) should be removed from the margin calculation, as the scope does not include "occasional tables."

Petitioners did not comment on this issue.

**Department's Position:** The Department agrees with Dare Group. On January 22, 2007, Dare Group submitted its response to the Department's January 7, 2007 questionnaire, which requested specific information for the purpose of determining whether the above-mentioned merchandise should be included in the margin calculation. Upon our review of that response, the Department has determined that the above-mentioned pieces are not within the scope of the Order. Accordingly, for the final results the Department will remove the above-mentioned pieces from Dare Group's margin calculation.

**Comment 38: Post Preliminary Results Updated FOP database to Reflect Correction for Previously Unreported Labor Hours Data**

Dare Group notes that in the preliminary results the Department used adverse facts available to value the indirect and packing labor of certain merchandise for which Dare Group did not report values for these factors. Dare Group explains that these instances were related to the production of samples. Dare Group asserts that it corrected the FOP dataset to report values for these missing factors in its March 16, 2007 submission, and argues that the Department should use these values, and not adverse facts available, in the final margin calculation.

Petitioners did not comment on this issue.

**Department's Position:** In the Preliminary Results the Department determined that, because Dare Group did not provide the Department with complete information with respect to indirect and packing labor for certain control numbers, the Department did not have adequate information

on the record to calculate margins for these control numbers, and thus must resort to the application of facts available. See Preliminary Results at 6214. Further, we concluded that when selecting from among the facts available, an adverse inference was appropriate pursuant to section 776(b) of the Act because the Department notified the Dare Group of the deficiencies in its data, yet the Dare Group failed to provide all of the missing data. See id.

19 CFR 351.301(b)(2) specifies that the factual information is due no later than 140 days after the last day of the anniversary month, unless requested by the Department. In this review, the Department extended the deadline for submission of factual information to October 27, 2006. Further, on January 16, 2007, the Department alerted Dare Group that it had reported values of zero in its labor fields for certain CONNUMs, but Dare Group did not fully remedy this deficiency in its January 22, 2007 response. See Memo to the File from Gene Degnan: Telephone Conversation with Counsel for Dare Group, dated January 16, 2007; see also Dare Group's January 22, 2007 supplemental response at 13. Therefore, the submission of the previously unreported data on March 16, 2007, without a specific request for the data by the Department, constitutes the untimely submission of new factual information.

The Department must set a date certain to close the administrative record in order to be able to meet its obligations for completing any segment of a proceeding. Such deadlines are established to allow the Department sufficient time to analyze the information and facilitate the Department's ability to administer the antidumping law. In the instant case, the Department took the unusual step of releasing a post-preliminary results supplemental questionnaire to ask for information relating to one very specific issue, and to allow argument on one other very specific issue. Dare Group took this opportunity to submit new factual data, not requested by the Department, on a number of topics, including previously unreported weight information for several fields in the U.S. sales database, corrections to its reported customer fields, a new conversion ratio for several of its FOP inputs, and the previously unreported labor hours. This new information was submitted on March 16, 2007, six weeks after our preliminary results, while the furniture team was in the PRC verifying those mandatory respondents selected for verification. Upon return from verification, the team had to write verification reports. Following the release of the verification reports, the team had literally hundreds of pages of case and rebuttal briefs to analyze and to which to respond. Additionally, based on positions adopted by the Department in response to the arguments in the briefs, the team had to make changes to its margin programs, research new surrogate value information, draft a final factors-of-production memorandum, company-specific analysis memorandums and the Final Results Federal Register notice, and accomplish many other tasks normally associated with finalizing an antidumping case. The ability to set a date certain to close the record is crucial to allow the Department to perform these tasks. To allow respondents to provide any factual information they please at any time would make the administration of the case within the statutory deadlines literally impossible.

Where there exist special circumstances that warrant the acceptance of new information, the Department will allow it. For example, the Department has accepted the above-mentioned

previously unreported weight information submitted by Dare Group because the Department did not ask for the information in the original questionnaire and the Department did not notify Dare Group that the information was missing. See Comment 39: Updated Sales Database Which Includes Previously Unreported Weight Information. We find that there are no special circumstances regarding the unreported labor data that warrant exception to our normal practice of requiring timely submission of data. Dare Group was fully on notice that the labor data was required by the Department. The Department's questionnaire clearly asks respondents to submit direct, indirect, and packing labor and, further, the Department had also alerted Dare Group that it had reported values of zero in certain labor fields and provided it an opportunity to cure this deficiency, which it did not do at that time. Based on the above, the Department has determined to continue to value labor for the products with zero labor values using the highest labor values reported for any control number as partial AFA for the final results.

**Comment 39: Updated Sales Database Which Includes Previously Unreported Weight Information**

Dare Group asserts that in the preliminary results, the Department resorted to facts available with adverse inferences in connection with a handful of transactions in the U.S. database that were missing weight information in the fields QTYKGU, UNITKGS and UNITKGSGROSS. Dare Group notes that in its March 16, 2007 response, it supplied the missing information. Dare Group argues that for the final results, the Department should use the updated information and discontinue any application of facts available for these items.

Petitioners did not comment on this issue.

**Department's Position:** 19 CFR 351.301(b)(2) specifies that the factual information is due no later than 140 days after the last day of the anniversary month, unless requested by the Department. In this review, the Department extended the deadline for submission of factual information to October 27, 2006. Therefore, the submission of these data, without a specific request by the Department, constitutes the untimely submission of new factual information. Additionally, we note that Dare Group is incorrect in its assertion that the Department resorted to AFA in connection to the transactions that were missing weight information. For the preliminary results, the Department assigned the average margin to each transaction, as neutral facts available. See Dare Group Preliminary Results Analysis Memo (January 31, 2007). However, because this information was not requested in the Original Questionnaire, and because Dare Group was not put on notice before the preliminary results by the Department that the information was missing, the Department has determined, in these specific circumstances, to accept the information presented by Dare Group. Accordingly, we will use the information presented by Dare Group for QTYKGU, UNITKGS and UNITKGSGROSS for certain transactions in Dare Group's final results margin calculation.

**Comment 40: Use of Material-Specific Conversion Rate for FIBERBOARDMD, PAPEREDFIBERBOARDMD, and FIBERBOARDPACKING**

Dare Group argues that, for the final results, the Department should use the specific value of 708 kg/m3 to convert three FOP fields FIBERBOARDMD, PAPEREDFIBERBOARDMD, and FIBERBOARDPACKING. Dare Group states that it initially provided a density figure of 698 kg/m3 for its FIBERBOARDMD, PAPEREDFIBERBOARDMD, and FIBERBOARDPACKING before the Preliminary Results. See, e.g., Exhibit 2 to Dare's Factor Values Submission – India Volume 1 (October 24, 2006). Dare Group states that in the Preliminary Results, the Department used a figure of 800 kg/m3, without explaning why Dare's actual, specific value was inappropriate.

Dare Group submits that, after the Preliminary Results, it provided a calculation in Exhibit 29 of its March 16, 2007 response illustrating how an updated conversion rate of 708 kg/m3 was derived from its actual last-submitted FOP data. Dare Group argues that this figure represents the density of the fiberboard actually used by Dare Group and is therefore, by definition, the most specific information.

Petitioners did not comment on this issue.

**Department's Position:** We agree with Dare Group, in part. The Department explained in its WBF Preliminary Factor Valuation Memorandum 1/31/07 that it used conversions from the website allmeasures.com and the TheFreeDictionary.com to convert many common inputs, including medium density fiberboard. See WBF Preliminary Factor Valuation Memorandum 1/31/07 at 2 and Exhibit 2. However, where Dare Group reported conversions more specific to the inputs it actually used, the Department used those conversions for the preliminary margin calculation. In Dare Group's October 24, 2006 submission at Exhibit 61, the majority of Dare Group's MDF inputs are described as having a density of less than 800 kg/m3. Additionally, the statements from two suppliers of Dare Group's fiberboard, submitted as Exhibits 5 and 6 of Dare Group's December 18, 2006 submission, state that the density of the MDF they supplied in two shipments is lower than 800 kg/m3. Therefore, we conclude that we mistakenly applied the generic conversion ratio of 800 kg/m3 in the preliminary results, instead of the more input-specific ratio of 698 kg/m3 submitted by Dare Group in its October 24, 2006 submission.

19 CFR 351.301(b)(2) specifies that factual information is due no later than 140 days after the last day of the anniversary month, unless requested by the Department. In this review, the Department extended the deadline for submission of factual information to October 27, 2006. Therefore, the submission on March 16, 2007, of the new conversion ratio of 708 kg/m3, without a specific request by the Department, constitutes the untimely submission of new factual information.

The Department must set a date certain to close the administrative record in order to be able to meet its obligations for completing any segment of a proceeding. Such deadlines are established

to allow the Department sufficient time to analyze the information and facilitate the Department's ability to administer the antidumping law. In the instant case, the Department took the unusual step of releasing a post-preliminary results supplemental questionnaire to ask for information relating to one very specific issue, and to allow argument on one other very specific issue. Dare Group took this opportunity to submit new factual data, not requested by the Department, on a number of topics, including previously unreported weight information for several fields in the U.S. sales database, corrections to its reported customer fields, previously unreported labor hours, and the new conversion ratio for these FOP inputs. This new information was submitted on March 16, 2007, six weeks after our preliminary results, while the furniture team was in the PRC verifying those mandatory respondents selected for verification. Upon return from verification, the team had to write verification reports. Following the release of the verification reports, the team had literally hundreds of pages of case and rebuttal briefs to analyze and to which to respond. Additionally, based on positions adopted by the Department in response to the arguments in the briefs, the team had to make changes to its margin programs, research new surrogate value information, draft a final factors-of-production memo, company-specific analysis memos, the Final Results Federal Register notice, and many other tasks normally associated with finalizing an antidumping case. The ability to set a date certain to close the record is crucial to allow the Department to perform these tasks. To allow respondents to provide any factual information they please at any time would make the administration of the case within the statutory deadlines literally impossible.

Accordingly, the Department has determined not to accept this new information, and to convert Dare Group's reported FOPs of FIBERBOARDMD, PAPEREDFIBERBOARDMD, and FIBERBOARDPACKING using the timely submitted density ratio for MDF of 698 kg/m3 for the final results.

**Comment 41: WOODPLUG - Clerical Error Allegation**

Dare Group argues that the Department incorrectly used a conversion ratio to convert the reported values of "WOODPLUG" to kilograms. Dare Group asserts that it reported "WOODPLUG" in kilograms, so no conversion is necessary.

Petitioners did not comment on this issue.

**Department's Position:** We agree with Dare Group that no conversion ratio is needed for "WOODPLUG" because Dare Group reported this FOP in kilograms. Therefore, we have not used a conversion ratio for "WOODPLUG" for the final results margin calculation.

**Comment 42: OKOUEMEVENEER - Clerical Error Allegation**

Dare Group contends that it reported the FOP "OKOUEMEVENEER" in units of square feet, but that the Department treated it as kilograms for FOP valuation purposes, and so did not apply the proper conversion ratio from square feet to kilograms for valuation consistent with the surrogate

value source unit of Rs/kg. Dare Group argues that the Department should convert the values it reported for the FOP "OKOUEMEVENEER" from square feet to kilograms for the final results. Dare Group further contends that the Department should use the conversion ratio of 0.041276861 kg/ft2 for the conversion.

Petitioners did not comment on this issue.

**Department's Position:** We agree with Dare Group and have converted the FOP "OKOUEMEVENEER" from square feet to kilograms using the conversion ratio of 0.0413 kg/ft2 for purposes of surrogate valuation for the final results margin calculation.

## VI. First Wood-Specific Issue

### Comment 43: Tianjin First Wood Co., Ltd.

First Wood requests that the Department reconsider its decision not to rescind the NSR of First Wood and to apply total AFA to First Wood in both the administrative review and NSR Preliminary Results. Specifically, First Wood requests that the Department now, in the final results, rescind its NSR, as well as assign it a separate rate in the concurrent administrative review. First Wood also requests that the Department, regardless of the rate it is assigned in the final results of the administrative review, articulate that First Wood demonstrated its eligibility for a separate rate.

Petitioners contend that the Department properly applied total AFA to First Wood in both the administrative review and NSR Preliminary Results. Petitioners assert that First Wood has repeatedly failed to act as a "reasonable respondent" and to "cooperate to the best of its ability." Moreover, Petitioners argue, First Wood has used various mechanisms (e.g., filing eight separate extension requests, withholding crucial information requested by the Department, failing to report information in the form or manner requested) in an attempt to game the system and avoid the PRC-wide rate. First Wood, Petitioners argue, should not be permitted to obtain a more favorable result by failing to cooperate than if it had fully cooperated. Therefore, Petitioners assert, the Department should reject First Wood's appeals and continue to apply total AFA to First Wood in the final results of both the administrative review and NSR.

First Wood asserts that the facts on the record indicate that the Department did not calculate a preliminary margin for First Wood, nor did it verify any of its data, prior to its January 9, 2007, NSR withdrawal and termination request. Therefore, First Wood argues, consistent with how the Department has characterized the term in prior decisions, the Department did not expend "significant resources" on First Wood's NSR. First Wood concedes that it did not submit its NSR withdrawal and termination request within the 60-day, regulatory deadline. However, First Wood argues, the Department has the discretion to extend the 60-day deadline for an NSR withdrawal request and has exercised such discretion in a number of prior cases. See Honey

2/15/05 (the Department rescinded the respondent's NSR even though the respondent's withdrawal of the review request was made after the 60-day period).

Moreover, First Wood argues, such discretion has been exercised in cases where the Department has neither calculated a margin for the NSR respondent requesting the late withdrawal, nor verified that respondent's data. See Carbazole Violet Pigment 5/9/06 (the Department explained that because it had not started calculating a margin for the NSR respondent and had not verified its data, it had not yet committed significant resources to the NSR respondent. Therefore, the Department determined, it was reasonable to extend the deadline for the NSR respondent to withdraw its NSR request). See also Fresh Garlic 4/28/04. In addition, First Wood asserts, Department precedent indicates that submitting multiple questionnaire responses prior to submitting an untimely NSR withdrawal and termination request, does not preclude the Department from determining that a rescission is, nevertheless, appropriate. See Honey 7/31/06 (respondent filed a request to withdraw its NSR after the 60-day deadline and after it had submitted multiple questionnaire responses. The Department, however, rescinded the NSR based on the fact that it had not calculated a preliminary margin for the respondent and had not verified the respondent's data, i.e., it had not yet committed significant resources to the respondent's NSR).

In addition, First Wood notes that it requested extensions to the Department's last NSR supplemental questionnaire, prior to the Preliminary Results, citing the loss of key personnel, the lack of expected funding to support the review process, as well as an earthquake that brought down communication lines. First Wood asserts that the Department, however, did not fully grant its NSR extension request based on the impending Preliminary Results. First Wood argues that if the Department intended to continue the NSR of First Wood, then consistent with its practice in similar cases, the Department would have issued another supplemental questionnaire for purposes of the Final Results. See e.g., Certain Forged Stainless Steel Flanges 3/7/07. Therefore, First Wood argues, it appears that the Department, by not issuing a supplemental questionnaire following the Preliminary Results, concluded that it would be an unproductive use of resources to continue the NSR of First Wood. Therefore, First Wood argues, it would be an appropriate exercise of the Department's authority, as well as consistent with the Department's treatment of similarly situated respondents in other proceedings, to extend the deadline for First Wood to submit its NSR withdrawal request, as well as to rescind First Wood's NSR.

Petitioners, however, argue that, unlike the respondents in the cases it cited above, First Wood did not simply withdraw its NSR request before its questionnaire responses were reviewed in any detail. Rather, Petitioners assert, the Department was fully engaged and had already expended significant time, effort and resources in its NSR when First Wood submitted its request, eight months after the withdrawal deadline and three weeks prior to the issuance of the Preliminary Results. Specifically, Petitioners note that, in addition to issuing various correspondence related to First Wood's eight extension requests, the Department received and reviewed over 547 pages of questionnaire responses from First Wood. After pouring over these responses, the Department ultimately concluded that the data submitted by First Wood was incomplete and unverifiable.

Therefore, the Department determined that it could neither conduct verification, nor calculate a margin using First Wood's own sales and FOP data. Thus, Petitioners argue, the Department expended, prior to and during the Preliminary Results, significant resources and time on the NSR of First Wood. Therefore, Petitioners contend, there was, and is, no basis for the Department to extend the 60-day statutory deadline in order to allow First Wood to withdraw its NSR, or for the Department to rescind the NSR of First Wood.

First Wood subsequently argues that, in the event that the Department rescinds its NSR in the Final Results, it should apply the same separate rate to First Wood in the concurrent administrative review that it applies to the other separate-rate entities. First Wood claims the Department found it eligible for a separate rate in the Preliminary Results based on the fact that it requested the administrative review; that it fully responded to the Department's Section A questionnaires; that its responses clearly demonstrated the absence of de jure and de facto control over its export activities; and that it did not decline to participate in verification, and therefore, did not impede the Department's separate-rate status determination. Thus, should the Department now determine to rescind First Wood's NSR, the natural consequence should be to assign First Wood, whose eligibility for a separate rate was previously settled by the Department in the Preliminary Results, the same rate assigned to the other separate-rate entities in the final results of the administrative review .

Finally, even if the Department determines to assign First Wood a different rate than that which is assigned to the other separate-rate respondents in the administrative review, First Wood requests that the Department clarify, in the final results, that it proved its eligibility for a separate rate. Furthermore, First Wood requests that the Department list its name, regardless of the rate it is assigned, in the section of the Federal Register notice that lists the separate-rate companies and their respective separate rates, so that the Department's separate-rate decision regarding First Wood is clear.

Petitioners note that while the Preliminary Results recognize that First Wood may have demonstrated its eligibility for a separate rate in the administrative review, they also detail multiple occasions in which First Wood withheld crucial information requested by the Department and failed to report information in the form or manner requested by the Department. Thus, Petitioners assert, First Wood's failure to cooperate to the best of its ability nullified any eligibility First Wood may have had for a separate rate in the administrative review. Therefore, Petitioners argue, because there have been no changes in the information or circumstances related to First Wood, the Department should continue to apply total AFA and the PRC-wide rate to First Wood in the final results.

**Department's Position:** Pursuant to 19 CFR 351.214(f)(1), the Department "may rescind a new shipper review under this section...if a party that requested a review withdraws its request not later then 60 days after the date of publication of notice of initiation of the requested review." In this case, the 60-day regulatory deadline was May 7, 2006. First Wood, however, waited until January 9, 2007, three weeks prior to the Preliminary Results, and almost eight months past the

regulatory deadline, to submit its NSR withdrawal request. First Wood now asks that the Department reconsider its decision to deny First Wood's January 9, 2007, withdrawal request and to rescind the NSR of First Wood in the final results.

First Wood contends that the Department did not expend significant resources on its NSR because the Department neither calculated a margin, nor verified First Wood's data. We find First Wood's contention to be unsupported by record evidence. The Department issued numerous questionnaires, an original and several supplementals, to First Wood during the course of this review. In response, First Wood submitted over 547 pages of data for the Department to read, evaluate, and analyze. While a timely NSR withdrawal request would have prevented this expenditure of Department resources, First Wood chose instead to request withdrawal eight months after the regulatory deadline had passed. While the Department has the discretion to rescind an NSR past the 60-day deadline, it also has the discretion to deny such a request, particularly in cases in which the Department has devoted considerable time and resources to the NSR, and the party withdraws its requests once it ascertains that the results of the NSR are not likely to be in its favor. Therefore, despite not having calculated a margin using First Wood's data nor having attempted to verify such data, we continue to find the denial of First Wood's NSR withdrawal request appropriate.

Moreover, because First Wood provided incomplete and unreliable sales, cost, and FOP data, First Wood's own actions prohibited the Department from being able to calculate a margin for First Wood or conduct a proper verification. See AFA Memo: First Wood. Because no additional timely information has been provided since the Preliminary Results that would cause the Department to reconsider its preliminary decision, we have determined that the application of total AFA to First Wood in these final results of review is warranted. Information which is so fundamentally incomplete, and thus cannot be properly verified, cannot serve as a reliable basis upon which to calculate a margin. We continue to find that through its fundamentally incomplete questionnaire responses, First Wood has failed to create an accurate record and to provide the Department with the information requested to ensure an accurate dumping margin.[48] In failing to submit complete sales and FOP data, information normally maintained in a company's books and records, First Wood has not acted as a "reasonable respondent," nor has it acted "to the best of its ability," as required by the statute. Based on First Wood's lack of cooperation and failure to cooperate to the best of its ability in responding to the Department's requests for information, when selecting from the facts otherwise available, an adverse inference is warranted, pursuant to section 776(b) of the Act.

In the Preliminary Results, the Department articulated that First Wood, notwithstanding the fact that it failed to cooperate to the best of its ability, demonstrated its eligibility for a separate rate.

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[48] See Shandong Huarong General Group Corporation and Liaoning Machinery Import & Export Corporation v. United States, Slip Op. 2003-135, at 35-36, 2003 Ct. Intl. Trade LEXIS 153 (October 2003) ("Shandong Huarong") (citing Reiner Brach GmbH & Co. KG v. United States, 206 F. Supp. 2d 1323, 1333 (CIT 2002)).

The Department will continue, in these final results, to include First Wood's name in the section of the Federal Register notice, and Separate-Rates Memo, which lists those companies that have demonstrated their independence from government control. Nevertheless, because we continue to find in these final results that First Wood failed to provide accurate, credible and verifiable information in order to calculate a correct margin, for purposes of these final results, we continue to base its rate, as in the Preliminary Results, on total AFA.

The Court, in Shandong Huarong articulated that "an NME exporter may qualify for a company-specific antidumping duty margin where it participates in the investigation, and: (1) requests a company-specific antidumping margin; and (2) provides evidence of its independence from government control in both law and fact." See Shandong Huarong at 56-57. However, a respondent must wholly and fully participate in an investigation or administrative review. In other words, a respondent must respond to all the information that has been requested by the Department and not selectively choose which requests to respond to or which information to submit. It cannot fully participate in one aspect of the review, while simultaneously failing to provide complete, accurate and verifiable data with respect to other required elements of that review. In the instant case, First Wood responded to the Department's requests with respect to information related to separate-rate status, but failed to cooperate to the best of its ability in the review as a whole by providing incomplete and unverifiable sales, cost, and FOP data. Because, however, the Department failed to notify First Wood that a respondent cannot qualify for separate- rate status if it fails to cooperate to the best of its ability throughout the investigation and/or review, the Department, as noted above, will continue to issue First Wood a separate rate. In future investigations and reviews, however, the Department will routinely notify all respondents of this requirement.

## VII. Guanqui-Specific Issues

### Comment 44: HTS Classification for PLYWOOD

Petitioners contend that Guanqiu described its "Plywood" factor as "plywood with different dimensions" and thus failed to provide sufficient information to support the use of either an eight-digit or a six-digit classification. Petitioners therefore argue that for the final results, the Department should value Guanqiu's "Plywood" factor using the HTS category 4412 (i.e., "Plywood, Veneered Panels And Similar Laminated Wood...Plywood, consisting solely of sheets of wood, each ply not exceeding 6 mm thickness").

Guanqiu rebuts Petitioners' assertion and argues that the 6- or eight-digit HTS categories are more specific to its inputs. Guanqiu contends it fully described its plywood as "outer ply of non-coniferous wood," which is covered by HTS 4412.14 (i.e., "Plywood, At least One Outer Ply Nonconiferous, Neso"). Guanqiu asserts that HTS 4412 includes many additional products (i.e., veneer panel and a multitude of plywood made with various types of wood, such as, tropical and coniferous woods, particle board, hardwood and laminated wood) that are clearly not the plywood it used. Citing Certain Polyester Staple Fiber 04/19/2007 Memo at Comment 7,

Guanqiu asserts that the Department should value its plywood using HTS 4412.14.90 because it is the Department's practice to use product-specific information in valuing each input.

**Department's Position:** We agree with Guanqiu. The Department's practice when selecting the "best available information" for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are publicly available, product-specific, representative of a broad market average, tax-exclusive and contemporaneous with the POR. Thus, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input.

We have determined that record evidence supports the use of HTS 4412.14.90 (i.e., "Plywood, Veneered Panels And Similar Laminated Wood...Plywood, consisting solely of sheets of wood, each ply not exceeding 6 mm thickness:...other with at least one outer ply of non-coniferous wood: other") to value Guanqiu's plywood in the final results. We note Guanqiu described its plywood as "plywood with at least one outer ply of nonconiferous wood" in its December 21, 2006 Supplemental Section D Response, which is sufficiently specific to value plywood at the six-digit level. Further, we find the eight-digit level HTS 4412.14.90 (i.e., "other") to be more specific to the type of plywood that Guanqiu uses based on its description of its input (i.e., outer ply of nonconiferous wood") because the sub-categories under HTS 4412.14 are not descriptive of Guanqiu's input. Therefore, for the final results, we will continue to value Guanqiu's plywood using HTS 4412.14.90.

**Comment 45: HTS Classification for MDF**

Petitioners contend that Guanqiu described its "MDF" factor as "medium density fiberboard with different dimensions" and thus failed to provide sufficient information relating to the dimensions or attributes necessary to support the use of either an eight-digit or a six-digit classification. Petitioners argue that for the final results, the Department should value Guanqiu's "MDF" factor using HTS heading 4411, not the eight-digit HTS 4411.21.90 (i.e., "Fibreboard Of Wood Or Other Ligneous Materials, Whether Or Not Bonded With Resins Or Other Organic Substances . . . Fibreboard of a density exceeding 0.5 g/cm$^3$ but not exceeding 0.8 g/cm$^3$: Not mechanically worked or surface covered: other") used in the Preliminary Results.

Guanqiu rebuts Petitioners' assertion and argues the 6- and eight-digit level HTS categories are both more specific to its inputs. Guanqiu asserts that it described its MDF as "insulation board with a density of 0.5 to 0.7 g/cm3," in its December 21, 2006 questionnaire response at Exhibit 1. Guanqiu states that the six-digit HTS 4411.21 includes fiberboard between 0.5 g/cm3 and 0.8 g/cm3, and the eight-digit HTS 4411.21.10 is for insulation board, citing Certain Polyester Staple Fiber 04/19/2007 Memo at Comment 7. Guanqiu urges the Department to value its MDF using HTS 4412.21.10 in the final results consistent with its practice of using the most product-specific information available.

**Department's Position:** We agree with Guanqiu that record evidence supports the use of the eight-digit HTS 4411.21.10 (i.e., "Fibreboard Of Wood Or Other Ligneous Materials, Whether Or Not Bonded With Resins Or Other Organic Substances . . . Fibreboard of a density exceeding 0.5 g/cm$^3$ but not exceeding 0.8 g/cm$^3$: Not mechanically worked or surface covered: insulation board") to value Guanqiu's MDF in the final results. Guanqiu described its MDF as having "density ranges 0.5-0.7g/CM3" in its December 21, 2006 Supplemental Section D Response, which is consistent with the six-digit HTS classification 4411.21. Additionally, in its Supplemental Section D Response Guanqiu described its MDF as being "insulation board," which is also consistent with the eight-digit HTS classification 4412.21.10. As we discuss above in Comment 45, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input. For these final results, we have determined to use the eight-digit HTS 4412.12.10 to value Guanqiu's MDF because record evidence indicates Guanqiu uses this type of MDF in its production of subject merchandise.

**Comment 46: HTS Classification for RESIN**

Petitioners contend that Guanqiu described its "Resin" factor as "resins used as a decorative fixture on furniture" and thus failed to provide sufficient information to support the use of a six-digit classification. Petitioners argue that for the final results, the Department should value Guanqiu's "Resin" factor using the boarder HTS category 3911(i.e., "Petroleum Resins, Coumarone-Indene Resins, Polyterpenes, Polysulphides, Polysulphones And Other Products Specified In Note 3 To This Chapter, Not Elsewhere Specified Or Include, In Primary Forms"), not the six-digit HTS 3911.10 (i.e., "Petroleum resins, coumarone-indene or coumarone-indene resins and polyterpenes") used in the Preliminary Results.

Guanqiu rebuts Petitioners' assertion and argues the 6- or 8- digit level for the specific HTS category is more specific to its inputs. Guanqiu argues Petitioners failed to put sufficient information on the record that a 4-digit basket category is appropriate in this instance. Thus, Guanqiu contends that for the final results, the Department should continue to use HTS 3911.10 to value its resin input.

**Department's Position:** We agree with Petitioners that Guanqiu failed to provide sufficient information to support the use of a six-digit (i.e., 3911.10) classification. The description for HTS 3911.10 is "petroleum resins, coumarone resins, etc. polyterpense." We note that Guanqiu described its resin only as "resins used as a decorative fixture on furniture" in its December 21, 2006, Supplemental Section D Response. Guanqiu's description did not demonstrate any connection to the description in HTS 3911.10, nor did it explain why HTS 3911.10 is more specific to Guanqiu's resin. Based on the information submitted by Guanqiu, we are unable to determine to any degree of reasonable certainty whether "resins used as a decorative fixture on furniture" would be included in a category that encompasses "petroleum resins," or "coumarone resins," or other products covered by HTS 3911.10. Further, Guanqiu did not provide an explanation as to why HTS 3911 is too broad a category to value the resins it uses in production.

Because it is the respondent not the Department who is most familiar with the input used by the respondent, the burden of adequately describing the input in relation to its recommended surrogate value, by necessity, falls upon the respondent. Because the language contained in Guanqiu's description of its resin input is not adequately reflected in the language in the six-digit HTS 3911.10, we cannot find that the six-digit category is somehow more specific to Guanqiu's resin input than the 4-digit HTS 3911 category, which encompasses petroleum resins, coumarone-indene resins, polyterpense, polysulphides and polysulphones, etc. Furthermore, Guanqiu has not suggested that any specific eight-digit category would provide an appropriate value for its resin input. Finally, we reexamined the description for HTS 3911(i.e., "Petroleum Resins, Coumarone-Indene Resins, Polyterpenes, Polysulphides, Polysulphones And Other Products Specified In Note 3 To This Chapter, Not Elsewhere Specified Or Include, In Primary Forms") and found that it includes numerous kinds of resins, which would include the type of resin described by Guanqiu. Therefore, given all of the information presented to the Department concerning Guanqiu's resin value, we find the broader 4-digit category most appropriate and determine to use HTS 3911 to value Guanqiu's resins inputs. See Analysis Memorandum for the Final Results of the First Administrative Review of Wooden Bedroom Furniture from the People's Republic of China: Foshan Guanqiu" dated August 8. 2007.

**Comment 47: HTS Classification for Paint**

Guanqiu states that in the Preliminary Results the Department incorrectly valued "paint-transparent" using HTS 3208 (i.e., "Paint & Varnish from Synth Etc Polymers Nonaq, etc.") which includes polyester, acrylic and vinyl paints. Guanqiu contends it indicated in its December 21, 2006 supplemental section D response, at Exhibit 1, that its paint-transparent is acrylic/vinyl polymer paint and not polyester paint which is included in HTS 3208. Guanqiu asserts that it is the Department's practice to recalculate a surrogate value in a final determination when it finds the HTS category used in the preliminary determination did not accurately reflect the respondent's material input. See Non-Malleable Cast Iron Pipe Fittings 02/18/03. Therefore, Guanqiu urges the Department to use the more specific HTS 3208.20.30 to value its paint-transparent in the final results.

Petitioners assert Guanqiu, as a respondent, bears the burden of providing the necessary information for the calculation of its dumping margin. See Zenith Elecs., see also Mannesmannrohren-Werke. They also contend Guanqiu determined how to group its inputs and how to describe its FOPs to the Department, and contend that Guanqiu's description of its paint demonstrated that this factor includes other paints in addition to finishing paint. Petitioners argue that because Guanqiu improperly grouped different products within this factor and failed to break the factor into different, separately classified components, Guanqiu's proposed classification does not cover the FOP as described. Therefore Petitioners urge the Department to continue to use HTS 3208 to value Guanqiu's paint transparent in the final results.

**Department's Position:** We agree with Guanqiu that record evidence supports the use of HTS 3208.20.30 to value its factor "paint-transparent" in the final results. Guanqiu described its

"paint-transparent" as "acrylic/vinl polymer paint which is the finishing paint after and on the colored paint for protection" in its December 21, 2006 Supplemental Section D Response. We also note Guanqiu separately reported colored paint as an input and described it as "polyester paint and is the first color paint on the furniture being used to adding color to it," in its December 21, 2006 Supplemental Section D Response.

We examined HTS 3208 (i.e., "Paint & Varnish from Synth Etc Polymers Nonaq, etc.") and noted that the written description includes paints based on polyesters, whereas Guanqiu's "paint-transparent" does not include polyester paint. Also, Petitioners have not provided any record evidence to demonstrate why Guanqiu's reported paint categories (i.e., paint-transparent and paint-colored) are not sufficient for valuation under the relevant more specific HTS categories. After examining the Indian HTS code, we have determined that HTS 3208.20.30 (i.e., paint and vanish, based on acrylic or vinyl polymers, varnishes) better matches the description that Guanqiu provided for its input and, unlike the broader 4-digit category, it does not include polyester paint. HTS 3208.20.30 is thus more appropriate and specific to Guanqiu's "paint-transparent." Therefore, for the final results, we determine to use HTS 3208.20.30 to value Guanqiu's "paint-transparent."

**Comment 48: Surrogate Value Source for Ocean Freight**

Guanqiu states the Department used the generic ocean freight charges for shipments from China to the United States reported by Maersk Sealand to value its ocean freight in the Preliminary Results, and argues this surrogate ocean freight value overstates its expense and is not specific to furniture. In addition, Guanqiu asserts it only incurred a shipping expense from the Chinese port of Sanshui to Hong Kong. Also, Guanqiu states that it provided a quote of ocean freight charges from the port of Sanshui to Hong Kong from Winsmart Shipping Ltd., a market-economy shipping company. Citing Allied Pac. Food, Guanqiu urges the Department to use the quote it provided to value its ocean freight in the final results, in order to be consistent with its practice of selecting surrogate values as specific as possible to the input.

Petitioners state that Guanqiu's argument is based on the mistaken assumption that the surrogate ocean freight rate is based on shipments from China to the United States. Petitioners assert the freight rates from China to the United States are significantly greater than the surrogate ocean freight the Department used to value Guanqiu's freight from Sanshui to Hong Kong. Therefore, Petitioners urge the Department to reject Guanqiu's ocean freight argument.

**Department's Position:** For these final results, we have determined to continue to rely on Maersk Sealand to value Guanqiu's ocean freight. Based on record evidence, we continue to find the Maersk Sealand rates to be the best available information on the record. The value used from Maersk Sealand in the preliminary results is publicly available, contemporaneous with the POR, and covers the delivery of goods from HsiaMen, a port in the south of China, to Hong Kong.

In Guanqiu's October 2, 2006, Section C & D Questionnaire Response at C-26, Guanqiu stated that it purchased ocean freight from a market economy carrier (i.e., Winsmart Shipping Ltd.). However, there is no record evidence to indicate that Guanqiu was either billed for this ocean freight or paid for such freight in a market economy currency. Although Guanqiu provided a quote in Hong Kong dollars for a voyage from Sanshui to Hong Kong from Winsmart Shipping Ltd., as noted above Guanqiu did not provide any evidence that the freight was actually billed to Guanqui and paid for by Guanqiu in a market economy currency. See Guanqiu's Analysis Memo for more discussion. Therefore, we consider Guanqiu's submitted quote to be a single, non-publicly available price quote for a charge to Hong Kong. Further, we have no record evidence that this quote was specific to Guanqiu or specific to furniture. When other usable and reliable information is available for valuing an FOP, it is the Department's practice not to rely on price quotes gathered by respondents for valuation purposes because they are not from publicly available sources and they do not represent broad industry averages throughout the POR. See Policy Bulletin 04.1. Accordingly, because the value from Maersk Sealand is publicly available, and contemporaneous with the POR, for these final results, we will continue to rely on Maersk Sealand to value Guanqiu's ocean freight expenses.

## VIII. Starcorp-Specific Issues

### Comment 49: Total Labor Hour Consumption

Starcorp questions the Department's conclusion that it was unable to reconcile Starcorp's reported labor hours. Starcorp first disputes the Department's claim that certain verification pages relating to labor contained discrepancies. Rather, Starcorp claims that the labor hours in specific exhibits tie to labor hours in other exhibits. In claiming this, Starcorp points to various pages of the verification exhibits to demonstrate that its labor hours reconcile, for example with respect to: total direct labor, total indirect labor, total packing labor, direct packing labor, direct metal labor, and direct thinner labor. Starcorp also disputes the Department's statement that one of the production lines illustration lists presented at verification was not comprehensive, explaining that an additional list included in a separate verification exhibit is the comprehensive list of all of Starcorp's production lines. Starcorp also states that the inconsistencies the Department cited in its verification report were not pointed out to Starcorp, and therefore attempts to provide an explanation for each the Department's noted inconsistencies in its brief.

Starcorp next claims that it provided to the Department at verification supporting documentation for the reconciliation of labor hours affected by wood hardness, and points to certain pages in the verification exhibits for support. Starcorp then asserts that the Department's findings with respect to its labor hours buildup was erroneous. Starcorp disputes the Department's statement that it was unable to provide information about the attendance summary ledger for lathing at a particular plant prior to the end of verification. In doing so, Starcorp states that since it provided some attendance summary ledgers for other production lines requested by the Department, there was no reason why it could not have provided the requested lathing data. Starcorp argues that the Department's conclusion that it did not provide any documentation to substantiate its painting

labor hours buildup is of no relevance because the data only applies to plant-specific FOPs, and thus carries no impact on the information to be used by the Department in its dumping calculations. Further, Starcorp explains that the reason the Department did not review any reconciliation package for carving labor was that no carving was performed in the requested CONNUM factor allocation trace. Starcorp also claims that it provided the allocation basis for upholstering labor (i.e., that the net volume of upholstered parts equates to kg).

Petitioners argue that Starcorp did not provide supporting documentation for several components of its reported manufacturing-related labor hours and erroneously based its indirect to direct labor hours ratio solely on the indirect and direct labor hours for Plant 1 rather than for all plants. Petitioners state that the Department was unable during verification to tie data provided by Starcorp in worksheets to standard books and records maintained in the ordinary course of business. Petitioners state that Starcorp failed to substantiate its reported labor hours using source documents for: labor hours affected by wood hardness, labor hours not affected by wood hardness; indirect labor hours; and labor hours that were not related to manufacturing (e.g., veneering, lathing, etc.). Petitioners point out that only worksheets were prepared for the Department, not source documents. Petitioners continue to emphasize that it is not the Department's verification practice to request more worksheets in support of worksheets previously submitted, but rather that the entire purpose of verification is to trace data contained in worksheets and databases to source documents maintained as part of the company's normal books and records. In fact, Petitioners contend that nowhere does Starcorp claim that it provided detailed company source documentation for its total labor hours reported in each labor category. Petitioners lastly insist that Starcorp's experienced U.S. and Chinese counsel should have been fully aware of the need to present source documents to substantiate information contained in its worksheets.

**Department's Position:** At the outset, the Department disagrees with Starcorp that it did not identify the types of inconsistencies that the Department found in conducting the labor traces. In fact, as discussed in the verification report, the Department specifically requested that Starcorp provide a reconciliation between one of the source documents it provided in the labor hours trace to one of the documents provided in the labor payment trace because the Department was unable to complete a direct trace between the two documents, both of which purported to identify all of Starcorp's production/function lines across all of its production facilities. See Starcorp Verification Report at 72-73.

The Department detailed its attempts to reconcile Starcorp's labor consumption through salary traces, review of labor lines, and examination of labor hours in its verification report. The verification report makes clear that Starcorp was unable to substantiate payment for Starcorp's total labor. See Starcorp Verification Report at 45-48 and 72-77. Due to the proprietary nature of this issue, please see further discussion in the Starcorp AFA Memo.

With respect to labor hours, Starcorp was similarly unable to substantiate through source documentation that it had accurately reported total labor hours. In its brief Starcorp alleges that it

provided a reconciliation demonstrating how the hours for each production line had been allocated to the categories identified in its questionnaire responses. This document is itself a worksheet Starcorp created for this reconciliation. While Starcorp claims that this worksheet identifies its classification of labor hours by categories (which we agree it does), Starcorp could only tie some of these categories to what it referred to as source documents. These source documents were printouts from its electronic labor log. Starcorp explained that it maintained an electronic file to record labor hours by production line at each plant. What Starcorp provided to us to support the two worksheets already discussed was an electronic printout from the database for the POR covering the production lines for which labor hours had not been allocated over multiple labor categories, for example the carving or veneering preparation lines. This was insufficient to determine that all of Starcorp's total labor hours were correctly reported. We asked Starcorp to provide a reconciliation demonstrating the allocation of labor hours for a production line across multiple labor categories; however, other than the worksheets already presented, Starcorp did not provide any additional documentation.

Had Starcorp substantiated its entire labor hours for a single category of its allocated labor or entire hours of a single category comprised of more than one production line, this might have been considered a valid spot check. Based upon our finding for this category, we requested that Starcorp provide the labor hour documentation for the second lathing line. We agree with Starcorp that there does not appear to be any reason it could not provide this information; nevertheless it did not, and this was one of the specific items we addressed at the close of verification as being outstanding.

Verifying the hours associated with a few lines that constitute less than five percent of Starcorp's total labor hours is insufficient to conclude that all of Starcorop's labor hours had been substantiated For further discussion see the Starcorp Verification Report at 69-74. Finally, for indirect labor, Starcorp incorrectly allocated indirect labor over direct labor using the data from only Plant 1. This impacted its reporting of all indirect labor hours. Moreover, as discussed above, Starcorp did not substantiate its indirect labor hours for the POR using source documents. See Starcorp Verification Report at 69-74. For the reasons stated above and detailed in the Starcorp Verification Report, the Department does not find that Starcorp has substantiated its total reported labor hour consumption. Finally, as we discuss in detail in the Starcorp AFA Memo, the Department is unable to rely on any of Starcorp's reported data in this review for unrelated reasons.

**Comment 50: Market Economy Purchases, Wood Consumption and Wood Screws**

Starcorp commented on the appropriate HTS category to value its wood screws, which it argues the Department viewed at verification. Starcorp also states that it adequately demonstrated its reported market purchases and its consumption of wood materials at verification through the use of source documentation.

Petitioners argue that Starcorp did not substantiate its reported market economy purchases and contends that Starcorp incorrectly calculated the total net volume usage of solid wood and board materials used in the production of wooden bedroom furniture.

**Department's Position:** We agree with Starcorp that it adequately demonstrated its market economy purchases of certain factors, its reported wood and board consumption and its use of wood screws in the production of subject merchandise. However, because the Department has determined it is unable to rely on any of Starcorp's reported data in this review for unrelated reasons, these issues are moot and therefore are not discussed further. See Starcorp AFA Memo.

**Comment 51: Department's Conduct at Verification**

Starcorp contends that; 1) it is a medium-size producer at best, 2) it participated in this administrative review and wanted to be verified because it believes it was not dumping, and 3) it was trying to comply with U.S. trade laws. Starcorp claims that it fully cooperated with the Department's requests for information throughout this proceeding, and asserts that over 37 members of its staff worked to the best of their ability to prepare for and participate in verification. Further, Starcorp contends that it was "up front" with the Department about its methodologies, as they were set forth in Starcorp's responses and discussions with Department officials. Finally, Starcorp proposes that in a complex case such as this, errors were expected and corrections were made.

Starcorp advocates the position that the Department abused its discretion with respect to verification and, in doing so, prejudiced and impacted Starcorp's ability to effectively participate in this proceeding. Starcorp urges the Department to re-conduct verification, arguing that re-verification of respondents is in accordance with law, citing to Rubberflex 59 F. Supp. 2d 1338 (CIT 1999); SKF USA 391 F. Supp. 2d 1327.

Starcorp states that the Department's verification report contains errors and misstatements which inaccurately portrayed its verification. Starcorp suggests that the Department led it to believe that it had completed all verification packages presented in the first week, only to return to them in the second week. Starcorp argues that the Department wasted critical verification time by using non-contentious items to train inexperienced personnel and by taking highly repetitive plant tours. Finally, Starcorp claims that once "it became clear that the Department had failed to manage the verification schedule appropriately," the Department "reluctantly" agreed to reduce the amount of material to be verified, and did not accept any factual information after verification concluded, notwithstanding the fact that the information was "fully and completely" prepared for the Department's review.

Starcorp generally implicates the Department's "professional" yet faulty conduct at verification as a reason for the outcome of its verification. Starcorp specifically questions the timing and procedures chosen by the Department before and during verification (which, as Starcorp reasons, should have been a "spot check"). See Torrington, 146 F. Supp. 2d at 897. Starcorp insists that

verification should be a "bilateral and interactive" process between respondent and the Department, reasoning that respondents should be afforded a meaningful opportunity to participate in all phases of an investigation or review, including verification. See Bowe-Passat, 17 CIT at 339; Rubberflex, 59 F. Supp. 2d at 1346. Hence, Starcorp alleges that Department's procedures significantly impeded Starcorp's verification, that the Department's actions compromised the accuracy of dumping margins, and this constitutes an abuse of discretion. See Rubberflex, 59 F. Supp. 2d at 1346; Shakeproof, 268 F. 3d at 1383-84. Starcorp speculates that the Department failed to appreciate the volume of information it had requested to verify, was disorganized, used its time unwisely, slowed the verification process in order to train two less-experienced verifiers, and wasted time conducting six plant tours. Starcorp argues that the Department failed to review all verification items, as it is the Department's responsibility to direct verification to a successful conclusion as the "master" of verification. See Zenith Elecs., 77 F. 3d at 430; San Vicente Camalu, Slip Op. 2007-58; DOC AD Manual, Chapter 13 at 5-7.

Starcorp suggests that the Department led it to believe that, with the exception of some sales traces left over as homework assignment from Friday (March 16) afternoon's proceeding, all items listed on the first half of the verification outline had been fully verified. Starcorp proposes that this belief led it to spend the weekend preparing FOP reconciliation items for which it did not receive adequate notice prior to verification (since, as Starcorp reasons, the outline was provided on the second-to-last business day before verification began). During the second week, Starcorp states that the Department returned to the financial structure of Starcorp and an analysis of the Chinese GAAP. Thus, Starcorp asserts that the Department failed to work efficiently during verification and reserve sufficient time in the second week to verify Starcorp's factor allocation methodologies and other cost issues. Starcorp argues that despite the fact that the Department eliminated certain items subject to verification, these modifications proved inadequate given the Department's "slow pace." Starcorp disputes the Department's statement that certain items were not presented until the last day of verification, and argues that the items were either already in the Department's possession, refused by the Department, or prepared and waiting. Starcorp further claims that when the Department desired to commence work on a verification package, that package was provided to the Department.

Starcorp proposes that it cooperated to the best of its ability in this administrative review, calling the Department's administration of the review "prejudicial." Starcorp asserts that it provided all information required by the Department in response to requests for information in an attempt to ensure a successful verification. It alleges that the Department impeded verification, not Starcorp. Starcorp continues by alleging that the Department did not verify all items listed in the verification outline because the Department: 1) failed to understand the magnitude and complexity of information Starcorp had prepared for verification; 2) failed to effectively plan for the second week; and 3) wasted time primarily during the second week of verification. Starcorp also takes issue with the Department's rejection of certain factual information after verification, which it claims is contrary to the Department's regulations.

Starcorp explains that its level of cooperation throughout this review and at verification was "extraordinary," consistent with the statutory mandate that a respondent act to the "best of its ability" to do the maximum it is able to do. See Nippon Steel, 377 F.3d at 1382. Starcorp claims to have provided all the information that the Department requested. Starcorp states, for example, that it provided information beyond that available in its normal books and records to provide plant-specific FOP data and labor based on "wood hardness factor" to the Department. Starcorp declares that it prepared 50 packages "spanning over 9,500...pages," "commandeered" key management personnel for verification preparation purposes, worked around the clock to accommodate the Department's verification schedule, responded to the Department's supplemental questionnaire during the Chinese New Year, and dedicated "all resources" to the verification effort including approximately 37 employees to ensure a successful verification. Starcorp also emphasizes that it "faithfully" responded to the Department's questionnaires, despite the "extreme hardship" placed on Starcorp when it needed to respond to the questionnaires over the Chinese New Year.

Moreover, Starcorp argues that no negative inference should be drawn from the fact that the Department did not complete review of certain verification packages. Starcorp reasons that the Department did not complete its review of certain verification packages because the Department did not understand the detailed nature of Starcorp's data, and not because of any unpreparedness on the part of Starcorp. See Allied Tube & Conduit Corp., 898 F. 2d at 786. See, also, Torrington, 146 F. Supp. 2d at 897 and Shandong Huarong, 435 F. Supp. 2d at 1284. Starcorp contends that the Department's objective is a "spot check" to corroborate information at verification, not verify each and every aspect of respondent's business in order to consider a respondent to have passed verification. Torrington, 146 F. Supp. 2d at 897 and Shandong Huarong, 435 F. Supp. 2d at 1284. Further, Starcorp maintains that verification is only a spot check and is not intended to be an exhaustive examination of a respondent's business. Starcorp also asserts that verification of information submitted by respondents is "superfluous" if it is corroborated by other independently reliable information on the record. See Corus Eng'g Steels LTD, CIT Slip Op. 2003-110 at *22. Starcorp continues to claim that according to the Department's regulations, under 19 C.F.R. 351.301(b)(2), the Department need not cover every factual point in a verification outline in order to pass a respondent; rather, factual information requested by the verifying official will be due no later than seven days after the date on which the verification of that person is completed. See 19 C.F.R. 351.301(b)(2); Hand Trucks and Certain Parts Thereof from the People's Republic of China, 10/14/04 Memo at Comment 1; Fujian Mach. & Equip. Imp. & Exp. Corp., 178 F. Supp. at 1319, 1321; SKF USA, 391 F. Supp. 2d 1327. Thus, Starcorp claims that the Department's inability to reach every item on its verification outline should not lead to a conclusion that Starcorp's questionnaire responses were not accurate or verified. Rather, Starcorp asserts that the content of some of the "verification exhibits" indicate that the verification was more than adequate.

Petitioners argue that Starcorp was so poorly prepared for verification that it impeded the verification. Citing the Starcorp Verification Report, Petitioners assert that Starcorp in many instances failed entirely to prepare and provide packages requested by the Department, routinely

provided document packages containing incomplete information and lacking supporting documents, presented documents that were often incomprehensible in the absence of English-language titles and/or headings, and the narrative explanations in the documents did not correspond to or fully identify the data they were supposed to explain. Petitioners contend that Starcorp impeded verification to such a degree that the Department had to change its verification procedures for the last two days of verification.

Petitioners argue that the Department properly managed verification. Petitioners state that Starcorp's case brief shows a consistent failure on the part of Starcorp to understand what was expected of it during verification and how to meet those expectations. Specifically, Petitioners reference Starcorp's assertions that there were certain "expectations set" of it by Department and that the Department "led Starcorp to believe" certain items were verified. Petitioners refute Starcorp's assertions by noting that none of them are supported by record evidence or even described as concrete statements made by any Department official on a particular date or during a particular meeting or telephone call. Additionally, Petitioners rebut Starcorp's arguments that the Department failed to appreciate the volume of information it had requested by pointing out that Starcorp agreed to the verification schedule and never requested either an extension of time for verification or a longer verification period once it came to appreciate the volume of information it was required to produce.

Petitioners also counter Starcorp's argument that the Department used its time unwisely during verification by arguing that Starcorp wasted months of useful time earlier in the review by asking for more time to submit plant-specific FOP data, refusing to submit such data, arguing instead that it should not be required to submit such data, and then submitting the data in incomplete and flawed form. Petitioners further argue that had Starcorp fulfilled its obligations during the review, the Department never would have been required to seek clarification of the plant-specific FOP data between the Preliminary Results and verification. Petitioners also explain that the presence of junior Department officials at verification is routine and their continuing training during the course of verification is part of the job as well as the verification process.

Petitioners next counter Starcorp's argument that the Department took too many plant tours during the verification by stating that: 1) the Department has broad discretion to pick and choose the facts and information it wishes to verify (citing to American Alloys, 30 F.3d at 1475); and 2) given statements made by Starcorp as to the integrated operation of its plants in the production of furniture, the Department was well within its discretion to examine each one of these plants in detail. Petitioners also disagree with Starcorp's statement that the Department appeared disorganized in its approach to many verification issues, and pointed out that the verification team included some of the most senior officials in Import Administration.

Moreover, Petitioners disagree with Starcorp's reliance on 19 C.F.R. 351.301(b)(2) when arguing that the Department was obligated to accept the verification packages it offered after 6:00 p.m.

on the last day of verification.[49] Petitioners argue that the regulation is inapplicable for two reasons. First, Petitioners cite to Fujian to support their argument that information that is supposed to be compiled by the respondent in response to the Department's verification outline, but which is not delivered during verification, is outside the scope of the regulations. See Fujian, 178 F. Supp. 2d at 1319. Second, Petitioners cite to Royal Thai and state that the CIT has rejected Starcorp's line of argument in the past explaining that the Department "may consider information received after verification only when it corroborates, reinforces, explains or expands on already verified questionnaire responses or other data." See Royal Thai, 441 F.Supp. 2d at 1361 n. 9. Petitioners argue that document packages proffered by Starcorp in the evening of the last day of verification did not corroborate, reinforce, explain or expand on already verified questionnaire responses or other data. Thus, Petitioners contend that the Department was within its discretion to refuse these documents.

Additionally, Petitioners state that Starcorp's version of the events on the last day of verification contradicts the verification report and is unreliable because it is unaccompanied by citations to record evidence. Rather, Petitioners reason that by "objective standards," the Department's version of events set forth in the verification report is more trustworthy as it is backed up by numerous verification exhibits and was prepared by several Department officials whom were present at verification, and also who enjoy a presumption of honesty and integrity in the discharge of their official duties. See Withrow v. Larkin, 421 U.S. at 47; and NEC Corp. 978 F.Supp. at 327. Petitioners further argue that Starcorp's affirmative factual statements about the conduct of verification constitute new factual information that should be stricken from Starcorp's case brief.

Petitioners maintain that the Department conducted Starcorp's verification within judicially accepted standards. Petitioners cite to section 782 of the Act to argue that the statute does not delineate the precise means for conducting verification. However, Petitioners also point out that Congress delegated to the Department latitude to derive verification procedures ad hoc. See Micron Technology, 117 F.3d at 1396; American Alloys, 30 F.3d at 1475; Hercules, 673 F. Supp. at 469; Kerr-McGee, 739 F.Supp. at 628. Thus, Petitioners maintain that the Department's verification procedures are entitled to considerable discretion. See Daewoo Elecs., 6 F.3d at 1516. Further, Petitioners contradict Starcorp's reliance on Rubberflex, where Starcorp asserts that the Department abused its discretion during verification. Rather, Petitioners claim that the factual predicate for that decision is different than the case at hand. Petitioners argue that in Rubberflex, the Department did nothing with the respondents' questionnaire responses for 18 months, and then compressed all remaining activities for two periods of review into a 45 day period. See Rubberflex, 59 F.Supp. 2d at 1338. By contrast, Petitioners describe the Department's administration of this review as "diligen{t} since commencement" and note that

[49] Petitioners cite to 19 C.F.R. 351.301(b)(2) and explain that this section establishes the deadlines for submitting factual information in a review and states that "factual information requested by the verifying officials from a person normally will be due no later than seven days after the date on which the verification of that person is completed."

the Department gave Starcorp an "unprecedented" number of opportunities to submit and clarify information, including the opportunity to reconcile its plant-specific FOP data after the Preliminary Results. Petitioners persist that the central distinguishing feature between this case and Rubberflex is that Starcorp, not the Department, was responsible for the outcome of the verification.[50]

Petitioners contend that a second verification of Starcorp would be pointless because, in order to justify this extraordinary step, a respondent must do more than complain that it did not have enough time–it must provide some record evidence to show that verification would have proceeded differently if the Department had afforded it more time to prepare. See Fujian, 178 F.Supp. 2d at 1316-17. Petitioners argue that the Fujian test for re-verification has not been met. Petitioners state that Starcorp's explanation of its accounting practices makes clear that none of the audited financial statements–individual or combined–can be relied upon because certain values are not reliable. Petitioners also point to other deficiencies in Starcorp's participation in this review, arguing that: 1) Starcorp failed to provide any support for its plant-specific FOP databases; 2) Starcorp's two consolidated FOP databases do not match where they should; 3) Starcorp presented to the Department, on the second-to-last day of verification, its explanation on how it averaged FOP data in CONNUMs using sales quantities and proxy FOP data; and 4) Starcorp failed to support the FOP data reported for numerous inputs. Hence, Petitioners argue that re-verification would not produce a different outcome since Starcorp's problems were systemic and too deeply rooted in its review-long refusal to cooperate to be rehabilitated by simply getting a few more documents on the record through verification. Petitioners state that all record evidence demonstrates that verification would not have proceeded differently if the Department afforded Starcorp more time to prepare, and that Starcorp produced no evidence to the contrary.

Finally, Petitioners propose that the Department should calculate Starcorp's margins using total adverse facts available. Petitioners contend that Starcorp did not act to the best of its ability to comply with the Department's requests for information since the Department's mere "spot checks" of Starcorp's questionnaire responses showed a systemic failure that would not allow Starcorp to pass verification regardless of how few spots the Department checked.

**Department's Position:** Upon a full review of this record, including Starcorp's submissions, the extensive verification report prepared by the Department, and all allegations and arguments submitted by parties, the Department disagrees with Starcorp's claims that the Department's verification team mismanaged its time during the verification. On the contrary, as we discuss in

[50] Petitioners also describe other differences between the Department's management of the case in Rubberflex and the instant case: 1) the Department denied the Rubberflex respondent's request for verification during a mutually convenient time, whereas Starcorp agreed to the verification schedule; 2) in Rubberflex, the Department only gave respondent two business days to prepare for verification, whereas the Department gave Starcorp four business days to prepare for the sales verification and eight business days to prepare for the cost verification; and 3) the Department tacitly agreed to accept certain documents at the end of the Rubberflex verification, whereas there was no such tacit agreement in this case.

further detail below, the record demonstrates that the Department's verification team was experienced, professional and followed standard verification procedures in its conduct of the verification. Indeed, when Starcorp's counsel came to meet with the DAS, counsel commented that while he disagreed with some aspects of the verification, he fully acknowledged that the Department verifiers were very professional throughout the two week verification. See Memo to the File: Ex-Parte Meeting, 6/25/07. Furthermore, because of the confusing and incomplete nature of the information submitted by Starcorp, the Department provided Starcorp with the extra benefits of a longer two-week verification (the Department typically allows one week for verifications of companies in China), a larger than normal verification team (most verification teams consist of two verifiers), and long hours while at verification as in a typical verification, that on most days, extended beyond the working day.

*Minor Corrections*

We disagree with Starcorp's contention that it was a mismanagement of verification time to request follow-up information regarding Starcorp's reported minor corrections, as the record shows this information was essential to gauging the impact of the errors. Without this information, the Department has no way of knowing whether minor errors are truly minor in nature. Specifically, when Starcorp reported errors to the Department, the Department examined the impact of these errors, and where it determined that these errors were minor, it accepted Starcorp's corrections. See Starcorp Verification Report. However, where Starcorp failed to provide information regarding the impact that certain errors may have on its overall margin calculation, the Department appropriately requested that Starcorp provide additional information. See Verification Report at 7-11. Additionally, while Starcorp asserts that errors were made and corrections were provided, Starcorp omits from its argument that it failed to be forthcoming about the nature of its reporting methodology. Specifically, it was critical to determine the magnitude of Starcorp's U.S. sales impacted by this methodology. See Starcorp AFA Memo for a detailed explanation of deficiencies in Starcorp's response. These items are not only directly relevant to calculating Starcorp's margin, but significantly impact the overall margin calculation (as they relate to the integrity of Starcorp's reporting methodology and affect a significant portion of Starcorp's reported data). Therefore, the Department finds it wholly appropriate to address these issues extensively at verification and in no way considers it a mismanagement of time.

*Verification of Non-Contentious Issues*

The Department further disagrees that its verifiers wasted time with what Starcorp calls "noncontentious" issues. The purpose of verification is to test the accuracy and reliability of a company's questionnaire responses. Thus, the Department's verification procedures are not governed by whether items are contentious or not, and the scope of the Department's verification is not limited to contentious items nor is it necessarily limited solely to items set forth in our verification outline. As the Department's standard verification outline states, "the enclosed agenda is not necessarily all inclusive and we reserve the right to request any additional information or materials necessary for a complete verification." See Letter to Starcorp

accompanying Starcorp's Verification Outline, dated March 6, 2007, at p. 1. At Starcorp's verification, Department officials verified items included it the verification outline and related information when the need for such information arose. As for items included in the Department's verification outline, the verification report is clear that the Department reviewed the items it determined to be most important to understanding Starcorp's reporting methodology such as sales traces, accounting procedure overview, sales process, production process, and raw material consumption. See generally Starcorp Verification Report. For subjects that were not specifically included in the verification outline, but were related to items in the verification outline, the Department requested information as appropriate. For example, during review of Starcorp's financial statements, the Department requested to review certain Chinese GAAP provisions to determine whether Starcorp's financial statements were consistent with Chinese GAAP. See Starcorp Verification Report at 18-20. The Department's entire scope of verification was relevant, necessary, and did not amount to a waste of time.

*Starcorp Was not Misled During Verification*

The Department further disagrees with Starcorp's implications that the Department led Starcorp into believing that it had completed certain verification topics during the first week of verification or that it was somehow inappropriate to return to topics previously reviewed during the first week of verification on the second week. It is customary to re-examine issues at verification as the need arises, and it is very common for verifiers to review one topic (e.g., financial statement), then proceed to a different verification topic (e.g., raw material consumption) and learn that certain elements of the current topic (e.g., raw material purchases) relate to the former topic (e.g., entry of raw material purchases within the financial statements). When this occurs, the Department ordinarily references the former topic and may need to ask follow-up questions to enhance its understanding of the element at hand and how it relates to the former. For example, during the second week of Starcorp's verification, the Department reviewed Starcorp's ME purchases and discovered that certain items are booked inconsistently in the debit and credit columns of Starcorps' raw material purchase ledgers. See Starcorp Verification Report at 51-52. This discovery also related to Starcorp's inventory valuation within its financial statements (a topic which was discussed with Starcorp during the first week of verification) and necessitated a more detailed inquiry into the manner in which raw materials values are accounted for in the final inventory figure of Starcorp's financial statements. See Starcorp Verification Report at 18. Here, the Department's inquiry was directly related to understanding discreet elements about Starcorp's tracking of inventory values.[51] In fact, all of the Department's inquiries during verification were necessary, justified, and relevant to performing an accurate trace. It is wholly within the Department's discretion to review items once or refer to them multiple times as necessary to successfully discharge its duties at verification. To adopt Starcorp's statement that the Department failed to work efficiently because the Department revisited prior explanations for clarification would suggest that the

[51] Because the details of this trace are proprietary, please see Starcorp Verification Report at 16-24 for a more complete discussion.

Department would never return to a previously discussed item when the need for clarification becomes apparent during a latter trace. Such a constraint on Department verifiers would negate a primary purpose of an onsite verification, which is to gain a full, complete understanding of the company's books and records. Moreover, because it is the verifier that must gain sufficient understanding and report back to the Department, discretion must lie with the Department verifiers, not the respondent, to determine whether certain subjects require clarification and, if clarification necessitates, re-visiting a previously-discussed topic.

The Department further disagrees with Starcorp's interpretation that the Department verifiers somehow led Starcorp to believe that certain items were verified. The Department verifiers did not mislead Starcorp. The record is clear that, consistent with its practice, the Department informed company officials after reviewing verification packages, at the close of the first week of verification, on the third-to-last day of verification, and at the conclusion of verification that it would not render a determination as to the outcome of verification until it returned to Washington, D.C., and performed the required analyses. The Department verifiers informed Starcorp officials on the third-to-last day of verification that it was concerned with the progress of verification, specifically with respect to the fact that documents were not translated, prepared packages were incomplete, and many packages had not yet been assembled at all. Finally, upon conclusion of verification, just after 10:00 p.m. on March 23 (after Department officials and Starcorp officials organized verification packages for filing on the record of the proceeding) the Department made concluding remarks to Starcorp officials, informing them that traces of certain items had not been completed. In response, Starcorp officials explained that they understood, and specifically acknowledged that the verification had not proceeded as all had hoped.[52] There is nothing in the record to support a conclusion that actions or assertions by the Department verifiers could lead Starcorp to believe that packages the Department considered to be incomplete had been successfully verified, or that somehow its verification was a complete success. Moreover, it is impossible to determine the "success" of a verification until the verifiers return to Washington, D.C., finalize their report, and the Department has the opportunity to fully analyze additional information after receiving comments from parties. Therefore, no verifier is in a position to determine how facts gathered at verification will later be treated by the Department at the close of verification.

*Items Examined During Verification*

Starcorp takes issue with the Department's verification procedures claiming that verification should be a spot check rather than a thorough review of all documents. The Department agrees with Starcop regarding the purpose of verification, but we disagree that the Department verifiers somehow performed a more thorough verification of Starcorp than they do for any other respondent. In fact, our verification report and verification exhibits unambiguously demonstrate that the Department did not attempt to examine every superfluous detail of every bookkeeping entry. The record further illustrates that the Department attempted to review significant items

[52] Moreover, no Starcorp official or representative disputed the Department's statement at that time.

that were relevant to Starcorp's reported data. In fact, the Department selected a few representative items from each trace (for example, three types of non-wood products--out of 36[53] that Starcorp consumed in the production of subject merchandise--in its non-wood consumption trace), and for these select items, attempted to substantiate Starcorp's reported data up through its financial statements and down through its raw material purchase records as necessary. Moreover, the Department points out that any lesser inquiry than this limited spot check would be meaningless, as data can only be legitimately traced if it is captured consistently throughout company books and records. The record illustrates additional instances where the Department sought a reconciliation for only a sample of Starcorp's sales and factor data, not every minute piece of data as Starcorp seems to suggest. See Starcorp Verification Report and accompanying Verification Exhibits.

While we agree that a verification is by necessity a "spot check", this does not mean that Department verifiers should conduct anything less than a thorough review of the items they select to verify. When an item is selected for verification, the Department reviews the item, and must be able to trace that item through the company's books and records. A "spot check" does not normally equate, as Starcorp would have us believe, to merely checking selected numbers from selected documents without observing how the numbers relate to each other in a meaningful manner.

*Experience of Starcorp's Verification Team*

The Department next addresses Starcorp's claims that a "senior Department official" informed it that certain verification items were performed as training exercises for two less experienced verifiers. Because the Department's verification team in this instance was very experienced, the Department finds this claim curious. There were six Department officials present during Starcorp's verification. The Deputy Assistant Secretary ("DAS") for Import Administration's Operations division, the Senior Enforcement Coordinator for the China/NME Office ("SEC"); and the Office Director for Office 8 within the China/NME Office ("OD-Office 8"). Each of these officials possess over a decade of experience conducting antidumping cases. The Department points out that the DAS was present during only the first day of Starcorp's verification (March 12, 2007) and the SEC was present only during the second day of Starcorp's verification (March 13, 2007) and not two days as Starcorp alleges. The OD-Office 8 conducted the verification along with Department officials including the case analyst and the Special Assistant to the Senior Enforcement Coordinator of the China/NME Office. The Department counsel, a senior attorney from the Office of Chief Counsel for Import Administration, also accompanied the verification team. Between them, this team has extensive verification experience in the conduct of AD proceedings.

Even so, because it is impossible to send verifiers with the exact same level of experience to verifications, it is inevitable some members of the verification team will have more experience

[53] If thinner is included, the count will be 46.

than others. While the Department does not send verifiers on verification as a "training exercise," because each company is different, and no two verifications are the same, verifiers at any level develop skills while verifying, including learning new techniques from the verifiers that are more experienced. This is a function of every verification, and in no way impedes a company's abilities to successfully demonstrate the authenticity of the information it submitted.

*Plant Tours of Starcorp's Facility*

The Department also disputes Starcorp's argument that the verifiers wasted time taking six plant tours. Starcorp is comprised of five individual companies, four production plants (where each plant has various warehouses and production lines which allegedly work together to fill production orders), the thinner facility, and a log cutting facility. In fact, the record illustrates the vastness of Starcorp's production operations with respect to the number of plants, warehouses, production lines, facilities, and the interwoven nature of these production operations. During verification, the Department had much ground to cover in reviewing Starcorp's production operations in an effort to substantiate Starcorp's repeated claims that the four production plants operate as a single entity, all producing essentially the same merchandise. During the first week of verification, the Department conducted one brief plant tour of Starcorp's overall operations. During the second week of verification, the Department took five additional but short, limited plant tours which were spread out during the week.[54] Importantly, these five plant tours were conducted by only two Department officials at a time, while the two other officials remained in the verification room to continue reviewing verification packages. The Department specifically expanded the size of the verification team because of the nature of Starcorp's business with several production facilities. Further, the aggregate time spent on all six plant tours amounted to less than a full business day for two Department officials. Moreover, the Department verifiers elected to go on plant tours to coincide with review of information and while waiting for company officials to complete specific assignments with respect to data traces. (For example, two verifiers conducted a tour of the thinner facility upon review of Starcorp's paint factor; and two verifiers conducted a tour of wood cutting lines upon review of Starcorp's wood factor, etc.) Finally, given that each company is different, it needs to be within the verifiers' discretion to determine when plant tours are required and how many are necessary for purposes of adequately corroborating a company's reported information at verification. In Starcorp's case, given the complexity of Starcorp's production and Starcorp's claims that its production facilities operate as a single entity, the Department's plant tours were not only justified, but each was limited in scope, specific to a topic at hand, and needed to corroborate certain information. Therefore, we do not find that any of the plant tours taken at Starcorp's verification amounted to a waste of time.

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[54] The five limited plant tours were of Starcorp's 1) thinner facility, 2) wood cutting line (to examine yield losses), 3) warehouse offices (to examine the types of information stored), 4) finished product packing line (to determine the ultimate destination of finished goods after production), 5)raw material warehouse (to examine how much raw materials are withdrawn for producing a given product).

*Verifiers' Management of Time During Verification and Starcorp's Preparedness*

The Department finds that Starcorp's argument that the Department mismanaged verification to be wholly baseless. On the contrary, the following discussion illustrates that the Department took every step within its discretion and reached beyond its call of duty to ensure an efficient and successful verification, and provided Starcorp with every opportunity for a successful outcome. First, the verification team consisted of four members, rather than the standard two, which allowed the Department to verify more than one item at a time. Second, because the Department appreciated the complexity of Starcorp's reporting methodology, it determined that a two-week verification rather than the usual one-week verification would more appropriately afford Starcorp adequate time to substantiate its reported information. Third, the Department verifiers frequently stayed late, beyond scheduled verification hours, in order to afford Starcorp every opportunity to present material for verification. Fourth, during portions of the first week of verification and during the majority of the second week of verification, the verifiers split into teams of two, sometimes three, in order to be able to review as much Starcorp company information as it had ready for review.[55] This was done solely for Starcorp's benefit and demonstrates that the Department endeavored to work through as many verification packages as possible.[56] Finally, the verifiers reduced items listed on the verification outline, on the eve of the third-to-last day of verification, when it became apparent that Starcorp had not yet prepared all verification packages for the Department's review.[57] There is no record evidence to support Starcorp's claim that the Department only "reluctantly" reduced the number of items subject to verification. Rather, it was the Department's decision to limit its review to certain items and accept a lesser-than-usual amount of information to consider a topic successfully verified. In fact, the record shows that the Department went through extraordinary efforts to facilitate a fair and successful verification. See generally Starcorp Verification Report. Moreover, at no point during verification did Starcorp indicate that it was having difficulty preparing verification packages as requested in the verification outlines, nor did Starcorp request that verification be extended or that verification be rescheduled. See Comment 52.

Furthermore, Starcorp's contention that the Department mismanaged verification and did not perform a swift and complete job as the "master" of verification is misleading. Starcorp attempts

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[55] When the Department remained in a team of one, it did so with respect to verification topics that applied to multiple traces (such as financial statements, production process, factor allocation methodology, etc.), in order to avoid having Starcorp company officials make a single presentation multiple times for separate teams.

[56] The Department notes, however, that its ability to review verification packages was limited by the number of packages that were ready for review and the level of completeness of each package.

[57] For example, the Department made the following eliminations from Starcorp's mandatory reconciliation. The Department: 1) reduced the factor trace package to only one surprise CONNUM; 2) reduced from four to three the number of pre-selected CONNUM FOP packages to be verified; and 3) reduced the number of factor traces to be prepared for two of the three remaining CONNUMs from 33 to 18 factors for the first CONNUM and from 28 to 13 factors for the second CONNUM. Moreover, within its raw materials consumption trace, the Department reduced the number of items to spot-check to four wood inputs and requested consumption data for these inputs for only one month (September 2005). See e.g. Starcorp Verification Report at 57.

to shift the burden of ensuring a successful verification solely on the Department. As stated above, the Department employed every possible means within its control to make efficient use of Starcorp's time and its own time to ensure a successful verification. It is beyond the Department's control, however, to ensure that Starcorp's verification packages are presented in a cohesive and complete manner, as this preparation stems from Starcorp's books and records, which are within Starcorp's, not the Department's, control. Specifically, as the Department's verification report indicates, Starcorp's verification packages were frequently untranslated and lacked requisite documentation to complete a trace. (Such documents were specifically requested in the Department's verification outline and routinely requested in all verification packages.) Moreover, as both the verification report and the Department's Memoranda in Response to Starcorp's Affidavit indicates, Starcorp did not have the majority of its raw material consumption verification packages prepared and ready for the Department's review until the second-to-last day of verification. The Department finds that the Department's inability to complete certain items was a result of Starcorp's lack of preparedness rather than the verifiers' management of the verification, as Starcorp tries to assert. The Department can only make an efficient review of verification packages that are ready to be reviewed and complete. Faulting Department verifiers for not moving swiftly through verification packages that are incomplete or not ready is unreasonable.

Starcorp claims that verification packages were prepared, ready for the Department's review, and present in the verification room during verification, yet faults the Department for not reviewing them. Because the Department verifiers were never actually presented with such packages, the Department cannot draw any conclusions as to whether they were actually prepared or not. Whether these packages were present in the verification room (or elsewhere on Starcorp's premises) is irrelevant because it is not the verifiers' responsibility to hunt through Starcorp's premises to find verification packages. The burden is on Starcorp to present verification packages to the Department. Since time at all verifications is limited, and because the Department is reviewing a respondents' actual books and records for the first time at verification, it is reasonable for the Department to request respondents to present their documents in an organized format so that the Department may move through them effectively and efficiently. When packages are complete, the burden shifts to the Department to review the packages and request additional documents as necessary to complete the package and trace. If Starcorp does not fulfill its responsibility of presenting complete packages to the Department, the verifiers cannot be expected to complete their task of reviewing packages in an efficient manner. As for packages that were presented to the Department, the verifiers reviewed them, requested supporting documentation when necessary, and where items traced, the Department noted so in its verification report. When items did not, the Department noted so accordingly. See Starcorp Verification Report.

The Department also disagrees with Starcorp's depiction of its extent of preparedness, specifically where it states that it presented 9,500 pages of documents to the Department as a means of demonstrating cooperation. The Department notes that the mere act of putting before the Department 9,500 pages of documents is meaningless if Starcorp does not provide the

Department with any way to navigate through such documents. As the verification report clearly indicates, the pages of documents that Starcorp offered to the Department were reviewed, and where they were incomplete, inconsistent, or contradictory, the Department noted such. (The Department's verification report and supporting verification exhibits show that documents relating to factors of production, including labor hours, electricity consumption, non-wood materials, packing materials, and paint, etc. were incomplete, inconsistent and/or contradictory.)[58] Consequently, the Department disputes Starcorp's argument that the verification packages were fully prepared. Starcorp seems to ignore that the relevant factor in demonstrating preparedness is providing the Department with (1) relevant documents and (2) a meaningful way to navigate through and make sense of these documents. The Department does not dispute that Starcorp did so for certain packages, but disagrees that Starcorp did so for all of them. See Starcorp Verification Report.

The Department also disagrees with Starcorp's allegation that the Department did not reserve sufficient time during the second week of verification to review Starcorp's factor allocations. In fact, the Department notes that it began tracing Starcorp's reported labor hours on the first day of the second week of verification. Moreover, due to the unorganized and inconsistent manner in which the labor traces were presented to the Department, the Department spent two-and-half (2 ½) days attempting to reconcile Starcorp's labor hours. Also, Starcorp fails to acknowledge that it did not have a substantial portion of its factor allocation and total consumption packages prepared until the second to last day of verification.[59]

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[58] For example, during verification, Starcorp presented to the Department purchase slips for a certain non-wood material input during the POR. The purpose of reviewing these slips was to confirm Starcorp's total POR raw material purchases of the input. Stacks of these slips were initially presented to the Department in a non-cohesive manner; these slips were not translated and the Department had no way of ascertaining which portions of these slips were relevant to the trace at hand. This manner of presenting documents was inadequate and constituted an inefficient use of the verifiers time because it required the verifiers, who are unfamiliar with Starcorp's books, to navigate their way through numerous untranslated slips, distinguish one slip from another, and make sense out of what is being put before them without explanation. Based on the manner in which these documents were presented to the verifiers, there was no way to determine which entries in the untranslated slips were relevant to the trace, which purchase values in the slips were relevant to the trace, and how these values equaled to the sum of Starcorp's POR purchases of this input. The Department sought to make the best use of their time at verification by requesting that one of the claimed 37 company officials present at verification add up these slips to substantiate a limited portion of the POR purchase total. The Department reasoned that this would enable the Department to continue with its reconciliation of other items until the purchase slip values were totaled. See Starcorp Verification Report at 55-56. This example is just one illustration of the Department making every effort whenever possible to make the best and most efficient use of its time at verification in order to afford Starcorp ample time to present additional verification packages to the Department.

[59] In fact, the Department discussed with Starcorp officials at 6:30 p.m. on March 21, the third to last day of verification, that it was concerned about the number of outstanding items that had not been presented to it, specifically referencing material consumption traces for inputs such as wood, non-wood, and electricity. On the morning of the second to last day of verification, March 22, Starcorp presented the Department with a hand-written list of items prepared and ready for review. This list is attached to the Memoranda in Response to Starcorp's Affidavit.

Next, the Department disagrees with Starcorp's claims that it presented to the verifiers an additional CONNUM trace package that the Department verifiers rejected on the last day of verification. Starcorp first stated in its case brief that it offered CONNUM trace packages to the verifiers and that the packages were rejected. See Starcorp's Rebuttal Brief at 14-15. Starcorp next stated during the hearing before the Department that its counsel presented a single CONNUM package to two of the Department officials at verification who did not examine the verification package and decided to perform a "thinner" plant tour instead. Starcorp's counsel subsequently filed an affidavit, signed by himself, on the record to correct its misstatements at the hearing. In the affidavit, Starcorp again alleged that it presented to the same named Department officials a CONNUM trace package, and that instead of examining this package, the verifiers went on their plant tour. This time, Starcorp's counsel substituted its allegation that the verifiers went on a "thinner" plant tour with a different allegation--that the verifiers went on a "raw material warehouse" tour. See Starcorp Affidavit at 4. The Department verification team collectively recalled the facts differently as to this CONNUM trace package. As the Department's Memoranda in Response to Starcorp's Affidavit indicates, the verification team recalled that Starcorp only presented one additional CONNUM trace package to the Department prior to the very end of the last day of verification, not multiple packages as Starcorp alleges in its brief. Also, Starcorp did not present the additional CONNUM trace package to the two Department officials it named at the hearing and in its affidavit. Rather, a member of the verification team recalls that Starcorp presented the additional CONNUM trace package to the two other members of the verification team on the last day of verification. As the Department's memoranda states, the Department official was presented with this CONNUM package while working through Starcorp's first CONNUM trace package. Upon receipt of this second CONNUM trace package, the senior Department official recalled asking Starcorp whether it would prefer that the Department stop its review of the first CONNUM package to commence review of the second, or continue with the first CONNUM trace until it was completed. The senior Department official recalled that Starcorp responded by stating that it preferred the Department to continue reviewing the first CONNUM trace package and then proceed to the second, time permitting after completion of the first. The Department granted this request. See Memoranda in Response to Starcorp's Affidavit.

The Department has fully reviewed the statements made by Starcorp and its counsel, and the responses provided by its officials that attended the verification. The Department finds that the inconsistent recollections put on the record by Starcorp, as well as the fact that its subsequent affidavit was filed in the "eleventh hour"[60] detracts from the credibility of the statements made therein. However, the Department also acknowledges that people can recall specific facts of the same event differently. In any case, the Department finds that the fact that the recollections of the verification team conflict with the exact recollection of Starcorp's counsel to be irrelevant to its decision here, particularly since, as explained in Comment 62, we have decided not to base our decision as to Starcorp on items we did not have an opportunity to review. However, even

[60] Starcorp did not submit this final statement as to the Department's conduct at its earliest opportunity, which would have been immediately following the verification report, or in its case brief.

when viewing the statements in light most favorable to Starcorp, Starcorp only alleges that late in the afternoon, on the last day of verification, it offered a CONNUM trace to the verification team, and the verification team decided to use the time available to visit one of Starcorp's production facilities. Because the plant tours were a necessary part of the Department's verification, and because it was nearing the end of the working day, this would have been the last opportunity to visit Starcorp's facilities. Hence, the Department finds that this does not in any way suggest an improper use of time, or otherwise a mismanagement of the verification time.

Lastly, the Department finds that all of its verification procedures were proper, completely within the Department's discretion, and employed for purposes of substantiating information presented to it by Starcorp. The Department notes that it worked with Starcorp to reduce items subject to verification and made every effort to make most efficient use of the time at verification (including splitting verification teams, working past scheduled verification hours, and providing two weeks for verification instead of the usual one-week verification). The discussion above and record evidence indicate that verification was indeed a bilateral and interactive process, as the Department worked with Starcorp officials to make the best use of all resources at verification. Moreover, although Starcorp disagrees with certain decisions that the Department officials made during verification, decisions that were wholly within their discretion as verifiers, the fact that Starcorp does not allege any improper conduct on the part of the Department, and in fact is on the record of complimenting the professionalism of the verifiers, further supports the Departments finding that its verification procedures were proper and in accordance with the Department's practice. Hence, the Department concludes that re-verification of Starcorp is not necessary or warranted. Finally, as explained in Comment 62, the Department's decision to apply AFA to Starcorp is not based on the items not reviewed or completed at verification.

**Comment 52: Timing of Verification Outline**

Starcorp insists that by not issuing the full verification outline until the last business day before verification began, the Department prevented Starcorp from effectively preparing for verification. This "tardy" issuance of the verification outline, Starcorp claims, prejudiced it significantly, compromised the Department's ability to accurately calculate a dumping margin for Starcorp, and deprived Starcorp of its statutory right to meaningfully participate in the review and verification process. Starcorp states that its consultants and counsel began preparing what they could using the verification outline from the investigation as a guide on Monday, March 5, 2007. Starcorp also states that it contacted the Department repeatedly as to the whereabouts of the verification outline. Then, Starcorp states that it received the first portion of the verification outline on the morning of March 8 (in China). Specifically, Starcorp claims that the Department failed to provide any portion of its outline to Starcrop until March 7 (China time), did not provide which sales traces would be verified until the morning of Thursday, March 8, and did not provide FOP/CONNUM information until so late on March 8, 2007, that it could not be acted upon until the last business day before verification began. Thus, Starcrop contends that it was significantly prejudiced by the lack of time it had to prepare for verification.

Starcorp states that it was crucial that it receive the Department's verification outline in accordance with its "longstanding practice" of releasing the outline at least seven days before verification starts. See Certain Artist Canvas 3/30/06 Memo at Comment 11. Starcorp references the CIT's decision in Rubberflex to argue that the Court requires re-verification where the "effects of {the Department's tardy issuance of a verification outline} reverberated through verification." See Rubberflex, 59 F. Supp. 2d eat 1348. Starcorp claims that the late release of the outline effectively precluded it from preparing much of the FOP verification materials before Friday evening of the first week of verification, March 16, 2007. Page 13. Starcorp also states that the late release of the outline prevented it from noticing all the "minor errors found in preparing for verification." Citing to Rubberflex, Starcrop states that when the Department "fails to issue a verification outline until the last moment, it is entirely unreasonable to expect a respondent to report errors found 'during preparation for verification prior to the start of verification.'" See Rubberflex 59 F. Supp. 2d at 1347.

For example, Starcorp argues that in scheduling verification with the Department, Starcorp stated that the Chinese New Year (Feb. 18 - 25th) would be a particularly difficult time for verification. Page 9. Starcorp also contends that it notified the Department that virtually all of Starcorp's personnel would be returning from the Chinese New Year's holidays on Monday, February 26, 2007, and would have no time to prepare for verification before or during the holiday, in light of the supplemental questionnaire response (reconciliation of the plant-specific and combined FOP databases) due on March 2, 2007. Thus, Starcorp alleges that it agreed to verification during the "week" of March 12, 2007. Starcorp then suggests that the Department represented to it that verification would cover roughly the same points as the verification during the investigation and would last through the middle of the second week, and that this led Starcrop to set its expectations regarding the likely length of verification. Starcorp states that the Department later informed it that verification was scheduled for two weeks. Starcorp also states that the Department was to provide Starcorp a full week to prepare for verification, in accordance with standard practice. Starcorp also points out that because adequate time for preparation appeared to remain, it did not request to alter the verification schedule. Starcorp speculates that had the Department notified it of the length and depth of the verification, Starcorp would have insisted on a three week verification.

Starcorp next states that despite "repeated contact" with the Department regarding the whereabouts of the verification outline throughout the week preceeding verification, the Department did not provide the first part of the outline until March 7, 2007, (Chinese Shanghai time), did not provide the identity of the pre-selected sales traces until Thursday, March 8, and did not provide FOP/CONNUM information until "late" on March 8, 2007. Starcorp also argues that it authorized the Department to send the full outline via fax or e-mail but the Department refused. From March 5, 2007, until the date that the outline arrived, Starcorp stated that it relied on the outline from the investigation as a preparation guide.

Starcorp also declares that the tardy release of the verification outline compounded by the "homework" assignments required of it by the Department during verification effectively

precluded Starcorp from preparing much of the FOP verification materials before Friday evening of the first week of verification, March 16, 2007. Starcorp also states that it is unreasonable for the Department to hold Starcorp responsible for its lack of preparedness since, as Starcorp argues, the Department transmitted its verification outline late.

Petitioners contend that Starcorp had adequate notice of the information required by the Department at verification and should have been prepared to present that information at verification. Petitioners assert that the verification outlines presented to Starcorp before verification described the types of documentation required by the Department, and specified that these documents should be prepared and translated prior to verification. Petitioners also note that Starcorp had been verified previously, and had experienced counsel.

Petitioners argue that Starcorp failed to provide or present pre-selected CONNUM traces. Petitioners state that, even though the Department attempted to facilitate matters by 1) reducing the number of CONNUM-FOP packages and number of factor traces it had asked Starcorp to prepare, 2) splitting into two teams, and then four teams, in order to complete as much of the verification as possible before the deadline, and 3) asking Starcorp on the morning of the second to last day of verification to produce a list of document packages and homework assignments that already had been prepared, in order to review the list and select the packages it would examine further over the next two days, Starcorp still did not present the majority of these packages until the very last day of verification, presented packages that were incomplete, and did not present some of these packages at all. Petitioners state that Starcorp ultimately produced only one of the four CONNUM-FOP packages that the Department requested prior to verification.

Petitioners explain that the Department's verification procedures were reasonable and did not constitute an abuse of discretion for a variety of reasons. First, Petitioners point out that the timing of the Department's release of the verification outline is a direct consequence of Starcorp's failure to timely answer the Department's fourth supplemental section D questionnaire. Petitioners specifically indicate that Starcorp only produced plant-specific FOP data 23 days before the preliminary results, and only then did Starcorp reveal "for the first time" that its combined FOP database contained CONNUM average FOP values derived on the basis of sales quantities. Petitioners also state that at this point, the Department remained unaware that Starcorp mixed production and sales quantities to derive FOPs within CONNUMs. Moreover, Petitioners argue that Starcorp's failure to timely provide plant-specific information had consequences that lasted through the eve of verification. Given Starcorp's questionnaire responses, Petitioners claim that the Department had to have certain information clarified by Starcorp which it solicited in the fourth supplemental questionnaire, including requesting Starcorp to reconcile its plant-specific FOP databases to its financial records. Petitioners contend that Starcorp repeatedly delayed submission of critical information, necessitating the Department's issuance of the fourth supplemental questionnaire after the preliminary results. Additionally, Petitioners point out that the Department's issuance of a fourth supplemental questionnaire at this time was unprecedented because it gave Starcorp an opportunity to clarify its data submissions in order to ensure a smooth verification during a time when the Department

is normally preparing for verification. Petitioners also emphasize that Starcorp's delay in providing its response compromised the Department's ability to provide Starcorp with the verification outline seven days in advance of the verification team's arrival in China.

To illustrate their point, Petitioners submitted a time line to illustrate the following facts: that the Department issued a fourth supplemental questionnaire to Starcorp within a mere five calendar days after the publication of the preliminary results, Starcorp requested an extension six days later, the Department granted a partial extension the next day (stating that "{d}ue to statutory deadlines...the Department is unable to grant Starcorp's full request"),[61] Starcorp asked for another extension six days later, the Department again granted Starcorp a partial extension the next day, and finally Starcorp provided its response to the Department's fourth supplemental questionnaire 16 days later (only 10 calendar days prior to the commencement of verification). Petitioners also point out that the Department released the sales and cost portions of the verification outline four and five calendar days, respectively, after receipt of Starcorp's fourth supplemental questionnaire response. Petitioners finally point out that the Department released the sales portion of its verification outline 6 calendar days before commencing Starcorp's sales verification, and released the cost verification outline 12 calendar days before commencing Starcorp's cost verification. Petitioners state that Starcorp did not count calendar days, but counted business days for purposes of protesting the number of days between the Department's issuance of its verification outline and the commencement of verification.

Petitioners conclude that Starcorp exacerbated the adverse effect on the verification schedule by repeatedly asking for extensions, and thereby shortening the interval from the date of submission of responses to the commencement of verification. Petitioners propose that if Starcorp had answered the questionnaire by the original due date, the Department would have had 19 calendar (13 business) days before the commencement of the sales verification to finalize the release of the verification outlines. Petitioners argue that this point, along with the alacrity with which the Department released verification outlines once Starcorp submitted its last response, makes it difficult to understand how Starcorp can state that the Department departed from its ordinary practice of releasing verification outlines seven days prior to the beginning of verification.[62]

Thus, Petitioners conclude that it is Starcorp, not the Department, who is responsible for any delays in the release of the verification outlines. In support of their argument, Petitioners point to the Department's questionnaire which advised Starcorp that the "administrative review is on a schedule dictated by law...incomplete or deficient {responses} to the extent that the Department considers it to be non-responsive...will not {be} issued supplemental questions but will use facts

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[61] Petitioners note that the Department also stated that "any further extension requests for this questionnaire should be considered in the context of the schedule for this review and may result in less time being provided for future responses or the rejection of future extension requests."

[62] Petitioners state that the Department's practice of releasing the verification outline seven days in advance of the commencement of verification is a practice, not a rule. Petitioners reason that the Department is free to change its practice so long as it provides a reasoned explanation for doing so, and cite to two cases to support this reasoning: Rust v. Sullivan, 500 U.S. 187; Allegheny Ludlum Corp., 112 F.Supp. 2d 1141.

available." Petitioners note that the Department also warned Starcorp in its supplemental questionnaires that if it fails to act to the best of its ability to comply with the Department's request for information, the Department may use adverse information. Petitioners rebut Starcorp's argument that the Department deprived it of sufficient time to prepare for verification, explaining that Starcorp "conveniently ignores" the impact of its own delays and extension requests on the overall timing of verification.

Next, Petitioners state that Starcorp agreed to the dates of verification and made no submissions to the Department objecting to the timing of the verification outline or the timing of the verification, and also that it never sought to postpone verification. Petitioners thus call into question Starcorp's claim that its agreement to the verification dates was conditioned upon the Department's release of the verification outline seven days before the commencement of verification. Petitioners, moreover, note that nothing in the record memorializes this alleged condition, but rather, the record memorializes the warning the Department gave to Starcorp that the review schedule was dictated by law and that repeated requests for extensions of time would have consequences.

Additionally, Petitioners disagree with Starcorp's statement that its personnel had no time to prepare for verification upon their return from the Chinese New Year holidays because they were responding to the Department's fourth supplemental questionnaire. Petitioners state that Starcorp employees were busy responding to this questionnaire because Starcorp did not respond properly to the Department's original and first through third supplemental questionnaires. Petitioners take issue with Starcorp's argument that its "need to respond to the Department's 'homework' assignments effectively precluded Starcorp from preparing much of the FOP verification materials before Friday evening of the first week of verification, March 16, 2007." Petitioners explain that this statement by Starcorp highlights the fact that Starcorp's behavior of refusing to cooperate during prior stages of the review, particularly with respect to submitting plant-specific FOP data, was the cause of the problems encountered during verification. Thus, Petitioners conclude that the blame for failing to prepare lies solely with Starcorp.

Petitioners also point out that in claiming that it lacked adequate time to prepare for verification, Starcorp's focus on the interval between the release of the cost verification outline and the commencement of the sales verification is misleading. Petitioners point out that the cost and sales verifications are different spot checking exercises, each with its own documentary requirements. In support of their point, Petitioners state that Courts have recognized that the Department's methodology does not contemplate using incidental information from sample sales documents to verify factor of production data, and cite to Tianjin, 353 F. Supp. 2d 1294. Thus, Petitioners maintain that Starcorp's difficulties arose primarily in connection with the cost verification for which the outline was released more than seven days in advance of the commencement of verification, and therefore conclude that the Department did not impair Starcorp's ability to prepare.

Next, Petitioners point out that Starcorp failed to produce documents that cannot be prepared in advance of verification, specifically, "surprise" CONNUM traces. Petitioners state that the surprise CONNUMs afford respondents no opportunity before verification to prepare the trace documents. Petitioners state that the Department followed its standard procedure with respect to assigning surprise CONNUM traces at verification. Petitioners argue that if the inability to prepare in advance of verification was the sole cause of Starcorp's difficulties, it would be expected that Starcorp could have compiled the trace documents for the surprise CONNUMs for which no pre-verification was possible, but Petitioners note that Starcorp could not.

Lastly, Petitioners rebut Starcorp's allegation that the verification schedule imposed a hardship on it by reasoning that such hardship was ameliorated by the Department's unusual and generous on-site modification of its verification procedures, where the Department specifically: 1) reduced the factor trace package to only one surprise CONNUM; 2) reduced from four to three the number of pre-selected CONNUM FOP packages to be verified; and 3) reduced the number of factor traces to be prepared for two of the three remaining CONNUMs from 33 to 18 factors for the first CONNUM and from 28 to 13 factors for the second CONNUM.

**Department's Position:** The Department disagrees that Starcorp has adequately demonstrated that the timing of the Department's issuance of the sales and cost verification outlines impeded Starcorp's preparation for verification and materially prejudiced its participation in the verification. See Starcorp AFA Memo. However, because the Department's decision to base Starcorp's margin on total facts available with an adverse inference ultimately rests on facts unrelated to preparedness at verification, it is not necessary for the Department to reach any conclusions with respect to whether or not and to what extent the timing of the outlines may have affected Starcorp's ability to adequately prepare for and participate in verification. See Starcorp AFA Memo.

The Department normally strives to issue verification outlines seven calendar days prior to the commencement of verification. The Department acknowledges that it issued Starcorp's sales verification outline on March 7, 2007, five calendar days prior to the commencement of Starcorp's on March 12, 2007. The Department further acknowledges that it issued Starcorp's FOP verification outline on March 8, 2007, three calendar days prior to the commencement of Starcorp's sales verification. The Department delayed the issuance of the FOP outline in this case because the Department did not receive Starcorp's final supplemental questionnaire response until March 5, 2007, and the Department believed that this final response contained information relevant to preparation of the FOP outline.

Starcorp relies on Rubberflex to support its argument that the Department's timing with respect to the release of its verification outline directly impacted Starcorp's ability to prepare for verification. In Rubberflex, however, the CIT did not rule that the timing of the Department's issuance of the verification outline was the sole cause of respondents' inability to prepare for verification. In fact, the Court in Fujian clarified Rubberflex, and declined to adopt a per se rule for the number of days in which verification outlines must be issued to respondents. See Fujian,

178, F. Supp. 2d 1315. Rather, in Fujian, the Court applied what it deemed to be the "essential test of Rubberflex," which asks whether the verification outline was issued so tardily as to preclude the respondent from having a meaningful opportunity to participate in the review process. See Fujian, 178, F. Supp. 2d 1315 (citing Rubberflex 59 F.Supp. 2d at 1345).[63]

Further, in Rubberflex, the Court placed sufficient weight on the Department's decision to deny the exporter's request to delay verification to allow further time for preparation. See Rubberflex 59 F. Supp. 2d at 1343. With respect to Starcorp, no such request was made. As the Court expressed in Fujian, if an exporter foresees a problem with the scheduling of verification, either initially or after the Department delays issuing a verification outline, it should inform the Department immediately rather than wait to make post hoc objections after a failed verification. As noted above, Starcorp did not request a delay in verification, nor at any time during the verification did it indicate any problems with respect to preparation of the required materials. See Starcorp verification report, at 6. However, towards the end of the first week of verification, because the Department grew concerned about the pace of the verification and the level of Starcorp's preparedness, the Department decided to reduce the number of traces and verification packages so as to cover as much as possible within the time frame allotted. See Starcorp verification report, at 6.

While the Department does not believe the record supports a conclusion that Starcorp was prejudiced by the timing of the issuance of the verification outlines, as noted above we do not need to reach a conclusion with respect to this issue. As explained in detail in the Starcorp AFA Memo, the Department determined not to apply any adverse inferences with respect to items not covered at verification or for which Starcorp was not adequately prepared at verification. See Starcorp AFA Memo. Rather, the Department's decision to apply AFA to Starcorp rests on Starcorp's failure throughout this proceeding to provide timely information in the format requested by the Department and on fundamental deficiencies in Starcorp's record keeping and financial recording system. Thus, no conclusion with respect to the impact of the timeliness of the outlines is necessary or warranted.

The Department also refutes Starcorp's assertions that the Department misled Starcorp as to the duration of Starcorp's verification. Contrary to Starcorp's allegations, the Department never alluded to a one-week verification for Starcorp. Rather, Starcorp was integrally involved with setting the time-table for verification, including the commencement date, and Starcorp agreed to the duration of verification. Starcorp does not point to any record evidence to the contrary.

The Department further disagrees with Starcorp that it assigned too many "homework assignments" and that this impeded its ability to adequately prepare for subsequent verification items. The Department notes that it is very common, and in fact customary, to request

[63] In Fujian, the same Court determined that respondents did not demonstrate that they were materially prejudiced by the late issuance of the Department's verification outline. See Fujian 178 F. Supp. 2d at 1317.

respondents to complete certain assignments during the course of verification.[64] These assignments relate to the items covered during verification which require further clarification or substantiation. Rather than wasting limited verification time by waiting for such clarifications/substantiations, the Department requests that the clarifications/substantiations be performed as homework assignments. Tabling such items for later preparation as "homework" enables the Department and the company officials to continue with the remaining verification items during the day, and provides to the company officials non-verification time to prepare requested clarifications/substantiations. This practice has been in effect for years because it is efficient and does not disrupt verification. Moreover, the particular homework assignments assigned to Starcorp were not complex or time consuming in nature. They were necessary, but limited. In fact, the Department's homework assignments were clarifications/substantiations relating to information already reported to the Department such as details of Starcorp's accounting system and a list of all of its accounts, beyond the simplified 4-digit level; examples of factor conversions from m2 to m3; pulling accounting books to show verifiers certain year-end values; and overview worksheets of plant and production lines.

**Comment 53: Appropriateness of Plant-Specific versus Combined FOP Data and Valuation of the Appropriate Data**

Starcorp argues that the Department should use Starcorp's single, facility-wide (i.e., combined) FOP database in its margin calculation. Starcorp claims that the Starcorp entity operates as a single production facility and its FOP database must be viewed similarly. First, Starcorp explains that its legal organization, sales structure, purchasing practice, production, and single inventory system support such use. Starcorp further explains that it is made up of five legal entities and Shanghai Starcorp, Starcorp Furniture, Star and Orin collectively operate plants 1, 2, 3, and 5, and purchase raw materials for use by all plants. Starcorp states that at verification the Department "heard testimony" and witnessed information about the legal organization, sales structure, raw material purchases, production, and single inventory system of Starcorp's operations which compel the use of the single, facility-wide FOP database.

Starcorp argues that the Department's use of plant-specific FOP database files was incorrect in the Preliminary Results, despite information on the record that these files were "clearly" inferior to the single, facility-wide FOP database file. Starcorp also states that it had "repeatedly" informed the Department that it did not keep plant-specific FOP data in the format requested in the normal course of business. Starcorp argues that the creation of the plant-specific FOP data was a substantial undertaking that is inconsistent with its books and records (which may have resulted in the omission of some inter-plant transfers or cross-plant production processes). Starcorp insists that because it does not have sophisticated information technology capabilities,

[64] "Homework" assignments during verification are routine. They refer to open items that are discovered during the course verification which require further explanation by the company. Thus, the Department gives the respondent company time (often until the next business day) to prepare their responses and documentation to substantiate these open items, while the Department verifiers move on to additional open items in the meantime.

compiling information for the Department required additional time and effort. Starcorp argues that it has much more confidence in the integrity of the facility-wide data due to "factors, including the level of integration in this review, the number of occurrences of intra-plant transfers of raw materials, frequent production across multiple plants, and the production of the same merchandise in more than one plant."

Also, Starcorp states that it prepared and presented "limited factor reconciliation packages on a plant-specific basis." Starcorp also maintains that it prepared and presented at verification a package that included a "list of products produced during the POR" and a "concordance list of product codes and CONNUMs" in which Starcorp listed the product codes and their corresponding total production quantities by each plant. Starcorp states that the Department reviewed these lists but did not include them in its verification exhibits. Starcorp also stated that for a certain CONNUM, it used plant-specific data for each piece of the product comprising the CONNUM and illustrated how the FOPs of the pieces were summed to derive the FOP for the set. Starcorp finally insists that it made available its records of the monthly finished goods inventory books containing the product codes, production quantities, and the plants that made these products, but claimed that the Department chose not to review them.

Petitioners contend that there are deficiencies in the alternative plant-specific databases submitted by Starcorp with its January 8, 2007 submission. Petitioners assert that the data in these databases were grossly inconsistent with the aggregate, company-wide data provided as part of the same submission, and were not accompanied by any narrative explanation, underlying documentation, or supporting worksheets. Petitioners argue, further, that the data contradicted Starcorp's claim that its four facilities were interchangeable.[65] Additionally, Petitioners contend that differences in product mix between plants were not simply the result of timing and that Starcorp had significant production of non-subject merchandise. Petitioners argue that the apparent errors and inconsistencies in these databases affected the comparisons of sales accounting for a significant portion of Starcorp's U.S. sales value.

Petitioners contend that Starcorp continued to provide incomplete, misleading and false responses after the Preliminary Results. Petitioners assert that in Starcorp's response to the Department's Fourth Supplemental Section D Questionnaire dated February 14, 2007, Starcorp did not provide updated plant-specific FOP data; did not provide worksheets indicating how the costs reported on its audited financial statements reconciled to the general ledger or trial balance and to the cost accounting system; failed to reconcile each plant's FOP with the financial records of the legal entity owning each plant; did not reconcile the plant-specific FOP database that it submitted on January 8 (and was used by the Department in the Preliminary Results) to plant-specific inventory records; did not provide a summary of the costs associated with those items that make up the difference between the sum of the FOPs for the CONNUMs with POR sales to the United States and the aggregate FOP across all products; did not reconcile FOPs based on the

[65] See Attachment 3 to Petitioners' January 12, 2007 submission for the proprietary evidence of these inconsistencies.

four individual plants' piece production; and did not reconcile the reported FOPs with the books and records from the period in which those items were produced or explain what it meant by the "most similar product" used to report FOPs.

Petitioners argue that Starcorp failed to provide support for the plant-based FOP databases used by the Department in the Preliminary Results. Petitioners assert that Starcorp failed to prepare any factor reconciliation packages or other packages supporting the plant-specific FOP databases, or the plant-weighted average FOP database. Petitioners argue that Starcorp's failure to provide at verification adequate support for the very databases identified previously by the Department as being most relevant to this proceeding in and by itself should suffice to deem the verification a complete failure.

Starcorp disputes Petitioners' understanding about its structure, operation, and book/record keeping. Starcorp argues that Petitioners failed to comprehend the "extraordinary" efforts it took to create plant-specific FOP data, which do not exist in Starcorp's ordinary course of business. Starcorp states that Petitioners distorted the record as to what Starcrop stated regarding the proprietary nature of using these files and what Starcorp stated regarding when it could produce these files.

Starcorp maintains that it "fully" complied with the Department's request consistent with how Starcorp operated and how it kept its books and records. Starcorp opposes Petitioners' claims about its lack of openness regarding why the combined, plant-wide FOP database should be used instead of a plant-specific databases. Starcorp contends that it explained to the Department in submissions and conference calls with the Department's cost accounting staff that to prepare plant-specific FOP files necessitated assembling data that did not exist on a plant-specific basis in the normal course of business. Starcorp also states that it objected to submission of plant-specific FOPs, explaining that it did not keep plant-specific FOP data pursuant to the Department's request. Starcorp emphasizes that providing plant-specific databases to the Department would require "creation" of plant-specific FOPs and that this was an "enormous undertaking" as it required reverse-engineering data kept in the ordinary course of business.[66] Starcorp states that in its November 9, 2006, extension request, as well as other correspondence with the Department (e.g., telephone calls), it communicated this to the Department. Starcorp also states that it had explained in its January 8, 2006, submission to the Department that the use of plant-specific FOPs were not the best approach in the investigation and in this review. Yet, Starcorp maintains, it made its best efforts to comply with the Department's request and submitted the files at the earliest possible time. In fact, Starcorp asserts that the only inference to be drawn from its cooperation to provide, from scratch, plant-specific FOP data which do not

[66] Specifically, Starcorp states that it had to trace and reverse inter-plant transfers and development of manufacturing allocations for products made across more than one plant in or more than one plant. To do so, Starcorp explains that it was required to aggregate the consumption of materials that are issued to each plant based on their respective records to obtain the plant-specific consumption, and then allocate the plant-specific consumption over the production at each plant.

reflect how it operates and which are not used in the normal course of business, is that Starcorp was doing everything possible to cooperate with the Department in this review, even where it deemed the Department's request to be "entirely unreasonable." Additionally, Starcorp emphasizes that it was ultimately able to produce its plant-specific FOPs and submit them to the Department before the Preliminary Results, and persists that it thereby "enabl{ed}" the Department's requests for information.

Starcorp insists that during the questionnaire phase of the review, both Petitioners and the Department did not understand the distinction between the Starcorp companies and its plants. Starcorp emphasizes that it operates as a single facility with respect to its level of integration of plants, the frequency of inter-plant transfers of raw materials, the frequency of production across multiple plants, and the production of the same merchandise in more than one plant. Thus, Starcorp concludes that it has much more confidence in the integrity and reliability of the facility-wide database than in the plant-specific data, and that using plant-specific data is neither appropriate nor reasonable.

Starcorp contends that the record, including the verification report, establishes that Starcorp's single, facility-wide FOP database is the most accurate and appropriate source for FOP information. Starcorp highlights a few major arguments to support its contention: its plants were designed to operate, and do operate, interchangeably as one facility; its plants operate as a single plant for the selling companies collectively; its companies, not plants, purchase raw materials; there is no correlation between plants and companies in general and with respect to production; the same product can be produced at different plants; a single product may be produced across plants; there is one single, integrated inventory system for all plants; and plants will share unused raw materials.

Starcorp explains that despite Petitioners' allegations, its "variances" were not abnormal and were not "variances" at all. Starcorp explains that its consumption ratios were the most reasonable and accurate method Starcorp had at its disposal to allocate its FOP consumption among products. Finally, Starcorp argues that the Department "successfully" verified this methodology.

Petitioners insist that the Department did not err in the preliminary results. First, Petitioners claim that data collected at verification provide evidence that Starcorp's FOP databases are inconsistent with one another. Refuting Starcorp's argument that some factors reconciled from the combined to plant-specific FOP files, Petitioners point to Starcorp's databases to argue that there exist substantial discrepancies between the combined and plant-specific databases with respect to weighted-average FOPs for the same CONNUMs (where sales data and proxy FOP data were used).[67] Petitioners conclude that since record evidence demonstrates that Starcorp's plant-specific and combined databases are inconsistent with one another with respect to FOPs for certain CONNUMs, both are unreliable for calculating an accurate dumping margin. Petitioners

[67] Due to the proprietary nature of this discussion, please see Petitioners' rebuttal brief.

also explain that Starcorp's use of sales data and proxy data to weight-average their FOPs impacts a significant number of Starcorp's U.S. sales and precludes a price-to-price comparison. Thus, Petitioners conclude that as a result of the Starcorp's FOP database inconsistency, its impact on Starcorp's U.S. sales data, as well as the many other discrepancies, errors and inconsistencies discovered by the Department at verification, the Department has no alternative but to assign total adverse facts available to Starcorp. In support of their conclusion, Petitioners explain that it is the Department's practice to base a respondent's margin on total facts available when "flawed and unverifiable cost data render {} all price-to-price comparisons impossible." See Rubber Thread from Malaysia, 63 FR 12753.

Next, Petitioners argue that the Department properly relied on plant-specific FOP data in the Preliminary Results. First, Petitioners argue that use of the combined FOP database is inconsistent with the Department's normal practice of relying on facility-specific FOPs in instances where subject merchandise is produced at multiple plants. Second, Petitioners emphasize that there is no single entity called the "Starcorp Group." In fact, Petitioners state that the "Starcorp Group" has no legal existence, no tax returns and no credible audited financial statements. Petitioners contend that using the consolidated database, as Starcorp suggests, will eliminate distinctions between the four production facilities in terms of factor usages, efficiencies, yield losses, and product specialization in spite of the verification report confirming that the different facilities focus on different production lines.

Petitioners also argue that Starcorp ignores the fact that the weighted-average FOP data based on its plant-specific databases is inconsistent with the single, facility-wide FOP database submitted on the same date (January 22, 2007). Thus, Petitioners conclude that the Department cannot rely on any of the FOP databases submitted by Starcorp and that they should be rejected as unreliable.

Moreover, Petitioners assert that any problems resulting from the use of the plant-specific FOP data are due solely to Starcorp's uncooperativeness with respect to the Department's specific instructions to prepare the FOP data on a plant-specific basis. Petitioners point out that Starcorp takes issue with having to create for the Department plant-specific files yet takes no issue with creating financial statements for a fictitious entity. Petitioners also dispute Starcorp's argument that the plant-specific files are "created" for the Department without any foundation in reality. Citing to the Department's verification report, Petitioners state that the Department determined at verification, through Starcorp's own admission, that it could identify the plant-specific gross and net usage figures for wood materials, which Petitioners point out are keys to Starcorp's wood allocation methodology used to determine the actual per-unit consumption of wood on a product-specific basis. Furthermore, Petitioners assert that Starcorp had this information but instead chose to ignore the Department's specific and repeated instructions to provide plant-specific FOP databases until January 8, 2007, more than three months after the submission of Starcorp's first Section D response. In addition, Petitioners point out that Starcorp's ultimate plant-specific submission was incomplete with respect to accounting for variances since Starcorp applied to each input the single, facility-wide variance.

Petitioners also call into question Starcorp's rationale that the presence of its U.S. sales of "sets" makes it inappropriate to rely on plant-specific data. Petitioners claim that, similar to reporting production of individual pieces, Starcorp's methodology of deriving data for sets based on the pieces that make up a set would have worked equally well on a plant-specific basis. Petitioners propose that for only those sets that incorporate pieces from different plants, Starcorp could have reported cross-plant data.

Petitioners insist that Starcorp was fully aware of the fact that the Department relied on the plant-specific FOP data in the Preliminary Results, and was on notice that the Department considered the plant-specific data to be the most relevant data for its margin calculations. Petitioners reason that Starcorp should have been fully and completely prepared to present support for the plant-specific data submitted to the Department. However, Petitioners state that the Department's verification report unambiguously demonstrates that Starcorp did not prepare or present any factor reconciliation packages for the plant-specific or plant-weight-averaged FOP databases.

**Department's Position:** The Department finds that record evidence does not support Starcorp's claims that its combined FOP databases are a more accurate reflection of its activities than the plant-specific FOP database. The Department has also determined that, because Starcorp failed to provide requested information by the Department's stated deadlines and in the form and manner requested, which would allow the Department to determine which of Starcorp's FOP databases are appropriate for use in its margin analysis, Starcorp significantly impeded the Department's ability to calculate an accurate dumping margin for Starcorp.

The Department disagrees that Starcorp provided information to the Department in a timely manner, or that the information that was ultimately provided was sufficient. Specifically, Starcorp failed to provide to the Department its FOP data on a plant-specific basis, despite the Department's repeated requests for such information and explanations as to why such information was necessary. Starcorp initially reported to the Department that it operates four separate plants, each of which produce finished subject merchandise from raw material inputs. The Department's normal practice with respect to respondents with multiple production plants is to weight-average plant-specific FOPs by CONNUM. In fact, Section D of the Department's supplemental questionnaire, released to Starcorp on July 28, 2006, required that the respondent provide information regarding the plant-specific FOPs from each of Starcorp's company's plants that produce subject merchandise. The Department normally finds that, due to differences in product mixes and production efficiencies at different plants, this methodology ensures that the Department's calculations are as accurate as possible. In its October 2, 2006, Section D questionnaire response, rather than submit weighted-average information from its four production facilities, and without informing the Department that it needed a different reporting methodology, Starcorp instead submitted an FOP database based on the "combined" data from the four plants in a combined plant database. Within its submission, Starcorp asserted that its combined FOP data base reflected its actual total factors' consumption during the POR and was the most appropriate FOP database to use to determine Starcorp's per-unit FOPs. See Starcorp AFA Memo.

The Department's July 2006 questionnaire provided clear direction to Starcorp regarding the manner in which to report factors of production where a company operates more than one plant that produces the merchandise under review. Also, because it is the respondent, not the Department, that has control of the respondent's data, the burden by necessity falls on the respondent to inform the Department if it believes it is not appropriate to respond to the Department's questionnaire in the manner requested. Starcorp did not inform the Department prior to submitting its questionnaire response that it would not be submitting its data in accordance with the Department's explicit instructions. In its October 2, 2006 response, Starcorp simply stated that it believed a combined, rather than a weighted-average, FOP database was more appropriate. Starcorp did not provide any reasoning to substantiate this claim other than that it operates the four plants as a single facility, and thereby did not provide the Department with sufficient explanation for the Department to assess the merits of its arguments regarding this issue.

In the its first supplemental questionnaire regarding FOPs, dated November 3, 2006, the Department again instructed Starcorp to provide separate databases for each of its four plants and a weighted-average database reflecting the activity at those four plants. On November 9, 2006, Starcorp requested a three-week extension to respond to this questionnaire. Notwithstanding its two extension requests, made specifically in part to report the plant-specific data, and the 26 days Starcorp had to respond to our supplemental questionnaire, Starcorp again failed to comply with the Department's request for the plant-specific FOP databases in its November 29, 2006 supplemental questionnaire response. Rather, in its November 29 and its subsequent December 12 questionnaire responses, Starcorp continued to assert the accuracy and relevance of the "combined" database. Moreover, when requesting extensions, Starcorp specifically stated that it needed time to report the information requested, yet later informed the Department that, as an integrated facility it does not track the information in the manner requested. (Surely when requesting these extensions, Starcorp must have been aware that it was not going to provide the requisite plant-specific and weighted-average databases as requested by the Department.) In reiterating its contention that the combined FOP database was more appropriate than weight-averaging the data across the four plants, Starcorp did not at all address the issues related to plant efficiencies (which are likely distorted when FOP data is aggregated on a combined plant basis), and only partially addressed differing product mixes across the plants. These two points are the specific reasons that the Department requests plant-specific and weighted-average databases in the first place.

On December 20, 2006, after reviewing Starcorp's November 29, 2006, response that did not contain the requested plant-specific and weighted-average databases, and its December 12, 2006, response that purported to, but did not, provide documentation substantiating its claims regarding the superiority of the "combined" data, the Department offered Starcorp yet another opportunity to demonstrate the validity of its claims by issuing another supplemental questionnaire on December 20, 2006. In its January 8, 2007 response, (only 23 days prior to the statutory deadline for issuance of the Preliminary Results), Starcorp responded by reiterating its same arguments, for example, that its plants operate as an integrated entity for the collective Starcorp

legal entities, and that the plants do not correlate to legal entities, etc. Also, in this questionnaire response, Starcorp provided a plant-specific database, but this database did not fully reconcile with the combined plant database with respect to several CONNUMs. Next, on January 19 (only 12 days prior to the statutory deadline for issuance of the Preliminary Resuts), and in response to comments submitted by Petitioners on January 16, 2007, Starcorp first attempted to explain the discrepancies in its databases. However, Starcorp's explanations were limited and did not resolve all CONNUM discrepancies between its databases. Subsequently, on January 22, 2007 (only 9 days prior to the issuance of the Preliminary Results), Starcorp provided a narrative explanation of its deficiencies but did not provide a reconciliation of its discrepancies in an electronic format that would have allowed the Department to analyze Starcorp's explanations with respect to an extensive number of CONNUMs provided in each given database. See Starcorp AFA Memo.

Had Starcorp submitted and described these databases in October 2006, as originally requested by the Department, or even in November 2006, as subsequently requested by the Department, there would have had an opportunity to analyze them and issue supplemental questionnaires soliciting information to clarify or rectify, as appropriate, these inconsistencies. However, because Starcorp had withheld these data until just before the Preliminary Results, the Department was deprived of the opportunity to seek any such clarification or corrections before issuing those results. Moreover, Starcorp's failure to be forthcoming regarding the nature and content of the data contained in each of the databases deprived the Department of the ability to understand and analyze these data adequately prior to issuance of the Preliminary Results, thus significantly impeding the Department's analysis regarding which data set would yield the most accurate margin for Starcorp.[68]

In reviewing the entire record before us, we have determined that Starcorp's contentions that the company-wide combined FOP data are necessarily more accurate than the plant-specific FOP data are not supported by record evidence. For example, there appears to be no direct correlation between which legal entity purchases the raw material and which factory actually consumes it, as Starcorp alleges. It is further unclear how this fact would impact the accuracy of the plant-specific but not the combined FOP databases. Based on the description of Starcorp's allocation methodologies, it is difficult to understand the company's contention that it would have to derive

[68] We note that Starcorp, in its case brief, makes assertions that it made certain items available during the verification concerning the reconciliation packages of its plant-specific databases that were not ultimately included in the Department's verification record. See Starcorp's case brief at 40. Because these assertions are vague and open-ended, it is difficult to discern Starcorp's views as to the relevance of either this information or the statements made in its case brief. Starcorp does not relate how it believes this claimed information should be relevant to the Department's decision. Because Starcorp does not even make an argument as to how this information should impact the Department's decision, and because the assertions relate to information that is not on our record, it is impossible to evaluate how this information should be treated within the context of our decision. We note that in this review, Starcorp had been provided more than ample opportunity to raise what it viewed as mistakes in our verification record, and did so in a subsequent submission to the Department. However, these particular assertions were not included in that submission.

all new allocation methodologies to derive plant-specific FOPs. First, with respect to the items that it already tracks on a model-specific basis, the reporting methodology should be the same regardless of whether Starcorp is reporting on a combined- or plant-specific basis. Second, with respect to the allocations involving net consumption, Starcorp itself stated that the total model-specific production quantities and the respective BOMs for each product served as the basis for this calculation. This was, in fact, how it derived the net BOM consumption values for total production. Starcorp also explained at verification that it maintained a production report identifying each piece of merchandise produced, by production plant. From these data, Starcorp compiled the quantities produced for purposes of its combined FOPs on a corporate-wide basis. However, since the production and inventory data are maintained in Excel files that track the data by plant, all Starcorp would have had to done differently was to aggregate the data by plant, rather than company wide and complete the calculations already completed for its combined FOP database on the plant-specific bases. Especially since, as Starcorp stated, regardless of which plant produces the product, the BOM is the same.[69] This does not appear to be so extraordinarily difficult given that the data is maintained in an Excel file, as is Starcorp own data. See Starcorp AFA Memo.

Also, for the reasons stated above, the Department is not convinced by Starcorp's claim that because it lacked "sophisticated information technology capacities," it was unable to respond to the Department's requests for information in a timely manner. Where this argument applies to Starcorp's provision of plant-specific FOP data, the Department finds that Starcorp's argument misconstrues record facts. First, reporting plant-specific data is not related to technology capacities that are unavailable to Starcrop presently or were unavailable to Starcorp during the investigation. In fact, during the investigation, Starcorp had reported its FOP data on a plant-specific basis, without having such sophisticated information technology capacities. Second, as noted above, the Department confirmed at verification that Starcorp had the ability to report FOP data on a plant-specific basis, as it collected gross raw material consumption data on a plant-specific basis. Third, the fact that Starcorp ultimately produced this data indicates that it had the ability to do so all along without use of sophisticated technologies. Finally, based on the Department's examination of Starcorp's books and records, and based on discussions with Starcorp personnel, it is clear that Starcorp could have provided plant-specific FOP data without undue difficulty as it recorded plant-specific data on a regular basis in the ordinary course of business. See Starcorp Verification Report at 16.

Finally, the Department points out that production efficiencies (i.e., variances) are captured more accurately when FOP data are reported on a plant-specific basis. This is because production plants differ with respect to production efficiencies, which are in turn determined by economic factors such as production equipments, labor skill, plant-size, production mix, etc. The Department find that Starcorp's combined FOP reporting methodology does not capture varying plant-specific production efficiencies because its variances are allocated throughout all plants and

[69] See Starcorp's November 29, 2006 at 12, "Each product has a BOM which is used regardless of which or how many factories produce that product."

the plant-specific variances are thereby masked. By contrast, although Starcorp's plant-specific FOP database does account for variances, we were not able to assess how accurately the variances are captured because Starcorp did not adequately reconcile its combined FOP database to its plant-specific FOP databases. The Department has been unable to the assess the impact the plant-specific variances would have had on Starcorp's overall margin calculations had they been properly accounted for and reported.

The Department's examination of Starcorp's databases (both plant-specific and combined) reveals numerous differences and inconsistencies in per-unit factor allocations based on Starcorp's different reporting methodologies. See Starcorp AFA Memo for a detailed discussion of such inconsistencies. Without knowing the full methodology behind the calculations in each database, and without understanding the effect these have on the observed inconsistencies, it is not feasible for the Department to make a determination with respect to which database provides the most accurate data. Had Starcorp been more forthcoming in its earlier questionnaire responses and had it responded to the Department's requests for data in a timely fashion (i.e., in response to the questionnaires soliciting that data), the Department may have had the opportunity to review the information in detail prior to verification and may have been able to resolve with Starcorp which database represented the most accurate reflection of its factor consumption ratios for its U.S. sales.

Thus, the facts on the record lead the Department to conclude that Starcorp failed to provide forthcoming responses in a timely manner to the Department's numerous direct requests for information, and this failure significantly impeded the Department's ability to comprehend and analyze Starcorp's data adequately within the Department's statutory time frame. As a result of Starcorp's repeated inconsistencies and its failure to provide information that was responsive to the Department's requests in a timely manner, the Department's ability to evaluate the reliability of either database was compromised. Without any determination as to the reliability of either database, we cannot determine which FOPs are most appropriate for calculate accurate margins.

**Comment 54: Application of Partial Adverse Facts Available for CONNUMs Consisting of Sets and "Sold But Not Produced"[70] Items**

Starcorp argues that the Department should reverse its preliminary decision to apply partial adverse facts available for CONNUMs consisting of "sets."[71] Starcorp contends that the Department's preliminary decision not to accept its reporting methodology should be reversed in the final results. Starcorp states that it discussed with Department officials during verification and in its submissions that it does not produce "sets" as defined by the Department's questionnaire, and as a result, there is no production of a given set, only production of pieces that

[70] During the POR, Starcorp had sales of subject merchandise that were not produced during the POR ("sold but not produced" merchandise).

[71] "Sets" are comprised of two or more complementary individual pieces, that together, can make up a single product. For example, an armoire is made up of two individual pieces–a top and a base. Each piece can be used independently of the other. Together, however, they form a single armoire "set."

make up a set. Starcorp states that it is only at the time of a sale that it is known if the piece will be sold as part of a set. With respect to a set made up of several individual pieces, Starcorp states that it calculated the total FOP for the set directly from the FOPs of the pieces which make up the set (based on the production quantity of those pieces). Starcorp emphasizes that sales quantity was not used to calculate any of the product-specific FOPs, and notes that it used sales quantity only in very limited instances of weight-averaging within a CONNUM where the production quantity did not exist.

Further, Starcorp insists that it explained its method of weight-averaging the FOPs of different sets that were included in a CONNUM to derive single FOPs for the CONNUM to which the relevant sets belonged. Starcorp states that it submitted its FOPs on a CONNUM-specific basis, as required by the Department, and demonstrated at verification that where a CONNUM is made up of more than one product, it weight-averaged the product-specific FOPs within the CONNUM. Starcorp maintains that in all instances where a production quantity for a given product existed, it was used to weight-average the CONNUM. However, Starcorp indicates that when the production quantity was zero, as it was for most sets, the standard weight averaging method would not be proper because either no FOPs existed for CONNUMs composed exclusively of sets, or skewed FOP for CONNUMs would result when one or more of the products within the CONNUM had zero production quantity. Thus, Starcorp claims that the only possible methodology to ensure that there was "complete reporting for FOPs for all CONNUMs" was to use the sales quantity as a proxy for the production quantity where no production quantity existed, as this methodology was approved by the Department in the investigation. Starcorp advocates the reasonableness of this methodology by stating that: 1) it is based on actual data; 2) production and sales are correlated; 3) no other alternate methodology was more accurate, reasonable and verifiable; and 4) it is in line with Petitioners' suggested use of sales as proxy data on a "worldwide" basis. Starcorp also states that it brought this methodology to the Department's attention in its submissions prior to and after the Preliminary Results.

Starcorp argues that the Department should reverse its preliminary decision to apply partial adverse facts available for merchandise "sold but not produced" during the POR. Starcorp states that a methodology was required to report FOPs for products "sold but not produced" during the POR, and it adopted a methodology used by a respondent in the underlying investigation (which was to apply proxy FOP data). Starcorp asserts that this methodology was verified and accepted by the Department in the investigation for another respondent and claims that it disclosed its use of the methodology to the Department in its questionnaire responses. Starcorp also contends that it informed the Department on the third day of verification that a package illustrating this methodology was prepared and the company was ready to discuss the package. Starcorp takes issue with the fact that the Department stated that it would not accept "new information" relating to this matter at verification. Starcorp argues that this information is not new and the Department's verification report incorrectly states that this methodology was unexplained in Starcorp's questionnaire responses. Starcorp further insists that it explained this methodology: 1) in its questionnaire response in narrative form; 2) in an exhibit providing a list of items "sold but not produced" and their corresponding most similar products (i.e., the source of the proxy data);

and 3) counsel's statement that "it would be prepared to demonstrate this methodology at verification." Next, Starcorp argues that the Department spent "several hours" on the morning of the last day of verification discussing Starcorp's methodology of reporting FOPs for products that were "sold but not produced" during the POR for which Starcorp used proxy data. Consequently, Starcorp asserts that it is not accurate for the Department to consider this issue new, and "not reviewed or accepted" at verification. In fact, Starcorp insists that there was sufficient information on the record to demonstrate that the information in the package refused by the Department was not new information, but that it corroborated information already on the record. Starcorp also maintains that the Department's position that it could not accept new information after the Preliminary Results is incorrect, as neither the statute nor regulations prohibit such submission of new information. Finally, Starcorp posits that its methodology for reporting proxy data for "sold but not produced" items is not new as it was used by a respondent and accepted by the Department in the underlying investigation.

Petitioners assert that on January 19, 2007, Starcorp for the first time in this review explained that the combined and weighted-average databases also included sales quantities and FOPs of products sold, but not produced, during the POR, as well as sales quantities and FOPs of products sold as sets but produced as pieces by individual plants. Petitioners contend that this information conflicted with information previously provided by Starcorp to the effect that it was supplying production quantities in its FOP database.

Petitioners argue that Starcorp introduced new information at verification with regard to the use of sales quantities and proxy data for items "sold but not produced" during the POR. Petitioners assert that when Starcorp presented its sole CONNUM FOP verification package on the second-to-last day of verification, it also presented the Department with new information that was inconsistent with the information presented in Starcorp's questionnaire responses. Citing page 56 of the Verification Report, Petitioners assert that Starcorp for the first time presented the Department with an explanation describing how Starcorp incorporated in the CONNUM average FOPs reported (a) sales quantities rather than production quantities and (b) surrogate products rather than the actual products in numerous cases where it reported U.S. sales of items not produced during the POR, not only for certain CONNUMs representing items sold as sets, but also for a large number of CONNUMs involving items sold as pieces. Petitioners argue that because of this new information presented by Starcorp at verification, the Department cannot rely on the databases provided by Starcorp since it has no way of knowing how Starcorp's use of sales quantities and surrogate FOPs at the product level impacted the weighted-average FOPs at the CONNUM level.

Petitioners state that the Department properly used partial adverse facts available for CONNUMs consisting of sets. Petitioners contend that Starcorp fails to explain why its methodology for reporting FOPs for its sets could not be accommodated on a plant-specific basis or why it could not be reported separately and apart from the FOP data for those CONNUMs produced at a plant. Petitioners argue that Starcorp's experienced U.S. and Chinese counsel should have been fully aware of the Department's standard practice of requiring FOP data on plant-specific bases.

Additionally, Petitioners contend that Starcorp unilaterally decided to provide only the combined, single-facility FOP file prior to January 8, 2007, despite numerous requests by the Department prior to this date. Petitioners claim that the lack of FOP data for certain CONNUMs based on the plant-specific data is solely the result of Starcorp's uncooperativeness on this issue.

Also, Petitioners state that the Department properly used partial adverse facts available for merchandise "sold but not produced" during the POR. First, Petitioners claim that Starcorp's failure to provide the correct and complete set of FOP files (i.e., plant-specific FOP files) in a timely manner as requested repeatedly by the Department is the underlying reason for the Department's use of partial facts available. Petitioners claim that had Starcorp provided the correct data sets from the beginning, any issue relating to CONNUMs "sold but not produced" would have been identified, addressed and potentially resolved before the issuance of the Preliminary Results. Second, Petitioners argue that Starcorp's methodology employed in the combined FOP database with respect to the "sold but not produced" items is inconsistent with the Department's requirements. Petitioners emphasize that the relevant factor in the Department's margin programs is whether or not the CONNUM within which that particular product is classified was produced during the POR. Petitioners state that the products subject to review are defined for antidumping purposes using CONNUMs, and it is for this reason that the Department's margin program compares average prices, FOP data and other information on a CONNUM-specific basis. Thus, Petitioners maintain that Starcorp's reporting methodology was unreasonable in that it used proxy FOP data and sales quantities for CONNUM weight averaging purposes. Petitioners explain that this methodology creates problems for determining what reliable FOPs should be used for the non-produced items and what quantity should be used in the weight-averaging by CONNUM. Referencing Starcorp's methodology of imputing sales data for missing production data and proxy FOP data, Petitioners state that: 1) Starcorp never explained its criteria for selecting the proxy FOP data; 2) the Department correctly identified this as "new information" in its verification report; and 3) Starcorp's application of sales quantities for weight-averaging purposes to products that were not produced during the POR is an inappropriate surrogate since the products may or may not have been shipped to destinations other than the United States as well. Thus, Petitioners persist that the weighted average FOP data reported by Starcorp for these CONNUMs are misstated and advocate the Department's rejection of the combined (i.e., facility-wide) FOP databases submitted by Starcorp.

**Department's Position:** The Department finds that, in the Preliminary Results, it properly applied partial adverse facts available to certain CONNUMs in Starcorp's U.S. sales database because it did not have corresponding CONNUMs in Starcorp's plant-specific FOP database.[72] Upon re-examination of Starcorp's data, based on information provided by Starcorp after the Preliminary Results and at verification, the Department found that Starcorp both withheld FOP

[72] As stated in the Department's Preliminary Results, the Department calculated Starcorp's antidumping duty margin using plant-specific FOP data because Starcorp did not incorporate sales quantities in the allocation of factor consumption for each CONNUM and reflected plant-specific activity, consistent with the Department's preference to use plant-specific FOP data. See Preliminary Results, 72 FR at 6215-16.

information necessary to calculate an accurate NV for more than 56 percent of its U.S. sales, and failed to provide such requested information by the Department's stated deadlines or in the form and manner requested. Starcorp's withholding of information significantly impeded the Department's ability to calculate accurate dumping margins for those sales. See Starcorp AFA Memo. Because Starcorp failed to cooperate to the best of its ability to comply with the Department's requests for information, for these Final Results, the Department has determined to assign to Starcorp a rate based on total adverse facts available. See Starcorp AFA Memo.

Specifically, with respect to its "sold but not produced items" Starcorp concealed from the Department its specific methodology for reporting FOP data for products "sold but not produced" until three weeks prior to the issuance of the Preliminary Results (i.e., 6 months after receipt of the Department's original questionnaire). At that point, Starcorp only disclosed part of its methodology (i.e., use of sales quantities instead of production quantities to weight-average product-specific FOPs in the calculation of the CONNUM level FOP). Further, Starcorp did not disclose the second part of its methodology (use of proxy FOP data) until March 2007, after issuance of the Preliminary Results, thus significantly impeding the Department's ability to evaluate its reporting methodology. Due to Starcorp's lack of full and timely disclosure, the Department is unable to assess the appropriateness of Starcorp's reporting methodology in the instant review.

Thus, the Department disagrees with Starcorp's claim that it disclosed its reporting methodology for "sold but not produced" products to the Department both prior to and after the Preliminary Results. Record evidence unambiguously demonstrates that Starcorp did not sufficiently address this issue in its questionnaire responses either prior to or after the Preliminary Results. Starcorp first failed to notify the Department that it had products "sold but not produced" during the POR, in response to the Department's July 2006 questionnaire, which explicitly instructed respondents to notify the Department if they were unable to provide FOP data on an actual basis. When reporting FOP data for "sold but not produced" merchandise, Starcorp determined not to report actual FOP data but to instead apply proxy FOP data (i.e., FOP data from other products that Starcorp itself deemed to be the "next most similar" to the merchandise "sold but not produced"). When making this decision, Starcorp did not consult with Department officials. Additionally, because Starcorp had no actual production during the POR of the "sold but not produced" products, Starcorp determined unilaterally to substitute sales data for the unavailable production data. In short, when Starcorp determined to substitute sales data for production data, use proxy data in lieu of actual FOP data, and base the proxy FOP data on the "next most similar" merchandise prior to preparing its questionnaire responses, Starcorp did not consult with Department officials to determine whether this would be an appropriate and acceptable methodology, as instructed to do so in the Department's questionnaire. Because Starcorp was unable to utilize the methodology for reporting these FOPs requested by the Department (i.e., on a plant-specific basis), it was incumbent upon Starcrop to not only fully disclose its alternative methodology in a timely manner, but also to seek guidance from the Department. Moreover, given the large portion of CONNUMs affected, Starcorp should have conferred and consulted

with the Department to find the most appropriate reporting methodology that would permit the calculation of an accurate margin.

Furthermore, Starcorp did not disclose its reporting methodology for "sold but not produced" products on its own volition. In fact, only in response to Petitioners' January 2007 questions did Starcorp first admit the existence of substituted sales data, and this admission occurred on January 19, 2007, just 12 days before the Preliminary Results. Just as significant is Starcorp's failure to provide information about its proxy FOP data until one week before its scheduled verification (i.e., six weeks after the Department's Preliminary Results, and eight months after the Department's issuance of its Section D questionnaire where the Department explicitly notified respondents that if they were unable to report actual FOP data, to contact the Department immediately).

In its case-briefs, Starcorp argues at length about the appropriateness of this methodology. However, Starcorp's piecemeal, vague and untimely explanations about its methodology effectively deprived the Department of the opportunity to examine the appropriateness and accuracy of that methodology. Starcorp's argument that the Department should accept this methodology because it was used by another respondent in the previous segment of this proceeding and verified as appropriate by the Department is unpersuasive here. It is well established that each segment of a proceeding stands on its own, and it does not automatically follow that a reporting methodology accepted by the Department in the context of one respondent's data would be deemed appropriate for another respondent. Since each respondent's production experiences and record-keeping practices differ, the determination to whether a respondent devised a correct reporting methodology must be made on a case-by-case basis. In fact, this is precisely the reason why the Department expressly requested in its July 2006 questionnaire that respondents contact the Department if they cannot report actual FOP data.

Starcorp correctly states that the Department spent some time during the last week of verification regarding Starcorp's reporting methodology for "sold but not produced" merchandise. These discussions were necessary both because Starcorp's questionnaire responses were inadequate and deficient with respect to precise explanations of its reporting methodology and the Department needed to assess the magnitude of CONNUMs and U.S. sales impacted by this methodology.

Starcorp's brief repeatedly contradicts information contained in its reported FOP databases. In its brief, Starcorp states that it does not produce "sets," and as a result "sets" are reported as "sold but not produced" merchandise. Starcorp stated in its questionnaire responses that "sets" could not be reported on a plant-specific basis, as they are produced as pieces, not as "sets," and that therefore the plant-specific data only reflects production of pieces. However, the fact that Starcorp's plant-specific FOP database includes some "sets" leads to the conclusion that Starcorp does produce "sets." We confirmed this fact with Starcorp officials at verification who said that the workshop manager prepares a warehouse-in slip reflecting either the pieces or the sets for movement into the finished goods warehouse. See Starcorp Verification Report at 25. Notwithstanding Starcorp officials' statements at verification that it does record production of

sets (which is substantiated by the production quantities recorded on the CONNUM/Product Code concordance file it provided at verification, and included in Starcorp's Verification Report at Exhibit 28), Starcorp once again claims in its brief that it does not produce sets. Thus, Starcorp's brief contradicts the data it submitted.

Moreover, the Department notes that Starcorp's plant-specific and combined FOP databases (discussed in Comment 53) are inconsistent with respect to CONNUMs for "sets" (i.e., certain CONNUMs for "sets" are not included in the plant-specific database but are reported in the combined database). In fact, there are many inconsistencies on the record with respect to Starcorp's reporting methodology that cannot be resolved based on record evidence.[73] Therefore, the Department finds that Starcorp failed to adequately explain and demonstrate precisely how and why its FOP reporting methodology is accurate with respect to capturing all FOP data.

Further, the Department properly declined to accept Starcorp's submission relating to its selection of proxy FOPs at verification. At no time prior to verification did Starcorp disclose its methodology for selecting proxy FOPs using information from the "next most similar" product.[74] The per-unit consumption amounts that were used as proxy FOPs were of critical relevance to Starcorp's margin calculation as these proxy FOPs are built into the normal values of many of Starcorp's CONNUMs. Yet, Starcorp did not reveal this FOP selection methodology within the Department's deadlines for submission of new information and in fact did not disclose this information until after the Preliminary Results, as discussed above. Starcorp's reliance on 19 C.F.R. 351.301(b)(2) as to why the Department should have accepted certain corroborating data at verification is misplaced. The purpose of the Department's verification exercise is to verify and gather supporting documentation for information that has already been submitted on the record. See 782(i) of the Act; 19 C.F.R. 351.307. It is not a fact-finding exercise or an opportunity by a party to correct major deficiencies in their submissions, particularly when, as is the case here, Starcorp had been provided with numerous prior opportunities to do so. While the Department has the discretion under its regulations to request new factual information it deems relevant to completing verification, the regulations do not permit parties that provide inadequate responses by the Department's specific deadline to then cure that deficiency at verification. See 19 C.F.R. 351.301(b)(2) and (c)(2)(ii).[75] Because Starcorp had not provided any description of its methodology or criteria to determine which products would serve to provide the proxy FOPs (which constitute 11.64 percent of Stacorp's CONNUMs), this would not constitute

[73] Although these inconsistencies should have been resolved in Starcorp's March 2007 reconciliation of its plant-specific FOP database and its combined FOP database, they were not.

[74] Starcorp acknowledged the use of proxy FOP data on March 2, 2007, however it never disclosed the methodology or criteria it used to determine the "next most similar products" from which it derived the proxy FOPs. Starcorp's verification commenced on March 12, 2007.

[75] Normally, the Department accepts new information at verification when (1) the need for the information was not previously evident, (2) the information makes minor corrections to information already on the record, or (3) corroborates, supports or clarifies information already on the record.

corroborative information but rather a wholesale new description of its FOP methodology for a significant number of products.

The Department disagrees with Starcorp that the exhibit it attempted to provide at verification constituted information that corroborates, supports, or clarifies information already on the record and should be accepted as such. See Structural Steel Beams from Luxembourg, Memo at Comment 1. Contrary to Starcorp's claim, the use of proxy FOP data, as opposed to actual FOP data, is new information. It is within the Department's discretion to determine whether a respondent has complied with an information request. See Helmerich, 24 F. Supp. 2d at 308. Section 351.301(b)(2) of the Department's regulations specifies that the factual information is due no later than 140 days after the last day of the anniversary month, unless requested by the Department.[76] In this review, the Department extended the deadline for submission of factual information to October 27, 2006. It was not until 1-1/2 months after the Preliminary Results that Starcorp brought to the Department's attention the fact that it reported proxy FOP data in lieu of actual FOP data. Furthermore, the Department could not have known about this reporting methodology by reviewing Starcorp's database until Starcorp actually acknowledged it (because raw FOP data on its face does not reveal such information). Then, 1-1/2 months after the Preliminary Results, during verification nonetheless, Starcorp attempted to submit to the Department worksheets illustrating the manner in which it selected its proxy FOPs. Given these facts, the Department was well within its discretion to refuse Starcorp's new and untimely information as it constituted new information that the Department had not had a prior opportunity to analyze, no other party had the opportunity to comment on, and hence, was properly found to be unacceptable new information. See Aramide, 901 F. Supp. 353; Reiner Brach, 206 F. Supp. 2d at 1330, see, also, Maui Pineapple, 264 F. Supp. 2d at 1224 (the Department's decision to accept any new information is made on a case-by-case basis and depends on the significance of the new information). With regard to Starcorp's claim that no alternative methodology would be as reasonable or yield more accurate results, the Department disagrees that this was established. Because Starcorp did not disclose the relevant information, and therefore precluded the Department from engaging in any analysis regarding alternative methodologies, there is no way now to assess the merits of Starcorp's claims.

Finally, where there exist special circumstances that warrant the acceptance of new information, the Department will allow it. However, in this instance, we find that there are no special circumstances regarding the methodology used by Starcorp to select proxy FOP data that warrant exception to our normal practice of requiring timely submission of data. Based on the above, the Department properly considered Starcorp's worksheets, submitted to the Department at verification, as untimely and not subject to acceptance by the Department.

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[76] The Department must set a date certain to close the administrative record in order to be able to meet its obligations for completing any segment of a proceeding. Such deadlines are established to allow the Department sufficient time to analyze the information and facilitate the Department's ability to administer the antidumping law. The ability to set a date certain to close the record is crucial to allow the Department to perform these tasks. To allow respondents to provide any factual information they please at any time would make the administration of the case within the statutory deadlines literally impossible.

**Comment 55: Starcorp's Financial Statements**

Starcorp maintains that its combined, audited financial statements are accurate and reliable, and therefore must be used for the Department's dumping analysis. Specifically, Starcorp emphasizes that the operations and activities of Starcorp as a whole are reflected in its combined financial statement. Also, Starcorp reasons that the combined financial statement must be deemed valid as it was audited by an accredited Chinese auditing firm, is prepared by Starcorp in its normal course of business, is relied upon by Starcorp management in the normal course of business, was verified and relied upon by the Department in the original investigation, and ties to its books and records.

Petitioners assert that Starcorp simply proclaimed the existence of an entity called the Starcorp Group and improperly submitted questionnaire responses based on this entity. Petitioners contend that the Starcorp Group is not a legal entity, and that the financial statements of this entity are at best an internal report to management, not an audited financial statement of a legal entity created for regulatory purposes and filed with the appropriate legal authorities. Petitioners argue that, therefore, these "financial statements" should not be used in place of the audited financial statements of the actual legal entities that produce and sell the subject merchandise (Shanghai Starcorp, Starcorp Furniture, Orin, and Star).

**Department's Position:** The Department has determined that neither Starcorp's individual nor combined financial statements are reliable. Because of the proprietary nature of elements concerning the reliability of Starcorp's financial statements, the Department more completely addresses the reliability of Starcorp's financial statements in a separate memo addressing this issue (see "Proprietary version of Comment 55: Reliability of Starcorp's Financial Statements Pursuant to Issues and Decision Memorandum for the Final Results of yay veits companion Starcorp AFA Memo, which is a proprietary document that 1) summarizes more fully party comments, and 2) explains the Department's position. See also Comment 63: Application of Total Adverse Facts Available.

**Comment 56: Raw Material Consumption Methodology**

Starcorp claims that record evidence indicates that its raw material allocation traces were found to be complete and accurate (except for a few minor mistakes). Starcorp also proposes that as the methodologies examined apply to all raw materials consumed and to subject merchandise it produced, the integrity of its reporting is complete and accurate.

Starcorp acknowledges that it made an error in the volume of solid wood reported for "consumable material allocations." However, Starcorp proposes that the Department ignore this error as it is de minimis in nature.

Starcorp also states that the Department correctly found that the review of its reconciliations for solid wood, processed boards, and veneer revealed no discrepancies. Starcorp claims that the

Department's review of the reconciliation package for paint consumption revealed no discrepancies as well. However, Starcorp contends that the Department's conclusions about the remaining traces are false. Specifically, Starcorp takes issue with the Department's statement that by March 21, it had still not completed preparation of any factor allocation packages. Starcorp reasons that it received its pre-selected CONNUM on the last business day before verification began and acted to the best of its ability to have the factor allocation packages prepared for verification. Starcorp also contends that it had CONNUM factor allocation packages prepared for the Department's review on March 21 and the following days. Finally, Starcorp states that the responsibility for any lack of preparation should fall with the Department.

Starcorp also disputes the Department's statement that it did not prepare or present any factor reconciliation packages for plant-specific FOP databases. Starcorp states that in a CONNUM FOP reconciliation package, it did in fact provided detailed examples of factor reconciliations for several inputs from the combined FOP file, and certain inputs tied to the individual plant FOP files.

Petitioners contend that Starcorp continued to be non-compliant in its response to the Department's Third Supplemental Section D Questionnaire issued December 20, 2006, and in its January 8, 2007 response. Specifically, Petitioners assert that Starcorp failed to provide any meaningful response to the Department's request for an explanation of its significant change from its product-specific methodology from the investigation to the broad allocation methodology used in this administrative review. Petitioners also assert that Starcorp's use of the quantities indicated in the BOM as the key for allocating materials actually consumed to specific products was inappropriate, because the BOM data were entirely unrelated to the consumption quantities required for producing any particular model and instead reflected the net materials ultimately contained in the finished product. Petitioners allege, further, that Starcorp's methodology of allocating total actual consumption of materials on the basis of the BOM quantities resulted in such large average variances that the resulting per-unit quantity of materials assigned to each individual product could not possibly be an accurate reflection of the quantity actually consumed in production.

Starcorp objects to Petitioners' allegations that its allocation methodology is incorrect due to its "unusually large variances." In doing so, Starcorp explains that: 1) it had repeatedly detailed its consumption ratio methodology in its questionnaire responses; 2) its methodology is consistent with methodologies used and approved by the Department in the investigation with regard to other respondents; and 3)"consumption ratios" are not variances. Starcorp maintains that its consumption ratios are the most reasonable and accurate calculation of material usage. Also, Starcorp claims that the accuracy of its reporting has been verified by the Department, making Petitioners' arguments no longer applicable.

Moreover, Starcorp states that it has provided "extensive documentation" demonstrating its calculation and application of consumption ratios, and also had reconciled their totals to inventory records. Starcorp claims that during verification, it demonstrated and traced these

calculations for numerous inputs including solid wood and boards, processed woods, veneer, paint, various non-wood materials, selected packing materials and other inputs. Starcorp also claims that at verification, it demonstrated how it calculated consumption ratios and how it applied these ratios to the bill of materials net volume to calculate product-specific FOPs. Starcorp persists that while it had made some minor errors, they were against its interests, and the data selected by the Department to examine were successfully verified.

Starcorp states that it provided ample explanation of the change in its reporting methodologies between the investigation and review, citing to its January 8, 2007, submission to the Department. Starcorp emphasizes that the methodology applied in this review, although different from the methodology used in the investigation, is more accurate because it captures total consumption for the inputs ensuring that no material is left unaccounted for. For example, Starcorp states that its methodology accounts for instances where materials are withdrawn for one order, but not fully consumed and retained for use in another order, or if a product is manufactured across more than one plant. Starcorp further posits that its methodology likely produces a higher consumption ratio which would be against its interest. Finally, Starcorp declares that its data tie to its books and records.

Further, Starcorp insists that the Department's "extensive verification" of one CONNUM is more than adequate to establish the accuracy of Starcorp's reporting. Starcorp argues that despite only receiving the chosen CONNUM one business day before verification, Starcorp managed to prepare CONNUM packages for each CONNUM late in the second week of verification. Starcorp alleges that additional CONNUM packages beyond the one verified were presented to one team of verifiers when they split into two teams, but that team chose to go on another plant tour and then proceeded to review issues addressed during the first week of verification rather than verify the additional CONNUM presented by Starcorp.

Starcorp alleges that the Department "verified" one CONNUM that included three products, more than 40 FOPs per product, and incorporated every applicable allocation methodology. Starcorp states that this CONNUM encompasses more FOPs and demonstrates more reporting methodologies than any of the three other pre-selected CONNUMs or the two "surprise" CONNUMs. Also, Starcorp claims that the Department's CONNUM verification covered an example of how it derived FOPs for a set, how it calculated FOPs for CONNUMs by using production quantity and sales quantity (in the absence of production quantity), and how the CONNUM covers more labor and electricity categories than others. Hence, Starcorp argues that the Department's verification of this CONNUM provides a more than adequate basis for ascertaining that its reporting methodology was accurate.

Starcorp concludes by arguing that the verification of this single, yet expansive CONNUM was more than adequate to determine its CONNUMs were fully accurate and verified. In reaching its conclusion, Starcorp suggests that "the function of verification is to corroborate information provided in the questionnaire responses," citing to Allied Tube F.2d at 786 for support, and that the Department is not required to verify each and every aspect of the respondent's business.

Starcorp also argues that the Department is not required to cover every item on its verification outline to determine if a respondent "passed" verification, as verification is only a spot check and not intended to be an exhaustive examination of a respondent's business, citing to Torrington, 146 F.Supp. 2d at 897 and Shandong Huarong, 435 F.Supp. 2d at 1284. Starcorp emphasizes that verification of information submitted by respondents is superfluous if it is corroborated by other independently reliable information on the record, citing to Corus Eng'g Steels LTD, CIT Slip Op. at 22. Starcorp also states that the Department's own regulations explicitly contemplate that the Department need not cover every factual point in a verification outline to "pass" a respondent. Citing to 19 CFR 351.301(b)(2) (which states factual information requested...will be due no later than seven days after the date on which verification is complete), Starcorp asserts that if the Department were precluded from determining that a respondent had "passed" verification when it was unable to reach all verification items, then this section of the Department's regulations would be superfluous. See Hand Trucks and Certain Parts Thereof from the People's Republic of China, I&D Memo at Comment 1.

**Department's Position:** The Department stated in its verification report that Starcorp had not substantiated its raw material consumption amounts with respect to: all but one non-wood materials (including paint products) and packing materials. See Starcorp Verification Report at 55 through 60. Starcorp's insistence that the Department verified its allocation methodologies and therefore found all of its reporting to be correct is a mis-characterization of the verification results.[77]

Starcorp's allocation methodology, as explained in Comment 56, is a formula (i.e., "allocation ratio") based on total consumption of the raw materials and net consumption of the raw materials based on the BOM per-unit quantities and the quantity of each product produced. The allocation ratio formula is generated for each raw material and is constant for all raw materials.[78]

Each product's net usage is obtained from that product's BOM (and other similar production-related documents). Because respondents are required to report product-specific per-unit consumption amounts on a gross rather than net basis, Starcorp calculated an estimated gross per-unit consumption amount using its allocation ratio as follows: for each product, Starcorp obtained the net per-unit usage of each factor using its BOM (and other similar documents); then, to derive the estimated gross per-unit consumption amount, Starcorp multiplied the net per-unit usage amount by the appropriate allocation ratio specific to that factor. This increased the net-usage amount to an estimated gross consumption amount. Because the allocation ratio for each factor is the same for all products, each net factor input will be adjusted by the same relative

[77] Whereas Starcorp states that it demonstrated and traced calculations for numerous inputs, Starcorp fails to mention that it did not trace the gross POR-wide consumption amounts for all non-wood materials. The gross POR-wide consumption amount is the key component of its factor allocation calculation–which in turn affects its reported gross per-unit consumption.

[78] This allocation ratio formula applies to raw material consumption calculations, but its basic principle applies to all factor inputs.

amount, regardless of the product in which it is utilized (i.e., if the allocation ratio for X type of wood material were 1.33, then the net X wood usage amounts, of all products using X wood, would be equally adjusted upward by 1.33).

At verification, the Department reviewed the allocation methodology for each raw material input (i.e., we reviewed the allocation methodologies and spot checked the reported net POR-wide usage) and we agree with Starcorp that the allocation methodologies were successfully verified. See Starcorp Verification Report at 55 through 60. While the Department was not able to verify the gross POR-wide consumption amount for the majority of non-wood materials to source documents because of preparedness/timing constraints, due to the fact that the Department did not reach a definitive conclusion on how the timing of its verification outline may have impacted Starcorp's preparation, the Department is not making an adverse determination with respect to such information. See Comment 52: Timing of Verification Outline for further discussion.

Starcorp recognized that its reported gross POR-wide consumption amount for solid wood, which formed the basis of its allocation ratio for non-wood consumable materials, was incorrect and over-reported. Starcorp states that this error was insignificant. However, Starcorp fails to acknowledge the cumulative effect of this error, as it serves as the allocation basis for all of its consumable materials. Starcorp's over-reported gross POR-wide consumption for solid wood is included in the denominator of its allocation ratio, which means that the allocation ratio is less than what it should have been. In the limited instance where this undervalued allocation ratio is applied to each product, the per-unit error may be insignificant. However, when the per-unit consumption amounts for all subject merchandise are aggregated, the error is compounded. Because the Department has determined that it cannot rely on Starcorp's data to calculate an accurate dumping margin, the Department has not analyzed whether this error rises above the insignificant level pursuant to 19 C.F.R. 351.413.

Further, with respect to Starcorp's argument that its combined data result in higher consumption ratios that would be against its interests, this cannot be the case with respect to all products. If it were, there would be a significant concern with respect to the reliability and accuracy of such a reporting methodology. Rather, it is more likely that the combined data under-report certain factor consumption rates for some products and over-report factor consumption rates for other products, again giving rise to serious concerns regarding the accuracy of the resulting data.

Finally, with respect to Starcorp's change in reporting methodology, the Department notes that it was not able to assess the appropriateness of Starcorp's change in methodology. This is due to the fact that Starcorp did not submit information with respect to this change in a timely manner necessary for the Department to assess its validity. In the investigation, Starcorp reported FOP data on a plant-specific basis. In this administrative review, Starcorp reported FOP data on a combined-plant basis. See Comment 53; Starcorp AFA Memo. Starcorp's argument that its methodology was consistent with that used by other respondents in the LTFV investigation is irrelevant, as each segment of a proceeding stands on its own and each respondent is expected and required to fully disclose its reporting methodology to the Department in each segment.

Starcorp did not do that in this review. Further, the reporting methodologies employed by a respondent must clearly reflect the data in that respondent's books and records for that particular segment. While a particular methodology might be appropriate for one company because it reflects that company's underlying data, the methodology might not reflect the books and records of another respondent and therefore would not serve as an appropriate methodology yielding an accurate margin for the latter. That is why the Department requires in each segment that respondents be forthcoming at the beginning of the process with respect to the reporting methodologies they employ and how they were derived. Thus Starcorp's reliance on the reporting method of a different respondent, in another segment of this proceeding, is irrelevant and wholly misplaced.

**Comment 57: Non-Wood Materials**

Starcorp argues that the non-wood materials package did not begin to be reviewed until 6:00 p.m on the last day of verification because the Department requested Starcorp to prepare and present supporting documents in a specific manner for verification. Starcorp insists that, despite the late start, it fully substantiated the total consumption amounts of non-wood materials by providing a package to the Department consisting of "hundreds of pages of documents prepared in accordance with the Department's outline" on the final day of verification. Starcorp further argues that it prepared a number of books summarizing the inventory-in and inventory-out balance as well as the quantity and value spanning the entire POR, all of which were offered to the Department and remained in the verification room throughout verification. Starcorp also claims that it prepared a non-wood inventory warehouse journal recording each warehouse-in and warehouse-out transaction of all non-wood materials as well as all inventory-in and inventory-out slips for September 2005 and made them available at verification on the last day. Starcorp explains that the Department reviewed the packages and reconciled one of the three selected non-wood materials to source documents and claims that the documents all tied. Starcorp then argues that when the Department began verification of the next input, it complained that the "warehouse-in and warehouse-out slips were not translated and did not contain calculator-tape summation." Starcorp asserts that given the thousands of documents presented and the "vast amount of translation performed by the company's limited staff, including the fact that the Department had...verified similar warehouse slips which were translated, the Department's request was not reasonable." Furthermore, Starcorp finds that the Department's request to have the total inventory-in and inventory-out slips summed "by different specifications of the same input" "unreasonable" because Starcorp's records do not allow systematic, electronic searches of these slips. However, Starcorp claims that it indexed and presented these slips, and calculated the total amounts by specification as the Department requested, and also presented relevant purchase invoices and accounting vouchers.

Finally, Starcorp claims that the second non-wood material consumption item traced successfully, and the third item traced with respect to the warehouse-in slips, inventory reports of in and out movements, its non-wood ledger for September 2005 showing the total in and out

movements for one month, and the purchase invoice with the accounting ledger showing the material purchase transactions.

Starcorp emphasizes that the Department's request for translated documents imposed a significant burden on it and further suggests that the Department expected it to write translations on original company documents. Starcorp alleges that the Department's "unreasonable" requests impeded the otherwise "flawless" presentation of the non-wood materials traces. Finally, Starcorp claims that when documents were requested, they were copied and translations were provided.

Petitioners contend that Starcorp failed to substantiate its total reported consumption of non-wood materials. Petitioners rebut Starcorp's argument that it fully substantiated the total consumption amounts of non-wood materials. Petitioners argue that even though Starcorp places emphasis on the "hundreds of pages of documents" that it claims it prepared for this subject, Starcorp's lack of preparedness and its failure to present this trace package to the Department until after 6:00 p.m. on the last day of verification, thus did not provide the Department with the opportunity to thoroughly review and test the materials. Petitioners also reason that the number of pages packed into Starcorp's non-wood consumption reconciliation package are meaningless and have no bearing on the question of whether the reported non-wood consumption data were verified. Also, Petitioners maintain that the package presented to the Department–which contained only worksheets summarizing total consumption of non-wood materials and contained units of measure that differed between Starcorp's worksheets and inventory books–limited the ability of the Department to perform this trace. Petitioners argue that, as a result of these problems, the Department was forced to limit its examination of non-wood consumption materials to three items, and that Starcorp failed to provide the Department with information requested for two of the three items. Petitioners stress that the information presented to the Department late in the day included untranslated documents, lacked prerequisite purchase documentation, and was presented without identifying labels to allow the Department to understand what the documents were. Accordingly, Petitioners maintain that Starcorp was not prepared to present a complete and coherent non-wood consumption reconciliation package to the Department. Petitioners emphasize that all requests from the Department for source documentation, translations, and reconciliations should have been expected by Starcorp's experienced U.S. and Chinese counsel because the requests are a routine part of verification. Lastly, Petitioners state that Starcorp failed to provide the requested standard reconciliation package for non-wood materials, and as such, non-wood material consumption could not be verified.

**Department's Position:** The Department finds that Starcorp did not substantiate its total consumption of non-wood materials except for one non-wood material input. See Starcorp Verification Report at 55-61. The Department's verification report clearly states that Starcorp presented its non-wood materials trace package just after 6:00 p.m. on the final day of verification. The Department's report further states that the non-wood reconciliation package was incomplete as presented. In other words, the non-wood materials trace package initially

contained only worksheets and no source documents. Further, these worksheets contained numbers that purported to be the total of each material's gross POR-wide consumption amount, but included no substantiating document to demonstrate any totals. In order to consider the package successfully verified, the Department selected three out of 36 non-wood materials (excluding thinner materials) to trace as a spot check. Starcorp officials provided largely untranslated documents that the Department requested, and were, therefore, of minimal value. These documents consisted of purchase and inventory records that required minimal translation (i.e., translations to headings and translations identifying the type of raw material). Moreover, the Department requested only that the key components of relevant documents be translated (e.g., titles of purchase vouchers and name of the material in the purchase voucher), and our request was justified because translations were necessary in order for the verifiers to discern 1) what documents they were observing, and 2) how the documents related to the material input that was the subject of the trace. The Department did not require any irrelevant or unnecessary portions of documents to be translated. Furthermore, the Department's requests were consistent with Department practice, as the Department's standard verification outline expressly requests translations to main components of relevant documents.

The Department was also proper in its request that Starcorp prepare calculations pertaining to the raw materials purchase traces (such as calculating the total for all presented purchase vouchers). This request was practical and the most efficient use of everyone's time; as Starcorp claims in its brief, it had at least 37 persons helping at verification and the Department had four officials present that day. Moreover, the Department made this request so that it could proceed with other verification items until the calculations were completed. Also, the Department was proper in its request to have company records summed according to their units of measure, where, for example, meters would be summed together, pieces would be summed together, and kilograms would be summed together.[79] This request imposed no burden on Starcorp (contrary to Starcorp's allegations reasoning that it does not have an electronic filing system) because the documents presented to the Department consisted of only a few pages, and each page contained a few numbers with varying units of measure. See Verification Report at Exhibit 32.

Finally, the Department was able to successfully trace the gross POR-wide consumption amount of only one non-wood material, the first non-wood material in the Department's selected traces. Although documents required to substantiate the gross POR-wide consumption amounts for Starcorp's non-wood materials were not presented in the verification package, company officials obtained the relevant documents pursuant to the Department's request. These documents, as the Department states in its verification report, substantiated the consumption amount for that non-wood material. However, for the second selected non-wood material, the gross POR-wide consumption was not substantiated prior to the end of verification, as documents were again not included in the verification package, had to be pulled from company records, were not translated, and were not aggregated in any meaningful manner (in that their totals were initially not

[79] Aggregating values using inconsistent units of measures is meaningless, as one cannot discern the true aggregate value of items if they are partially reported in meters and partially reported in pieces, for example.

presented to the Department and when they finally were, the totals were apparently not aggregated using the same units of measure). Because Starcorp had not prepared spot-check traces in advance of verification, preparing these items during verification for the second trace proved to be too costly with respect to time. As a result, verification concluded prior to the successful examination of the second trace and before commencing the third non-wood raw material trace. Nevertheless, because the Department did not reach a definitive conclusion on how the timing of its verification outline would have impacted Starcorp's preparation, the Department is not making an adverse determination with respect to the information that it did not have an opportunity to review, or that Starcorp did not have an opportunity to present to the Department. See Comment 52: Timing of Verification Outline for further discussion. However, as we explain in Starcorp AFA Memo, for unrelated reasons, the Department is unable to rely on any of Starcorp's data in this review.

**Comment 58: Valuation of Thinner**

Starcorp argues that because it manufactures its own thinner and does not purchase thinner, thinner should be valued based on its component parts, which the Department witnessed in its plant tour of the thinner factory. Starcorp states that the Department noted no discrepancies in its factor allocation methodology for thinner. However, Starcorp disputes the Department's statement in its verification report that it did not provide any documents to substantiate its reported total consumption amount. Starcorp argues its "non-wood consumption" reconciliation package contained data for the total thinner consumption amounts but the Department chose not to focus on this information. Starcorp next insists that it "offered" to the Department a separate package tying the production, consumption and allocation methodology for thinner in the afternoon (and not "8:00 pm") as indicated in the verification report on the last day of verification. Starcorp also disputes the Department's finding that the package for thinner constituted a worksheet previously submitted to the Department. Starcorp claims that the package was a worksheet demonstrating the total consumption of each component chemical and total production of thinner–figures which tied to the total consumption amount of inputs and the total production amount of thinner included in the non-wood inventory ledger, which was presented to the Department. Starcorp contends that it was ready to demonstrate the full trace of thinner inputs purchased and consumed using the same allocation methodology for non-wood inputs, which Starcorp claims was "verified."

Petitioners argue that the thinner factor data are unverified and cannot be used in Starcorp's final margin calculation. Petitioners point out that the Department's verification report calls into question the accuracy and completeness of Starcorp's reconciliation of paint inputs, including thinner, because Starcorp failed to provide any source data to substantiate its reported data. Petitioners state that Starcorp's handing over a large stack of Chinese-language papers and worksheets does not fulfill verification requirements, and that the documents Starcorp attempted to provide to the Department at verification did not meet the Department's requirement that Starcorp support its underlying total consumption amounts. Thus, Petitioners conclude that in the absence of correct and verified aggregate consumption data, the Department has no

benchmark to determine whether the per-unit thinner consumption data reported by Starcorp were correct.

**Department's Position:** The Department disagrees with Starcorp's contentions. The Department stands by its verification report which clearly states that Starcorp offered the Department a package to substantiate its reported thinner FOP data at 8:00 p.m. on the final day of verification. The Department objectively described in its verification report items which traced (e.g., pre-selected sales and surprise sales, market economy purchases, wood consumption amounts, etc.) and duly noted items which did not (e.g., certain labor hours, certain electricity consumption amounts, etc.).

Further, while the Department's visit to Starcorp's thinner facility substantiated Starcorp's claim it made its own thinner, the visit, by itself, does not provide any information regarding actual consumption during the POR. Nevertheless, because the Department did not reach a definitive conclusion on how the timing of its verification would have impacted Starcorp's preparation, the Department is not making an adverse determination with respect to the information that it did not have an opportunity to review, or that Starcorp did not have an opportunity to present to the Department. See Comment 52: Timing of Verification outline for further discussion. However, as we explain in Starcorp AFA Memo, for unrelated reasons, the Department is unable to rely on any of Starcorp's data in this review. See Starcorp AFA Memo at 3, Comment 62.

**Comment 59: Total Electricity Consumption**

Starcorp disputes the Department's conclusion that it was unable to substantiate its total electricity consumption. Starcorp states that it disagrees with the Department's statement in its verification report that the June 2004 reported meter reading was erroneous. Starcorp contends that this issue only concerns Plant 1, there is nothing to suggest that the number is wrong, and that the mistake resulted from a calculation error, not an erroneous meter reading. Starcorp claims that company officials explained to the verifiers that this was a calculation mistake in preparing the worksheet and not an erroneous meter reading reproduced in Starcorp's worksheet. Starcorp also suggests that the June 2004 meter reading (as well as "all electricity bills") had been presented and examined by the Department in the electricity reconciliation process. Next, Starcorp refutes the Department's statement that Starcorp presented source documents to substantiate only the electricity exclusions associated with Plant 1 for July 2004. Starcorp insists that the remainder of the documents were in the verification room and available for review. Also, Starcorp contests the Department claims that it could not substantiate the majority of the electricity exclusions for non-furniture projects. In doing so, Starcorp specifically points to the fact that certain electricity exclusions on Starcorp's worksheets were titled "construction" projects which, as Starcorp argues, necessarily concludes that they are construction projects and therefore not related to furniture production. Starcorp also claims that the Department viewed these and other non-furniture producing facilities during its plant tours. Furthermore, Starcorp asserts that the Department's statement regarding the exclusion of electricity associated with thinner "because {Starcorp} self produces thinner, and the Department is valuing the inputs to

thinner as a separate factor of production" is incomplete, and the correct statement should have been that "thinner electricity was excluded...because it was included in a separate thinner FOP." Lastly, Starcorp acknowledges that it used the incorrect figure for electricity in its electricity allocation calculations, stating that the error was de minimis and that is why Starcorp was "reasonable" in choosing not to explain this discrepancy.

Petitioners state that Starcorp's aggregated and reported per-unit electricity consumption data are flawed and cannot be accepted by the Department as a basis for calculating the final margin. First, Petitioners refer to Starcorp's incorrect June 2004 meter figure reported in a verification worksheet and state that the Department, not Starcorp, discovered this error. Petitioners point out that the error was not isolated to just one plant but affected all plants. As a result of this error, Petitioners conclude that the Department was unable to assess the level of significance of this error with respect to Starcorp's total electricity consumption. Second, Petitioners stress that Starcorp did not substantiate its electricity exclusions and argue that the Department is not required to accept Starcorp's characterizations of its exclusions at face value without more detail. Third, Petitioners point to Starcorp's admission that it declined to inform the Department that a different electricity value was used for its labor-related electricity allocations. Petitioners conclude that Starcorp knowingly and willingly made the decision not to present this information to the Department. Even though Starcorp states that the Department is the "master of" and "controls" verification, Petitioners state that it was Starcorp that decided to control the information provided to the Department, and as such, it hindered the Department's investigation of its total electricity consumption. Finally, Petitioners reason that because the CONNUM weighted-average labor hours reported by Starcorp are flawed, the electricity factor assigned to each CONNUM is likewise flawed.

**Department's Position:** The Department disagrees with all of Starcorp's contentions regarding electricity. At the outset, Starcorp did not correctly report its consumption of electricity in KWH for July 2004. Record evidence is clear on its face that Starcorp's June 2004 meter readings, as reported in its monthly KWH worksheet, were inconsistent for all plants and not limited to Plant 1 as Starcrop alleges. See Starcorp Verification Report at Exhibit 33. This was discovered during the Department's review of Starcorp's KWH monthly electricity consumption worksheet. When asked about this inconsistency, Starcorp officials specifically stated that the worksheet contained incorrect meter readings for June 2004. See Starcorp Verification Report, at 61-66.

Furthermore, the Department disagrees with Starcorp that all meter readings, electricity bills, and other necessary source documents were presented to the Department during verification. Upon receipt of the electricity package at verification, the Department worked through as many pages of the documents as time permitted. Pages were included in the electricity reconciliation package that were not presented to the Department in conjunction with any verification item during Starcorp's review of its electricity consumption package. Because the Department did not review those pages, it did not include them in its verification package.

Also, Starcorp incorrectly states that the Department reviewed all electricity bills. The Department reviewed the electricity bills which listed plant-wide meter readings based on each plant's general meter, for all plants during July 2004, in order to substantiate the conversion factor of each plant's general meter, as this conversion factor was used to convert each plant's meter readings to KWH. The Department points out that its limited review of Starcorp's electricity bills was sufficient to substantiate each plant's general meter readings as converted and reported to the Department in KWH.

However, the Department ultimately determined that Starcorp's reported electricity consumption was unsubstantiated because Starcorp failed to demonstrate the nature and accuracy of a significant number of its electricity exclusions that were purportedly unrelated to furniture production.[80] This is discussed directly below.

Starcorp's electricity reconciliation package included worksheets identifying Starcorp's electricity consumption by month. There were two such worksheets included in the verification package. One worksheet sub-divided electricity consumption by electricity bills, and the other worksheet sub-divided electricity consumption by meter readings. Starcorp stated that it selected the meter reading values to report to the Department as they are more accurate and even overstated the POR-wide total electricity consumption. Then, for the first time in this administrative review, Starcorp stated that it made exclusions to this overstated POR-wide electricity consumption figure based on what it alleged to be electricity usage amounts unrelated to furniture production. Because Starcorp had not disclosed this in any of its questionnaire responses, the Department had been unaware until verification of this issue. Thus, any analysis of this issue had to be conducted at verification because, by not reporting the exclusions in its questionnaire responses, Starcorp precluded the Department from asking any supplemental questions on this issue.

Starcorp presented to the Department its electricity exclusions for Plant 1 for July 2004 using a page from company records that listed sub-meter readings for Plant 1. See Verification Report at Exhibit 33. Starcorp explained that each plant had one general meter and multiple sub-meters (feeding into the original meter), which are associated with various furniture-related and non-furniture related operations. Starcorp's July 2004 records listed each furniture and non-furniture operation and its associated meter reading. The Department then asked Starcorp to review the remaining electricity exclusions with respect to the subsequent 17 months of the POR (August 2004 - December 2005). Starcorp officials read off electricity exclusions for the rest of the POR months, as they related to each specific plant, using a company worker's notebook. This notebook was never presented to the verifiers so that they could substantiate the electricity

[80] The Department also points out that Starcorp did not report in its questionnaire responses that it does not consider its gross POR-wide electricity consumption amount to be its actual electricity consumption during the POR with respect to production of subject merchandise. We only discovered at verification that Starcorp's reported electricity consumption amount was based on certain exclusions. Moreover, at no time prior to verification did Starcorp disclose that its reported electricity consumption amount is exclusive of electricity used in non-furniture production.

exclusions by reviewing the type of non-furniture related activity and its associated meter readings (nor were any other documents presented to the verifiers for substantiating the exclusions). For example, when asked about electricity exclusions related to "electricity to 3rd party," Starcorp officials only read out loud from their notebook that this electricity exclusion related to a certain construction project that was unrelated to furniture production. Company officials failed to provide any source documents to the verifiers to demonstrate the validity of what they were reading from their notebook. Starcorp argues that the Department should take the company officials' word that the type of electricity exclusion read from the notebook was sufficient to consider the item verified. The Department disagrees. The entire purpose of verification is to spot check items through review of source documents kept in the ordinary course of business. While Starcorp did in fact provide documentation to substantiate its July 2004 electricity exclusion for plant 1, this is insufficient documentation to substantiate 18 months of exclusions covering 4 plants. Given that this was the first the Department knew about the exclusions, the Department was also not in a position of knowledge where it could have been prepared to follow up with detailed questions. It had to rely on the presentations by Starcorp officials. Therefore, the Department does not consider this item to be successfully verified.

Starcorp also alleges that the Department observed certain facilities during its plant tour, and that this is sufficient evidence to find the facilities' electricity exclusion verified. Although the Department verifiers did observe a handicraft facility, Starcorp did not provide any evidence that the electricity for the claimed sub-meter was related to that facility.

Next, Starcorp takes issue with the Department's characterization of the thinner facility's electricity exclusion in its verification report, which stated that "because {Starcorp} self produces thinner, and the Department is valuing the inputs to thinner as a separate factor of production," its electricity consumption was excluded. In its verification report, the Department only noted what Starcorp officials said to it during verification. The Department did not reach any adverse inference with respect to these facts. See Starcorp Verification Report at 66.

Finally, as stated in the verification report, Starcorp reported its per-unit electricity consumption as it relates to its different types of labor. See Starcorp Verification Report at 69. In other words, Starcorp allocated its POR-wide electricity consumption (post-exclusions) by different types of labor. Starcorp acknowledges that in its allocation ratio of labor to electricity, it used a different POR-wide electricity consumption amount than the one reported to the Department and in its electricity reconciliation trace. Starcorp states that the difference in the electricity amounts is de minimis. However, because this figure was misreported in Starcorp's electricity allocation ratio and because the labor figure in Starcorp's electricity allocation ratio was unsubstantiated, we have determined that Starcorp has not substantiated its reported per-unit electricity consumption.

Lastly, although Starocorp's electricity exclusions were not substantiated at verification, we have determined, based on reasons unrelated to Starcorp's verification deficiencies, that we cannot rely on any of Starcorp's data in this review. See Starcorp AFA Memo and Comment 62.

Therefore, the issue of how to treat Starcorp's deficiencies with respect to electricity exclusions is moot.

**Comment 60: Packing Materials**

Starcorp disagrees with the Department's conclusion that Starcorp did not provide any documentation to substantiate the total consumption figures for packing materials. Starcorp persists that this information was produced in the non-wood reconciliation package and that a "good part" of that package was verified.

Petitioners call attention to the verification report, where the Department states that it asked Starcorp for documentation to substantiate its total packing material consumption and that Starcorp stated that those figures could be verified as part of the non-wood materials reconciliation package. Petitioners also note that verification ended without a complete reconciliation of Starcorp's non-wood material consumption amounts. Referencing the Department's verification report, Petitioners point out that Starcorp's non-wood consumption package contained only worksheets summarizing its reported total consumption of non-wood materials during the POR. Petitioners argue that although the Department completed its review of one non-wood material, Starcorp was unable to provide the Department with an adequate reconciliation package for the other two materials before the end of verification, citing the Department's verification report which indicates that the non-wood materials reconciliation package was not presented in a comprehensible format. Accordingly, Petitioners reason that since the total consumption data for packing materials (other than the one input reviewed in the non-wood materials reconciliation trace) were based on the non-wood materials package, and since verification of non-wood s material package ended without a complete reconciliation, packing materials (other than the single reviewed input) remain unverified.

**Department's Position:** We disagree with Starcorp's claims that it substantiated the total consumption figures for packing materials. At no time during verification did Starcrop present to the Department source documents to substantiate its gross POR-wide consumption of any packing material. See Starcorp Verification Report at 79-80 (as stated in Comment56, the gross POR-wide consumption amount is a key figure in Starcorp's factor allocation methodology as it is the main basis for each factor's allocation ratio used to derive Starcorp's reported per-unit factor consumption amounts.) Thus, since verification concluded without a complete reconciliation of Starcorp's consumption of packing materials, we find that Starcorp has not presented record evidence to support its reported total packing material consumption figures. Nevertheless, because the Department did not reach a definitive conclusion on how the timing of its verification outline would have impacted Starcorp's preparation, the Department is not making an adverse determination with respect to the information that it did not have an opportunity to review, or that Starcorp did not have an opportunity to present to the Department. See Comment 52: Timing of Verification Outline for further discussion. However, as we explain

in Starcorp AFA Memo, the Department is unable to rely on any of Starcorp's reported data in this review for unrelated reasons. See Starcorp AFA Memo; Comment 62.

**Comment 61: Minor Corrections**

Starcorp claims that the Department distorted its characterization of the minor corrections presented at verification. Starcorp states that its minor corrections as initially presented to the Department were never changed or revised. Starcorp maintains that revisions occurred to the presentation of the minor corrections pursuant to the Department's request that it quantify the impact of the errors in specific ways for the Department's evaluation. Moreover, Starcorp claims that the Department's accumulation of the errors in the appendix to its verification report distorts the errors, but states that the Department's narrative correctly quantifies the impact of these errors.

**Department's Position:** The Department notes that certain minor corrections were significant in that they resulted in FOPs not being reported for certain CONNUMs. The impact of these errors are addressed in the Starcrop AFA Memo that has been issued with these Final Results.

We do not agree with Starcorp's characterization of this issue. In presenting these minor corrections to the Department, Starcorp did not apprise the Department of their full impact on Starcorp's reported FOPs. Therefore, the Department requested that Starcorp identify their full impact on its reported FOPs. As Starcorp acknowledges, the Department's narrative in the verification report is an accurate reflection of the errors. Nevertheless, while the error impacts a significant quantity of CONNUMs, the impact on the FOPs appear to be insignificant overall, pursuant to 19 C.F.R. 351.413. The Department has not analyzed this issue further because the Department is unable to rely on Starcorp's data for other reasons. See Starcorp AFA Memo.

**Comment 62: Application of Total Adverse Facts Available**

Petitioners argue that the Department must determine Starcorp's dumping margin in this review using total adverse facts available. Petitioners contend that Starcorp obstructed the Department's efforts to conduct this review at every stage of the proceeding. Petitioners claim that Starcorp provided untimely, incomplete, misleading and false responses to the Department's questionnaires prior to the preliminary results, and continued to do the same after the preliminary results. Petitioners claim, further, that Starcorp so thoroughly failed verification that the Department cannot calculate a margin based on partial adverse facts available, as it did in the preliminary results. Petitioners conclude that, therefore, the Department must determine Starcorp's dumping margin using total AFA.

Petitioners assert that Starcorp has refused to cooperate with the Department's information requests since the beginning of this review. Petitioners assert that Starcorp did not comply with

the Department's November 3, 2006 Supplemental Section D Questionnaire which instructed Starcorp to submit a separate FOP database for each of its four legal entities that produce subject merchandise, even though it did not claim that such information does not exist or that it was impossible for it to comply. Petitioners assert that, in fact, Starcorp conceded in its November 9, 2006 request for extension of time that it could report on such a basis. Petitioners further assert that Starcorp did not comply with the Supplemental Section D Questionnaire instruction to provide an explanation of the unusually large variances observed in Starcorp's Section D Response.

Specifically, in citing to the Act, Petitioners assert that every one of the criteria for the application of total facts available has been met in this case. Petitioners contend that Starcorp repeatedly withheld requested information from the Department and repeatedly failed to provide requested information by the deadlines and in the form and manner requested. Petitioners state that these errors and omissions occurred most notably in connection with the Department's questions regarding plant-specific FOPs and again at verification with respect to any number of document packages and homework assignments. Petitioners assert that Starcorp did not produce the plant-specific FOPs until 23 days before the preliminary results were due to be issued; the FOPs were incomplete as stated in the Preliminary Results; the BOMs did not reflect raw material consumption as required, which distorted Starcorp's allocation methodology; and Starcorp did not provide an adequate explanation of its financial accounting procedures. Further, petitioners argue that at verification Starcorp withheld information it claimed it had compiled until the end of the last day of verification, and much of the information it gave the Department earlier in the day was incomplete. Lastly, Petitioners assert that, as detailed above, Starcorp also significantly impeded the review.

Moreover, Petitioners assert that Starcorp has provided extensive information and contradictions that could not be verified. Petitioners cite to Exhibits 32-34 of their case briefs and list their observations as to deficiencies and contradictions in information that Starcorp provided to the Department. Those observations have been listed below. Petitioners allege that the problems at verification affected all fundamental aspects of the FOP response, including the veracity of Starcorp's financial statements, Starcorp's general reporting methodology (i.e., Starcorp's surrogate product FOPs and failure to support plant data), wood inputs, non-wood inputs, labor, energy, packing materials, and by-products. Petitioners contend that because none of these components of the FOP response was verified as reported, the Department cannot calculate Starcorp's margin based on partial facts available.

Petitioners argue that, given the developments after the preliminary results and at verification, Starcorp must be assigned total, rather than partial, adverse facts available. Petitioners assert that the Department generally uses "partial facts available only to fill 'gaps in the record due to deficient submissions or other causes,'" citing Am. Silicon Techs, 240 F. Supp. 2d 1308 n.1, (citing the SAA, at 656, 869). Petitioners assert, further, that the Department's practice is "to reject a respondent's submitted information in toto when flawed and unverifiable cost date render{} all price-to-price comparisons impossible," citing Extruded Rubber Thread From

Malaysia; Final Results, 63 FR 12763. Petitioners state that the CIT and Federal Circuit have endorsed this practice in Heveafil, 25 CIT 151 (affirming the Department's use of total adverse facts available on the ground that "{i}t is clear to the Court that unverified product-specific direct material costs would prevent any meaningful accurate cost calculation."), accord, Steel Authority of India, 149 F. Supp. 2d 928. Petitioners contend that, because the Department cannot render a price-to-price comparison based on the record in this review, it must assign Starcorp a margin based on total facts available.

Petitioners assert that the Department must use adverse inferences because Starcorp has repeatedly failed to cooperate. See Sections 776(a)(1) and (2), 776(b) of the Act. Further, citing Nippon Steel, 337 F.3d 1381-83, Petitioners assert that the Department may apply adverse inferences for inattentiveness, carelessness, or inadequate record keeping even when the respondent denies having the specific intent to refuse to cooperate. Petitioners state that the Department explicitly determined that Starcorp did not cooperate to the best of its ability prior to the preliminary results, contend that Starcorp did nothing thereafter to reverse or ameliorate that finding, and assert that Starcorp's failure to cooperate became even more egregious in the final stages of the verification.

Petitioners contend that Starcorp clearly did not cooperate to the best of its ability between the preliminary results and verification, as described above. Petitioners state that even though the Department gave Starcorp a fourth chance to submit correct information in the form requested by issuing a post-preliminary results supplemental questionnaire, Starcorp still failed to provide updated plant-specific FOP data, failed to perform a number of reconciliations requested by the Department, and failed to provide certain information in a useable format.

Petitioners argue that Starcorp's failure to cooperate to the best of its ability in this case is a particularly compelling basis for applying adverse inferences because in Heveafil, 25 CIT 147, the CIT affirmed the Department's decision to use total adverse facts available when the respondent could not produce an original bill of materials, did not present a budgeting report as requested, and could not reconcile inventory records. Petitioners contend that, in that case, the following facts were relevant to the Department's finding that the respondent did not cooperate to the best of its ability, and to the CIT's and Federal Circuit's decisions to affirm the Department's finding: (a) the respondent did not inform the Department that certain documents would not be produced until the third day of a five-day verification, even though the Department requested the documents at the beginning of verification; (b) the respondent's employees lacked familiarity with the respondent's accounting system; and (c) the respondent knew what verification entailed based on the Department's verification instructions and the respondent's own prior experience with verification. Petitioners assert that in the instant case, Starcorp similarly did not produce documents until the last day of verification even though they were requested earlier, Starcorp employees lacked familiarity with Starcorp's records and accounting system, and Starcorp knew what verification entailed based on the Department's Verification Outline and its verification of Starcorp during the investigation. Petitioners argue that, therefore, as in Heveafil, the Department should assign Starcorp's margin based on total adverse facts available in this review.

Finally, Petitioners contend that the Department should assign Starcorp the PRC-wide rate of 216.01 percent as total facts available. Petitioners assert that in accordance with the Act, an adverse inference may include reliance on information derived from any previous review. Petitioners argue that the Department should assign Starcorp the PRC-wide rate of 216.01 percent, which is the highest rate from the most recently completed new shipper review of the antidumping duty order on wooden bedroom furniture from the PRC. Petitioners state that this was the rate assigned as adverse facts available in the preliminary results to another respondent, First Wood.

As noted above, Petitioners list, in Exhibits 32 - 34 of their case brief, their specific observations as to deficiencies and contradictions in Starcorp's questionnaire responses and responses at verification. The allegations contained in Petitioners' case brief, at Exhibits 32-34, are summarized below.

Petitioners provide examples of Starcorp's deficiencies at verification, stating that[81]:

1. Starcorp did not provide factor reconciliation packages for plant-specific or plant-weight-averaged (i.e., combined) FOP databases. As a result, Starcrop's FOP databases relied on the Department for the preliminary results margin calculation remain entirely unverified.
2. Starcorp's submission of a package to the verifiers to explain its methodology for using the "next most similar product" as a surrogate source for proxy FOP data for "sold but not produced" pieces constituted new information that the Department properly rejected.
3. Starcorp's minor correction indicates that it may have not reported all POR production within a single CONNUM.
4. Starcorp's indication at verification that there are differences in the production process for different products and for different plants calls into question any methodology that assigns a single variance (or "consumption rate") across all production and all four plants.
5. That certain line-item in Starcorp's individual and combined financial statements is unreliable such that they do not substantiate its reported FOP consumption data.
6. Starcorp's explanation of financial accounts and financial statements was contradictory and did not appear to reflect the accompanying documentation.
7. Starcorp failed to produce documents to support its auditor's calculations for its financial statements pursuant to the Department's request.
8. Starcorp failed to provide any support for its year-end accounting for inventories and other items in its financial statements.

[81] For discussion of proprietary information, see Petitioners' Case Brief, dated June 18, 2007, at Exhibit 32.

9. In explaining to the Department that a "computer virus" affected "some production and sales data," Starcorp failed to indicate whether the lost data could include U.S. sales and or production records relating to subject merchandise.

10. Starcorp failed to provide certain documents to substantiate its completeness for the Department's 2005 completeness trace.

11. Starcorp failed to present salary information for all of its individual companies to substantiate its total labor hours relating to furniture production.

12. Starcorp failed to provide other information requested by the Department to demonstrate that certain wages were unrelated to production.

13. Starcorp presented to the Department at verification plant-specific data that would have enabled it to report plant-specific consumption amounts. Starcorp indicated for the first time at verification that this information was available to it, thus, it could have been used to increase the accuracy of the reported FOPs. Yet, Starcorp consistently relied on a plant-wide, single consumption ratio.

14. Starcorp failed to provide the Department with a labor reconciliation to confirm that all production functions in the production line had been accounted for it the reported labor hours.

15. Starcorp failed to provide the Department with the Plant 1 lathing line attendance summary ledger and the Plant 1 painting labor hours as the Department requested.

16. As a result of receiving a single CONNUM FOP allocation package, the Department was unable to review the allocation of carving labor.

17. Starcorp provided inaccurate freight distances between Starcorp and the Harbor and between Starcorp and its suppliers.

18. Starcorp was unable to substantiate its reported consumption of iron materials and scrap iron offset reported.

Petitioners also state that Starcorp impeded the Department's verification in the following ways.[82]

1. Verification packages were not prepared prior to verification or completed by March 21, 2007, as required. Petitioners state that documentation to support Starcorp's per-unit consumption amount for material inputs for each of the four CONNUMs identified in Attachment II of the Department's March 7, 2007, verification outline were not prepared, specifically purchase, inventory, production and accounting records that are necessary to tie the per-unit amount reported to the general ledger. Starcorp did not provide a complete trace of its production process, including supporting documentation starting from a single production order related to each of the CONNUMs listed in the Department's

[82] For discussion of proprietary information, see Petitioners' Case Brief, dated June 18, 2007, at Exhibit 33.

March 7 verification outline, prior to March 21, 2007. After the Department narrowed its request for items relating to its raw material traces, Starcorp still did not comply with the Department's requests for information and only presented a factor allocation for one CONNUM on the second to last day of verification.

2. Verification packages were not prepared prior to verification as required, and were incomplete where presented. For electricity, the reconciliation package was presented to the Department at 6:00 p.m on the final day of verification, and the Department discovered numerous inconsistencies with respect to Starcorp's June 2004 reported meter readings and no documents to substantiate its electricity exclusions. For non-wood materials consumption, the Department was not presented with packages until after 6:00 p.m. on the final day of verification, and the package presented was incomplete. One trace presented to the Department was incomplete, but after requests for source documentation by the verifiers, Starcorp provided the documentation that traced. Other traces presented to the Department were incomplete, as Starcorp presented numerous untranslated documents without supporting calculations to demonstrate reconciliation or supporting documents to substantiate POR purchases.

3. Verification packages were prepared but incomplete.

   a. For raw material allocations, Starcorp had not completed any of the surprise CONNUM FOP traces, which were requested during the course of verification. The Department reduced this request to one CONNUM FOP package to reduce the burden on Starcorp. Starcorp did not present this CONNUM FOP package to the verifiers.

   b. Also, Starcorp did not provide to the Department its full chart of accounts until the 5$^{th}$ day of verification.

   c. Starcorp did not substantiate certain cost-related traces using its individual financial statements.

   d. Starcorp presented verifiers with a package in which it traced its reported total cost of wood materials consumed from the cost reconciliation worksheet to the 2004 wood inventory record, but did not prepare or provide any documentation beneath this data. Thus, the data were not reconciled to any supporting documents.

   e. Starcorp did not present supporting documentation beyond data from its single inventory system to substantiate its wood material consumption using documentation such as production records, material purchases, etc.

   f. Starcorp did not present verifiers with documents to substantiate its factor allocation and overall consumption for paint products.

   g. Starcorp's market economy purchase for a certain solid wood item remained unverified as Starcorp's worksheet contained an error with respect to a calculation for: "percentage of the total quantity of this factor purchased or obtained during the POI/POR."

h. Also, Starcorp did not provide a reconciliation of it production lines and plants, thus, labor remained unverified. Starcorp also did not provide supporting documentation to substantiate its total labor hours for direct labor relating to wood hardness; direct labor associated with veneering, lathing, carving and upholstering, and indirect labor.

i. Starcorp did not provide any documentation to support its packing consumption and payment.

Petitioners state that Starcorp made certain contradictions in providing information to the Department.[83]

1. Starcorp made contradictions about payments to suppliers for raw material purchases.
2. Starcorp stated that its customers pay customs fees, but certain traces revealed that Starcorp sometimes pays customs fees.
3. Although Starcorp stated that it did not receive advance payment from customers, its accounts receivable ledgers indicates that certain customers have a surplus with Starcorp.
4. Starcorp stated that it did not maintain price lists, but the Department's trace indicated that some price lists are kept.
5. Starcorp stated that Orin does not make U.S. sales, but the Department's sales trace revealed that a U.S. sales contract was issued by Orin.
6. The list of all production lines presented to the Department at verification did not correspond to a previous list of production lines.
7. The aggregation of certain line-items in Starcorp's financial statements did not correspond to the Department's findings during its market economy purchase trace.
8. Starcorp did not submit a correction for its June 2004 electricity meter reading, which was reported incorrectly.
9. Starcorp's financial statements did not account for its electricity deduction relating to use by tenants.
10. Starcorp did not explain the nature of its electricity deductions relating to non-furniture production (e.g., construction projects and candle facility).

Petitioners finally point to general methodological problems that remain unresolved to argue that application of partial adverse facts available is impossible. Specifically, Petitioners state the following.[84]

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[83] For discussion of proprietary information, see Petitioners' Case Brief, dated June 18, 2007, at Exhibit 33.

[84] For discussion of proprietary information, see Petitioners' Case Brief, dated June 18, 2007, at Exhibit 34.

1. Starcorp's plant-specific databases remain unsupported because Starcorp did not prepare or present any FOP data to support the plant-specific data reported previously to the Department, which are the very databases relied upon by the Department in the calculation of the preliminary margin. As a result, the Department cannot rely on the plant-specific databases and cannot apply corrections to these unsupported source files.
2. Starcorp's aggregated factor consumption data are unsupported because: Starcorp's financial statements are not reliable to provide accurate value information, raw material consumption information, and do not reflect reality.
3. Starcorp's products require different precision and plant-specific consumption rates that more accurately account for efficiencies resulting from differences in precision, could have been derived, but were not reported to the Department. Specifically, Starcorp could have provided factor allocation ratios on a plant-specific basis but did not do so. Also, Starcorp did not reveal prior to verification that different product mixes require different levels of precision which results in different material yields and different consumption rates.
4. Starcorp failed to support the CONNUM-specific FOPs reported in its plant-specific databases and failed entirely to support the CONNUM-specific FOPs reported in the consolidated (i.e., "combined") database for three of the four pre-selected CONNUMs. Thus, the CONNUM-specific FOP data did not verify and no data exist to rectify this failure.

Petitioners also point to discreet issues that, they argue, remain unresolved. Those are as follows.[85]

1. Starcorp never provided corrected CONNUM FOP data for the 2 CONNUMs affected by the missing products that were incorrectly classified as non-subject merchandise. Because Starcorp did not provide the recalculation or the underlying FOP data for these items, the Department cannot correct this error and gauge the impact.
2. Starcorp identified product codes that fall within CONNUMs not previously reported. Some of these products did not fall within any reported CONNUMs, and therefore, no FOP data were provided for these products. Since no calculation was provided for this issue, the Department cannot correct this error.
3. Starcorp indicates that it failed to include certain products from the reported FOP for the sets listed, and no correction for this error was presented.
4. Starcorp failed to provide the Department with the corrected information requested to verify a certain input purchased from a market economy. The

[85] For discussion of proprietary information, see Petitioners' Case Brief, dated June 18, 2007, at Exhibit 34.

Department thus has no information with which to assess whether the reported values should be accepted as reported or need to be adjusted.

5. Starcorp failed to provide the Department with complete and accurate supporting documentation regarding its wood consumption.
6. Starcorp did not present a complete verification package for non-wood materials consumption in a timely manner. The reported non-wood FOP values are unverified.
7. Starcorp did not provide documents to substantiate its reported total consumption amounts for paint.
8. Starcorp did not provide documents to substantiate its reported total consumption of consumable materials.
9. Starcorp did not provide the Department with a verifiable set of source documents and worksheets to substantiate its POR electricity consumption. This aggregate electricity consumption remains unsubstantiated, and the allocation of electricity per labor hours is unsubstantiated because labor remains unsubstantiated.
10. Starcorp did not substantiate the aggregate quantity of direct labor hours for either direct labor hours affected by wood hardness or direct labor hours not affected by wood hardness.
11. Starcorp presented untimely corrections to the reported indirect labor quantities and failed to provide any supporting documentation for the labor hours reported in this labor category.

Starcorp rebuts Petitioners' claims and asserts that there is no basis on which the Department can determine that it failed to cooperate to the best of its ability based on that portion of the record. Starcorp declares that Petitioners' call for total adverse facts available is without legal or factual basis. Doing so, Starcorp suggests, would artificially distort its dumping margin. Starcorp concedes that there may be a few minor errors or gaps in the factual record for which the Department may be justified in using partial facts otherwise available, if they are reasonable in relation to the actual information used elsewhere to calculate Starcorp's margin, as such an outcome would be consistent with the Department's obligation to determine dumping margins as accurately as possible. See Am. Silicon Techs., 240 F. Supp. 2d at 1308, n.1 and n. 2; Rhone Poulenc Inc., 899 F. 2d at 1191. However, Starcorp alleges that its questionnaire responses and supplemental questionnaire responses provided all information requested of the company where such information was available.

Starcorp details the law governing the application of adverse facts available, citing to Lii de Cecco di Filippo Fara S. Marino S.p.A., 216 F. 3d at 1032. In doing so, Starcorp explains that in making such a determination, the Department's discretion is not unbounded in that: 1) the Department must show that the respondent has failed to live up to the statutory mandate to do all

that it is able to do;[86] and 2) if the respondent's questionnaire responses are deficient in only a few respects, the Department will use facts otherwise available to fill in gaps on the record.[87]

Starcorp maintains that its efforts to cooperate with the Department at verification were extraordinary. Starcorp insists that it did not "fail to cooperate" with the Department during this review, it rather enabled the Department's review by, for example, successfully creating a plant-specific FOP allocation methodology from scratch. Stacorp also states that it went to extreme lengths to accommodate an "overly ambitious," mismanaged verification schedule and verification process when it had been provided so little notice of what the Department actually intended to verify in its verification outline.[88] Starcorp claims that it worked "around-the-clock" with its counsel and consultants to prepare for the first week of verification. This, Starcorp contends, precluded it from doing much preparation for the verification's second week until the weekend of March 17, 2007. Starcorp also argues that the Department insisted on taking five plant tours during the second week, and that this precluded the Department from completing its agenda having to reach the bulk of the verification material during the last three days of verification. Nevertheless, Starcorp urges that it was prepared for every verification item in the outline, thus, it did not impede verification. Starcorp contends that if there are to be any consequences that flow from the Department's failure to complete all verification tasks listed in its "tardily-provided" verification outline, Starcorp is entitled to a new verification under case precedent. See Rubberflex, 59 F. Supp. 2d at 1346.

Starcorp addresses certain points raised by Petitioners in their case brief, specifically the pre-selected CONNUM trace packages, the trace of Starcorp's production process for each of the CONNUMs identified in that portion of the verification outline, and the Department's narrowing of the list of items to be verified during the last week of verification. Starcorp protests these points by claiming that these circumstances arose in part because it only received the full verification outline a single business day before verification began, and in part due to the Department's choice to take additional plant tours and spend additional time on already-covered items during the verification's second week, and other choices. Starcorp also notes that the cost portion of the Department's verification outline was "provided to Starcorp at roughly 11 p.m. on the last business day before verification."

Starcorp also states that Petitioners' citation of various errors (some perceived errors, some actual minor errors, and other inadvertent mistakes) by Starcorp in no way compromises the overall accuracy and veracity of Starcorp's reporting. Starcorp rebuts each of Petitioners' claims:

1. Starcorp states that items, such as raw material purchases and labor, are accurately reported in Starcorp's combined financial statement.

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[86] See Shanghai Taoen Int'l Trading Co., 360 F. Supp. 2d at 1344.
[87] See New World Pasta Co., 316 F. Supp. 2d at 1352.
[88] See Rubberflex, 59 F. Supp. 2d at 1346.

2. Starcorp states that its U.S. sales databases are reliable as finished goods "out" are valued at actual.

3. Starcorp alleges that it did not fail to provide any support for the plant-based FOP databases, but rather provided plant-specific FOP data during verification.

4. Starcorp contends that it did not introduce new information with regard to use of sales quantity where production quantity was not available in weight-averaging within a CONNUM, e.g., products "sold but not produced." This information, Starcorp claims, was submitted previously as part of Starcorp's questionnaire responses. Moreover, even if considered "new," Starcorp argues that it must be accepted as "corroborated {and} supported" information already on the record.

5. Starcorp points out that its total net volume of solid woods calculation was incorrect, but against its interest.

6. Starcorp states that its electricity exclusions are valid and fully explained during verification.

7. Starcorp refutes Petitioners' claims regarding variances, as Petitioners cite to "meaningful differences in the production process for different products and different plants." Starcorp claims that all plants produce wooden bedroom furniture and there is extensive and frequent production across all plants, production of a single order at different plants, and production of the same product at different plants, citing to the Verification Report at 13, 24, 40 and Exhibit 4 at 2409-10.

8. Starcorp argues that the Department's opinion on the applicability of certain Chinese GAAP standards is without merit.

9. Starcorp claims that it did provide support for its yearly count of inventories.

10. Starcorp contends that there is no evidence that a "computer virus" compromised its sales data, claiming that it was reconciled during verification and citing to the Verification Report at 28-38 and 41-43.

11. Starcorp alleges that the Department verified "without discrepancy" a particular transaction for which a document was missing, citing to the Verification Report at 43.

12. Starcorp disputes Petitioners' suggestion that there might be some labor costs not captured because they were booked at Xing Ding, stating that it was contradicted by the Department's verification report where the Department traced the total amounts of the salary details for September 2005 to each of the five legal entities' September 2005 salaries payable summary ledgers.

13. Starcorp opposes Petitioners' suggestions that plant-specific data are available, stating that it had great difficulty in its preparing plant-specific data.

14. Starcorp states that Petitioners' comment concerning certain aspects of labor (i.e., Plant 1 Lathing Line, Plant 1 Painting Labor, Carving Labor) was addressed in Starcorp's case brief.

15. Starcorp explains that its errors with respect to freight distance were against its interests.

16. Starcorp states that it substantiated its reported consumption of iron materials and scrap as an offset in its "Non-Wood Materials" reconciliation package.

17. Starcorp strongly disagrees with Petitioners' statement regarding cost reconciliation for materials in 2004 where Petitioners stated that "data were not reconciled to any supporting documents." Starcorp argues that the Department verified and traced Starcorp's raw material purchases to the accounting records and to the single inventory system, referencing the Department's verification report where the Department reconciled Starcorp's ME purchases and reconciliation for particle board and pine, and 2005 wood material.

18. Starcorp states that for its wood materials consumption, the Department tested a number of ME purchases of wood materials and was able to reconcile the selected purchases to the single inventory system and to the combined financial statements. Starcorp also explains that the Department tested the consumption for particle board, pine, alder and Chinese fir and found no discrepancies.

19. Starcorp argues that for thinner, it submitted supporting documentation at verification and was reviewed to be adequate and that additional materials existed in its "non-woods" package. Starcorp also notes that the Department noted no discrepancies with respect to Starcorp's paint allocation methodology.

20. Starcorp states that the incorrect ratio for indirect labor was against its interest, and is not requesting that this error be corrected in the final results.

21. Starcorp states that it did not contradict itself with respect to "advance payments from customers" at verification. Starcorp maintains that it does not receive advance payment from its customers as it had stated this at verification.

22. Starcorp maintains that any of Petitioners' or the Department's suggestion of contradiction with respect to Starcorp's price lists is without merit, as Starcorp uses price lists only as an internal guide to pricing.

23. Starcorp claims that Orin does not make any U.S. sales, and that U.S. sales are made only by Shanghai Starcorp and Starcorp Furniture.

24. Starcorp claims, in response to the Department's and Petitioners' claims regarding electricity deductions, that its rental income is booked into its accounts under the line of other business income and that Starcorp's chart of accounts and Star's financial statement do not report that account and that line item.

Starcorp urges that the Department may make specific findings of facts available. Starcorp concedes that in certain limited instances it did "inadvertently neglect" to provide information in the proceeding. Starcorp claims that the Department should fill in the gaps left by such an omission through the use of partial facts available pursuant to case precedent and section 776 of the Act and Am. Silicon Techs., 240 F. Supp. 2d 1308 n1 (quoting the Uruguay Round Agreements Act Statement of Administrative Action, H.R. Rep. No. 103-826 at 656, 869). Doing so, Starcorp argues, would enable the Department to fulfill its statutory mandate to determine "dumping margins as accurately as possible." See Fujian Mach. & Equip. Imp. & Exp. Corp. 178 F. Supp. 2d 1317.

Starcorp makes specific claims as to the inapplicability of both facts available and adverse facts available:

1. Starcorp states that certain aspects of its financial statements are valid.

2. Starcorp contends that although Petitioners take issue with Starcorp's material warehouse ledgers, Starcorp's ledgers were found to be accurate and reconciled to Starcorp's financial statements.

3. Starcorp disagrees with Petitioners' characterization of its individual company booking strategy for raw materials, and notes that the aggregate factor consumption data are not implicated by its booking strategy. In fact, Starcorp argues that its individual-company booking strategy fully supports the use of the combined and aggregated FOP database alleging that they were verified by the Department. Starcorp persists that company-specific purchases do not correlate to plant usage or production, and only purchases and usages viewed for the single facility as a whole (in the aggregate) render the data completely accurate, and claims that this was verified by the Department.

4. Referencing Petitioners' statements about certain values in Starcorp's financial statements, Starcorp asserts that its reported quantities were verified by the Department and reconciled to Starcorp's combined audited financial statements for numerous inputs.

Next, Starcorp repeats its claims that plant-specific consumption rates do not reflect how Starcorp purchases or consumes raw materials and are not logical for the Department's analysis. Starcorp acknowledges some differences between plants, but maintains the appropriateness of

using single facility consumption rates based on the alleged extent of cross-plant and multi-plant production.[89]

Additionally, Starcorp alleges that the Department verified one CONNUM, which was made up of three products and more than 40 FOPs each. This, Starcorp argues, provides more than an adequate basis to conclude that Starcorp's CONNUM-specific data were supported and verified.

Further, Starcorp claims that the Department has data to address each of the "discrete issues" and not apply total facts available. In doing so, Starcorp references specific items:

1. In acknowledging that it did not provide corrected CONNUM FOP data for the two products at issue in Minor Correction No. 2, Starcorp states that sales quantities and values of these products are minor and concedes to the possible application of partial adverse facts available.

2. Pursuant to Minor Correction No. 3, Starcorp acknowledges that the application of partial adverse facts available for certain products that do not fall within an existing CONNUM would not be unreasonable.

3. Also pursuant to Minor Correction No. 3, Starcorp states that for the remaining products, existing CONNUM-specific FOP data are available, but product-specific FOP data for these products were not included in the CONNUM-specific FOP build-up. Starcorp argues that it would be appropriate in this instance to apply partial facts available using data already on the record to "fill in the gap." In doing so, Starcorp claims that the products at issue involve a de minimis volume by quantity of reported U.S. sales and the correction for this error should be proportionate to the error itself. Thus, Starcorp argues that the application of adverse facts available to the entire CONNUM would be "unfair" and distortive since the remaining FOPs for other products in the CONNUM were reported correctly. Instead, Starcorp submits that the most reasonable, logical and accurate way to provide data for the missing product-specific FOPs is to apply partial facts available using the FOP for the CONNUM to which the product belongs. Yet, Starcorp maintains that applying partial facts available to each of the several CONNUMs at issue would be distortive and would contravene the Department's statutory mandate to calculate dumping margins as accurately as possible and would contravene the CAFC and CIT's mandate that, when applying an adverse inference, the Department continue to "...determine current margins as accurately

[89] Starcorp explains the differences between its four plants: 1) plants operate a single facility in an integrated and interchangeable manner; 2) which plant produces a given product is a question of line availability, not specialization; 3) the same product can be produced at different plants; 4) a single product may be produced across several plants; and 5) when one plant pulls inventory of a given material , it can be partially used in the manufacture of subject or non-subject merchandise, with the remainder transferred to other plants or held for manufacture of another order.

as possible." See Rhone Poulenc Inc., 899 F. 2d 1191; Nat'l Steel Corp., 913 F. Supp. 596.

4. For Minor Correction No. 6, Starcorp states that the Department's description of this error is not accurate, arguing that its error is only limited to the sets within the CONNUMs listed by the Department, and those pieces for which FOP data was missing. Starcorp agrees with the Department's statement that the errors impact these CONNUMs differently. For CONNUMs with missing FOPs for pieces, Starcorp states that the Department should apply the total FOP for the CONNUM as it exists to "fill the gap" for the missing CONNUM. For the remaining CONNUMs for "sets," Starcorp states that data already exists on the record for the Department to calculate FOPs for the sets at issue using FOP data for pieces comprising the sets. Starcorp claims that this methodology ensures an accurate FOP for the set CONNUMs in question and reflects the same methodology used by Starcorp and allegedly verified by the Department. Starcorp contends that application of adverse facts available to the sets in question, would be unreasonable given that Starcorp's error was minor and brought to the Department's attention by Starcorp.

5. Starcorp states that an error with respect to raw material consumption data for a certain input has no impact on the reporting in this review and should be ignored, and that no form of facts available should be applied.

6. Starcorp persists that its wood materials consumption package was complete, well-supported and verified, and that no form of facts available should be applied.

7. Starcorp states that its non-wood materials consumption data were verified and that the Department's Verification Report in this regard is incorrect. Starcorp argues that no form of facts available should be applied.

8. Starcorp contends that it did present information regarding its total paint consumption, thus no form of facts available should be applied.

9. Starcorp argues that its consumable materials were reported in and supported by its non-wood material reconciliation package, and thus no form of facts available should be applied.

10. Starcorp alleges that it did substantiate its electricity consumption, and in certain calculations it over-reported its total POR electricity. Although Starcorp states that it is not seeking a reduction to its electricity usage figure, it also argues that no form of facts available should be applied.

11. Starcorp claims that its direct labor was verified, and that due to a minor error presented to the Department at verification, the Department should increase labor hours not affected by wood hardness by a certain percentage.

12. Starcorp points out that it over-reported indirect labor and this error was against its interest. Starcorp posits that the Department should adjust Starcorp's indirect labor downward to correct for this error. Moreover, Starcorp urges that no form of facts available should be applied.

**Department's Position:** The Department has determined, and record facts compel a finding, that Starcorp's rate for these Final Results is most appropriately based on total adverse facts available. The basis of the Department's determination is discussed below and a further discussion can be found in the Starcorp AFA Memo, issued with these Final Results. See Starcorp AFA Memo.[90]

*Withholding of Information Necessary to Calculate an Accurate Margin*

Starcorp withheld FOP information necessary to calculate an accurate NV for more than 56 percent of its U.S. sales. In the numerous responses to our questionnaires, Starcorp repeatedly failed to notify and disclose to the Department the methodology used to construct the CONNUMs and the FOP usage rates. The methodologies selected by Starcorp to report its FOPs were contrary to the instructions of the questionnaire and did not make the best use of the plant-specific information that was available to Starcorp.

First, Starcorp failed to notify the Department that it did not follow the instructions in the questionnaire with respect to reporting FOP data. The Department learned, just before issuing its Preliminary Results (January 31, 2007), that Starcorp had sales of merchandise that was "sold but not produced" during the POR. Starcorp did not fully disclose the use of sales quantity to weight FOPs until just before the Preliminary Results. This methodology was used to derive the normal values for 12.02 percent of Starcorp's U.S. sales. It was not until its January 19, 2007 submission (i.e., 3 months after its first FOP submission and only 12 days before issuance of the Preliminary Results) that Starcorp began to hint at the weighting aspect of its reporting methodology for sold, but not produced items (i.e., using sales quantities in place of production quantities to weight average product-specific FOPs within a CONNUM). Even then, the Department was unable to constructively use this information in any analysis regarding the magnitude of U.S. sales impacted by this weighting methodology. Additionally, Starcorp did not fully disclose the use of proxy FOP data for merchandise sold but not produced. This methodology was use to derive the normal value for 44.62 percent of Starcorp's U.S. sales. It was not until its March 5, 2007, response to the Department's post-preliminary results questionnaire that Starcorp finally reported the existence and its use of proxy FOP data. Because we were not aware of the use of proxy FOP data until March 5, 2005, only one week prior to verification and such data had not been provided in electronic format, we were unable to identify the full magnitude of U.S. sales impacted by the sold, but not produced (either as sets or pieces) issue. Starcorp had foreclosed any opportunity for the Department to conduct a meaningful

[90] The Department is not making an adverse determination with respect to the information that it did not have an opportunity to review at verification, or that Starcorp did not have an opportunity to present to the Department at verification. See Comment 52: Timing of Verification Outline.

analysis of the appropriateness of this methodology or its impact on the accuracy of the margin calculation. In withholding such information from the Department, Starcorp precluded any opportunity for the Department to consider what might be the most appropriate alternative for calculating Starcorp's FOPs for the items "sold but not produced items" that did not have POR production data.

Additionally, Starcorp failed to disclose the methodology it used to derive its CONNUM FOPs despite having numerous opportunities to do so. For example, in its response to the Department's November 29, 2006 questionnaire, Starcorp did not disclose, in either the narrative response or the accompanying exhibit, that the information supplied in an Exhibit, which was supposed to demonstrate the FOP buildup for a certain CONNUM, did not in fact reflect the full CONNUM FOP buildup as reported in Starcorp's FOP database because the exhibit was missing data for several of the products making up this CONNUM. Moreover, the Department remained unaware of Starcorp's failure to fully demonstrate its methodology until reviewing information we specifically requested at verification in conjunction with information contained in Starcorp's March 5, 2007 supplemental questionnaire response. Starcorp's failure to be forthcoming and to accurately demonstrate its CONNUM FOP buildup to the Department in a timely manner deprived the Department of the ability to understand and analyze Starcorp's data adequately prior to issuance of the Preliminary Results and prior to verification, and thus significantly impeded the Department's analysis of this issue. Further, by not providing the complete FOP buildup for this CONNUM, but stating that it had, Starcorp again misled the Department.

*Discrepancies between the Combined and Plant-Specific FOP Databases*

In the numerous responses to our questionnaires, Starcorp repeatedly failed to fully respond to our requests for information with respect to plant-specific FOP data. The methodology selected by Starcorp to report its FOPs was contrary to the instructions of the Department's questionnaire and did not make the best use of the plant-specific information that was available to Starcorp. Eventually, Starcorp did provide some of the requested plant-specific data; however, it did so without adequate explanation for the Department to conduct an appropriate analysis of the data prior to the Preliminary Results. Upon reviewing these data, we found a series of inconsistencies that led us to question the overall reliability and integrity of all of Starcorp's FOP databases.

Specifically, Starcorp failed to provide information in the form and manner requested by the Department and within the Department's stated deadlines. The Department's questionnaire provides explicit instructions to respondents that they are to report plant-specific and weighted-average FOP data if they have more than one facility that produced the merchandise under review during the POR. In its initial questionnaire response, Starcorp instead submitted an FOP database based on the combined (not weighted-average) data of its production facilities. Starcorp then requested two extensions to the Department's supplemental questionnaire, in part to respond to the Department's second request for the plant-specific and weighted-average data. Notwithstanding the extension requests (which we granted in part), Starcorp again failed to provide the plant-specific and weighted-average FOP data. On January 8, 2007, in response to a questionnaire asking Starcorp to substantiate its claim that the combined database represented the

most accurate product-specific FOP data, Starcorp reiterated its previous inadequate explanations and provided the plant-specific and what it called a "plantall" FOP database. However, this explanation was submitted three months after Starcorp's first FOP data submission and only 23 days prior to the Preliminary Results. Thus, Starcorp had precluded any opportunity for the Department to conduct a meaningful analysis of the newly submitted databases.

Starcorp has proffered that it had to go to great lengths to derive the plant-specific data. However, we note that all of Starcorp's factor data was allocated based on the differences between its gross and net consumption of raw materials, all of which it maintains electronically. Specifically, its net consumption values are derived from product-specific standards that Starcorp maintains in electronic format in the normal course of business and which were used for reporting both the combined and the plant-specific reporting databases. Further, its gross consumption figures were also maintained electronically in an Excel database that tracks the release of raw materials from inventory, by plant, in the normal course of business and could easily be disaggregated to derive the plant-specific data. Thus, Starcorp's reasoning for originally withholding this information, i.e., that it does not comport with the manner in which it maintains its books and records, does not appear to be valid.

Furthermore, the Department discovered significant distortions and discrepancies among Starcorp's FOP databases. Upon our return from verification, the Department verifiers were able to run some data tests on the numerous FOP databases in comparison to information obtained at verification. These data tests identify anomalies in the data sets provided by Starcorp. For example, the combined data identifies consumption quantities for certain FOPs that do not appear to have been consumed in the production of those products, based on information contained in the plant-specific databases. Thus, Starcorp's contention that the combined data more accurately reflect its production values is unsubstantiated by record evidence. Further, the combined data do not reflect different plant efficiencies or the different product mix manufactured at each plant during the POR, while the plant-specific data capture these quite adequately. Thus, this calls into question the overall integrity of Starcorp's derivation of its FOP databases.

*Unreliability of Starcorp's Financial Statements*

Starcorp insisted throughout this proceeding that the combined financial statement used for internal use and antidumping purposes should be one the Department examines. According to Starcorp, this one central statement captures all the business activities conducted by Starcorp throughout its various legal entities. There are several problems with Starcorp's approach. For example, the combined financial statement, audited or not, is not submitted to any government agency. Due to the proprietary nature of the evidence that caused the Department to determine that Starcorp's financial statements are unreliable, a more detailed analysis of the Department's determination is contained in Starcorp AFA Memo, and Memorandum from Nazak Nikakhtar, through Wendy J. Frankel, to Stephen J. Claeys Regarding Reliability of Starcorp's Financial Statements. Both have been issued with these Final Results.

*Application of Adverse Facts Available*

The record shows that, as a direct result of its misreporting and withholding of information, Starcorp significantly impeded the Department's ability to calculate accurate margins for 56.64 percent of U.S. sales. See Starcorp AFA Memo. Starcorp further impeded the Department's ability to calculate accurate margins as a direct result of its failing to provide, in the form and manner requested by the Department and by the Department's established deadlines, the information that would have served as the basis of the Department's analysis, pursuant to sections 776(a)(2)(B) and (C) of the Act. Despite having numerous opportunities to provide the information for "sold but not produced items" as well as plant-specific and weighted-average data in a timely manner, as evidenced by the Department's instructions in its questionnaires, Starcorp did not do so, and this failure significantly impeded the Department's ability to comprehend and analyze Starcorp's data adequately within the Department's statutory time frame. Further, where, as here, the Department finds that a respondent's submitted information cannot be tied to reliable financial statements or a reliable financial recording system, the Department must conclude that the submitted data are also not reliable. Finally, there remain significant discrepancies between Starcorp's numerous data files and between the data files and the narrative descriptions Starcorp provided purporting to explain those data files. See Starcorp AFA Memo.

In selecting from among facts available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has "failed to cooperate by not acting to the best of its ability to comply with a request for information." Section 776(b) of the Act further provides that an adverse inference may include reliance on information derived from: (1) the petition; (2) a final determination in the investigation under this title; (3) any previous review under section 751 or determination under section 753; or (4) any other information on the record. In this case, Starcorp failed to cooperate to the best of its ability by failing to provide its true reporting methodology (e.g., use of proxy FOP data and sales quantities for weighting purposes instead of production quantities) throughout most of the proceeding. Starcorp selectively reported information to the Department, providing only that information that it deemed relevant and appropriate for the proceeding and withholding, or providing in an untimely and confusing manner information specifically requested by the Department. Therefore, as AFA, we have applied 216.01 percent, the rate calculated for another respondent in the recently completed new shipper review that overlaps 12 months of this administrative review (and thus is contemporaneous with this POR).

## IX. Separate Rate Company-Specific Issues

### Comment 63: Separate-Rate Status for New Four Seas

New Four Seas asserts that it and its affiliate[91] have submitted sufficient documentation during this review to demonstrate the absence of both de jure and de facto government control over their sales of subject merchandise and, as such, the Department should assign them separate-rate status.

New Four Seas claims that in supplemental questionnaire responses dated December 28, 2006 and March 26, 2007, New Four Seas and Four Seas HK provided all of the additional information requested by the Department, including a revised SRA in Four Seas HK's name. New Four Seas argues that sales of subject merchandise it produced that was exported by Four Seas HK should be assigned a separate rate for the final results.

No other party commented on this issue.

**Department's Position:** We agree that New Four Seas and Four Seas HK provided all of the information requested by the Department in the supplemental questionnaire, including evidence demonstrating that the company's ultimate owners are located in a market-economy country. As a result, we find that New Four Seas/Four Seas HK has demonstrated an absence of both de jure and de facto government control over its export activities in accordance with the separate-rates test criteria, and should be assigned a separate rate for the final results.

### Comment 64: Separate-Rate Status for Winny and Triple J

Winny and Triple J request that the Department make available to them supplemental questionnaires that the companies claim they never received prior to the preliminary results. Winny and Triple J state that the Department cited their failure to respond to the Department's supplemental questionnaires as the basis for denying them separate-rate status in the preliminary results. However, counsel for Winny and Triple J claims that, due to previously reported failure of its telephone/fax/voice mail system, it was unaware of the supplemental questionnaires until February 2, 2007, when it received notice of the Department's preliminary results via e-mail. Winny and Triple J state that they had received information from the Department on several occasions via e-mail during this review, but no e-mail notice was sent regarding the supplemental questionnaires.

According to Winny and Triple J, the Department notified them that it might be willing to provide the supplemental questionnaires upon receipt of sufficient proof substantiating the claims regarding the service disruptions to counsel's telephone/fax/e-mail service. Winny and Triple J

[91] New Four Seas' affiliate is Four Seas Furniture Manufacturing Ltd. ("Four Seas HK").

argue that, in response to the Department's request, they provided documentation of these service interruptions on April 9, 2007, and submitted further confirmation as an attachment to their June 18, 2007 case brief. Furthermore, they state that counsel informed the Department in December 2006 of these service disruptions.[92] Winny and Triple J assert that they have demonstrated a willingness to provide information to the Department to justify their eligibility for separate-rate status. In consideration of the documentary evidence of the service disruptions, Winny and Triple J request that the Department now make available to them the supplemental questionnaires.

Petitioners argue that the Department should continue to deny Triple J and Winny a separate rate because they did not timely respond to the Department's requests for supplemental information, and thereby failed to meet their burden of demonstrating an absence of government control in either law or fact. Petitioners point out that on November 17, 2006, the Department issued a supplemental questionnaire to Triple J, established a due date of November 27, 2006, and on November 17, 2006, telephoned Triple J's counsel, leaving a voice message informing him that the supplemental questionnaire was available for pick up.[93] Further, Petitioners state that the Department called and left messages for Triple J's counsel two additional times on November 17, 2006 and again on November 27, 2006,[94] and that the Department also attempted to fax the supplemental questionnaire.[95] Petitioners state that Triple J did not submit a response to the supplemental questionnaire and did not request an extension (citing Separate Rates Memorandum at 13).

In addition, Petitioners state that on December 11, 2006, the Department issued Winny a supplemental questionnaire requesting that the individual company that exported the subject merchandise to the United States submit an SRA. According to Petitioners, the Department also attempted to fax the supplemental questionnaire to Winny's counsel,[96] and Winny neither submitted a supplemental questionnaire response nor requested an extension, citing the Separate Rates Memorandum at 14.

Petitioners explain that on April 9, 2007, counsel for Triple J and Winny submitted an unsigned letter from Verizon to substantiate its claim that there was an interruption in its telephone/fax/voice mail service during the period when the Department was attempting to notify it of the supplemental questionnaires. According to Petitioners, the letter contained acknowledged discrepancies. Petitioners assert that Triple J and Winny submitted new,

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[92] See Affadavit of Patricia Foster, administrative assistant at the law firm of Aitken Berlin, counsel to Winny and Triple J, attachment to the June 18, 2007 case brief.

[93] Petitioners cite to Memorandum to the File from Paul Stolz: Calls to Counsel Regarding Separate Rate Supplemental Questionnaire, (November 30, 2006).

[94] Petitioners cite to Memorandum to Wendy Frankel, Director, Office 8, from Charles Riggle, Program Manager: Preliminary Results Separate Rates Memorandum ("Separate Rates Memorandum") (January 31, 2007).

[95] Petitioners cite Case Brief of Triple J and Winny at 2 (explaining and not disputing that the "Department reported that it successfully attempted to fax to us Supplemental Questionnaires for Winny and Triple J").

[96] Id.

unsolicited factual information in their June 18, 2007 case brief, well after the deadline for the submission of new factual information, and that the information should be stricken from the record. Notwithstanding the fact that the information was submitted untimely, Petitioners maintain that the new factual information does nothing to entitle Winny and Triple to separate-rate status.

Petitioners submit that Triple J's and Winny's counsel filed notices of appearance on behalf of Triple J and Winny, which notified the Department that it should interact with Triple J's and Winny's counsel. As a result, Petitioners contend that the Department properly attempted to notify counsel for Triple J and Winny (by telephone and facsimile) of the supplemental questionnaires, and that any excuse that counsel's phone/fax/voice mail service was interrupted for over three months is implausible. Petitioners maintain that parties to a proceeding before the Department have an explicit obligation to cooperate to the best of their ability, and an implicit obligation to notify the Department if they cannot be reached by normal means of communication. Petitioners assert that it is not the Department's burden to exhaust every form of available communication to contact counsel. Moreover, Petitioners argue, even if counsel for Triple J and Winny made an attempt to notify the Department of problems with its telephone/fax/voice mail service sometime late in December 2006, as suggested in attachment 2 of Triple J and Winny's case brief, this does not absolve respondents of any obligations that arose before that time period. According to Petitioners, the Department depends on the cooperation of respondents to provide necessary information in order to determine dumping margins within the extremely short deadlines imposed by the statute, and the fact remains that Triple J and Winny failed to timely respond to the Department's supplemental questionnaires.

Petitioners argue that Triple J and Winny's request that the Department make the supplemental questionnaires available is untimely and wholly inappropriate. Petitioners claim that the Department called and left messages about the supplemental questionnaires before the preliminary results and, pursuant to 19 CFR 351.301(c)(2)(ii), "failure to submit requested information in the requested form and manner by the date specified may result in the use of facts available under section 776 of the Act and § 351.308." Consequently, Petitioners argue that the Department should apply facts available and continue to deny Triple J and Winny a separate rate.

**Department's Position:** We agree with Petitioners that the Department should continue to deny Triple J and Winny a separate rate because they did not timely respond to the Department's requests for supplemental information, and thereby failed to meet their burden of demonstrating an absence of government control in either law or fact.

On November 17, 2006, the Department issued a supplemental questionnaire to Triple J, establishing a due date of November 27, 2006 for Triple J's response. The Department telephoned counsel for Triple J twice on November 17, 2006, both times leaving messages on his voice mail informing him that the supplemental questionnaire was available for pickup. The Department left voice messages again on November 22, 2006 and November 27, 2006, informing

counsel that the supplemental questionnaire still had not been picked up.[97] Counsel did not return the Department's telephone calls and Triple J did not pick up the supplemental questionnaire or submit a supplemental questionnaire response, nor did it request an extension of the deadline to respond to the supplemental questionnaire. On December 11, 2007, the Department issued a supplemental questionnaire to Winny, again leaving a message with counsel's voice mail system that the questionnaire was available for pickup. Counsel did not return the Department's calls and Winny did not pick up the supplemental questionnaire or submit a supplemental questionnaire response, nor did it request an extension of the deadline to respond to the supplemental questionnaire.

On February 9, 2007, the Department published the preliminary results of this review. On February 12, 2007, Winny and Triple J filed submissions, requesting that the Department accept the information meant to address the reasons for which the Department denied separate-rate status to Winny and Triple J, as discussed in the Preliminary Results. In filing these submissions, counsel for Triple J and Winny stated that he had previously informed the Department in November and December 2006 of problems with his telephone and voice mail systems. As a result, counsel claimed that he was unable to retrieve voice mail messages for several weeks coinciding with the period during which the Department attempted to issue the supplemental questionnaires. However, despite counsel's claims to the contrary, there is no evidence that anyone from his firm made any attempt to contact the Department regarding the purported shutdown of telephone and voice mail service until after the preliminary results.

On March 12, 2007, the Department rejected Winny's and Triple J's February 12, 2007 submissions as untimely filed new factual information. In doing so, the Department explained that if counsel could provide by April 2, 2007, "documentation from Verizon which indicates that Verizon had shut down your telephone and voice mail system while it switched your firm from its system to Vonage's system during November and December 2006," the Department would consider whether to reissue the supplemental questionnaires to Winny and Triple J. The Department specifically framed its request in this manner because this was the reason provided by counsel as to why his firm was unable to access its voice mail system during this time period.

On April 2, 2007, counsel requested – and the Department granted – a one-week extension to provide the requested documentation. On April 9, 2007, counsel filed a letter, purportedly from Verizon, which purportedly confirmed that his firm experienced a service interruption that lasted "for months," i.e., from mid-October 2006 through March 14, 2007.

On May 9, 2007, we telephoned counsel for Triple J and Winny to point out the fact that the letter from Verizon was not signed, and moreover that its explanation was inconsistent with the explanation previously provided.[98] Specifically, counsel for Triple J and Winny had previously

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[97] See Memorandum to the File from Paul Stolz: Calls to Counsel Regarding Separate Rate Supplemental Questionnaire, (November 30, 2006).

[98] See May 10, 2007 Memorandum to the File from Charles Riggle and Robert Bolling, Program Managers..

informed the Department that his firm attempted to switch to Vonage, and that the service was shut down due to the failure of Verizon to properly assign the lines to Vonage. The letter from Verizon explained that counsel for Triple J and Winny established a new account with Verizon on September 15, 2006, and subsequently experienced service problems as a result of moving from one service provider to Verizon. Counsel stated that he would attempt to obtain another letter from Verizon to clarify the matter. We told counsel "to provide the Department with the revised letter from Verizon, and a clarifying statement on his firm's telephone problems as soon as possible."[99]

On June 18, 2007, Winny and Triple J filed a case brief requesting that the Department reissue the supplemental questionnaires for Winny and Triple J. Attached to the case brief was another letter from Verizon, this time with a signature, and stating that the service problems resulted from moving from Verizon to another service provider. By any standard, counsel failed to provide this revised letter "as soon as possible." The letter was faxed to counsel on June 13, 2007, but was not submitted to the Department until June 18 as an attachment to its case brief. Moreover, even if the Department were to find this explanation reasonable, coming as it does 51 days before the statutory due date for the final results, there is insufficient time to issue supplemental questionnaires and allow interested parties to comment on the responses prior to the due date for the final results.

We acknowledge that the log book in the APO office shows that counsel for Triple J and Winny picked up other documents on December 22, 2006. However, counsel made no effort to inform the appropriate Department staff of telephone service outages, and the first notification to the Department on the record of the instant proceeding was with the February 12, 2007 submission. As the legal representative for Winny and Triple J in this proceeding, their counsel had a responsibility to notify the Department personnel involved in this proceeding of any problems with its telephone, fax, or voice mail systems, and to provide the Department with an alternative method of communication. The fact is, whenever the Department called to inform Triple J's and Winny's counsel that documents were ready for pickup, the voice mail system seemed to be working. The Department followed normal procedures and made numerous attempts to contact the legal representative for Winny and Triple J each time a document was to be released.

Because no additional timely information has been provided since the preliminary results, we continue to find that Triple J and Winny have not demonstrated their eligibility for separate-rate status by showing that they operate free of government control either in law or in fact, and that Triple J and Winny remain part of the PRC entity for purposes of these final results of review.

[99] Id.

**Comment 65: Separate-Rate Status for ZY Wooden/MY Trading**

ZY Wooden asserts that it and its affiliate[100] have submitted sufficient documentation during this review to demonstrate the absence of both de jure and de facto government control over their sales of subject merchandise and, as such, the Department should assign them separate-rate status.

According to ZY Wooden/MY Trading, in supplemental questionnaire responses dated December 27, 2006 and April 4, 2007, it provided all of the additional information requested by the Department, including a revised SRA in MY Trading's name. ZY Wooden argues that subject merchandise it produced that was exported to the United States by MY trading should be assigned a separate rate for the final results.

No other party commented on this issue.

**Department's Position:** We do not agree that ZY Wooden/MY Trading should be assigned a separate rate. On March 21, 2007, the Department issued to ZY Wooden/MY Trading a supplemental questionnaire, requesting "documentation demonstrating receipt of payment by ZY Wooden." The Department also stipulated that "The documents must show payment from the U.S. customer to ZY Wooden and must tie to the relevant sale for which you provided documents in Exhibit 2 of the April 18, 2006 SRA."

As "proof of payment" MY Trading provided pages from its accounts receivable for the customer identified on the commercial invoice. The accounts receivable shows the balance due from a debtor on a current account, and is not evidence of receipt of payment. In its April 4, 2007 supplemental questionnaire response ZY Wooden/MY Trading stated that is has continued to carry forward the accounts receivable balance for this customer since June 2004 because "MY Trading still had not collected the payment . . . from the U.S. customer" and that it "remains an account receivable in MY Trading's books up to the present time." As a result, we have determined that ZY Wooden/MY Trading does not qualify for a separate rate because it has failed to demonstrate that it made a sale of subject merchandise during the POR.

[100] ZY Wooden is referring to MY Trading as its affiliated trading company.

**RECOMMENDATION**

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final determination of sales at less than fair value and the final weighted-average dumping margins for all investigated firms in the Federal Register.

AGREE ✓ DISAGREE____

David M. Spooner
Assistant Secretary
for Import Administration

8/8/07
Date