

September 20, 2010

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Susan H. Kubach
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Investigation of Certain Coated Paper Suitable for High Quality
Print Graphics Using Sheet-Fed Presses from the People's
Republic of China: Final Antidumping Duty Determination

SUMMARY:

The Department of Commerce ("Department") has analyzed the case and rebuttal briefs submitted by interested parties in the antidumping duty investigation of certain coated paper suitable for high quality print graphics using sheet-fed presses ("coated paper") from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes to the *Preliminary Determination*.¹ We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

Case Issues:

- Comment 1: Whether to Grant Market-Oriented Industry ("MOI") Status to the Coated Paper Industry
- Comment 2A: Whether Simultaneous Application of Countervailing Duties ("CVDs") and Antidumping Duties Calculated Using the NME Methodology is Contrary to Law
- Comment 2B: Whether Simultaneous Application of Countervailing Duties and Antidumping Duties Calculated Using the NME Methodology to Imports of the Same Products Results in the Imposition of Double Remedies
- Comment 3: Whether Targeted Dumping Test Violates the Administrative Procedures Act ("APA") and is Flawed
- Comment 4: Whether to Revise the Targeted Dumping Analysis in Light of APP-China's Minor Corrections Filed at Verification
- Comment 5: Whether the Department Should Apply Zeroing
- Comment 6: Application of Adverse Facts Available ("AFA") to Sun Paper Companies
- Comment 7: Whether to Apply Market-Oriented Economy ("MOE") Treatment to APP-China
- Comment 8: Whether to Apply AFA to All Sales and Expense Information of GPS

¹ See *Preliminary Determination*.

- Comment 9: Whether to Reclassify Certain APP-China Sales from Export Price (“EP”)- to “Constructed Export Price (“CEP”)
- Comment 10: Whether the Department Should Reject APP-China’s Minor Correction
- Comment 11: Whether the Department Should Deduct Certain Rebates for APP-China
- Comment 12: Whether the Department Should Deduct Certain Commission Expenses
- Comment 13: Whether the Department Should Correct Certain Ministerial Errors
- Comment 14: Whether to Deduct Domestic Inland Insurance from U.S. Price
- Comment 15: Application of Foreign Truck Freight
- Comment 16: Whether to Treat All of APP-China’s Market Economy (“ME”) Pulp Purchases as Market Economy Purchases (“MEPs”)
- Comment 17: Whether to Accept APP-China’s ME Purchases from Thailand and Korea
- Comment 18: Whether to Employ the 33 Percent Threshold for GE Group’s ME Purchases
- Comment 19: Valuation of Calcium Carbonate Ore (“CCORE”)
- Comment 20: Valuation of Optical Brightener (“OBA/OBAS/OBAL”)
- Comment 21: Valuation of Masculine Starch Transforming Agent (“MSTA”)
- Comment 22: Valuation of Tapioca Starch (“TSTARARCH”)
- Comment 23: Valuation of Wet End Starch (“WESTARCH”)
- Comment 24: Valuation of Dispersing Agent A (“DISPERSANTA”)
- Comment 25: Valuation of Tackifier
- Comment 26: Valuation of Hypochlorous Natrium/Sodium Hypochlorite (“BACLO/NACLO”)
- Comment 27: Valuation of Coating Binding Agent (“CBA”)
- Comment 28: Valuation of Coating Starch (“CSTARARCH”)
- Comment 29: Valuation of Surface Sizing Starch (“SSS”)
- Comment 30: Selection of Labor Rate
- Comment 31: Valuation of Brokerage & Handling
- Comment 32: Whether the Department Should Include Certain Direct Selling Expenses in the Calculation of SG&A

List Of Abbreviations And Acronyms Used In This Memorandum:

| Acronym/Abbreviation | Full Name |
|-----------------------------|---|
| Act or Statute | Tariff Act of 1930, as amended |
| AD | Antidumping |
| AD/CVD | Antidumping and Countervailing Duty |
| AD Agreement | Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 |
| Aditya | Aditya Birla Chemicals (India) Limited |
| AFA | Adverse Facts Available |
| AP Act | Administrative Procedure Act |
| APP-China | Gold East Paper (Jiangsu) Co., Ltd. (“GE”), Gold Huasheng Paper Co., Ltd. (“GHS”), Gold East (Hong Kong) Trading Co., Ltd. (“GEHK”), Ningbo Zhonghua Paper Co., Ltd. (“NBZH”), Ningbo Asia Pulp and Paper Co., Ltd. (“NAPP”), (collectively, the “GE Group” or “APP-China”) |
| AUV(s) | Average Unit Value(s) |
| B&H | Brokerage and Handling |
| CEP | Constructed Export Price |

List Of Abbreviations And Acronyms Used In This Memorandum:

| Acronym/Abbreviation | Full Name |
|-----------------------------|--|
| CIT or Court | U.S. Court of International Trade |
| COM | Cost of Manufacture |
| CONNUM | Control Number |
| Customs or CBP | U.S. Customs and Border Protection |
| CV | Countervailing |
| CVD | Countervailing Duty |
| Department | Department of Commerce |
| EP | Export Price |
| Essar | Essar Steel Limited |
| FA | Facts Available |
| FOP(s) | Factor(s) of Production |
| GATT | General Agreement on Tariffs and Trade |
| GOC | Government of China |
| GE | Gold East Paper (Jiangsu) Co., Ltd. |
| GE Group | Gold East Paper (Jiangsu) Co., Ltd. , Gold Huasheng Paper Co., Ltd., Gold East (Hong Kong) Trading Co., Ltd., Ningbo Zhonghua Paper Co., Ltd., Ningbo Asia Pulp and Paper Co., Ltd., (collectively, the “GE Group” or “APP-China”) |
| GEHK | Gold East (Hong Kong) Trading Co., Ltd. |
| GHS | Gold Huasheng Paper Co., Ltd. |
| GPS | Global Paper Solutions Inc. |
| Himalya | Himalya International Ltd |
| HTS | Harmonized Tariff Schedule |
| IDM | Issues and Decision Memorandum |
| ITC | U.S. International Trade Commission |
| LTFV | Less Than Fair Value |
| ME | Market Economy |
| MEP | Market Economy Purchase |
| Mm | Millimeters |
| MOI | Market Oriented Industry |
| MOI Respondents | APP China and Chenming |
| MT | Metric Ton |
| NAPP | Ningbo Asia Pulp and Paper Co., Ltd. |
| Navneet | Navneet Publications (India) Ltd. |
| NBZH | Ningbo Zhonghua Paper Co., Ltd. |
| NME | Non-Market-Economy |
| PAI | Publicly Available Information |
| Petitioners | Appleton Coated LLC, NewPage Corporation, S.D. Warren Company d/b/a Sappi Fine Paper North America, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union |
| POI | Period of Investigation |
| PRC | People’s Republic of China |
| Rs | Rupees |

List Of Abbreviations And Acronyms Used In This Memorandum:

| Acronym/Abbreviation | Full Name |
|----------------------|--|
| SAA | Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. no. 103-316, Vol. 1 (1994), at 838 |
| Santosh | Santosh Starch Products Limited |
| SG&A | Selling, General, and Administrative Expenses |
| Sun Paper Companies | Shandong Sun Paper Industry Joint Stock Co., Ltd., Yanzhou Tianzhang Paper Industry Co., Ltd., Shandong International Paper and Sun Coated Paperboard Co., Ltd., International Paper and Sun Cartonboard Co., Ltd. |
| SV | Surrogate Value |
| WTA | World Trade Atlas® |

Below is the complete list of the issues for which we received comments and rebuttal comments from the parties:

Background:

On May 6, 2010, the Department of Commerce published in the *Federal Register* its *Preliminary Determination* in the antidumping duty investigation of coated paper from the PRC.² Subsequent to the *Preliminary Determination*, the collapsed mandatory respondent, Sun Paper Companies, withdrew from participating in the investigation prior to verification. We conducted verifications of APP-China in California (GPS) and China (GE, NBZH, and GEHK) in May and June, 2010. Petitioners and APP-China, and their affiliated U.S. reseller GPS, submitted surrogate value comments on June 29, 2010. Petitioners submitted rebuttal comments on July 6, 2010. We provided Petitioners and the respondents with an opportunity to comment on our *Preliminary Determination* and verification findings.

On August 5, 2010, case briefs were filed by Petitioners, APP-China, MOI Respondents, and the GOC on all issues excluding scope. On August 10, 2010, Petitioners filed their rebuttal brief, and APP-China filed its rebuttal brief on August 11, 2010.

The respondents filed a case brief on scope issues on August 20, 2010, and the petitioners filed a rebuttal brief on August 24, 2010. The briefs pertaining to scope issues were submitted on the records of all four concurrent antidumping and countervailing duty investigations of certain coated paper from Indonesia and the People's Republic of China, and are addressed in the "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China," dated concurrently with this memorandum.

² See *Preliminary Determination*.

DISCUSSION OF ISSUES

Comment 1: Whether to Grant Market-Oriented Industry (“MOI”) Status to the Coated Paper Industry

- MOI Respondents argue that coated paper producers in China are an MOI, and the Department should use market economy methodology to calculate antidumping duties for the final determination.
- MOI Respondents also argue that the Department’s MOI three-prong test is inconsistent with U.S. law, and its application violates due process.
- The GOC argues that the Department's approach not to grant MOI is inconsistent with the statute and that the Department’s MOI three-prong test does not rationally address whether an industry is market-oriented and unreasonably prejudices the producers under investigation.
- Petitioners argue that the Department should uphold its *Preliminary Determination* to reject the respondent’s MOI claim based on failing to satisfy prongs number two and three of the three-prong *Lug Nuts From the PRC* test for identifying MOIs.³

Department’s Position: MOI Respondents argue that under section 773(c)(1) of the Tariff Act of 1930, as amended (“Act”), the Department must justify why the “available information does not permit the normal value of the subject merchandise to be determined under subsection (a),” in order for the Department to determine normal value (“NV”) on the basis of factors of production (“FOP”). Pursuant to section 771(18)(A) of the Act, when a country is determined to be a non-market economy (“NME”), it means that the designated country, in this case the PRC, “{d}oes not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise.” In accordance with section 771(18)(C)(i) of the Act, NME status remains in effect until revoked by the Department. NME status for the PRC has not been revoked by the Department and remains in effect for the purpose of this investigation. Accordingly, the NV of the product is appropriately based on FOPs valued in a surrogate market economy (“ME”) country in accordance with section 773(c) of the Act, a methodology that has been repeatedly upheld by the Courts. *See, e.g., Sigma Corp. v. United States*, 117 F.3d 1401, 1405 (Fed. Cir. 1997); *Nation Ford Chem. Co. vs. United States*, 166 F.3d 1373 (Fed. Cir. 1999).

Under the NME presumption established by the statutory scheme, the only mechanism for market economy treatment currently available to respondents in NME proceedings is MOI classification. The Act does not specify a specific test for determining whether a particular industry is market oriented. The Department currently employs an industry-wide test to determine whether, under section 773(c)(1)(B), available information in the NME country permits the use of the ME methodology for the NME industry producing the subject merchandise. The MOI test affords NME-country respondents the possibility of market

³ *See Lug Nuts/PRC* (April 24, 1992).

economy treatment, but only upon a case-by-case, industry-specific basis. This test is performed only upon the request of a respondent. *See, e.g., First MOE Comment Request.*

For an MOI claim to provide a sufficient basis for further investigation, it must adequately address each of the three prongs of the MOI test regarding the situation and experience of the industry as a whole, in this case, the coated paper industry. Specifically, the MOI test requires that: (prong 1) there be virtually no government involvement in production or prices for the industry; (prong two) the industry producing the merchandise under investigation should be characterized by private or collective ownership,⁴ and; (prong three) producers pay market-determined prices for all major inputs, and for all but an insignificant proportion of minor inputs. Additionally, an MOI claim must cover all (or virtually all) of the producers in the industry in question.⁵

In the *Preliminary Determination* of this investigation, the Department stated that the test for finding such a market-oriented industry must begin with a strong presumption that such situations do not occur in a country that is otherwise determined to be a non-market economy for the purposes of the antidumping law. *See Lug Nuts/PRC* (April 24, 1992). With respect to prong two in the present instance, the Department found that the evidence on the record was insufficient and problematic with regard to the ownership status of enterprises in the coated paper industry. Specifically, one or more of the largest producers of coated paper was a state-owned enterprise (“SOE”).⁶ With respect to prong three, the Department found that MOI Respondents did not provide a sufficient basis to support the claim that market-determined prices were paid for virtually all inputs. Of the three material inputs for which MOI Respondents did provide information, the Department noted that at least one of the inputs was characterized by substantial state production.⁷ MOI Respondents did not make any claim as to whether the numerous other material inputs to the coated paper industry are market based and only referenced company-level responses.⁸ For the above reasons, the Department determined that the MOI claim did not provide sufficient evidence to warrant the Department’s further consideration in this investigation of whether the coated paper industry in China is market-oriented.

As a preliminary matter, the Department disagrees with MOI Respondents’ argument that the Department “brushed aside the substantial factual evidence” without giving parties a meaningful right to present arguments or provide the coated paper industry an opportunity to satisfy the Department’s concerns. As the Department stated during the *Preliminary Determination* of this investigation, the Department prompted MOI Respondents to complete their MOI claim⁹ after receiving the initial data submission on February 5, 2010, that only addressed prong two.¹⁰ In order to ensure that MOI Respondents provided a sufficient MOI claim, the Department directed

⁴ There may be state-owned enterprises in the industry but substantial state ownership would weigh heavily against finding a market-oriented industry. *See Lug Nuts from the PRC.*

⁵ *See Preliminary Determination.* *See also Color Television Receivers/PRC* (April 16, 2004), and accompanying IDM at Comment 1.

⁶ *See Preliminary Determination* at 24896.

⁷ *See Exhibit INPUT-3 of MOI Respondent’s March 9, 2010, submission.*

⁸ *See MOI Respondents’ April 14, 2010, submission.*

⁹ *See Department’s February 24, 2010, Request for Additional Information Concerning Market-Oriented Industry Treatment.*

¹⁰ *See MOI Respondents’ February 5, 2010 submission.*

MOI Respondents to the three test elements as articulated in *Lug Nuts/PRC* (April 24, 1992) and specifically noted that the MOI claim must also address the first and third prong. In addition, to ensure that MOI Respondents addressed all of the necessary material and non-material inputs, the Department directed MOI Respondents, in addressing prong three, to include the specific inputs of land, capital, and labor.¹¹ MOI Respondents subsequently provided two additional data submissions on February 24 and March 9, 2010, regarding prongs one and three of the MOI test, respectively. On March 9 and 19, 2010, Petitioners submitted information citing deficiencies in MOI Respondents' claims, especially with respect to prongs two and three. On April 14, 2010, MOI Respondents provided additional information in support of their MOI claim and provided arguments in response to Petitioners' submission. After the *Preliminary Determination*, MOI Respondents provided a fifth data submission on May 19, 2010, that included an ownership chart and import volumes of three papermaking chemicals. On May 24, 2010, Petitioners cited deficiencies in MOI Respondents' May 19, 2010, submission.

The Department has carefully and fully considered all of MOI Respondents' data submissions and arguments, and disagrees that MOI Respondents were not afforded due process. On the contrary, MOI Respondents were afforded every opportunity to present evidence and arguments, and to rebut Petitioners' arguments against the MOI claim. Contrary to MOI's Respondent's assertion that the Department did not provide them with an opportunity to make their arguments and satisfy Department's concerns, MOI Respondents had more than half a year since the initiation of this investigation to make their arguments and provide evidence supporting their MOI claim. Moreover, the Department in the *Preliminary Determination* clarified a number of different analytical factors, including the existence of border measures, ultimate ownership of producers, the existence of guidance pricing, and clarifications regarding the timing of MOI submissions.¹² We also note that the MOI respondents made a data submission after the *Preliminary Determination*, but aside from providing an ownership chart and import volumes of three papermaking chemicals, the submission did not address any of the analytical factors utilized by the Department.

For all of the reasons outlined below, the Department continues to find that MOI Respondents' claim does not adequately address the second and third prongs of the MOI test.

With regard to prong two, the evidence on the record remains problematic with respect to the extent of state ownership in the coated paper industry. MOI Respondents themselves identified one of the largest producers of coated paper as an SOE.¹³ On March 9, 2010, Petitioners submitted information that several other enterprises, classified as non-SOEs by MOI Respondents, are in fact state-owned. MOI Respondents subsequently acknowledged that some of these enterprises, not previously classified as SOEs, in fact, have direct or indirect majority state-ownership, including an enterprise among the largest producers initially identified by MOI

¹¹ See *Preliminary Determination*, 75 FR at 24895.

¹² See *Preliminary Determination* at 24895. See footnote 2 of the Department's February 24, 2010, Request for Additional Information Concerning Market-Oriented Industry Treatment, which stated "This factor in the MOI analysis states, in part, that market-determined prices must be paid for all significant inputs, whether material or non-material (e.g., labor and overhead), and for an all but insignificant proportion of all the inputs accounting for the total value of the merchandise under investigation."

¹³ See Exhibit 1 of Respondents' February 5, 2010, submission.

Respondents.¹⁴ Moreover, notwithstanding this acknowledgement, MOI Respondents did not present an updated ownership composition of the coated paper industry that would more accurately reflect the extent of state-ownership in the coated paper industry. The second prong of the MOI test requires that there be no substantial state-ownership: “There may be state-owned enterprises in the industry but substantial state ownership would weigh heavily against finding a market-oriented industry.”¹⁵ In view of the above, particularly in light of the fact that some of the largest producers in the industry are state-owned, MOI Respondents’ claim does not adequately address prong two.¹⁶

The Department also continues to find that the MOI claim does not adequately address the third prong of the MOI test. First, MOI Respondents’ claim did not address virtually all inputs as the MOI requires, but in fact addressed only three material inputs. Second, the Department continues to note that at least one of the three “major (material) inputs” cited by MOI Respondents is characterized by substantial state production.¹⁷ Furthermore, indicia that might suggest market-based prices, such as a high import penetration ratio, are lacking for two of the three inputs.¹⁸ Additionally, for the primary input to the production of coated paper, wood pulp, record evidence indicates that China has imposed an export tariff.¹⁹ Border measures, in general, tend to depress domestic prices.²⁰

Aside from taking issue with the Department’s application of the MOI test in this investigation, MOI Respondents argue that the test itself is unreasonable.

First, MOI Respondents argue that the third prong’s requirement to demonstrate that market prices are paid for “virtually all” the inputs is an unreasonable burden. Respondents also argue that such information is not under the producers’ control and is the proprietary information of enterprises not participating in the AD investigation or may not even exist. The Department disagrees with MOI Respondents’ characterization of the requirements under the third prong of the MOI test. The Department does not require that MOI respondents collect business proprietary factor information for every material input, no matter how insignificant, from the universe of coated paper producers. The third prong of the MOI test, however, does require that the companies which elect to submit an MOI claim provide the Department with evidence that market-determined prices are paid for virtually all of the inputs that *MOI Respondents* use in the production process.²¹ In addition, MOI Respondents must explain how the inputs provided in the claim are reflective of the industry-wide production experience. In contrast to the above criteria, MOI Respondents’ claim only addressed *three* material inputs out of the several dozen, up to hundreds, of material inputs actually used in their production process.²² For certain coated paper

¹⁴ See MOI Respondents’ August 5, 2010, case brief. See also Petitioners’ March 9, 2010 submission.

¹⁵ See Preliminary Determination at 24895. See also *Color Television Receivers/PRC (April 16, 2004)*, and accompanying IDM at Comment 1.

¹⁶ See Exhibit INPUT-3 of MOI Respondents’ March 9, 2010, submission.

¹⁷ See Exhibit INPUT-3 of MOI Respondents’ March 9, 2010, submission.

¹⁸ See Exhibit 1 of MOI Respondents’ May 19, 2010, submission.

¹⁹ See Exhibit 6 of Petitioners’ March 19, 2010, submission.

²⁰ See Exhibit 6 of Petitioners’ March 19, 2010, submission.

²¹ See *Lug Nuts/PRC (April 24, 1992)*.

²² See Preliminary Determination at 24896.

products, these three inputs do not account for a large portion of the direct material cost.²³ Moreover, MOI Respondents did not provide the Department any explanation regarding the steps taken to obtain ownership and national-level production statistics regarding the unaddressed material inputs.

Second, MOI Respondents argue that the strong presumption against finding an MOI is unreasonable and contradicts present-day economic realities in China. MOI Respondents point to the Department's finding in the first countervailing duty investigation that "private industry now dominates many sectors of the Chinese economy, and entrepreneurship is flourishing." See *Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic – Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy*, (March 29, 2007) at 4, 10 ("*Georgetown Memo*"). The Department disagrees that its presumption is unreasonable. In 2006, the Department conducted a review of China's status as an NME for the purposes of the U.S. antidumping law applying the factors required under section 771(18)(B) of the Act.²⁴ In conducting this analysis, the Department considered the totality of China's economic reforms. In our decision to continue to treat China as an NME, the Department found that market forces in China are not yet sufficiently developed to permit the use of prices and costs in that country for purposes of the Department's dumping analysis. The Department found, *inter alia*, that China has a "dynamic (but constrained) private sector, but also found that the state retains for itself considerable levers of control over the economy."²⁵ In the *Georgetown Memo*, the Department found that,

"... China's economy, though distorted, is observably more flexible than the Soviet-style economies...the limits the PRC Government has placed on the role of market forces are not consistent with recognition of China as a market economy under the U.S. antidumping law."²⁶

MOI Respondents are conflating the Department's findings regarding the role of the private sector in the *Georgetown Memo*, with the separate and distinct inquiry of whether the prices and costs in China are sufficiently market-based in order to be used in the Department's dumping analysis. As the Department found in its last review of China's status as a non-market economy, market forces are not sufficiently developed, in large part, due to the fact that the GOC has not "ceded fundamental control over the economy to market forces."²⁷

Contrary to MOI Respondents' argument that the Department's presumption is unreasonable, the MOI test reflects the analytical and economic difficulty of finding an industry that is market-oriented in what is otherwise an NME. If economy-wide prices and costs are unusable for the Department's dumping analysis, then finding an MOI should be exceptional, unless overcome by thorough and convincing evidence on the record which demonstrates that the producers operate

²³ Due to the proprietary nature of this data, please see the final analysis memo for APP-China.

²⁴ See *Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China* ("China")-China's status as a non-market economy ("NME").

²⁵ *Id.* at 4

²⁶ See *Georgetown Memo* at 9.

²⁷ See *Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China* ("China")-China's status as a non-market economy ("NME") at 80-82.

in an environment of market-based costs and prices.²⁸

Third, MOI Respondents' further argue that the MOI test is unreasonable because the Department has not found an MOI since the test was developed in 1992.²⁹ The Department believes that this outcome is not indicative of the degree of reasonableness of the MOI test, but is indicative of the challenge of finding a *market-oriented* industry in a country where the Department has already determined that economy-wide prices and costs are not market-based. The economic reforms assessed in the Department's six-factor NME status determination under section 771(18)(B) of the Act generally take place throughout the economy, as opposed to taking place on an industry-by-industry basis, given the inter-sectoral linkages among industries that share common material and non-material inputs.

Comment 2A: Whether Simultaneous Application of Countervailing Duties (“CVDs”) and Antidumping Duties Calculated Using the NME Methodology is Contrary to Law

- Asserting that simultaneously applying anti-dumping (“AD”) duties calculated using the NME methodology and CVDs on the same imports is contrary to law, APP-China cites *GPX International Tire v. United States* as an example where it alleges the Department acknowledges this potential conflict between CVD and the NME-AD law, as well as, provides potential remedies for resolving the problem.³⁰

Department's Position: As an initial matter, APP-China did not articulate the reasoning behind this position, but rather stated that it incorporates, by reference, its argument submitted in the concurrent CVD investigation on these products from the PRC. However, that is a separate and distinct legal proceeding from the AD investigation. Accordingly, the comments submitted by APP-China on the record of the CVD proceeding are not on the record of this proceeding. The Department's regulations expressly provide that the “case brief *must present all arguments* that continue in the submitter's view be relevant to the Secretary's determination, including any arguments presented before the date of publication of the preliminary determination or preliminary result.” *See* 19 C.F.R. 351.310. The Department's regulations do not contemplate that parties may dispose of the requirement of presenting all arguments in their case brief by making a fleeting reference to an argument made in a separate proceeding. The Department is not required to search for, analyze and respond to arguments in other proceedings; rather, the Department's regulations place the burden on an interested party to present all relevant arguments in its case brief. Interested parties, on occasion, will support each other's arguments by incorporating them into their own.³¹ Moreover, interested parties, and the Department itself, will often incorporate by reference publicly available statements of the Department's practice, in an effort to avoid restating the relevant precedent in its entirety.³² However, we are unaware of any instance where the Department has accepted incorporation of arguments by reference from

²⁸ *See Preliminary Determination*. *See also Lug Nuts/PRC (April 24, 1992)*.

²⁹ *See Id.*

³⁰ APP-China cites the following cases in support of its arguments: Commerce Final Results of Redetermination Pursuant to Remand, dated April 26, 2010, submitted in *GPX International Tire, et al. v. United States*, Consol. Court No. 08-00285; *GPX International Tire Corporation v. United States*, 645 F. Supp. 2d 1231, 1234-35 (Ct. Int'l Trade 2009);

³¹ *See, e.g., Activated Carbon/PRC (November 10, 2009)*, and accompanying IDM at Comment 3c.

³² *See, e.g., Orange Juice/Brazil (August 11, 2008)*, and accompanying IDM at Comment 2.

another *proceeding*, particularly when the party is attempting to incorporate such a broadly and vaguely defined body of arguments. Accordingly, we will only address the arguments that APP-China presented in the case brief. Arguments presented in a separate proceeding will be addressed in the context of the proceeding where they were presented.

Further, while APP- China claims that the Department has previously acknowledged potential remedies for resolving this issue in *GPX International Tire, et al. v. United States*, Consol Court No. 08-00285, it misstates the Department’s position. In *GPX*, the Department expressly stated: “In particular we disagree that there is a high potential for double remedies from the concurrent application of the NME AD methodology and our CVD methodology in this case, such that additional policies or procedures are necessary to ‘adapt’ the two methodologies.” *See GPX* September 3, 2008 Remand Determination at 2.

Comment 2B: Whether Simultaneous Application of Countervailing Duties and Antidumping Duties Calculated Using the NME Methodology to Imports of the Same Products Results in the Imposition of Double Remedies

- APP-China asserts that because the Department imposed AD duties calculated using its NME methodology and simultaneously imposed CVDs on the same imports, the Department must adopt measures to avoid double counting duties against these imports because the statute does not allow for the imposition of two sets of duties to compensate for the same alleged unfair trade practice.³³
- The GOC argues that the Department should alter its preliminary AD findings to prevent imposition of a double remedy in the parallel coated paper AD and CVD investigations.

³³ APP-China cites the following cases in support of its arguments: Final Results of Redetermination Pursuant to Remand, dated April 26, 2010, submitted in *GPX International Tire, et al v. United States*, Consol. Court No. 08-00285; *GPX International Tire Corporation v. United States*, 645 F. Supp. 2d 1231, 1234-35 (Ct. Int’l Trade 2009); Georgetown Steel Memo at 5 (Mar. 29, 2007); *Coated Free Sheet Paper IDM* at 23-24 (citing *Certain Steel Products from Austria*: General Issues Appendix, 58 FR 37217 (July 9, 1993); *Lock Washers/PRC* (Nov. 19, 1997); *Cold-Rolled Carbon Steel Flat Products/Korea* (Oct. 3, 2002) at 62125; *Tires/PRC* (July 15, 2008) at 14; *KASR/PRC* (July 24, 2009); *Circular Welded Pipe/PRC* (March 31, 2009); *Tires/PRC* at 14 (July 15, 2008); *Uranium/France* (Aug. 3, 2004) at 46506; U.S.-China Trade: Commerce Faces Practical and Legal Challenges in Applying Countervailing Duties. GAO-05-474, at 27-28 (June 2005) (“GAO Report”); Testimony Before The U.S. China Economic and Security Review Commission, GAO-06-608T, at 18 (April 4, 2006); U.S.-China Trade: Commerce Faces Practical and Legal Challenges in Applying Countervailing Duties; GAO-05-474, at 27-28 (June 2005) (“GAO Report”); Testimony Before The U.S. China Economic and Security Review Commission, GAO-06-608T, at 18 (April 4, 2006); *Freeport Minerals Co. v. United States*, 776 F.2d 1029, 1034 (Fed. Cir. 1995); *Timken v. United States*, 25 CIT 939, 166 F. Supp. 2d 608, 629-630 (2001); *Wieland-Werke AG v. United States*, 22 CIT 129, 135, 4 F. Supp. 2d 1207, 1212 (1998); *Rhone-Poulenc, Inc. v. United States*, 20 CIT 573, 578, 927 F. Supp. 451, 456 (1996); *Transcom, Inc. v. United States*, 294 F.3d 1371, 1382 (Fed. Cir. 2002); *British Steel pic v. United States*; 19 CIT 176, 255, 879 F. Supp. 1254, 131617 (1995); *aff’d* in pertinent part sub nom *LTV Steel Co. Inc. v. United States*, 174 F.3d 1359 (Fed. Cir. 1999); *Uranium from France* 69 Fed. Reg. 46,501, 46,506 (Aug. 3, 2004); *NLRB v. Baptist Hospital, Inc.*, 442 U.S. 773, 787 (1979); *United Scenic Artists, Local 829 v. NLRB*, 762 F.2d 1027, 1034 (D.C. Cir. 1985); *British Steel pic v. United States*, 20 CIT 663,699,929 F. Supp. 426, 454-55 (1996), *aff’d* sub nom *Inland Steel Indus., Inc. v. United States*, 188 F.3d 1349 (Fed. Cir. 1999); *Sec’y of Labor v. Keystone Coal Mining Co.*, 151 F.3d 1096, 1100-01 (D.C. Cir. 1998); *National Mining Ass’n v. Babbitt*, 172 F.3d 906, 911 (D.C. Cir. 1999); *Daewoo Electronics Co. v. United States*, 13 CIT 253,712 F.Supp. 931 (1989); *Daewoo Electronics Co. v. United States*, 6 F.3d 1511 (Fed. Cir. 1993); *Nippon Steel v. United States*, 337 F.3d 1373, 1381 (Fed. Cir. 2003); *Dorbest v. United States*, 462 F. Supp. 2d, 1262, 1317 (CIT 2006).

The GOC points to *GPX Int'l Tire Corp. v. United States* where the CIT ruled that the prospect of a double remedy is likely when CVD remedies and NME AD remedies are combined and that the burden falls on the Department, not respondents, to resolve the problem. GOC argues that the Department should also use Gold East's market economy submissions to calculate a dumping margin for Gold East so as to avoid double counting.³⁴

- Petitioners agree with the Department's stated position in *GPX International Tire v. United States* to treat CVD and AD law as separate and independent of one another (except in cases of export subsidies, where the statute contemplates a limited nexus).³⁵

Department's Position: The Department disagrees with APP-China and the GOC that the concurrent application of AD duties calculated under the Department's NME methodology and CVDs creates a double remedy for domestic subsidies in China. First, we note that the Act does not expressly address this issue. However, the automatic offset that section 772(c)(1)(C) of the Act provides for an adjustment to the AD calculation to offset CVDs based on export subsidies, combined with the absence of any such corresponding adjustment to offset domestic subsidies, strongly suggest that Congress did not intend for any adjustment to be made to offset domestic subsidies. *See Central Bank of Denver v. First Interstate Bank*, 511 U.S. 164, 176-77 (1994) ("Congress knew how to impose aiding and abetting liability when it chose to do so. If, as respondents seem to say, Congress intended to impose aiding and abetting liability, we presume it would have used the words 'aid' and 'abet' in the statutory text. But it did not."); *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 734 (1975) ("When Congress wished to provide a remedy . . . it had little trouble in doing so expressly."); *Franklin Nat'l Bank v. New York*, 347 U.S. 373, 378 (1954) (finding "no indication that that Congress intended to make this phrase of national banking subject to local restrictions, as it has done by express language in several other instances"); *Meghrig v. KFC Western, Inc.*, 516 U.S. 479, 485 (1996) ("Congress . . . demonstrated in CERCLA that it knew how to provide for the recovery of clean up costs, and . . . the language used to define the remedies under RCRA does not provide that remedy"); *FCC v. NextWave Personal Communications, Inc.*, 537 U.S. 293, 302 (2003) (when Congress has intended to create exceptions to bankruptcy law requirements, "it has done so clearly and expressly"); *Dole Food Co. v. Patrickson*, 538 U.S. 468, 476 (2003) (Congress knows how to refer to an "owner" "in other than the formal sense," and did not do so in the Foreign Sovereign Immunities Act's definition of foreign state "instrumentality"); *Whitfield v. United States*, 125 S. Ct. 687, 692 (2005) ("Congress has imposed an explicit overt act requirement in 22 conspiracy statutes, yet has not done so in the provision governing conspiracy to commit money

³⁴ GOC cites the following cases in support of its arguments: *Badger-Powhatan, Div. of Figgie Intern., Inc. v. United States*, 9 CIT 2t3, 216, 608 F. Supp. 653, 656; *Zenith Radio Corp. v. United States*, 437 U.S. 443, 455-56 (1978); *Wheatland Tube v. United States*, 495 F.3d 1355, 1364 (Fed. Cir. 2007); *GPX Int'l Tire Corp. v. United States*, 645 F. Supp. 2d 1231, 1242-1243 (Ct. Int'l Trade 2009); *Cold-Rolled Carbon Steel Flat Products/Korea (Oct. 3, 2002)* at 62125; *Georgetown Steel v. United States*, 801 F.2d 1308, 1317-18 (Fed. Cir. 1986); *Tires/PRC (July 15, 2008)* IDM at 116; *Wire Rod/Czechoslovakia (May 7, 1984)* at 19372; *NEC Corp. v. United States*, 151 F.3d 1361, 1376 (Fed. Cir. 1998);

³⁵ Petitioners cite the following cases in support of their arguments: *Tires/China (September 4, 2008)*; and *Tires/China (July 15, 2008)*; *GPX v. United States*, supra, 645F.Supp.2d at 1240-1243,1251 in its Remand Redetermination (April 26, 2010); *Fans/China (October 25, 1991)*; *Shrimp/PRC (September 12,2007)*; *Shrimp/Vietnam (September 15, 2009)*; *PSF/PRC (January 11, 2010)*; *Ad Hoc Committee v. United States*, 13 F.3d 398,401-403 (Fed. Cir. 1994); *Chevron USA v. Natural Resources Defense Council*, 467 U.S.C. 837, 842-43, 81 L.Ed. 2d 694 (1984); *Daewoo Electronics Co., Ltd v. International Union*, 6 F.3d 1511, 1518 (Fed. Cir. 1993).

laundering.”).

The AD and CVD laws are separate regimes that provide separate remedies for distinct unfair trade practices. The CVD law provides for the imposition of duties to offset foreign government subsidies. Such subsidies may be countervailable regardless of whether they have any effect on the price of either the merchandise sold in the home market or the merchandise exported to the United States. AD duties are imposed to offset the extent to which foreign merchandise is sold in the United States at prices below its fair value. With one exception, AD duties are calculated the same way regardless of whether there is a parallel CVD proceeding.

The one point of contact between the AD and CVD regimes is section 772(c)(1)(C) of the Act. This provision requires that the price used to establish the export price shall be increased by the amount of any CVD imposed on the subject merchandise . . . to offset an *export subsidy* (emphasis supplied). . . APP-China and the GOC suggest that the Department erred in refusing to interpret this provision as if it actually read, “to offset an export subsidy *or, where the NME antidumping methodology is applied, a domestic subsidy* (emphasis supplied).” In other words, APP-China and the GOC would have the Department read an automatic 100-percent offset for domestic subsidies in NME AD proceedings into the Act, based upon the logic purportedly inherent in Congress’s decision to provide an automatic offset for export subsidies to implement the requirements of Article VI(5) of the General Agreement on Tariffs and Trade (“GATT”). Plainly, the highlighted language is not in the Act, which does not provide the automatic offset sought by APP-China and the GOC. Moreover, contrary to its assertion, the U.S. Government Accountability Office (“GAO”) study cited by APP-China does not create any legitimate doubts about the Department’s interpretation of the Act. As an initial matter, the GAO does not administer the antidumping and countervailing duty laws and has no expertise in antidumping or countervailing duty calculations. More importantly, the GAO did not conclude that domestic subsidies were automatically passed through into export prices, *pro rata*. On the contrary, in referring to the possibility of double counting that might result from the simultaneous application of CVDs and the Department’s NME AD methodology, the GAO Report stated that “current trade law does not make any specific provision for adjusting antidumping duties in such situations, and the implications of such situations arising are therefore unclear.”³⁶ Similarly, in *Cold-Rolled Steel/Korea* (October 3, 2002) cited by APP-China, the Department refers only to adjusting the AD duties for any CVD determined to be based on export subsidies,³⁷ and does not find an automatic *pro rata* offset for domestic subsidies. We further discuss this *pro rata* offset below. As the Department noted in *Uranium/France (August 3, 2004)*, Congress amended the Act to provide for an adjustment to the AD calculation to offset CVDs for export subsidies. If anything, the absence of the additional language related to a domestic subsidy suggests that Congress intended to not provide the additional adjustment for domestic subsidies.

Indeed, APP-China and the GOC cite no statutory provision that would be a basis for imposing such an adjustment because there are no such provisions in the Act. The various theories advanced by respondents in prior cases to support their requests for an automatic 100-percent offset of AD duties determined under the NME methodology by any CVD duties are based on mistaken premises. Accordingly, the Department has consistently and properly rejected these

³⁶ See *GAO Report (June 2005)* at 28.

³⁷ See *Cold-Rolled Carbon Steel Flat Products/Korea (October 3, 2002)* at 62125.

claims.³⁸

Similarly, in the instant investigation, APP-China asserts that export subsidies automatically lower export prices, *pro rata*, thereby increasing dumping margins and, as a result, the Act makes an explicit offset for export subsidies. However, where the Department disagrees with APP-China is with its claim that the Act also makes an *implicit* offset for domestic subsidies by allowing the use of lower domestic prices in the AD calculation in ME cases, prices that are lower precisely because of the “pass through” of the domestic subsidy, according to APP-China. APP-China argues that the important point is that such assumptions about “pass through” are built into the law. The Department has rejected this proposition.³⁹

In fact, the legislative history of the export subsidy adjustment establishes only that Congress considered it to satisfy the obligations of the United States under Article VI: 5 of the GATT. The legislative history does not appear to be based on any specific assumption about whether foreign government subsidies lower prices in the United States and, in fact, is not solely concerned with the effects of subsidies in the United States.⁴⁰ Thus, although the Act requires a full adjustment of AD duties for CVDs based on export subsidies in all AD proceedings, it provides no basis for concluding that Congress’s action was based on any specific assumptions about the effect of subsidies upon export prices. It may be simply that Congress recognized the complexity of the issues that would have had to have been resolved in order to provide anything less than a complete offset for export subsidies, and simply opted for a full offset to avoid those potential problems.

Whether Congress considered the economic assumptions that might have been behind the failure of the GATT contracting parties to address domestic subsidies in Article VI: 5 is not clear. In any event, all that the contracting parties may have assumed was that domestic subsidies had a symmetrical effect upon export and domestic prices. This presumed symmetrical impact may have been a *pro rata* or *de minimis* reduction in these prices. Thus, it is not correct to conclude that Congress assumed that the GATT contracting parties assumed that domestic subsidies lower export prices, *pro rata*, still less that Congress built any assumptions about the price effects of domestic subsidies into the antidumping law.

APP-China is similarly mistaken about the Department’s statement in *Uranium/France* (August 3, 2004), that “domestic subsidies presumably lower the price of the subject merchandise in the home and the U.S. markets.”⁴¹ This statement does not stand for the proposition that domestic subsidies are passed through into export prices, *pro rata*. Taken at face value, the statement is that “domestic subsidies presumably lower the price of the subject merchandise in export markets” This is no more than a presumption, and a very limited presumption at that – *e.g.*, the reductions in price could be 1 percent of the subsidy in each market. The Department’s point was not that all domestic subsidies are presumed to be fully passed through into domestic and

³⁸ See, e.g., *KASR/PRC* (July 27, 2009) and accompanying IDM at Comment 1.

³⁹ *Id.*

⁴⁰ Trade Agreements Act of 1979, Report of the Committee on Finance United States Senate on H.R. 4537, July 17, 1979, 96th Cong., 1st Sess. Rep. No. 96-249; Trade Agreements Act of 1979, Statement of Administrative Action, H. Doc. No. 96-153, Part II (1979), at 412.

⁴¹ See *Uranium/France* (August 3, 2004) at 46506.

export prices, but that the effect of domestic subsidies on the price in each market presumably was the same.

The Department has explained that the effect of domestic subsidies upon export prices depends upon many factors (*e.g.*, the supply and demand for the product on the world market, and the exporting countries' share of the world market), and is therefore speculative.⁴² Thus, the Department has correctly refused to assume that domestic subsidies automatically reduce export prices, *pro rata*. There is substantial support for the Department's position in the economic literature.⁴³

In considering the impact of domestic subsidies upon export prices, the form of the subsidy is again important because, like export subsidies, some domestic subsidies give domestic producers a greater incentive to increase production than others. A production subsidy (*e.g.*, the provision of raw materials at reduced prices) reduces the unit cost of producing that merchandise and, therefore, increases the producer's profit on sales of that merchandise. This may give the producer a commercial incentive to increase production of that merchandise. In an NME, however, it is not necessarily safe to assume that economic decisions are made on the basis of such market forces. In any event, more general subsidies (*e.g.*, general grants or debt forgiveness) would not provide that direct incentive. A foreign producer might use a general subsidy to modernize its plant, pay higher dividends, fund research and development, clean up the environment, make severance payments, increase the production of some other product, or waste the money. Consequently, this type of domestic subsidy will not necessarily result in any increase in production and, therefore, will not necessarily result in any reduction in export prices, still less an automatic *pro rata* reduction.

Even if a producer attempted to respond to a domestic subsidy exclusively by increasing production, it might not be able to do so, at least in the short or medium term. Various constraints (*e.g.*, limits on the supply of raw materials, energy, or transportation) might limit its ability to do so. Moreover, adding capacity takes time. Thus, it would be incorrect to claim that domestic subsidies automatically result in increased production.

Additionally, even if all producers in an NME country do respond to domestic subsidies by increasing production, it is by no means certain that this increase would result in lower export prices. If the world market price is going up, it is not realistic to assume that an NME producer that receives a domestic subsidy automatically will reduce its export prices by the full amount of the subsidy, as allocated under the Department's CVD methodology. Increased production and exports will tend to lower export prices *over time*, but this reduction will be neither automatic nor necessarily *pro rata*. In fact, during the years preceding prior to Department investigations, some Chinese producers raised their prices in line with world market prices, despite having received substantial subsidies.⁴⁴ Increased export sales will reduce the price of the subject

⁴² See *Tires/PRC* (February 20, 2008) at 9287.

⁴³ World Trade Organization, *World Trade Report 2006* (page 57), Alex F. McCall and Timothy E. Jostling, *Agricultural Policies and World Markets*, MacMillan Pub. Co., 1985, p. 126-7.

⁴⁴ See *Certain New Pneumatic Off-the-Road Tires from China*, *ITC Final Report* (Publ. 4031, August 2008), pages IV-5 (Table IV-2), E-3 (Table E-1) and E-6 (Table E-4), and *Circular Welded Carbon-Quality Steel Pipe from China*, *ITC Preliminary Report*, (Publ. 3938, July 2007), pages V-12 ((Table V-3) V-14 (Table V-5), and V-19, showing rising average unit values on imports from China for the years 2005-2007.

merchandise on world markets only to the extent that the producer or producers in question supply a substantial share of the world market, so that the additional production will drive down prices in that market. Even this will take time and will not occur if other producers in the market reduce production to avoid a price war. In sum, as the Department concluded in *Tires/PRC* (February 20, 2008), the relationship of domestic subsidies to export prices is speculative.

APP-China's presumption about the effect of domestic subsidies on export prices is derived from what it considers to be the assumption that Congress made concerning export subsidies in amending section 772 of the Act to require the automatic addition to U.S. prices of CVDs to offset export subsidies – that export subsidies automatically reduce export prices, *pro rata*. The implication is that Congress did not provide an adjustment for domestic subsidies because Congress considered them to reduce both export prices and domestic prices, *pro rata*, thereby not affecting the dumping margin. However, the APP-China and the GOC argue that under the NME methodology, the Department compares the export price, presumably reduced by the domestic subsidies, to a normal value that has been calculated using non-subsidized surrogate values (“SVs”), meaning that APP-China and the GOC argue that safeguards against double counting that they claim are inherent in the ME methodology do not exist in the Department's NME methodology.

This argument that domestic subsidies inflate dumping margins by automatically lowering export prices assumes that domestic subsidies in NME countries do not affect NV. There is no basis for this assumption. Put simply, while NME subsidies may not affect the factor *values* used to calculate normal value in an NME proceeding, such subsidies may easily affect the *quantity* of factors consumed by the NME producer in manufacturing the subject merchandise.

The simplest example would be where a domestic subsidy in an NME country enables an investigated producer to purchase more efficient equipment, lowering its consumption of labor, raw materials, or energy. When the SVs are multiplied by the NME producer's lower factor quantities, they result in lower NVs and, hence, lower dumping margins.⁴⁵ Any reduction in factor usage by NME producers would reduce normal value in a second manner, because the final factor values are also used to calculate the amounts for overhead, selling, general and administrative expenses (“SG&A”), and profit⁴⁶ that are additional components of normal value.

Moreover, in determining NV in NME cases, the Department does not exclusively use factor quantities in the NMEs valued in the surrogate, ME country. Some factors values are based on the prices of imported inputs (priced in the currency of the country from which the inputs were obtained or in U.S. dollars). Given that the input suppliers in these countries are often competing with Chinese suppliers of those same inputs, it is by no means safe to assume that those prices are not influenced by subsidies in China.

Finally, in at least some cases, the NME exports of the subject merchandise will account for a significant share of the world market, enough to influence prices in world markets. In such cases, particularly where the industry is export oriented or has excess capacity (a chronic

⁴⁵ See section 773(c)(3) of the Act, 19 U.S.C. 1677b(c)(3).

⁴⁶ See *Hebei Metals & Mineral v. United States*, 366 F. Supp. 2d at 1277 (citation omitted); *Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262, 1300 - 01 (CIT 2006).

problem in China), subsidies could increase output and exports from China, which, in turn, would reduce the prices of the good in question in world markets. These lower prices would reduce profits for producers selling in these markets which, in turn, would reduce the profit the Department derives from their financial statements, (used as surrogates for the Chinese producers), and, thus, reduce normal value.

Another argument put forth by APP-China, *i.e.*, that AD and CVD proceedings against NME countries automatically result in the application of a double remedy is even vaguer. APP-China argues that the effects of countervailable domestic subsidies can pass through to normal value under the Department's NME methodology, so that AD duties on Chinese exports, by themselves, remedy all subsidies attributable to that merchandise. In other words, APP-China asserts that the NME methodology inherently provides a remedy for any and all countervailable subsidies such that concurrent application of CVDs is necessarily duplicative. Apparently, APP-China concludes that the NME methodology arrives at this result mechanically because of the lack of any statutory provision that requires or achieves this result.

It appears that the general premise of this argument is that concurrent ADs and CVDs do not create automatic double remedies in ME proceedings, because domestic subsidies automatically lower normal value, and hence the dumping margins, *pro rata*. Also according to this premise, the NME AD methodology, on the other hand, produces a normal value that is not affected by subsidies in any way, so that it necessarily exceeds what would have been the ME dumping margin by the full amount of the subsidy, thus creating a double remedy, which the statute requires the Department to offset. We reject this proposition.

There are several reasons why subsidies in ME cases would not necessarily lower the normal value calculated by the Department, *pro rata*, below what it would have been absent any subsidies. Subsidies often come with conditions attached that reduce the cost savings to the recipient below the nominal amount of the benefit received. For example, subsidy recipients may be required to retain redundant workers, maintain higher levels of production than would be optimum, remain in economically disadvantageous locations, reduce pollution, obtain supplies from favored sources, and so forth. Even if subsidies come with no strings attached, there is no guarantee that they will result in a lower cost of production. Subsidies could be paid out as dividends, used to increase executive pay, or wasted in any number of ways.

Moreover, the Act provides that normal value in ME cases is to be based on home market prices, where possible. Where normal value is based on prices, the relationship of subsidies to normal value becomes yet more tenuous. Not only is the extent to which the subsidies will affect costs uncertain but, even to the extent that subsidies may lower costs, the extent to which the producer will pass these cost savings through to home market or third-country prices is uncertain. Basic economic principles indicate that the prices are a function of the supply and demand for the product in the relevant market, so that any cost savings will be reflected in prices only indirectly. Finally, to the extent that domestic subsidies lower normal value in ME cases, they may lower export prices commensurately, so that the dumping margins may not change. Thus, it is not safe to conclude that subsidies in MEs automatically reduce dumping margins, still less that they automatically reduce dumping margins, *pro rata*.

The counterpoint to the argument that domestic subsidies automatically lower normal values (and, thus, dumping margins) in ME cases, *pro rata*, is that domestic subsidies have no effect whatsoever on normal values (and, thus, dumping margins) determined under the NME methodology. APP-China argues that domestic subsidies do not affect normal value in NME cases because normal value is essentially imported from surrogate, ME, countries. As explained above, this premise is also incorrect, as there are several ways in which subsidies can lower NME normal values.

Moreover, the whole idea of comparing AD margins under the NME methodology to the theoretical margins that the Department would find if it treated China as an ME country is dependent upon all other things being equal, so that any actual difference could be attributed to the difference in the distortion from subsidies. But this is not the case. The most obvious difference between NVs determined in ME and NME situations involves exchange rates. In ME proceedings, NVs are converted from the home-market currency to the currency of the importing country at prevailing exchange rates. In NME proceedings, however, NVs are derived from the actual factors of production that are valued based on information from the surrogate country using the currency of that surrogate country. Thus, NVs in NME proceedings are not influenced by the exchange rate between the exporting country and the importing country. How the different roles that currencies play in NME and ME antidumping proceedings affect any difference in dumping margins calculated under the two methodologies is uncertain, and highly complex. What is certain, however, is that this key difference would prevent any simple comparison of NME and ME AD margins.

APP-China asserts that the fact that the Department may find that an input for a particular product was provided for less than adequate remuneration in a CVD case, and then used an SV for that input in the AD case, proves that the subsidy lowered NV, *pro rata*. This conclusion is not logical. NME methodology involves more than the simple addition of input costs. It is a complex calculation that takes into consideration operating efficiencies, administrative expenses, the cost of capital, and numerous other factors. An SV for one factor of production that is higher than the price actually paid by the respondent company does not necessarily result in a higher dumping margin, nor does a lower SV for one factor of production necessarily result in a lower dumping margin. The individual elements of the NME methodology do not exist in a vacuum; the various elements necessarily work together. Moreover, while APP-China attempted to illustrate this point using electricity in a hypothetical example, it did not provide evidence demonstrating how the CVD the Department found on electricity in the companion CVD case lowered NV in this AD case. See 19 C.F.R. 351.401(b)(1) (“The interested party that is in possession of relevant information has the burden of establishing to the satisfaction of the Secretary the *amount* and nature of a particular adjustment.”) (Emphasis added).

In *KASR/PRC* (July 24, 2009) and *Tires/PRC* (July 15, 2008), the Department refused to interpret the Act requiring the automatic addition of export subsidies to U.S. prices in NME proceedings as an automatic addition of domestic subsidy CVDs. The Department refused to deduct domestic CVDs from U.S. prices because this would have resulted in the collection of total AD duties and CVDs that would have exceeded both independent remedies in full. The Federal Circuit has upheld this position.⁴⁷ Similarly, the Department’s refusal to treat

⁴⁷ See *Wheatland Tube Co. V. United States*, 495 F. 3d 1355 (Fed. Cir. 2007) (reversing *Wheatland Tube v.*

antidumping duties and safeguard duties as a cost in AD calculations reflects the Department's effort to collect these distinct remedies in full, but no more.

The Department is charged with calculating dumping margins as accurately as possible. APP-China fails to identify any item in the dumping margin calculation that is being counted twice. Thus, even if the NV and export price have been determined accurately, APP-China contends that, nevertheless, the difference between these amounts should not be treated as the margin of dumping. Rather, APP-China and the GOC argue that because the CVD law cannot be applied concurrently with the NME AD methodology, the margin of dumping should be determined as the difference between the normal value and export prices (or constructed export price), less the amount of the CVD determined in a concurrent investigation of subsidies. Contrary to APP-China and the GOC's assertions, nothing is being double counted in the dumping margin calculation. Accordingly, the accurately calculated dumping margin should be collected in full as the remedy for pricing at less than normal value.

Additionally, we do not agree with APP-China's argument that the Department's conclusion in several prior cases⁴⁸ that there is no evidence of a double remedy imposing an impermissible burden of proof on the respondent parties. This would imply that APP-China attempted to furnish some evidence that a double remedy was actually created, but was unable to meet the heavy burden of proof imposed upon it by the Department. APP-China asked the Department to read an automatic 100-percent offset into the Act that would make any evidence concerning the alleged double remedy irrelevant. Even in cases where a clear statutory basis for granting a price adjustment exists, the burden to establish entitlement to that adjustment is on the party seeking the adjustment, which has access to the necessary information.⁴⁹

Lastly, we reject the notion that Congress passed the AD and CVD laws to correct unspecified economic distortions and that, to the extent that these unspecified economic distortions may overlap, the Department is required to measure this overlap and provide an offset. Congress established two separate remedies for what it evidently regards as two separate unfair trade practices. The only point at which the Act requires the Department to reconcile these separate remedies is in the adjustment of AD duties to offset export subsidies. Because neither AD nor CV duties are concerned with economic distortion, as such, but are simply remedial duties calculated according to the detailed specifications of the Act, it follows that no overall economic distortion cap for concurrent proceedings can be distilled from the Act.

The theory advanced by APP-China would not result in a reduction in AD or CV duties assessed in concurrent proceedings by some fraction of the CVD. APP-China and the GOC's theory is that the NME AD methodology entirely replaces subsidized, below market, costs with purely market-determined costs, creating a double remedy to that full extent. Thus, accepting this theory would result in the complete nullification of CVDs for China, as long as the NME methodology is applied. The Department does not accept this premise.

Additionally, APP-China and the GOC's reliance on *GPX (CIT 2009)* is misplaced. This

United States, 414 F. Supp. 2d at 1271 (CIT 2006)).

⁴⁸ See, e.g., *Circular Welded Pipe/PRC (March 31, 2009)*, and accompanying IDM at Comment 14.

⁴⁹ See Statement of Administrative Action, H. Doc. No. 103-316, Vol. 1 (1994) at 829.

decision is not final, as a final order has not been issued by the CIT, nor have all appellate rights been exhausted. Even if reliance on *GPX (CIT 2009)* were not misplaced, *GPX (CIT 2009)* does not support the positions attributed to it by APP-China and the GOC. *GPX (CIT 2009)* did not find a double remedy necessarily occurs through concurrent application of the CVD statute and NME provision of the AD Act, only that the “potential” for such double counting may exist. The finding of a “potential” for double counting in the *GPX* decision does not mean that the Department must make an adjustment to its dumping calculations in this antidumping investigation. The Statement of Administrative Action (“SAA”) places the burden on the respondent to demonstrate the appropriateness of any adjustment that benefits the respondent. See SAA at 829; 19 C.F.R. 351.401(b)(1) (“The interested party that is in possession of relevant information has the burden of establishing to the satisfaction of the Secretary the *amount and nature of a particular adjustment.*”) (emphasis added); *Fujitsu General Ltd. v. United States*, 88 F.3d 1034, 1040 (Fed. Cir. 1996) (explaining that a party seeking an adjustment bears the burden of proving the entitlement to the adjustment). In this case, China-APP seeks the adjustment based on a “potential,” but has not demonstrated the amount of the adjustment and the entitlement to it. The Department maintains its previously stated position on double remedies in *GPX International Tire v. United States*. Moreover, the Department does not agree with the CIT’s interlocutory decision and will wait for a final and conclusive decision in that case.

Finally, we disagree with APP-China’s argument that the Department was contradictory in its statements in *Antidumping Duty Investigation of Certain Lined Paper Products from the People’s Republic of China – China’s Status as a Non-Market Economy*, Memorandum for Assistant Secretary David M. Spooner (August 20, 2006) (“*China’s Status as a Non-Market Economy Memo*”) and in *Countervailing Duty Investigation of Coated Free Sheet Paper from the PRC - Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China’s Present-Day Economy*, Memorandum for Assistant Secretary David M. Spooner at 5 (Mar. 29, 2007) (“*Georgetown Steel Memo*”). The Department notes first that the complete quotes from the referenced sources are as follows. In the *China’s Status as a Non-Market Economy Memo*, we said that, “[w]hile China has enacted significant and sustained economic reforms, our conclusion, as stated in the May 15th memorandum, is that market forces in China are not yet sufficiently developed to permit the use of prices and costs in that country for purposes of the Department’s dumping analysis.” In the *Georgetown Steel Memo*, in contrast, we cited a study from the Economist Intelligence Unit, indicating that “market forces now determine the prices of more than 90 percent of products traded in China,” in the context that the PRC Government has eliminated price controls on most products, besides certain “essential” goods and services.

Once the complete quotes are read and understood, it is easy to reconcile them. In the *China’s Status as a Non-Market Economy Memo*, the quote is a reference to (1) the government’s continued and significant role in the economy, particularly from a resource allocation standpoint and (2) the negative implications for PRC domestic prices from an antidumping perspective. The other quote from the *Georgetown Steel Memo*, is actually a quote from the Economist Intelligence Unit. The Department used that quote in a section of the memo concerning price controls, simply to point out that reforms in China had progressed enough that most prices in China now are no longer subject to direct government controls. But de-controlled prices, in the context of the PRC government’s overall role in the economy, particularly with respect to

resource allocations, are not the same as market-based prices. So we determine that there is no conflict or inconsistency between the two quotes.

Comment 3: Whether Targeted Dumping Test Violates the Administrative Procedures Act (“APA”) and is Flawed

- APP-China argues the Department violated the Administrative Procedure Act (“APA”) when it withdrew the targeted dumping regulations and the Department must therefore continue to abide by the provisions of these regulations.
- Moreover, APP-China argues, the Department’s statistical methodology for analyzing targeted dumping is flawed. In addition, according to APP-China, the Department’s decision, in the *Preliminary Determination*, to apply the targeted dumping remedy to all of APP-China’s sales was not in accordance with the law.
- Petitioners argue that the Department did not violate the APA and so should continue to investigate for targeted dumping using the same methodology employed in the *Preliminary Determination*.

Department’s Position: We disagree with APP-China that the Department is now constrained by the targeted dumping regulation, which was withdrawn in December 2008. The targeted dumping regulation was withdrawn in a determination separate from this antidumping duty proceeding and a notice of withdrawal was published in the Federal Register.⁵⁰ Consistent with Supreme Court precedent, a withdrawn regulation cannot constrain the Department’s interpretive authority.⁵¹

The Act does not mandate a specific test for determining whether targeted dumping occurred. Congress has left the discretion to the Department how to make such a determination. In exercising this discretion, for purposes of the final determination in this investigation, the Department has used the test introduced in *Nails/PRC (June 16, 2008)*, and applied recently in *Carrier Bags/Taiwan (March 26, 2010)*,⁵² *Carrier Bags/Indonesia (April 1, 2010)*,⁵³ and *OCTG/PRC (April 19, 2010)*.⁵⁴ Using this test, the Department finds that APP-China engaged in targeted dumping.⁵⁵ Based on our analysis, the Department is using the alternative average-to-transaction comparison methodology on all of APP-China’s sales to calculate APP-China’s dumping margin.

⁵⁰ See *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations* 73 F.R. 74930 (December 10, 2008).

⁵¹ See *United States v. Eurodif S.A.*, 129 S. Ct. 878, 885-887 and n. 7 (2009) (explaining that the tolling regulation withdrawn by the Department cannot constrain the Department’s interpretive authority under *Chevron*); *Withdrawal of Regulations Governing the Treatment of Subcontractors (“Tolling Operators”)*, 73 F.R. 16517 (March 28, 2008) (providing for immediate withdrawal of the tolling regulation).

⁵² See *Carrier Bags/Taiwan (March 26, 2010)* and accompanying IDM at Comment 1.

⁵³ See *Carrier Bags/Indonesia (April 1, 2010)* and accompanying IDM at Comment 1.

⁵⁴ See *OCTG/PRC (April 29, 2010)*.

⁵⁵ See Memorandum regarding, “Targeted Dumping Analysis of Mandatory Respondents,” dated concurrently with this memorandum (“Final TD Memo”).

Generally, when calculating dumping margins in an investigation, section 777A(d)(1)(B) of the Act allows the Department to employ the alternative average-to-transaction margin-calculation methodology only if (1) there is a pattern of export prices that differ significantly among purchasers, regions, or periods of time; and (2) such differences cannot be taken into account using the standard average-to-average or transaction-to-transaction methodology.⁵⁶ Unless these two criteria are satisfied, the Department is not permitted to use average-to-transaction comparisons to determine dumping margins in an investigation. Thus, unless the criteria are satisfied, in an investigation the Department will use either the standard average-to-average or transaction-to-transaction comparison methodology provided in section 777A(d)(1)(A) of the Act. The *Nails* test provides a two-stage analysis to determine whether there is a pattern of export prices that differ significantly among purchasers, regions, or periods of time. The first stage addresses the “pattern” requirement; the second stage addresses the “significant difference” requirement. Although the following example applies to customer targeting, the procedures are the same for customer, regional, and time-period targeted-dumping allegations.

In the first stage of the *Nails* test, the “standard-deviation test,” the Department determines the share of the alleged targeted-customer’s purchases of subject merchandise (by sales volume) that are at prices more than one standard deviation below the weighted-average price to all customers, targeted and non-targeted. The Department calculates the standard deviation on a product-specific basis (*i.e.*, CONNUM by CONNUM) using the POI-wide weighted-average prices for each alleged targeted customer and customers not alleged to have been targeted. If that share exceeds 33 percent of the total volume of a respondent’s sales of subject merchandise to the alleged targeted customer, then the pattern requirement has been met and the Department proceeds to the second stage of the test.

In the second stage, the Department examines all sales of identical merchandise (*i.e.*, by CONNUM) by a respondent to the alleged targeted customer. From those sales, the Department determines the total volume of sales for which the difference between the weighted-average price of sales to the alleged targeted customer and the next higher weighted-average price of sales to a non-targeted customer exceeds the average price gap (weighted by sales volume) for the non-targeted group.⁵⁷ The Department weights each of the price gaps in the non-targeted group by the combined sales volume associated with the pair of prices to non-targeted customers that make up the price gap. In doing this analysis, the alleged targeted customers are not included in the non-targeted group; each alleged targeted customer’s average price is compared only to the average prices to non-targeted customers. If the share of the sales that meets this test exceeds 5 percent of the total sales volume of subject merchandise to the alleged targeted customer, the significant-difference requirement is met and the Department determines that customer targeting has occurred.⁵⁸ In such a case the Department will evaluate the extent to which applying the

⁵⁶ See section 777A(d)(1)(B) of the Act.

⁵⁷ The next higher price is the weighted-average price to the non-targeted group that is above the weighted-average price to the alleged targeted group. For example, if the weighted-average price to the alleged targeted group is \$7.95 and the weighted-average prices to the non-targeted group are \$8.30, \$8.25, and \$7.50, we would calculate the difference between \$7.95 and \$8.25 because this is the next higher price in the non-targeted group above \$7.95 (the average price to the targeted group).

⁵⁸ For example, if non-targeted customer A’s weighted-average price is \$1.00 with a total sales volume of 100 kg and non-targeted customer B’s weighted-average price is \$0.95 with a total sales volume of 120 kg, then the difference of \$0.05 (\$1.00 - \$0.95) would be weighted by 220 kg (*i.e.*, 100 kg + 120 kg).

alternative average-to-transaction methodology to all U.S. sales unmask targeted dumping not accounted for using the standard average-to-average comparison methodology.⁵⁹

Currently, the Department's practice is to utilize the *Nails* test to identify targeted dumping. The Department disagrees with both of APP-China's suggestions to modify the *Nails* test in order to identify targeted dumping. Regarding APP-China's suggestion to use a difference-in-means test (t-test), the Department explicitly rejected using this test to identify targeted dumping in *Tires*.⁶⁰ Specifically, while the t-test identifies whether the difference in sample means is statistically different from zero, it does not say anything about whether the difference in sample means is significant. As a result, a t-test does not produce results that satisfy the statutory requirement that requires the Department to identify prices that differ significantly across purchasers, regions, or time periods. Therefore, the Department finds that the use of a t-test would not be appropriate in the context of a targeted dumping analysis.

With respect to APP-China's argument to calculate confidence intervals using a t-distribution, the confidence interval approach that APP-China proposes is conceptually no different than the standard deviation test currently employed by the Department. The only substantive difference between the two is the threshold for what constitutes a "sufficiently low" price. In the case of the standard deviation test, that threshold is one standard deviation; in the case of the confidence interval proposed by respondent, that threshold would depend on sample size and a chosen confidence level, which would be greater than one standard deviation at the confidence level proposed by the respondent. Since the threshold level is the only substantive difference between the two approaches, and the thresholds proposed (implicitly) by respondent are no inherently better -- just more conservative -- than the threshold selected by the Department, the Department has decided not to adopt respondent's proposal.

Moreover, we disagree with APP-China that the *Nails* test should be run on the basis of transactions prices. In the context of testing to see whether customers have been targeted, the relevant price variance, in the Department's view, is the variance in prices across customers, not transactions. For this reason, the Department approached the problem by analyzing the variance in the average price paid by each customer.

For the final determination, the Department is again testing APP-China's U.S. sales using the *Nails* test to identify targeted dumping. Similar to our findings in the April 28, 2010, *TD Memo*, by applying the *Nails* test to APP-China's sales, the Department finds that there was a pattern of prices that differ significantly by customer (*i.e.*, targeted dumping).⁶¹

In doing so, the Department finds that the pattern of price differences identified cannot be taken into account using the standard average-to-average methodology because the average-to-average methodology conceals differences in price patterns between the targeted and non-targeted groups by averaging low-priced sales to the targeted group with high-priced sales to the non-targeted

⁵⁹ See *Carrier Bags/Taiwan* (March 26, 2010) and accompanying IDM at Comment 1, *Carrier Bags/Indonesia* (April 1, 2010) and accompanying IDM at Comment 1, and *OCTG/PRC* (April 19, 2010) and accompanying IDM at Comment 2.

⁶⁰ See *Tires/China China* (September 4, 2008) and accompanying IDM at Comment 23.D.

⁶¹ See Final TD Memo.

group. Thus, the Department finds, pursuant to section 777A(d)(1)(B) of the Act, that application of the standard average-to-average comparison methodology would result in the masking of dumping that would be unmasked by application of the alternative average-to-transaction comparison method to all of APP-China's sales.

Though APP-China argues that it is unlawful to apply the average-to-transaction calculation methodology to all of its sales, in accordance with our decision in *Carrier Bags/Taiwan (March 26, 2010)*, the Department determines to apply the alternative average-to-transaction methodology to all of APP-China's sales on the basis of the Department's examination of the language in section 777A(d)(1)(B) of the Act. The only limitations that section 777A(d)(1)(B) of the Act places on the application of the alternative average-to-transaction methodology are the satisfaction of the two criteria set forth in the provision. When the criteria for application of the alternative average-to-transaction methodology are satisfied, section 777A(d)(1)(B) of the Act does not limit application of the alternative average-to-transaction methodology to certain transactions. Rather, the provision expressly permits the Department to determine dumping margins by comparing weighted-average NVs to the export prices ("EP") (or constructed export prices ("CEPs")) of individual transactions.

While the Department does not find that the language of section 777A(d)(1)(B) of the Act mandates application of the alternative average-to-transaction methodology to all sales, it does find that the interpretation expressed above is a reasonable one and is more consistent with the Department's approach to selection of the appropriate comparison method under section 777A(d)(1) of the Act. As mentioned, unless the criteria of section 777A(d)(1)(B) of the Act are satisfied, the Department is not permitted to use average-to-transaction comparisons to determine dumping margins in an investigation. In the absence of satisfying the criteria of section 777A(d)(1)(B) of the Act, section 777A(d)(1)(A) of the Act requires the Department to use either average-to-average or transaction-to-transaction comparisons. The Department has established criteria for determining whether average-to-average or transaction-to-transaction is the more appropriate methodology; the Department generally uses average-to-average comparisons except under relatively rare circumstances that make use of the transaction-to-transaction comparisons more appropriate.⁶² The Department does not have a practice of using transaction-to-transaction comparisons for certain transactions and average-to-average comparisons for other transactions in calculating the weighted-average dumping margin. Rather, the Department chooses the appropriate comparison methodology and applies it uniformly for all comparisons of NV and EP (or CEP).

Accordingly, consistent with the Department's decision in *Carrier Bags/Taiwan (March 26, 2010)*, the Department will exercise its interpretive authority without relying upon the withdrawn regulation.⁶³ Thus, if the criteria of section 777A(d)(1)(B) of the Act are satisfied, as is the case in this investigation, the Department will apply the alternative average-to-transaction

⁶² See *Coated Paper/Korea (October 16, 2007)*, and the *Softwood Lumber Remand Redetermination/ Canada (July 11, 2005)* at 11.

⁶³ See *United States v. Eurodif S.A.*, 129 S. Ct. 878, 885-887 and n. 7 (2009) (explaining that the tolling regulation withdrawn by the Department and cannot now constrain the Department's interpretive authority under *Chevron*); *Withdrawal of Regulations Governing the Treatment of Subcontractors ("Tolling Operators")*, 73 F.R. 16517 (March 28, 2008) (providing for immediate withdrawal of the tolling regulation).

methodology for all sales in calculating the weighted-average dumping margin.

Comment 4: Whether to Revise the Targeted Dumping Analysis in Light of APP-China's Minor Corrections Filed At Verification

- Petitioners argue that the Department should redo its targeting dumping analysis for purposes of the final determination because the minor corrections submitted at verification by APP-China were not known to Petitioners when they filed their targeted dumping allegation, yet the corrections bear directly on net U.S. prices.
- APP-China argues that Petitioners' request to adjust their targeted dumping allegation is untimely and should be rejected by the Department.⁶⁴

Department's Position: We disagree with APP-China, and have adjusted our targeted dumping analysis in light of APP-China's minor correction filed at verification.

On March 15, 2010, Petitioners timely filed a targeted dumping allegation with respect to APP-China.⁶⁵ Within this submission, Petitioners alleged that targeted dumping existed with respect to sales to certain regions, and sales to a certain customer of APP-China. We accepted this allegation as both timely filed and sufficiently supported, and, in our *Preliminary Determination*, we made an affirmative finding of targeted dumping with respect to the particular customer identified by Petitioners.⁶⁶

Subsequently, in its minor corrections submitted during verification, APP-China reported additional rebates to a single customer, which impacted a significant percentage of APP-China's sales to that customer. These corrections to the data previously reported by APP-China also materially impacted the net U.S. prices APP-China reported to that single customer, as the corrected U.S. prices were all adjusted in the same direction (*i.e.*, they were lowered). Accordingly, when Petitioners timely submitted their targeted dumping allegation, they relied upon the information, which APP-China's revisions materially affected.

APP-China notes that the Department has frequently rejected targeted dumping allegations that we have found to be untimely filed or incomplete. Citing *Narrow Woven Ribbons/Taiwan (July 19, 2010)*, APP-China argues that the Department has also rejected the claim that minor corrections submitted after the deadline for targeted dumping allegations are cause for extending the deadline or accepting allegations filed at the briefing stage.

We agree with APP-China's suggestions that the Department can reject untimely or incomplete

⁶⁴ APP-China cites the following cases in support of its argument: *Narrow Woven Ribbons/Taiwan, (July 19, 2010)* and accompanying IDM at Comment 1, and *Activated Carbon/PRC, (March 2, 2007)*, and accompanying IDM at Comment 4.

⁶⁵ See letter to the Department titled "Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Petitioners' Submission of Targeted Dumping Allegation" dated March 15, 2010.

⁶⁶ See memorandum titled "Less-Than-Fair-Value Investigation on Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Targeted Dumping Analysis of Mandatory Respondents" dated April 28, 2010.

targeted dumping submissions, and that it need not extend the deadline for allegations due to minor corrections. However, we find the cases highlighted by APP-China inapposite to the case here. First, in *Narrow Woven Ribbons/Taiwan (July 19, 2010)* Petitioners declined to timely file a targeted dumping allegation but then attempted, for the first time, to submit their targeted dumping allegation at the briefing stage. Here, Petitioners submitted a timely filed allegation which they now ask that the Department adjust in light of the material changes that were introduced by APP-China's revisions to its previously reported pricing data. Further, the minor corrections at issue in *Narrow Woven Ribbons/Taiwan (July 19, 2010)* were described as "commonplace" and "of a type which happens in most investigations," and Petitioners had not argued otherwise.⁶⁷ In the instant case, Petitioners have highlighted the potentially significant, measurable impact on reported U.S. prices to one of APP-China's customers, as a result of the minor correction submitted at verification. Moreover, we find *Activated Carbon/PRC (March 2, 2007)* similarly distinguishable from the facts of the instant case because Petitioners, in that case, also chose not to make a timely filed allegation of targeted dumping and asserted for the first time in their case brief that they should be allowed to file an allegation, but did not provide grounds sufficient to warrant such a late filing of targeted dumping.

Here, Petitioners submitted a timely filed targeted dumping allegation which we accepted for use in the *Preliminary Determination*. After the targeted dumping allegation deadline, APP-China revised a significant portion of its net U.S. sales prices to a single customer, which were submitted on July 30, 2010, in response to the Department's request. These databases were not available to Petitioners until approximately one week prior to submission of case briefs. In this context, we find it appropriate to consider the potential for targeted dumping with respect to that customer. While we agree with APP-China that commonplace changes to a respondent's data are not cause for an extension of the deadline for targeted dumping allegations, we find that the unique circumstances presented here justify a more flexible approach. Therefore, because 1) Petitioners timely filed a complete and adequate targeted dumping allegation which the Department previously accepted, 2) APP-China's minor correction appears to have a significant, measurable impact on its U.S. sales prices to a single customer, and 3) Petitioners revised their allegation within a relatively short period of time after gaining access to the revised databases, we find it is appropriate to apply our targeted dumping analysis to that particular customer.

Comment 5: Whether the Department should apply zeroing

- APP-China and the GOC argue that the Department's application of its zeroing practice in the *Preliminary Determination* is not in accordance with the law. Because the World Trade Organization ("WTO") Appellate Body has found zeroing to be inconsistent with international obligations, APP-China and GOC argue that the Department must abstain from the use of zeroing if it makes an affirmative finding of targeted dumping.⁶⁸

⁶⁷ See *Narrow Woven Ribbons/Taiwan, (July 19, 2010)*, and accompanying IDM at Comment 1.

⁶⁸ APP-China and the GOC cite the following in support of their arguments: *Preamble*, 61 Fed. Reg. 7350 (Feb. 27, 1996). 283, *Federal Mogul Corp. v. United States*, 63 F.3d 1572, 1580 (Federal Circuit 1995). *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804), *Luigi Bermioli Corp., Inc. v. United States*, 304 F.3d 1362, 1368 (Fed. CIT. 2002). *Allegheny Ludlum Corp. v. United States*, 367 F.3d 1339 (Federal Circuit 2004), *Timken Co. v. United States*, 354 F.3d 1334 (Federal Circuit 2004), and 293 Appellate Body Report, United States - Final Dumping Determination on Softwood Lumber from Canada, WTIDS264/AB/R, adopted 31 August 2004, DSR 2004:V, 1875; Appellate Body Report, United States - Laws, Regulations and Methodology for Calculating

- No other party commented on this issue.

Department's Position: We disagree with APP-China and the GOC. As we stated in *OCTG/China*,⁶⁹ the Department agrees that it does not have a practice of granting offsets for non-dumped sales when applying the alternative average-to-transaction methodology. While it is the Department's standard practice to grant offsets for non-dumped comparisons when using the standard average-to-average methodology in an investigation, the Department has not adopted a similar standard practice in the context of applying the alternative average-to-transaction methodology to analyze a respondent's sales. Therefore, to the extent that application of the alternative average-to-transaction methodology may demonstrate that any of APP-China's sales are not dumped, offsets would not be provided for such sales to reduce the amount of dumping found on other sales.

APP-China and the GOC argue that the WTO has ruled that "zeroing" is inconsistent with U.S. obligations under the Antidumping Agreement. The U.S. Court of Appeals for the Federal Circuit ("CAFC") has held that WTO reports are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA. *See* 19 USC 3538. *See also Corus I*, 395 F.3d at 1347-49; accord *Corus II*, 502 F.3d at 1375, and *NSK*, 510 F.3d at 1379-80.

Congress has adopted an explicit statutory scheme in the Uruguay Round Agreements Act ("URAA") for addressing the implementation of WTO reports. *See, e.g.*, 19 USC 3538. As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute. *See* 19 USC 3538(b)(4) (implementation of WTO reports is discretionary). Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports. *See* 19 USC 3533(g) and *Zeroing Notice* at 77722, 77724. With regard to the denial of offsets in administrative reviews and in cases of targeted dumping, the United States has not employed this statutory procedure. In any event, no WTO report addressed the Department's methodology in this context.

For all these reasons, the various WTO reports cited by APP-China and the GOC do not address whether the Department's denial of offsets in the context of targeted dumping is consistent with U.S. law. Accordingly, and consistent with the Department's interpretation of the Act described above, in the event that an affirmative finding of targeted dumping is made, and any of the

Dumping Margins ("Zeroing Notice"), WTIDS294/AB/R, adopted 9 May 2006, and Corr., DSR 2006:II, 417; Appellate Body Report, United States - Measures Relating to Zeroing and Sunset Reviews, WTIDS322/AB/R, adopted 23 January 2007, DSR 2007:1,3; Panel Report, United States Anti-Dumping Measure on Shrimp from Ecuador, WTIDS335/R, adopted on 20 February 2007, DSR 2007:II, 425; Appellate Body Report, United States - Measures Relating to Shrimp from Thailand/United States - Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties, WTIDS343/AB/R, WTIDS345IAB/R, adopted 1 August 2008; Appellate Body Report, United States - Final Anti-Dumping Measures on Stainless Steel from Mexico, WTIDS344/AB/R, adopted 20 May 2008; Appellate Body Report, United States - Continued Existence and Application of Zeroing Methodology, WTIDS350/AB/R, adopted 19 February 2009; Panel Report, United States - Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand, WTIDS383/R, adopted 18 February 2010.

⁶⁹ *See OCTG/PRC (April 19, 2010)* and accompanying IDM at Comment 2.

export transactions examined are found to exceed normal value, where the Department applies the alternative average-to-transaction methodology, the amount by which the price exceeds normal value does not offset the dumping found with respect to other transactions.

Comment 6: Application of AFA to Sun Paper Companies

- Petitioners argue the Department should apply total AFA to the Sun Paper Companies because the Sun Paper Companies did not submit a complete database of all reportable U.S. sales and refused to undergo verification.
- Petitioners recommend that the Department use information from the petition to determine the appropriate AFA rate for the Sun Paper Companies, and that the instant investigation can be distinguished from the United States Court of Appeals for Federal Circuit (“CAFC”)’s ruling in *Gallant Ocean (Thailand) Co., Ltd. v. United States*.⁷⁰
- No other party commented on this issue.

Department’s Position: For the final determination, we have applied total AFA to the PRC-wide entity, which includes Sun Paper Companies, because the Sun Paper Companies did not submit a complete database of all reportable U.S. sales, refused to undergo verification, and withdrew from the investigation.

Section 776(a)(2) of the Tariff Act of 1930, as amended (“Act”), provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Because Sun Paper Companies failed to timely submit a full and proper U.S. sales database to all unaffiliated U.S. customers during the POI, the Department applied partial AFA in the *Preliminary Determination*. See section 776(a)(2)(B). On May 19, 2010, post *Preliminary Determination*, Sun Paper Companies ceased participation in the instant investigation, and therefore, the Department was not able to conduct verification of Sun Paper Companies’ responses. Verification is integral to the Department’s analysis and is mandated by section 782(i) of the Act and the Department’s regulations in the context of antidumping investigations. See 19 CFR. 351.307. Verification allows the Department to satisfy itself that it is relying upon accurate information in calculating dumping margins. By failing to participate in verification, Sun Paper Companies prevented the Department from verifying their reported information and significantly impeded the proceeding. Moreover, by not permitting verification, Sun Paper Companies failed to demonstrate that they operates free of government control and are entitled to a separate rate. Accordingly Sun Paper Companies are part of the PRC-wide entity. Therefore, we find that, in accordance with sections 776(a)(2)(B)(C) and (D) of the Act, the use of facts available for the PRC-wide entity, including Sun Paper Companies, is appropriate for this final determination.

⁷⁰ See *Gallant Ocean (Thailand) Co., Ltd v. United States*, _ F.3d_, Appeal No. 2009-1282 (April 16, 2010) (“*Gallant*”).

We agree with Petitioners that Sun Paper Companies, as part of the PRC-wide entity, did not cooperate to the best of their ability when they withdrew from participating in the investigation prior to verification. Section 776(b) of the Act authorizes the Department to apply an adverse inference with respect to an interested party if the Department finds that the party failed to cooperate by not acting to the best of its ability to comply with a request for information. We find that Sun Paper Companies' withdrawal from participation and refusal to participate in verification constitutes a failure to cooperate by not acting to the best of their ability to comply with a request from the Department. Therefore, we find that when selecting from among the facts available, an adverse interest is warranted.

When the Department applies adverse facts available because a respondent 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 authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See also* 19 CFR 351.308(c) and the Statement of Administrative Action, accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316 ("SAA") at 870. In selecting from among the facts available, section 776(b) of the Act authorizes the Department to use an inference that is adverse to a party if the Department finds that the party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* SAA at 870. To examine whether the respondent "cooperated" by "acting to the best of its ability" under section 776(b) of the Act, the Department considers, inter alia, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins.⁷¹ In this case, the PRC-wide entity, including Sun Paper Companies, has hindered the calculation of an accurate margin because Sun Paper Companies withdrew from participating in the investigation prior to verification. Moreover, as explained in the *Preliminary Determination* and unchanged in this final determination numerous other entities that comprise of the PRC-wide entity failed to cooperate in this investigation.

As AFA, for the final determination, we have continued to use information from the Petition, updated using the Department's revised labor rate methodology, and we find that this rate is properly corroborated within the meaning of section 776(c) of the Act. Specifically, the statute provides that the Department must, to the extent practicable, corroborate information used as AFA with independent sources reasonably at its disposal. To corroborate the petition margin, we compared it to APP-China's dumping margins and determined that it had probative value because it is in the range of APP-China's margins.⁷² Thus, the Department followed the same practice recently upheld by the Federal Circuit namely it used data from the cooperating respondent to demonstrate the probative value of the AFA rate applied to uncooperative respondents. *See KYD v. United States*, 2009-1366, at 11-12 (Fed. Cir. May 28, 2010) (upholding reliance upon a cooperative party's transaction-specific dumping margins to corroborate the AFA rate applied to an uncooperative party). The Department has relied on the same methodology to corroborate petition/initiation margins in recent investigations.⁷³

⁷¹ *See, e.g., Welded Carbon Steel Pipes and Tubes/Thailand (October 16, 1997)*

⁷² *See* Corroboration Memo.

⁷³ *See, e.g., Woven Electric Blankets/PRC (July 2, 2010).*

Moreover, although no party argued that the *Gallant* applies here, Petitioners suggested that the *Gallant* decision is distinguishable from the instant case. We agree. As an initial matter, *Gallant* did not involve a failure to cooperate in the context of an antidumping duty investigation; rather it concerned a corroboration of a petition rate in the context of an administrative review. In that specific context and under the unique facts of that case, the Federal Circuit found that the rate the Department applied as AFA was not supported by substantial evidence because “Commerce’s own investigation revealed that petition rate was not reliable.” *See Gallant*, 602 F.3d 1323. This is not the case here. Moreover, in *Gallant* the Court found that the Department used a very small percentage of another respondent’s transactions that had “unusually high” margins as corroborative evidence. *See Gallant*, 602 F.3d at 1324. By contrast, in the instant case, the Department examined the dumping margins of a cooperating mandatory respondent on a transaction-specific basis and found that for several transactions the dumping margins demonstrated that the petition rate has probative value because it falls within the range of APP-China’s margins.⁷⁴ Further, the transaction-specific dumping margins used to corroborate the petition rate do not reflect “unusually high” dumping margins relative to the other transaction-specific rates determined for the cooperating respondent. In this case, the PRC-wide entity, including Sun Paper Companies’ failure to cooperate deprived the Department of the most direct evidence of the PRC-wide entity’s actual dumping margins. Because there is no independent information on the record pertaining to the PRC-wide entity, as companies comprising this entity failed to cooperate in this investigation, the Department is satisfied that the dumping margins of a cooperating respondent used for corroborative purposes reflect commercial reality. The dumping margins are based upon real transactions that occurred during the POI, were subject to verification by the Department. The petition rate is not aberrational or uncommon because there were other sales by a cooperating respondent during the period of investigation that resulted in similar or higher margins. If a cooperating respondent sold the subject merchandise with such dumping margins, it is reasonable to determine that the uncooperative respondent could have made all of its sales of the subject merchandise at similar dumping margins.

Comment 7: Whether to allow MOE treatment of APP-China

- APP-China argues that the Department should apply its ME antidumping calculation methodology to calculate APP-China’s margin. Refusal to consider the request for MOE treatment, APP-China states, would be unlawful.
- Petitioners argue that the Department should reject APP-China’s request for treatment as an MOE. Petitioners contend that the Department has established no policy or standards for classifying respondents as MOE’s, and that the standards proposed by APP-China are unlikely to meet any reasonable standards the Department might adopt. Further, according to Petitioners, the Department is not required to determine that ME methodology cannot be used before applying NME methodology in an antidumping proceeding.

Department’s Position: The antidumping statute and the Department’s regulations are silent with respect to the term “MOE.” Neither the statute nor the regulations compel the agency to treat some constituents of the NME industry as MOEs while treating others as NME entities. To date, the Department has not adopted any MOE exception to the application of the NME

⁷⁴ *See* Corroboration Memo.

methodology in any proceeding involving an NME country. As we stated in *Coated Free Sheet Paper/PRC* (October 25, 2007), and accompanying IDM at Comment 1, no determination has been made “whether it would be appropriate to introduce a market oriented enterprise process” in NME antidumping investigations.

Speaking to the complexity of the issue, the Department has twice asked for public comment on whether it should consider granting market-economy treatment to individual respondents operating in non-market economies, the conditions under which individual firms should be granted market-economy treatment, and how such treatment might affect antidumping calculations for such qualifying respondents.⁷⁵ The Department received numerous comments in response to the two *Federal Register* notices. The Department is still considering those comments while evaluating whether to adopt an official policy concerning MOEs.

APP-China argues that under section 773(c)(1) of the Act, the Department must justify why, for a particular respondent, the “available information does not permit the NV of the subject merchandise to be determined under subsection (a),” in order for the Department to determine NV on the basis of FOPs. We disagree with this contention. Pursuant to section 771(18)(A) of the Act, when a country is determined to be an NME, it means that the designated country, in this case the PRC, “{d}oes not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise.” In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and remains in effect for the purpose of this investigation. Accordingly, the NV of the product is appropriately based on FOP valued in a surrogate ME country in accordance with section 773(c) of the Act, a methodology that has been repeatedly upheld by the Courts. *See, e.g., Sigma Corp. v. United States*, 117 F.3d 1401, 1405 (Fed. Cir. 1997); *Nation Ford Chem. Co. vs. United States*, 166 F.3d 1373 (Fed. Cir. 1999).

Under the NME presumption established by the statutory scheme, the only mechanism for market economy treatment currently available to respondents in NME proceedings is MOI classification. The Department currently employs an industry-wide test to determine whether, under section 773(c)(1)(B), available information in the NME country permits the use of the ME methodology for the NME industry producing the subject merchandise. The MOI test affords NME-country respondents the possibility of market economy treatment, but only upon a case-by-case, industry-specific basis. This test is performed only upon the request of a respondent.⁷⁶

With respect to APP-China’s argument that key elements of its ME questionnaire responses have been verified by the Department, neither the verification outline nor the verification report indicate that the Department intended to verify, or conducted verification of, APP-China’s unsolicited ME questionnaire response. We followed the standard NME verification outline and verified APP-China’s corporate structure, accounting, sales information, and FOPs, as noted in

⁷⁵ *See First MOE Comment Request*, 72 FR at 29302-03; *Antidumping Methodologies in Proceedings Involving Certain Non-Market Economies: Market-Oriented Enterprise: Request for Comment*, 72 FR 60649 (Oct. 25, 2007) (“*Second MOE Comment Request*”).

⁷⁶ *See, e.g., First MOE Comment Request*. *See* Comment 1 above for a full discussion of the MOI claim in this proceeding.

the Verification Report.⁷⁷ While APP-China argues that the Department examined its SAP sales and distribution (“SD”) module, from which its U.S. sales and home market sales databases were derived, again, the verifiers did not specifically examine home market sales information reported to the Department in its unsolicited ME questionnaire response. The Department verified APP-China’s accounting system, U.S. sales information, as well as information with respect to the products subject to the investigation as part of examining the SD module.⁷⁸ The Department did not verify any part of APP-China’s unsolicited ME questionnaire response. *See, generally, APP-China Verification Report.*

Comment 8: Whether to apply AFA to all sales and expense information of GPS

- Citing the Department’s verification report, Petitioners contend that GPS’ responses could not be tied to a reliable financial statement and therefore, for the final determination, AFA should be applied to all CEP sales involving GPS.⁷⁹
- APP-China argues that the Department should not apply AFA to sales made by GPS because GPS’ information is complete and fully verified. APP-China contends that the fact that GPS does not maintain audited financial statements is insufficient grounds to reject its questionnaire responses.⁸⁰

Department’s Position: We have not applied AFA to APP-China sales made through GPS. The Department does not require that a respondent keep audited financial statements, provided its records are prepared in accordance with home country generally accepted accounting principles (“GAAP”).⁸¹ In such situations, the Department looks to other financial records, prepared in the normal course of business and for purposes independent of the antidumping proceeding, which attest to the veracity of a respondent’s accounting system and the information it submitted to the Department.

In this case, GPS submitted “CPA reviewed” (albeit unaudited), financial statements which it maintains in its normal course of business. In addition, GPS explained that, as a non-public company, it had never been required to maintain audited financial statements.⁸² In its questionnaire responses⁸³ and at verification,⁸⁴ GPS was able to demonstrate that the financial statements it maintained were reliable and supported the information it had provided throughout

⁷⁷ *See, generally, APP-China Verification Report. See also Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People’s Republic of China: Verification Agenda for Gold East Paper (Jiangsu) Co., Ltd., and Ningbo Zhonghua Paper Co., Ltd, dated June 3, 2010.*

⁷⁸ *See APP-China Verification Report at 8, 9, and 15.*

⁷⁹ Petitioners cite the following cases in support of their argument: *Chrome-Plated Lug Nuts/Taiwan (April 9, 1999)*; *Collated Roofing Nails/Taiwan (October 1, 1997)*; *Gourmet Equipment v. United States, 24 CIT 572 (2000)*; *Fresh Cut Flowers/Mexico (September 26, 1995)*; *Coated Free Sheet Paper/PRC (October 25, 2007)*; and *Silicon Metal/Brazil (February 23, 2001)*.

⁸⁰ APP-China cites the following cases in support of its argument: *Coated Free Sheet Paper/PRC (October 25, 2007)*.

⁸¹ *See, e.g., Granular Polytetrafluoroethylene Resin/Italy (January 17, 2007)* and accompanying IDM at Comment 1 and *Silicon Metal/Brazil (February 15, 2000)*, and accompanying IDM at Comment 1.

⁸² *See CEP verification report at page 5.*

⁸³ *See, e.g., APP-China’s supplemental section C response at Exhibits 6 and 9.*

⁸⁴ *See CEP verification report, generally.*

the course of this investigation. While there are some small discrepancies between the financial documents examined at verification (*e.g.*, slight differences found in the context of verifying the company's indirect selling expense ratio)⁸⁵, these errors are not so significant as to call into question the integrity of the company's reported information. Instead, the discrepancies were examined at verification, where Department officials confirmed the source and magnitude of each difference.⁸⁶

Sections 776(a)(1) and (a)(2)(A), (C) and (D) of the Act provide that the Department shall apply "facts otherwise available" if the necessary information is not on the record, or if an interested party: withholds information that has been requested by the Department; significantly impedes a proceeding under the antidumping statute; or provides information but the information cannot be verified. In *Chrome-Plated Lug Nuts/Taiwan (April 9, 1999)*, the respondent provided fundamentally un-reconcilable and thus unverifiable information and despite multiple opportunities to correct its deficiencies, failed to correct them or to provide evidence for the cause of the discrepancies. In contrast, as noted above, GPS' information was determined verified, and the discrepancies uncovered during verification were found to be both minor and adequately supported by GPS.

With regard to other cases cited by Petitioners, in *Silicon Metal/Brazil (February 23, 2001)*, the Department found that the respondent failed to cooperate to the best of its ability in refusing to provide audited financial statements to the Department despite maintaining such statements and having provided such statements in the prior segments of the proceeding. In contrast, here there is no evidence that GPS prepares audited financial statements because, as it explained, it is not required to do so under U.S. law. In *Fresh Cut Flowers/Mexico (September 26, 1995)*, the Department explained that it accepted unaudited financial statements from respondents in prior reviews because Mexican law did not require them to prepare audited financial statements or to file tax returns. However, because 1) Mexican law changed and began requiring the companies to file tax returns, 2) respondents provided misleading and evasive statements regarding their obligation to do so, and 3) respondents either failed to reconcile their unaudited financial statements with their tax return or refused to provide the tax return, the Department concluded that they impeded the proceeding. In the instant case, we have no evidence suggesting that GPS has engaged in a similar effort to withhold documents.

Moreover, in *Chrome Plated Lug Nuts/Taiwan (April 9, 1994)*, which was at issue in the *Gourmet Equipment* case, the Department found that the respondent failed to cooperate to the best of its ability because its questionnaire responses conflicted with its financial statements. In contrast, we have made no finding that GPS' financial statements materially conflicted with its questionnaire responses. Other examples cited by Petitioners, including *Collated Roofing Nails/Taiwan (October 1, 1997)*, involved the Department finding that the respondent's proffered financial statements were unreliable and unusable. The Department has not made such a finding in the instant case.

Accordingly, we find that there is no basis for using facts available ("FA") with respect to APP-China's CEP sales because the information submitted by GPS, on the whole, is complete,

⁸⁵ See CEP verification report at Exhibit 12.

⁸⁶ See CEP verification report at page 15.

useable and has been verified. Applying total FA in this context would be unwarranted because there is no basis to conclude that the errors or discrepancies at issue affect the overall integrity of the response or suggest an effort by the respondent to deceive the Department by withholding, altering, or fabricating documents.⁸⁷ As noted above, the facts of this case do not support such a finding with regard to GPS' reported information. Consequently, we are not basing APP-China's CEP margins on total facts available.

Comment 9: Whether to reclassify certain APP-China sales from EP to CEP

- For the final determination, Petitioners argue that the Department should reclassify certain APP-China EP sales as CEP because the delivery terms of these sales illustrate that the sales occurred in the United States, and the Department should make the appropriate deductions for CEP selling expenses.⁸⁸
- According to APP-China, because GPS did not take title to the merchandise, negotiate the sales price, issue invoices, or receive payment, the sales are properly classified as EP transactions.⁸⁹

Department's Position: We agree with APP-China, and have not reclassified as CEP APP-China's sales which were delivered under terms of delivered duty paid ("DDP") or delivered duty unpaid ("DDU"). We find that APP-China's classification of EP and CEP sales is consistent with the statute, SAA, and relevant case law, including *AK Steel*.

Pursuant to section 772(a) of the Act, "the term 'export price' means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c) of this section." Pursuant to section 772(b) of the Act, and the SAA at 819, the term "CEP" means the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

In *AK Steel*, the Federal Circuit explained that CEP sales can be made by either the foreign producer/exporter or the foreign producer/exporter's U.S. affiliate, while EP sales "can only be made by the producer or exporter of the merchandise" (*i.e.*, sales "made by a U.S. affiliate can only be CEP"). Moreover, the Federal Circuit stated in *AK Steel* that:

Commerce does not require a cumbersome test, examining the activities of the affiliate, to determine whether or not the U.S. affiliate is a seller, when the answer to that question is plain from the face of the contracts governing the sales in question. If Congress had

⁸⁷ See, e.g., *Pure Magnesium/PRC* (December 14, 2009)

⁸⁸ Petitioners cite the following cases in support of their argument: *NSK Ltd. v. United States*, 115 F.3d 965 (Federal Circuit 1997); *AK Steel Corp. v. United States*, 226 F.3d 1361, 1375 (Federal Circuit 2000); *Nucor Corp. v. United States*, 612 F.Supp.2d 1264, 1272-1283 (CIT 2009); and *Corus Staal, BV v. United States*, 502 F.3d 1370, 1377 (Federal Circuit 2007).

⁸⁹ APP-China cites the following cases in support of its argument: *AK Steel Corp. v. United States*, 226 F.3d 1361, 1375 (Federal Circuit 2000), and *Nucor Corp. v. United States*, 612 F.Supp.2d 1264, 1272-1283 (CIT 2009).

intended the EP versus CEP distinction to be made based on which party set the terms of the deal or on the relative importance of each party's role, it would not have written the statute to distinguish between the two categories based on the location where the sale was made and the affiliation of the party that made the sale.⁹⁰

Thus, the analysis the Department undertakes to determine whether a sale is properly classified as EP or CEP is: 1) the identity of the seller to the first unaffiliated U.S. customer; and 2) the location of the sale to the first unaffiliated U.S. customer. Subsequent to *AK Steel*, the Federal Circuit further clarified that “*AK Steel* does not stand for the proposition that all sales by foreign sellers to unaffiliated U.S. customers should be considered EP transactions. . . . The statute, moreover, is clear on that point: EP treatment is limited to transactions that occur between a seller outside the United States and a buyer inside the United States, before the date of importation.”⁹¹

In the instant case, record evidence supports continuing to treat the sales at issue as EP transactions. Specifically, for these sales, APP-China (GEHK), is identified as the seller of the merchandise and invoiced the U.S. customer prior to the date of importation.⁹² GPS did not take title to the product, nor is it identified as the seller of the merchandise on the commercial invoice.⁹³ Accordingly, record evidence⁹⁴ indicates that APP-China (GEHK) is the seller of the subject merchandise in these transactions, and that the sale took place outside the United States, before the date of importation, when APP-China (GEHK) invoiced the U.S. customer.

Further, we find Petitioners' focus on the delivery terms of these sales misguided. Petitioners argue, in essence, that sales delivered under the terms DDP or DDU must necessarily be classified as CEP because, under the commercial definition of these terms, the sale occurs at the moment of delivery, when the seller completes the transfer to the buyer. However, as noted above, the central facts the Department considers with regard to EP and CEP classification involve the identity of the seller and the location where the sale was made.

In fact, as stated in the *Preliminary Determination*, the Department has determined to use the date of invoice as the date of sale for APP-China (GEHK)'s exports to the United States, consistent with 19 CFR 351.401(i), because the invoice date best reflects the date on which APP-China (GEHK) established the material terms of sale. We do not find that the date on which the material terms of sale were established was a function, in any way, of the delivery date of the merchandise. Accordingly we have not reclassified APP-China's EP sales delivered under DDU or DDP terms, as CEP.

⁹⁰ See *AK Steel* at 1372.

⁹¹ See *Corus Stahl*, 502 F.3d at 1377.

⁹² See CEP verification report at page 7. We also note that the invoice date is the date of sale.

⁹³ *Id.* at Exhibits 3, 4, and 10. GPS' role in these sales was limited to facilitating importation, communication, and post-sale servicing and warranty claims, for which services GPS received a commission.

⁹⁴ *Id.*

Comment 10: Whether the Department should reject APP-China's Minor Correction

- Petitioners argue that the Department should reject APP-China's "Minor Correction # 4," presented during verification, because it was not "minor." According to Petitioners, the circumstances are sufficient to warrant the application of AFA to the data in question but, in the alternative, the Department should not use APP-China's minor correction when calculating the margin in the final determination.⁹⁵
- APP-China contends that the record lacks evidence to support the application of AFA. APP-China argues the minor correction was submitted at the appropriate time and was fully verified. According to APP-China, the Department should also reject Petitioners' suggestion to use previously reported data instead of the correction.

Department's Position: We agree with APP-China, and have used its corrected data for purposes of the final determination.

The correction at issue involves revising the reporting of a particular "finish" characteristic for several of APP-China's products from characteristic "2" – indicating a finish between 65 and 74.99, to characteristic "1" – indicating a finish of 75 or greater. APP-China described the error as an inadvertent typographical mistake.

As an initial matter, the Department routinely accepts minor corrections at the beginning of verification. Errors requiring such minor corrections are frequently uncovered by respondents as they prepare for verification. The corrections in errors that we accept at this stage typically include corrections of minor mistakes in addition, subtraction, or other arithmetic function, minor data entry mistakes, clerical errors resulting from inaccurate copying, duplication, or the like, and minor classification errors.⁹⁶

However, the Department considers several factors in determining whether or not to accept corrections of errors submitted by interested parties. In particular, we evaluate whether the correction is clerical or methodological,⁹⁷ whether we are able to verify the error and are satisfied with the documentary support for the reported correction,⁹⁸ whether the error calls into question the overall integrity of the respondent's submissions,⁹⁹ and whether it amounts to a "substantial revision" of previously reported data.¹⁰⁰

Petitioners argue that the Department should reject the proposed correction for essentially two reasons: 1) it was not "minor" because its impact on the margin was not minor, and 2) it constitutes an attempt by APP-China to circumvent normal procedure by making a large revision to its reported data "at the eleventh hour."¹⁰¹

⁹⁵ Petitioners cite the following case in support of their argument: *Petroleum Wax Candles/PRC* (March 19, 2003).

⁹⁶ See, e.g., *Shrimp/Brazil*, (July 11, 2008) and accompanying IDM at Comment 6.

⁹⁷ See, e.g., *KASR/PRC*, (July 24, 2009), and accompanying IDM at Comment 4.

⁹⁸ See, e.g., *Diamond Sawblades/PRC*, (May 22, 2006), and accompanying IDM at Comment 73.

⁹⁹ See, e.g., *Shrimp/Ecuador*, (September 15, 2009), and accompanying IDM at Comment 9.

¹⁰⁰ See, e.g., *WBF/PRC*, (August 18, 2010), and accompanying IDM at Comment 23.

¹⁰¹ See Petitioners' brief at page 9.

Notwithstanding Petitioners' assertions, the Department finds, after careful consideration, that the corrections at issue are minor corrections of the type we routinely accept at verification, for the following reasons. First, during verification, Department officials reviewed the proposed correction and were able to examine source documents substantiating it. We confirmed that APP-China's specification sheets supported the correction.¹⁰² Subsequently, we reviewed the specification sheets of these and several other of APP-China's products. Our verification uncovered no similar classification mistakes that would suggest this was a systemic problem in APP-China's responses.¹⁰³ Instead, our review of the error at, and subsequent to, verification, has supported our initial conclusion that the error was a minor classification error of the type typically accepted at verification. Accordingly, we find that the existence of this error does not call into question the integrity of APP-China's responses.

Moreover, we find that the minor corrections required to correct the error do not meet the level of "substantial revision of the response." The corrections do not involve production data, or call into question FOPs and cost reconciliations. While the impact of the minor correction may not be minor, in this context, we find *Brake Drum and Rotor v. United States*, (CIT 1999) applicable, wherein the CIT held that:¹⁰⁴

The issue is not the value of the errors as a percentage of total U.S. sales, or the number of instances of errors. Rather the issue is the nature of the errors and their effect on the validity of the submission.

Second, with respect to Petitioners' argument regarding procedure, we find that the record does not support the conclusion that APP-China was aware of this error prior to its preparations for verification. On the contrary, in the verification outline sent to APP-China immediately prior to verification, APP-China was instructed by the Department to prepare packets of source documentation (e.g., specification sheets) supporting its reported product characteristics, including the one at issue here.¹⁰⁵ We find it reasonable to conclude, absent evidence suggesting otherwise, that APP-China discovered the misclassification as it was preparing these documents for its upcoming verification.

Further, we do not agree that APP-China unfairly prejudiced Petitioners by delaying its disclosure of this minor correction. Consistent with the Department's instructions, APP-China served interested parties with these errors on June 18, 2010.¹⁰⁶ This occurred well before the due date for case briefs, which was August 5, 2010.¹⁰⁷ APP-China complied with our request to submit corrected databases, and it submitted its revised data in the form requested by the Department. Consequently, we find that APP-China acted to the best of its ability and in

¹⁰² See APP-China verification report at page 3.

¹⁰³ See *Id.*, generally.

¹⁰⁴ See *The Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers v. United States*, 44 F. Supp 2d 229, 236 (CIT 1999)

¹⁰⁵ See APP-China verification outline at page 9.

¹⁰⁶ See APP-China's submission of minor corrections dated June 18, 2010.

¹⁰⁷ See letter to interested parties titled "Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Revised Case Brief and Rebuttal Brief Deadlines" dated July 27, 2010.

accordance with the Department's instructions in this regard. Further, the minor corrections were initially disclosed on June 18, 2010, over one month before the deadline for case briefs, and the database was submitted on July 30, 2010, four business days before the deadline for case briefs. In light of the foregoing, we find that Petitioners were not precluded from analyzing or reacting to the errors or the corrections.

Finally, we find Petitioners' reliance on *Petroleum Wax Candles/PRC (March 19, 2003)*, misplaced. The correction at issue here involves a classification error which is clerical and easily verifiable. In *Petroleum Wax Candles/PRC (March 19, 2003)*, on the other hand, the Department concluded otherwise, and halted verification upon disclosure of the error. In further contrast to *Petroleum Wax Candles/PRC (March 19, 2003)*, APP-China's error did not involve production data, or call into question large portions of its submissions, including FOPs and cost reconciliations. As noted above, the narrow scope of APP-China's error was confirmed during verification. Further, APP-China's correction was reviewed and accepted at verification and is on the record. The minor correction at issue in *Petroleum Wax Candles/PRC (March 19, 2003)*, meanwhile, involved an extraordinary situation where verification was halted and all documents regarding the correction were returned to the respondent. In fact, in its decision to reject the correction at issue in *Petroleum Wax Candles/PRC (March 19, 2003)*, the Department relied exclusively on the facts of the case and cited no precedent, further evidencing the exceptional nature of those circumstances.

Accordingly, for the foregoing reasons, we have determined that the errors at issue are minor, and that APP-China acted to the best of its ability in availing itself to correct them. We have also found that Petitioners were not unfairly prevented from investigating the errors. Therefore, we have used APP-China's corrected data for purposes of the final determination.

Comment 11: Whether the Department should deduct certain rebates for APP-China

- APP-China argues that the Department should ensure that APP-China's minor correction to reported rebates is not double counted in the final determination.
- Petitioners contend the Department should make no further corrections to APP-China's reported data and should deduct the rebates as reported in APP-China's U.S. sales database.

Department's Position: We have determined to deduct APP-China's rebates as currently reported in its July 30, 2010 U.S. sales databases submitted subsequent to verification because the record does not sufficiently support APP-China's claim that it had already reported a certain portion of the rebates it submitted as minor corrections at verification.

According to APP-China in its case brief, the corrected rebate calculations that it submitted to the Department as part of its minor corrections at verification included rebates for some sales that had already been reported by GHS (albeit, originally reported incorrectly). While Petitioners suggest that the Department should not consider correcting APP-China's alleged error because it made the request too late in the proceeding, we note that the Department has, in the past, accepted minor corrections submitted by a respondent in its case brief.¹⁰⁸

¹⁰⁸ See, e.g., *Stainless Steel Bar/India*, (September 3, 2010), and accompanying IDM at Comment 2.

However, as the Department stressed in *Stainless Steel Bar/India (September 3, 2010)*, the respondent's burden when submitting minor corrections includes demonstrating substantial, direct support on the record for the proposed correction. Further, as APP-China is requesting a favorable adjustment to its already reported rebates, it is incumbent upon the firm to demonstrate that it is entitled to the adjustment.¹⁰⁹

We do not find that the evidence cited by APP-China sufficiently supports its claim that by deducting the rebates reported as a minor correction, we would double count rebates already reported by GHS. Specifically, the exhibit APP-China cited as support is not translated, in violation of 19 C.F.R. 351.303(e),¹¹⁰ and the narrative description of the previously reported rebate¹¹¹ provides no detail concerning how rebates were previously calculated or applied. Consequently, it is unclear from this evidence whether, and to what extent, the rebate corrections APP-China submitted as a minor correction at verification had already been partially reported in its previous submissions. Accordingly, the Department finds that APP-China has not met its burden to demonstrate record support for its proposed change and entitlement to the adjustment which would result from it.

Comment 12: Whether the Department Should Deduct Certain Commission Expenses

- APP-China argues that the Department should not deduct certain commission expenses from sales that were classified as Channel 1, direct EP sales, as a result of their CEP minor correction number.
- Petitioners reiterate their argument that APP-China has mischaracterized some of their EP sales and the Department should reclassify them as CEP sales.

Department's Position: We agree with APP-China, and for the final determination we have not deducted certain commission expenses from those sales reclassified from Channel 2 (indirect EP sales) to Channel 1 (direct EP sales) because GPS, the U.S. affiliate, was not involved in these transactions. At verification we were presented with a diagram demonstrating the sales process in the various channels. As part of the review of this minor correction at verification we selected a sale originally reported as a Channel 2 sale (which is one of those reclassified as Channel 1 as part of this minor correction) and found that the document trail matches that of a Channel 1 sale.¹¹² Therefore, because GPS, as APP-China notes, was not involved in the sales process for these sales, we have not deducted GPS's commissions from these particular sales. In addition, with respect to Petitioners' argument that APP-China has mischaracterized some of their EP sales, we have addressed Petitioners' argument in Comment 9 above.

¹⁰⁹ See 19 CFR 351.401(b)(1) and *Timken Co. v. United States*, 673 F. Supp. 495, 513 (CIT 1987) (holding that a respondent bears the burden of demonstrating entitlement to favorable adjustment).

¹¹⁰ See GHS Section C response at Exhibit, page 2.

¹¹¹ See *Id.*, at pages 15, 16.

¹¹² See "Verification of the Sales and Factors Responses of Gold East Paper (Jiangsu) Co., Ltd., Ningbo Zhonghua Paper Co., Ltd., and Gold East (Hong Kong) Trading Co., Ltd., in the Antidumping Duty Investigation of Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China from the People's Republic of China," dated July 21, 2010, at Exhibits 7 and 43.

Comment 13: Whether the Department Should Correct Certain Ministerial Errors

- APP-China requests for the final determination that the Department corrects all identified ministerial errors identified subsequent to the preliminary determination, in line with the Department's Ministerial Error Memo.
- Petitioners request the Department acknowledge that it received Petitioners' Rebuttal Comments to APP-China's Request for Correction of Ministerial Errors dated May 13, 2010 before the Department makes any of the ministerial error corrections for the final determination.

Department's Position: The Department for the final determination has made the ministerial error corrections that we found to be "clerical" in nature, as described in our June 9, 2010 Ministerial Error Memo.¹¹³ In addition, the Department notes that we received Petitioners' May 13, 2010 Comments, however they have not persuaded us that the conclusions we reached in the June 9, 2010 Ministerial Error Memo should be revisited. We also note that Petitioners' case brief does not contain any arguments or objections against correcting ministerial errors identified in the Department's Ministerial Memo.

A ministerial error is defined in section 351.224(f) of the Department's regulations as "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any similar type of unintentional error which the Secretary considers ministerial." The Department found that some of the allegations raised by APP-China subsequent to the *Preliminary Determination* constituted ministerial errors within the meaning of section 351.224 of the Department's regulations, although the Department found that the errors were not "significant" to amend the *Preliminary Determination*. Based on what we stated in the June 9, 2010 *Ministerial Error Memo*, incorporated herein by reference, the following ministerial errors have been corrected for the final determination:

- Department Incorrectly Calculated Freight for Certain Inputs (in part)
- Department Incorrectly Calculated NGAS
- Department Incorrectly Calculated the Weighted-Average Market Economy ("ME") Purchase Price for BCTMP, LBKP, and DISAGENT (in part)
- Department Incorrectly Calculated the Percent of MEPs to Total Purchases for DEFOAMER1, RAPOLY1, and BLDE2
- Department Incorrectly Calculated the Average Surrogate Financial SG&A Ratio Applied to GE Group

Comment 14: Whether to Deduct Domestic Inland Insurance from U.S. Price

- APP-China argues that the Department should reverse its decision in the preliminary determination to deduct domestic inland insurance from U.S. price because APP-China never incurred this expense, only marine insurance.

¹¹³ See "Antidumping Duty Investigation of Certain Coated Paper from the People's Republic of China: Allegation of Ministerial Errors," dated June 9, 2010 ("Ministerial Error Memo").

- Petitioners argue for the Department to uphold its original decision in the preliminary determination because APP-China reported that their marine insurance contracts from NME-suppliers included domestic inland insurance.¹¹⁴

Department’s Position: For the final determination, the Department has continued to apply a surrogate value for domestic inland insurance, in accordance with 19 CFR 351.408(c)(1). APP-China in all of the mills’ supplemental section C submissions specified that the marine insurance contract they have with their NME supplier includes domestic inland insurance.¹¹⁵ Accordingly, notwithstanding the fact that GE’s factory site is located at the port, APP-China paid for domestic inland insurance through its marine insurance contract,¹¹⁶ and we have deducted domestic inland insurance accordingly from U.S. price. See section 772(c)(2)A of the Act. Consistent with *OCTG/China (April 19, 2010)*,¹¹⁷ because the surrogate value for marine insurance does not include domestic inland insurance, the Department has separately valued domestic inland insurance and deducted it from gross unit price.

Comment 15: Application of Foreign Truck Freight

- Petitioners argue that the Department should correct a foreign truck freight calculation error.
- APP-China argues that the Department should reject Petitioners’ argument and continue to deduct the per-unit freight value from APP-China’s reported per-unit prices.

Department’s Position: We agree with Petitioners that the Department incorrectly calculated foreign truck freight, and we have corrected this calculation for the final determination. The antidumping statute does not mandate any particular calculation methodology for calculating foreign truck freight. In the *Preliminary Determination*, the Department calculated foreign truck freight by multiplying the distance to the port by the per metric ton inland freight surrogate value (as APP-China reported its sales on a per-metric ton basis), and then deducted the resulting per-metric ton expense from the per-metric ton gross unit price. However, as Petitioners correctly point out, the per-metric ton weight is a net weight, exclusive of packing, which needs to be included in the calculation of inland freight, as this expense pertains to the transportation of the finished goods (*i.e.*, packed goods) from the factory to the port of exportation. Thus, the Department has included the weight of packing one metric ton of merchandise in the calculation of foreign truck freight for the final determination.

Comment 16: Whether to Treat All of APP-China’s Pulp Purchases as MEPs

¹¹⁴ See *OCTG/PRC (April 19, 2010)* and accompanying IDM at Comment 3.

¹¹⁵ See Gold Huasheng’s Supplemental Section C Response,” dated March 29, 2010, Exhibit SC-9, pg 4; Ningbo Zhonghua Paper Co., Ltd and Ningbo Asia Pulp and Paper Co., Ltd: Section C Response, dated March 4, 2010, and Gold East’s Supplemental Section C Response, dated March 29, 2010, Exhibit SC-7.

¹¹⁶ See Gold Huasheng’s Supplemental Section C Response,” dated March 29, 2010, Exhibit SC-9; “Gold East’s Supplemental Section C Response,” dated March 29, 2010, Exhibit SC-7; Ningbo Zhonghua Paper Co., Ltd and Ningbo Asia Pulp and Paper Co., Ltd: Supplemental Section C Response, dated April 7, 2010 at Exhibit SC-8. See also Verification Report at Exhibit 36.

¹¹⁷ See *OCTG/PRC (April 19, 2010)* and accompanying IDM at Comment 3.

- APP-China argues that the Department should reverse its decision in the *Preliminary Determination* and accept the ME purchase prices for APP-China's otherwise qualified pulp purchases which occurred through a PRC trading company. APP-China contends that, because the trading company has no influence on the ultimate purchase price of the pulp, these purchases were in fact between APP-China and the ME supplier.
- Petitioners contend that the Department should continue to use surrogate values for the pulp inputs in question because the PRC trading companies constitute a break between the ME supplier and APP-China.¹¹⁸

Department's Position: We agree with Petitioners and have continued to exclude from our MEP calculations purchases of pulp that APP-China sourced through NME trading companies.

The Department has a long-standing practice of disregarding prices set within an NME because they are presumptively not set according to market forces.¹¹⁹ With regard to ME purchases, the Department's regulations state:

Where a factor is purchased from a market economy supplier and paid for in a market economy currency, the Secretary normally will use the price paid to the market economy supplier.¹²⁰

In applying these standards to potential ME transactions involving trading companies, the Department has excluded from its MEP calculations inputs which were produced by an NME supplier but sourced through an ME trading company,¹²¹ as well as inputs which were produced by an ME supplier but purchased from an NME trading company.¹²² These situations did not meet the definition of an ME purchase (*i.e.*, a purchase "from a market economy supplier,") or involved prices which were influenced by non-market economy forces. We applied this practice in the *Preliminary Determination*, excluding certain of APP-China's purchases because we found that the sales "did not occur directly between the respondent and an ME supplier."¹²³

APP-China argues that its pulp purchases which were sourced through NME trading companies are distinguishable from the Department's past practice because the trading company has no influence on the ultimate purchase price APP-China mills pay for the input.¹²⁴ Therefore, according to APP-China, the Department should treat the sales as ME purchases. Essentially, APP-China contends these purchases are between itself and the ME supplier, even though an NME trading company is involved.

¹¹⁸ Petitioners cite the following cases in support of their argument: *Tires/PRC*, (July 15, 2008), and accompanying IDM at Comment 70, and *Coated Free Sheet Paper/PRC*, (October 17, 2007), and accompanying IDM at Comment 12.

¹¹⁹ See, e.g., *Narrow Woven Ribbons/PRC*, (July 19, 2010), and accompanying IDM at Comment 2, and *OCTG/PRC*, (April 19, 2010), and accompanying IDM at Comment 5.

¹²⁰ See 19 CFR 351.408(c)(1).

¹²¹ See *Polyethylene Retail Carrier Bags/PRC*, (June 18, 2004), and accompanying IDM at Comment 3.

¹²² See *OCTG/PRC*, (April 19, 2010), and accompanying IDM at Comment 70 and *Coated Free Sheet Paper/PRC*, (October 17, 2007), and accompanying IDM at Comment 12.

¹²³ See *Preliminary Determination* at 24904.

¹²⁴ See APP-China case brief at page 12.

APP-China has direct purchases of pulp from ME suppliers and also has the purchases of pulp at issue, which go through an NME trading company. For both types of purchases, the documentation involved in the purchase process includes supply contracts, emailed price negotiations, and purchase documents between APP-China's parent company and the ME suppliers. However, the difference between the direct ME purchases of pulp and the purchases made through NME trading companies is that the ME supplier invoices the NME trading company at the amount agreed upon between APP-China and the ME supplier, and then the NME trading company invoices APP-China a different price, which consists of the purchase price paid by the NME trading company to the ME supplier with an additional mark-up/commission.¹²⁵ Thus, we disagree with APP-China's contention that the trading company has no influence on the ultimate purchase price APP-China mills pay. Specifically, APP-China and the NME trading company agree on a commission/mark-up that is added to the purchase price paid by the NME trading company to the ME supplier, so in fact, the NME trading company does have an influence over the price paid by APP-China. Moreover, there is no evidence on the record indicating that the ME supplier was involved in the negotiation of the commission/mark-up paid to the NME trading company, which distinguishes the instant case from *Seamless Pipe*, where 1) the ME supplier set the commission paid to the NME agent acting on the supplier's behalf, and 2) the price that the respondent paid was the price set by the ME supplier. Because the additional mark-up/commission charged to APP-China is essentially an NME transaction (between two NME entities), and the price APP-China ultimately paid for the pulp is not the price negotiated with the ME supplier, we find that these purchases do not constitute ME purchases.

In conclusion, in each of these purchases, APP-China was identified as the ultimate buyer, and the respective NME trading company was identified as the ultimate seller.¹²⁶ Consequently, we can only conclude that 1) APP-China ultimately purchased these inputs from NME trading companies, not from ME suppliers, 2) the NME trading companies influenced the prices APP-China paid for these inputs – by charging APP-China a different price from that paid to the ME supplier, and 3) that price was, by definition, not market based because it was negotiated between two NME entities and, thus, is not reliable for use in this proceeding. Accordingly, we have continued to exclude these purchases from our ME purchase calculations, consistent with our finding in the *Preliminary Determination*.

Comment 17: Valuation of GE Group's ME Purchases from Thailand and Korea

- APP-China argues that the Department should not have rejected market-economy purchases from Korea and Thailand because the Department failed to place on the record substantiated evidence confirming that Korea and Thailand subsidize the inputs in question.¹²⁷

¹²⁵ See APP-China verification report at Exhibit 5.

¹²⁶ See *Id.*

¹²⁷ APP-China cites to the following cases: *See Shakeproof Assembly Components v. United States*, 268 F.3d 1376, 1382 (Ct. Int'l Trade 2001); *Lasko Metal Prods., Inc. v. United States*, 43 F.3d 1442, 1446 (Ct. Int'l Trade 1994); *Fuyao Glass Indus. Group Co. v. United States*, 29 CIT 109 (2005); *Sichuan Changhong Elec. Co. v. United States*, 460 F. Supp. 2d 1338, 1349-53 (Ct. Int'l Trade 2006); *Certain Color Television Receivers from the People's Republic of China*, 69 Fed. Reg. 20,594 (Apr. 16, 2004); *China National Machinery Import & Export Corp. v. United States*, 27 CIT 255 (2003); *Tapered Roller Bearings and Parts Thereof Finished and Unfinished, from the*

- Petitioners argue for the Department to uphold its decision (and rely on its practice) to decline to use prices for goods imported from Korea or Thailand because both countries maintain broadly-available non-industry specific export subsidies.¹²⁸

Department’s Position: The Department has continued its practice of rejecting MEPs from Thailand and Korea for the final determination. As we stated in the *Preliminary Determination*, in accordance with the *OTCA 1988* legislative history, the Department continues to apply its long-standing practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be subsidized.¹²⁹ In this regard, the Department has previously found that it is appropriate to disregard such prices from South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.¹³⁰ Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POI, the Department finds that it is reasonable to infer that all exporters from South Korea and Thailand may have benefitted from these subsidies. This is consistent with past practice, where the Department has rejected MEPs from Thailand and Korea.¹³¹

APP-China argues that the Department did not place on the record substantial evidence reflecting that Korea and Thailand subsidize the inputs in question, as it must and cites to the CIT’s decision in *Fuyao Glass*¹³² to support its contention. We disagree. The Department is not required to conduct a formal investigation with respect to multiple countries to ensure that prices are subsidized. Rather, it is sufficient if the Department has “substantial, specific, and objective evidence in support of its suspicion that the prices are distorted.” *See China Nat’l Mach. Imp. & Exp. Corp. v. United States*, 293 F. Supp. 2d 1334, 1339 (CIT 2003) (emphasis in original); H.R.

People’s Republic of China 66 Fed. Reg. 35,937 (July 10, 2001); *Luoyang Bearing Corp. v. United States* 28 CIT 733 (2004); *Shandong Huarong Mach Co. v. United States*, 29 ITRD 1184 (Ct. Int’l Trade 2008).

¹²⁸ Petitioners cite to the following cases: *National Cable & Telecommunications Ass’n v. Brand X Internet Services*, 545 U.S. 967, 162 L.Ed.2d 820 (2005); *Wire Decking/PRC (January 12, 2010)*, unchanged in *Wire Decking/PRC (June 10, 2010)*; *Steel Grating/PRC (January 6, 2010)*, unchanged in *Steel Grating/PRC (June 8, 2010)*; *PC Strand/PRC (December 23, 2009)* at 68239, unchanged in *PC Strand/PRC (May 21, 2010)*; *OCTG/PRC (November 17, 2009)* at 59127, unchanged in *OCTG/PRC (April 19, 2010)*; *KASR/PRC (March 5, 2009)* at 9600, unchanged in *KASR/PRC (July 24, 2009)*; *Lawn Groomers/PRC (January 28, 2009)* at 4934, unchanged in *Lawn Groomers/PRC (June 19, 2009)*; *Circular Welded Line Pipe/PRC (November 6, 2008)* at 66017, unchanged in *Circular Welded Line Pipe/PRC (March 31, 2009)*; *FSVs/PRC (October 22, 2008)* at 62957, unchanged in *FSVs/PRC (March 13, 2009)*; *HEDP/PRC (October 21, 2008)* at 62475, unchanged in *HEDP/PRC (March 11, 2009)*; *Steel Threaded Rod/PRC (October 8, 2008)* at 58938-58939, unchanged in *Steel Threaded Rod/PRC (February 27, 2009)*; *Circular Welded Austenitic Pipe/PRC (September 5, 2008)*, unchanged in *Circular Welded Austenitic Pipe/PRC (January 28, 2009)*; *Graphite Electrodes/PRC (August 21, 2008)* at 49415-49416, unchanged in *Graphite Electrodes/PRC (January 14, 2009)*; *China National Machinery v. United States*, 27 CIT 1553, 293 F.Supp.2d 1334 (2003); *Luoyang Bearing Factory v. United States*, 27 CIT 1638, 288 F.Supp.2d 1369 (2003); *Peer Bearing Company-Changshan v. United States*, 27 CIT 1763, 298 F.Supp.2d 1328 (2003).

¹²⁹ *See Omnibus Trade and Competitiveness Act of 1988*, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) (“OTCA 1988”) at 590.

¹³⁰ *See Corrosion-Resistant Carbon Steel Flat Products/ Korea (January 15, 2009)* and accompanying IDM at pages 17, 19-20; *Hot-Rolled Carbon Steel Flat Products -Sunset (December 7, 2006)*. *Hot Rolled Carbon Steel Flat Products/Thailand (October 3, 2001)* and accompanying IDM at page 23.

¹³¹ *See Coated Free Sheet Paper/PRC (June 4, 2007)* unchanged in *Coated Free Sheet Paper/PRC (October 25, 2007)*; *Wire Decking/PRC (January 12, 2010)* at 1605, unchanged in the *Wire Decking/PRC (June 10, 2010)*.

¹³² *See Fuyao Glass Industries Group Co. v. United States*, 29 CIT 109 (2005) (“Fuyao Glass”).

Rep. Conf. 100-576 at 590. APP-China's suggestion that the Department cannot rely upon its finding in other proceedings and is instead required to conduct a full blown reinvestigation of export subsidies in Thailand and Korea in the context of this antidumping duty investigation is unsupported and would be unadministrable, particularly in light of the statutory deadlines for completing antidumping investigations. Therefore, the Department is instructed by Congress to base its decision on information that is available to it at the time it is making its determination.¹³³

While APP-China asserts that the Department verified and "found no discrepancies" with respect to APP-China's suppliers of MEPs from Thailand and Korea, and in effect, the Department should utilize the MEPs prices from Thailand and Korea, the Department did not state in the verification outline or verification report that examining purchase documentation requires the Department to use that specific information to value FOPs. As part of standard verification procedures, the Department examines documentation with respect to domestic, as well as imported purchases, in order to verify several things, for example, that the inputs a respondent reported were the ones it had purchased and consumed and that the inputs the respondent used were purchased in the normal course of business. Simply because the reported MEP prices tie to the respondent's books and records does not resolve the fundamental concern that these prices could have been distorted by export subsidies. Therefore, for the final determination, we have continued to disregard purchases made from Korea and Thailand in valuing APP-China's FOPs.

Comment 18: Whether to Employ the 33 Percent Threshold for GE Group's ME Purchases

- APP-China argues that the Department's 33-percent threshold policy for valuing ME inputs constitutes a rebuttable presumption, and based on new information available on the post-verification record, APP-China argues that the Department should use APP-China's MEP prices to value the entire input where APP-China has MEPs.¹³⁴
- Petitioners argue that the Department should uphold its decision in the preliminary determination to use a weighted-average of APP-China's MEP prices with surrogate values when MEPs do not make up 33 percent of total purchases of a particular input because although the Department's 33-percent threshold is not a statute or regulation, it is Department practice based on agency discretion.

Department's Position: The Department for the final determination has continued to implement its methodology of using the 33 percent threshold for MEPs because APP-China has not provided sufficient evidence for the Department to depart from its practice. As we stated in *Antidumping Methodologies*,¹³⁵ when the volume of an NME firm's purchases of a particular input from market economy suppliers as a percentage of its total volume of purchases of that input during the period of review is below 33 percent, we cannot be sure that the ME price is representative of what the total price would have been had the firm purchased solely from the ME suppliers. Nevertheless, where these purchases are otherwise valid and meet the Department's existing conditions, the Department will weight-average the weighted-average

¹³³ See *OCTA* 1988 at 590.

¹³⁴ See *Shakeproof Assembly Components, Div. O/III. Tool Works, Inc. v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001); *Lasko Metal Prods., Inc. v. United States*, 43, F.3d 1442,1446 (Fed. Cir. 1994).

¹³⁵ See *Antidumping Methodologies*.

market economy purchase price with an appropriate surrogate value according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption that market economy input prices are the best available information for valuing an entire input when the total volume of the input purchased from all market economy sources during the POI exceeds 33 percent of the total volume of the input purchased from all sources during the period.

APP-China argues that since the 33 percent methodology is a policy, not part of the statute or a regulation, it has the right to rebut this presumption. Moreover, as reflected in *Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States*¹³⁶ and *Lasko Metal Prods., Inc. v. United States*,¹³⁷ APP-China alleges that the Department has a preference for using ME purchases to value factors and argues that applying surrogate values to FOPs is less accurate and contrary to the intent of the law when the Department has actual prices paid for the input to a market economy supplier on the record. APP-China also cites to the verification report and states in its case brief that “the Department assessed and verified negotiating documents, purchase histories, and many other documents confirming that good-faith negotiations occurred and that the prices paid for the ME input purchases were valid transactions set by market forces.”¹³⁸ While we agree that Department officials examined various documents at verification with respect to APP-China’s ME purchases, there is nothing in the verification report or cited to in APP-China’s case brief to demonstrate that where APP-China purchased less than 33 percent of its input from ME suppliers, it would represent the value of APP-China’s total purchases of that input.¹³⁹

Again, as we stated in *Antidumping Methodologies*, it has been established in both the Preamble and through the Department’s long-standing case precedent that the Department may decline to accept market economy purchases to value an input when the volume involved is insignificant.¹⁴⁰ *Windshields/PRC (May 9, 2005)* is representative of the Department’s consistent standard that it will rely on market economy purchases to value an entire input only when the share of the input sourced from market economy suppliers, relative to the total volume purchased, is high enough that the Department has confidence that the market economy purchase price is reflective of the firm’s total purchases of the input. Moreover, in *WBF/PRC (August 18, 2010)*,¹⁴¹ the Department rejected using MEP to value an FOP when the total quantity of MEPs was less than 33 percent. The Department explained that the total quantity that is less than 33 percent would not accurately reflect the value of total purchases: “{t}he Department maintains this practice in an effort to ensure ‘that the ME price is representative of what the total price would have been

¹³⁶ See *Shakeproof Assembly Components, Div. O/Ill. Tool Works, Inc. v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001)

¹³⁷ See *Lasko Metal Prods., Inc. v. United States*, 43, F.3d 1442,1446 (Fed. Cir. 1994).

¹³⁸ See APP-China’s case brief at 32.

¹³⁹ See “Verification of the Sales and Factors Responses of Gold East Paper (Jiangsu) Co., Ltd., Ningbo Zhonghua Paper Co., Ltd., and Gold East (Hong Kong) Trading Co., Ltd., in the Antidumping Duty Investigation of Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People’s Republic of China from the People’s Republic of China,” dated July 21, 2010, pg. 24-26.

¹⁴⁰ See, e.g., *Windshields/PRC (May 9, 2005)* at 24380 (“where the quantity of the input purchased from market-economy suppliers was insignificant, the Department will not rely on the price paid by an NME producer to a market-economy supplier because it cannot have confidence that a company could fulfill all its needs at that price.”).

¹⁴¹ See *WBF/PRC (August 18, 2010)* and accompanying IDM at Comment 21.

had the firm purchased solely from the ME suppliers.’’¹⁴² Therefore, because APP-China has not provided sufficient evidence to rebut the Department’s 33 percent threshold for valuing the entire input using ME prices, the Department will continue to implement the 33 percent threshold methodology for the final determination.

Comment 19: Valuation of calcium carbonate ore (CCORE)

- APP-China argues that the Department should value its consumption of CCORE using HTS category 252100 – limestone, or, in the alternative, an average of the category which the Department used in the *Preliminary Determination*, 251741 – “marble chips,” and the HTS category for limestone.
- Petitioners contend that APP-China’s consumption of CCORE should be valued using a combination of HTS categories 251511 – “marble crude or roughly trimmed” and 251741 – “marble chips” or, in the alternative, a combination of HTS categories 251511 – “marble crude or roughly trimmed,” 251741 – “marble chips,” 252100 – “limestone,” and 283650 – “calcium carbonate.”

Department’s Position: In valuing FOPs, section 773(c)(1) of the Act instructs the Department to use “the best available information” from the appropriate ME country. With respect to SV selection, “it is the Department’s stated practice to use investigation or review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data.”¹⁴³ As a consequence, the Department first attempts to find publicly available SVs from the primary surrogate country that are contemporaneous and representative of the FOPs being valued. In applying the Department’s SV selection criteria as mentioned above, the Department has found in numerous NME cases¹⁴⁴ that the import data from WTA represent the best available information for valuation purposes because they represent a broad average of multiple price points that are specific to inputs in question within a specific period and are tax-exclusive. In some instances, the Department has disregarded import data where record evidence demonstrates that per-unit values are aberrational with respect to the product at issue, or the time period in question. The Department determines whether data are aberrational on a case-by-case basis after considering the totality of the circumstances.

In this case, we selected India as our primary surrogate country, a selection that no party has challenged. Because the Department has selected India as the surrogate country, our first preference in selecting SV data for this investigation is to utilize publicly available prices within India.

With respect to CCORE, we have continued to value APP-China’s CCORE consumption using Indian HTS category 251741 – “broken or crushed stone, pebbles, of marble” because it is the HTS category most specific to APP-China’s CCORE input and because we have determined that

¹⁴² See *Antidumping Methodologies*, 71 FR at 61717.

¹⁴³ See Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process, March 1, 2004 (“Policy Bulletin”) at 4; see also *Diamond Sawblades/PRC (May 22, 2006)* and accompanying IDM at Comment 11.

¹⁴⁴ See, e.g., *Diamond Sawblades/PRC (May 22, 2006)* and accompanying IDM at Comment 11.

averaging the multiple different HTS categories together would produce a less reliable approximation of APP-China's CCORE input. As both Petitioners and APP-China recommended several different HTS categories (and combinations thereof) for this input, we address each of these recommendations below:

- 1) HTS category 252100 – “limestone.” Record evidence indicates that both marble and limestone can be used to produce coated paper.¹⁴⁵ Both marble and limestone are types of calcium carbonate ore and are chemically indistinguishable.¹⁴⁶ APP-China argues that its CCORE input consists of limestone, not marble. However, the HTS category for limestone is not specific to APP-China's calcium carbonate ore, because it is specific to limestone used for the manufacture of “lime or cement.”¹⁴⁷ Moreover, while the record, and even APP-China's own documents are inconsistent on this point, the record evidence indicates that APP-China consumed some form of marble,¹⁴⁸ which it occasionally referred to as limestone or calcium carbonate ore in its internal documents.¹⁴⁹
- 2) HTS category 251511 – “marble stone, crude or roughly trimmed.” We find that this HTS category is also not specific to APP-China's input. First, record evidence demonstrates that APP-China cannot process pieces of this input over a certain size.¹⁵⁰ Department officials noted this size restriction in their review of the input during verification, after which they stated that the ore was kept at APP-China's factory in two forms: “small” and “larger rocks.”¹⁵¹ These forms are distinguishable from what is imported in this HTS category (*i.e.*, “monumental or building stone,” “cut” or “trimmed” into “blocks or slabs.”)
- 3) HTS category 283650 – “calcium carbonate.” While Petitioners have suggested this category only as a potential component of any average the Department might develop for purposes of valuing CCORE, we nevertheless have declined to use this category because the record indicates that the imports under this category involve a chemical form of calcium carbonate.¹⁵² This form is physically distinguishable from “ore,” and contrasts sharply with the factor we viewed at verification and the other recommendations suggested by Petitioners and APP-China, which were all taken from the HTS category for stones. Without more information about the nature of this HTS category, we have no reason to believe that chemical calcium carbonate would be specific to APP-China's calcium carbonate ore input.

¹⁴⁵ See, e.g., APP-China's Prelim SV submission at Exhibit 10.

¹⁴⁶ *Id.*

¹⁴⁷ See APP-China's Prelim SV submission at Exhibit 11.

¹⁴⁸ The term “marble” was used across the range of APP-China's source documents including all supplier contracts, internal accounting records, and calcium carbonate production records, while “limestone” or “calcium carbonate” was also referenced, particularly in some purchases and testing certificates. See APP-China verification report at Exhibit 17.

¹⁴⁹ See APP-China verification report at page 26 and Exhibit 17.

¹⁵⁰ See APP-China verification report at page 13.

¹⁵¹ *Id.*

¹⁵² See letter titled “Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China; Submission of Surrogate Values” dated February 12, 2010.

- 4) HTS category 251741 – “broken or crushed stone, pebbles of marble.” We find, based on record evidence, that this HTS category best corresponds to the type of ore APP-China purchases, maintains, and consumes, and that it best describes the form of APP-China’s CCORE input. Notably, APP-China recommended this HTS category as the appropriate Indian HTS category for use in valuing its CCORE input for the *Preliminary Determination*, by submitting that “HTS number 251741, the HTS that covers broken or crushed stone of marble, is the most appropriate surrogate value for the CCORE used by {APP-China.}”¹⁵³ Further, this category “is specific to the size of CCORE used by {APP-China}...and required by {APP-China’s} machinery.”¹⁵⁴ As we noted above, at verification the Department reviewed both the type of the input (*i.e.*, marble or limestone) and the form of the input (*i.e.*, rocks and pebbles or slabs and blocks), and has found no reason to depart from its *Preliminary Determination* to use this HTS category for purposes of valuing APP-China’s CCORE input.
- 5) Average of various HTS categories (252100 and 251741), (251511 and 251741), and (251741, 252100 and 283650). With the exception of unusual circumstances, the Department’s preference is to select the single best value and not to average multiple HTS categories,¹⁵⁵ as both APP-China and Petitioners have suggested. Further, given our determination that the HTS categories for “limestone,” “marble blocks” and “chemical calcium carbonate” are not specific to APP-China’s CCORE input, we find that averaging them with the HTS category for “broken marble” would weaken, not improve, the specificity of this SV. In particular, we do not agree with APP-China’s claim that inconsistent references to “limestone” and “marble” on the record require that the Department average together two HTS categories. Such an analysis implies that APP-China consumes two types of ore, limestone *and* broken marble, and both *in equal proportions*, a conclusion unsupported by record evidence, and at odds with the Department’s findings outlined above.

The Department has determined that APP-China, in its production of coated paper, consumed pieces of marble in two forms that can both best be described as broken or crushed stone. Accordingly, we have continued to value APP-China’s CCORE input using Indian HTS category 251741.

Comment 20: Valuation of optical brightener (OBA/OBAS/OBAL)

- APP-China contends that the Indian WTA import data used by the Department to value optical brightener in the *Preliminary Determination* is an inappropriate SV source. APP-China argues that the Department should instead value its consumption of optical brightener using either: 1) APP-China’s ME purchase prices of the input; 2) the inventory value of optical brightener as listed in the financial statements of an Indian producer of optical

¹⁵³ See APP-China’s 2nd Prelim SV submission at page 7. The Department is aware that APP-China’s current position is that its CCORE input is “not marble in any form.” See APP-China’s rebuttal brief at 36.

¹⁵⁴ *Id.*

¹⁵⁵ See, e.g., *Polyester Staple Fiber/PRC* (April 19, 2007), and accompanying IDM at Comment 8 and *Mushrooms/PRC* (September 14, 2005) and accompanying IDM at Comment E.

brightener; or 3) Indonesian import data for HTS category 320420 – “synthetic organic products used as fluorescent brightening agents.”¹⁵⁶

- Petitioners argue that the inventory value listed in the financial statements of the Indian producer would be inappropriate for the Department to use in valuing APP-China’s consumption of optical brightener.

Department’s Position: We have continued to use Indian WTA import data to value APP-China’s optical brightener because APP-China has not demonstrated that the Indian WTA import data is unrepresentative of its optical brightener inputs, or otherwise unreliable. Notably, APP-China recommended HTS 32042090 as the appropriate Indian HTS category for use in valuing its optical brightener inputs for the *Preliminary Determination*.¹⁵⁷ Subsequently, APP-China reiterated that recommendation, noting “32042090 is the Indian HTS number that applies to imports into India of optical brighteners.”¹⁵⁸

APP-China’s objection is limited to the set of imports into India during this particular time period (*i.e.*, the POI). APP China referenced “publicly available data” (*i.e.*, Infodrive India data) to support its contention that what was imported under that HTS category during the POI was very different than APP-China’s input. APP-China contends that these differences are supported by a comparison between the average unit value (“AUV”) of the Indian imports in the WTA data and APP-China’s own ME purchase prices.

First, due to the Department’s well-established reservations¹⁵⁹ regarding the use of Infodrive data, either as a corroborative tool or price benchmark, the viability of this particular Infodrive dataset must be analyzed in accordance with Department practice regarding the use of Infodrive data.¹⁶⁰ Further, when a party claims that a particular SV is not appropriate to value the FOP in question, the burden is on that party to prove the inadequacy of the SV or, alternatively, to show that another value is preferable.¹⁶¹

However, the Infodrive data APP-China cited is not on the record of this investigation. Without the underlying data being on the record of this investigation, we cannot evaluate whether this Infodrive data is sufficient to overcome the Department’s well-established reservations regarding the use of Infodrive data to test the reliability of WTA import data.

¹⁵⁶ APP-China cites the following cases in support of its argument: *Activated Carbon/PRC* (November 10, 2009) and accompanying IDM at Comment 3d; *Glycine/PRC* (August 14, 2009) and accompanying IDM at Comment 3; and *OCTG/PRC* (April 19, 2010) and accompanying IDM at Comment 20.

¹⁵⁷ See APP-China’s Prelim SV submission at page 9.

¹⁵⁸ See APP-China’s case brief at 36.

¹⁵⁹ The Department outlined some of these reservations in *Diamond Sawblades/PRC* (May 22, 2006) and accompanying IDM at Comment 11D, where it noted: “...the Department prefers not to use Infodrive data to derive surrogate values or to use as a benchmark to evaluate other potential surrogate values because it does not account for all of the imports which fall under a particular HTS subheading. The Department has also determined that Infodrive India is unreliable because a majority of the HTS categories do not report the specific import items in a uniformly comparative manner (*i.e.*, cans, bottles, pieces, sets, or numbers) from which we can calculate a reliable or accurate surrogate value. We note that this is not a problem with the WTA data because every HTS category is reported using a single uniform measurement (*e.g.*, rupees per kilogram).”

¹⁶⁰ See, *e.g.*, *LWTP/PRC* (October 2, 2008), and accompanying IDM at Comment 9.

¹⁶¹ See, *e.g.*, *TRBs/PRC* (January 6, 2010), and accompanying IDM at Comment 2.

Second, the Department finds comparisons between APP-China's ME purchase prices that represent less than 33 percent of total purchases and the AUV of the Indian import data inappropriate for purposes of assessing the adequacy of the Indian import data. As stated in the *Preliminary Determination*, where the quantity of an input purchased from ME suppliers does not meet certain standards, the Department cannot rely on the price paid by an NME producer to a ME supplier,¹⁶² either for benchmarking or factors valuation purposes, because it cannot have confidence that a company could fulfill all its needs at that price.¹⁶³ Because APP-China's purchases of optical brighteners do not amount to at least 33 percent of its purchases of this input, we do not have confidence that the ME purchase prices are reflective of APP-China's total purchases of the input.¹⁶⁴ In addition, the probative value of comparing these two AUVs is further diminished by the fact that they represent only two data sources, implying no clear indication as to which source, if any, is aberrant.¹⁶⁵

Third, with respect to APP-China's references to *Activated Carbon/PRC (November 10, 2009)* and *Glycine/PRC (August 14, 2009)*, we find that the facts in the instant case differ. In the cases cited by APP-China, the Department chose to value a respondent's input using *Chemical Weekly* as the source for the SV. *Chemical Weekly* prices, in contrast to financial statement inventory values¹⁶⁶ such as the one recommended by APP-China, have been found reliable for valuation purposes by the Department, for reasons including, *inter alia*, that they represent multiple transactions from multiple markets, making them representative of prices in India as a whole. While the Department has, in the past, considered financial statement values as the best available information on the record, *Chemical Weekly* has consistently been found to be a reliable SV source for certain inputs. Accordingly, we find that APP-China has not met its burden to prove the inadequacy of this SV. Because APP-China has on several occasions in this investigation noted that this HTS category is specific to its input and has provided no evidence to support its contention that this particular batch of imports is unrepresentative, the Department has no basis to depart from its *Preliminary Determination* to value this input using the Indian WTA data. Similarly, APP-China has provided no basis for the Department to depart from its strong preference¹⁶⁷ to value all FOPs from the primary surrogate country. For purposes of the final determination, the Department finds that Indian WTA data are the best available information to value APP-China's optical brightener inputs because: (1) they are average non-export values; (2) they are representative of India-wide prices; (3) they are product-specific; (4) they are tax-exclusive; and (5) they are contemporaneous with the POI. Consequently, we have continued to value APP-China's optical brighteners using Indian HTS import data for HTS category 32042090.

¹⁶² See *Preliminary Determination* at 24904.

¹⁶³ *Id.*, and *Antidumping Methodologies* (October 19, 2006), at 61716-61719.

¹⁶⁴ See also, Comment 18, above.

¹⁶⁵ See, e.g., *HEDP/PRC (March 11, 2009)*, and accompanying IDM at Comment 3.

¹⁶⁶ See *Glycine/PRC (August 14, 2009)*, and accompanying IDM at Comment 2 where the Department declined to use inventory values, stating that they "may not reflect the prevailing market price."

¹⁶⁷ See *Fish Fillets/Vietnam (June 23, 2003)* and accompanying IDM at Comment 3.

Comment 21: Valuation of masculine starch transforming agent (MSTA)

- APP-China contends that the Indian WTA import data used by the Department to value MSTA in the *Preliminary Determination* is an inappropriate SV source because it consists of significantly higher grade material than that used by APP-China in the production of coated paper. APP-China argues that the Department should instead value its consumption of MSTA using either 1) APP-China's ME purchase prices of the input, or 2) Indonesian import statistics data for HTS category 292390 – “quaternary ammonium salts and hydroxides.”¹⁶⁸
- Petitioners disagree, arguing that the Infodrive data cited by APP-China to draw distinctions between the Indian WTA data and APP-China's MSTA input is inappropriate for testing the reliability of WTA data.¹⁶⁹

Department's Position: We have continued to use Indian WTA import data to value APP-China's MSTA input because APP-China has not demonstrated that the Indian WTA import data is unrepresentative of its input, or otherwise unreliable. Notably, APP-China itself recommended HTS 29239000 as the appropriate Indian HTS category for use in valuing its MSTA input for the *Preliminary Determination*.¹⁷⁰ Subsequently, APP-China reiterated that recommendation, noting “29239000 is the Indian HTS number that applies to imports into India of masculine starch transforming agents.”¹⁷¹

APP-China's objection is limited to the set of imports into India during this particular time period (*i.e.*, the POI). Specifically, APP China cited Infodrive India data on the record for HTS 29239000 to support its contention that Indian imports included materials that are not specific to its MSTA input. APP-China contends that these differences are supported by a comparison between the AUV of the Indian imports and APP-China's own ME purchase prices of MSTA.

First, as noted above, we have determined that comparisons between ME purchase prices that represent less than 33 percent of total purchases and the AUV of import data are of little probative value. Because APP-China's purchases of MSTA do not amount to at least 33 percent of its purchases of this input, we do not have confidence that the ME purchase prices are reflective of APP-China's total purchases of the input.¹⁷²

Second, as noted above, the viability of a particular Infodrive dataset must be analyzed in accordance with Department practice regarding the use of Infodrive data. However, the overwhelming majority of entries in the Infodrive data submitted by APP-China are recorded in units other than weight, (*i.e.*, “NO,” “UN,” “PCS,” and “BTL”) making such an analysis impossible.¹⁷³ Moreover, the data referenced by APP-China contains over 800 individual entry

¹⁶⁸ APP-China cites the following case in support of its argument: *OCTG/PRC* (April 19, 2010) and accompanying IDM at Comment 20.

¹⁶⁹ Petitioners cite the following cases in support of their argument: *Laminated Woven Sacks* (June 24, 2008), and accompanying IDM at Comment 2; *Diamond Sawblades/PRC* (May 22, 2006); and *Tires/PRC* (July 15, 2008).

¹⁷⁰ See APP-China's Prelim SV submission at page 17.

¹⁷¹ See APP-China's case brief at 42.

¹⁷² See also Comment 18, above.

¹⁷³ One of the threshold analyses the Department performs when considering Infodrive India data is the calculation of the “coverage.” This answers the question of what percentage of the WTA import data does the Infodrive India data describe. See, *e.g.*, *LWTP/PRC* (October 2, 2008), and accompanying IDM at Comment 9. See

line-items with hundreds of product descriptions of varying specificity (e.g., “lipoid pe,” “trimethylammonium bromide,” and “aminodermin clr”). APP-China submitted no key that would allow the Department to determine which of these entries did not correspond to its MSTA input. Consequently, we were unable to evaluate whether this Infodrive data is sufficient to overcome the Department’s well-established reservations regarding the use of Infodrive data to test the reliability of WTA import data.¹⁷⁴

Third, we find that the facts of the instant case differ from *OCTG/PRC*, as cited by APP-China. While the Department has looked to WTA import data on the record from outside the primary surrogate country, including in *OCTG/PRC* and also below, at Comment 22, we have done so only when the primary surrogate country data was shown to be inappropriate or otherwise unreliable. For the reasons discussed above, we have made no such finding that the Indian WTA data are unreliable with regard to valuing APP-China’s MSTA input.

Accordingly, we find that APP-China has not met its burden to prove the inadequacy of this SV. Furthermore, because APP-China has twice noted in this investigation that this HTS category is specific to its input and has provided insufficient evidence to support its contention that this particular batch of imports is unrepresentative, the Department has no basis to depart from its strong preference to value all factors of production from the primary surrogate country. For purposes of the final determination, the Department finds that Indian WTA data are the best available information to value APP-China’s MSTA input because: (1) they are average non-export values; (2) they are representative of India-wide prices; (3) they are product-specific; (4) they are tax-exclusive; and (5) they are contemporaneous with the POI. Consequently, we have continued to value APP-China’s MSTA input using Indian HTS import data for HTS category 29239000.

Comment 22: Valuation of tapioca starch (TSTARARCH)

- APP-China contends that the Indian WTA import data used by the Department to value TSTARARCH in the *Preliminary Determination* is an inappropriate SV source because it is overbroad, and consists of different material than that used by APP-China in the production of coated paper. APP-China argues that the Department should instead value its consumption of TSTARARCH using either 1) APP-China’s ME purchase prices of the input, or 2) Indonesian import statistics data for HTS category 110814 – “Manioc (cassava) starch.”¹⁷⁵
- Petitioners disagree, arguing that the Infodrive data cited by APP-China to draw distinctions between the Indian WTA data and APP-China’s TSTARARCH input is inappropriate for testing the reliability of WTA data. Petitioners argue, further, that APP-China’s ME purchase prices should not be used because they do not meet the Department’s 33 percent threshold. Moreover, according to Petitioners, resorting to Indonesian import statistics would

also, Prelim FOP memo at page 7.

¹⁷⁴ See, e.g., *OCTG/PRC* (April 19, 2010), and accompanying IDM at Comment 20.

¹⁷⁵ APP-China cites the following cases in support of its argument: *OCTG/PRC* (April 19, 2010), and accompanying IDM at Comment 20.

contravene the Department's preference for using a single surrogate country for all surrogate values.¹⁷⁶

Department's Position: For the final determination, we have determined to value APP-China's tapioca starch using Indonesian import data because it is more specific to APP-China's input than the Indian HTS category used in the *Preliminary Determination*. The six-digit Indonesian HTS category includes only tapioca starch, while the broader four-digit Indian HTS category includes other types of starches, but no imports of tapioca starch during the POI. While, as noted above, the Department's strong preference is to value all FOPs from the primary surrogate country, the Department looks to other sources when data from the primary surrogate country is demonstrated to be unrepresentative or otherwise unreliable.

At the *Preliminary Determination*, we used the Indian HTS category 1108 to value APP-China's tapioca starch input. This HTS category is for "starches" and includes cassava starch, wheat starch, corn starch, potato starch, and others. After the *Preliminary Determination*, APP-China submitted evidence¹⁷⁷ demonstrating that its input is commonly referred to as manioc or cassava starch, which corresponds to HTS category 110814. However, during the POI, there were no imports into India under HTS category 110814. Because Indian imports under HTS 1108 included no imports of tapioca or cassava starch (which is the type of starch used as APP-China's input), we find it appropriate to look to other sources on the record of this investigation.

First, as noted above, we cannot rely on APP-China's ME purchase prices which do not meet our threshold standards for using ME prices for purposes of valuing inputs, including tapioca starch. Because APP-China's purchases of tapioca starch do not amount to at least 33 percent of its purchases of this input, we do not have confidence that the ME purchase prices are reflective of APP-China's total purchases of the input.¹⁷⁸ Alternatively, Indonesian import data for HTS category 110814 meets the Department's preferences for SV sources as it is composed of: (1) average non-export values; (2) representative of Indonesia-wide prices; (3) product-specific; (4) tax-exclusive; and (5) contemporaneous with the POI. Thus, because the Indian HTS category contained no tapioca starch imports during the POI, and because Indonesian HTS category 110814 is specific to tapioca starch, the input consumed by APP-China, we have valued the input using the Indonesian import data.

Comment 23: Valuation of wet end starch (WESTARCH)

- APP-China contends that the Indian WTA import data used by the Department to value WESTARCH in the *Preliminary Determination* is an inappropriate SV source because it is overbroad and consists of different material than that used by APP-China in the production of coated paper. APP-China argues that the Department should instead value its consumption of WESTARCH using either 1) APP-China's ME purchase prices of the input, or 2)

¹⁷⁶ Petitioners cite the following cases in support of their argument: *Laminated Woven Sacks* (June 24, 2008), and accompanying IDM at Comment 2; *Diamond Sawblades/PRC* (May 22, 2006); *Tires/PRC* (July 15, 2008); *Silicomanganese/PRC* (November 8, 1999); and *CTL Plate/Romania* (March 15, 2005).

¹⁷⁷ See APP-China's final SV submission at Exhibit 9.

¹⁷⁸ See also Comment 18, above.

Indonesian import statistics data for HTS category 35051090 – “other dextrans and modified starches.”¹⁷⁹

- Petitioners disagree, arguing that the Infodrive data cited by APP-China to draw distinctions between the Indian WTA data and APP-China’s WESTARCH input is inappropriate for testing the reliability of WTA data. Petitioners argue, further, that APP-China’s ME purchase prices should not be used because they do not meet the Department’s 33 percent threshold. Moreover, according to Petitioners, resorting to Indonesian import statistics would contravene the Department’s preference for using a single surrogate country for all surrogate values.¹⁸⁰

Department’s Position: We have continued to use Indian WTA import data to value APP-China’s wet end starch because APP-China has not demonstrated that the Indian WTA import data is unrepresentative of its input, or otherwise unreliable.

Specifically, APP-China submitted Infodrive India data for HTS 35051090, a subcategory of the HTS category used by the Department to value wet end starch for the *Preliminary Determination*. APP-China cited the Infodrive data, generally, and noted one example of differences from its input: entries of “sodium starch glycolate,” a pharmaceutical grade starch. APP-China also cited the Infodrive data, generally, for evidence that HTS 35051090 includes other materials “unsuitable” for use in the production of coated paper. APP-China contends that the inappropriateness of the Indian import data is supported by a comparison between the AUV of the Indian imports and APP-China’s own ME purchase prices of this input.

First, for the reasons noted above, we have determined that comparisons between ME purchase prices that represent less than 33 percent of total purchases and the AUV of import data are of little probative value. Because APP-China’s purchases of wet end starch do not amount to at least 33 percent of its purchases of this input, we do not have confidence that the ME purchase prices are reflective of APP-China’s total purchases of the input.¹⁸¹

Further, as noted above, the viability of a particular Infodrive dataset must be analyzed in accordance with Department practice regarding the use of Infodrive data. However, the Infodrive data in question consists of 12 pages and over 500 individual line items of import entries into India during the POI. These entries contain highly technical descriptions of varying specificity (*e.g.*, “EMCAT TC 20 cationic starch,” “pregelatinized starch,” and “lycatab PGS”). APP-China has submitted no key that would allow the Department to determine which of these entries corresponded to its wet end starch input and which were “unsuitable,” as it has claimed. As a consequence, we were unable to evaluate whether this Infodrive data is sufficient to overcome the Department’s well-established reservations regarding the use of Infodrive data to test the reliability of WTA import data. Nevertheless, we reviewed APP-China’s specific claim

¹⁷⁹ APP-China cites the following cases in support of its argument: *OCTG/PRC* (April 19, 2010), and accompanying IDM at Comment 20.

¹⁸⁰ Petitioners cite the following cases in support of their argument: *Laminated Woven Sacks* (June 24, 2008), and accompanying IDM at Comment 2, *Diamond Sawblades* (May 22, 2006), *Tires/PRC* (July 15, 2008), *Silicomanganese/PRC* (November 8, 1999), and *CTL Plate/Romania* (March 15, 2005).

¹⁸¹ See also Comment 18, above.

regarding “sodium starch glycolate” and found that less than five percent of the import quantity, and approximately 12 of the over 500 entries, were described as “sodium starch glycolate.” We do not believe that this is sufficient to disqualify the overall WTA import data.

Accordingly, we find that APP-China has not met its burden to prove the inadequacy of this SV. Furthermore, because APP-China has provided insufficient evidence to support its contention that this particular batch of imports is unrepresentative, the Department has no basis to depart from its strong preference to value all factors of production from the primary surrogate country or from its preliminary determination to use the Indian WTA data. For purposes of the final determination, the Department finds that Indian WTA data are the best available information to value APP-China’s wet end input because: (1) they are average non-export values; (2) they are representative of India-wide prices; (3) they are product-specific; (4) they are tax-exclusive; and (5) they are contemporaneous with the POI. Consequently, we have continued to value APP-China’s wet end input using Indian HTS import data for HTS category 350510.

Comment 24: Valuation of dispersing agent A (DISPERSANTA)

- APP-China contends that the Indian WTA import data used by the Department to value DISPERSANTA in the *Preliminary Determination* is an inappropriate SV source because it consists of different material than that used by APP-China in the production of coated paper. APP-China argues that the Department should instead value its consumption of DISPERSANTA using either 1) APP-China’s ME purchase prices of the input, or 2) Indonesian import statistics data for HTS category 3906909900 – “other acrylic polymers in other forms.”¹⁸²
- Conversely, Petitioners disagree, arguing that the Infodrive data cited by APP-China to draw distinctions between the Indian WTA data and APP-China’s DISPERSANTA input is inappropriate for testing the reliability of WTA data. Petitioners argue, further, that APP-China’s ME purchase prices should not be used because they do not meet the Department’s 33 percent threshold. Moreover, according to Petitioners, resorting to Indonesian import statistics would contravene the Department’s preference for using a single surrogate country for all surrogate values.¹⁸³

Department’s Position: We have continued to use Indian WTA import data to value APP-China’s dispersant input because APP-China has not demonstrated that the Indian WTA import data is unrepresentative of its input, or otherwise unreliable. Notably, APP-China recommended HTS 39069090 as the appropriate Indian HTS category for use in valuing its dispersant input for the *Preliminary Determination*.¹⁸⁴ Subsequently, APP-China reiterated that recommendation, noting that its dispersant input is “most properly classified under this HTS code.”¹⁸⁵

¹⁸² APP-China cites the following case in support of its argument: *OCTG/PRC* (April 19, 2010), and accompanying IDM at Comment 20.

¹⁸³ Petitioners cite the following cases in support of their argument: *Laminated Woven Sacks* (June 24, 2008), and accompanying IDM at Comment 2, *Diamond Sawblades/PRC* (May 22, 2006), *Tires/PRC* (July 15, 2008), *Silicomanganese/PRC* (November 8, 1999), and *CTL Plate/Romania* (March 15, 2005).

¹⁸⁴ See APP-China’s Prelim SV submission at Exhibit 1.

¹⁸⁵ See APP-China’s case brief at 53.

APP-China's objection is limited to the set of imports into India during this particular time period (*i.e.*, the POI). APP-China cites the Infodrive data, generally, and notes one example of differences to its input, entries described using the term "embroidery material." APP-China contends that the unsuitability of the Indian import data is supported by a comparison between the AUV of the Indian imports and APP-China's own ME purchase prices of this input.

First, for the reasons noted above, we have determined that comparisons between ME purchase prices that represent less than 33 percent of total purchases and the AUV of import data are of little probative value. Because APP-China's purchases of dispersant do not amount to at least 33 percent of its purchases of this input, we do not have confidence that the ME purchase prices are reflective of APP-China's total purchases of the input.¹⁸⁶

Further, as noted above, the viability of a particular Infodrive dataset must be analyzed in accordance with Department practice regarding the use of Infodrive data. The Infodrive data in question consists of 57 pages and over 3,500 individual line items of import entries into India during the POI. These entries contain highly technical descriptions of varying specificity (*e.g.*, "polydamac," "araform," and "eudragit e100"). APP-China has submitted no key that would allow the Department to determine which of these entries corresponded to its dispersant input and which were inappropriate, as it has claimed. As a consequence, we were unable to evaluate whether this Infodrive data is sufficient to overcome the Department's well-established reservations regarding the use of Infodrive data to test the reliability of WTA import data. Furthermore, we were unable to review APP-China's specific claim concerning "embroidery material" because these 16 entries were recorded using a unit of measure other than weight (*i.e.*, PCS), rendering it impossible to calculate any potentially distortive effect on the AUV of this HTS category. As noted above, this significant limitation in Infodrive data has often been highlighted by the Department in the context of using Infodrive data to test the reliability of WTA import data.¹⁸⁷ In any event, absent additional evidence, we are unable to conclude that these entries are significant enough to meaningfully affect the overall reliability of the database.

Accordingly, we find that APP-China has not met its burden to prove the inadequacy of this SV. Furthermore, because APP-China has noted that this HTS category is specific to its input and has provided insufficient evidence to support its contention that this particular batch of imports is unrepresentative, the Department has no basis to depart from its strong preference to value all factors of production from the primary surrogate country or to depart from its preliminary determination to use the Indian WTA data. For purposes of the final determination, the Department finds that Indian WTA data are the best available information to value APP-China's dispersant input because: (1) they are average non-export values; (2) they are representative of India-wide prices; (3) they are product-specific; (4) they are tax-exclusive; and (5) they are contemporaneous with the POI. Consequently, we have continued to value APP-China's dispersant input using Indian HTS import data for HTS category 39069090.

¹⁸⁶ See also Comment 18, above.

¹⁸⁷ See, *e.g.*, *OCTG/PRC (April 13, 2010)*, and accompanying IDM at Comment 20.

Comment 25: Valuation of tackifier

- APP-China contends that the Indian WTA import data on the record regarding tackifier, HTS category 39069090, is an inappropriate SV source because it consists of different material than that used by APP-China in the production of coated paper. APP-China argues that the Department should instead value its consumption of tackifier using either 1) APP-China's ME purchase prices of the input consistent with the *Preliminary Determination*, or 2) Indonesian import statistics data for HTS category 3906909900 – “other acrylic polymers in other forms.”¹⁸⁸
- Conversely, Petitioners disagree, arguing that the Infodrive data cited by APP-China to draw distinctions between the Indian WTA data and APP-China's tackifier input is inappropriate for testing the reliability of WTA data. Petitioners argue, further, that APP-China's ME purchase prices should not be used because they do not meet the Department's 33 percent threshold. Moreover, according to Petitioners, resorting to Indonesian import statistics would contravene the Department's preference for using a single surrogate country for all surrogate values.¹⁸⁹

Department's Position: At the *Preliminary Determination*, we used APP-China's ME purchase prices to value all of APP-China's tackifier consumption despite the fact that these purchases approached, but did not meet, the threshold standard for using ME prices for valuation purposes.¹⁹⁰ We stated that we used this information as FA and that we intended to request more information from APP-China on this input in order to find an appropriate WTA category for use in the final determination.¹⁹¹ In response to our request, APP-China identified HTS 39069090, the same category discussed in comment 24, above, as the appropriate category. APP-China subsequently objected to the use of this HTS import data for the same reasons it noted with respect to its dispersant input, discussed above in comment 24. Accordingly, for the same reasons the Department discussed in our position in comment 24, above, we have determined that HTS category 39069090 is the best available information to value the portion of APP-China's tackifier input which was not ME-sourced. With respect to APP-China's argument that the Department's 33 percent threshold is being applied inappropriately, *see* the Department's Position at Comments 17 and 18, above.

Comment 26: Valuation of Hypochlorous Natrium/Sodium Hypochlorite (“BACLO/NACLO”)

- APP-China argues that the Department should not use WTA data to value its BACLO/NACLO because the type and grade covered under HTS category 282890 is not specific to APP-China's BACLO/NACLO input.

¹⁸⁸ APP-China cites the following case in support of its argument: *OCTG/PRC* (April 19, 2010) and accompanying IDM at Comment 20.

¹⁸⁹ Petitioners cite the following cases in support of their argument: *Laminated Woven Sacks* (June 24, 2008) and accompanying IDM at Comment 2; *Diamond Sawblades/PRC* (May 22, 2006); *Tires/PRC* (July 15, 2008); *Silicomanganese/PRC* (November 8, 1999); and *CTL Plate/Romania* (March 15, 2005).

¹⁹⁰ *See* APP-China Prelim analysis memo at page 3.

¹⁹¹ *Id.*

- APP-China recommends using a sodium hypochlorite sales value from the 2008-2009 financial statements of Aditya, an Indian producer, who manufactures this type of sodium hypochlorite that is specifically used for bleaching pulp and paper.¹⁹²
- Petitioners argue that Aditya’s annual report does not contain a selling price for the “similar” product actually used by the APP-China mills, but rather an average price for all sodium hypochlorite Aditya sells.
- Petitioners argue that based on information in Aditya’s annual report, the majority of Aditya’s manufactured sodium hypochlorite is produced at its Thailand facilities, rather than in India.

Department’s Position: Consistent with the *Preliminary Determination*, the Department has continued to use WTA data under Indian HTS category 282890, “Other: Sodium Hypochlorite,” to value APP-China’s sodium hypochlorite for the final determination. When selecting surrogate values with which to value the factors of production used to produce subject merchandise, the Department is directed to use the “best available information” on the record. *See* Section 773(c)(1) of the Act. As noted by Petitioners, when selecting SVs for use in an NME proceeding, the Department’s preference is to use, where possible, a range of publicly available, non-export, tax-exclusive, and product-specific prices for the POI, with each of these factors applied non-hierarchically to the particular case-specific facts and with preference to data from a single surrogate country.¹⁹³ We continue to find that the WTA Indian import data under HTS subheading 282890 are publicly available, broad market averages, contemporaneous with the POI, tax-exclusive, and representative of significant quantities of imports; thus satisfying critical elements of the Department’s SV test. Moreover, because these data are also from the primary surrogate country and are specific to the input in question, we find that they represent the best available information for purposes of valuing APP-China’s sodium hypochlorite input.

As established by recent decisions, and stated in *TRBs/PRC (January 22, 2009)*,¹⁹⁴ when a party claims that a particular surrogate is not appropriate to value the FOP in question, the Department has determined that the burden is on that party to prove the inadequacy of said SV or, alternatively, to show that another value is preferable. As explained below, we find that APP-China has failed to prove the inadequacy of the WTA Indian import data under HTS category 2828.90, has not demonstrated that the Department’s selection of this surrogate value is unreasonable, and has not presented sufficient evidence to show that either of its suggested alternative surrogate values is preferable.

Citing to India Infodrive data placed on the record of this investigation, APP-China argues against using Indian WTA data alleging that the type and grade of imports under this Indian HTS category are different with respect to APP-China’s sodium hypochlorite input. APP-China uses

¹⁹² *See Activated Carbon/PRC (Nov. 10, 2009)* and accompanying IDM at Comment 3d; *Glycine/PRC (Aug. 14, 2009)*.

¹⁹³ *See TRBs/PRC (Jan. 6, 2010)* and accompanying IDM at Comment 2.

¹⁹⁴ *See Id.* and accompanying IDM at Comment 6; *see also Laminated Woven Sacks/PRC (June 24, 2008)* at Comment 2; *Carrier Bags/PRC (March 17, 2008)* at Comment 6; *Hangers/PRC (August 14, 2008)* at Comment 4; and *Tires/PRC (July 15, 2008)* at Comment 10.

India Infodrive data both as a price benchmark and, consistent with the aforementioned requirement for determining whether a given SV is aberrational, a corroborative tool in an attempt to show that the WTA SV data are distorted. Due to the Department's well established reservations regarding the use of India Infodrive data, either as a corroborative tool or price benchmark, the viability of this particular India Infodrive dataset (and, thus, APP-China's claims that the WTA data are distorted) must be analyzed in accordance with Department practice and policy regarding the use of India Infodrive data.¹⁹⁵ The Department has stated that it will consider India Infodrive data to further evaluate import data, provided: 1) there is direct and substantial evidence from India Infodrive reflecting the imports from a particular country; 2) a significant portion of the overall imports under the relevant HTS category is represented by the India Infodrive data; and 3) distortions of the AUV in question can be demonstrated by the India Infodrive data.¹⁹⁶ Although APP-China addressed that HTS 28289090 covers products including sodium fluoride, Levofloxacin, and Paracetamol which are not specific to APP-China's sodium hypochlorite, the Infodrive data that APP-China cited is not on the record of this investigation. Without the underlying data being on the record of this investigation, we cannot evaluate whether this Infodrive data is sufficient to overcome the Department's well-established reservations regarding the use of Infodrive data to test the reliability of WTA import data. Consequently, we have no way to evaluate whether the India Infodrive data corroborates APP-China's arguments with regard to the India WTA data; therefore, we cannot use this data as a corroborative tool to assess the relevance of the WTA data.

With regard to APP-China's assertion that there is a large difference between the India WTA average unit value of sodium hypochlorite and the sales value of Indian manufactured sodium hypochlorite found in the financial statements of Aditya, the Department has found that the existence of higher prices alone does not necessarily indicate that price data is distorted or misrepresented, and thus, is not a sufficient basis on its own to exclude a particular SV, absent specific evidence the value is otherwise aberrational.¹⁹⁷ This practice does not place an undue burden on parties to prove a particular value is aberrational or that this requirement is in conflict with the Department's current guidelines toward the use of price benchmarks. This precedent simply requires that parties provide sufficient factual support when arguing that a particular value is inappropriate. When sufficient evidence is presented to show that a particular SV is not viable, the Department will assess all relevant information on the record, including any appropriate benchmark data, in order to accurately value the input in question.

APP-China argues that the Department should reject the India WTA data and instead use the sales value of sodium hypochlorite from Aditya's financial statement found on the record. However, While Aditya's sales value for sodium hypochlorite is publicly available, tax-exclusive, and contemporaneous data with the POI, it is the Department's preference to use industry-wide values, rather than values of a single producer, whenever possible, because industry-wide values are more representative of prices and costs of all producers in the surrogate

¹⁹⁵ See *Silicon Metal/PRC* (October 16, 2007) at Comment 5; *Tires/PRC* (July 15, 2008) at Comment 10; *Laminated Woven Sacks/PRC* (June 24, 2008) at Comment 2; *Honey/PRC* (June 16, 2006) at Comment 1; and *Chlorinated Isos/PRC* (May 10, 2005) at Comment 10.

¹⁹⁶ See *LWTP/PRC* (October 2, 2008) at Comment 10.

¹⁹⁷ See *CTL Plate/PRC* (February 24, 2010), and accompanying IDM at Comment 6; See, e.g., *TRBs/PRC* (January 6, 2010), and accompanying IDM at Comment 2.

country.¹⁹⁸ Moreover, we find that Aditya's data is not specific to APP-China's input based on concentration/purity levels of the product. Aditya's financial statement does not list the purity level of the sodium hypochlorite that it sells, which dissuades the Department from using this sales value as a surrogate value for APP-China's sodium hypochlorite. It is the Department's practice to use a surrogate value that has a similar purity level to the input in question.¹⁹⁹ Further, information found on Aditya's website also dissuades us from using Aditya's financial statement to value sodium hypochlorite because, as Petitioners point out, there is a major discrepancy between the capacity and quantity sold of sodium hypochlorite at the Indian manufacturing site. Petitioners allege that Aditya's reported value of sodium hypochlorite in the financial statement was mostly produced in Thailand based on the following information: Aditya's manufacturing locations website page that was placed on the record lists a production capacity of 1,800 tons/year, whereas, Aditya's financial statement lists 9,780 tons/year sold. This unexplained discrepancy calls into question whether the financial statement value actually reflects a price for Indian produced product.

Finally, APP-China did not provide sufficient evidence to demonstrate the unreliability of the WTA. Therefore, based on the evidence on the record the Department finds imports under Indian HTS category 282890 from WTA to be best available data on the record for valuing APP-China's sodium hypochlorite input.

Comment 27: Valuation of Coating Binding Agent ("CBA")

- APP-China argues that the Department should not use WTA data to value its CBA input because the type and grade covered under Indian HTS category 35051090, labeled "dextrins and other modified starches (for example, pregelatinised or esterified starches); glues based on starches, or on dextrins or other modified starches," is not specific to the CBA input consumed by APP-China.
- APP-China recommends that the Department use its MEPS of CBA to value its CBA, or in the alternative, use the CBA sale value from the 2008-2009 financial statements of Santosh, an Indian producer that manufactures a type of CBA specific to APP-China's input. If the Department chooses neither of those sources, APP-China suggests that the Department utilize Indonesian import statistics under HTS category 3505109000, "Other Dextrins & Other Modified Starches."
- Petitioners argue that Santosh's annual report does not contain a selling price for the "similar" product actually used by the APP-China mills, but rather an average price for all "starches." Petitioners also refute that Santosh manufactures a similar type of CBA to that consumed by the APP-China mills.

Department's Position: The Department has continued to use Indian WTA HTS category 35051090 to value CBA for the final determination based on similar reasoning stated in comment 26 with regard to BACLO/NACLO. In response to APP-China's specific arguments for not using Indian WTA data to value CBA, the India Infodrive data placed on the record does not exhibit an adequate representation of the WTA data because it includes units of measure that

¹⁹⁸ See *Pencils/PRC* (July 7, 2010), and accompanying IDM at Comment 2.

¹⁹⁹ See, e.g., *Activated Carbon/PRC* (November 10, 2009) and accompanying IDM at Comment 3.d.

are not easily converted to MT (*e.g.* Nos, DRM, GMS) so as to conduct a comparative analysis with the Indian WTA data. Moreover, the India Infodrive data referenced by APP-China contains over 550 individual entry line-items covering 11 pages with varying product descriptions that on face value may or may not be specific to the input in question. While APP-China addressed some of these descriptions (*i.e.*, #), it did not provide a key for the Department to discern which of the remaining entries do not reflect its input. In effect, we were unable to evaluate whether this India Infodrive data is probative evidence for rejecting Indian WTA data. Because APP-China failed to provide the Department India Infodrive in a usable format that converts unit of measure and aggregates the total quantity for purposes of comparison to the Indian WTA data's total quantity, or identifies which descriptions do not reflect APP-China's input, we cannot use this data as a corroborative tool to assess the relevance or reliability of the WTA.

With respect to APP-China's argument to use the MEP prices (including Thailand and Korea) to value its entire CBA input, it is the Department's practice to not use MEP prices from Thailand and Korea because of these countries' generally available export subsidies. Further, the Department does not value an entire input with the actual MEP price when the quantity of MEPs of that input does not meet the 33 percent threshold. *See* comment 17 above regarding the Department's practice on excluding MEPs from Thailand and Korea, as well as, comment 18 regarding the Department's practice on the 33-percent threshold methodology for MEPs.

While both the India WTA data and the starch sales value in Santosh's 2008-2009 annual report are publicly available, tax-exclusive, and contemporaneous data with the POI. However, the starch information in Santosh's financial statement is less specific to APP-China's CBA input, *e.g.*, Santosh's financial statement does not break out the different prices of each type of "starch" sold such that we could identify a price specific to CBA. Further, it is the Department's preference to use industry-wide values, rather than values of a single producer, whenever possible, because industry-wide values are more representative of prices and costs of all producers in the surrogate country.²⁰⁰ Therefore, in this case, where there is a single value from one financial statement that does not reflect a broad-market average and is not more specific to the respondent's input than the WTA data, the Department finds the WTA data to be the better source with which to value the respondent's input.

Despite APP-China's argument to use the Indonesian WTA data if the Department rejects using actual market economy purchases prices and the starch price from Santosh's 2009 financial statement, the Department has determined not to use the Indonesian WTA data as a surrogate value for CBA because the respondent did not effectively demonstrate why the Indian WTA data is unrepresentative of APP-China's CBA input and the Department has a preference to use data from a single surrogate country.²⁰¹

Comment 28: Valuation of Coating Starch ("CSTARCH")

- APP-China argues that the Department should not use Indian WTA data for CSTARCH because the type and grade covered under Indian HTS category 3505.10.90 is not specific to

²⁰⁰ *See Pencils/PRC (July 7, 2010)*, and accompanying IDM at Comment 2.

²⁰¹ *See TRBs/PRC (January 6, 2010)*, accompanying IDM at Comment 2.

APP-China's CSTARARCH input.

- APP-China recommends that the Department use its MEPS of CSTARARCH to value its CSTARARCH, or in the alternative, use Indonesian import statistics under HTS category 3505.10.9000, "Other Dextrins & Other Modified Starches."²⁰²
- Petitioners argue that the Department should not use MEP prices to value the entire input purchased by APP-China when it doesn't meet the 33 percent threshold. Moreover, Petitioners argue against using India Infodrive data based on the Department's decision in *OCTG from China*, where the Department determined that India Infodrive data is not reliable.²⁰³

Department's Position: The Department has continued to use Indian WTA HTS category 35051090 to value CSTARARCH for the final determination for the same reasons that we continued to use this same Indian HTS category to value CSTARARCH for the final determination. APP-China raised several of the same arguments with regard to valuing this input as they raised with regard to valuing CSTARARCH. Specifically, they suggested: 1) that we use the India Infodrive data to benchmark the Indian WTA data; and 2) that we use either their MEP prices or Indonesian WTA data for purposes of valuing their CSTARARCH FOP for the final determination. Because this issue reflects the identical data²⁰⁴ addressed in Comment 27, please see the Department's position with respect to that comment for a detailed discussion of the Department's position with respect to the valuation of this input. For the same reasons articulated there, we have declined to use either of the other data sources suggested by APP-China for valuing CSTARARCH.

Comment 29: Valuation of Surface Sizing Starch ("SSS")

- APP-China argues that the Department should not use Indian WTA data to value SSS because the type and grade covered under Indian HTS code 38099200 is not specific to APP-China's CSTARARCH input. APP-China recommends that the Department use its MEPS of SSS to value its SSS.
- Petitioners argue that the Department should not use MEP prices to value the entire input purchased by APP-China when it doesn't meet the 33 percent threshold, and recommend that the Department continue to use Indian WTA import statistics to value SSS. However, Petitioners argue that the HTS code 38099200, labeled "finished agents, dye carriers to accelerate the dyeing or fixing of dye-stuffs...of a kind used in the paper or like industries," used in the preliminary determination is not an accurate description of APP-China's SSS, and argues that the Department should utilize Indian HTS code 350510, labeled "dextrins and other modified starches (for example, pregelantinized or esterified starches)," because it is more specific to APP-China's SSS.

Department's Position: For the final determination, the Department finds that Indian HTS code 3505.10 ("dextrins and other modified starches (for example, pregelantinized or esterified

²⁰² See *OCTG from China* and accompanying IDM at Comment 20.

²⁰³ See *OCTG from China* and accompanying IDM at Comment 20.

²⁰⁴ APP-China's ME purchases of CSTARARCH are less than 33 percent of total CSTARARCH purchases.

starches,)” is the best available information to APP-China’s SSS value, as opposed to Indian HTS code 38099200 (“finished agents, dye carriers to accelerate the dyeing or fixing of dye-stuffs...of a kind used in the paper or like industries,”) that was used for the *Preliminary Determination*. APP-China argues that if the Department does not use its actual market economy prices to value its SSS FOP, only then should the Department value SSS with Indian HTS code 3809.92.00.²⁰⁵ Petitioners originally argued for the Department to use HTS code 3809.92.00 in lieu of APP-China’s ME prices.²⁰⁶ However, on June 29, 2010, Petitioners submitted a tariff classification ruling, Customs and Border Protection (“CBP”) Ruling HQ966632 dated December 14, 2004, which demonstrates that “Cato size 52A and Cato 15A”—chemically modified starches used as a surface sizing agent in the papermaking processes (which are similar to the SSS that APP-China uses) — were reclassified from HTS 3809.92.50 to HTS 3505.10.²⁰⁷ Based on the same reasoning as articulated in the Department’s position in comment 26 and 27, we have declined to use APP-China’s MEP purchases to value the entire input in this instance because its MEPs of this input reflect less than 33 percent of total purchases of the input. Moreover, we have reconsidered the appropriate HTS category for valuing this input in light of the CBP tariff classification ruling, discussed above. Accordingly, the Department has used Indian HTS category 3505.10 to value APP-China’s SSS because it is the best available information on the record (*i.e.*, a value that is publicly available, non-export, tax-exclusive, contemporaneous with the POI, and specific to the input being valued).

Comment 30: Selection of Labor Rate

- Petitioners argue that the Department should use information from financial statements of Indian surrogate producers on the record to calculate the wage rate. Petitioners also argue that the Department should not use ILO India data due to discrepancies with that information and that the Department should select “bookend” countries with GNIs that vary by the same percentage amount to the GNI of the PRC.
- APP-China argues that the Department should use the Indian labor rate from the Department’s regression model rather than information from financial statements on the record.
- APP-China also argues that export data is not an appropriate indication of whether a country is a significant producer of subject merchandise and asserts that the Department noted in the *Preliminary Determination* that Ukraine, Peru, and Philippines were not significant producers of coated paper.

Department’s Position: As a consequence of the CAFC’s recent ruling in *Dorbest*, the Department is no longer relying on the regression-based wage rate described in 19 CFR 351.408(c)(3). The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. For this final determination, we have calculated an hourly wage rate to use in valuing APP-China’s reported labor input by averaging earnings and/or

²⁰⁵ See APP-China’s Surrogate Value Submission, dated February 22, 2010, pg. 24.

²⁰⁶ See Petitioners’ Rebuttal Comments on Gold East and GHS Surrogate Value Submission, dated February 24, 2010, pg. 13.

²⁰⁷ See “Petitioners’ 40-Day Surrogate Values Submission,” dated June 29, 2010, at Attachment 3.

wages in countries that are both economically comparable to the PRC and significant producers of comparable merchandise. The Department has determined that the best available information for calculating a wage rate is based on multiple surrogate countries rather than an individual surrogate country.

In order to determine the economically comparable surrogate countries from which to calculate a surrogate wage rate, the Department looked to the *Preliminary Determination*. Early in this investigation, the Department selected six countries for consideration as the primary surrogate country for this investigation. To determine which countries were at comparable levels of economic development to the PRC, the Department placed primary emphasis on GNI.²⁰⁸ The Department relies on GNI to generate its initial list of countries considered to be economically comparable to the PRC. In this investigation, the list of potential surrogate countries found to be economically comparable to the PRC included India, the Philippines, Indonesia, Ukraine, Thailand, and Peru.²⁰⁹ The Department used the highest- and lowest-income countries identified in the list of potential surrogate countries as “bookends,” for purposes of determining the full list of economically comparable countries for calculation of the labor rate. Next, the Department identified all countries that fell within the range of the “bookends,” based on the World Bank’s reported 2008 country specific GNI per capita. This resulted in 43 countries, ranging from India with USD 1,040 GNI per capita to Peru with USD 3,990 GNI per capita.

The Department finds that the selection of the range of economically comparable countries based on absolute GNIs is reasonable and consistent with the statute. As a preliminary matter, Petitioners provide no legal basis for the argument that the Department should use relative GNI ranges when determining economically comparable countries for purposes of determining wage rates. The Department has a long-standing and predictable practice of selecting economically comparable countries on the basis of absolute GNI, and nothing in Petitioners’ submissions undermines the reasonableness of that practice.

Regarding the second criterion of “significant producer,” the antidumping statute and regulations are silent in defining a “significant producer,” and the antidumping statute grants the Department discretion to look at various data sources for determining the best available information. See section 733(c) of the Act. Moreover, while the legislative history provides that the “term ‘significant producer’ includes any country that is a significant net exporter,”²¹⁰ it does not stipulate a specific metric by which the Department must determine whether a country is a significant producer, and thus it does not preclude consideration of additional factors.

In practice, the Department has relied on other indicia for determining whether a country is a significant producer. For example, in a recent administrative review of the antidumping duty order on wooden bedroom furniture from the PRC,²¹¹ the Department relied on production data

²⁰⁸ See 19 CFR 351.408(b).

²⁰⁹ See Surrogate Country List attached to the Department’s January 8, 2010, letter requesting surrogate country comments and surrogate values.

²¹⁰ See *Conference Report to the 1988 Omnibus Trade & Competitiveness Act*, H.R. Conf. Rep. No. 576, 590, 100th Cong. 2nd Sess. (1988), reprinted in 134 Cong. Rec. H2031 (daily ed. April 20, 1988).

²¹¹ See *Wooden Bedroom Furniture From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of Review*, 74 FR 6372 (February 9, 2009) (unchanged in *Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Antidumping Duty*

for selecting the primary surrogate country.

Since our *Preliminary Determination* in this case, we have had to revisit our definition of what constitutes a “significant producer” in light of the Federal Circuit’s decision in *Dorbest*, which was issued after the *Preliminary Determination*. Consistent with other recent decisions, for this final determination, we have defined “significant producer” as a country that has exported comparable merchandise during the relevant period (in this case 2007 through 2009). We find the fact that a country exports comparable merchandise to other countries to be a strong indication that the country is a significant producer of such merchandise.²¹² This threshold for significant producer maximizes the size of the ultimate basket while still accounting for this criterion. This, in turn, provides the best available wage rate because multiple data points for labor will minimize potential distortions or arbitrary variations in wage data that are normally present among otherwise economically comparable countries.

Thus, for the final determination the Department identified all countries which have exports of comparable merchandise (defined as HTS 4810.14, 4810.19, 4810.22, 4810.29, which are identified in the scope of the investigation) between 2007 and 2009. After screening for countries that had exports of comparable merchandise, we found that 23 of the 43 countries designated as economically comparable to the PRC are also significant producers.

We disagree with APP-China’s arguments that the presence of exports is not indicative of production. Moreover, we find that APP-China has not provided any support for its allegation that countries with exports may have just exported the merchandise in a trans-shipment kind of situation rather than actually producing and exporting the merchandise. Furthermore, APP-China’s allegation is not supported by the legislative history.²¹³ While not definitive, the reference to net exporters in the legislative history presumes that exports provide at least some indication of significant production.

While APP-China argues that the Department made a decision in the *Preliminary Determination* that Ukraine, Peru, and Philippines were not significant producers of coated paper, and thus the Department should not use these countries (or those with fewer exports) in the basket of countries for calculating the wage rate, we find that the directive in *Dorbest* provides the basis to change our *Preliminary Determination* finding with respect to what constitutes a “significant” producer. Accordingly, we reexamined the data from these countries to resolve the issue of whether Ukraine, Peru and Philippines are significant producers for purposes of establishing the

Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009).

²¹² See, e.g., *Wooden Bedroom Furniture From the People’s Republic of China: Final Results and Final Rescission in Part*, 75 FR 50992 (August 18, 2010), and accompanying IDM at Comment 34; *Administrative Review of Certain Frozen Warmwater Shrimp From the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 49460, 49461 (August 13, 2010); *Certain Magnesia Carbon Bricks From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*, 75 FR 45468 (August 2, 2010), and accompanying IDM at Comment 1.b.; *Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Antidumping Duty New Shipper Review*, 75 FR 44764 (July 29, 2010) and accompanying IDM at Comment 2; *Narrow Woven Ribbons With Woven Selvedge From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 41808 (July 19, 2010), and accompanying IDM at Comment 8.

²¹³ See *Conference Report to the 1988 Omnibus Trade & Competitiveness Act*, H.R. Conf. Rep. No. 576, 590, 100th Cong. 2nd Sess. (1988), reprinted in 134 Cong. Rec. H2031 (daily ed. April 20, 1988).

list of potential surrogate countries. The record evidence demonstrates that Ukraine, Peru and Philippines had exports of comparable merchandise.²¹⁴ Furthermore, although we have revisited our definition of “significant producer,” doing so does not disturb our selection of India as the primary surrogate country because India is also at a comparable level of economic development and a significant producer of comparable merchandise. Furthermore, India provides the best sources of data for the other FOPs in this proceeding.

Based on the analysis set forth above, for purposes of valuing wages for the final determination, the Department determines the following 23 countries to be both economically comparable to the PRC, and significant producers of comparable merchandise: Bolivia, Ecuador, Egypt, El Salvador, Fiji, Guatemala, Honduras, India, Indonesia, Jordan, Morocco, Nicaragua, Nigeria, Paraguay, Peru, Philippines, Samoa (Western), Sri Lanka, Swaziland, Syria, Thailand, Tunisia, and Ukraine.

From the 23 countries that the Department determined were both economically comparable to the PRC and significant producers of comparable merchandise, the Department identified those with the necessary wage data. In doing so, the Department has relied upon ILO Chapter 5B data “earnings,” if available and “wages” if not.²¹⁵ We used the most recent data within five years of the base year (2007) and adjusted to the base year using the relevant CPI.²¹⁶ Of the 23 countries that the Department has determined are both economically comparable and significant producers of comparable merchandise, seven countries, *i.e.*, Bolivia, Morocco, Nigeria, Samoa, Swaziland, Syria, and Tunisia were not used in the wage rate valuation because there was no earnings or wage data available. As discussed below, the Department has also determined not to use the

²¹⁴ See Memorandum to the File, concerning, “Wage Data,” dated July 16, 2010.

²¹⁵ The Department maintains its current preference for “earnings” over “wages” data under Chapter 5B. See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61721 (October 19, 2006) (explaining that “earnings” more accurately reflect the remuneration received by workers) (“*Antidumping Methodologies*”). However, under the previous practice, the Department was typically able to obtain data from somewhere between 50-60+ countries. Given that the current basket now includes 16 countries, the Department found that our long-standing preference for a robust basket outweighs our exclusive preference for “earnings” data. We note that several countries that met the statutory criteria for economic comparability and significant production, such as Indonesia and Thailand, reported only a “wage” rate. Thus, if earnings data is unavailable from the base year (2007) of the previous five years (2002-2006) for certain countries that are economically comparable and significant producers of comparable merchandise, the Department will use “wage” data, if available, from the base year or previous five years. The hierarchy for data suitability described in the 2006 *Antidumping Methodologies* still applies for selecting among multiple data points within the “earnings” or “wage” data. This allows the Department to maintain consistency as much as possible across the basket.

²¹⁶ Under the Department’s regression analysis, the Department limited the years of data it would analyze to a two year period. See *Antidumping Methodologies*, 71 FR at 61720. However, because the overall number of countries being considered in the regression methodology was much larger than the list of countries now being considered in the Department’s calculations, the pool of wage rates from which we could draw from two years-worth of data was still significantly larger than the pool from which we may now draw using five years worth of data (in addition to the base year). The Department believes it is acceptable to review ILO data up to five years prior to the base year as necessary (as we have previously), albeit adjusted using the Consumer Price Index. See *Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology*, 70 FR 37761, 37762 (June 30, 2005). In this manner, the Department will be able to capture the maximum amount of countries that are significant producers of comparable merchandise, including those countries that choose not to report their data on an annual basis. See also Memorandum to the File, concerning, “Wage Data,” dated July 16, 2010 for CPI data placed on record, obtained from the International Monetary Fund’s International Financial Statistics.

Honduran wage rate. The remaining fifteen countries reported either earnings or wage rate data to the ILO within the last five years.²¹⁷

With respect to APP-China's argument that we should use the wage rate from India from the Department's regression model, and the Petitioners' argument that we should rely on data from the Indian financial statements, the Department disagrees. While information from a single surrogate country can reliably be used to value other FOPs, wage data from a single surrogate country does not constitute the best available information for purposes of valuing the labor input due to the variability that exists between wages and GNI. While there is a strong worldwide relationship between wage rates and GNI, too much variation exists among the wage rates of comparable market economies. As a result, we find reliance on wage data from a single country to be unreliable and arbitrary. For example, when examining the most recent wage data, even for countries that are relatively comparable in terms of GNI for purposes of factor valuation (*e.g.*, countries with GNIs between USD 1040 and USD 3990), the wage rate spans from USD 0.48 to USD 2.37. See "Expected Wages of Selected Non-Market Economy ("NME") Countries," revised in December 2009, available at <http://ia.ita.doc.gov/wages/index.html>. Additionally, although both India and Guatemala have GNIs below USD 2,700, and both could be considered economically comparable to the PRC, India's observed wage rate is USD 0.48, as compared to Guatemala's observed wage rate of USD 1.23 - more than two times higher than the Indian wage rate. See "Expected Wages of Selected NME Countries," revised in December 2009, available at <http://ia.ita.doc.gov/wages/index.html>.

There are many socio-economic, political and institutional factors that cause the variance in wage levels between countries. For this reason, and because labor is not traded internationally, the cross-country variability in labor rates, as a general rule, does not characterize other production inputs or impact other factor prices. Accordingly, the large variance in these wage rates illustrates the arbitrariness of relying on a wage rate from a single country. For these reasons, the Department maintains its longstanding position that, even when not employing a regression methodology, more data are still better than less data for purposes of valuing labor. Therefore, based on all of the above, we will not rely on either the Indian labor rate from the regression model or the financial statements of surrogate producers on the record to derive a labor surrogate value. The Department has instead employed a methodology that relies on a large number of countries in order to minimize the effects of the variability that exists between wage data of comparable countries.

With respect to Petitioners' arguments about India and the ILO survey methodology, we do not believe that there is sufficient evidence on the record to undermine the validity of the Indian wage rate. According to the notes to the ILO survey methodology, the ILO survey is conducted pursuant to the Factories Act of 1948. However, those notes also refer to the Payment of Wages Act of 1936, as amended in 1982, which covered employees making 1,600 rupees ("Rs") per month or less. Those notes have not been updated since 1995, which leads us to believe that, until recently, the survey was intended to cover those making 1,600 Rs per month or less. In 2005, the Payment of Wages Act of 1936 was amended, raising the application to those making 6,500 Rs per month or less (about USD 162), thereby covering more workers in India.

²¹⁷ See Memorandum to the File, concerning, "Wage Data," dated July 16, 2010 for wage data from ILO's Yearbook.

Petitioners argue that this amount acts as a hard cap on those surveyed, and therefore covers only the “lowest paid” of Indian workers. We disagree with this assessment of the record.

Although it is also our understanding that the Payment of Wages Act of 1936 is limited to employees earning 6,500 Rs or less, neither the survey, nor the Factories Act of 1948, appear to be so limited by Indian law. The record shows that for at least four different years, India reported a national average wage rate or industry-specific wage rate to the ILO that surpassed this alleged “cap.” For example, in 2004, India reported a national wage of 1,732 Rs per month when the “cap” was 1,600, and in 2006 India reported an industry specific wage of 6,678 Rs per month at the time the “cap” was 6,500 Rs per month. This would mean that for those years, either for the country as a whole, or for specific industries, there were employees collecting wages over that amount and that the “cap” was simply not considered binding for the survey coverage. Furthermore, there are additional examples during that period in which the overall average or the industry-specific average met, or came near to, the alleged “cap” amount. Unless almost all workers surveyed were being paid nearly the same wage (which seems unlikely), it is reasonable to presume that there were workers surveyed that earned more than the alleged “cap.” The record evidence indicates therefore that India does not treat the 6,500 Rs amount for the 2006 wage rate as a hard cap, but rather possibly as a guideline.

In light of this fact, we also question Petitioners’ claim that only the “lowest paid” of Indian worker wages are covered by this amount. Assuming the guideline is generally considered in conducting the survey, only those workers earning over the 6,500 Rs per month or more might be excluded. There is no evidence on the record to suggest that this guideline would exclude a significant portion of workers in India’s manufacturing sector. Petitioners have provided no information on the record for which the Department can compare this amount to average wages throughout India. For example, the record contains no information with respect to the 2006 minimum wages in India, or any other industry specific minimum wage amounts. Thus, the Department has no means on this record of knowing whether or not 6,500 Rs per month applies only to the “lowest paid” employees, as argued by Petitioners, or in fact to the vast amount of manufacturing wages in India. Accordingly, we have concluded based upon the record evidence the ILO wage data point for India is not distorted and we will continue to use it in our calculations for the final determination.

With regards to the Honduran wage rate provided by the ILO, the Department is rejecting this wage rate since the Department determined in *Shrimp/Vietnam (August 9, 2010)*, and accompanying IDM at Comment 10 that this wage rate is inaccurate, possibly due to an ILO reporting error. As explained in *Shrimp/Vietnam (August 9, 2010)*, the effective Honduran minimum wage during the same year as the underlying ILO data (2006) is USD 91.99 per month. With the assumption that the current reported ILO wage rate is USD 0.17, a worker would earn an average monthly wage of USD 32.64, a third of the minimum wage rate. Therefore, consistent with the Department’s determination in *Shrimp/Vietnam (August 9, 2010)*, the Department finds that the reported wage rate for Honduras is unreliable and is rejecting the Honduran wage rate for the purposes of averaging surrogate wage rates for this final determination.

Comment 31: Valuation of Brokerage & Handling (“B&H”)

- Petitioners argue that the Department should not continue to apply the average B&H expenses reported by: 1) Navneet in the 2007-2008 administrative review of certain lined paper products from India; 2) Essar in the 2006-2007 antidumping duty administrative review of hot-rolled carbon steel flat products from India; and 3) Himalya in the 2005-2006 administrative review of certain preserved mushrooms from India, but instead should use only the B&H expenses of Navneet because the lined paper industry is most relevant to the industry under investigation.
- Petitioners argue that the Department’s practice is to use disparate values to calculate an average value only when the record lacks data relevant to the industry under consideration.²¹⁸
- APP-China argues that the Department should uphold its original decision to use the above-mentioned three sources to calculate the surrogate B&H value because it is the Department’s preference to utilize broad, India-wide data and past precedent supports using this average B&H surrogate value.
- APP-China argues that that Navneet data is grossly aberrational when compared to the other two B&H surrogate values.²¹⁹

Department’s Position: For the final determination, the Department has revised its decision from the *Preliminary Determination* and has used data only from Navneet to calculate the B&H surrogate value for the final determination. In the *Preliminary Determination*, the Department used an average of data reported by Navneet, Essar, and Himalya to value APP-China’s B&H expenses. When selecting surrogate values with which to value the factors of production used to produce subject merchandise, the Department is directed to use the “best available information” on the record. *See* Section 773(c)(1) of the Act. To meet this standard, the Department’s preference is to use, where possible, a range of publicly available, non-export, tax-exclusive, and product-specific prices for the POI, with each of these factors applied non-hierarchically to the particular case-specific facts and with preference given to data from a single surrogate country. The Department’s practice in choosing surrogate values is further based on quality, specificity, and contemporaneity of the data.²²⁰

With regard to valuing B&H expenses, the Department has consistently averaged multiple B&H surrogate values in cases where none of the values were specific to the industry at issue. We are not faced with that circumstance here. In this case the Department has surrogate value information (*i.e.*, from Navneet, a paper producer) that meets the Department’s criteria, including being specific to the industry under investigation. By contrast, the other potential B&H surrogate source, data from Essar and Himalya represent two industries (steel and mushrooms, respectively) that bear no direct relationship to the industry under investigation here. Therefore, the Department finds that because the Navneet data are for an industry comparable to the coated paper industry and meet the Department’s remaining criteria for SV selection, they represent the

²¹⁸ *See* *Zhejiang Native Produce and Animal By-Products Import & Export Group Corp., et al. v. United States*, et al., CIT Slip Op. 09-61 (June 19, 2009), at 12.

²¹⁹ *See* *Garlic/PRC (May 5, 2010)* at 24582.

²²⁰ *See* *Lined Paper/PRC (September 8, 2006)*, and accompanying IDM at Comment 3.

best available information on the record. Using information that is more relevant to the industry in question is consistent with the Department's practice. In *Mushrooms/PRC (April 1, 2009)*, unchanged in *Mushrooms/PRC (June 18, 2009)*, the Department calculated an industry-specific B&H surrogate value by using information from AgroDutch, an Indian producer of mushrooms. This principle was upheld in *Zhejiang Native Produce and Animal By-Products Import & Export Group Corp., et al. v. United States, et al.*,²²¹ where the Court of International Trade first looked to the specificity of the B&H surrogate value with respect to subject merchandise, and only in the absence of data more specific to the industry at issue there (honey), did the Court conclude that consideration of other relevant data already placed on the record (from two other industries) was appropriate.

Finally, APP-China has not provided any documentation to substantiate its claim that the Navneet B&H expense data are aberrational, notwithstanding the fact that it is so much higher than the B&H expense data for Essar and Himlaya. As we stated in the Department's position to several other comments in this proceeding, the burden to demonstrate that a particular value is aberrational falls on the party making the claim. In this case all APP-China has done is to compare the B&H values for the three different industries on the record of this proceeding. It has not provided any evidence to support its contention that because these values differ from each other, it must necessarily follow that the highest of the three is aberrational. It has provided no corroborating evidence, nor even made an argument about the nature of the underlying data. Accordingly, we find that APP-China has not met its burden to prove the inadequacy of this SV and we have relied on it for the final determination.

Comment 32: Whether the Department Should Include Certain Direct Selling Expenses in the Calculation of SG&A

- Citing *Woven Electric Blankets/PRC (July 2, 2010)*, APP-China argues for the Department to reverse its decision in the *Preliminary Determination*, and exclude the line item "Bank charges, transport, clearing and forwarding charges, traveling and other misc. expenses" found in JK Paper's financial statements, in the calculation of the SG&A ratio because APP-China reported transportation expense and clearing and forwarding charges as direct expenses in their responses.²²²
- Petitioners argue that the Department should not change its calculation for the SG&A ratio from the preliminary determination because excluding this line item from the SG&A ratio would disregard several expenses which must be included in the SG&A ratio, including bank charges, miscellaneous expenses, and traveling expenses.²²³

²²¹ See *Zhejiang Native Produce and Animal By-Products Import & Export Group Corp., et al. v. United States, et al.*, CIT Slip Op. 09-61 (June 19, 2009), at 12.

²²² See *Woven Electric Blankets/PRC (July 2, 2010)* and accompanying Issues & Decision Memorandum at Comment 4.

²²³ See *Dorbest Ltd. V. United States*, 30 CIT 1671 1715-1716, 462 F. Supp. 2d 1262, 1301, n. 36; *Nation Ford Chemical Co. v. United States*, *supra*, 166 F.3d at 1377 (quoting *Sigma Corp. v. United States*, [[7 FJd 1401, 1407 (Fed. Cir. 1997)]; *GPX Int'l Tire Corp. v. United States*, Slip Op. 10-84 (CIT August 4, 2010), at 3, n.1; *Magnesium Corp. of Am. v. United States*, 166 F.3d 1364, 1372 (Fed. Cir. 1999); see also *GPX*, *supra*, Slip Op. 10-84 at 22-23, quoting *Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1250 (CIT 2002).

Department's Position: For the final determination, the Department has not excluded the line item, "Bank charges, transport, clearing and forwarding charges, traveling and other misc. expenses," from the calculation of the SG&A ratio because this line item includes selling expenses that are appropriately classified as SG&A for purposes of calculating the surrogate financial ratios. *See, e.g., Dorbest Ltd. v. United States*, 30 CIT 1671 1715-1716, 462 F. Supp. 2d 1262, 1301, n. 36 (CIT 2006). In deriving appropriate surrogate values for overhead, SG&A, and profit, the Department typically examines the financial statements on the record of the proceeding and categorizes expenses as they relate to: 1) materials, labor and energy; 2) factory overhead; 3) SG&A; and 4) profit, and excludes certain expenses (*e.g.*, movement expenses) consistent with the Department's practice of accounting for these latter expenses elsewhere.²²⁴ However, in NME cases, it is impossible for the Department to further dissect the financial statements of a surrogate company as if the surrogate company were an interested party to the proceeding, as the Department has no authority to either ask questions or verify the information from the surrogate company.²²⁵ Therefore, in cases where the Department is unable to isolate specific expenses within the surrogate financial statements, Department practice is "to not make adjustments to the financial statements data, as doing so may introduce unintended distortions into the data rather than achieving greater accuracy. . . . In calculating overhead and SG&A, it is the Department's practice to accept data from the surrogate producer's financial statements in total, rather than performing a line-by-line analysis of the types of expenses included in each category."²²⁶

Despite APP-China's argument, the facts in *Woven Electric Blankets/PRC (July 2, 2010)*, are different from those in this case. In *Woven Electric Blankets/PRC (July 2, 2010)* the Department excluded freight and cartage charges from the surrogate SG&A ratio specifically to avoid double counting movement expenses.²²⁷ In that case, the Department was able to isolate these expenses based on how they were reported in the financial statements at issue in that proceeding. However, in the instant investigation, the Department does not have a breakdown of the specific line item to segregate the expenses in question from the other selling expenses, such as bank charges, traveling, and miscellaneous expenses in JK Paper's financial statements. Here, without the ability to segregate specific types of expenses, excluding the whole line item from the calculation of SG&A could lead to unintentional distortions rather than resulting in a more accurate ratios because it would result in the exclusion of certain expenses appropriately classified as SG&A and not captured elsewhere in the Department's calculations. The Department's practice of not making such adjustments has most recently been upheld by the CIT in *GPX Int'l Tire Corp. v. United States, Slip Op. 10-84* (CIT August 4, 2010)²²⁸ where the court cited extensive precedent supporting the position that the Department is not required to duplicate the exact production experience of the Chinese manufacturers nor undergo an item-by-item analysis in calculating factory overhead.²²⁹ The same principle clearly applies to the calculation

²²⁴ See *Freshwater Crawfish Tail Meat/PRC (April 17, 2007)* and accompanying IDM at Comment 1.

²²⁵ See *WBF/PRC (December 6, 2006)* and accompanying IDM at Comment 5.

²²⁶ See *WBF/PRC (August 18, 2010)* and accompanying IDM at Comment 30.A.

²²⁷ See *Woven Electric Blankets/PRC (July 2, 2010)* and accompanying IDM at Comment 4.

²²⁸ See *GPX Int'l Tire Corp. v. United States, Slip Op. 10-84 (CIT August 4, 2010)*, at 21-25, quoting *Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247 1250 (CIT 2002).

²²⁹ See *e.g., Activated Carbon/PRC (March 2, 2007)*; and *Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1250 (CIT 2002) (stating that "Rather, once {the Department} establishes that the surrogate produces identical or comparable merchandise, closely approximating the nonmarket economy producer's experience, {the Department}

of the surrogate SG&A ratio. Thus, the Department has not excluded the line item in question from the calculation of the SG&A ratio for the final determination.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins in the *Federal Register*.

Agree

Disagree

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date

merely uses the surrogate producer’s data.”

| Antidumping/Countervailing Duty Proceeding Federal Register Cite Table <i>All cites in this table are listed alphabetically by short cite</i> | |
|---|---|
| Case Short Cite: | Case Full Cite: |
| <i>Activated Carbon/PRC (March 2, 2007)</i> | <i>Final Determination in the Antidumping Duty Investigation of Certain Activated Carbon from the People's Republic of China, 72 FR 9508 (March 2, 2007).</i> |
| <i>Activated Carbon/PRC (November 10, 2009)</i> | <i>First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 57995 (November 10, 2009)</i> |
| <i>Bricks/PRC (August 2, 2010)</i> | <i>Certain Magnesita Carbon Bricks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, 75 FR 45468 (August 2, 2010)</i> |
| <i>Carbon Steel Flat Products/Korea (Oct. 3, 2002)</i> | <i>Certain Cold-rolled Carbon Steel Flat Products from Korea: Notice of Final Determination of Sales at Less Than Fair Value, 67 FR 62124 (Oct. 3, 2002)</i> |
| <i>Carrier Bags/Indonesia (April 1, 2010)</i> | <i>Polyethylene Retail Carrier Bags From Indonesia: Final Determination of Sales at Less Than Fair Value, 75 FR 16431 (April 1, 2010)</i> |
| <i>Carrier Bags/Taiwan (March 26, 2010)</i> | <i>Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value, 75 FR 14569 (March 26, 2010)</i> |
| <i>Cased Pencils/PRC (July 7, 2010)</i> | <i>Certain Cased Pencils From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review, 75 FR 38980 (July 7, 2010).</i> |
| <i>Certain Lined Paper Products/PRC (September 8, 2006)</i> | <i>See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006).</i> |
| <i>Chlorinated Isos/PRC (May 10, 2005)</i> | <i>Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005)</i> |
| <i>Chrome-Plated Lug Nuts/Taiwan (April 9, 1999)</i> | <i>Chrome-Plated Lug Nuts From Taiwan; Final Results of Antidumping Duty Administrative Review, 64 FR 17314 (April 9, 1999)</i> |
| <i>Circular Welded Austenitic Pipe/PRC (September 5, 2008)</i> | <i>Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 51788 (September 5, 2008),</i> |
| <i>Circular Welded Austenitic Pipe/PRC (January 28, 2009)</i> | <i>Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 4913 (January 28, 2009)</i> |
| <i>Circular Welded Line Pipe/PRC (November 6, 2008)</i> | <i>Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 66012 (November 6, 2008)</i> |
| <i>Circular Welded Line Pipe/PRC (March 31, 2009)</i> | <i>Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 14514 (March 31, 2009)</i> |
| <i>Coated Free Sheet Paper/PRC (June 4, 2007)</i> | <i>Preliminary Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper From the People's Republic of China, 72 FR 30758 (June 4, 2007)</i> |
| <i>Coated Free Sheet Paper/PRC (October 25, 2007)</i> | <i>Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007)</i> |
| <i>Coated Paper/Korea (October 16, 2007)</i> | <i>Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the Republic of Korea 72 FR 60630 (October 16, 2007)</i> |
| <i>Cold-rolled Carbon Steel Flat Products/Korea (October 3, 2002)</i> | <i>Certain Cold-rolled Carbon Steel Flat Products from Korea: Notice of Final Determination of Sales at Less Than Fair Value, 67 FR 62124 (Oct. 3, 2002)</i> |
| <i>Collated Roofing Nails/Taiwan (October 1, 1997)</i> | <i>Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan, 62 FR 51427 (October 1, 1997)</i> |

| Antidumping/Countervailing Duty Proceeding Federal Register Cite Table <i>All cites in this table are listed alphabetically by short cite</i> | |
|---|---|
| Case Short Cite: | Case Full Cite: |
| <i>Color Television Receivers/PRC (April 16, 2004)</i> | <i>Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances for the Antidumping Duty Investigation of Certain Color Television Receivers from the People's Republic of China, 69 FR 20594, (April 16, 2004)</i> |
| <i>Corrosion-Resistant Carbon Steel Flat Products/Korea (January 15, 2009)</i> | <i>Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009)</i> |
| <i>CTL Plate/PRC (February 24, 2010)</i> | <i>Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order, 75 FR 8301 (February 24, 2010).</i> |
| <i>CTL Plate/Romania (March 15, 2005)</i> | <i>Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651 (March 15, 2005)</i> |
| <i>Diamond Sawblades/PRC (May 22, 2006)</i> | <i>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)</i> |
| <i>Fans/China (October 25, 1991)</i> | <i>Oscillating Fans and Ceiling Fans from the People's Republic of China, 56 FR 55271 (October 25, 1991)</i> |
| <i>First MOE Comment Request</i> | <i>Antidumping Methodologies in Proceedings Involving Certain Non-Market Economies: Market-Oriented Enterprise, 72 FR 29302 (May 25, 2007)</i> |
| <i>Fish Fillets/Vietnam (June 23, 2003)</i> | <i>Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003)</i> |
| <i>Fresh Cut Flowers/Mexico (September 26, 1995)</i> | <i>Fresh Cut Flowers From Mexico; Preliminary Results of Antidumping Duty Administrative Review, 60 FR 49569 (September 26, 1995);</i> |
| <i>Freshwater Crawfish Tail Meat/PRC (April 17, 2007)</i> | <i>Freshwater Crawfish Tail meat from the People's Republic of China: Final Results of Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007)</i> |
| <i>FSVs/PRC (October 22, 2008)</i> | <i>Frontseating Service Valves from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, and Postponement of Final Determination, 73 FR 62952, 62957 (October 22, 2008),</i> |
| <i>FSVs/PRC (March 13,2009)</i> | <i>Frontseating Service Valves From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances, 74 FR 10886 (March 13,2009)</i> |
| <i>Garlic/PRC (May 5, 2010)</i> | <i>Fresh Garlic from the People's Republic of China: Preliminary Results of New Shipper Review, 75 FR 24578 (May 5, 2010)</i> |
| <i>Glycine/PRC (August 14, 2009)</i> | <i>Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 41121 (August 14, 2009)</i> |
| <i>Granular Polytetrafluoroethylene Resin/Italy (January 17, 2007)</i> | <i>Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy, 72 FR 1980 (January 17, 2007)</i> |
| <i>Graphite Electrodes/PRC (August 21, 2008)</i> | <i>Small Diameter Graphite Electrodes From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances, in Part, 73 FR 49408 (August 21, 2008)</i> |
| <i>Graphite Electrodes/PRC (January 14, 2009)</i> | <i>Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China, 74 FR 2049 (January 14, 2009)</i> |
| <i>Hangers/PRC (August 14, 2008)</i> | <i>Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 47587 (August 14, 2008)</i> |
| <i>HEDP/PRC (October 21,</i> | <i>1-Hydroxyethylidene-1,1-Diphosphonic Acid From the People's Republic of China:</i> |

| Antidumping/Countervailing Duty Proceeding Federal Register Cite Table <i>All cites in this table are listed alphabetically by short cite</i> | |
|---|--|
| Case Short Cite: | Case Full Cite: |
| 2008) | <i>Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination</i> , 73 FR 62470 (October 21, 2008) |
| <i>HEDP/PRC (March 11, 2009)</i> | <i>1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less Than Fair Value</i> , 74 FR 10545, (March 11, 2009) |
| <i>Honey/PRC (June 16, 2006)</i> | <i>Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review</i> , 71 FR 34893 (June 16, 2006) |
| <i>Hot-Rolled Carbon Steel Flat Products – Sunset (December 7, 2006)</i> | <i>Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, South Africa, and Thailand: Final Results of Expedited Five-Year (Sunset) Reviews of the Countervailing Duty Orders</i> , 71 FR 70960 (December 7, 2006). |
| <i>Hot Rolled Carbon Steel Flat Products/Thailand (October 3, 2001)</i> | <i>Certain Hot Rolled Carbon Steel Flat Products from Thailand: Final Results of Countervailing Duty Determination</i> , 66 FR 50410 (October 3, 2001) |
| <i>KASR/PRC (March 5, 2009)</i> | <i>Certain Kitchen Appliance Shelving and Racks from the People's Republic of China</i> , 74 FR 9591 (March 5, 2009) |
| <i>KASR/PRC (July 24, 2009)</i> | <i>Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value</i> , 74 FR 36656 (July 24, 2009) |
| <i>Laminated Woven Sacks (June 24, 2008)</i> | <i>Laminated Woven Sacks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances</i> , 73 FR 35646 (June 24, 2008) |
| <i>Lawn Groomers (January 28, 2009)</i> | <i>Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination</i> , 74 FR 4929 (January 28, 2009), |
| <i>Lawn Groomers (June 19, 2009)</i> | <i>Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value</i> , 74 FR 29167 (June 19, 2009) |
| <i>Line Pipe/PRC (November 6, 2008)</i> | <i>Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination</i> , 73 FR 66012 (November 6, 2008) |
| <i>Line Pipe/PRC (March 31, 2009)</i> | <i>Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value</i> , 74 FR 14514 (March 31, 2009) |
| <i>Lock Washers/PRC (Nov. 19, 1997)</i> | <i>Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review</i> , 62 FR 61794 (Nov. 19, 1997) |
| <i>Lug Nuts/PRC (April 24, 1992)</i> | <i>Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order: Chrome-Plated Lug Nuts from the People's Republic of China</i> , 57 FR 15052 (April 24, 1992) |
| <i>LWTP/PRC (October 2, 2008)</i> | <i>Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value</i> , 73 FR 57329 (October 2, 2008) |
| <i>Mushrooms/PRC (April 1, 2009)</i> | <i>Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Reviews</i> , 74 FR 14772 (April 1, 2009) |
| <i>Mushrooms/PRC (June 18, 2009)</i> | <i>Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews</i> , 74 FR 28882 (June 18, 2009) |
| <i>Mushrooms/PRC (September 14, 2005)</i> | <i>Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China</i> , 70 FR 54361 (September 14, 2005) |
| <i>Nails</i> | <i>Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value</i> , 73 FR 33985 (June 16, 2008), and <i>Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances</i> , 73 FR 33977 (June 16, 2008) |

| Antidumping/Countervailing Duty Proceeding Federal Register Cite Table <i>All cites in this table are listed alphabetically by short cite</i> | |
|---|--|
| Case Short Cite: | Case Full Cite: |
| <i>Nails/PRC (June 16, 2008)</i> | <i>Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008)</i> |
| <i>Narrow Woven Ribbons /Taiwan (July 19, 2010)</i> | <i>Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan, 75 FR 41804 (July 19, 2010)</i> |
| <i>Narrow Woven Ribbons/China (July 19, 2010)</i> | <i>Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 41808 (July 19, 2010)</i> |
| <i>OCTG/PRC (November 17, 2009)</i> | <i>Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination, 74 FR 59117 (November 17, 2009)</i> |
| <i>OCTG/PRC (April 19, 2010)</i> | <i>Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010)</i> |
| <i>Orange Juice/Brazil (August 11, 2008)</i> | <i>Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 46584 (August 11, 2008)</i> |
| <i>PC Strand/PRC (December 23, 2009)</i> | <i>Prestressed Concrete Steel Wire Strand From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 74 FR 68232 (December 23, 2009)</i> |
| <i>PC Strand/PRC (May 21, 2010)</i> | <i>Prestressed Concrete Steel Wire Strand From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 28560 (May 21, 2010)</i> |
| <i>Pencils/PRC (July 7, 2010)</i> | <i>Certain Cased Pencils From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review, 75 FR 38980 (July 7, 2010)</i> |
| <i>Petroleum Wax Candles/PRC (March 19, 2003).</i> | <i>Petroleum Wax Candles From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 68 FR 13264 (March 19, 2003)</i> |
| <i>Polyester Staple Fiber/PRC (April 19, 2007)</i> | <i>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)</i> |
| <i>Polyethylene Retail Carrier Bags/PRC (June 18, 2004),</i> | <i>Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China, 69 FR 34125 (June 18, 2004),</i> |
| <i>Polyethylene Retail Carrier Bags/PRC (March 17, 2008);</i> | <i>Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review, 73 FR 14216 (March 17, 2008)</i> |
| <i>Preliminary Determination</i> | <i>Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China ("PRC"): Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 24892 (May 6, 2010)</i> |
| <i>PSF/China (January 11, 2010)</i> | <i>Polyester Staple Fiber from the People's Republic of China, 75 FR 47191 (January 11, 2010)</i> |
| <i>Pure Magnesium/PRC (December 14, 2009)</i> | <i>Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 66089 (December 14, 2009)</i> |
| <i>Shrimp/Brazil (July 11, 2008)</i> | <i>Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 39940 (July 11, 2008)</i> |
| <i>Shrimp/Ecuador (September 15, 2009)</i> | <i>Certain Frozen Warmwater Shrimp from Ecuador: Final Results of Antidumping Duty Administrative Review, 74 FR 47201 (September 15, 2009)</i> |
| <i>Shrimp/PRC (August 13, 2010)</i> | <i>Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 49460 (August 13, 2010)</i> |

| Antidumping/Countervailing Duty Proceeding Federal Register Cite Table <i>All cites in this table are listed alphabetically by short cite</i> | |
|---|--|
| Case Short Cite: | Case Full Cite: |
| <i>Shrimp/PRC (September 12,2007)</i> | <i>Frozen Warmwater Shrimp from the People's Republic of China, 72 FR 52049 (September 12,2007)</i> |
| <i>Shrimp/Vietnam (August 9, 2010)</i> | <i>Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 47771 (August 9, 2010)</i> |
| <i>Shrimp/Vietnam (September 15, 2009)</i> | <i>Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 74 FR 47191(September 15, 2009)</i> |
| <i>Silicomanganese/PRC (November 8, 1999)</i> | <i>Silicomanganese From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 64 FR 60784 (November 8, 1999)</i> |
| <i>Silicon Metal/Brazil (February 15, 2000)</i> | <i>Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil, 65 FR 7497 (February 15, 2000)</i> |
| <i>Silicon Metal/Brazil (February 23, 2001).</i> | <i>Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 66 FR 11256 (February 23, 2001)</i> |
| <i>Silicon Metal/PRC (October 16, 2007)</i> | <i>Silicon Metal from the People's Republic of China: Notice of Final Results of 2005/2006 New Shipper Reviews, 72 FR 58641 (October 16, 2007)</i> |
| <i>Stainless Steel Bar/India (September 3, 2010)</i> | <i>Stainless Steel Bar From India: Final Results of Antidumping Duty Administrative Review, 75 FR 54090 (September 3, 2010)</i> |
| <i>Steel Grating/PRC (January 6, 2010)</i> | <i>Certain Steel Grating From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 847 (January 6, 2010)</i> |
| <i>Steel Grating/PRC (June 8, 2010)</i> | <i>Certain Steel Grating From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 32366 (June 8, 2010)</i> |
| <i>Steel Threaded Rod/PRC (October 8, 2008)</i> | <i>Certain Steel Threaded Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 73 FR 58931 (October 8, 2008)</i> |
| <i>Steel Threaded Rod/PRC (February 27, 2009)</i> | <i>Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 9807 (February 27, 2009)</i> |
| <i>Tires/China (February 20, 2008)</i> | <i>Certain New Pneumatic Off-The-Road Tires From the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 9278 (February 20, 2008)</i> |
| <i>Tires/China (September 4, 2008)</i> | <i>Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order, 73 FR 51624, (September 4, 2008)</i> |
| <i>Tires/PRC AD (July 15, 2008)</i> | <i>Certain New Pneumatic Off the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008)</i> |
| <i>Tires/PRC CVD (July 15, 2008)</i> | <i>Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances, 73 FR 40480 (July 15, 2008)</i> |
| <i>TRBs/PRC (January 22, 2009)</i> | <i>Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 3987 (January 22, 2009)</i> |
| <i>TRBs/PRC (January 6, 2010)</i> | <i>Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order, 75 FR 844 (January 6, 2010)</i> |
| <i>TRBs/PRC (July 10, 2001)</i> | <i>Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China), 66 FR 35937 (July 10, 2001)</i> |
| <i>Uranium/France (Aug. 3, 2004)</i> | <i>Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium From France, 69 FR 46501 (Aug. 3, 2004)</i> |
| <i>Welded Carbon Steel Pipes and Tubes/Thailand (October 16, 1997)</i> | <i>Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 62 FR 53808 (October 16, 1997)</i> |

| Antidumping/Countervailing Duty Proceeding Federal Register Cite Table <i>All cites in this table are listed alphabetically by short cite</i> | |
|---|---|
| Case Short Cite: | Case Full Cite: |
| <i>Windshields/PRC (May 9, 2005)</i> | <i>Preliminary Results of Administrative Review: Automotive Glass Windshields from China, 70 FR 24373, 24380 (May 9, 2005)</i> |
| <i>Wire Rod/ Czechoslovakia (May 7,1984)</i> | <i>Carbon Steel Wire Rod from Czechoslovakia; Final Negative Countervailing Duty Determination, 49 FR 19370, 19372 (May 7,1984)</i> |
| <i>Wire Decking (January 12, 2010)</i> | <i>Wire Decking from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 1597 (January 12, 2010)</i> |
| <i>Wire Decking (June 10, 2010)</i> | <i>Wire Decking from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 32905 (June 10, 2010)</i> |
| <i>WBF/PRC (December 6, 2006)</i> | <i>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)</i> |
| <i>WBF/PRC (July 29, 2010)</i> | <i>Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 75 FR 44764 (July 29, 2010)</i> |
| <i>WBF/PRC (August 17, 2009)</i> | <i>Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009)</i> |
| <i>WBF/PRC (February 9, 2009)</i> | <i>Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of Review, 74 FR 6372 (February 9, 2009)</i> |
| <i>WBF/PRC(August 18, 2010)</i> | <i>Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part, 75 FR 50992 (August 18, 2010)</i> |
| <i>Woven Electric Blankets/PRC (July 2, 2010)</i> | <i>Certain Woven Electric Blankets From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 38459 (July 2, 2010)</i> |

| Short Cite Table For Litigation <i>All cites in this table are listed alphabetically by short cite</i> | |
|--|--|
| Litigation: Short Cite | Litigation: Full Cite |
| <i>Brand X (2005)</i> | <i>National Cable & Telecommunications Ass'n v. Brand X Internet Services, 545 U.S. 967,162 L.Ed.2d 820 (2005)</i> |
| <i>China Nat'l Mach. Imp. & Exp. Corp. (CIT 2003)</i> | <i>China Nat'l Mach. Imp. & Exp. Corp. v. United States, 293 F. Supp. 2d 1334, 1339 (CIT 2003) (emphasis in original); H.R. Rep. Conf. 100-576 at 590.</i> |
| <i>Daewoo Electronics Co., Ltd. v. International Union (Fed. Cir. 1993)</i> | <i>Daewoo Electronics Co., Ltd. v. International Union, 6 F.3d 1511, 1518 (Fed. Cir. 1993)</i> |
| <i>Dorbest (CIT 2006)</i> | <i>Dorbest v. United States, 30 CIT 1671 1715-1716, 462 F. Supp. 2d 1262 (CIT 2006)</i> |
| <i>Fuyao Glass Industries Group Co. (CIT 2005)</i> | <i>Fuyao Glass Industries Group Co. v. United States, 29 CIT 109 (2005).</i> |
| <i>Gallant Ocean (Thailand) Co., Ltd. (April 16, 2010)</i> | <i>Gallant Ocean (Thailand) Co., Ltd. v. United States, _F.3d_, Appeal No. 2009-1282 (April 16, 2010)</i> |
| <i>GPX Int'l Tire Corp. (CIT August 4, 2010)</i> | <i>GPX Int'l Tire Corp. v. United States, Slip Op. 10-84 (CIT August 4, 2010)</i> |
| <i>GPX Remand (April 26, 2010)</i> | <i>GPX v. United States, supra, 645F.Supp.2d at 1240-1243,1251. Department of Commerce Remand Redetermination (April 26, 2010)</i> |
| <i>KYD (Fed. Cir. May 28, 2010)</i> | <i>KYD v. United States, 2009-1366, at 11-12 (Fed. Cir. May 28, 2010).</i> |
| <i>Magnesium Corp. of Am. (Fed. Cir. 1999)</i> | <i>Magnesium Corp. of Am. v. United States, 166 F.3d 1364, 1372 (Fed. Cir. 1999).</i> |

| Short Cite Table For Litigation <i>All cites in this table are listed alphabetically by short cite</i> | |
|--|---|
| Litigation: Short Cite | Litigation: Full Cite |
| <i>Nation Ford Chemical Co.</i> (Fed. Cir. 1997) | <i>Nation Ford Chemical Co. v. United States</i> , <i>supra</i> , 166 F.3d at 1377 (quoting <i>Sigma Corp. v. United States</i> , [[7 FJd 1401, 1407 (Fed. Cir. 1997)]. |
| <i>Rhodia Inc</i> (CIT 2002) | <i>Rhodia, Inc. v. United States</i> , 240 F. Supp. 2d 1247, 1250 (CIT 2002) |
| <i>Shakeproof</i> (Fed. Cir 2001) | <i>Shakeproof Assembly Components Div. of Ill v. United States</i> , 268 F.3d 1376, 1382- (Fed. Cir. 2001) |
| <i>Sichuan Changhong</i> (Ct. Int’l Trade 2006) | <i>Sichuan Changhong Elec. Co. v. United States</i> , 460 F. Supp. 2d 1338, 1349-53 (Ct. Int’l Trade 2006) |
| <i>Zhejiang Machinery Import & Export Corp.</i> (Ct. Int’l Trade 2007) | <i>Zhejiang Machinery Import & Export Corp. v. United States</i> , 473 F. Supp. 2d 1365 (Ct. Int’l Trade 2007) |

| Short Cite Table For Memorandum/Reports & Miscellaneous <i>All cites in this table are listed alphabetically by short cite</i> | |
|--|--|
| Memorandum: Short Cite | Memorandum: Full Cite |
| <i>Antidumping Methodologies</i> (Oct. 19, 2006) | <i>Antidumping Methodologies: Market Economy Inputs</i> , 71 FR 61716, 61718 (Oct. 19, 2006). |
| APP-China’s case brief | APP-China’s case brief,” dated August 5, 2010 |
| APP-China’s Final Analysis Memo | “APP-China’s Final Analysis Memo,” dated September 20, 2010. |
| APP-China’s Verification Report | “Verification of the Sales and Factors Responses of Gold East Paper (Jiangsu) Co., Ltd., Ningbo Zhonghua Paper Co., Ltd., and Gold East (Hong Kong) Trading Co., Ltd., in the Antidumping Duty Investigation of Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People’s Republic of China from the People’s Republic of China,” dated July 21, 2010. |
| APP-China’s Surrogate Value Submission | APP-China’s Surrogate Value Submission, dated February 22, 2010 |
| GH and GE’s Supplemental Section C Response, and NBZH and NAPP’s Section C Response | <i>See Gold Huasheng’s Supplemental Section C Response</i> ,” dated March 29, 2010; Ningbo Zhonghua Paper Co., Ltd and Ningbo Asia Pulp and Paper Co., Ltd: Section C Response, dated March 4, 2010, and Gold East’s Supplemental Section C Response, dated March 29, 2010. |
| Ministerial Error Memo | “Antidumping Duty Investigation of Certain Coated Paper from the People’s Republic of China: Allegation of Ministerial Errors,” dated June 9, 2010. |
| <i>OTCA 1988</i> | <i>Omnibus Trade and Competitiveness Act of 1988</i> , Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988). |
| Petitioners’ 40-Day Surrogate Values Submission | Petitioners’ 40-Day Surrogate Values Submission, dated June 29, 2010. |
| Petitioners’ Rebuttal Comments on Gold East and GHS Surrogate Value Submission | Petitioners’ Rebuttal Comments on Gold East and GHS Surrogate Value Submission, dated February 24, 2010 |