

DATE: March 12, 2007

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results in the First Administrative Review of Floor-standing, Metal-top Ironing Tables and Certain Parts Thereof from the People's Republic of China

SUMMARY:

We have analyzed the briefs and rebuttal briefs of interested parties in the first administrative review of floor-standing, metal-top ironing tables and certain parts thereof (ironing tables) from the People's Republic of China (PRC). As a result of our analysis, we have made certain changes from the preliminary results. *See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53655 (September 12, 2006) (*Preliminary Results*). We recommend that you approve the positions developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this administrative review:

General Issues

- Comment 1: Appropriate Source for Financial Ratios Surrogate Values
- Comment 2: Classification of Labor in Financial Ratios
- Comment 3: Non-Market Economy (NME) Wage Rate
- Comment 4: Zeroing
- Comment 5: Appropriate Surrogate Value for Hot-Rolled Steel

Company-Specific Issues

Since Hardware-Related Issues

- Comment 6: Market Economy Purchases
- Comment 7: By-Product Offset

Foshan Shunde-Related Issues

Comment 8: Rescission of Shunde Yongjian and Foshan Shunde

Comment 9: Calculating a Margin for Foshan Shunde

Comment 10: By-Product Clerical Error

Forever Holdings-Related Issues

Comment 11: Rescission of Forever Holdings

Comment 12: Clerical Errors in Surrogate Values

Background

We published the preliminary results of the first administrative review in the *Federal Register* on September 12, 2006. *See Preliminary Results*. The period of review (POR) is February 3, 2004 through July 31, 2005. On January 30, 2007, we received one case brief from petitioner Home Products International Inc. and respondents Since Hardware (Guangzhou) Co., Ltd. (Since Hardware), Forever Holdings Ltd. (Forever Holdings) and Foshan Shunde Yongjian Housewares & Hardware Co., Ltd. (Foshan Shunde). Hereafter, Since Hardware, Foshan Shunde, and Forever Holdings are referred to collectively as “the respondents.” We received rebuttal briefs from the petitioner, Since Hardware, and Forever Holdings, on February 5, 2007.

DISCUSSION OF THE ISSUES:

Comment 1: Appropriate Source for Financial Ratios Surrogate Values

Petitioner argues that the Department should use the contemporaneous 2005 Agew Steel Manufacturers Private Limited (Agew Steel) financial statements to value factory overhead and SG&A expenses, and use the contemporaneous 2005 Infiniti Modules Pvt. Ltd. (Infiniti Modules) financial statements to value the surrogate profit ratio, as the Agew Steel financial statements reflect a net loss in 2005.

Petitioner argues, pursuant to 19 CFR 351.408(c)(4) and Import Administration Policy Bulletin No. 04.1, the Department should narrowly interpret “comparable merchandise” and use the contemporaneous 2005 financial reports for Agew Steel, and Infiniti Modules to calculate the surrogate financial ratios for the final results. Petitioner argues that Godrej & Boyce Manufacturing Company Limited (Godrej), whose financial statements were utilized in the preliminary results, is a conglomerate that produces a wide range of “non-comparable merchandise,” such as consumer electronics, machinery, and industrial equipment, which attenuates their suitability as surrogate financial information in comparison to the Agew Steel and Infiniti Modules financial statements.¹

Petitioner argues that both Agew Steel’s and Infiniti Modules’ financial statements provide relatively better-suited surrogate financial ratios for metal-top ironing tables than the Godrej annual report. Petitioner argues that, in contrast to Godrej’s diversification into unrelated

¹ Citing *Notice of Final Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People’s Republic of China*, 69 FR 35296, 35310-12 (*Ironing Tables Investigation*) (June 24, 2004).

markets such as electronics, horticulture, and construction, Infiniti Modules only manufactures products that are relatively more comparable to ironing tables, such as seating, storage, work-surfaces, and panel products, which incorporate metal-parts such as steel leg tubing and frames. Moreover, petitioner also argues that Agew Steel manufactures products, such as steel doors and window frames, which are very similar to metal-top ironing tables. *See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Home Products International, Inc. case brief (January 30, 2007) (Petitioner Case Brief), at 3-5.*

Since Hardware rebuts that the Department should continue to use the 2005 Godrej financial statements to calculate the financial ratios in the current review, as the company is a producer of comparable merchandise, and was previously utilized in several other proceedings. Since Hardware also argues that Godrej is a producer of metal-fabricated consumers goods, a comparable product to ironing tables, and that the Department should disregard petitioner's claim that the variety of products that Godrej produces renders it less appropriate than other statements on the record.

Since Hardware further argues that the Department should disregard the Agew Steel financial statements because Agew Steel is not a producer of comparable merchandise and the company's financial statements cannot be used to derive a surrogate profit ratio. Furthermore, Since Hardware, citing *Rebar from Belarus*,² argues that it is the Department's practice to disregard incomplete financial statements. Specifically, because Agew Steel's report is missing the certified Profit and Loss (P&L) statement and has abnormal account schedules, Since Hardware argues that the Department cannot calculate the surrogate financial ratios with any level of certainty.³ Moreover, Since Hardware and Forever Holdings both argue that the Agew Steel financial statements are largely illegible, and are not reliable. *See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Since Hardware's Rebuttal Brief (February 5, 2007) (Since Hardware Rebuttal Brief) at 1-4.*

Additionally, Since Hardware and Forever Holdings both argue that Agew Steel is not a producer of comparable merchandise and the Department should disregard the financial statements despite petitioner's claims that steel doors and window frames are comparable to ironing tables. Since Hardware similarly asserts that Infiniti Modules produces less comparable merchandise than Agew Steel and, therefore, the Department should also disregard the Infiniti Modules financial statements.⁴ Since Hardware notes that Agew Steel produces steel window frames and doors, which must meet international standards and customer specifications, and does not produce metal furniture, ironing tables, or consumer goods similar to ironing tables. Since Hardware argues that customizable products that must meet specific international safety standards are not comparable to mass-produced, low-value consumer products such as ironing tables. *See Since Hardware Case Brief at 4.* Moreover, Forever Holdings argues that fire doors involve higher costs due to greater manufacturing requirements. Therefore, Since Hardware and Forever Holdings assert that the Godrej financial statements are the only financial data source on

² *See Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Belarus*, 66 FR 33528 (June 22, 2001) (*Rebar from Belarus*), and accompanying Issues and Decision Memorandum at Comment 2.

³ *See Final Results and Final Partial Rescission of Certain Cut-to-length Carbon Steel Plate from Romania*, 70 FR 12651 (March 15, 2005), and accompanying Issues and Decision Memorandum at Comment 10.

⁴ *See Petitioner Case Brief at 5.*

the record of the proceeding to produce comparable merchandise. *See* Since Hardware Rebuttal Brief at 4.

Furthermore, Since Hardware and Forever Holdings argue that Agew Steel’s auditors noted that the company is not a “going concern,” and the Department does not normally utilize the financial statements of “sick” companies, citing *Persulfates*.⁵ Since Hardware specifically notes that the auditor’s report states that the company’s financial losses are a source of concern. Therefore, Since Hardware argues that the Department should disregard the Agew Steel financial statements and rely solely on the Godrej financial statements. *See* Since Hardware Rebuttal Brief at 5-6 and 7-12.

If the Department disagrees, however, Since Hardware argues that the Department must adjust petitioner’s proposed Infiniti Modules financial ratio calculations to account for job-work income and certain labor expenses reported in Infiniti Modules’ P&L statement. Additionally, if the Department utilizes Agew Steel’s financial statements, Forever Holdings asserts that petitioner’s proposed allocation of expenses overstates the financial ratios, and argues that should the Department use the Agew Steel financial statements, the Department should recalculate the financial ratios based on the Department’s established precedent. Forever Holdings asserts that “salaries” should be treated as direct manufacturing labor in the MLE denominator, movement costs such as “Import Freight,” “Carriage Inward,” and “Octroi Charges” should be excluded,⁶ and similarly “sales tax” should be excluded.⁷ *See* Forever Holdings Rebuttal Brief at 4–5.

In response to Since Hardware’s and Forever Holdings’ comments, petitioner concedes that the Agew Steel financial statements do not contain a P&L statement. However, petitioner notes that under Indian law, non-publicly held companies are entitled to proprietary treatment of the P&L statement under *Section 610 of the Companies Act (1956) of India*. *See* Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People’s Republic of China: Rebuttal Brief of Home Products International, Inc., (February 5, 2007) (Petitioner Rebuttal Brief), at 5. Regardless, petitioner argues that the Agew Steel financial statements submitted on October 16, 2006,⁸ contain all necessary information for the Department to calculate the surrogate financial ratios. Furthermore, petitioner argues that according to 19 USC 1677b(c)(1) and 19 CFR 351.408(c)(4), the Department has no requirement to rely solely upon complete financial statements,⁹ so long as the financial statements contain the necessary data to derive surrogate

⁵ *See Persulfates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005) (*Persulfates 2002-2003*), and accompanying Issues and Decision Memorandum at Comment 3.

⁶ *See Final Determination of Sales at Less-Than-Fair-Value: Honey from the People’s Republic of China*, 66 FR 50608 (October 4, 2001), and accompanying Issues and Decision Memorandum at Comment 3.

⁷ *See Polyvinyl Alcohol From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 27991 (May 15, 2006), and accompanying Issues and Decision Memorandum at Comment 7.

⁸ *See* Letter to the Secretary from Home Products International, Inc, regarding Surrogate Value Information Concerning Financial Ratios (Factory Overhead, SG&A Expenses and Profit) (October 16, 2006).

⁹ *See Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People’s Republic of China*, 69 FR 67313 (November 17, 2004), and accompanying Issues and Decision Memorandum at Comment 3 (*Furniture Investigation*).

financial ratios.¹⁰ Petitioner argues that along with the negative profit, which the Department should disregard, all other information needed to calculate overhead and SG&A ratios are sufficient. Petitioner further argues that the Agew Steel financial statements were audited in compliance with Indian law and include all schedules, accounting notes, and Auditor's Reports. Petitioner also argues that the Agew Steel financial statements are legible and only contain a single example where the data is difficult to read.

Petitioner disputes Since Hardware and Forever Holdings' non-comparable merchandise claims above and asserts that Agew Steel is a producer of comparable merchandise. First, petitioner argues that Agew Steel is a comparatively better source, which exclusively produces steel products, whereas Godrej is a highly diversified manufacturer. While petitioner concedes that Agew Steel produces certain products that meet international manufacturing standards, *i.e.*, Underwriters Laboratories, Inc. (UL standards), petitioner also notes that Godrej also manufactures products that meet UL standards.¹¹ Furthermore, petitioner concedes that while Agew Steel is capable of manufacturing based on customer specifications, petitioner argues that the Godrej financial statements imply that Godrej also manufactures special-order products. Furthermore, petitioner argues that customers of ironing tables also provide product specifications in bidding packages. *See* Petitioner Rebuttal Brief at 12–15.

Petitioner argues that Agew Steel only produces steel products, which are comparable to ironing tables, while only a quarter of Godrej's sales revenue is devoted to comparable steel merchandise. Petitioner cites *Wooden Bedroom Furniture*,¹² and argues that in comparison to the Godrej financial statement, which consolidates an amalgam of undifferentiated products, the Department should use the Agew Steel and Infiniti Modules financial statements to calculate the surrogate financial ratios. *See* Petitioner Rebuttal Brief at 15-16.

Citing the Indian *Auditing and Assurance Standard (AAS)*,¹³ petitioner also argues that the auditor's notes regarding Agew Steel's financial conditions do not denote a "going concern," but rather denote the auditor's consideration regarding whether the company is entitled to a "going concern" assumption. Petitioner argues that, despite the auditor's "going concerns"—doubts about the company's financial future, the company has continued to operate since the 2005 Annual Report. Furthermore, petitioner argues that Agew Steel has not been officially designated as a "sick company" under India's Sick Industrial Companies Act, as described in *Color Televisions from the PRC*,¹⁴ and nevertheless, the Department still considers using "potentially sick" companies as surrogate producers, citing *Persulfates from the PRC Final*.¹⁵ Petitioner argues that the 2005 Agew financial statements reflect an improving financial

¹⁰ *See 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) (*Furniture NSR Final*), and accompanying Issues and Decision Memorandum at Comment 2.

¹¹ *See Godrej Annual Report* at 7.

¹² *See Furniture NSR Final*, and accompanying Issues and Decision Memorandum at Comment 1.

¹³ *See Auditing and Assurance Standard* 16, Statement on Standard Auditing Practices 16, Institute of Chartered Accountants of India.

¹⁴ *See Certain Color Television Receivers From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 69 FR 20594 (April 16, 2004) (*Color TVs Final*), and accompanying Issues and Decision Memorandum at Comment 14.

¹⁵ *See Persulfates 2002-2003*, and accompanying Issues and Decision Memorandum at Comment 3.

condition based on a comparison of the 2004 to 2005 statements and the continued operations of the company allays doubt regarding the company's financial situation. *See* Petitioner Rebuttal Brief at 11–12.

Department's Position:

Pursuant to section 773(c)(1) of the Tariff Act of 1930, as amended (the Act), it is the Department's practice to use the best available information to derive the surrogate financial ratios. To determine the best information available, the Department considers several factors, including the quality, specificity, and contemporaneity of the source information.¹⁶ For these final results, the Department has determined that the Infiniti Modules financial statements are contemporaneous and complete, and most closely reflect merchandise comparable to ironing tables. Thus, the Department finds that they are the most appropriate financial statements available on the record of this review from which to derive surrogate financial ratios.

The Department finds that the Infiniti Modules financial statements are more appropriate than the Godrej financial statements because Infiniti Modules manufactures a more narrow range of products primarily consisting of consumer home and office furniture—goods that are more comparable to ironing tables pursuant to 19 CFR 351.408(c)(4). In contrast, in addition to “steel furniture,” Godrej produces security equipment; typewriters; locks; home appliances (refrigerators and washing machines); traded products and services; press tools, jigs, fixtures, gauges, dies, moulds, cutting tools, special purpose machines and precision components; process plant equipment; forklift trucks; concrete; and other property development and construction goods.¹⁷ Further, the Department notes that Godrej's production of comparable steel furniture comprises only a quarter of its total sales. Thus, the Department finds that the Infiniti Modules financial information better represents the financial conditions expected of an ironing tables manufacturer.

Irrespective of the discussion regarding the comparability of Agew Steel's metal-fabricated products to ironing tables, the Department has determined that the Infiniti Modules financial statements are a more appropriate source of surrogate information than the Agew Steel financial statements. As petitioner noted in its rebuttal brief, Agew Steel is not a publicly held company, and thus its P&L statement is entitled to proprietary treatment. The absent P&L statement raises concerns as to whether the Agew Steel financial statements are wholly publicly available. Pursuant to 19 CFR 351.408(c)(4), the Department prefers to use publicly available information to calculate surrogate financial ratios. Thus, the Department has determined not to rely on Agew Steel's financial statements for purposes of these final results.

In adopting the Infiniti Modules financial information to derive the surrogate financial ratios for these final results, the Department has allocated the line items of Infiniti Modules reported revenues and costs in accordance with the Department's established methodology. Consistent with the Department's treatment of unrelated revenue, the Department has excluded the revenue that Infiniti Modules earned from job-work (tolling) operations (which accounted for 8.5 percent

¹⁶ *See, e.g., Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6.

¹⁷ *See* 2005 Godrej & Boyce Manufacturing Company Limited, Schedule T at 40.

of total revenue) from the calculation of the surrogate financial ratios.¹⁸ In addition, consistent with the Department's findings in *Honey from the PRC*, the Department has excluded "Carriage Inward" and "Octroi, Cooli, and Cartage" expenses from the calculation of the surrogate financial ratios because these expenses are already accounted for in the normal value calculation and in adjustments made to the U.S. price.

Comment 2: Classification of Labor in Financial Ratios

Forever Holdings argues that the Department's exclusion of certain Indian employment labor-costs in the surrogate financial ratio calculation for material, labor, and energy costs (MLE) is baseless and unlawful. Forever Holdings argues that Chapter 5B of the *Yearbook of Labour Statistics* states that the published wage rate includes certain work-related expenses thus, Forever Holdings contends the Department should also include other labor-related costs to the MLE denominator of the surrogate financial ratios. Forever Holdings argues that the Department did not substantiate why it concluded that certain labor-related costs were excluded from the International Labour Office (ILO) data. Citing the Court of International Trade (CIT) finding in *Luoyang*,¹⁹ Forever Holdings argues that the CIT has found that ILO data includes labor costs which were excluded by the Department in the calculation of the surrogate financial ratios. Forever Holdings asserts that in the *Luoyang* decision, the CIT stipulated that labor-costs may be included as overhead or SG&A expenses when PRC producers also incurred additional labor costs.²⁰ Forever Holdings argues that because there is no evidence to suggest Forever Holdings incurred these additional labor-costs, these expenses should be reclassified overhead to MLE. See *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China*: Forever Holdings Case Brief (January 30, 2007) (Forever Holdings Case Brief) at 3-4.

Petitioner rebuts Forever Holding's assertions by arguing that Forever Holdings erred in its argument to include certain social welfare and benefit expenses in the MLE denominator of the surrogate financial ratios. Petitioner argues that, after extensive analysis, the Department has found that Chapter 5 of the *Yearbook of Labour Statistics* excludes employer contributions to benefit schemes.²¹ Therefore, the wage rate does not include worker benefits and welfare costs. Petitioner argues that in *Luoyang*, as cited by Forever Holdings, the Court did not mention the inclusion of employee benefits or welfare costs, and adds that the Court confirmed the Department's labor-related cost categorization.²² Petitioner notes that in the CIT's decision regarding *Luoyang*, the Department found that surrogate Indian producers incurred non-wage expenses, and thus properly accounted for the costs as SG&A expenses. Petitioner argues that in

¹⁸ The Department notes that the small percentage of income Infiniti Modules generated from tolling represents a minor facet of Infiniti Modules' business operations and that Infiniti Modules identifies itself as an original equipment manufacturer on its website. See <http://www.infinitimodules.com/>.

¹⁹ *Luoyang Bearing Corp. v. United States*, 347 F. Supp. 2d 1326, 1334 (CIT May 18, 2004) (*Luoyang*).

²⁰ "Commerce was also presented with specific and undisputed evidence that demonstrated that additional expense were incurred by employers in the PRC." *Id.*

²¹ See *Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 18, 2006) (*Tables and Chairs*), and accompanying Issues and Decision Memorandum at Comment 1B.

²² See *Luoyang*, 347 F. Supp. 2d at 1334.

Luoyang, neither the Department nor the CIT addressed whether the Chinese producers encountered similar costs.²³ See Petitioner Rebuttal Brief at 18–20.

Forever Holdings also argues that “contract labor,” as specified in the Godrej financial statements as a service provision for future contract labor, should be valued as direct labor and not overhead. See Forever Holdings Case Brief at 4.

Petitioner argues that the “contract labor” is actually representative of “expenses for service contracts on refrigerators and washing machines sold,”²⁴ which represent a reserve fund for selling expenses and are not related to production. Petitioner further notes that this “contract labor” serves as an example of non-comparable expenses included in Godrej’s financial statements due to the company’s diverse product line. See Petitioner Rebuttal Brief at 21.

Department’s Position:

For the final results, the Department has determined to use the Infiniti Modules financial statements to calculate the surrogate financial ratios; thus, discussions regarding the allocation of certain expense line items from the Godrej financial statements are moot.

However, in allocating expenses to derive the surrogate financial ratios using the Infiniti Modules financial statements, consistent with past practice, the Department finds that employer contributed benefits and welfare plans are appropriately classified as manufacturing overhead and excluded from the calculation of the MLE denominator.²⁵ As the Department has stated, reclassifying the relevant employee benefits from direct labor to manufacturing overhead is consistent with our regression-based PRC wage rate calculation. The Department based its calculation of the expected PRC wage rate on the ILO’s categorization of information provided by the countries it surveys. Information from the ILO website defines wages and labor costs separately.²⁶ Specifically, Chapter 5 defines “wages” as:

“The concept of earnings, as applied in wages statistics, relates to remuneration in cash and in kind paid to employees, as a rule at regular intervals, for time worked or work done together with remuneration for time not worked, such as for annual vacation, other paid leave or holidays. Earnings exclude employers’ contributions in respect of their employees paid to social security and pension schemes and also the benefits received by employees under these schemes. Earnings also exclude severance and termination pay.”

Chapter 6 defines “Labour Costs” as including employee benefits:

²³ See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China; Final Results of 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 1953 (January 10, 2001), and accompanying Issues and Decision Memorandum at Comment 7.

²⁴ See *Godrej 2005 Annual Report* at schedule T, not 1(m).

²⁵ See *Persulfates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 7725 (February 14, 2006) (*Persulfates 2003-2004*), and accompanying Issues and Decision Memorandum at Comment 3, and *Tables and Chairs*, and accompanying Issues and Decision Memorandum at Comment 1B

²⁶ See ILO Website: <http://laborsta.ilo.org/>.

“For the purposes of labour cost statistics, labour cost is the cost incurred by the employer in the employment of labour. The statistical concept of labour cost comprises remuneration for work performed, payments in respect of time paid for but not worked, bonuses and gratuities, the cost of food, drink and other payments in kind, cost of workers' housing borne by employers, employers' social security expenditures, cost to the employer for vocational training, welfare services and miscellaneous items, such as transport of workers, work clothes and recruitment, together with taxes regarded as labour cost”²⁷

The wages category (Chapter 5) is exclusive of employee benefits such as pension and social security, while the labor cost category (Chapter 6) is inclusive of these employee expenses. As we stated in *NME Wage Comment FR*,²⁸ the Department based its calculation of the regression-based expected PRC wage rate on data from Chapter 5B of the *Yearbook of Labour Statistics*. In the instant administrative review, the Infiniti Modules surrogate financial data allow the Department to segregate labor expenses into “Wages” (which corresponds to Chapter 5B of the ILO database and, therefore, to the Department’s expected NME wage rate), and other labor costs (which are not included in the Department’s calculated NME wage rate). Accordingly, consistent with the methodology employed in calculating the expected PRC wage rate, and as articulated in *Tables and Chairs*, and accompanying Issues and Decision memorandum at Comment 1B, the Department finds that it is appropriate to classify employer provided benefits and welfare expenses as manufacturing overhead in order to ensure that they are captured in our calculation of normal value.

Comment 3: Non-Market Economy (NME) Wage Rate

Forever Holdings argues, pursuant to 19 USC 1677b(c)(4), that the Department should calculate wage rates based on economic comparability²⁹ rather than using the Department’s regression analysis.³⁰ Forever Holdings disputes the validity of 19 CFR 351.408(c)(3) based on the Department’s reasoning that more countries yield more accurate results, the regression is more fair, and the calculated results are more predictable. Forever Holdings argues that the regression methodology has produced a result significantly higher than the published wage rate for India. Forever Holdings asserts that contrary to 19 USC 1677b(c)(4)(A), the Department excluded low-wage countries, but included non-comparable country data in the regression calculation. Furthermore, Forever Holdings argues that the Department violates the statute by including countries that may not be significant producers of comparable merchandise. The respondent argues that simply using more countries in the calculation does not necessarily yield more accurate results.³¹ It argues that the CIT has called into question both the fairness and

²⁷ See also *Persulfates 2003-2004*, and accompanying Issues and Decision Memorandum at Comment 3.

²⁸ See *Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology*, 70 FR 37761, 37762 (June 30, 2005) (*NME Wage Comment FR*).

²⁹ See Memorandum to the File through James C. Doyle, Director, Office 9, from Kristina Boughton, Senior International Trade Compliance Analyst, and Bobby Wong, International Trade Compliance Analyst, Office 9, regarding Selection of a Surrogate Country (August 31, 2006) at 2.

³⁰ See *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27367 (May 19, 1997) (*Final Rule*).

³¹ See *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 842–43, *reh'g denied* 468 U.S. 1227 (1984).

predictability of the Department's regression methodology.³² The company argues that the complicated nature of the regression calculation does not support the Department's assertion that it creates greater predictability.

Forever Holdings also argues that the Department's NME methodology is predicated on the theory that Chinese data is unreliable.³³ Therefore, using China's per-capita GNI in calculating a surrogate wage rate is contrary to the Department's surrogate-value policy. Forever Holdings argues that the Department should instead use the country-wide wage rate from India. *See* Forever Holdings Case Brief at 11.

However, Forever Holdings argues that should the Department continue to rely upon the regression methodology to calculate the surrogate wage rate, the Department should include all countries from the *Yearbook of Labor Statistics* and the *World Development Indicators* for which data is available, holding with the Department's preference to use more data. Forever Holdings argues that the Department's unsubstantiated exclusion of certain countries from the regression analysis cannot be a random sample and that sampling is unnecessary given the small population. Furthermore, with the exclusion of certain countries, the company argues the regression calculation cannot be purported to represent a worldwide relationship between wages and gross national income (GNI). *See* Forever Holdings Case Brief at 12–13.

Forever Holdings argues that the Department should at least use the new calculated wage rate, having corrected for flaws in the wage rate calculation addressed in the remand of *Wooden Bedroom Furniture from the PRC*.³⁴ Forever Holdings asserts that following *Dorbest*, the Department calculated a new value for surrogate wages, which the Department should now apply without delay. *See* Forever Holdings Case Brief at 14–15.

Forever Holdings argues that the Department's updated labor rate remains inconsistent with section 773 of the Act and 19 USC 1677b(c)(4). Citing *Eurodif v. United States*,³⁵ Forever Holdings argues that no regulation or administrative action has credence over the plain language of the statute. Based on the problems with the methodology previously outlined, the respondent asserts that the Department failed to either correct the calculation or explain how the updated regression calculation comports with the statute and legal precedents established by *Dorbest*. Forever Holdings states that if the Department does not use economically comparable countries to comport with the statutory language, the Department should alternatively use the more contemporaneous 2004 regression-based wage rates as recently published. *See* Forever Holdings Rebuttal Brief at 10–11.

Since Hardware also states the Department should use the recently revised NME wage rate based of 2004 labor statistics. It noted that the Department published in the *Federal Register* on January 9, 2007,³⁶ its intent to revise the calculation and received no comments in response.

³² Citing *Dorbest Limited v. United States*, 462 F. Supp. 2d 1262 at 100 (CIT October 31, 2006) (*Dorbest*).

³³ *See Fresh Garlic from the People's Republic of China: Partial Rescission and Preliminary Results of the Eleventh Administrative Review and New Shipper Reviews*, 71 FR 71510, 71514 (December 11, 2006) (*Garlic*).

³⁴ *See, e.g., Furniture Investigation*.

³⁵ *Eurodif v. United States*, 411 F.3d 1355 (CAFC 2005).

³⁶ *See Expected Non-Market Economy Wages: Request for Comments on 2006 Calculation*, 72 FR 949 (January 9, 2007).

Therefore, Since Hardware argues that the Department should formalize its revised wage rate and apply the new rate to its margin. *See* Since Hardware Case Brief at 6-7.

Petitioners provided no comments on the wage rate.

Department's Position:

The Department has reconsidered the data set used in the updated calculation of the surrogate wage rate, and as more fully described below, has determined to include all data that meet the Department's suitability requirements and that were available at the time the wage rate was calculated.

The Department is not required by statute to limit its data set in its regression analysis to economically comparable countries; however, the Department considered this option.³⁷ The Department found that restricting the basket of countries to include only countries that are economically comparable to each NME is not feasible and would undermine the consistency and predictability of the Department's regression analysis. A basket of "economically comparable" countries could be extremely small. For example, there are only three countries with GNI less than US\$1,000 in the Department's revised 2004 expected NME wage rate calculation and many NME countries' GNI are around this range. A regression based on an extremely small basket of countries would be highly dependent on each and every data point.

Moreover, relative basket size would not be such a critical factor if there were a perfect correlation between GNI and wage rates. If this were the case, data from only two countries would be sufficient to calculate a precise regression line. However, as the Department has noted repeatedly, while there is a strong worldwide relationship between wage rates and GNI, there is nevertheless variability in the data.³⁸ For example, in the data relied upon for the Department's revised 2004 calculation, observed wage rates did not increase in lockstep with increases in GNI in the five countries with GNI less than US\$1,000: Nicaragua, with a GNI of US\$720, had reported a wage rate of US\$0.94 per hour while Sri Lanka, with a GNI of US\$850, had reported a wage rate of US\$0.33 per hour.

This inevitable variability in the underlying ILO data is especially true in the case of countries with a lower GNI where wage rates can be so low that even a difference of a few cents can appear to be enormous if represented in percentage terms. Because reliable wage rate data is available and there exists a consistent relationship between wage rates and GNI over time, the Department is able to avoid periodic variability through the use of a regression-based methodology for estimating wage rates. The Department calculates, in essence, an average wage rate of all market economies, indexed to each NME's level of economic development via its GNI. Using the Department's regression methodology, the value for labor in a particular country

³⁷ *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006).

³⁸ *See* Memorandum to the File through James C. Doyle, Director, Office 9, and Christopher D. Riker, Program Manager, AD/CVD Operation, Office 9, from Bobby Wong, International Trade Analyst, Office 9, and Kristina Horgan, Senior International Trade Analyst, Office 9, regarding Factors of Production Valuation Memorandum for the Final Results of Antidumping Administrative Review of Floor-standing, Metal-top Ironing Tables and Certain Parts Thereof from the People's Republic of China (March 12, 2007) at Attachment 3.

remains consistent despite the possible selection of different surrogate countries. This enhances the fairness and predictability of the Department's calculations.

As stated above, a larger basket minimizes the effects of any single data point and, thereby, better captures the global relationship between wage rates and GNI. More data is, therefore, better than less data for the purposes of the Department's regression analysis, provided it is suitable and reliable.³⁹

In response to Forever Holdings' argument regarding the distortive effect of the regression model in predicting India's wage rate, the Department cannot purport to produce perfect wage rates with its regression methodology, as no estimate ever can claim such precision. However, there is no inherent distortion in the model that would lead to systematic overestimation or underestimation of wages. The Department acknowledges that its regression line provides only an estimate of what an NME's hourly wage rate would be within a mathematically derived margin of error based on the wage rates and GNI data from market economies. As with any estimate based on a pool of data, some data will fall above the estimate and some data will fall below the estimate.

While Forever Holdings points specifically to India as an example of wages "overstated" by the regression calculation, there are a significant number of predicted wage rates that also are above the regression line, *i.e.*, economies for which the model would "understate" wage rates; in all, 23 of the 58 countries included in the model lie above the regression line. India's wage rate is the lowest reported wage rate in the Department's data set, despite not being the lowest GNI per capita. Still, the Department treats India's wage rate not as an anomaly, but as another piece of data that informs the regression line. However, given that India's wage rate is so much lower than that of other countries in relation to its GNI, any calculation that relies on data from other countries would overstate India's actual reported wage. Because India's wage rate is so low relative to its GNI, the regression, unsurprisingly, also "overstates" India's wage rate, and can lead to an appearance of distortion, even where there is none, such that the calculated wage rate falls within an acceptable margin of error.

The Department's regression methodology is superior to a single country's wage rate because the regression methodology ameliorates any country-specific distortion that would cause variation in the data, ties the estimated wage rate directly to each NME's GNI, and provides predictable results that are as accurate as possible. The Department finds that the regression-based methodology does not distort or systematically overestimate wage rates in general; rather, the regression line serves to smooth out the differences in the reported wage rates. By ensuring the data in the regression includes all earnings data that best reflect the dynamics of contemporaneous labor markets and represents both men and women in all reporting industries, the Department is able to minimize many potential distortions. Therefore, using a large basket of data is less susceptible to both the country-by-country, as well as the as the year-on-year, variability in data and enables the Department to arrive at the most accurate, predictable, and fair surrogate value for labor.

³⁹ See *Antidumping Duties; Countervailing Duties Part II*, 61 FR 7308, 7345 (February 27, 1996) and *Final Rule*, 62 FR at 27367.

In response to Forever Holdings' contention that calculating wage rates using the PRC's GNI is contrary to the Department's surrogate value policy, the Department acknowledges that the GNI of an NME such as the PRC may reflect, at least to some extent, non-market income data, which is inherently unreliable. However, the Department finds that each NME's GNI, as published in the World Bank Indicators, is the "best available" metric for establishing economic comparability for all surrogate values, including labor. There are no other sources or metrics available that would be untainted by the non-market nature of the economy underlying an NME's GNI, nor has such a metric been suggested. Further, an NME's GNI is the metric that the Department routinely uses in NME cases to establish economic comparability of the surrogate country used to value other surrogate values. Given that there is no better source available or suggested, the Department finds no reason to deviate from its practice of relying on the PRC's GNI in this case.

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

For these reasons, consistent with the regulation and the statute, the Department's revised wage rate calculation applied to this review relies on a significantly larger basket of countries than was used in the preliminary results. A larger basket maximizes the accuracy of the regression results, minimizes the effects of the potential year-to-year variability in the basket, and provides predictability and fairness. Importantly, the Department notes that economic comparability is established in the regression calculation through the GNI of the NME in question, which ensures that the result represents a wage rate for a country economically comparable to the NME. Using the revised data set, the recalculated wage rate for the PRC in this review is US\$0.83.

Comment 4: Zeroing

Forever Holdings argues that the Department should eliminate the practice of zeroing in administrative reviews, and in particular eliminate zeroing the negative margins in Forever Holdings' weighted-average margin calculation in the current review. The respondent argues that the WTO Appellate Panel found that the U.S. practice of zeroing is inconsistent with the Anti-Dumping Agreement and GATT.⁴⁰ Moreover, Forever Holdings argues that the Department should construe the Appellate Panel decision consistent with its international obligations.⁴¹ Forever Holdings argues that the Department should extend the decision to apply the recent decision to make average-to-average comparison methodology in antidumping

⁴⁰ See *United States—Measures Relating to Zeroing and Sunset Reviews*, at p.190(c), WT/DS322/AB/R (January 9, 2007).

⁴¹ See *Alexander Murray v. Schooner Charming Betsy*, 6 U.S. 64, 118 (1804); and *Luigi Bormioli Corp. v. U.S.*, 304 F.3d 1362, 1368 (Fed. Cir. 2002).

investigations⁴² to antidumping administrative reviews. *See Forever Holdings’ Case Brief* at 4–6.

Forever Holdings asserts that in implementing the Uruguay Round Agreements, the U.S. Congress provided for a special exception⁴³ to administer rules for zeroing and the Department’s need to protect against “spot”⁴⁴ or “targeted”⁴⁵ dumping. Forever Holdings argues that the Department should not apply zeroing, which violates an international agreement and section 777A(d)(1)(B) of the Act, where no allegation of “spot” or “targeted” dumping was made. *See Forever Holdings Case Brief* at 6–7. Furthermore, Forever Holdings argues that pursuant to 19 CFR 351.301(d)(5), petitioner missed the deadline to file an allegation of targeted dumping; thus Forever Holdings argues the Department cannot rely on targeted dumping as the basis for zeroing negative dumping margins. *See Forever Holdings Case Brief* at 7.

Petitioner rebuts these comments by arguing that it is the court-endorsed and consistent practice of the Department to “zero-out” negative margins,⁴⁶ and deny any “off-sets” from negative margins. Petitioner asserts that the Department recently explained that it interprets 19 USC 1677(35)(A) to mean that dumping margins only exist when normal value exceeds the export or constructed export price (EP/CEP).⁴⁷ Petitioner argues that the courts have upheld the Department’s zeroing methodology, citing *Timken*⁴⁸ and *Corus Staal BV*.⁴⁹ In citing the WTO DSP report,⁵⁰ petitioner argues that the Department should apply non-zeroing only to investigations.⁵¹ *See Petitioner Rebuttal Brief* at 16–18.

Department’s Position:

Section 771 (35)(A) of the Act defines “dumping margin” as the “amount by which the normal value *exceeds* the export price and constructed export price of the subject merchandise.” (emphasis added). The Department interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than export or constructed export price. As no dumping margins exist with respect to sales where normal value is equal to or less than export or constructed export price, the Department will not permit these non-dumped sales to offset the

⁴² *See Antidumping Proceedings: Calculation of the Weighted-Averaged Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722, 77725 ((December 27, 2006) (*WA Margin Final Modification*)).

⁴³ *See* 19 CFR 351.414(f), section 777A(d)(1)(B) of the Act, and the *Statement of Administrative Action Accompanying the Uruguay Round Trade Agreements Act (SAA)* at 843.

⁴⁴ *See Bowe Passat Reinigungs-Und Waschereitechnik GMBH v. United States*, 926 F. Supp. 1138, 1149 (CIT 1996) (*Bowe*).

⁴⁵ *See Timken v. United States*, 354 F.3d 1334, 1343 (Fed. Cir. 2004) (*Timken*).

⁴⁶ *See Persulfates 2002-2003*, and accompanying Issues and Decision Memorandum at Comment 10.

⁴⁷ *See Stainless Steel Sheet and Strip in Coils from Germany: Notice of Final Results of Antidumping Administrative Review*, 71 FR 74897 (December 13, 2006), and accompanying Issues and Decision Memorandum at Comment 4.

⁴⁸ *See Timken*.

⁴⁹ *Corus Staal BV v. Department of Commerce*, 395 F.3d 1343 (Fed. Cir. 2005), reh’g denied, 2005 US App Lexis 10462 (Fed. Cir. 2005), cert. denied, 126 S. Ct. 1023, 163 L. Ed. 2d 853 (January 9, 2006) (*Corus Staal BV*).

⁵⁰ WTO Dispute Settlement Procedures (DSP) Report *United States—Laws, Regulations and Methodology for Calculating Dumping Margins*, WT/DS294 (October 2005).

⁵¹ *See WA Margin Final Modification*, 71 FR at 77724.

amount of dumping found with respect to other sales. The U.S. Court of Appeals for the Federal Circuit has held that this is a reasonable interpretation of the statute.⁵²

With respect to *US – Zeroing (EC)*, the Department recently announced that it was modifying its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations.⁵³ In doing so, Commerce declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews.⁵⁴ In addition, the United States has not yet gone through the statutorily mandated process of determining how to implement the report with respect to the specific administrative reviews that were subject to the *US – Zeroing (EC)* dispute.⁵⁵ As such, the Appellate Body’s reports in *US – Softwood Lumber*, *US – Zeroing (EC)* and *US – Zeroing (Japan)* have no bearing on whether the Department’s denial of offsets in this administrative determination is consistent with U.S. law.⁵⁶ Accordingly, the Department will continue in this case to deny offsets to dumping based on export transactions that exceed normal value.

Comment 5: Appropriate Surrogate Value for Hot-Rolled Steel

Petitioner argues that the Department inadvertently erred in applying the surrogate value for hot-rolled steel. Petitioner argues that the Department should use the value as recommended by Forever Holdings.⁵⁷ See Petitioner Case Brief at 15.

Department’s Position:

The Department agrees with the petitioner that it erred in the *Preliminary Results* by applying the incorrect surrogate value for hot-rolled steel to Forever Holdings’ normal value calculation. In the preliminary results, the Department incorrectly applied HTS 7208.27.30, which included “pickled steel.” There is no evidence on the record to suggest that Forever Holdings consumed pickled steel in the manufacturing of the subject merchandise. Therefore, for the final results, the Department will use HTS 7208.39.90, as recommended by Forever Holdings in the Forever FOP Submission, to value hot-rolled steel.

Company-Specific Issues

Since Hardware-Related Issues:

Comment 6: Market Economy Purchases

Petitioner asserts that the Department should reject Since Hardware’s market economy (ME)

⁵² *Timken*, 354 F.3d at 1342, cert. denied sub nom. and *Koyo Seiko Co. v. United States*, 543 U.S. 976 (2004). See also *Corus Staal BV*, 395 F.3d at 1347.

⁵³ See *WA Margin Final Modification*, 71 FR at 77724.

⁵⁴ See *Id.*

⁵⁵ See 19 USC 3538.

⁵⁶ See *Corus Staal BV*, 395 F.3d at 1347-49; *Timken*, 354 F.3d at 1342.

⁵⁷ See Letter to the Department of Commerce from Forever Holdings, regarding Forever’s First Surrogate Value Submission: Administrative Review of Floor-Standing, Metal-Top Ironing Tables and Parts Thereof from the People’s Republic of China (April 3, 2006) at Exhibit 9 (Forever FOP Submission).

purchases of various inputs. Petitioner cites the Since Hardware Verification Report⁵⁸ and emphasizes that Since Hardware's largest domestic customer is also a wholly owned subsidiary of Since Hardware's primary ME input supplier, a Chinese-owned, Hong Kong-based company. Petitioner argues that the supplier/customer relationship raises concerns regarding arm's length pricing, which presents the possibility of barter, bundling, and ME purchasing price manipulation. Petitioner argues that, pursuant to 19 USC 1677(33) and under direct questioning by the Department, Since Hardware had not previously disclosed this supplier/customer relationship and, in fact stated on the record that neither Since Hardware nor Best Unity, the owner of Since Hardware, have any relationship with Since Hardware's ME suppliers.⁵⁹ Furthermore, under 19 CFR 351.102(b), petitioner contends, the Department should find the supplier/customer relationship as potential for control, including the potential for the relationship to impact decisions on production, pricing, and cost.⁶⁰ See Petitioner Case Brief at 6-8.

Furthermore, petitioner notes that at verification, the Department learned that Since Hardware's general manager had known the owner of the ME supplier for many years. Further, petitioner states, Since Hardware made payment for the ME inputs to the Hong Kong ME supplier, rather than to the foreign producer of the materials. Citing 19 CFR 351.408(c), petitioner claims that because Since Hardware never disclosed its knowledge that its ME supplier was Chinese-owned, the entity cannot be considered a ME supplier as provided for by the regulations. See Petitioner Case Brief at 9-10.

Petitioner cites 19 USC 1677e(a)(2)(b) and 19 CFR 351.308(a)–(c) and asserts that the Department should apply adverse facts available (AFA) to Since Hardware's alleged ME purchases, as Since Hardware did not disclose salient information about its ME supplier. In addition, petitioner contends, Since Hardware has provided unreliable data in the instant review.

Citing the Since Hardware Verification Report, petitioner asserts that the Department found that Since Hardware had understated freight costs, did not report brokerage and handling costs, misrepresented its ownership structure, failed to disclose inputs used to repair leg tubing, and reported discrepant input weights. Furthermore, petitioner argues that, despite Since Hardware's explanation of its new production facilities, the explanation remains inconsistent with documentation provided by Since Hardware regarding its metal processing facilities lease, which allows Since Hardware the benefit of valuation based on the purchase cost of raw materials rather than processed goods. Petitioner also asserts that documentation pertaining to the lease, collected at verification, contradicts statements⁶¹ made by and documentation⁶² previously submitted by Since Hardware. Petitioner emphasizes that settlement of Since Hardware's

⁵⁸ See Memorandum to the File from James Doyle, Director, Office 9, and Carrie Blozy, Program Manager, Office 9, regarding Verification of the Sales and Factors Response of Since Hardware (Guangzhou) Co. Ltd. in the First Antidumping Administrative Review of Floor-Standing, Metal-Top Ironing Tables People's Republic of China (January 22, 2007) (Since Hardware Verification Report).

⁵⁹ See Letter to the Department of Commerce from Since Hardware, regarding 2nd Supplemental Questionnaire Response (April 26, 2006) at 18.

⁶⁰ Citing *Jinfu Trading Co., Ltd. v. United States*, CIT, Slip Op. 06-137 (2006) at 15 and 27.

⁶¹ See Letter to the Department of Commerce from Since Hardware, regarding the 4th Supplemental Questionnaire Response (July 21, 2006) at 2.

⁶² See *Id.* at Exhibit 3.

previously leased production facilities took over a year, which bears upon the veracity of the question regarding the leased facilities. *See* Petitioner Case Brief at 10-13.

Petitioner argues the Department should deny Since Hardware's ME purchased input claim and disallow any cost benefits from reported ME purchases. Petitioners argue that, because of Since Hardware's improper ME input claims, the Department should apply the surrogate value to certain reported ME purchased inputs. Furthermore, for one of the reported ME purchases, petitioner argues that it is unlikely that respondents would pay the price they paid for that input; therefore, petitioner contends the Department should apply facts available to value this input. Petitioner also notes that Since Hardware reported that it consumed a certain type of cotton fabric and that the surrogate value would not be representative for this input. Petitioner argues that the Department should value cotton fabric at the highest available rate. *See* Petitioner Case Brief at 13-15.

Since Hardware responds to petitioner's comments by arguing that the Department should continue to value Since Hardware's reported and verified ME inputs, as it did in the *Preliminary Results*, based on actual prices paid for these final results. Since Hardware contends that the Department verified its questionnaire responses and found no discrepancies with regard to its reported ME purchases, in general, and specifically "noted no information contrary to Since's reporting regarding the ultimate market economy source of its coils."⁶³ Furthermore, according to Since Hardware, it is the Department's practice to accept a company's ME purchases when the suppliers are located in Hong Kong, which the Department treats as a market economy, and the transactions are conducted in ME currency.⁶⁴ *See* Since Hardware Rebuttal Brief at 12-13.

Regarding the aforementioned prices, Since Hardware claims that at verification the Department examined the extent to which Since Hardware may have received bartered goods or discounted pricing because one of Since Hardware's domestic customers owns the Hong Kong-based trading company through which Since Hardware sourced steel coils, but found no such practice. Rather, the Department's verifiers, Since Hardware contends, confirmed the accuracy of the per-unit prices and country-of-origin of the ME steel purchases.⁶⁵ The Department separately reviewed Since Hardware's sales of merchandise to the domestic customer, the payments this domestic customer made to Since Hardware, and the payments Since Hardware made to the Hong Kong-based trading company, Since Hardware argues, and found no evidence of material purchase price manipulation, bartering, or bundling.⁶⁶ *See* Since Hardware Rebuttal Brief at 13-16.

Since Hardware also claims that the Department should disregard petitioner's arguments regarding Since Hardware's ME purchases because petitioner cited no record evidence that: 1) any of Since Hardware's ME purchases were aberrant, 2) Since Hardware was affiliated with any of its suppliers, 3) Since Hardware purchased materials from ME suppliers that were actually

⁶³ *See* Since Hardware Verification Report at 28.

⁶⁴ Citing *Color TVs Final*, and accompanying Issues and Decision Memorandum at Comment 8, citing *Certain Preserved Mushrooms From the People's Republic of China: Final Results of First New Shipper Review and First Antidumping Duty Administrative Review*, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 7.

⁶⁵ *See* Since Hardware Verification Report at 28 and Verification Exhibit 24.

⁶⁶ *See Id* at 27.

produced in NME countries, or 4) Since Hardware did not actually use the materials purchased from ME suppliers to produce subject merchandise during the POR. Furthermore, although petitioner's case brief implies that there is something inherently suspicious about Since Hardware purchasing steel inputs from a Hong Kong affiliate of one of its many customers, Since Hardware argues that it is only logical that it decided to work with a company it knew, and that it purchased imported steel in response to customer demand. Again, Since Hardware claims, the Department verified the circumstances surrounding the ME purchases, including the business reasons behind Since Hardware's decisions to source these inputs from this particular supplier.⁶⁷ See Since Hardware Rebuttal Brief at 16-17.

Since Hardware contends that the Department should continue to calculate Since Hardware's dumping margin based on the company's reported information and should not apply AFA to the final results because its questionnaire responses are reliable and have been verified as such. Given the vast amount of information required by the Department in its questionnaires, Since Hardware claims, the minor and isolated errors contained in Since Hardware's response are inconsequential and do not warrant AFA. See Since Hardware Rebuttal Brief at 18.

Regarding freight distances, Since Hardware states that it reported the distances between the company's main facility and its leased steel processing and plating workshops,⁶⁸ contrary to petitioner's assertions, and the Department should not modify its dumping margin to include the freight costs between the two facilities because these costs are already captured in the factory overhead ratio. Moreover, Since Hardware claims, the Department did not use these inter-facility freight distances to calculate its normal value in the *Preliminary Results*, which is consistent with the Department's practice⁶⁹ that inter-facility freight expenses are likely captured in the surrogate financial ratios and would be double counted if the Department valued them separately. See Since Hardware Rebuttal Brief at 19.

Regarding brokerage and handling expenses, Since Hardware states that the Department should not add material purchase-related brokerage and handling expenses to Since Hardware's margin calculation for its imported materials because they are already captured in the 2005 Godrej financial statements, from which the surrogate financial ratios were derived in the *Preliminary Results*. Whether or not the Department decides to do this, Since Hardware contends, the Department must adjust the calculation of the Godrej financial ratios for the final results. Since Hardware argues that the Department should include the "Freight, Transport, and Delivery Charges" expense, which it excluded in the *Preliminary Results* financial ratios calculation, in the denominator of the surrogate financial ratios because it captures freight expenses on purchases of raw materials. Since Hardware also argues that the Department should exclude the "Motor Car and Lorry" expenses from SG&A, where the Department included this expense in the *Preliminary Results*, because this expense related to freight expenses incurred on the sale of merchandise.⁷⁰ See Since Hardware Rebuttal Brief at 20.

⁶⁷ See *Id.*

⁶⁸ See the FOP database submitted with the Letter to the Department of Commerce from Since Hardware, regarding Supplemental Questionnaire Response (February 2, 2006).

⁶⁹ See *Notice of Final Determination of Sales of Less Than Fair Value: Collated Roofing Nails from the People's Republic of China*, 62 FR 51410 at 51417 (October 17, 1997).

⁷⁰ See 2004-2005 Godrej & Boyce Financial Statements at 34, Schedule T, note 14.

Since Hardware also contends that the Department should not adjust its margin calculation in the final results to account for the consumption of certain overhead items, including oxygen, borax, argon welding rod, and argon. Since Hardware claims that the Department found at verification that while Since Hardware did not report these inputs, it verified that there was no information contrary to Since Hardware's explanation that the company did not report these factors because they are only used in small amounts and for the repair of production machines or the occasional repair of tables.⁷¹ The Department's well-established practice, according to Since Hardware, is to determine whether to value an item as a direct material or an overhead item by evaluating if the item is continuously used in the production process, or occasionally or intermittently used.⁷² The materials listed, Since Hardware claims, are not incorporated physically into the production of subject merchandise, and are primarily used to repair production machines and occasionally used to repair ironing table legs. The Department has defined the difference between direct materials and other materials, Since Hardware argues, as direct materials being incorporated into the product.⁷³ Because the overhead items identified during the Department's factory tour at verification are not physically incorporated into the finished product, Since Hardware claims, they are not direct materials. Rather, Since Hardware argues, its costs should be considered captured by the surrogate overhead ratio, because otherwise the Department would be double-counting the value of those inputs. *See* Since Hardware Rebuttal Brief at 20-24.

Regarding its reported finished goods and parts weights, Since Hardware claims that the Department verified⁷⁴ the accuracy of these weights and verified that they were within fractions of a kilogram of the weights reported in Since Hardware's questionnaire responses. Therefore, Since Hardware states, the Department should rely on the reported weights for the final results. Finally, regarding the start-up date of the metal fabrication facility, according to Since Hardware, the Department should not adjust Since Hardware's margin because of the miscommunication between Since Hardware officials and its counsel regarding such date. At verification, Since Hardware claims, counsel admitted its error regarding the date and provided the Department's verifiers with full access to all relevant fixed-asset, construction-related, and machinery purchase documentation and accounting ledgers. In the verification report,⁷⁵ Since Hardware claims, the Department stated that, "none of the examined information supported a date after October 2004." Since Hardware claims that the company properly reported all steel materials consumed in the production of subject merchandise. *See* Since Hardware Rebuttal Brief at 24-25.

Department's Position:

Petitioner raises concerns with the ME prices reported by Since Hardware, including concerns regarding verification findings pertaining to these inputs. With regard to the Department's verification findings, however, the Department cannot conclude from record evidence that the

⁷¹ *See* Since Hardware Verification Report at 2 and 11.

⁷² Citing, e.g., *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006), and accompanying Issues and Decision Memorandum at Comment 7.

⁷³ *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026 at 19040 (April 30, 1996).

⁷⁴ *See* Since Hardware Verification Report at 25-27.

⁷⁵ *See Id.* at 2.

minor inaccuracies in Since Hardware's data render the whole of Since Hardware's responses unreliable or represent a failure by Since Hardware to cooperate with the Department regarding the reporting of these inputs.

The Department intends to adjust for certain verification findings in these final results, such as adding a freight factor to Since Hardware's steel inputs to account for the freight distance between its factory and steel processing facility and adding brokerage and handling expenses, which Since Hardware incurred from an NME supplier on Since Hardware's importations of inputs.⁷⁶ The few other findings that the Department noted in its verification report, such as the failure to disclose inputs used to repair leg tubing and the date that Since Hardware activated its on-site steel processing facility, were inconsequential and do not call into question the overall reliability of Since Hardware's reported data. For instance, Department verifiers noted in the report, with respect to the unreported inputs, that "Since {Hardware} explained that it did not report these factors because they are used only in small amounts and only for repair of production machines or occasional repair of table legs. The team examined inventory in and out records as well as purchase records, and found no information contrary to Since {Hardware}'s explanation."⁷⁷ Regarding activation of Since Hardware's on-site steel processing facility, the Department notes in the verification report that "{n}one of the examined information supported a date after October 2004," despite indication to the contrary in Since Hardware's responses.⁷⁸

In addition, the Department did not list the discrepant input weights that petitioner discusses as a finding in its verification report. This is because the Department, in examining the weights of Since Hardware's reported inputs, found that some weights were over-reported and some weights were underreported (most by very small amounts). Moreover, the Department found no indication that Since Hardware systematically under- or over-reported its data, or evidence to suggest that the data was unreliable. Overall, while the Department found at verification that some of Since Hardware's data had been incorrectly reported, the record does not support a finding that the data is so insufficient or unreliable as to call into question the whole of Since Hardware's responses to the Department.

Despite the position above, however, the Department shares the petitioner's primary concern that there is a potential, in situations where a supplier is physically located in a ME, but overwhelmingly owned by an entity(ies) located in an NME, that such a supplier may make pricing decisions based on NME rather than ME principles. Because of the ownership situation surrounding the supplier of several of Since Hardware's inputs, the Department has determined that additional scrutiny of Since Hardware's purchases is appropriate in this instance.

For these final results, the Department examined the average purchase price of each input purchased by Since Hardware from the NME-owned supplier, and compared the average purchase prices to international market prices derived from annualized export statistics obtained

⁷⁶ See Memorandum to the File through Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, from Bobby Wong, International Trade Analyst, AD/CVD Operations, Office 9, regarding Since Hardware (Guangzhou) Co. Ltd. (Since Hardware) Analysis Memorandum for the Final Results of Review (March 12, 2007) (Since Hardware Analysis Memo).

⁷⁷ See Since Hardware Verification Report at 11.

⁷⁸ See *Id.* at 2.

from World Trade Atlas (WTA) for the country from which the input was originally produced.⁷⁹ For a comparison of the average purchase prices to the WTA country-specific export statistics, *see* the Since Hardware Analysis Memo. This comparison shows that Since Hardware's POR purchases of hot rolled steel coil, powder coating, and nails were all made at prices that were at or above the international market price based on WTA export statistics.⁸⁰ Because these prices are at or above the international market price, the Department finds that the record of the review contains no evidence that Since Hardware's purchases of these inputs were made at prices not reflective of ME principles. Additionally, at verification, the Department performed numerous checks regarding the payment for these goods between Since Hardware and its supplier and found no evidence to suggest that price manipulation, bundling or bartering had occurred.⁸¹ Therefore, the Department will value Since Hardware's consumption of hot rolled steel coil, powder coating, and nails using the purchase prices referenced above, as adjusted per findings made at verification.⁸²

However, a comparison of the average purchase prices for other inputs sourced from this supplier (*i.e.*, cold rolled steel coil, steel wire rod, cotton fabric, springs, bolts, and rivets) to appropriate WTA export statistics shows that these purchases were made at prices below the international market prices. The Department therefore finds that record evidence indicates that purchases of these inputs may not be reflective of ME principles (*i.e.*, the prices were below the international market price based on the WTA statistics). Therefore, the Department finds that the best available information for valuing cold rolled steel coil, steel wire rod, cotton fabric, springs, bolts, and rivets are the relevant Indian surrogate values, rather than the purchases prices paid by Since Hardware to the NME-owned supplier. As such, the Department has relied on the relevant Indian surrogate values for the inputs listed above for purposes of these final results.

Comment 7: By-Product Offset

Since Hardware argues that for the final results the Department should apply its by-product offset in the cost of manufacturing (COM) calculation to which the surrogate overhead ratio is applied. In the *Preliminary Results*, Since Hardware states, the Department incorrectly adjusted its by-product offset after the application of surrogate financial ratios in the normal value calculation. Since Hardware contends that the Department's normal practice is to include the by-product offset in the COM calculation when the surrogate company, from which the surrogate value financial ratios are derived, treats its by-product sales as a reduction to raw materials rather than as a revenue item. *See* Since Hardware Case Brief at 7.

⁷⁹ Where possible, the Department utilized the HTS category with the greatest degree of detail that was clearly comparable to the input in question. In other words, where possible the Department first sought to use 10-digit HTS data, then 8-digit, then, in a few instances, broader 6-digit categories to find the HTS category that most closely represented the input in question for the POR. *See Id.*

⁸⁰ *See* Since Hardware Analysis Memo.

⁸¹ *See* Since Hardware Verification Report at 27-28.

⁸² *See* Since Hardware Analysis Memo.

Since Hardware points to the final results of the recent administrative review of *Folding Metal Tables and Chairs from the People's Republic of China*⁸³ as one of the cases where the Department determined that the by-product offset should be applied to the respondent's COM calculation rather than deducted from normal value. That case, Since Hardware states, used the same surrogate company, the 2004-2005 Godrej & Boyce financial statements, as the Department used to calculate the surrogate financial ratios for the *Preliminary Results* in the instant review. These financial statements make clear, Since Hardware argues, that Godrej offsets the total value of its raw material purchases with the value of any scrap sales during the fiscal year.⁸⁴ Therefore, the Department should follow its normal practice and use the same methodology as it did in the *FMTC Final* to account for the by-product offset in Since Hardware's normal value calculation. See Since Hardware Case Brief at 7-8.

Petitioner claims that, as it argues in Comment 1, Godrej is not the appropriate surrogate producer to be used for the calculation of financial ratios; therefore, petitioner contends, Since Hardware's point on this matter should be considered moot. Agew Steel, petitioner contends, is the appropriate choice for surrogate producer and it values its raw materials "at cost," according to its financial statements. Infiniti Modules does the same, petitioner claims; therefore, if the Department uses an average of Agnew Steel and Infiniti Modules, petitioner argues, Since Hardware's point is still moot. See Petitioner Rebuttal Brief at 21-22.

Department's Position:

As discussed in depth in Comment 1, the Department has determined to use the financial statements from Infiniti Modules to calculate the surrogate financial ratios for these final results. Therefore, the issue of how Godrej classifies its by-product offset is moot. In examining Infiniti Module's financial statements, we cannot find any indication that Infiniti Modules treats its by-product sales as a reduction to raw materials rather than as a revenue item. Therefore, for these final results, we will continue to apply all of the respondents' claimed by-product offsets to the calculation of normal value.

⁸³ See *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 71509 (December 11, 2006), and accompanying Issues and Decision Memorandum at Comment 8.

⁸⁴ See note 11 on page 34 of the 2004-2005 Godrej & Boyce financial statements, as found in attachment 7 of the Memorandum to the File through James C. Doyle, Director, Office Director, AD/CVD Operations, Office 9, and Carrie Blozy, Program Manager, AD/CVD Operations, Office 9, from Kristina Horgan, Senior International Trade Compliance Analyst, AD/CVD Operations, Office 9, and Bobby Wong, International Trade Compliance Analyst, AD/CVD Operations, Office 9, regarding Factors of Production Valuation Memorandum for the Preliminary Results of Antidumping Administrative Review of Floor-standing, Metal-top Ironing Tables and Certain Parts Thereof from the People's Republic of China (August 31, 2006) at Attachment 3.

Foshan Shunde-Related Issues:

Comment 8: Rescission of Shunde Yongjian and Foshan Shunde

Petitioner argues that the Department has been confused about the relationship between Shunde Yongjian Housewares Co., Ltd. (Shunde Yongjian) and Foshan Shunde in the current review. As the record shows,⁸⁵ petitioner states, on August 26, 2005, Shunde Yongjian requested a review of its exports of subject merchandise during the POR, while on August 31, 2005, Shunde Yongjian clarified to the Department that the instant review should include a variation of its name, Foshan Shunde. The Department announced in the *Preliminary Results*,⁸⁶ petitioner continues, that it would look into whether Foshan Shunde is the successor-in-interest to Shunde Yongjian. *See* Petitioner Brief at 16-17.

Petitioner argues that during the POR Shunde Yongjian and Foshan Shunde were two separate companies, located in separate facilities, and operating in separate market spheres. It adds that no interested party disputes that the companies had common ownership until Shunde Yongjian was sold, or that Shunde Yongjian made no shipments of subject merchandise to the United States during the POR. The question is, petitioner contends, whether the companies should be collapsed or if Foshan Shunde is the successor in interest to Shunde Yongjian. *See* Petitioner Brief at 17.

Petitioner argues that a relationship via cross ownership does not require in and of itself that the entities be collapsed. Rather, petitioner states, relationship questions arise because it is important to consider if one entity can control the other entity to such an extent that transactions between the two entities would not be considered to be at arm's length. Citing responses to the supplemental questionnaires⁸⁷ issued by the Department, petitioner contends that there was clearly no cross-company influencing of product pricing because Foshan Shunde stated that Shunde Yongjian sold no subject merchandise to the United States during the POR. Moreover, petitioner asserts, none of the merchandise produced by Shunde Yongjian shared the same CONNUMS with the products produced and sold to the United States by Foshan Shunde. Petitioner further states that, according to the supplemental questionnaire responses, any input materials transferred from Shunde Yongjian to Foshan Shunde happened after Shunde Yongjian's production had ceased and that products made from those inputs were not channeled through Shunde Yongjian, which liquidated its inventory. Therefore, it contends, this one-time exchange of materials had no potential impact on decisions concerning the production, pricing, or cost of the subject merchandise, as the Department's regulations⁸⁸ stipulate. Petitioner argues that the companies operated independently of one another in different markets, *i.e.*, non-U.S. and U.S. markets, and therefore collapsing is unwarranted. *See* Petitioner Brief at 17-18.

Petitioner further contends that a successorship finding is unwarranted. Because the supplemental questionnaire responses stated that Foshan Shunde received no key assets from the

⁸⁵ *See Preliminary Results*, 71 FR at 53655.

⁸⁶ *See Id.*, 71 FR at 53656.

⁸⁷ *See* Letter to the Department of Commerce from Foshan Shunde, regarding Fifth Supplemental Questionnaire Response (September 14, 2006) (Foshan Shunde 5th supplemental response).

⁸⁸ 19 CFR 351.102(b).

sale of Shunde Yongjian and that some of Shunde Yongjian's raw material was sold at market price to Foshan Shunde, petitioner argues that the parties' relationship did not influence transactions between them and that other entities received assets from Shunde Yongjian's sale. Therefore, it argues, the review should be rescinded for Shunde Yongjian because it had no sales to the United States during the POR. *See* Petitioner Brief at 18-19.

Foshan Shunde argues that the Department correctly granted it a separate rate in the *Preliminary Results* and that the Department used the record developed in the instant review to take into account that Foshan Shunde has demonstrated it is the successor in interest to Shunde Yongjian. Foshan Shunde points out that the Department stated in the *Preliminary Results* that it would further evaluate the successorship issue and that the Department did so by issuing a supplemental questionnaire and verifying the submissions made by Foshan Shunde. Foshan Shunde contends the Department should find that Foshan Shunde is the successor-in-interest to Shunde Yongjian and continue to calculate a separate rate for Foshan Shunde in the final results. Foshan Shunde notes that a collapsing analysis is not appropriate because Shunde Yongjian and Foshan Shunde never had simultaneous production activities and Shunde Yongjian did not produce the merchandise under review during the POR, which was verified by the Department.⁸⁹ Because of this, Foshan Shunde claims, there is no risk of price or production manipulation between Shunde Yongjian and Foshan Shunde, as contemplated by the Department's regulations.⁹⁰ *See* Floor-Standing, Metal-Top Ironing Tables and Parts Thereof from the People's Republic of China: Foshan Shunde's Case Brief (January 30, 2007) (Foshan Shunde Case Brief) at 1-2.

Foshan Shunde states that the Department examines several factors in making a successor-in-interest finding, including changes in the proposed successor company's management, production facilities, supplier relationships, and customer base.⁹¹ In general, Foshan Shunde argues, the Department finds a new company to be the successor to a previous company if the new company's operations are essentially inclusive of the predecessor's operations. Record evidence shows, Foshan Shunde contends, that this is the case for Foshan Shunde and it should be assigned the same cash deposit rate as its predecessor, Shunde Yongjian. *See* Foshan Shunde Case Brief at 2-3.

Foshan Shunde argues that the Department should see from its verification findings and through record evidence that Foshan Shunde and Shunde Yongjian are essentially the same in terms of management, production facilities, supplier networks, and customer base. Regarding management, Foshan Shunde claims, record evidence⁹² shows that the vast majority of individuals, including Foshan Shunde's current general manager, who managed key areas—such as the sales, production, technology, and purchasing departments—at Shunde Yongjian either

⁸⁹ *See* Memorandum to the File from Kristina Horgan, Senior Case Analyst, Office 9, and Bobby Wong, Case Analyst, Office 9, regarding Verification of the Sales & Factors Responses of Foshan Shunde Yongjian Housewares & Hardware Co., Ltd. in the Antidumping Duty Review of Floor-Standing Metal-Top Ironing Tables and Parts Thereof from the People's Republic of China (January 22, 2007) (Foshan Shunde Verification Report) at 3-4.

⁹⁰ *See* 19 CFR 351.401(f)(1).

⁹¹ *See, e.g., Stainless Steel Plate in Coils from Belgium: Preliminary Results of Antidumping Administrative Review*, 69 FR 32501, 32503 (June 10, 2004) (*Belgium Steel Plate FR*) (citing *Notice of Final Results of Antidumping Administrative Review: Stainless Steel Sheet and Strip in Coils from France*, 68 FR 69379 (December 12, 2003)).

⁹² *See* Foshan Shunde 5th supplemental response, dated September 14 and 15, 2006, at Exhibit 3 (Foshan Shunde 5th supplemental response) and the Foshan Shunde Verification Report at 1.

moved on to or concurrently held positions at Foshan Shunde that were either at a level of substantially the same or increased responsibility of those formerly held at Shunde Yongjian. The Department verified this, Foshan Shunde contends, and the records shows that the individuals in charge of all major aspects of the companies' operations remained the same after the transition between operations at Shunde Yongjian and Foshan Shunde in the summer of 2004. *See* Foshan Shunde Case Brief at 3-5.

Regarding production facilities, according to Foshan Shunde, the Department verified that Shunde Yongjian was liquidated after Foshan Shunde was established and that Shunde Yongjian sold its production machinery and remaining raw materials to Foshan Shunde. The Department also verified, Foshan Shunde claims, that an investor of Foshan Shunde received the money related to the sale of assets.⁹³ Foshan Shunde states that in its supplemental responses⁹⁴ it reported that Shunde Yongjian shut down its operations because its facilities were too small to accommodate its growth and that Shunde Yongjian sales staff was charged with selling off Shunde Yongjian's remaining inventory, while the staff assumed new responsibilities at Foshan Shunde. These examples demonstrate, Foshan Shunde argues, that the companies had similar production and sales activities and the same management. *See* Foshan Shunde Case Brief at 5-6.

Furthermore, Foshan Shunde contends, it is reasonable that Foshan Shunde expanded its production capabilities in the wake of Shunde Yongjian's growth, and record evidence⁹⁵ shows that Foshan Shunde's plans included expanded production facilities and larger workshops than those available at Shunde Yongjian. Again, Foshan Shunde states, the Department verified this information.⁹⁶ Record evidence and the Department's verification report also show that both companies, Foshan Shunde contends, concentrate on the production of ironing tables, including subject ironing tables, using the same machinery and personnel to do so.⁹⁷ Therefore, Foshan Shunde argues, the record conclusively shows that the production activities of Shunde Yongjian remained unchanged at Foshan Shunde. *See* Foshan Shunde Case Brief at 6-7.

Finally, regarding supplier network and customer base, Foshan Shunde argues, the company retained the same business relationships that had been maintained at Shunde Yongjian. Because Foshan Shunde received Shunde Yongjian's equipment and raw materials, as stated earlier, Foshan Shunde contends, it inherited the supplier networks associated with the machinery and raw materials. Moreover, Foshan Shunde states, the record⁹⁸ demonstrates that Foshan Shunde maintained the same purchasing manager as Shunde Yongjian. The Department found no information to the contrary at verification, it states. The record⁹⁹ also shows that Foshan Shunde's POR sale of subject merchandise, Foshan Shunde claims, was made to a longstanding

⁹³ *See* Foshan Shunde Verification Report at 4 and Verification Exhibit 2.

⁹⁴ *See* Letter to the Department of Commerce from Foshan Shunde, regarding 1st Supplemental Questionnaire Response (February 28, 2006) (Foshan Shunde 1st supplemental response) at 1; the Foshan Shunde 5th supplemental response at 2; and the Foshan Shunde Verification Report at 17-18.

⁹⁵ *See* Letter to the Department of Commerce from Foshan Shunde, regarding 2nd Supplemental Questionnaire Response (July 13, 2006) (Foshan Shunde 2nd supplemental response) at 6; the Foshan Shunde 1st supplemental response at 1, and the Foshan Shunde Verification Report at 17-18

⁹⁶ *See* Foshan Shunde Verification Report at 2-7 and Verification Exhibits 1-2.

⁹⁷ *See Id* at 3-4.

⁹⁸ *See Id* at 7 and Verification Exhibit 2.

⁹⁹ *See Id* at Verification Exhibit 7.

customer of Shunde Yongjian. Sales documentation examined by the Department at verification, it contends, illustrates the companies' long-standing business relationship. Furthermore, it argues, the Department verified that models included in the POR sale of subject merchandise were made by Shunde Yongjian in the past.¹⁰⁰ See Foshan Shunde Case Brief at 7-8.

In sum, because Foshan Shunde has satisfied all four of the criteria it outlined as necessary for establishing a successor in interest relationship between Shunde Yongjian and Foshan Shunde, Foshan Shunde maintains, the Department should find that Foshan Shunde is the successor in interest to Shunde Yongjian and assigned Foshan Shunde the same cash deposit rate as its predecessor company Shunde Yongjian in the final results. See Foshan Shunde Case Brief at 8.

Petitioner argues that the Department found in the *Preliminary Results* that Shunde Yongjian had no POR sales of subject merchandise to the United States and thus did not warrant review. Even Foshan Shunde, it claims, does not believe collapsing Shunde Yongjian and Foshan Shunde would be appropriate. Therefore, according to petitioner, whether this review should be rescinded with respect to Foshan Shunde rests on the question of successorship. The Department examines many factors, petitioner claims, such as changes in management, production facilities, supplier relationships, and customer base, when making successor-in-interest determinations. Petitioner contends that the Department's evaluation of these factors is qualitative, and that, in general, the Department will consider one company to have succeeded another if that company's operations are essentially inclusive of the predecessor's operations.¹⁰¹ See Petitioner Rebuttal Brief at 22-23.

Petitioner claims that there is little question that many managers from Shunde Yongjian found employment at Foshan Shunde. However, when it comes to production facilities, petitioner contends, it is apparent that Foshan Shunde's operations are not inclusive of the predecessor's operations. During the POR, according to petitioner, Foshan Shunde did not take over the facilities of Shunde Yongjian; instead, petitioner argues, a new production facility was constructed for Foshan Shunde. Furthermore, petitioner argues, in light of Shunde Yongjian having the highest dumping margin of any respondent at the conclusion of the ironing tables antidumping investigation,¹⁰² it would have been reasonable for Foshan Shunde to avoid the use of downstream materials valued at higher FOP surrogate values. However, as petitioner stated, in concordance with its Letter to the Department of Commerce from Home Products International Inc. regarding Request for Partial Rescission of Administrative Review (January 4, 2006) (Petitioner Rescission Request), requesting rescission of Foshan Shunde and Shunde Yongjian, Shunde Yongjian did not have steel slitting, wire drawing or tube forming operations at its facilities, while Foshan Shunde had these operations. See Petitioner Rebuttal Brief at 23-25.

Besides distinctions between their production facilities and processes, petitioner claims, the two companies' products are distinctive in that none of the merchandise produced by Shunde Yongjian during the POR shared the same CONNUMs with the products produced and sold to

¹⁰⁰ See *Id* at 11-12.

¹⁰¹ See *Belgium Steel Plate FR*, 69 FR at 32503.

¹⁰² See *Ironing Tables Investigation*.

the United States by Foshan Shunde during the POR.¹⁰³ Regarding supply, petitioner contends, it is to be expected the two companies may have common vendors; however, Shunde Yongjian did not acquire raw material inputs from market economy sources,¹⁰⁴ while Foshan Shunde claimed such sourcing.¹⁰⁵ In addition, according to petitioner, only some of Shunde Yongjian's raw materials were sold to Foshan Shunde at market prices after Shunde Yongjian shutdown.¹⁰⁶ This confirms, according to petitioner, that some of Shunde Yongjian's assets were distributed to entities other than Foshan Shunde. Petitioner adds that the arm's length pricing suggests that Foshan Shunde, among others, was merely acquiring assets offered at liquidation, and, therefore, it was not as if a purchaser was buying a business. *See* Petitioner Rebuttal Brief at 25.

Finally, petitioner contends, with regard to customer base, the sales performance of each company during the POR provides little to evaluate with respect to customers. However, the actual disposition of Shunde Yongjian's finished goods, petitioner argues, provides useful insight in that Foshan Shunde did not acquire these goods; rather, Shunde Yongjian retained its sales staff to dispose of its remaining inventory.¹⁰⁷ Petitioner claims these transactions were not a part of Foshan Shunde's operations, which was established by the Department at verification when the verification team requested Shunde Yongjian's sales records, which Foshan Shunde officials advised were maintained in Hong Kong, and the records had to be faxed to Foshan Shunde's location.¹⁰⁸ *See* Petitioner Rebuttal Brief at 25-26.

In sum, petitioner argues, under each criterion of the successorship test, there is evidence that Foshan Shunde should be viewed as an entity distinct from Shunde Yongjian because the totality of circumstances point convincingly to a finding that Foshan Shunde is not the successor-in-interest to Shunde Yongjian. Petitioner contends that no final results should be issued, and this review should be rescinded for Foshan Shunde, because no request for review was ever made. Additionally, petitioner argues, the review of Shunde Yongjian should be rescinded because it had no POR sales of subject merchandise to the United States. *See* Petitioner Rebuttal Brief at 26.

Department's Position:

The Department stated in the *Preliminary Results* that if it determined not to collapse Foshan Shunde and Shunde Yongjian and that if it found that Foshan Shunde is not the successor in interest to Shunde Yongjian, it would rescind the review of Shunde Yongjian based on no shipments. For these final results, the Department, based on the discussion below, has determined that Foshan Shunde and Shunde Yongjian should not be collapsed and that Foshan Shunde is not the successor in interest to Shunde Yongjian. Therefore, for these final results, the Department will rescind this review with respect to Shunde Yongjian.

¹⁰³ *See* Foshan Shunde 5th supplemental response at 1.

¹⁰⁴ *See* Petitioner Rescission Request at 5 and note 8.

¹⁰⁵ *See Id* at 5 and n.10.

¹⁰⁶ *See* Foshan Shunde 5th supplemental response at 1.

¹⁰⁷ *See* Letter to the Department of Commerce from Foshan Shunde, regarding Section A Questionnaire Response (November 23, 2005) at 3.

¹⁰⁸ *See* Foshan Shunde Verification Report at 17.

In the *Preliminary Results*, the Department described the facts on the record at the time surrounding the relationship between Shunde Yongjian and Foshan Shunde. In its November 23, 2005, Section A response, Shunde Yongjian indicated that it would be answering the Department's questionnaires as Foshan Shunde because Foshan Shunde produced and sold subject merchandise to the United States during the POR. It also stated that Foshan Shunde's owners controlled Shunde Yongjian, which had in July 2004 ceased all production activities and retained only its sales department to dispose of the company's remaining inventory. Foshan Shunde further stated that Shunde Yongjian did not sell any subject merchandise to the United States during the POR. Foshan Shunde reiterated the statement that Shunde Yongjian had no POR shipments of subject merchandise in its February 28, 2006, supplemental questionnaire response in response to the Department's request for clarification of Foshan Shunde's responses and the relationship between Foshan Shunde and Shunde Yongjian. In its July 13, 2006, supplemental response, Foshan Shunde confirmed that during the POR Shunde Yongjian did not produce the same model types or control numbers that Foshan Shunde produced and sold to the United States during the POR.

The Department issued an additional questionnaire after the publication of the *Preliminary Results*, which Foshan Shunde replied to on September 14, 2006, and September 15, 2006. In this questionnaire, Foshan Shunde explained, again, that Shunde Yongjian did not sell any subject merchandise to the United States during the POR, nor did it produce any merchandise during the POR that shared the same CONNUMs with the products produced and sold to the United States by Foshan Shunde during the POR. Furthermore, Foshan Shunde confirmed on Shunde Yongjian's behalf that Shunde Yongjian purchased steel inputs from domestic suppliers during the POR, provided a list of managers from Shunde Yongjian who moved to Foshan Shunde, and provided a list of customers to which Shunde Yongjian sold ironing tables during and prior to the POR. Foshan Shunde also explained in this questionnaire response that Shunde Yongjian's sales staff/managers transferred to Foshan Shunde while Shunde Yongjian's affairs were winding down and were charged with the responsibility of selling off the remaining inventory of Shunde Yongjian in addition to their responsibilities at Foshan Shunde. Foshan Shunde stated that the owners of the companies granted this authority to the salespeople.

Furthermore, in January 2007, the Department verified the responses of Foshan Shunde at the company's premises in Foshan, Guangdong, PRC. At verification the Department found that during the POR, one of the owners of Shunde Yongjian and Foshan Shunde began buying out the other owners of these companies, so that by the end of the POR, this owner was the sole owner of Shunde Yongjian and Foshan Shunde.¹⁰⁹ The Department also verified that Shunde Yongjian ceased production by August 2004, and that sales and production began at Foshan Shunde in August 2004.¹¹⁰ In addition, the Department verified that Foshan Shunde had constructed a new facility and that Shunde Yongjian's old facility had been sold to a separate entity in January 2005.¹¹¹ Furthermore, the Department verified that the owner of Foshan Shunde and Shunde Yongjian sold Shunde Yongjian's business license to an unaffiliated Hong Kong businessman in February 2006, sold off the assets of Shunde Yongjian before the transfer in ownership, and that Shunde Yongjian, post-February 2006, had no physical location as of the date of verification,

¹⁰⁹ See *Id* at 2-3, 5.

¹¹⁰ See *Id* at 7 and 17-18.

¹¹¹ See *Id* at 4.

i.e., January 2007.¹¹² Shunde Yongjian’s new owner also stated at verification that he planned to use Shunde Yongjian to manufacture items other than ironing tables.¹¹³

Affiliation

Section 771(33) of the Act provides that:

The following persons shall be considered to be “affiliated” or “affiliated persons”:

- (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
- (B) Any officer or director of an organization and such organization.
- (C) Partners.
- (D) Employer and employee.
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
- (G) Any person who controls any other person and such other person.

During the POR, Shunde Yongjian was owned by corporate entities which, in turn, were owned, in the majority, by Owner A.¹¹⁴ Moreover, during the POR, Owner A also owned the overwhelming majority of another corporate entity, which, in turn, owned Foshan Shunde. Given that both Shunde Yongjian and Foshan Shunde are controlled by Owner A through his level of ownership in both entities, it is clear based on record evidence that Foshan Shunde was affiliated with Shunde Yongjian pursuant to section 771(33)(F) of the Act during the POR.

Record evidence also shows, however, that after the POR in 2006, Owner A sold its ownership in the above-referenced corporate entities, and that the corporate entities, in turn, sold their ownership in Shunde Yongjian to an unaffiliated Hong Kong businessman. The ownership of Foshan Shunde did not change appreciably. Therefore, as of February 2006, Shunde Yongjian and Foshan Shunde are no longer affiliated pursuant to section 771(33)(F) of the Act.

Collapsing

Pursuant to 19 CFR 351.401(f), the Department will collapse producers and treat them as a single entity where (1) those producers are affiliated, (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production. In determining whether a significant potential for

¹¹² *See Id* at 4, 5.

¹¹³ *See Id* at 4.

¹¹⁴ The exact identity of Owner A is business proprietary information, so the Department has assigned that individual the public identifier “Owner A.” The exact identity of Owner A can be found in the business proprietary version of the Foshan Shunde Verification Report at pages 2-4.

manipulation exists, 19 CFR 351.401(f)(2) provides that the Department may consider various factors, including (i) the level of common ownership, (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, and (iii) whether the operations of the affiliated firms are intertwined.¹¹⁵

To the extent that this provision does not conflict with the Department's application of separate rates, the enforcement of the NME provision, and section 773(c) of the Act, the Department will collapse two or more affiliated producers in a case involving an NME country if the facts of the case warrant such treatment. Furthermore, the Department notes that the factors listed in 19 C.F.R. 351.401(f)(2) are not exhaustive, and in the context of an NME investigation other factors unique to the relationship of business entities in the NME may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case. *See Mushrooms*¹¹⁶ (citing *Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1342-43 (CIT 2003)(*Hontex I*) (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation)).

We note in this case Shunde Yongjian and Foshan Shunde were affiliated during the POR, as discussed above. In addition, for part of the POR, the two companies had production facilities for producing similar or identical products as both companies produced ironing tables. Thus, we have analyzed the information on the record of this review to determine if Shunde Yongjian and Foshan Shunde should be treated as a single entity for purposes of this review. Because the two entities were affiliated during the POR, but are currently not affiliated, the Department has separately analyzed whether collapsing is warranted for both assessment as well as cash deposit purposes. With respect to assessment, we note that regardless of whether a significant potential for manipulation existed, collapsing the two entities for this POR would have no effect, as there are no entries of subject merchandise produced or exported by Shunde Yongjian during the POR on which to assess.

Furthermore, as Shunde Yongjian did not produce any subject merchandise during the POR, collapsing would have no effect on normal value, as there are no relevant factors of production for Shunde Yongjian to weigh in with those of Foshan Shunde. Thus, we find that for assessment purposes, collapsing would have no effect and is not warranted or necessary in this instance to effectuate the statute and regulations. With respect to cash deposits, we note that as Shunde Yongjian and Foshan Shunde are no longer affiliated, to assign a single cash deposit rate to both entities would be contrary to the statute and regulations, *i.e.*, absent affiliation there can be no significant potential for manipulation of production or prices between the two entities, as provided for in 19 CFR 351.401(f). Thus, for the reasons described above, we have determined not to collapse Shunde Yongjian and Foshan Shunde for purposes of this review.

¹¹⁵ See *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12774 (March 16, 1998); *Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51436 (October 1, 1997).

¹¹⁶ See *Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review*, 69 FR 10410, 10413 (March 5, 2004) (*Mushrooms*), unchanged in *Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 70 FR 54361 (September 14, 2005).

Successor In Interest

In making a successor-in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base.¹¹⁷ While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor if the resulting operations are essentially the same as those of the predecessor company.¹¹⁸ Thus, if the record demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor.¹¹⁹

In this case, the evidence on the record establishes that Foshan Shunde is substantially different from Shunde Yongjian and that Foshan Shunde is not the successor in interest to Shunde Yongjian. While both companies had similar management and a common owner during the POR, subsequent to the POR, Shunde Yongjian's ownership changed and the two entities no longer share a common owner or similar management. Indeed, as a non-operational entity as of January 2007, Shunde Yongjian did not have any managers as of that date. The two companies also had distinct production facilities during and after the POR. Foshan Shunde did not take over the production facilities of Shunde Yongjian upon its inception; rather, a new production facility was constructed for Foshan Shunde. Furthermore, at this new production facility, Foshan Shunde incorporated steel slitting, wire drawing and tube forming operations, all of which Shunde Yongjian did not perform at its existing facilities.¹²⁰ Moreover, as of January 2007, Shunde Yongjian did not have a physical facility and its former facility was sold to a wholly unrelated entity which does not produce or sell subject merchandise.

Foshan Shunde's supplier relationships also significantly differed from Shunde Yongjian during the POR. Specifically, Foshan Shunde used market economy suppliers for several key inputs, while Shunde Yongjian sourced its inputs entirely from NME sources.¹²¹ Post POR, Shunde Yongjian did not have a supplier network as of January 2007 due to its non-operational status. Similarly, with regard to customer base, as of January 2007, Shunde Yongjian did not have any customers due to its non-operational status.

For all of the reasons stated above, the Department finds that Foshan Shunde is not the successor in interest to Shunde Yongjian. Therefore, for these final results, the Department will rescind this review with respect to Shunde Yongjian due to no shipments during the POR and continue to calculate a margin applicable solely to Foshan Shunde.

¹¹⁷ See *Certain Cut-to-Length Carbon Steel Plate from Romania: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 22847 (May 3, 2005).

¹¹⁸ See, e.g., *Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Forged Stainless Steel Flanges from India*, 71 FR 327 (January 4, 2006).

¹¹⁹ See, e.g., *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

¹²⁰ See Petitioner Rescission Request at 4-5 and Attachments 1-5.

¹²¹ See also *Id* at 5.

Comment 9: Calculating a Margin for Foshan Shunde

Petitioner argues that Foshan Shunde's U.S. sales database does not reflect *bona fide* commercial sales; therefore, petitioner contends, the review should be rescinded for Foshan Shunde. Petitioner compares Foshan Shunde's POR sales to Shunde Yongjian's sales during the period of investigation, stating that it is clear the Department is dealing with "small" quantities in the instant review. The Department has excluded trial and sample sales from its analysis in the past¹²² because they were made in small quantities and were deemed unreliable as an indicator of ordinary commercial conduct, petitioner contends. If the Department uses Foshan Shunde's U.S. sales database, petitioner states, it would lead to unreliable and aberrant results. *See* Petitioner Case Brief at 19-20.

Petitioner also argues that the Foshan Shunde Verification Report shows that its POR sales were "fraught with non-commercial course indicators." In the report, petitioner states, Foshan Shunde indicated a certain customer "has long been a good friend and customer" and that this customer believed that Foshan Shunde's dumping rate was too high and that its working capacity was good. Petitioner points out that Foshan Shunde had no follow up contact from that customer for a year and that Foshan Shunde implies in the report that it believed the high antidumping duty rate deterred this customer from discussing repeat business sooner. Petitioner also contends that it is hard to believe Foshan Shunde's assertions in the report that its discussion of prices with this customer did not include consideration of the antidumping duty rate. In sum, petitioner contends, the Department should not use Foshan Shunde's U.S. sales database as a foundation on which to evaluate the company's commercial behaviors; therefore, petitioner argues, the Department should rescind the review for Foshan Shunde. *See* Petitioner Case Brief at 20-21.

Foshan Shunde argues that the Department should calculate a margin for Foshan Shunde based on the data that it has submitted, as well as the Department's verification results. It states that it has submitted information in response to the Department's requests in a complete and accurate manner, and that the Department verified that these responses were correct. Specifically, Foshan Shunde claims, the Department verified its accounting system and production and sales data, both related to the POR sale and in general. Furthermore, according to Foshan Shunde, the Department reconciled Foshan Shunde's sales quantity and value, performed completeness checks, and verified its relevant costs, raw material consumption, and energy inputs. Because the Department verified the data that Foshan Shunde submitted to the Department during an on-site verification, Foshan Shunde argues, the Department should acknowledge the completeness and accuracy of the data and use it to calculate a margin for Foshan Shunde in the final results. *See* Foshan Shunde Case Brief at 8-11.

¹²² Citing *Pure Magnesium From the Russian Federation: Preliminary Determination for Sales at Less Than Fair Value*, 66 FR 21319 (April 30, 2001) (*Magnesium from Russian Federation*) and *Certain Color Television Receivers from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances*, 68 FR 66800 (November 28, 2003) (*Color TVs Prelim*).

Department's Position:

We disagree with petitioner and find that the record evidence does not support a finding that Foshan Shunde's sale to the United States was not a *bona fide* transaction.

To determine whether a sale in a review is "unrepresentative or extremely distortive," and therefore excludable as non-*bona fide*, the Department employs a totality of the circumstances test.¹²³ In examining the totality of the circumstances, the Department examines whether the transaction is "commercially reasonable" or "atypical."¹²⁴ Atypical or non-typical in this context means unrepresentative of a normal business practice.¹²⁵

In evaluating whether or not a sale is *bona fide*, the Department considers, *inter alia*, such factors as (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arms-length basis.¹²⁶ Therefore, the Department considers a number of factors in its bona fides analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise."¹²⁷

Although some *bona fides* issues may share commonalities across various Department cases, the Department examines the *bona fide* nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale.¹²⁸

Moreover, established Department practice provides that the size of a transaction is not sufficient, in and of itself, to warrant a finding that the transaction is not *bona fide*.¹²⁹ In particular, the Department has found that single sales, even those involving small quantities, are not inherently commercially unreasonable and do not necessarily involve selling practices atypical of the parties' normal selling practices.¹³⁰ In addition, the Department will typically look at the totality of circumstances surrounding a sale rather than a single circumstance. In

¹²³ See *Glycine From The People's Republic of China: Rescission of Antidumping Duty New Shipper Review of Hebei New Donghua Amino Acid Co., Ltd.*, 69 FR 47405, 47406 (August 5, 2004). (*Glycine Rescission*)

¹²⁴ See *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty New Shipper Review and Final Rescission of Antidumping Duty New Shipper Review*, 68 FR 1439, 1440 (January 10, 2003) (*Crawfish NSR Final*).

¹²⁵ See *Am. Silicon Techs. v. United States*, 110 F. Supp. 2d 992, 995 (CIT 2000) (*Silicon Techs*).

¹²⁶ See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249 (CIT 2005) (*TTPC*).

¹²⁷ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342, (CIT 2005) (*New Donghua*) (citing *Fresh Garlic from the PRC: Final Results of Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002) (*Garlic NSR Final*), and accompanying Issues and Decision Memorandum).

¹²⁸ See *TTPC*, 366 F. Supp. 2d at 1260, (citing *Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003) (*Mushrooms AR3 Final*), and accompanying Issues and Decision Memorandum at 20).

¹²⁹ See *Saccharin from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 7515 (February 13, 2006) (*Saccharin Final*).

¹³⁰ See *Certain Cut-to-Length Carbon Steel from Romania: Rescission of Antidumping Duty Administrative Review*, 63 FR 47234 (September 4, 1998) (*Carbon Steel Rescission*).

examining the totality of the circumstances, the Department examines whether the transaction is “commercially reasonable” or “atypical.”¹³¹

There is no information on the record to indicate that Foshan Shunde’s sale is an aberrantly small quantity or that it is atypical of Foshan Shunde’s normal business practices. The Department found no indication at verification that the sales quantity of the POR sale was, as petitioner stated, aberrantly small. Furthermore, the Department found no evidence at verification that there were other circumstances surrounding Foshan Shunde’s POR sale that would lead the Department to conclude that the sale was not *bona fide*. See Foshan Shunde Verification Report for the Department’s verification findings.

Regarding petitioner’s cites to *Magnesium from Russian Federation* and *Color TVs Prelim and Final*, while the Department addressed disregarding a certain percentage of overall U.S. sales in those cases, the Department did not discuss disregarding a single sale that amounted to the universe of sales in question for the affected parties nor did the issue of whether or not the sales were *bona fide* come into question. The sales at issue in *Magnesium from Russian Federation* were determined to be “unusual transactions” representing a small percentage of sales (less than 5 percent) and were excluded on that basis.¹³² The decision to exclude sales made in the *Color TVs Prelim* was overturned in the *Color TVs Final*, and those sales were included in the margin calculation.¹³³ In this case, the Department has no evidence that Foshan Shunde’s sale was not *bona fide* or was “unusual” in any way. Therefore, the reference to these two cases is inapposite.

Finally, regarding Foshan Shunde’s conversation with its customer pertaining to the underlying antidumping duty order on ironing tables, we note that the CIT has held that “there {is} nothing unlawful or improper in the parties’ discussions of the dumping margin and the potential applicability of legal exemptions.”¹³⁴ Furthermore, the Department itself has stated that a customer’s decision to order a small quantity shipment to limit high antidumping liabilities is not a commercially unreasonable business decision for a company participating in an antidumping proceeding.¹³⁵ Therefore, we cannot conclude, as argued by petitioner, that Foshan Shunde’s conversations with its customer constitute a significant “non-commercial course indicator.”

Therefore, for the reasons stated above, we will continue to calculate a margin for Foshan Shunde in these final results.

Comment 10: By-Product Clerical Error

Foshan Shunde contends that the Department intended to give Foshan Shunde a by-product credit by subtracting Foshan Shunde’s by-product value from its reported manufacturing cost to

¹³¹ See *Crawfish NSR Final*, and accompanying Issues and Decision Memorandum at Comment 1.

¹³² See *Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation*, 66 FR 49347 (September 21, 2001), and accompanying Issues and Decision Memorandum at Comment 10.

¹³³ See *Color TVs Prelim*, 68 FR at 66806; see also *Color TVs Final*, and accompanying Issues and Decision Memorandum at Comment 27.

¹³⁴ See *Silicon Techs*, 110 F. Supp. 2d at 997.

¹³⁵ See *Final Results of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios From Iran*, 70 FR 7470 (February 14, 2005), and accompanying Issues and Decision Memorandum at Comment 3.

calculate normal value in the *Preliminary Results*. However, Foshan Shunde states, because it reported its by-product factor as a negative value in its factors of production database, the Department should add the by-product credit in the normal value calculation instead of subtracting it. *See* Foshan Shunde Case Brief at 11-12. Petitioner did not comment on this issue.

Department's Position:

The Department agrees that it erred in the *Preliminary Results* by subtracting Foshan Shunde's by-product offset in the normal value calculation. Because the by-product offset was reported as a negative value, the Department has, as is consistent with the language in the SAS margin calculation program, added Foshan Shunde's by-product offset to the normal value calculation for these final results.¹³⁶

Forever Holdings-Related Issues

Comment 11: Rescission of Forever Holdings

Petitioner argues that Forever Holdings did not conduct valid commercial transactions during the POR; therefore, petitioner contends, the Department should rescind the review for this company. Petitioner argues that because Forever Holdings' acted as the importer of record for certain sales and did not for other POR sales indicates that the sales were "test transactions." Petitioner also claims that because Forever Holdings acted as importer of record for certain sales, the company effectively reimbursed any assessment to the customer. Furthermore, petitioner argues that calculating a margin for Forever Holdings using small quantity, trial sales would result in aberrant results. *See* Petitioner Case Brief at 21–22.

Forever Holdings rebuts by arguing that the Department has consistently held that small quantity sales alone, made during the POR, in and of itself is not a sufficient basis to rescind an administrative review¹³⁷ or a new shipper review. Forever Holdings argues that it made its sales of subject merchandise during the POR in accordance with the Department's *bona fide* criteria.¹³⁸ *See* Forever Holdings Rebuttal Brief at 6–8.

Furthermore, Forever Holdings argues that the Department should continue to calculate export price (EP) or constructed export price (CEP) based on 19 CFR 351.402(f)(1), and reject petitioner's allegation of reimbursement, as the regulation only applies when importers and exporters are separate legal entities.¹³⁹ In this case, Forever Holdings asserts, the exporter and importer of record were the same entity, *i.e.*, Forever Holdings. Forever Holdings also argues that petitioner's reimbursement allegation is baseless as Forever Holdings has only paid

¹³⁶ *See* Memorandum to the File through Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, from Kristina Horgan, Senior International Trade Compliance Analyst, AD/CVD Operations, Office 9, regarding Foshan Shunde Yongjian Houseware & Hardware Co., Ltd. (Foshan Shunde) Analysis Memorandum for the Final Results of Review (March 12, 2007) (Foshan Shunde Analysis Memo).

¹³⁷ *See Saccharin Final*, and accompanying Issues and Decision Memorandum at Comment 5.

¹³⁸ *See Notice of Final Results of Antidumping Duty New Shipper Review: Certain In-Shell Raw Pistachios from Iran*, 68 FR 353 (January 3, 2003), and accompanying Issue and Decision Memorandum at Comment 2.

¹³⁹ Citing *Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Administrative Review*, 63 FR 33041, 33042 (June 17, 1998) (*Steel Pipe and Tube from Mexico*).

antidumping duty deposits. Furthermore, Forever Holdings asserts that it provided documentation¹⁴⁰ for the terms of sale that demonstrated that it was the importer of record and that it was responsible for payment of the antidumping duty deposit. *See* Forever Holdings Rebuttal Brief at 8–9.

Department’s Position:

We disagree with petitioner and find that the record evidence does not support a finding that Forever Holdings’ sales to the United States were not *bona fide* transactions. To determine whether a sale in a review is “unrepresentative or extremely distortive,” and therefore excludable as non-*bona fide*, the Department employs a totality of the circumstances test.¹⁴¹ In examining the totality of the circumstances, the Department examines whether the transaction is “commercially reasonable” or “atypical.”¹⁴² Atypical or non-typical in this context means unrepresentative of a normal business practice.¹⁴³

In evaluating whether or not a sale is *bona fide*, the Department considers, *inter alia*, such factors as (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arms-length basis.¹⁴⁴ Therefore, the Department considers a number of factors in its *bona fides* analysis, “all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise.”¹⁴⁵

Although some *bona fides* issues may share commonalities across various Department cases, the Department examines the *bona fide* nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale.¹⁴⁶

Moreover, established Department practice provides that the size of a transaction is not sufficient, in and of itself, to warrant a finding that the transaction is not *bona fide*.¹⁴⁷ In particular, the Department has found that “single sales, even those involving small quantities, are not inherently commercially unreasonable and do not necessarily involve selling practices atypical of the parties’ normal selling practices.”¹⁴⁸ In addition, the Department will typically look at the totality of circumstances surrounding a sale rather than a single circumstance. In examining the totality of the circumstances, the Department examines whether the transaction is “commercially reasonable” or “atypical.”¹⁴⁹

¹⁴⁰ *See* Forever Holdings’ November 9, 2005, Original Questionnaire Section A Response at Exhibit 11.

¹⁴¹ *See Glycine Rescission*, 69 FR at 47406 (August 5, 2004).

¹⁴² *See Crawfish NSR Final*, 68 FR 1439, 1440 (January 10, 2003).

¹⁴³ *See Silicon Techs*, 110 F. Supp. 2d at 995.

¹⁴⁴ *See TTPC*, 366 F. Supp. 2d at 1249.

¹⁴⁵ *See New Donghua*, 374 F. Supp. 2d at 1342 (citing *Garlic NSR Final*, and accompanying Issues and Decision Memorandum).

¹⁴⁶ *See TTPC*, 366 F. Supp. 2d at 1260, (citing *Mushrooms AR3 Final*, and accompanying Issues and Decision Memorandum at 20).

¹⁴⁷ *See Saccharin Final*.

¹⁴⁸ *See Carbon Steel Rescission*.

¹⁴⁹ *See Crawfish NSR Final*, and accompanying Issues and Decision Memorandum at Comment 1.

There is no information on the record to indicate that Forever Holdings' POR sales were aberrantly small quantities or atypical of Forever Holdings' normal business practices. Furthermore, the sales were not characterized as trial sales by Forever Holdings, they were not sales of damaged merchandise, and there is no indication they were treated as sample sales, where no consideration was provided in exchange for the merchandise. Furthermore, there is no other evidence on the record that indicates the totality of circumstances, *i.e.*, factors other than sales quantity, surrounding Forever Holdings' POR sales were suspect in such a way that would lead us to conclude that the sales were not *bona fide*. Finally, we note that, in the *Preamble*,¹⁵⁰ the Department stated that "it is not justifiable to presume that the existence of an affiliation will result in reimbursement or that an affiliated U.S. importer, because of its affiliation, is more likely to file a false certification." Moreover, the Department has previously held that the mere existence of inter-company transfers of funds among affiliated parties does not constitute reimbursement of antidumping duties. *See, e.g., Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 38373 (July 16, 1998). Additionally, there is no evidence on the record supporting an allegation of reimbursement with respect to either the CEP or EP transactions subject to this review.

For the reasons stated above, we will continue to calculate a margin for Forever Holdings in these final results.

Comment 12: Clerical Errors in Surrogate Values

Forever Holdings argues that the Department should value "accelerant" using a more specific HTS covering sodium nitrite, which would better represent the reported factor of production as reported by Forever Holding. *See* Forever Holdings Case Brief at 16.

Petitioner rebuts by arguing that the Department should continue to value accelerant using the HTS used in the *Preliminary Results* because Forever Holdings misread the tariff provision. Petitioner argues that the more general HTS category that the Department used in the *Preliminary Results* is more appropriate because it covers mixtures of substances, which would account for sodium nitrite as the "principal" chemical in a mixture. *See* Petitioner Rebuttal Brief at 27–28.

Additionally, Forever Holdings argues that the company reported that the "shrink wrap" it consumed in the production of the subject merchandise consisted of polyethylene foam and thus contends that the Department should value "shrink wrap" using an HTS category that includes polyethylene foam rather than polyethylene bags. *See* Forever Holdings Case Brief at 16–17.

Petitioner rebuts by arguing that there is no evidence to suggest that Forever Holdings' "PE foam" is constructed of polyethylene terephthalate (PET), as implied by the Forever Holdings' suggested HTS. Petitioner argues that the Department should continue to use the HTS as used for the preliminary results. *See* Petitioner Rebuttal Brief at 28.

¹⁵⁰ *Final Rule*, 62 FR at 27355.

Finally, Forever Holdings argues that the Department incorrectly applied the surrogate value for “welding wire,” as Forever Holdings reported consuming “welding wire” in the production of the subject merchandise. *See* Forever Holdings Case Brief at 16.

Department’s Position:

First, the Department agrees with Forever Holdings that the Department erred in the application of the surrogate value for accelerant. For the preliminary results, the Department used HTS category 3815 to value accelerant, which includes non-specified reaction initiators/accelerators and catalytic preparations. However, the Department notes that in Forever Holdings’ April 11, 2006, section D supplemental questionnaire response, Forever Holdings explained that the accelerant it consumed was composed of only nitrite natrium (sodium nitrite) and water. Therefore, the Department will utilize HTS category 2834.10.10 as specified by Forever Holdings in its April 3, 2006, surrogate values submission to value the accelerant it consumed for the final results.

Second, the Department disagrees with Forever Holdings’ assertion that the Department erred in applying the surrogate value for “shrink-wrap bags.” The Department notes that while Forever Holdings reported that its “shrink-wrap bags” were composed of polyethylene foam, in their April 3, 2006, surrogate values submission at 15, Forever Holdings recommended using HTS category 3923.21.00, which the Department used for the *Preliminary Results*. The Department cannot permit respondents to “cherry-pick” surrogate values in an attempt to ascertain a lower deposit rate. Furthermore, the Department agrees with the petitioner that there is no record evidence to suggest that Forever Holdings’ “shrink-wrap bags” are composed of polyethylene terephthalate, warranting an alternate HTS category. Therefore, the Department will continue to use HTS category 3923.21.00 for the final results.

Finally, the Department agrees with Forever Holdings assertion that the Department erred in applying the surrogate value for “welding rods” instead of “welding wire.” For the preliminary results, the Department incorrectly used the value for welding rods to value welding wire. However, it is clear based on record evidence that the input consumed in the production of the subject merchandise was “welding wire.” Therefore, the Department will use the correct value for “welding wire” for the final results.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation programs accordingly. If accepted, we will publish the final results of the review and the final weighted-average dumping margins in the *Federal Register*.

AGREE _____ DISAGREE _____

David M. Spooner
Assistant Secretary
for Import Administration

Date