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DATE: May 9, 2007

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

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

REGARDING: Antidumping Duty Administrative Review and New Shipper  
Review of Hand Trucks and Certain Parts Thereof From the  
People's Republic of China

SUBJECT: Issues and Decision Memorandum for the Final Results

## **SUMMARY**

We have analyzed the comments of the interested parties in the 2004-2005 antidumping duty administrative review and the new shipper review of hand trucks and certain parts thereof (hand trucks) from the People's Republic of China (the PRC). As a result, we have made changes to the margin calculations for two of the three participating respondents in this case, True Potential Co., Ltd. (True Potential) and Since Hardware (Guangzhou) Co., Ltd. (Since Hardware). However, we have not made changes to the margin calculation for the third participating respondent in this case, Forecarry Corporation (Forecarry), and its factory Formost Plastics & Metalworks Co., Ltd. (Formost). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

## **BACKGROUND**

On January 9, 2007, the Department of Commerce (the Department) published the preliminary results of the antidumping duty and new shipper reviews of hand trucks from the PRC. See Hand Trucks and Certain Parts Thereof From the People's Republic of China; Preliminary Results and Partial Rescission of Administrative Review and Preliminary Results of New Shipper Review, 72 FR 937 (January 9, 2007) (Preliminary Results). The product covered by this investigation is hand trucks. The petitioner, Gleason Industrial Products, Inc. and Precision Products, Inc. (collectively, the petitioner), requested a hearing, which was held by the

Department at its main building on February 15, 2007. The period of review (POR) is December 1, 2004, through November 30, 2005.

We invited parties to comment on the Preliminary Results. We received timely filed case briefs from the petitioner, Forecarry/Formost, and Since Hardware. We also received timely filed rebuttal briefs from the petitioner, Forecarry/Formost, Since Hardware, and True Potential. Based on our analysis of the comments received, we have changed the weighted-average margins from those presented in the Preliminary Results for True Potential and Since Hardware.

## **LIST OF THE ISSUES**

Below is the complete list of issues in this investigation for which we received comments from interested parties:

### **I. General Issues**

- Comment 1: Whether the Department Should Use an Electricity-Specific Inflation Index to Adjust the Electricity Surrogate Value.
- Comment 2: Whether the Department Should Include Packing Materials and Packing Labor in the Application Bases for Surrogate Financial Ratios.
- Comment 3: Whether the Department Should Correct Clerical Errors in the Application of the Surrogate Values for Inland Freight Expenses.
- Comment 4: Whether the Department Should Correct Clerical Errors in the Application of the Surrogate Values for Domestic Brokerage and Handling Expenses.
- Comment 5: Whether the Department Should Select Different Financial Statements to Value Factory Overhead, Selling, General & Administrative Expenses, and Profit.
- Comment 6: Whether the Department Should Use the 2004-2005 or the 2005-2006 Financial Statements of Jay Equipment to Calculate Overhead, Selling, General & Administrative Expenses and Profit.
- Comment 7: Whether the Department Should Correct Its Calculation of the Surrogate Financial Ratios for Rexello Castors Private Ltd.
- Comment 8: Whether the Department Should Correct Its Application of the Surrogate Value for Hydrochloric Acid.
- Comment 9: Whether the Department Should Apply an Updated Surrogate Value for Brokerage and Handling Expenses.
- Comment 10: Whether the Department Should Apply the Most Recently Calculated Non-Market Economy Wage Rate for the PRC.

### **II. Company-Specific Issues**

A. Since Hardware Issues

- Comment 11: Whether the Department Should Accept Since Hardware's Reported Factors of Production Methodology.
- Comment 12: Whether the Department Should Reject Since Hardware's Market Economy Purchases of Steel Inputs.
- Comment 13: Whether the Department Should Assign a Surrogate Value to Plastic Bags.
- Comment 14: Whether the Department Should Assign Bungee Cable a Different HTS Classification.
- Comment 15: Whether the Department Should Assign a Surrogate Value to the Input for Petrolatum.
- Comment 16: Whether the Inclusion of South Korea in the Calculation of the Surrogate Value for Muriate of Potash is Warranted.
- Comment 17: Whether the Calculation of the Surrogate Value for Welding Rod is Correct.
- Comment 18: Whether the Department Should Assign Bearings a Different HTS Classification.
- Comment 19: Whether the Inclusion of Packing-Related Inputs in Cost of Manufacturing is Valid.

B. True Potential Issues

- Comment 20: Whether the Department Should Add Trading Company Factors for Selling, General & Administrative Expenses and Profit to its Calculation of True Potential's Normal Value.
- Comment 21: Whether the Department Should Correct its Application of a Surrogate Value for Certain Ball Bearings.
- Comment 22: Whether the Department Should Correct Its Surrogate Value Calculation for Carbon Dioxide to Include Imports from Hong Kong.
- Comment 23: Whether the Department Should Correct its Surrogate Value Calculation for Welding Solder to Include Imports from Austria and the Netherlands.

C. Future Tool's Issue

- Comment 24: Whether the Department Should Continue to Apply Adverse Facts Available to Future Tool.

D. Shangdong Machinery's Issue

- Comment 25: Whether the Department Should Continue to Apply Adverse Facts

Available to Shandong Machinery.

E. Forecarry and Formost's Issues

Comment 26: Whether to Apply Facts Available to Forecarry and Formost.

Comment 27: Whether to Apply Adverse Facts Available to Forecarry and Formost.

**CHANGES IN THE MARGIN CALCULATIONS SINCE THE PRELIMINARY RESULTS**

We calculated export price (EP) and normal value (NV) using the same methodology stated in the Preliminary Results, except as follows:

General Issues

1. The Department corrected clerical errors in the application of the surrogate value for inland freight expenses.
2. The Department corrected clerical errors in the application of the surrogate value for domestic brokerage and handling expenses.
3. The Department revised the financial statement used to value factory overhead, selling, general & administrative expenses (SG&A) and profit.
4. The Department offset SG&A by short-term interest income.
5. The Department corrected its application of the surrogate value for hydrochloric acid and revised the input freight cost calculation for hydrochloric acid.
6. The Department revised the input freight cost calculation for paraffin wax.
7. The Department revised the surrogate value for foreign brokerage and handling expenses.
8. The Department revised the non-market economy (NME) wage rate used for the PRC.

Since Hardware

9. The Department revised the Harmonized Tariff Schedule (HTS) classification assigned to bungee cable.
10. The Department recalculated the surrogate value for Since Hardware's bearings.
11. The Department removed imports from South Korea in the surrogate value calculation for muriate of potash input.
12. The Department recalculated the surrogate value for the input for welding rod.
13. The Department removed packing-related inputs from the cost of materials.

True Potential

14. The Department corrected its application of the surrogate value used for certain ball bearings.
15. The Department revised its surrogate value calculation for carbon dioxide to include imports from Hong Kong.

16. The Department revised its surrogate value calculation for welding solder to include imports from Austria and the Netherlands.

## **DISCUSSION OF THE ISSUES**

### **General Issues**

#### **Comment 1: Whether the Department Should Use an Electricity-Specific Inflation Index to Adjust the Electricity Surrogate Value**

The petitioner notes that, in the Preliminary Results, the Department adjusted an Indian electricity rate from the year 2000 to be contemporaneous with the period of review (POR) by using the wholesale price index (WPI) for India. Pursuant to section 773(c)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner argues that the Department should use a different index to adjust its electricity surrogate for inflation because the WPI covers wholesale prices for a wide range of input commodities. The petitioner asserts that the price for electricity does not necessarily follow the same inflationary trends as the inputs for all commodities. Therefore, the petitioner urges the Department to adjust the surrogate electricity rate, which is from the year 2000, using an inflation index that is specific to electricity. The petitioner suggests that the Department use the electricity-inflation index published by the Reserve Bank of India (RBI) because it is specific to electricity. Citing Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 2002-2003 Administrative Review and Partial Rescission of Review, the petitioner argues that, in the past, where Indian electricity prices are reported in Indian rupees (as is the matter in this case), the Department has used the RBI. See 69 FR 42041 (July 13, 2004) (TRB 02-03 Final) and Issues and Decision Memorandum at Comment 3; see also the Petitioner's Case Brief at 2.

In rebuttal, Since Hardware argues that, as it did in the Preliminary Results, the Department should continue to inflate the surrogate value for electricity using the WPI for India derived from the International Financial Statistics published by the International Monetary Fund (IMF). Since Hardware disagrees with the petitioner's suggestion that the Department should use data obtained from the website of the RBI to derive an inflation factor for the electricity surrogate value. Since Hardware contends that the petitioner's own admission indicates that the inflation factor used in the Preliminary Results is suitable considering that the WPI data published by the IMF covers wholesale prices in India for a range of items including fuel and power. Since Hardware asserts that the petitioner has not demonstrated that the inflation factor used in the Preliminary Results is inaccurate. Rather, Since Hardware claims that the petitioner merely asserts, without any reference to record evidence, that prices for "electricity do not necessarily follow the same inflationary trends as the inputs for all commodities." See Since Hardware's Rebuttal Brief at 2. Accordingly, Since Hardware argues that the Department has no reason to depart from its decision in the Preliminary Results to use the IMF's WPI data to derive the inflation factor for electricity. Furthermore, Since Hardware states that the petitioner's reference to another proceeding does not demonstrate a Department preference for RBI data over IMF data. In the TRB 02-03 Final, Since Hardware contends that the Department rejected the

RBI data and used a U.S. dollar inflation factor because the surrogate value for electricity was expressed in dollars, not rupees. *Id.* Thus, Since Hardware states that the determination in TRB 02-03 Final does not support the proposition that the Department prefers RBI data over Indian WPI data but, rather, establishes the idea that the currency on which the inflation factor is based should be consistent with the currency in which the surrogate value is expressed.

**Department's Position:** We agree with Since Hardware and have continued to inflate the surrogate value for electricity using the WPI data. Although the petitioner argues that the Department should use the RBI data over the WPI data to value electricity because the “prices for energy inputs do not necessarily follow the same inflationary trends as the inputs for all commodities,” the petitioner has provided no record evidence to demonstrate that this is in fact the case. *See* the Petitioner's Case Brief at 2. In addition, in the Preliminary Results, the Department obtained the surrogate value for electricity from the International Energy Agency Statistics (IEA). *See* Memorandum from Elizabeth Eastwood, Senior Analyst, through Shawn Thompson, to The File, regarding “Factors of Production Valuation Memorandum for the Preliminary Results of the First Administrative Review and Preliminary Results of the First New Shipper Review (Preliminary Results FOP Memo)” at 6, dated December 29, 2007. The IEA separates the value for electricity into two separate categories: “electricity for industry” and “electricity for households.” *Id.* at Exhibit 6. The Department used “electricity for industry” in the Preliminary Results. *Id.* The RBI electricity-specific index provided by the petitioner does not distinguish between electricity for industrial, residential, or commercial use. *See* the petitioner's surrogate value submission at Attachment 2, dated September 15, 2006. The RBI simply lists one general category for electricity. *Id.* As with its statement regarding the prices for energy inputs, referenced above, the petitioner also has provided no record evidence to demonstrate that the RBI's general categorization of electricity follows the same inflationary trends as electricity for industrial use. Therefore, the petitioner has provided no record evidence to demonstrate that the RBI's general electricity index is better suited to inflate the surrogate value for industrial use electricity than the WPI.

Moreover, the Department notes that it rarely will have an inflator that precisely matches the surrogate value to which it is applied. In addition, as in this case, the Department often will need to inflate multiple surrogate values that are not similar in nature. *See* True Potential's Preliminary Calculation Memorandum at Exhibit 3, dated January 9, 2007. For example, in the instant reviews, the Department inflated the surrogate values for hot rolled steel, aluminum scrap, recycled paint powder, diesel oil, electricity and water. Therefore, due to the infrequency of precise matching between surrogate values and inflators, as well as the Department's need to inflate unrelated products in one proceeding, the Department finds it appropriate to continue to use the WPI to inflate all inputs, including electricity, because the WPI data is calculated from a wide a range of commodities.

In addition, the petitioner has provided no record evidence to demonstrate that the Department's use of the WPI index to adjust the electricity surrogate for inflation caused inaccuracies or faulty results in the Preliminary Results. While the petitioner cites to the TRB 02-03 Final as support for its argument that the Department should select the RBI to inflate

electricity, we find that this case does not address the issue of whether the Department has a stated preference for the RBI or the WPI. Rather, in the TRB 02-03 Final, the Department selected an inflator based on “its normal practice to use an inflationary factor calculated in the same currency in which the surrogate price is reported.” See TRB 02-03 Final at Comment 3. In this instant matter, the currency of the indices and the surrogate value price is not at issue because they are consistent. Further, the Department has a demonstrated practice of using the WPI to adjust electricity surrogates for inflation. See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Activated Carbon From the People's Republic of China, 71 FR 59721, 59735 (October 11, 2006) (no change in the final results); Honey from the People's Republic of China: Intent to Rescind and Preliminary Results of Antidumping Duty New Shipper Reviews, 71 FR 32923, 32928 (June 6, 2006) (no change in the final results); Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 70 FR 77121, 77133 (December 29, 2005) (no change in the final results). Moreover, the Court of International Trade (CIT) has found that the Department need not demonstrate that a particular chosen methodology is the only way or best way to achieve a result. See Shakeproof Assembly Components Division of Illinois Tool Workers, Inc., v. United States, 2006 Ct. Intl. Trade LEXIS 132 (CIT August 25, 2006). Rather, the CIT has only required that the Department demonstrate that its chosen methodology is reasonable. *Id.* Therefore, given that the petitioner has provided no record evidence to demonstrate that the Department's use of the WPI index to adjust the electricity surrogate results in inaccurate, faulty, or unreasonable results, and in light of the Department's demonstrated history of using the WPI inflation index to adjust the surrogate value for electricity, the Department finds that it is reasonable to continue to use the WPI data for the final results.

**Comment 2: Whether the Department Should Include Packing Materials and Packing Labor in the Application Bases for Surrogate Financial Ratios**

The petitioner notes that, in the Preliminary Results, the Department derived factory overhead, SG&A expenses, and profit ratios by allocating manufacturing overhead over the sum of material, direct labor, and energy. The petitioner notes that the Indian financial statement used by the Department in the Preliminary Results does not specifically identify packing materials and packing labor. However, the petitioner asserts that it is reasonable to assume that packing materials are included within the financial statement line items pertaining to raw materials, because it is consistent with generally accepted accounting principles for manufacturers to include packing materials as a part of cost of goods sold (COGS). Similarly, the petitioner contends that it is reasonable to assume that packing labor is also included in the financial statement lines for “salaries, wages, and bonus,” as the packing of finished goods is typically performed by production workers. However, the petitioner asserts that neither packing materials nor packing labor would logically be reported in the sections of the income statement pertaining to income, interest, management expenses, loss on sale of assets, or depreciation. See the Petitioner's Case Brief at 3.

The petitioner states that because packing materials and packing labor are likely included in the figures relied on by the Department for materials and direct labor, then packing materials and packing labor should also be considered part of the denominator for the calculation of the surrogate ratios for factory overhead, SG&A expenses, and profit. In its NV calculation, however, the petitioner states that the Department applied the surrogate financial ratios for factory overhead, SG&A expenses, and profit to amounts that excluded packing materials and packing labor. The petitioner asserts that this creates a distortion in the Department's calculation, as the base on which the factors were derived is not consistent with the base on which the factors were applied. Specifically, the petitioner states that the derivation of the financial ratios is performed using a denominator base that is conceptually higher, or more inclusive, than the application base, systematically understating the calculated factory overhead, SG&A expenses, and profit.

The petitioner asserts that the Department has recognized the need to account for packing expenses included in COGS in the derivation and application of financial ratios. See the petitioner's Case Brief at 4. For example, citing Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, the petitioner contends that the Department, recognizing that COGS includes packing expenses, adjusted the COGS denominator used in the financial expense ratio calculation to exclude packing expenses, and applied the revised ratio to a packing-exclusive cost of manufacture (COM), thus deriving and applying the ratio in a consistent manner. See 69 FR 6259 (February 10, 2004) and Issues and Decision Memorandum at Comment 15; see also the Petitioner's Case Brief at 4. In these instant reviews, the petitioner states that the Department has applied packing-inclusive financial ratios to packing-exclusive values. The petitioner contends that information is not available to adjust the financial ratios to a packing-exclusive basis. Therefore, the petitioner argues that the Department should revise its calculations to apply the packing-inclusive financial ratios to packing-inclusive values.

In sum, the petitioner states that although the Department properly included packing materials and packing labor in total NV, it did not include factory overhead, SG&A expenses, and profit attributable to packing materials and packing labor in NV. As a result, the petitioner contends that the NV derived by the Department is understated. Therefore, the petitioner argues that the Department should revise its calculation of NV and apply the financial ratios to the appropriate base amount, where COM includes packing materials and labor.

In rebuttal, Since Hardware argues that, for the final results, the Department should reject the petitioner's suggestion to include packing related materials and labor in the COM portion of Since Hardware's NV calculation. Since Hardware notes that, in the original investigation, the Department rejected the petitioner's proposal to apply the surrogate financial ratios to packing related items, stating that there is no evidence that packing expenses were included as direct material costs in the Indian financial data. In more recent decisions, Since Hardware claims that the Department has reaffirmed its practice on this issue and has stated clearly that it is not appropriate to include packing expenses in COM to which the surrogate financial ratios are applied when it cannot be ascertained that packing expenses are in the surrogate financial ratio

calculations. Citing Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews, Since Hardware claims that the Department has explained that the Indian financial data makes no reference to packing materials and it “cannot assume, as the Petitioner suggests, that packing materials must be captured by TOTCOM. Accordingly, there is no reason for the Department to apply packing material costs to any amount other than to NORMVAL.”<sup>1</sup> See 71 FR 54269 (September 14, 2006) (Hand Tools 14<sup>th</sup> Review Final) and Issues and Decision Memorandum at Comment 6; see also Since Hardware's Rebuttal Brief at 3. As in the Hand Tools 14<sup>th</sup> Review Final, Since Hardware asserts that the Indian financial statements on the record of this case do not indicate that packing-related items are included in any of the manufacturing line items that are used in the denominator of the surrogate financial ratios. Accordingly, Since Hardware argues that the need for accuracy, as well as an adherence to the Department's practice, require that the packing-related items that Since Hardware reported be included in the NV calculation only after the application of the surrogate financial ratios.

Since Hardware argues that, in the Preliminary Results, the Department did not fully comply with its practice because it inadvertently included three packing-related items in COM rather than as part of the overall packing costs that were added subsequent to the application of the surrogate financial ratios. Since Hardware asserts that the Department should correct this error in the final results. For a further discussion of this topic, please refer to Comment 20, below.

**Department's Position:** We agree with Since Hardware and have not included packing related materials and labor in COM for the final results. Regarding the petitioner's argument on the application of packing material and packing labor, we note that, in the Preliminary Results, the financial statement of Rexello Castors Private Limited (Rexello) did not contain any evidence of how packing material and packing labor costs were treated by the company. As explained in numerous prior decisions by the Department,<sup>2</sup> it is not appropriate to include packing expenses in

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<sup>1</sup>TOTCOM is an acronym for “total cost of manufacturing” and NORVAL is an acronym for “normal value.”

<sup>2</sup>See Hand Tools 14<sup>th</sup> Review Final, 71 FR 54269 at Comment 6; see also Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Peoples's Republic of China, 71 FR 29303 (May 22, 2006) (Diamond Sawblades from the PRC) and Issues and Decision Memorandum at Comment 9; Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews, 70 FR 54897 (September 19, 2005) (Hand Tools 13<sup>th</sup> Review Final) and Issues and Decision Memorandum at Comment 8J; Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper

the COM to which the surrogate financial ratios are applied when it cannot be ascertained that packing expenses are in the surrogate financial ratio calculations. In both the Hand Tools 13<sup>th</sup> Review Final and Fresh Garlic 01-02 Final, the Department could not identify where and to what extent packing expenses were accounted for in the surrogate companies' financial ratios. See Hand Tools 13<sup>th</sup> Review Final, 70 FR 54897 and Issues and Decision Memorandum at Comment 8J; see also Fresh Garlic 01-02 Final, 69 FR 33626 and Issues and Decision Memorandum at Comment 6. In both of these cases, the Department concluded that applying the surrogate financial ratios to production costs that included amounts for packing materials would distort the amount of overhead, SG&A expenses, and profit in the margin calculation. Id. To avoid this distortion, the Department accounted for packing expenses in NV. Id. In these instant reviews, a careful review of the Rexello financial statement reveals that there is no reference to packing materials in the calculations of surrogate financial ratios. The Department cannot assume, as the petitioner suggests, that packing materials and labor must be captured by the manufacturing materials and wages line-items in Rexello's financial statements. Accordingly, in the Preliminary Results, the Department followed its normal practice and adding packing costs to NV after it applied the financial ratios and calculated the overhead, SG&A, and profit amounts. See Diamond Sawblades from the PRC, 71 FR 29303 and Issues and Decision Memorandum at Comment 9.

However, for the final results of these reviews, the Department is no longer relying upon Rexello as a surrogate to calculate financial ratios. Rather, for the final results, the Department is calculating surrogate financial ratios based upon the financial statement of Nagori Engineers Pvt. Ltd. (Nagori). See Comment 5, below. However, we have examined the financial statements of Nagori, as well as the costs obtained from this company's income statements that are included in the numerator and denominator of the surrogate financial ratio calculations. Based upon our review of this information, we are unable to determine whether Nagori performed packing activities associated with the items it produced, as its financial information does not indicate whether it incurred any packing expenses. Furthermore, in the event that Nagori did incur packing expenses, we do not know the extent to which such expenses are included in the values we obtained from its income statement, for purposes of calculating the surrogate financial ratios, because packing expenses are not included as a line item or distinguished in the income statements in any way. Where the Department cannot ascertain from the surrogate financial information whether packing expenses are in the surrogate financial ratio calculations, such as in the denominator, it is not appropriate to include packing expenses in the production costs to which the surrogate financial ratios are applied. See Fresh Garlic 01-02 Final at Comment 6. If packing expenses are not in the denominator of surrogate financial ratio calculations or, as here, we cannot identify where and to what extent such expenses are included in the ratio calculation, and we apply the ratios to production costs that include amounts for packing materials and labor, we may distort the amount of overhead, SG&A, and profit that we calculate for COP. Id. Accordingly, for the final results of these reviews, and as we did in the

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Reviews, 69 FR 33626 (June 16, 2004) (Fresh Garlic 01-02 Final) and Issues and Decision Memorandum at Comment 6.

Preliminary Results, we have determined not to apply the surrogate financial ratios to production costs that include packing expenses, for purposes of calculating the amount of overhead, SG&A expenses, and profit included in COP.

**Comment 3: Whether the Department Should Correct Clerical Errors in the Application of the Surrogate Values for Inland Freight Expenses**

The petitioner notes that, in the Preliminary Results, the Department's surrogate value for foreign inland freight was expressed in Indian rupees per kilogram per kilometer. The petitioner states that in its calculations of NV, the Department multiplied the surrogate inland freight rate by the distance from the producer to the port of export. See the Petitioner's Case Brief at 6. The petitioner asserts that the result of the aforementioned calculation is an amount for inland freight that is on a per kilogram basis. However, in order to properly utilize inland freight expenses in the margin calculations, the petitioner contends that the Department should derive the inland freight expenses on a per hand truck basis. The petitioner asserts that the Department must also multiply the per kilogram inland freight expense it derived by the weight of the hand truck in kilograms. Therefore, the petitioner states that the Department must also multiply the surrogate value for inland freight by the weight of the hand trucks, in kilograms.

No other party commented on this issue.

**Department's Position:** We agree with the petitioner. As noted in section 351.401(g) of the Department's regulations, the Department prefers expenses to be calculated on a transaction-specific basis. However, when transaction-specific calculations are not feasible, the Department requires the calculation of the expense to be as specific as is feasible. Id. As noted by the petitioner, in the Preliminary Results, the Department multiplied the surrogate value for inland freight by only the distance between the producer and the port of export, and did not include the per-unit weight of the hand truck. Typically, the Department prefers that the calculation of inland freight costs be based on volume, weight, distance, or a combination of these factors. See Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order; In the matter of A-27-801, A-428-801, A-475-801, A-588-804, A-485-801, A-559-801, A-401-801, A-549-801, A-412-801; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, 58 FR 39729, 39769 (July 26, 1993). Therefore, in order to calculate a surrogate value for inland freight expenses on as specific a basis as possible, and consistent with the Department's past practice, the Department will calculate inland freight based upon a combination of distance traveled and packed weight for the final results. For additional information, see Memorandum from Maisha Cryor, Senior Analyst, through Mark Manning, Program Manager, to The File, regarding "Analysis Memorandum for the Final Results of Qingdao True Potential Co., Ltd.," dated May 9, 2007 (TP Final Calculation Memo); see also Memorandum from Zev Primor, Senior Analyst, through Mark Manning, Program Manager, to The File, regarding "Analysis Memorandum for the Final Results of the Since Hardware (Guangzhou) Co., Ltd.," dated May 9, 2007 (SH Final Calculation Memo).

**Comment 4: Whether the Department Should Correct Clerical Errors in the Application of the Surrogate Values for Domestic Brokerage and Handling Expenses**

The petitioner notes that, in the Preliminary Results, the Department's surrogate value for foreign brokerage and handling expenses was expressed in rupees per kilogram. See the Petitioner's Case Brief at 7. The petitioner asserts that in its preliminary results calculation of NV, the Department simply included the surrogate value for foreign brokerage and handling expenses. However, in order to properly utilize brokerage and handling expenses in the margin calculations, the petitioner contends that the Department should derive these expenses on a per hand truck basis. Therefore, the petitioner asserts that the Department must also multiply the per kilogram brokerage and handling expenses it derived by the weight of the hand truck in kilograms. To incorporate these expenses correctly into the margin calculations, the petitioner asserts that the Department must restate these expenses on a per hand truck basis. Therefore, the petitioner states that the Department must multiply the surrogate value for brokerage and handling by the weight of the hand trucks, in kilograms.

No other party commented on this issue.

**Department's Position:** As noted below in Comment 9, the Department has revised the surrogate value used to calculate brokerage and handling expenses. Therefore, the calculation of brokerage and handling expenses from the Preliminary Results is no longer valid. However, the Department agrees with the petitioner's argument regarding the calculation of brokerage and handling expenses. Specifically, as explained in Comment 3, above, the Department prefers expenses to be calculated on a transaction-specific basis. See section 351.401(g) of the Department's regulations. However, when transaction-specific calculations are not feasible, the Department requires the calculation of the expense to be as specific as is feasible. Id. In this case, multiplying the packed weight of the hand trucks by the surrogate value for brokerage and handling makes the calculation more specific to the individual transactions. Therefore, in order to calculate the surrogate cost of foreign brokerage and handling, we multiplied the surrogate value, expressed in rupees per kilogram, by the packed weight of the hand truck. For additional information, see TP Final Calculation Memo; see also SH Final Calculation Memo.

**Comment 5: Whether the Department Should Select Different Financial Statements to Value Factory Overhead, Selling, General & Administrative Expenses, and Profit**

The petitioner notes that, in the Preliminary Results, the Department used audited financial statements from the Indian company Rexello to value factory overhead, SG&A expenses, and profit. The petitioner notes that after the Preliminary Results, and as a part of its February 5, 2007, surrogate value submission (Since Hardware's Surrogate Value Submission), Since Hardware submitted financial statements for six additional Indian companies: A.K.

Engineering Industries Pvt. Ltd. (A.K. Engineering); Devendra Fabricators Pvt. Ltd. (Devendra); Nagori; Puma Lift Trucks Pvt. Ltd. (Puma); SMACO Engineering Pvt. Ltd. (SMACO); Century Crane Engineers Pvt. Ltd. (Century); and Jay Equipment & Systems Pvt. Ltd. (Jay Equipment).<sup>3</sup> The petitioner argues that the following five companies do not produce merchandise identical to hand trucks: A.K. Engineering, Devendra, Puma, SMACO, and Century.<sup>4</sup> Therefore, the petitioner argues that the Department should not use the submitted surrogate financial data for these five companies in the calculation of the final results. The petitioner notes that, in the Preliminary Results, the Department rejected three Indian companies identified by Since Hardware as candidates for Indian surrogate producers because the companies did not produce merchandise identical to hand trucks.<sup>5</sup> The petitioner asserts that the Department should follow the same logic when selecting financial statements for surrogate value purposes in the final results. Therefore, the petitioner argues that the Department should use the audited financial statements from Rexello and Jay Equipment to value factory overhead, SG&A expenses, and profit because the evidence demonstrates that these Indian companies produce hand trucks.

In rebuttal, Since Hardware argues that, for the final results, the Department should calculate overhead expenses, SG&A expenses, and profit using the 2004-2005 financial statements of Nagori, Jay Equipment, Devendra, Puma, Jose Brothers, A.K. Engineering, and Rexello because record evidence demonstrates that each company is equally a producer of merchandise comparable to the subject merchandise.

In valuing factory overhead, SG&A expenses, and profit, Since Hardware contends that the Department normally uses non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. See Since Hardware's Case Brief at 16, citing section 351.408(c)(4) of the Department's regulations and section 773(c)(4) of the Act. To determine if a product produced by a company in the surrogate country is comparable, Since Hardware alleges that the Department's established practice is to apply a three-part test that examines "physical characteristics, end uses, and production processes." Id., citing Shanghai Foreign Trade Enterprises Co., Ltd. v. United States, 318 F. Supp. 2d 1339, 1348 (Ct. Int'l Trade 2004).

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<sup>3</sup>The petitioner notes that Since Hardware provided two financial statements for Jay Equipment covering different fiscal years; 2004-2005 and 2005-2006.

<sup>4</sup>The petitioner argues that the Department should not use Nagori's financial statement because the document was submitted with a number of missing pages. However, Since Hardware ultimately corrected this error by providing the missing pages. Given that the full document was submitted on the record of this review, we consider this issue to be moot. The petitioner provided no other argument against using Nagori's financial statement as a surrogate for calculating financial ratios and profit.

<sup>5</sup>These companies are Godrej & Boyce Manufacturing Company Ltd. (Godrej); Jaldoot Material Handling Pvt. Ltd. (Jaldoot); and Jose Brothers Auto Components Pvt. Ltd. (Jose Brothers).

In the Preliminary Results, Since Hardware notes that the Department used the financial statement of Rexello to value factory overhead, SG&A expenses, and profit, stating that Rexello is “an Indian producer of hand trucks.” See Since Hardware’s Case Brief at 16. However, Since Hardware contends that the Department’s assertion regarding Rexello’s hand trucks production experience is not supported by any record evidence. Since Hardware states that Rexello might be a minor producer of comparable merchandise, but that no record evidence exists to support the proposition that Rexello is a producer of identical merchandise. Since Hardware contends that Rexello is almost exclusively a producer of caster wheels. Specifically, Since Hardware states that, according to its financial statement, Rexello produces caster wheels, trolley wheels, conveyor rollers, and trolleys. Id. In fact, Since Hardware contends that trolleys are the only product that could be considered comparable to hand trucks and that they comprise only a small share of Rexello’s total operations. Id.

Since Hardware notes that, in the Preliminary Results, the Department declined to use the financial statement of Jose Brothers, which, Since Hardware asserts, produces merchandise identical to the merchandise produced by Rexello. Id. at 17. Since Hardware contends that, like Rexello, Jose Brothers produces caster and trolley wheels, conveyor rollers, and trolleys. If the Department concludes that Rexello is reasonably comparable to a producer of hand trucks, then Since Hardware argues that the Department should also consider Jose Brothers to be equally comparable. Further, Since Hardware argues that Jose Brothers should be an equal part of the Department’s surrogate financial ratio calculations.

Subsequent to the Preliminary Results, Since Hardware notes that it submitted the 2004-2005 financial statements of Nagori, Jay Equipment, Devendra, Puma, and A.K. Engineering, whom it claims are Indian producers of merchandise that is comparable or identical to the hand trucks produced by Since Hardware during the POR. Since Hardware states that the products that Nagori, Jay Equipment, Devendra, Puma, and A.K. Engineering produced are more comparable to the subject hand trucks than the merchandise produced by Rexello and Jose Brothers. Id. Since Hardware asserts that, like Rexello and Jose Brothers, A.K. Engineering is a producer of comparable merchandise, producing casters, wheels, and industrial trolleys. Id. As such, Since Hardware contends that the financial statement of A.K. Engineering should be used for the final results because it is at least as comparable to a hand truck producer as Rexello or Jose Brothers. In addition, Since Hardware contends that Nagori, Jay Equipment, Devendra, and Puma all produce various types of hand trucks, trolleys, and other material handling equipment that are comparable to the subject merchandise. Id.

Since Hardware contends that industry websites indicate that Nagori produces hand trucks, barrel and drum trolleys, and other material handling equipment. Id. at 18. Similarly, Since Hardware states that industry websites show that Jay Equipment produces barrel and drum trolleys, platform trolleys, and other material handling equipment. Id. Since Hardware states that, in the underlying antidumping investigation, the Department determined that Nagori and Jay Equipment are producers of comparable merchandise. Id. Thus, Since Hardware argues that the Department has already determined that producers of various types of trolleys that also produce other material handling equipment are appropriate sources for surrogate hand truck

producer financial ratios. Like Nagori and Jay Equipment, Since Hardware asserts that Devendra produces trolleys and other sheet metal fabricated material handling equipment. Id. Furthermore, Since Hardware states that Puma produces various material handling equipment, including manual trolleys that are identical to the subject merchandise. Id. Since Hardware states that both Devendra and Puma produce merchandise that is at least as comparable to the subject merchandise as the products manufactured by Nagori and Jay Equipment.

Since Hardware asserts that the Department already determined in the underlying antidumping investigation that Rexello, Nagori, and Jay Equipment are all producers of comparable merchandise and calculated the surrogate financial ratios using the average of these three producers' financial data. Id. Since Hardware asserts that record evidence shows that Jose Brothers, A.K. Engineering, Devendra, and Puma all produce merchandise that is at least as comparable to the subject merchandise as the merchandise produced by Rexello, Nagori, and Jay Equipment. Id. Accordingly, for the final results, Since Hardware argues that the Department should calculate overhead expenses, SG&A expenses, and profit for Since Hardware using the 2004-2005 financial statements of Jose Brothers, A.K. Engineering, Devendra, Puma, Rexello, Nagori, and Jay Equipment.

In rebuttal, the petitioner argues that, contrary to the arguments made by Since Hardware, the Department should also reject A.K. Engineering, Devendra, Jose Brothers, Nagori, and Puma as being inappropriate surrogate selections. The petitioner argues that A.K. Engineering, Devendra, and Puma do not produce merchandise identical, or even comparable, to hand trucks. See the Petitioner's Rebuttal Brief at 15.

Further, the petitioner contends that Jose Brothers does not produce merchandise identical, or even comparable, to hand trucks. Id. The petitioner states that, in the Preliminary Results, the Department recognized that Jose Brothers manufactures platform trolleys, a product that differs substantially from hand trucks. Id. The petitioner asserts that platform trolleys are clearly outside the scope of the antidumping order on hand trucks because the horizontal frame of these articles cannot slide under a load for purposes of lifting and/or moving the load.

Therefore, the petitioner argues that the Department should use the 2004-2005 audited financial information from Rexello and the 2005-2006 financial information from Jay Equipment to value factory overhead, SG&A expenses, and profit for its final results, because the evidence demonstrates that these Indian companies produce hand trucks. In contrast, the petitioner states that the Department should not use the financial data for A.K. Engineering, Devendra, Jose Brothers, and Puma because there is no evidence that these companies produce merchandise identical to hand trucks. Specifically, regarding Puma, the petitioner concedes that there may be a possible overlap between a product produced by Puma identified on Puma's website as a "manual trolley" and hand trucks. However, the petitioner argues that even if Puma produces "manual products," record evidence indicates that this trolley is an insignificant portion of its operations. Id. at 15-16.

In rebuttal, Since Hardware contends that, for the final results, the Department should calculate overhead expenses, SG&A expenses, and profit for Since Hardware using the 2004-2005 financial statements of Nagori, Jay Equipment, Devendra, Puma, Jose Brothers, A.K. Engineering, and Rexello, because record evidence demonstrates that each company is equally a producer of merchandise comparable to the subject merchandise. Since Hardware notes that the petitioner argues that the Department should use only the 2004-2005 financial statement of Rexello and the 2005-2006 financial statement of Jay Equipment to calculate the surrogate financial ratios because Rexello and Jay Equipment produce merchandise identical to the subject merchandise. Although the petitioner contends that the products produced by A.K. Engineering, Devendra, Puma, and Jose Brothers are not identical to the subject merchandise, Since Hardware asserts that the petitioner's analysis ignores record evidence that these companies produce merchandise that is identical to the merchandise produced by Rexello and Jay Equipment. See Since Hardware's Rebuttal Brief at 4.

Since Hardware asserts that Jose Brothers and A.K. Engineering produce merchandise that is identical to the merchandise produced by Rexello. Id. at 5. Since Hardware asserts that Rexello is a caster manufacturer that produces a limited number of trolleys. Id. Like Rexello, Since Hardware asserts that Jose Brothers produces caster and trolley wheels, conveyor rollers, and trolleys. Id. If the Department concludes that Rexello is reasonably comparable to a producer of hand trucks, then Since Hardware argues that Jose Brothers is equally comparable and should be an equal part of the Department's surrogate financial ratio calculations. Similarly, Since Hardware asserts that A.K. Engineering is a producer of comparable merchandise, producing casters, wheels, and industrial trolleys. Id. As such, Since Hardware argues that the financial statement of A.K. Engineering should be used for the final results because it is at least as comparable to a hand truck producer as Rexello or Jose Brothers.

In addition, Since Hardware asserts that, unlike Rexello, who produced a relatively small number of trolleys, the record does not indicate whether A.K. Engineering produced a limited number of trolleys or a large number of trolleys. Id. The record indicates only that A.K. Engineering produces trolleys. Id. In addition, Since Hardware asserts that the record contains no evidence that Rexello produces trolleys within the scope of the antidumping order on hand trucks. Considering that A.K. Engineering and Rexello both produce casters and trolleys, Since Hardware contends that it is reasonable to assume that Rexello produces trolleys that are similar, if not identical, to the trolleys produced by A.K. Engineering. Accordingly, just as with Jose Brothers, if the Department concludes that Rexello is reasonably comparable to a producer of hand trucks, then Since Hardware asserts that A.K. Engineering should be considered equally comparable and should be an equal part of the Department's surrogate financial ratio calculations.

Since Hardware notes that the petitioner argues that the Department should use the financial statement of Jay Equipment because it produces hand trucks. Id. at 6. However, Since Hardware contends that record evidence does not specify whether Jay Equipment produces hand trucks; only that it produces material handling equipment including pallet trucks, manual electric stackers, barrel and drum trolleys, wooden platforms, electric dock levelers, platform trolleys,

textile trolleys, metal bins, and metal pallets. *Id.* Like Nagori and Jay Equipment, Since Hardware states that Devendra produces trolleys and other sheet metal-fabricated material handling equipment. *Id.* Furthermore, Since Hardware states that Puma produces various material handling equipment, including manual trolleys that are identical to the subject merchandise. *Id.* Since Hardware states that both Devendra and Puma produce merchandise that is at least as comparable to the subject merchandise as the products manufactured by Nagori and Jay Equipment. Accordingly, Since Hardware argues that if the Department concludes that Jay Equipment is reasonably comparable to a producer of hand trucks, then Nagori, Devendra, and Puma are all equally comparable and should be an equal part of the Department's surrogate financial ratio calculations.

Moreover, Since Hardware contends that, despite the petitioner's assertions to the contrary, Devendra is a producer of comparable merchandise. Since Hardware states that the petitioner contends that Devendra is not a producer of comparable merchandise because there are no pictures of the products manufactured by Devendra in the industry website printout. *Id.* at 7. However, Since Hardware asserts that the product listing for Devendra includes trolleys, sheet metal fabrication, trays and material handling systems, industrial pallets, and cable trays and dispensers for industrial application. *Id.* Just like Jay Equipment and Nagori, Since Hardware asserts that Devendra produces trolleys and other metal-fabricated material handling equipment and should be used to calculate surrogate financial ratios because it produces merchandise that is comparable, if not identical, to the subject merchandise.

Further, Since Hardware states that, despite the petitioner's own admission that Puma produces merchandise identical to the subject merchandise, the petitioner contends that Puma should not be used to calculate surrogate financial ratios. Since Hardware states that the merchandise produced by Puma is virtually identical to the merchandise produced by Jay Equipment. *Id.* For example, both produce drum trolleys, hydraulic pallet trucks, electronic pallet trucks, manual and electric stackers, and dock levelers. Accordingly, Since Hardware argues that if Jay Equipment is considered a producer of comparable merchandise, then Puma also must be considered a producer of comparable merchandise.

True Potential also rebuts the petitioner's argument. True Potential argues that the Department should calculate overhead expenses, SG&A expenses, and profit for True Potential using the 2004-2005 financial statements of Nagori, Jay Equipment, Devendra, Puma, Jose Brothers, A.K. Engineering, and Rexello because record evidence demonstrates that each company is equally a producer of merchandise comparable to the subject merchandise. True Potential states that section 351.408(c)(4) of the Department's regulations provides that in valuing factory overhead, SG&A expenses, and profit, the Department normally uses non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. True Potential contends that the financial statements of the producers identified above demonstrate that each is either a producer of merchandise identical to, or comparable to, hand trucks.

**Department's Position:** As noted by both parties, in the Preliminary Results, the Department

used the financial statements of Rexello to calculate surrogate financial ratios for Since Hardware and True Potential. The Department explained its selection of Rexello as the surrogate company by stating that it considered Rexello to be an Indian producer of hand trucks. See Preliminary Results FOP Memo at 7. While the Department found Rexello to be a producer of subject merchandise, the Department also determined that the three companies submitted by Since Hardware before the Preliminary Results as candidates for surrogate companies, Godrej, Jaldoot and Jose Brothers, did not produce identical merchandise. Id. at 6. Therefore the Department declined to use these companies as surrogate companies for the calculation of financial ratios in the Preliminary Results. Id.

For the final results, Since Hardware and True Potential have argued that the Department should select seven companies as surrogate companies for the calculation of financial ratios and profit: Nagori, Jay Equipment, Devendra, Puma, Jose Brothers, A.K. Engineering, and Rexello.<sup>6</sup> Section 351.408 (c)(4) of the Department's regulations states that for "manufacturing overhead, general expenses, and profit, the Secretary normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country." However, although the Department's regulations state that the Department will use data gathered from producers of identical or comparable merchandise, the Department's stated and preferred practice is to calculate manufacturing overhead, SG&A expenses, and profit using the financial statements of producers of identical merchandise, rather than comparable merchandise, where possible. See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006) (Lined Paper) and Issues and Decision Memorandum at Comment 1. Specifically, in Lined Paper, the Department stated that:

"in most cases . . . the Department's preference for surrogate value sources are 'producers of identical merchandise, provided that the data are not distorted or otherwise unreliable . . . Because we now have financial information on the record for producers of identical merchandise that are complete, publicly available, and contemporaneous with the POI, we have determined that for the final determination, consistent with the Department's stated preference for financial statements of producers of identical merchandise (so long as the data are not distorted or otherwise unreliable), it is no longer appropriate to use the data from a producer of comparable merchandise.' " Id.

In addition, regarding the selection of surrogate companies for the calculation of overhead,

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<sup>6</sup>We note that, although Since Hardware submitted financial statements for SMACO and Century, no party argued that the Department should use these financial statements for purposes of calculating financial ratios for the final results.

SG&A and profit, the Department has also stated that, “where there are multiple sources of such information on the record of a proceeding, the Department generally has a preference for using data from producers of identical merchandise.” See Persulfates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 6712 (February 10, 2003) and Issues and Decision Memorandum at Comments 8 and 9.

Therefore, given the Department’s stated preference for using the financial statements of surrogate companies who produce merchandise identical to subject merchandise, the Department has selected the financial statements from Nagori to value factory overhead, SG&A expenses, and profit for the respondents for these final results. Alternatively, the Department has not selected the following producers to value overhead, SG&A, and profit for the respondents in this segment of the proceeding: Rexello, Puma, Jay Equipment, Jose Brothers, A.K. Engineering, and Devendra.

Nagori is the only company for whom record evidence exists to definitively demonstrate that it produces identical merchandise, *i.e.*, hand trucks. Specifically, Since Hardware submitted pages from an industry website which stated that Nagori “develops *hand truck* {sic}, electric trucks, dump trucks & stackers, drum trolleys and drum stackers.” (*emphasis added*) See Since Hardware’s Surrogate Value Submission at Attachment 17. Moreover, there is no record evidence to demonstrate that the “hand truck{s}” produced by Nagori are not in-scope merchandise. Therefore, given that record evidence exists which definitively states that Nagori is a producer of hand trucks, while no evidence exists to definitively demonstrate that the other companies are producers of hand trucks, the Department will use Nagori’s financial statements as the source for calculating the surrogate financial ratios. Lastly, the Department reviewed Nagori’s financial statements and found there to be no evidence that its financial statements are distorted or otherwise unreliable.

Regarding Rexello, although the Department used this company in the Preliminary Results, we note that there is no record evidence to definitively demonstrate that it produces merchandise identical to subject merchandise. Specifically, the only record evidence regarding the type of merchandise produced by Rexello is its financial statement, which simply states that Rexello produced “trolleys.” See the petitioner’s surrogate value submission at Attachment 5, dated September 15, 2006. Although the scope of the antidumping duty order on hand trucks does allow for the term trolley to be used as a synonym for hand trucks, there is also record evidence to indicate that the term trolley can include non-subject merchandise. For example, the scope of this antidumping order states that covered merchandise must have a “vertical frame” and “projecting edges or toe plates.” See Preliminary Results 72 FR at 938. Since Hardware submitted pages from A.K. Engineering’s website where A.K. Engineering advertised that it produces trolleys that have neither a vertical frame nor a projecting edge, *i.e.*, trolleys that are non-subject merchandise. See Since Hardware’s Surrogate Value Submission at Exhibit 17. Therefore, given that there is no record evidence currently before the Department to indicate that Rexello produced hand trucks, or trolleys of the type specifically covered by the scope of the antidumping duty order, the Department finds that it cannot definitively classify Rexello as a producer of merchandise identical to subject merchandise. As explained above, given the

Department's stated preference for selecting, when possible, surrogate companies that produce merchandise identical to subject merchandise, the Department has not selected Rexello as a surrogate for these final results.

Similarly, the Department finds that there is insufficient record evidence to demonstrate that Puma and Jay Equipment are producers of merchandise identical to subject merchandise. Although Since Hardware submitted a page from Puma's website listing a category for manual trolleys, the picture accompanying the category title appears to be of a non-subject merchandise trolley. See Since Hardware's Surrogate Value Submission at Exhibit 17. Specifically, the trolley pictured does not appear to have a projecting edge, as required by the scope. Id. In addition, regarding Jay Equipment, Since Hardware submitted pages from an industry website, which describes the product profile of Jay Equipment as offering "trolleys, platform trolleys and drum trolleys." Id. However, as with Rexello and Puma, there is no record evidence currently before the Department to demonstrate that Jay Equipment produced trolleys of the type specifically covered by the scope of the antidumping duty order. Therefore, the Department finds, based on the record evidence of this segment of the proceeding, that it cannot definitively classify Puma and Jay Equipment as producers of merchandise identical to subject merchandise. As with Rexello, given the Department's stated preference for selecting, where possible, surrogate companies that produce merchandise identical to subject merchandise, the Department has not selected Puma or Jay Equipment as surrogates for these final results.

Regarding Jose Brothers, A.K. Engineering, and Devendra, the Department has determined that sufficient record evidence exists to demonstrate that these companies also do not produce identical merchandise. First, for the Preliminary Results, the Department determined that Jose Brothers was not a producer of identical merchandise. See Preliminary Results FOP Memorandum at 6. Second, Since Hardware provided information from the websites of A.K. Engineering and Jose Brothers where it states that A.K. Engineering and Jose Brothers produce trolleys. However, the pictures provided of the trolleys indicate that they have characteristics which place them outside of the scope of the antidumping duty order. Specifically, as stated previously, the scope of the antidumping order covers hand trucks containing a vertically disposed frame and a projecting edge. Although the scope of the order notes, "that the vertical frame can be converted from the vertical setting to a horizontal setting, then operated in that horizontal setting as a platform, is not a basis for exclusion," the scope does require that the hand truck consist of a vertical frame. See Preliminary Results 72 FR at 938. The record evidence provided by Since Hardware, i.e., pictures from websites, indicates that the trolleys produced by A.K. Engineering and Jose Brothers do not consist of a vertical frame, but rather a horizontal frame, and are solely capable of being operated in a horizontal setting. Moreover, the trolleys do not appear to possess a projecting edge. Therefore, given the physical characteristics of the trolleys produced by A.K. Engineering and Jose Brothers, as indicated on the material currently before the Department, and the fact that these products appear to be non-subject merchandise, the Department does not consider A.K. Engineering or Jose Brothers to be producers of identical merchandise. As with Rexello, Puma and Jay Equipment, and given the Department's stated preference for selecting, when possible, surrogate companies that produce merchandise identical to subject merchandise, the Department has not selected Jose Brothers or A.K. Engineering as

surrogates for these final results.

Additionally, the Department does not consider Devendra to be a producer of identical merchandise. The financial statements of Devendra indicate that Devendra only produced pallets during April 2004-2005. See Since Hardware's Surrogate Value Submission at Exhibit I. Further, Since Hardware provided website pages of merchandise offered for sale by Devendra. Much like Rexello, Puma, and Jay Equipment, the website information for Devendra simply states that Devendra provides trolleys. Id. at Exhibit 17. However, given that there is no record evidence currently before the Department to indicate that Devendra produced trolleys of the type specifically covered by the scope of the antidumping duty order, the Department finds that it cannot definitively classify Devendra as a producer of merchandise identical to subject merchandise. As with Rexello, Puma, Jay Equipment, Jose Brothers, and A.K. Engineering, and given the Department's stated preference for selecting, when possible, surrogate companies that produce merchandise identical to subject merchandise, the Department has not selected A.K. Engineering as surrogates for these final results

As stated previously, the Department has expressed a preference for selecting financial statements of companies who produce merchandise identical to respondents, when such information is available and when such information is not distortive or unreliable. See Lined Paper, 71 FR 5309 at Comment 1. In this case, the record evidence currently before the Department definitively demonstrates that there is only one producer of identical merchandise, Nagori. In addition, we have record evidence to indicate that Nagori, the producer of identical merchandise, also produces a range of products in addition to hand trucks, much like Since Hardware and True Potential.<sup>7</sup> Lastly, we have analyzed Nagori's financial statement and found no evidence to indicate that it is distorted or otherwise unreliable. Therefore, given the fact that Nagori is an identical producer of subject merchandise, and given the fact that its production profile is similar to our respondents, we feel that it is appropriate to select Nagori as the surrogate company to use for purposes of calculating financial ratios and profit for the final results.

**Comment 6: Whether the Department Should Use the 2004-2005 or the 2005-2006 Financial Statements of Jay Equipment to Calculate Overhead, Selling, General & Administrative Expenses and Profit**

The petitioner notes that Since Hardware provided two financial statements for Jay Equipment covering different fiscal years, 2004-2005 and 2005-2006. The petitioner argues that the Department should use the financial statements for the 2005-2006 time period to determine overhead, SG&A expenses, and profit, because the Department prefers to use the most

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<sup>7</sup>True Potential is an exporter who sells hand trucks produced by Qingdao Huatian Hand Truck Co., Ltd. (Huatian) and Yangjiang Shunhe Industrial Co., Ltd. (Shunhe). See True Potential's June 29, 2006, questionnaire response at C-39. Huatian and Shunhe produced a range of products in addition to hand trucks. Id. at D-3.

contemporaneous financial statement available. See the Petitioner’s Case Brief at 16. Therefore, the petitioner contends that Jay Equipment’s 2005-2006 audited financial statements are the most appropriate source for surrogate financial data.

In rebuttal, Since Hardware argues that the Department should not use the 2005-2006 financial statement of Jay Equipment but, rather, its 2004-2005 financial statement. Citing Dorbest v. United States, 462 F. Supp. 2d 1262 (Ct. Int’l Trade 2006), Since Hardware states that, in choosing financial statements, the Department “generally considers the quality, specificity, and contemporaneity of the available financial statements.” See Since Hardware’s Rebuttal Brief at 9. Since Hardware notes that the Department may also consider the “representativeness of the production experience of the surrogate producers in relation to the respondent’s own experience.” Id. Citing Fresh Garlic From the People’s Republic of China: Final Results of Antidumping Duty New Shipper Review, 67 FR 72139 (December 4, 2002) (Fresh Garlic NSR) and Issues and Decision Memorandum at Comment 5, Since Hardware states that when the available financial statements are equally specific to the subject merchandise, the Department typically prefers to use a pool of financial statements rather than one or two financial statements in order to obtain representative surrogate financial ratios that accurately portray the economic spectrum. Id.

Moreover, citing 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) (Wooden Bedroom Furniture) and Issues and Decision Memorandum at Comment 3, Since Hardware asserts that it is not the Department’s practice to average financial ratio calculations derived from multiple financial years. Id. at 10. Since Hardware states that the record contains only one financial statement that covers the period of April 2005 through March 2006, which overlaps with eight months of the POR. Id. However, Since Hardware states that the record contains a wealth of financial statements from producers of identical or comparable merchandise that cover the period of April 2004 through March 2005, thus overlapping a significant portion of the POR. Accordingly, Since Hardware asserts that all financial statements on the record are contemporaneous with the POR. In addition, Since Hardware urges the Department not to sacrifice the quality and representativeness, resulting from the use of multiple financial statements from the same fiscal year, by using one financial statement from a different fiscal year that is only slightly more contemporaneous with the POR.

**Department’s Position:** As noted above, the Department is not using Jay Equipment’s financial statement to calculate surrogate financial statements for the final results. Therefore, Since Hardware’s argument is moot.

**Comment 7: Whether the Department Should Correct Its Calculation of the Surrogate Financial Ratios for Rexello Castors Private Ltd.**

As noted above in Comment 5, the petitioner contends that the Department should continue to use Rexello’s financial statement to calculate surrogate financial ratios and profit for the final results.

In rebuttal to the petitioner's argument that the Department should continue to use Rexello's financial statements in the final results, Since Hardware asserts that the financial ratios calculated in the Preliminary Results were distortive in two ways. First, Since Hardware asserts that the Rexello financial ratio calculation used in the Preliminary Results is inaccurate with respect to the treatment of labor. Since Hardware notes that the Rexello financial ratio calculation included "Labour Charges" as an SG&A expense and treated "Salaries, Wages, & Bonus" as a labor expense. *Id.* at 11. Since Hardware contends that an examination of the Rexello financial statement shows that "Labour Charges" should be treated as manufacturing labor expenses and "Salaries, Wages, & Bonus" should be treated as an SG&A expense. *Id.* Since Hardware asserts that, presumably, the Department included "Labour Charges" in SG&A because the financial statement included this line item in Schedule 12, labeled "Management Expenses." However, Since Hardware claims that the heading for Schedule 12 is misleading in that the items included in this category contain line items that are typically regarded as manufacturing-related expenses, such as "Stores & Spares," "Labour Charges," "Electricity," "Repair & Maintenance-Machinery," and "Repair & Maintenance-Building." Further, the line item "Salaries, Wages & Bonus" was included in Schedule 10, which is labeled "Personnel," along with line items "P.F. & Other Fund Contributions" and "Staff Welfare Expenses." Since Hardware contends that the items included in Schedule 10 do not appear to be related to manufacturing whereas many of the items included in Schedule 12 are clearly related to manufacturing. In addition, Since Hardware notes that the value of "Salaries, Wages & Bonus" is roughly one third of the value of the "Labour Charges" line item, and that it would be unreasonable to conclude that Rexello is a manufacturing company if it maintains a 3-to-1 ratio of sales and administrative personnel to manufacturing workers. Thus, if the Department continues to use Rexello's financial statements for the final results, Since Hardware asserts that the Department should treat the "Labour Charges" line item as a manufacturing labor expense and treat the "Salaries, Wages & Bonus" line item as an SG&A expense.

Second, Since Hardware argues that the Department should offset Rexello's SG&A expenses with its short-term interest income in accordance with the Department's normal methodology. Since Hardware states that the Department routinely offsets SG&A expenses with short-term interest income. In Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Since Hardware asserts that the Department offset SG&A expenses with interest income reasoning that the interest income is short-term because the surrogate company classified the relevant interest-bearing accounts as current assets. *See* 70 FR 6836 (February 9, 2005) (Persulfates 02-03 Final) and Issues and Decision Memorandum at Comment 5. As in Persulfates 02-03 Final, Since Hardware states that Rexello's interest income should be regarded as short-term because all of its interest-bearing accounts are classified under "Current Assets Loans & Advances."

**Department's Position:** As explained above in Comment 5, the Department is not using Rexello as a surrogate company for purposes of calculating overhead, SG&A expenses, and profit for the final results. Therefore, Since Hardware's argument regarding Rexello is moot. However, the Department has examined Since Hardware's argument in relation to Nagori, the company the Department has selected as a surrogate for purposes of calculating surrogate

financial ratios and profit for the final results. First, regarding the categorization of labor charges, we note that Since Hardware's argument is not relevant with respect to Nagori. Specifically, unlike Rexello, Nagori did not record separate line items on its financial statements for labor charges and "Salaries, Wages & Bonus." See Since Hardware's submission regarding Devandra and Nagori's Financial Statements (Surrogate Financial Statement Submission) at Exhibit 2, dated February 21, 2007. Rather, Nagori has only one line item, titled "salaries, wages, allowance, comm & bonus," related to labor on its financial statement and it is listed under Schedule 15, titled "employee remuneration & benefits." *Id.* As such, Since Hardware's argument regarding the categorization of "labor charges" is moot with respect to Nagori.

Second, regarding short-term interest income, we find that it is appropriate to offset Nagori's SG&A by short-term interest income, pursuant to Department practice. See Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 12762 (March 19, 2007) (Poly Retail Bags) and Issues and Decision Memorandum at Comment 3g; see also Wooden Bedroom Furniture at Comment 3 (it is our standard methodology to offset SG&A expenses with short-term interest income). Specifically, Nagori's financial statement includes a category titled "loans & advances," from which the interest income is derived, under "Current Assets, Loans and Advances." See Surrogate Financial Statement Submission at Exhibit 2. Similarly, in Poly Retail Bags and Persulfates 02-03 Final, the financial statements used by the Department to calculate SG&A included a category entitled "loans and advances" under "Current Assets, Loans and Advances." See Poly Retail Bags at Comment 3; see also Persulfates 02-03 Final at Comment 5. In those cases, the Department found the fact that the financial statements included "loans and advances" under "Current Assets, Loans and Advances" to be significant. *Id.* Specifically, the Department stated that "{a}ccording to the definition of 'current' in this context, such assets, loans, and advances are short-term in nature . . . {c}onsequently, we are continuing to adjust each company's SG&A expenses for interest income in these final results." See Persulfates 02-03 Final at Comment 5. The facts of this instant matter is consistent with those in Poly Retail Bags, Persulfates 02-03 Final, and Wooden Bedroom Furniture. Therefore, given the Department's practice of finding accounts entitled "current" to be short-term in nature, and the Department's practice to offset SG&A with short-term interest income, we will offset Nagori's SG&A by its short-term interest income for the final results.

**Comment 8:            Whether the Department Should Correct Its Application of the Surrogate Value for Hydrochloric Acid**

Since Hardware alleges that the Department made a clerical error with respect to the application of the appropriate surrogate value for its consumption of hydrochloric acid in the Preliminary Results. In the Preliminary Results, Since Hardware states that the Department valued hydrochloric acid using price data obtained from the Indian publication Chemical Weekly. Using the Chemical Weekly data, Since Hardware claims that the Department calculated a tax-exclusive average price for hydrochloric acid of 4.0091 rupees/kilogram. However, in its NV calculation, Since Hardware alleges that the Department inadvertently valued its consumption of hydrochloric acid with a surrogate price of 124.49 rupees/kilogram.

Since Hardware argues that the surrogate value that the Department inadvertently applied in the Preliminary Results was based on import statistics that the Department, in previous antidumping proceedings, has found to be aberrational. In numerous past cases, Since Hardware contends, the Department has determined that Indian import statistics for hydrochloric acid are aberrational and, instead, has valued hydrochloric acid using prices from Chemical Weekly. Since Hardware claims that the Department stated its intention to follow this practice in the Preliminary Results but, instead, valued hydrochloric acid on the basis of Indian import statistics. For the final results, Since Hardware contends that the Department should correct this inadvertent error and value Since Hardware's hydrochloric acid consumption using a Chemical Weekly derived surrogate value of 4.0091 rupees/kilogram.

In rebuttal, the petitioner acknowledges that, in other proceedings, the Department has found that Indian import statistics are aberrational for the purposes of calculating the surrogate value for hydrochloric acid. However, the petitioner argues that the Department's determination in those proceedings was not based on a simple comparison between the values available in the Indian import statistics and Chemical Weekly, but rather based on a comparison of the available values with the import statistics for hydrochloric acid imported into other countries, including the United States, the European Union, and other potential surrogate countries. See the Petitioner's Rebuttal Brief at 20, citing Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China, 69 FR 67304 (November 17, 2004) (Carbazole) and Issues and Decision Memorandum at Comment 3.

Pursuant to what it asserts is agency precedent, the petitioner requests that the Department first complete similar comparisons in this review before deciding which surrogate value is the appropriate value to use for hydrochloric acid. If the Department subsequently determines that Indian import statistics for hydrochloric acid are aberrational, then the petitioner asserts that it should base its surrogate value for hydrochloric acid on values from Chemical Weekly. If not, then the petitioner states that the Department should continue to base its surrogate value for hydrochloric acid on Indian import statistics.

**Department's Position:** We agree with Since Hardware and will value hydrochloric acid using Chemical Weekly data for the final results. For the Preliminary Results, we clearly stated our intent to value hydrochloric acid "based on price data obtained from the Indian publication Chemical Weekly." See Preliminary Results FOP Memorandum at 2. However, when calculating the surrogate value for hydrochloric acid, we unintentionally used a surrogate value based on Indian import statistics. We will correct this error for the final results and follow our stated intention to use Chemical Weekly data.

Regarding the petitioner's request that the Department perform a benchmark comparison for hydrochloric acid by examining imports of hydrochloric acid into other countries, we note the petitioner has raised its concerns regarding the appropriate source for the valuation of hydrochloric acid for the first time in its rebuttal brief, which was submitted on the record towards the end of this proceeding. The petitioner did not raise this concern, or ask the Department to conduct a benchmark test to determine the appropriateness of using Chemical

Weekly to value hydrochloric acid in any of its submissions prior to the Preliminary Results, nor did it provide any data for this purpose. Consequently, there is no data on the record of this proceeding to allow the Department to perform such a test. Moreover, our decision from the Preliminary Results to use Chemical Weekly to value hydrochloric acid, rather than Indian import statistics, is consistent with past Departmental decisions where the Department performed the benchmark comparisons noted by the petitioner. See Certain Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 28274 (May 17, 2005) and Issues and Decision Memorandum at Comment 10; see also Carbazole, 69 FR 67304 and Issues and Decision Memorandum at Comment 3. The surrogate value from Chemical Weekly on the record of the instant review is 4.0091 rupees/kilogram, while the surrogate value used in the cases cited above are 3.48 rupees/kilogram and 3.71 rupees/kilogram, respectively. See Certain Helical Spring Lock Washers from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 69 FR 64903, 64905 (November 9, 2004), citing the “Memorandum to File: Factor Values Used for the Preliminary Results of the 2002-2003 Administrative Review,” dated November 1, 2004 (no change in the final results); and Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbazole Violet Pigment 23 From the People's Republic of China, 69 FR 35287, 35292 (June 24, 2004), citing “FOP Memo” (no change in the final determination). Therefore, consistent with our stated intention in the Preliminary Results, the Department will value hydrochloric acid for the final results using Chemical Weekly data.

**Comment 9: Whether the Department Should Apply an Updated Surrogate Value for Brokerage and Handling Expenses**

Since Hardware states that, in the Preliminary Results, the Department valued brokerage and handling using the simple average of the per-kilogram brokerage and handling charges reported in the public versions of questionnaire responses submitted by two Indian respondents, Essar Steel Ltd. (Essar) and Pidilite Industries Ltd. (Pidilite). Since Hardware states that the Essar data covers the period December 2003 through November 2004, and the Pidilite data covers the period November 2002 through September 2003. Since Hardware contends that neither data source is contemporaneous with the POR, but the Pidilite data, in particular, is more than one year prior to the POR. In addition, Since Hardware contends that the Department has rejected the Pidilite data in previous cases because it was not contemporaneous with the period being reviewed, citing Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews, 71 FR 26329 (May 4, 2006) (Fresh Garlic 03-04 Final) and Issues and Decision Memorandum at Comment 6. Since Hardware contends that in Fresh Garlic 03-04 Final, the Department used the simple average of the Essar data and the public financial statement of Agro Dutch Industries Ltd. (Agro Dutch), taken from the administrative review of certain preserved mushrooms from India, for which the POR was February 1, 2004, through January 31, 2005. See Since Hardware's Case Brief at 12. Since Hardware states that the Agro Dutch data indicates that brokerage and handling expenses are incurred at a rate of 0.092

rupees/kilogram.

Since Hardware states that since Fresh Garlic 03-04 Final, the Department has continued to use Essar and Agro Dutch data to value brokerage and handling in antidumping reviews covering imports from China. Since Hardware contends that the Department has previously relied on the Essar and Agro Dutch data to value brokerage and handling even though no interested parties placed either data source on the record of the proceeding, citing Brake Rotors From the People's Republic of China: Preliminary Results of the 2005-2006 Administrative and New Shipper Reviews and Partial Rescission of the 2005-2006 Administrative Review, 72 FR 7405 (February 15, 2007); see also Since Hardware's Case Brief at 13. Further, when assessing which data source represents the "best available information," Since Hardware contends that the Department relies on surrogate values which are: (1) non-export average values; (2) most contemporaneous with the period of investigation or review; (3) product-specific; and (4) tax exclusive. See Since Hardware's Case Brief at 13, citing Polyethylene Retail Carrier Bag Committee, et al v. United States, 2005 Ct. Intl. Trade LEXIS 175 (CIT December 13, 2005). Since Hardware states that all of the sources available to the Department for valuing brokerage and handling are tax-exclusive, non-export average values, and none of the available sources are product-specific.

Thus, Since Hardware argues that, as explained in Fresh Garlic 03-04 Final, the Department should choose the surrogate value that is most contemporaneous with the POR. Since Hardware contends that Agro Dutch's rate of 0.092 rupees/kilogram is the only surrogate value that is contemporaneous with the current POR. Accordingly, Since Hardware argues that, for the final results, the Department should value its brokerage and handling expenses using data from Agro Dutch and not the non-contemporaneous data of Pidilite or Essar. Alternatively, Since Hardware suggests that the Department could average the rates of Agro Dutch and Essar considering that the Essar data is nearly contemporaneous with the current POR. However, Since Hardware contends that the Pidilite data should not be used because it is not at all contemporaneous with the current POR and more contemporaneous data are available.

In rebuttal, the petitioner contends that Since Hardware submitted Agro Dutch's data after the deadline for the submission of such information and ignored a Departmental deadline. Specifically, the petitioner states that section 351.301(c)(3)(ii) of the Department's regulations stipulates that interested parties may submit publicly available information to value factors under section 351.408(c) "20 days after the date of publication of the preliminary results of review." However, the petitioner argues that Since Hardware did not introduce Agro Dutch's data to this proceeding until it submitted its case brief. The petitioner asserts that this constitutes a flagrant violation of the Department's rules regarding the submission of surrogate values by interested parties and urges the Department to dismiss Since Hardware's arguments with respect to this data.

However, if the Department accepts submission of Agro Dutch's data, the petitioner argues that the Department should not use Agro Dutch's data in the final results of review. While the petitioner agrees that data contemporaneity is an important consideration, it asserts

that it is not the only consideration, or even the most important consideration, in the selection of surrogate values. Instead, the petitioner argues that the primary focus of surrogate selection should be on the relevancy of the data vis-à-vis the subject merchandise. The petitioner claims that canned mushrooms (the good shipped by Agro Dutch) and hot-rolled carbon steel flat products (the good shipped by Essar) both exhibit a high weight-to-volume ratio. That is, the petitioner explains, these products exhibit a high density when packed in a shipping crate. By contrast, the petitioner argues that hand trucks (the subject merchandise) and carbazole violet pigment (the good shipped by Pidilite) exhibit a relatively low weight-to-volume ratio. As a result, the petitioner argues that when a firm ships canned mushrooms and hot-rolled carbon steel, the shipping container is typically at or near weight capacity, but when it ships hand trucks, the shipping container is not at maximum capacity (*i.e.*, it may be full, but given the shape of hand trucks, a firm cannot fit additional hand trucks into the container).

The petitioner states that brokerage and handling charges generally involve both a value-based component (*i.e.*, charge as a percentage of merchandise value) and a volume-based component (*i.e.*, charge per container). The volume-based component, the petitioner claims, is typically a larger component of the overall brokerage and handling expense. The petitioner states that because hand trucks, as shipped, exhibit a low weight-to-volume ratio, hand truck shipments fail to maximize a cargo container's weight capacity. In other words, the petitioner claims that when filling a cargo container with hand trucks, the shipper soon runs out of room before the container's weight limits are met. The petitioner asserts that Since Hardware's sales documentation confirms this point.

Therefore, for the final results, the petitioner argues that the Department should focus first on product-relevancy data in its selection of a surrogate value for brokerage and handling expenses, namely the weight-to-volume ratio. The petitioner states that to the best of its knowledge, the goods shipped by Pidilite exhibit a weight-to-volume ratio not unlike hand trucks. Thus, the petitioner argues that the Department should value brokerage and handling expenses for the final results based on Pidilite's data. By contrast, the petitioner states that the goods shipped by Essar and Agro Dutch exhibit a weight-to-volume ratio dissimilar to hand trucks. The petitioner argues that the Department should avoid using the data for these companies to value brokerage and handling expenses for the final results. However, the petitioner states that if the Department considers Essar's data appropriate, then it should value brokerage and handling expenses based on a simple average of Pidilite and Essar's data.

Finally, the petitioner argues that if the Department accepts Since Hardware's untimely submission of Agro Dutch's data and considers that data also appropriate, it should value brokerage and handling expenses based on a simple average of the data from Pidilite, Essar, and Agro Dutch.

**Department's Position:** We agree with Since Hardware, in part, and have discontinued using Pidilite's data to value brokerage and handling for the final results. However, we also agree with the petitioner that Since Hardware did not adhere to section 351.301(c)(3)(ii) of the Department's regulations, which provides that surrogate value information must be placed on the

record 20 days after the date of publication of the preliminary results of review, unless specifically extended by the Department. Since Hardware included the surrogate value for Agro Dutch's brokerage and handling cost in its February 15, 2007, case brief, which was filed well after the Department's February 5, 2007, deadline for submitting surrogate value information. Further, Since Hardware did not include the source documentation from Agro Dutch in its case brief, thereby preventing the Department and the petitioner from examining the source documentation. Since the Agro Dutch information was placed on the record after the applicable deadline, and the source documentation was not included in its submission, thereby preventing the petitioner the ability to examine the source document, we are unable to use Agro Dutch's surrogate value for purposes of valuing brokerage and handling for the final results.

In valuing FOPs, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market economy country. In choosing the most appropriate surrogate value, the Department considers several factors, including the quality, similarity, specificity, and contemporaneity of the source information. See, e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges, 68 FR 53347 (September 10, 2003), and Issues and Decision Memorandum at Comment 5; see also Fresh Garlic 03-04 Final, 71 FR 26329 and Issues and Decision Memorandum at Comment 6. Stated differently, the Department attempts to find the most representative and least distortive market-based value in the surrogate country. See Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China, 66 FR 31204 (June 11, 2001), and Issues and Decision Memorandum at Comment 5. The Department undertakes this analysis on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.

In the Preliminary Results, the Department calculated a surrogate value for foreign brokerage and handling expenses using data from both Essar and Pidilite. See Preliminary Results FOP Memorandum at 9. Arguments concerning Agro Dutch aside, Since Hardware contends that the Department should use Essar's data because it is more contemporaneous than Pidilite, while the petitioner argues that the Department should use Pidilite's value since it is more similar to hand trucks than Essar's hot-rolled carbon steel flat products. The Department has evaluated the merits of using the Essar and Pidilite data in the instant review. First, regarding contemporaneity, we note that the Essar data was based on the time period December 2003 through November 2004 (which ends one month before the beginning of the instant POR). The Pidilite data was based on the time period November 2002 through September 2003, which ends 14 months before the instant POR. Clearly, Essar's brokerage and handling data is more contemporaneous with the instant POR.

Second, we examined the petitioner's argument the Department should consider the product relevancy of the merchandise shipped by Essar and Pidilite to be a more important factor in the selection of a surrogate value for brokerage and handling than contemporaneity, i.e., a weight-to-volume ratio of the products shipped by the surrogate companies compared to the

respondent companies. See the Petitioner’s Rebuttal Brief at 18-19. Although the similarity of the surrogate to the merchandise under review is certainly an important factor in selecting the most appropriate surrogate value, in this case, we are not persuaded by the petitioner’s argument regarding product relevancy. Specifically, the petitioner’s argument is theoretical and not based on substantial record evidence. Although the petitioner notes the length of the container used by Since Hardware, and the total weight of hand trucks shipped in such a container, it does not provide any evidence regarding the container length or weight of the hot-rolled steel or carbazole violet shipped by Essar and Pidilite, respectively. Thus, there is no evidence from Essar or Pidilite against which the Department can compare Since Hardware’s information. Instead of using record evidence, the petitioner must resort to speculation in stating that “to the best of {its} knowledge, hand trucks and carbazole violet exhibit a low weight-to-volume ratio compared to hot rolled steel and mushrooms.” Id. at 19-20. Without substantial record evidence, we find that the petitioner’s hypothetical statements regarding shipment ratios do not overrule the importance of data contemporaneity in the selection of a surrogate value for brokerage and handling.

It is our preference to use contemporaneous data when all other aspects such as quality and specificity of the source information are equal. See Anshan Iron & Steel v. United States, 159 F. Supp. 2d 714, 728 (Ct. Int’l Trade 2003) (“{t}his court has repeatedly recognized that Commerce’s practice is to use surrogate prices from a period contemporaneous with the period of review.”) In fact, in a recent case, the Department declined to use Pidilite’s brokerage and handling data because it was not contemporaneous with the POR of that review. See Fresh Garlic 03-04 Final, 71 FR 26329 and Issues and Decision Memorandum at Comment 6. Since no party has argued against either surrogate value on issues other than contemporaneity and product similarity, and the Department finds that the petitioner’s product similarity argument to be unpersuasive, we find that all other things are equal between these two surrogate values. Therefore, given that the Pidilite data used in the Preliminary Results is not as contemporaneous as the Essar data, the Department will value foreign brokerage and handling in the final results using Essar’s data.

**Comment 10:**            **Whether the Department Should Apply the Most Recently Calculated Non-Market Economy Wage Rate for the PRC**

Since Hardware argues that, for the final results, the Department should value its labor consumption using the most recently calculated expected wage rate for the PRC of \$0.83 per hour. Since Hardware states that the Department finalized the most recent wage rate calculation in January 2007 and updated the Department’s website with the new expected wage rates for NMEs on February 2, 2007, and stated that it would apply the revised wages rates in all Department proceedings for which the final determinations are due on or after February 16, 2007. See Since Hardware’s Case Brief at 14. Accordingly, Since Hardware argues that the Department should apply its revised wage rate to its NV calculation in the instant proceeding.

The petitioner states that it agrees with Since Hardware’s request.

**Department’s Position:** We agree with both Since Hardware and the petitioner and have

adjusted the wage rate used to value labor consumption for the final results. As noted by Since Hardware, the Department has revised its calculation of expected wages for selected NME countries. See Poly Retail Bags, 72 FR at 12762. The Department's revised calculation of expected NME wages, consistent with its normal methodology and with section 351.408(c)(3) of the Department's regulations, is based on the most current data available as of January 2007. Id. The Department's expected NME wage rate for the PRC is USD \$0.83 per hour. Id. Therefore, for the final results, and consistent with the Department's practice, we calculated the surrogate value for labor consumption using the Department's revised expected NME wage rate of \$0.83 for the PRC.

### **Since Hardware's Issues**

#### **Comment 11: Whether the Department Should Accept Since Hardware's Reported Factors of Production Methodology**

The petitioner argues that the FOP methodology employed by Since Hardware is distortive and should be rejected by the Department. The petitioner observes that hand trucks account for a tiny percent of Since Hardware's overall production. Even though it should have been possible for Since Hardware to devise a methodology specific to such a small amount of production, the petitioner notes that Since Hardware's FOP reporting methodology allocated inputs "globally across production of subject and non-subject merchandise for a 12 month period." See the Petitioner's Case Brief at 16. The petitioner argues that using a factory-wide methodology is distortive because it does not take into account the large cost differences between the different products Since Hardware produces. The petitioner claims that Since Hardware's standard costs used in the FOP database do not reflect the true cost Since Hardware incurred in the hand trucks production. Further, the petitioner notes that Since Hardware tried to justify its imprecise FOP allocation methodology by stating that "the production of hand trucks is fully integrated into Since Hardware's production line, {and} it is impossible for the company to separate out the energy, labor, work in process, and material inputs from the overall production of the factory in any meaningful way." Id. at 18, citing the Memorandum from Elizabeth Eastwood and Nichole Zink to James Maeder, titled, "Verification of Sales and Factors Responses of Since Hardware (Guangzhou) Co., Ltd. in the New Shipper Review of Hand Trucks and Certain Parts Thereof from the People's Republic of China" (Since Hardware Verification Report) at 18, dated October 5, 2006. According to the petitioner, information taken at verification contradicts this implausible justification.

The petitioner notes that Exhibit 6 of the Since Hardware Verification Report memorializes an e-mail "conversation" between Since Hardware and its U.S. customer prior to the beginning of the instant POR. The petitioner quotes extensively from the e-mail exchanges between Since Hardware and its U.S. customer, which are business proprietary in nature, alleging that the content of these exchanges indicates that Since Hardware should have been able to base its FOP methodology on the actual cost of hand truck production. Instead of doing so, the petitioner asserts that Since Hardware provided the Department with FOPs which were based on non-subject merchandise which is also produced in the same facility.

The petitioner also notes that Since Hardware is an experienced respondent, which was and is involved in another ongoing antidumping proceeding. According to the petitioner, such experience should have allowed Since Hardware to prepare FOP information which was based on the actual hand trucks production costs. The petitioner cites to Exhibit 5 of the Since Hardware Verification Report, which contains a material reference sheet that lists the specific thicknesses of the cold-rolled, hot-rolled, and steel wire rod consumed to produce a hand truck. See the Petitioner's Case Brief at 22. According to the petitioner, for these three metal FOPs, the material reference sheet demonstrates that Since Hardware did not put forth the maximum effort to limit its reporting methodology to the thicknesses used in producing a hand truck, but instead opted to rely on an FOP allocation methodology that includes thicknesses used in non-subject merchandise. Moreover, the petitioner notes that, as shown in Exhibit 14 of the Since Hardware Verification Report, Since Hardware's raw material inventory withdrawal records do identify the thickness and width (or diameter in the case of wire rod) of the three steel inputs when taken out of inventory. The petitioner claims that Since Hardware should have been able to utilize its inventory records, which identify specific thickness ranges, to create an FOP methodology specific to hand trucks, and exclusive of inputs used to produce non-subject merchandise.

Citing Nippon Steel Corp. v. United States, 337 F.3d 1373 (Fed. Cir. 2003) (Nippon Steel), the petitioner argues that “[t]he statutory mandate that a respondent act to ‘the best of its ability’ requires the respondent to do the maximum it is able to do.” See petitioner's case brief at 24, citing Nippon Steel at 1382. In this regard, the petitioner claims that Nippon Steel requires the Department to apply adverse facts available (AFA) whenever it finds that: (1) a reasonable and responsible respondent would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations; (2) the respondent not only failed to promptly produce the requested information, but further that the failure to fully respond is the result of the respondent's lack of cooperation in either (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records. Id. at 24, citing Nippon Steel at 1382-1383. According to the petitioner, Since Hardware knew that it was required to report a product-specific FOP methodology due to its experience in another antidumping duty proceeding. Nonetheless, Since Hardware failed to maintain or generate accurate records of the FOPs it used to produce the hand trucks sold during the POR. Thus, since both requirements have been met in the instant review, the petitioner claims that the Department should reject the reported FOPs and instead apply AFA to Since Hardware. Id. at 25-26.

Even though, according to the petitioner, Since Hardware was able to tie its FOP database to its accounting records, the petitioner believes that it does not mean that the Department should embrace the inadequacies of that FOP database and calculate from it an erroneous result. Therefore, for the reasons set forth above, the petitioner is urging the Department to reject Since Hardware's FOP response as incomplete because Since Hardware failed to base its response on the actual production inputs used to manufacture hand trucks. In addition, the petitioner urges the Department to apply the AFA rate of 383.60 percent to calculate Since Hardware's final results dumping margin. See the Petitioner's Case Brief at 26.

In rebuttal, Since Hardware urges the Department to disregard the petitioner's claim that the e-mail exchange between Since Hardware and its U.S. customer prior to the start of this proceeding indicates that Since Hardware developed a FOP database separate from the one submitted to and verified by the Department, and used in the Preliminary Results. See Since Hardware's Rebuttal Brief at 12. According to Since Hardware, the e-mail exchange cited in the petitioner's brief is a discussion limited to only pre-production estimated costs and not the actual amounts of materials, energy, or labor consumed by Since Hardware when it produced its hand truck. In other words, Since Hardware claims that the Department would not have accepted such estimated consumption data because it would have been impossible to verify the accuracy of the data or link the information to Since Hardware's material withdrawal and financial accounting records. Id. at 13-14.

Because, according to Since Hardware, the company submitted FOP data that are rooted in the company's own material and accounting record keeping, the Department's verifiers were able to conduct a complete reconciliation of the company's reported FOP data to Since Hardware's raw material inventory records, energy consumption records, worker attendance records and, ultimately, to the COGS figure recorded in the company's audited financial statement. See Since Hardware's Rebuttal Brief at 15. Since Hardware claims that there is nothing in the record of this proceeding indicating that the Department, at any point in this proceeding, doubted the accuracy or appropriateness of Since Hardware's FOP data. Accordingly, Since Hardware urges the Department for the final results of this review to continue to construct Since Hardware's NV on the basis of the FOP data that the company reported to the Department and that the Department verified during an on-site audit at the company's facilities. Id. at 15.

Since Hardware rejects the petitioner's claim that Since Hardware's FOP database is not specific to subject merchandise, and argues that such premise is not supported by record evidence, and it is undermined by Since Hardware's questionnaire responses and the Department's verification findings and procedures. Since Hardware argues that contrary to petitioner's assertions, Since Hardware based its reported hand truck-specific FOP data on the actual weight of the hand trucks, its many parts, and the raw materials consumed to produce each hand truck. Id. at 16. Since Hardware also claims that it provided detailed and verifiable FOP data which the Department was able to link, without discrepancy, to the company's material inventory, energy, labor, and financial accounting records.

Since Hardware notes it had to look to its consumption of all materials and its production of all products only for the purpose of calculating accurate yield-loss ratios. Contrary to petitioner's claims, Since Hardware argues that it reported highly accurate hand truck-specific FOP data by reporting the finished weight of each component contained in a single hand truck, which it increased by the material-specific yield-loss ratios derived by dividing total consumption of steel, plastic, and other raw materials by the total output of steel, plastic, and other semi-finished parts. See Since Hardware's Rebuttal Brief at 17. Since Hardware observes that the petitioner has not proposed an alternative FOP reporting methodology, nor has the Department questioned the accuracy or appropriateness of its FOP methodology. In sum, Since

Hardware claims that its FOP methodology takes full account of: (1) the actual weight of all components comprising a hand truck; (2) the fact that the hand truck product is fully integrated into the company's production operations for non-subject merchandise; and (3) the actual yield loss Since Hardware experiences in producing all of its parts and components. *Id.* at 18. Accordingly, Since Hardware urges the Department to disregard the petitioner's claims that Since Hardware has not reported product-specific FOP data.

Since Hardware also rejects the petitioner's claim that its FOP data is not specific to subject merchandise. According to Since Hardware, it allocated the consumption of its various steel inputs on the most specific and verifiable basis allowed by the company's books and records. The petitioner's argument that Since Hardware could have used its material reference sheet and raw material inventory withdrawal records to devise an FOP methodology specific to hand trucks is based on a misunderstanding of Since Hardware's accounting system. As evidenced at verification, Since Hardware claims that even though its raw materials withdrawal records do record the thickness, width, or diameter of the product being withdrawn, Since Hardware does not have the ability to link these records to the specifications of the actual steel consumed in the production of subject merchandise. Since Hardware states that it is not able to link steel material inventory withdrawal records directly to actual production. *Id.* at 19-20, citing Exhibit 14 of the Since Hardware Verification Report. For this reason, Since Hardware does not know whether any particular amount of steel withdrawn from inventory was used in part or in total for producing subject or non-subject merchandise. *Id.* at 20. Moreover, Since Hardware notes that nowhere in the Department's verification report does it indicate that Since Hardware can link inventory withdrawal slips to specific production records as contemplated by petitioner. Rather, verification documents demonstrate the opposite, that there is no link. *Id.* at 21. Accordingly, Since Hardware argues that it acted to the best of its ability and has no reason to amend its approach for the final results, and the Department should therefore continue to calculate NV using its reported FOPs.

**Department's Position:** Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides such information but the information cannot be verified, the Department shall, subject to sections 782(d) and (e) of the Act, use facts otherwise available in reaching the applicable determination. Specifically, section 776(a)(2)(B) of the Act requires the Department to use facts available (FA) when a party does not provide the Department with information by the established deadline or in the form and manner requested by the Department. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available.

We disagree with the petitioner's assertions that Since Hardware submitted a FOP database that is distortive, utilized a methodology that is unreasonably broad, failed to provide requested information, or was uncooperative. In addition, we note that Since Hardware

submitted its questionnaire responses in a timely manner, provided FOP data that the Department successfully verified, cooperated with the Department during the verification of its questionnaire responses, and did not withhold data from the Department. For these reasons, we find that the evidence on the record does not support the application of FA, let alone the use of an adverse inference.

Regarding the petitioner's claim that the e-mail correspondence between Since Hardware and its U.S. customer demonstrates that Since Hardware has the ability to provide a hand truck-specific FOP data set, we find this argument is misplaced because the correspondence cited by the petitioner deals with estimated costs in order to establish the price for the U.S. customer, rather than the actual consumption rates used to produce subject merchandise. We also disagree with the petitioner's argument that Since Hardware's FOP data is distortive and does not reflect the true costs of subject merchandise. In fact, the petitioner's description of the FOP methodology as being non-specific to subject merchandise is an overstatement. Since Hardware's FOP methodology was to report the actual weight of the hand truck components, which is specific to subject merchandise, and increase this weight by the material-specific yield loss. The only part of this methodology that is based on factory-wide consumption is the material-specific yield loss ratios. Although the Department would prefer a more specific methodology for calculating yield loss, we verified that Since Hardware's inventory withdrawal records do not link with production orders. See Since Hardware's Verification Report at Exhibit 14. Therefore, based upon the record evidence of this review, we find its yield-loss methodology reasonable.

More generally, as noted by Since Hardware, the Department successfully verified the consumption rates of 14 of the most important inputs used to produce a hand truck, with only small discrepancies in the FOP's weights, which were noted and incorporated in the Preliminary Results. See the chart in the Since Hardware Verification Report at 20, and Exhibit 16. Regarding the yield-loss methodology, the Department selected the steel inputs and successfully verified the reported yield-loss. See the Since Hardware Verification Report at 27-28, and Exhibit 11. While noting that Since Hardware production is indeed integrated between subject and non-subject merchandise, the Department was able to tie all the monthly consumption of each input to the company's raw material sub-ledger and the corresponding inventory withdrawals. The Department also determined that the FOP methodology was indeed based on Since Hardware's records maintained in the ordinary course of trade. See Since Hardware Verification Report at 18, and Exhibit 14.

**Comment 12: Whether the Department Should Reject Since Hardware's Market Economy Purchases of Steel Inputs**

The petitioner challenges Since Hardware's claims that a portion of its steel inputs were purchased from market economy countries and, more specifically, that Since Hardware's market economy purchases for steel inputs should have been reported at a more specific level of detail. With regard to the country of origin, the petitioner claims that Since Hardware documented that its market economy purchases of steel inputs originated from a Hong Kong supplier. Although a market economy country does appear on certain documents from the Hong Kong supplier, the

petitioner asserts that Since Hardware failed to provide to the Department evidence that would allow the agency to confirm that these purchases were, in fact, of goods actually produced in a market economy, such as mill certificates, Hong Kong Customs entry documents, or any document that identified the specific producer of the purchased input (which would thereby indicate the country of origin). See the Petitioner's Case Brief at 28. As such, the petitioner claims that while the Department could confirm that Since Hardware purchased these inputs from a Hong Kong supplier, it could not confirm that the purchased inputs were manufactured by a market economy producer located in a market economy country. Id.

Moreover, the petitioner alleges that the market economy prices Since Hardware reported to the Department are aberrational when compared with the publicly-available surrogate values applied by the Department to steel inputs used by True Potential, another respondent in the instant review. The petitioner claims that, although the HTS subheadings of the market economy purchases reported by Since Hardware do not exactly match the HTS subheadings reported by True Potential, the subheadings are similar enough that it is reasonable to expect that the prices would be close to one another. Id. at 29 and footnote 10. Instead, the petitioner claims that the market economy prices reported by Since Hardware are significantly different from the surrogate values assigned to True Potential's steel inputs. Based on this observation, the petitioner believes that the price discrepancy is too great and urges the Department to reject Since Hardware's market economy purchase prices of steel inputs as aberrational. Id. at 29.

In addition, the petitioner claims that Since Hardware incorrectly grouped all of its market economy purchases of cold-rolled steel coil, regardless of thickness. That is, in analyzing its market economy purchases versus purchases from NME sources of cold-rolled steel coil, and the other steel inputs, Since Hardware did not analyze these purchases by different thickness ranges, but instead analyzed it as one commodity. See the Petitioner's Case Brief at 30. Citing the Since Hardware Verification Report at Exhibit 15, the petitioner analyzes Since Hardware cold-rolled steel purchases by thickness ranges and concludes that the majority of market economy purchases were of thicknesses not listed on the material reference sheet for hand trucks. Id. at 30-31. According to the petitioner, the percent of cold-rolled steel purchased from market economy sources in the thickness range listed on the hand truck material reference sheet is not significant. Thus, the petitioner asserts that the Department should value the cold-rolled steel FOP with a surrogate value obtained from Indian import statistics, rather than on Since Hardware's reported market prices. Id. at 31-32.

In rebuttal, Since Hardware urges the Department to continue to value Since Hardware's consumption of direct materials using Since Hardware's market economy purchase prices and to reject the petitioner's argument that the Department failed to gather sufficient evidence to support Since Hardware's market economy purchase claims. In the instant proceeding, Since Hardware argues that the Department followed its standard verification procedures and thoroughly examined Since Hardware's market economy purchases of cold-rolled steel, hot-rolled-steel, and steel wire rod, among other inputs, and noted no discrepancies.

Regarding the country of origin of the market economy purchases, Since Hardware

contends that the verification did not find any evidence of improper accounting or evasion, and there was no reason for the Department to search further than the Hong Kong supplier's documents, or to question Since Hardware's reported market economy purchases. According to Since Hardware, the petitioner's suggestion that the Department did not go far enough in verifying the country of origin of the market economy steel materials purchased by Since Hardware is without merit, and the Department should not revise any of the market economy input pricing data reported by Since Hardware in the final results. See Since Hardware's Rebuttal Brief at 23.

Since Hardware also urges the Department to ignore the petitioner's comparisons of Since Hardware's market economy steel pricing data because they are based on faulty comparisons. Since Hardware rejects the petitioner's comparison of its market economy prices against the surrogate data used to value the steel material inputs of another respondent, True Potential. Since Hardware believes that the comparison is flawed due to the different HTS classifications of steel purchased by itself and True Potential, and the large difference in the quantity Since Hardware purchased under its HTS subheading and the insignificant volume imported into India under True Potential's HTS subheading. Second, Since Hardware alleges that the contemporaneity of the comparison also is suspect as True Potential's steel purchases, referred to by the petitioner, could have entered India as much as two years before the end of the POR. Since Hardware claims that not only are the data from different time periods, but the petitioner also then applied to the Indian value an inflation figure even though world steel prices actually were decreasing over the POR. See Since Hardware's Case Brief at 24.

Since Hardware further claims that the petitioner's comparison of Since Hardware's steel wire rod purchases to Indian import data is similarly dubious. Not only does the petitioner compare Since Hardware's specific market economy purchases to a basket category of Indian imports under HTS 72155090 ("other bars and rounds") but, according to Since Hardware, the petitioner falsely claims that the prices reported by Since Hardware are significantly lower than that of the surrogate values. Id. Contrary to petitioner's claim, Since Hardware claims that the Indian import values under HTS 72155090 range widely depending on the country of origin, and Since Hardware's POR average market economy steel wire rod price falls within the range of the countries identified. Thus, even if one could legitimately compare Since Hardware's steel wire rod purchases to the Indian import basket category, the country-specific import values do not support a conclusion that Since Hardware's market economy purchase prices are aberrational. Id.

Finally, Since Hardware asks the Department to view with skepticism the petitioner's claims that Since Hardware's market economy purchases were not reported with an appropriate level of specificity. On one hand, according to Since Hardware, the petitioner claims with respect to steel inputs that "differences in price due to minor differences in the exact specifications, while expected, **should not be dramatic.**" (Emphasis in original.) On the other hand, Since Hardware claims that the petitioner argues just the opposite, i.e., that Since Hardware should have reported purchases on a more specific basis, presumably because there might be price differences for steel materials with different thicknesses. Id. at 25-26. Since

Hardware points to the record evidence, claiming that it paid the same metric ton prices for the hot-rolled steel it sourced from market economy suppliers, regardless of the thicknesses. Since Hardware argues that the same applies to the purchases of the cold-rolled steel it sourced from market economy suppliers. Thus, according to Since Hardware, the petitioner's attempts to discredit the market economy purchase prices based on alleged differences in cost for different thickness ranges are without merit. Additionally, because Since Hardware purchased its market economy steel inputs throughout the POR, there is also no concern that Since Hardware purchased from market economy sources only when the market price was very low (and otherwise purchased from NME suppliers), and there is no reason to believe that a specific, period-wide surrogate value would constitute a better surrogate value for the portion of the Since Hardware's steel inputs purchased from NME sources. Consequently, for the final results, Since Hardware urges the Department to continue to determine that the best available information to value the NME-produced portion of Since Hardware's steel inputs are the company's market economy steel input purchase prices. *Id.* at 26.

**Departments's Position:** Section 351.408(c)(1) of the Department's regulations provides that "where a factor is purchased from a market economy supplier and paid for in market economy currency, the Secretary normally will use the price paid to the market economy supplier" to value the FOPs. Thus, when a respondent demonstrates that it has purchased a meaningful amount of its input from a market economy country, and has paid for the input in market economy currency, the Department will infer that the price paid to the market economy supplier accurately reflects the cost of the input, and value all of the input with the weighted-average market economy price. Also, it is not the Department's practice to require a respondent to tie the use of materials purchased from market economies to the actual production of subject merchandise. See Notice of Final Determination of Sales at Less Than Fair Value: Hand Trucks and Certain Parts Thereof from the People's Republic of China, 69 FR 60980 (October 14, 2004) (Hand Trucks Final Determination) and Issues and Decision Memorandum at Comment 8.

As an initial matter, the Department notes that it recently revised its practice regarding how it will determine whether the quantity of market economy purchases is significant. See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716 (October 19, 2006). Specifically, the Department instituted a rebuttable presumption that market economy input prices are the best available information for valuing an entire input when the total volume of the input purchased from all market economy sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period. *Id.* at 61717. This new practice became effective for all segments of NME proceedings that were initiated after October 19, 2006, the publication date of the above-referred notice. Given that the instant new shipper review was initiated on February 3, 2006, this case does not fall under the Department's new policy. Therefore, we have analyzed this issue pursuant to our previous practice, which entailed a case-by-case basis analysis of whether the volume of market-economy inputs was meaningful. 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 Issues and Decision Memorandum at Comment 1 (Folding Metal Tables and Chairs).

Section IV of the Department's standard Section D questionnaire requires respondents to report for each raw material the percentage purchased from a market economy country and the percentage purchased from an NME. Since Hardware reported the percentages of each raw material purchased from market economy countries and from NME suppliers. Based on this information, we determined in the Preliminary Results that in every instance where Since Hardware purchased inputs from both market economy and NME suppliers, the percentage purchased from market economy suppliers was meaningful. Therefore, in accordance with section 351.408(c)(1) of our regulations, we preliminarily valued the relevant inputs using the actual market economy prices paid. See 72 FR 945.

At verification, the Department was able to tie randomly selected market economy purchases of multiple inputs to quantity reported, currency used, and country of origin. See Since Hardware's Verification Report at 19 and Exhibit 15. Regarding the quantity of purchases, the Department found no discrepancies at verification and, for the final results, continues to find that these purchases were clearly meaningful and significant. Id. In its case brief, the petitioner analyzed purchases of cold-rolled steel on a thickness basis. See the Petitioner's Case Brief at 30. The Department notes that, even when looking only at the purchases of cold-rolled steel of the thickness range listed on the material reference sheet, the percentage of market economy purchases of this range, as identified by the petitioner, is still sufficiently significant and meaningful in order for the Department to base its steel input valuation on market economy purchases. See Folding Metal Tables and Chairs at Comment 1; see also Folding Metal Tables and Chairs from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 38852, 38860 (July 10, 2006). Therefore, we are not persuaded by the petitioner's arguments.

**Comment 13: Whether the Department Should Assign a Surrogate Value to Plastic Bags**

According to the petitioner, Since Hardware reported plastic bags (field name PEBAG) as an FOP. The Department's NV calculation valued plastic bags using a surrogate value for polyethylene (PE) resin. For purposes of its final results, the petitioner urges the Department to assign a surrogate value to plastic bags based on the value of plastic bags in India. See the Petitioner's Case Brief at 32.

In rebuttal, Since Hardware argues that a surrogate value for PE bags is not an appropriate basis for valuing Since Hardware's consumption of the PE resin used for PE bags production because Since Hardware has reported throughout this proceeding, and the Department has verified, that the company produces its own PE bags from raw PE resin. See Since Hardware's Case Brief at 27.

At verification, according to Since Hardware, the Department's analysts examined the quantities of the PE resin used to produce the plastic bags as well as all the applicable energy and labor factors related to PE bags production, including allocated per-unit consumption amounts for diesel oil, electricity, and direct labor. Not finding any discrepancies between the

reported and consumed quantities, Since Hardware urges the Department to continue to separately value the PE resin, diesel oil, electricity, and labor hours consumed in the production of PE bags. Doing otherwise will, according to Since Hardware, “double count” all of the individual factors that Since Hardware reported for its “plastic bag making” production stage. Id. at 29.

**Department Position:** The record of this case clearly indicates that Since Hardware is not using plastic bags obtained from other sources. Rather, Since Hardware is manufacturing its own plastic bags using PE resin at the main production facility for subject merchandise. The Department verified that the production of plastic bags takes place in Since Hardware’s main production facility and was able to tie all the relevant FOPs associated with the plastic bags production to the company’s records. When a respondent self-produces an item, it is the Department’s practice to value individual inputs comprising such an item rather than base the value of a complete product on surrogate value. See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People’s Republic of China, 68 FR 47538 (August 11, 2003) and Issues and Decision Memorandum at Comment 1; Polyvinyl Alcohol From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 27991 (May 15, 2006) and Issues and Decision Memorandum at Comment 12. Consequently, for the final results, we continued to value plastic bags by assigning surrogate values to all relevant inputs used in the production of plastic bags.

**Comment 14:**        **Whether the Department Should Assign Bungee Cable a Different HTS Classification**

The petitioner argues that the Department should change its surrogate value for bungee cable (field name BCABLE) from HTS 5607.90.20, used in the Preliminary Results and defined as “CORDAGE, CABLE ROPES AND TWINE OF COTTON,” to HTS 5604.10.00, which has a description of “RUBBER THREAD AND CORD, TEXTILE COVERED.” The petitioner claims that HTS 5604.10.00 is a better match for the bungee cable used by Since Hardware in the production of subject merchandise, because bungee cable is not a rope or a cord of cotton, as suggested by the description for HTS 5607.90.20. Instead, according to the petitioner, the bungee cable has a core comprised of rubber thread, or elastic, covered by a textile layer. Thus, for the final results, the petitioner urges the Department to modify its surrogate value selection for bungee cable so it is based on HTS 5604.10.00.

Since Hardware did not respond to this comment.

**Department’s Position:** We agree with the petitioner that the more appropriate valuation of bungee cord should be based on HTS 5604.10.00. In Since Hardware’s submission of suggested publicly available information to value FOPs, Since Hardware describes its bungee cable as “Rubber Threat {sic} and Cord.” See Since Hardware’s September 15, 2006, submission at Attachment I. Consequently, the record supports the notion that the bungee cord used in the production of hand trucks contains a rubber element. Therefore, for the final results, we applied the surrogate value based on the Indian imports contained in HTS 5604.10.00, as this subheading

is for cords that have a rubber element, while the subheading used in the Preliminary Results does not.

**Comment 15:**        **Whether the Department Should Assign a Surrogate Value to the Input for Petrolatum**

According to the petitioner, in the Preliminary Results, the Department declined to assign a surrogate value to petrolatum as a FOP because: (1) surrogate value information was not available; and (2) the material was reported as being used in minimal amounts. See the Petitioner's Case Brief at 34. Referring to Since Hardware's November 8, 2006, submission, the petitioner notes that Since Hardware itself suggest two possible surrogate values: crude petroleum jelly and "petroleum oils and oils obtained from bituminous minerals, other than crude." Id. Thus, petitioner believes that information on petrolatum exists and is sufficient to assign an appropriate surrogate value to petrolatum. Therefore, for the final results, the petitioner urges the Department to revise its calculation of NV by including the surrogate value for petrolatum.

In rebuttal, Since Hardware urges the Department to reject the petitioner's assertion that the Department should value petrolatum for the final results. According to Since Hardware, the Department is permitted to decline to account for adjustments that are insignificant to the total NV. Further, Since Hardware claims that the Department typically values every FOP, but it is not required to do so when the input in question is insignificant and there is not reliable surrogate value information available. Furthermore, Since Hardware contends that the record does not contain any information that could be used to value petrolatum. Therefore, according to Since Hardware, the Department should follow its decision in the Preliminary Results and decline to value this insignificant input. See Since Hardware's Case Brief at 29.

**Department's Position:** The record of this case indicates the usage of petrolatum as one of the FOPs in manufacturing hand trucks. Additionally, as mentioned by the petitioner above, Since Hardware suggested three possible surrogate values for petrolatum, i.e., HTS 2712.10 (crude petroleum jelly), HTS 2710 (petroleum oils and oils obtained from bituminous minerals, other than crude) and HTS 2710.19.80 (lubricating oil). See Since Hardware November 8, 2006, supplemental response at 2. Moreover, Since Hardware's discussion of the possible surrogates seems to indicate that petroleum jelly is most similar to petrolatum ("when made into a solid form, petrolatum is similar to petroleum jelly"). Id.

Our review of the Indian import statistics for the HTS subheadings identified above indicates that there were no shipments into India during the POR in the above-mentioned HTS categories. Furthermore, there are no other possible surrogate values for petrolatum on the record. We note that the record indicates that the quantities of petrolatum used in the production of hand trucks were minimal. In previous cases, where certain materials were reportedly consumed in very small amounts and the surrogate values for these materials were not available, the Department did not include surrogate values for these materials in its calculation of NV. See Polyvinyl Alcohol from the People's Republic of China: Preliminary Results of Antidumping

Duty Administrative Review, 70 FR 67434, 67439 (November 7, 2005) (unchanged in the final results); Synthetic Indigo From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value, 65 FR 25706 (May 3, 2000), and Issues and Decision Memorandum at Comment 8; Ferrovandium and Nitrided Vanadium From the Russian Federation: Notice of Final Results of Antidumping Duty Administrative Review, 62 FR 65656 (December 15, 1997), and Issues and Decision Memorandum at Comment 11. Consequently, for the final results, we did not assign a value to the input for petrolatum.

**Comment 16:**            **Whether the Inclusion of South Korea in the Calculation of the Surrogate Value for Muriate of Potash is Warranted**

According to the petitioner, the Department inadvertently included Indian imports from South Korea in its calculation of a surrogate value for muriate of potash. Referring to the Department's Surrogate Value Memorandum, which excludes imports from South Korea because the agency has determined that South Korea maintains broadly available, non-industry-specific export subsidies that may benefit exports to all markets, the petitioner argues that the Department should recalculate the surrogate value for muriate of potash to exclude imports from South Korea. *Id.* at 36.

Since Hardware did not respond to this comment.

**Department's Position:** It is the Department's policy and practice to exclude from the surrogate country import data used in our calculations imports from South Korea, Thailand, Indonesia and India due to generally available export subsidies. See China Nat'l Mach. Imp. & Exp. Corp. v. United States, 293 F. Supp. 2d 1334 (Ct. Int'l Trade 2003), *aff'd* 104 Fed. Appx. 183 (Fed. Cir. 2004); and Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651 (March 15, 2005) (Carbon Steel Plate from Romania) and Issues and Decision Memorandum at Comment 4. Thus, for the final results of this review, we excluded imports from South Korea from the Indian import data for muriate of potash.

**Comment 17:**            **Whether the Calculation of the Surrogate Value for Welding Rod is Correct**

The petitioner alleges that an error occurred in the Preliminary Results calculation of the surrogate value for welding rod. Specifically, the petitioner asserts that the information for welding rod includes imports from six countries that have a positive quantity but a zero value. The petitioner states that the six countries as they appear in the Department's calculations are Sri Lanka, Sweden, Switzerland, Taiwan, the United Kingdom, and the United States. The petitioner notes that positive values are available for the imports from these countries in the surrogate value information submitted by Since Hardware for the record. Therefore, the petitioner urges the Department to correct its calculation of the surrogate value for welding rod for purposes of its final results by changing the zero value data to positive values based on the information submitted by Since Hardware. See the Petitioner's Case Brief at 37.

In rebuttal, Since Hardware agrees with the petitioner's comment and urges the Department to use the appropriate values already placed on the record. See Since Hardware Rebuttal Brief at 36.

**Department's Position:** We agree with the parties' suggestions and, because this information is already on the record, we will make the appropriate corrections for the final results. See SH Final Calculation Memo.

**Comment 18: Whether the Department Should Assign Bearings a Different HTS Classification**

The petitioner, in its case brief, alleges a clerical error when the Department applied the surrogate value to the axis of rotation FOP. The surrogate value is available in Indian rupees per piece. The reported factor is on a per kilogram basis. According to the petitioner, it is thus necessary to convert one of the values so they are presented on the same basis. This error can be corrected by converting the reported axis of rotation factor from a weight basis to a number-of-pieces basis. In this manner, according to the petitioner, the surrogate value per piece can be multiplied by the number of pieces per hand truck in the margin calculation. See the Petitioner's Case Brief at 35-36.

In its case brief, Since Hardware alleges that in the Preliminary Results, the NV calculation grossly overstated the cost of the two "axes of rotation" (i.e., wheel-mount ball bearings) that Since Hardware consumed to produce each unit of the subject merchandise. According to Since Hardware, to ensure that its NV calculation is a precise reflection of its actual production and COM experience, the Department, in the final results, should value Since Hardware's consumption of two wheel-mount ball bearings using the surrogate value for ball bearings (i.e., Indian imports classified under HTS 8482.10.11) that the Department used to value the same input for True Potential. In the Preliminary Results, Since Hardware claims that the Department valued the two wheel-mount bearings that Since Hardware consumes in the production of each unit of the subject merchandise using Indian import quantities and values for bearing housings, incorporating ball or roller bearings, classified under HTS 8483.20.00. Since Hardware argues that the surrogate value derived from this HTS and applied to Since Hardware's NV calculation in the Preliminary Results is inappropriate because: (1) it was converted, in error, from Indian import data recorded in pieces; (2) it grossly overstates the value of Since Hardware's two wheel-mount ball bearings as a percentage of overall COM; and (3) the Department has more precise information on the record to value Since Hardware's two wheel-mount ball bearings, including the surrogate value used in the Preliminary Results to value the same input that True Potential consumed.

The Department, in the Preliminary Results, valued Since Hardware's wheel-mount bearings using the quantity and value of Indian imports classified under HTS 8483.20.00, an import classification which encompasses a wide variety of bearing housings, including bearing housings that incorporate both ball bearings and roller bearings. According to Since Hardware, the import quantities recorded in this HTS classification are expressed on a per-unit basis,

resulting in a surrogate value that can only be expressed on a rupees per-unit basis. Since Hardware claims that HTS 8483.20.00 appears to be a “catch-all” classification that covers imports of a wide variety of bearing housing sizes. See Since Hardware’s Case Brief at 3. Given the absence of any size restrictions for the bearing housings classified under this HTS classification, Since Hardware claims that it is impossible to derive a meaningful rupees per-unit surrogate value that can be applied to its consumption of wheel-mount bearings.

Additionally, Since Hardware claims that the Department erred in the calculation of its bearing cost by failing to properly convert the unit cost from rupees/piece to rupees/KG. See Since Hardware’s Case Brief at 3-4. When the Department corrects this error, according to Since Hardware, the corrected surrogate value will cause the cost of the bearings to increase to the point of exceeding the entire value of COM. Id. at 5.

Since Hardware claims that it is far more reasonable to utilize the surrogate value that the Department used to value the bearings that True Potential consumed (i.e., imports classified under HTS 8482.10.11), even though this value is still high as a proportion of Since Hardware’s total COM and NV. According to Since Hardware, HTS 8482.10.11 more specifically reflects the actual wheel-mount ball bearings that Since Hardware consumed during the POR. See Since Hardware’s Case Brief at 6. By comparison, HTS 8483.20.00 suffers from many deficiencies. First, it is a broad category that covers bearing housings incorporating either ball bearings or roller bearings. Second, HTS 8483.20.00 includes both radial ball bearings and axial ball bearings. Since Hardware claims that the wheel-mount ball bearings it consumed during the POR were simple, radial ball bearings that allow two of the hand truck’s caster wheels to swivel. The ball bearings that Since Hardware consumed are neither axial bearings nor roller bearings. Third, as stated previously, the absence of any restrictions on the size of the items included in HTS 8483.20.00 makes it impossible to convert the per-piece import price to a kilogram equivalent basis with any degree of specificity or accuracy. In contrast, HTS 8482.10.11 is limited to radial-type ball bearings not exceeding a 50 millimeter bore diameter. Although the import data under HTS 8482.10.11 also are expressed on a per-piece basis, the items imported under this classification are at least limited to a 50 millimeter diameter and, thus, more closely approximate the size of the ball bearings that Since Hardware consumed. According to Since Hardware, the size range of the ball bearings that it consumed during the POR falls squarely within the limited size range of ball bearings that could be included under HTS 8482.10.11. Id. at 7. Accordingly, Since Hardware contends that the unit weights of the ball bearings included in HTS 8482.10.11 approximately reflect the unit weight of the ball bearings that Since Hardware consumed and, thus, are more specific to the ball bearings that Since Hardware consumed than the items classified under HTS 8483.20.00.

Furthermore, Since Hardware claims that the audited financial statements of two Indian producers of caster wheels demonstrates that the average import price under HTS 8483.20.00 does not constitute a representative price for the wheel-mount ball bearings in question. Since Hardware states that A.K. Engineering and Rexello are large producers of caster wheels and also produce trolleys. According to Since Hardware, the average unit value calculated from the ending finished goods inventory values of A.K. Engineering and Rexello corroborate the import

price for bearings classified under HTS 8482.10.11 and demonstrate further that HTS 8483.20.00 is not an appropriate basis for valuing the ball bearings used in conjunction with caster wheels.

Finally, Since Hardware claims that in the Preliminary Results, the Department applied in the NV calculation for True Potential the average price of bearing imports classified under HTS 8482.10.11. True Potential's bearings are nearly identical in terms of physical characteristics and function to the ball bearings that Since Hardware consumed in the production of subject hand trucks during the POR. According to Since Hardware, the Department is obligated to treat respondents consistently and fairly. Accordingly, Since Hardware argues that the Department, for the final results, should apply to Since Hardware's ball bearings the same surrogate value that it applied in the Preliminary Results to True Potential's bearings. See Since Hardware's Case Brief at 10.

In rebuttal, the petitioner argues that Since Hardware's attempt to change the HTS classification for the input "Axis of Rotation" is misplaced and should be rejected. The petitioner claims that the selection of HTS 8483.20.00, used in the Preliminary Results, constitutes the most appropriate Indian import classification for valuing Since Hardware's consumption of the Axis of Rotation. The petitioner notes that Since Hardware provided and suggested that the above-mentioned HTS classification, described as "BEARNG HOUSING, INCORPORTNG BALL/RLLR BEARN," most closely represents the housed bearing used in Since Hardware's products. See the Petitioner's Rebuttal Brief at 7-8.

The petitioner refers to Since Hardware's questionnaire responses where, according to the petitioner, Since Hardware clearly describes the Axis of Rotation as "wheel hubs (inclusive of bearings)" both at the original section C questionnaire response, as well as in the subsequent supplemental questionnaire response. Id. at 8-9. Additionally, the petitioner cites Since Hardware's surrogate value submission, dated September 15, 2006, where Since Hardware recommended HTS 8483.20.00 as the most appropriate commodity classification because it covers housed bearings. Id.

Additionally, the petitioner urges the Department to reject Since Hardware's attempt to re-characterize its input by referencing the Axis of Rotation as either "wheel-mount bearings," "wheel-mount ball bearings," "ball bearing components," "ball bearings," or "radial ball bearings" which, according to the petitioner, constitutes new information. Id. at 9. Also, Since Hardware's description of the Axis of Rotation as a "simple bearing" constitutes, according to the petitioner, new and untimely filed information and, as such, should be rejected by the Department. Id. at 10.<sup>8</sup>

The petitioner also asks the Department to reject the Since Hardware's request that the

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<sup>8</sup> The Department notes that the same argument was submitted separately by the petitioner in a letter to the Department, dated February 20, 2007.

Department value its Axis of Rotation according to the HTS classification employed to value True Potential's bearing. The petitioner claims that, unlike Since Hardware's bearings, which come with a housing, True Potential's hand trucks use a simple bearing which requires a different HTS classification. *Id.* at 10. Specifically, the petitioner claims that Since Hardware's housed bearings serves three functions: (1) it allows the wheels on the hand truck to swivel 360 degrees, on a plane perpendicular to the orientation of the wheels; (2) it holds the bearing in place; and (3) it holds the wheels in place. In contrast, True Potential's bearings serve none of these functions. Further, the petitioner notes that Since Hardware has not provided any information regarding the bearing contained within its housing, except for a brief reference to a roller bearing, which Since Hardware now contradicts. *Id.* According to the petitioner, True Potential's bearings: (1) consist of plain bearings absent any hub or housing; (2) are placed at the center of the wheel and facilitate rotation of the wheel on the same plane as the bearing; (3) do not allow the wheel to swivel 360 degrees; and (4) weigh substantially less than Since Hardware's housed bearings. *See* the Petitioner's Rebuttal Brief at 11. The petitioner claims that the evidence of record demonstrates that Since Hardware's axis of rotation factor is radically different than True Potential's input. Since Hardware's input is a wheel hub (inclusive of bearings) and not a simple ball bearing. *Id.*

The petitioner also asserts that the Department should reject Since Hardware's claim that the audited financial statements of A.K. Engineering and Rexello demonstrate the unreasonableness of the surrogate value calculated from HTS 8483.20.00. *Id.* at 12. The petitioner rejects Since Hardware's analysis which relies heavily on the characterization of the wheels on its hand truck as "caster wheels." According to the petitioner, Since Hardware's record does not refer anywhere to its wheels as "caster wheels." *Id.* The petitioner points out that Since Hardware specifically told the Department that its hand trucks did not use casters. *Id.* Therefore, according to the petitioner, Since Hardware's characterization of its wheels as "caster wheels" is new and untimely and, as such, should be rejected by the Department. *Id.* Finally, even if the information about caster wheels is accepted by the Department, the petitioner claims that (1) it is not clear whether the caster wheels and bearings in the two Indian companies' financial statements are similar to the inputs consumed by Since Hardware, and (2) whether the reported finished goods inventory values for bearings and casters are purchase values or production costs. For these reasons, the petitioner contends that the Department must reject Since Hardware's arguments based upon the Indian financial statements.

The petitioner urges the Department to reject Since Hardware's claims that it is not familiar with the Indian HTS classification system because Since Hardware is an experienced exporter that is familiar with general HTS classifications, and Since Hardware and its legal counsel are both veteran participants in antidumping proceedings concerning NME countries. *See* the Petitioner's Rebuttal Brief at 13. Given the experience of the respondent in NME proceedings, the petitioner claims that Since Hardware should be knowledgeable on the selection of HTS classification with regard to its Axis of Rotation factor. *Id.* Lastly, the petitioner agrees with Since Hardware concerning the error in valuing housed bearings made by the Department in the Preliminary Results. The petitioner urges the Department to correct this error.

**Department's Position:** With regard to the petitioner's allegations that Since Hardware used a set of new terms to describe the bearings used in the production of subject merchandise, such as "wheel-mount bearings," or "wheel-mount ball bearings," rather than the original term of "Axis of Rotation," used in the initial Since Hardware submissions, we note that Since Hardware also used the term "housed bearing" to describe Axis of Rotation on a number of occasions throughout the record. See, e.g., Supplemental Response, dated September 15, 2006, Attachment I. Under section 351.301(b)(4) of the Department's regulations, factual information for the final results of a new shipper review must be submitted not later than 100 days after the date of publication of notice of initiation of the review, except to the extent requested by the Department. Because the publication date of the initiation notice of this review was February 3, 2006, the last day to submit unsolicited new factual information was May 14, 2006. See Hand Trucks and Certain Parts Thereof From the People's Republic of China; Initiation of New Shipper Review, 71 FR 5810 (February 3, 2006). However, the information contained in Since Hardware's September 15, 2006, submission, where it used the term "housed bearing", was requested by the Department and therefore timely filed. Since Hardware's use of additional terms to describe its housed bearings amounts to no more than a list of synonyms describing the same part. As such, the Department does not consider the usage of the new terms as new information, but rather a description of the same input using a different set of synonymous terms. We also note that Since Hardware's use of new terms does not change the Department's perception that the axis of rotation is indeed a form of housed bearing used in the production of hand trucks.

With regard to valuing Since Hardware's housed bearings, we find that weight-averaging the surrogate values from the two HTS bearing classifications currently on the record is the best method for calculating a surrogate value reflective of housed bearing prices in India during the POR, given the limited information on the record of this review. We explain these findings below.

In valuing FOPs, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market economy country. In choosing the most appropriate surrogate value, the Department considers several factors, including the reliability, contemporaneity, and specificity of the source information. See, e.g., Fresh Garlic NSR, 67 FR 72139, and Issues and Decision Memorandum at Comment 6. Stated differently, the Department attempts to find the most representative and least distortive market-based value in the surrogate country. See Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China, 66 FR 31204 (June 11, 2001), and Issues and Decision Memorandum at Comment 5. The Department undertakes this analysis on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry. The Department prefers to rely on publicly available data. See Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review, 66 FR 20634 (April 24, 2001) and Issues and Decision Memorandum at Comment 2.

Regarding Since Hardware's arguments concerning the surrogate value used in valuing its bearings, we note that our review of the Indian import statistics, used in the Preliminary Results to value bearings incorporated in Since Hardware's subject merchandise, yields a surrogate value that appears to be disproportionate to the total cost of materials of the subject merchandise. Specifically, the weighted-average surrogate value for a single housed bearing derived from the import statistics covered by HTS 8483.20.00, corrected for the error noted by Since Hardware in its case brief, would yield a cost of greater than 20 U.S. dollars per piece. As there are two bearings per single hand truck, the total cost assigned to bearings would have exceeded the total cost of all other direct materials incorporated in Since Hardware's hand truck. See Since Hardware's Case Brief at 5. For this reason, the Department finds it appropriate to re-examine the surrogate value information on the record of this proceeding and determine the most suitable method of valuing this input.

In its factual submissions related to the appropriate surrogate value for this input, Since Hardware suggested that the Department use HTS 8483.20.00 to value its bearings. See Since Hardware's submission dated September 15, 2006. Since the respondent is in the best position to determine the HTS classification that best describes its input, it is appropriate to continue to include HTS 8483.20.00 in our valuation of Since Hardware's bearings. Moreover, we note that this category is for housed bearings, which is the type of bearing Since Hardware reported that it used in the production of its hand truck. Although Since Hardware subsequently claimed in its case brief that this HTS classification is no longer the most appropriate classification to use in valuing its input, all of Since Hardware's arguments are that the surrogate value from 8483.20.00 is aberrational. At no point does Since Hardware provide any evidence, argument, or discussion that its bearings would not be imported under the classification 8483.20.00, as originally claimed. Rather, it argues just that the surrogate value for 8483.20.00 is aberrationally high. This argument, however, is misplaced. Even after the shipments from the NME and subsidy countries are removed, there remains a large quantity of shipments, from multiple countries, in the Indian import statistics. Further, we note that there is no information on the record, such as shipments under this HTS classification into other countries, to use as a benchmark in analyzing whether this is aberrational. For these reasons, the Department does not find the resulting surrogate value from this HTS classification to be aberrational.

In its case brief Since Hardware argues that HTS 8483.20.00 has no restriction on the size of bearings included in that category. We agree that the imports made under this HTS classification may cover a wide range of housed bearing sizes, as evidenced by the wide range of country specific import quantities and prices. The absence of a size limit appears to create a "basket category" of housed bearings. Balancing this concern, with Since Hardware's record statement that this is the appropriate HTS classification in which to obtain a surrogate value for its housed bearing inputs, we find that it is not appropriate to rely exclusively on HTS 8483.20.00 in valuing this input. In this regard, our examination of the record in the instant review indicates that, in addition to HTS 8483.20.00, the Department also used HTS 8482.10.11, which was applied to value True Potential's bearings. See Preliminary Results FOP Memorandum.

While the Department does not claim that True Potential's bearings are necessarily identical to Since Hardware's adapter bearings, HTS 8482.10.11 appears to contain the main characteristics applicable to the Since Hardware's bearings. HTS 8482.10.11 is limited to a size range that appears to be similar to the size of Since Hardware's bearings examined at verification and, according to the WTA statistics, also incorporates an adapter, which is a form of metal housing for the bearing. Further, as the petitioner notes, the record does not specifically describe the type of bearing or housing included in Since Hardware's housed bearing, although Since Hardware did include a reference to roller bearings. See the Petitioner's Rebuttal Brief at 10. Since there is no evidence on the record regarding the cost of roller versus ball bearings, the Department, based upon record evidence of this review, does not consider the type of bearing included in the two HTS classifications under consideration to be especially relevant. Instead, we find the size of the bearing to be more instructive. The fact that HTS 8482.10.11 limits the bearings to a certain size yet, at the same time, includes bearings that may rotate horizontally or vertically, and are in a metal housing, appears to complement the HTS classification used in the Preliminary Results.

Consequently, in light of the limited record evidence concerning Since Hardware's input, and the apparent applicability of both HTS classifications to the housed bearing incorporated in the Since Hardware hand truck, the Department determines that weight-averaging the two bearing categories into a single surrogate value constitutes the best available information for purposes of valuing Since Hardware's housed bearings. We applied a weighted-average surrogate value derived from imports statistics using both HTS classifications, *i.e.*, 8483.20.00 and 8482.10.11. See Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 71 FR 34893 (June 16, 2006), and Issues and Decision Memorandum at Comment 1.

Regarding the reliability, contemporaneity, and specificity of the two HTS classifications, we note that the data for both HTS classifications are from Indian import statistics covering the POR, thus, satisfying the requirements of reliability and contemporaneity. Regarding specificity, we note that True Potential's bearing, just as Since Hardware's bearing, is used to reduce friction, housed in a metal housing, and its main function is to assist in the wheel's operation. Thus, weight-averaging these two HTS classifications into a single surrogate value satisfies the Department practice. Id.

The resulting weighted-average surrogate value used for these final results is 61.83 Indian rupees per piece. The Department converted this rupees per piece surrogate value into rupees per KG, and then applied the exchange rate to arrive at a dollar per KG value of 6.16 U.S. dollars. Since there are two bearings per hand truck, the Department multiplied the dollar per KG surrogate value by the consumption rate (for both bearings) that is expressed in KG.

**Comment 19:**            **Whether the Inclusion of Packing-Related Inputs in Cost of Manufacturing is Valid**

Since Hardware claims that the Department, for the final results, should adjust Since

Hardware's NV calculation so that all packing-related costs are added to the calculation only after the application of the surrogate financial ratios. In the Preliminary Results, according to Since Hardware, the Department included three packing-related items in COM rather than as a part of the overall packing costs that were added subsequent to the application of the surrogate financial ratios. At the Department's request, Since Hardware separately reported the diesel consumed for plastic bag making (field name "DIESELPBM"), the electricity consumed for plastic bag making (field name "ELECTRICITYPBM"), and the labor hours required for plastic bag making (field name "DIRLABPBM"). The Department properly included the resin used to make plastic bags (field name "PEBAG") in the packing portion of the NV calculation, but did not include the factors reported in the fields DIESELPBM, ELECTRICITYPBM, and DIRLABPBM. Instead, Since Hardware alleges that the Department inadvertently added these items to COM. Given that the Department requested that Since Hardware separately report all the FOPs necessary to produce plastic bags in an effort to calculate Since Hardware's antidumping margin as accurately as possible, Since Hardware argues that the Department in the final results should ensure that the FOPs reported in the fields DIESELPBM, ELECTRICITYPBM, and DIRLABPBM are added to packing costs and not to COM. See Since Hardware's Case Brief at 14-15.

In rebuttal, the petitioner agrees with Since Hardware that the Department should correct this matter in its final results by including these factors as part of its packing calculation. However, the petitioner believes that the Department should also revise its NV calculation to include the factory overhead, SG&A expense, and profit attributable to packing materials and packing labor in NV. See the petitioner's Rebuttal Brief at 17.

**Department's Position:** We agree with Since Hardware that the FOPs associated with packing should be included in the packing calculation of NV. Consequently, for the final results, we included factors DIESELPBM, ELECTRICITYPBM, and DIRLABPBM as part of the packing calculations. See SH Final Calculation Memo. With regard to the petitioner's claims that the factory overhead, SG&A expense and profit attributable to packing materials should also be included in NV, we disagree. For further information, see Comment 2, above.

### **True Potential's Issues**

**Comment 20:** **Whether the Department Should Add Trading Company Factors for Selling, General & Administrative Expenses and Profit to its Calculation of True Potential's Normal Value**

The petitioner argues that, in the Preliminary Results, the Department's calculation of True Potential's NV is inaccurate because it fails to include those additional SG&A expenses and profits associated with True Potential's sale of hand trucks to its customers. The petitioner states that, in the Preliminary Results, the Department calculated NV for True Potential based on the FOPs for those manufacturers from whom True Potential purchased hand trucks. The petitioner claims that the Department's Preliminary Results calculation included SG&A expenses and profit surrogate ratios based on the financial statement of an Indian producer of the

same or similar merchandise, and thus captured the SG&A expenses incurred, and profits enjoyed, by those PRC manufacturers who sold hand trucks to True Potential. However, the calculation did not include additional SG&A and profit surrogate ratios based on the financial statements of Indian trading companies, and thus failed to capture those additional SG&A expenses incurred, and additional profits enjoyed, by True Potential for its sale of hand trucks to its customers. The petitioner asserts that the Department's preliminary calculation thus underestimated the NV of the subject merchandise.

Citing Section 771(28) of the Act, the petitioner claims that the statute requires that the Department's NV calculations take into account "both the exporter of the subject merchandise and the producer of the same subject merchandise to the extent necessary to accurately calculate the total amount incurred and realized for costs, expenses, and profits in connection with production and sale of that merchandise." (emphasis added by the petitioner.) The petitioner claims that the Department's failure to include in its NV calculation additional SG&A expenses and profits for True Potential's export sales opens up a loophole whereby resellers can escape consequences due to their own dumping misbehavior. The petitioner notes that in situations involving market economy countries, the Department normally calculates a reseller's cost of producing the subject merchandise based on the manufacturer's production costs, the manufacturer's SG&A, and the reseller's SG&A. See the petitioner case brief at 39. As such, the petitioner states that the Department has recognized that a manufacturer's SG&A does not fully capture the NV of the subject merchandise as sold by a reseller in situations involving market economy countries. Thus, the petitioner contends that it is unreasonable and unlawful for the Department to act inconsistently and ignore reseller SG&A (and profit) when it calculates the NV of the subject merchandise as sold by a reseller in situations involving NME countries.

The petitioner notes that the Department rejected this proposal in the underlying investigation. However, the petitioner urges the Department to reconsider this issue. In the original investigation, the petitioner states that the Department said that it could not close this loophole because "without knowing the selling activities undertaken by the Indian producers whose information is being used to calculate an SG&A ratio, we cannot say whether or to what extent they differ from the selling activities of True Potential and its suppliers. Therefore, we have no basis to apply the SG&A ratio twice as requested by the petitioner." See the petitioner case brief at 40. In this instant matter, the petitioner notes that it is not asking the Department to "apply the SG&A ratio twice." Rather, the petitioner states that it is asking that two separate SG&A ratios be applied: one applicable to SG&A expenses associated with the producer's sale of hand trucks to the trading company and the other applicable to SG&A expenses associated with the trading company's sale of hand trucks to its customer.

Further, the petitioner argues that it is reasonable to assume that the Indian surrogate hand truck producers engage in the same types of selling activities engaged in by True Potential's unaffiliated suppliers. The petitioner contends that the Department implicitly acknowledges the similarity of the selling activities between the Indian surrogate hand truck producer(s) and the Chinese hand truck producers by the very concept and application of a surrogate SG&A ratio. Therefore, the petitioner states that it is completely reasonable to assume

that True Potential, as a trading company, engages in selling activities that are comparable to the selling activities engaged in by Indian trading companies.

Moreover, the petitioner states that True Potential and its unaffiliated producers/suppliers operate as independent entities, with each party performing its own selling activities and earning its own profit. The petitioner notes that True Potential has submitted no evidence on the record of this review to suggest otherwise. However, if the Department continues to be concerned about the selling activities of True Potential and its suppliers, the petitioner argues that, at a minimum, the Department should apply the profit ratio for trading companies in the derivation of NV for True Potential.

The petitioner notes that its February 5, 2007, surrogate value submission provides the Department with surrogate reseller SG&A and profit information based on publicly available data for Indian trading companies. Therefore, in addition to the calculated SG&A and profit surrogate ratios for manufacturing companies, the petitioner states that the Department's calculation of True Potential's NV should capture a reseller SG&A ratio of 20.40 percent and reseller profit ratio of 4.23 percent. *Id.* at 41.

True Potential disagrees with the petitioner's argument that the Department should apply one set of financial ratios to capture the manufacturer's experience, and a second set to capture the exporter's experience. True Potential contends that the petitioner has not provided any analysis of the selling structure of the Indian companies upon which the surrogate value information is based to support its assertion that the calculation it is requesting would not result in double-counting SG&A and profit. Further, True Potential asserts that the Department disposed of the petitioner's suggested methodology in the investigation because there is no way to determine, without knowledge of the selling activities being undertaken by Indian producers, whether the Department would be double-counting SG&A and profit. *See* True Potential's Rebuttal Brief at 2. True Potential states the petitioner has made no attempt to compare or contrast the actual selling activities of True Potential and its manufacturers to the selling activities of the Indian producers. For example, True Potential notes that it is possible that a producer in India performs all of the selling activities itself that are spread between True Potential and its supplier in the PRC. True Potential states that the petitioner fails to explain how its proposal would not result in double-counting in such a situation. Moreover, True Potential notes that the petitioner has not cited a single NME case where the Department added surrogate value ratios for SG&A and profit twice. True Potential states that the petitioner is requesting a major policy change that has support neither in the statute, nor case law. Therefore, True Potential urges the Department to reject the petitioner's argument in this matter as it did in the underlying investigation.

**Department's Position:** We agree with True Potential and have not added the SG&A and profit of Indian trading companies to the calculation of True Potential's NV for the final results. Specifically, as stated in the underlying investigation, "without knowing the selling activities undertaken by the Indian producers whose information is being used to calculate an SG&A ratio, we cannot say whether or to what extent they differ from the selling activities of True Potential

and its suppliers.” See Hand Trucks Final Determination at Comment 12. As noted by both parties, the petitioner raised this issue in the underlying investigation, where the Department determined that it would be inappropriate to apply two SG&A ratios to COM. The petitioner has provided no new information on the activities of the surrogate Indian producers or trading companies to justify a departure from the Department’s handling of this same issue in the investigation. Moreover, there is no information on the record of this review to indicate that the selling activities undertaken by Nagori differ from the selling activities undertaken by True Potential or its PRC manufacturers so as to support the calculation requested by the petitioners. While the petitioner concedes that it is reasonable to assume that the Indian surrogate hand truck producers engage in the same types of selling activities as True Potential’s unaffiliated suppliers, it has offered no record evidence to demonstrate why this would justify applying two separate SG&A and profit ratios in the calculation of True Potential’s NV. Therefore, as stated in the underlying investigation, we have no basis to apply the SG&A and profit ratios in the manner requested by the petitioner.

**Comment 21:**            **Whether the Department Should Correct its Application of a Surrogate Value for Certain Ball Bearings**

The petitioner contends that the Department made a clerical error in its application of the surrogate value for True Potential’s ball bearings. While the surrogate value for ball bearings is available in Indian rupees per piece, the petitioner alleges that the Department incorrectly utilized this surrogate value as if it were reported in Indian rupees per kilogram by multiplying the weight of ball bearings by the surrogate value of ball bearings on a per piece basis. The petitioner asserts that the Department can correct this error in its calculations by converting the reported ball bearings factor from a weight basis to a number-of-pieces basis. The petitioner states that the Department can then multiply the surrogate value per piece by the number of pieces per hand truck in the margin calculation.

True Potential did not comment on this issue.

**Department’s Position:** We agree with the petitioner that the surrogate value for ball bearings and the ball bearings factor should be utilized on the same basis, *i.e.*, unit of measure. However, in order to keep the unit of measure for the ball bearings surrogate value consistent with the other reported FOPs, we have converted the surrogate value for ball bearings from a rupees per-piece basis to a rupees per-kilogram basis. We then multiplied the surrogate value on a per-kilogram basis by the ball bearings factor, which was reported on a per-kilogram basis. For additional information, see TP Final Calculation Memo.

**Comment 22:**            **Whether the Department Should Correct Its Surrogate Value Calculation for Carbon Dioxide to Include Imports from Hong Kong**

The petitioner states that True Potential reported carbon dioxide as a FOP. However, the petitioner alleges that, in the Department’s calculation of a surrogate value for carbon dioxide, the Department inexplicably excluded imports from Hong Kong in the calculation of the overall

weighted-average value for carbon dioxide. The petitioner contends that there is no reason for the Department to exclude imports from Hong Kong because the Department considers Hong Kong to be a market economy country. Therefore, for the final results, the petitioner asserts that the Department should revise its calculation of the surrogate value for carbon dioxide to include shipments from Hong Kong.

True Potential did not comment on this issue.

**Department's Position:** We agree with the petitioner. For the Preliminary Results, in its calculation of a surrogate value for carbon dioxide, the Department mistakenly excluded imports from Hong Kong. See Preliminary Results FOP Memo at Exhibit 4. It is the Department's policy and practice to exclude, from the surrogate country import data used in our calculations, imports from NME countries, South Korea, Thailand, Indonesia and India due to generally available export subsidies. See China Nat'l Mach. Imp. & Exp. Corp. v. United States, 293 F. Supp. 2d 1334 (Ct. Int'l Trade 2003), aff'd 104 Fed. Appx. 183 (Fed. Cir. 2004) and Carbon Steel Plate from Romania, 70 FR 12651 and Issues and Decision Memorandum at Comment 4. We note that Hong Kong is not included in this list of countries. Thus, for the final results, we will include the import statistics from Hong Kong in the calculation of the surrogate value for carbon dioxide. See TP Final Calculation Memo.

**Comment 23:**        **Whether the Department Should Correct its Surrogate Value Calculation for Welding Solder to Include Imports from Austria and the Netherlands**

The petitioner notes that True Potential reported steel welding solder as a FOP. However, in its calculation of a surrogate value for welding solder, the petitioner alleges that the Department excluded imports from Austria and the Netherlands from its calculation of the surrogate value for welding solder. The petitioner argues that there is no reason for the Department to exclude these imports. Therefore, for the final results, the petitioner states that the Department should revise its calculation of the surrogate value for welding solder so as to include imports into India from Austria and the Netherlands in the calculation.

True Potential did not comment on this issue.

**Department's Position:** We agree with the petitioner. For the Preliminary Results, in its calculation of a surrogate value for steel welding solder, the Department mistakenly excluded imports from Austria and the Netherlands. See Preliminary Results FOP Memo at Exhibit 4. It is the Department's policy and practice to exclude, from the surrogate country import data used in our calculations, imports from NME countries, South Korea, Thailand, Indonesia and India due to generally available export subsidies. See China Nat'l Mach. Imp. & Exp. Corp. v. United States, 293 F. Supp. 2d 1334 (Ct. Int'l Trade 2003), aff'd 104 Fed. Appx. 183 (Fed. Cir. 2004) and Carbon Steel Plate from Romania, 70 FR 12651 and Issues and Decision Memorandum at Comment 4. We note that Austria and the Netherlands are not included in this list of countries.

Thus, for the final results, we will include import statistics from Austria and the Netherlands in the calculation of the surrogate value for steel welding solder. See TP Final Calculation Memo.

### **Future Tool's Issue**

#### **Comment 24: Whether the Department Should Continue to Apply Adverse Facts Available to Future Tool**

The petitioner states that, in the Preliminary Results, the Department found that Future Tool failed to respond to sections C and D of the Department's questionnaire. As a result, the petitioner notes that the Department preliminarily concluded that the use of total FA was appropriate with respect to those responses. See petitioner case brief at 14. The petitioner notes that the Department then concluded that Future Tool's failure to respond to the agency's questionnaire necessarily meant that it also failed to establish its eligibility for a separate rate. Id.

Therefore, the petitioner urges the Department to confirm its preliminary results regarding Future Tool in the final results of this review. The petitioner notes that U.S. antidumping law permits the Department to derive an AFA rate from: (1) the petition; (2) a final determination in the investigation; (3) any previous administrative review; or (4) any other information placed on the record. 19 U.S.C. 1677e(b). The petitioner argues that, given the willful nature of Future Tool's refusal to cooperate, the Department should calculate Future Tool's dumping margin based on the AFA rate of 383.60 percent and issue assessment instructions to this effect 15 days after the date of publication of the final results.

Future Tool did not comment on this issue.

**Department's Position:** In the Preliminary Results, regarding Future Tool, we found that "as a result of its failure to respond to the Department's requests for information, Future Tool failed to establish its eligibility for a separate rate. Therefore, Future Tool is not eligible to receive a separate rate and will be part of the PRC-wide entity, subject to the PRC-wide rate. As noted above, this rate will be based on total FA." See Preliminary Results, 72 FR at 942. In the Preliminary Results, the PRC-wide rate was 383.60. Id. at 946. Moreover, in the Preliminary Results, we noted that "because . . . Future Tool . . . {is} part of the PRC-wide entity, {it is} subject to the PRC-wide rate." Id.

We find that no change in the facts has emerged on the record of this review since the Preliminary Results. Accordingly, for the final results, we continue to deny Future Tool a separate rate, thereby including Future Tool in the PRC-wide entity. Since the PRC-wide entity did not provide requested information, thereby impeding the progress of this review, we continue to apply total FA pursuant to sections 776(a)(2)(A) and (C) of the Act. Moreover, since the requested information is in the possession of the PRC-wide entity, we continue to find that the PRC-wide entity did not cooperate to the best of its ability. Therefore, we continue to apply an adverse inference, pursuant to section 776(b) of the Act. As AFA, we continue to apply the rate

of 383.60 percent. For a full discussion of our application of AFA to Future Tool and the PRC-wide entity, see Preliminary Results, 72 FR at 942-943. This decision is in accordance with Department practice. See 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) (Brake Rotors 04-05 Final) and Issues and Decision Memorandum at Comment 11.

### **Shandong Machinery's Issue**

#### **Comment 25: Whether the Department Should Continue to Apply Adverse Facts Available to Shandong Machinery**

The petitioner states that, in the Preliminary Results, the Department found that Shandong Machinery had failed to provide data on the quantity and value of its exports to the United States during the POR. See the Petitioner's Case Brief at 37. As a result, the petitioner notes that the Department preliminarily concluded that the use of total FA was appropriate with respect to those responses. *Id.* The petitioner notes that the Department then concluded that Shandong Machinery's failure to respond to the agency's questionnaire necessarily meant that it also failed to establish its eligibility for a separate rate.

Therefore, the petitioner urges the Department to confirm its preliminary results regarding Shandong Machinery in the final results of this review. The petitioner notes that U.S. antidumping law permits the Department to derive an AFA rate from: (1) the petition; (2) a final determination in the investigation; (3) any previous administrative review; or (4) any other information placed on the record. 19 U.S.C. 1677e(b). The petitioner argues that, given the willful nature of Shandong Machinery's refusal to cooperate, the Department should calculate Shandong Machinery's dumping margin based on the AFA rate of 383.60 percent and issue assessment instructions to this effect 15 days after the date of publication of the final results.

Shandong Machinery did not comment on this issue.

**Department's Position:** In the Preliminary Results, regarding Shandong Machinery, we found that, "because this company did not respond to the Department's questionnaire, the Department preliminarily finds that the use of total FA is appropriate. Moreover, Shandong Machinery failed to establish its eligibility for a separate rate. Therefore, Shandong will be part of the PRC-wide entity, subject to the PRC-wide rate. As noted above, this rate will be based on total FA." See Preliminary Results, 72 FR at 942. In the Preliminary Results, the PRC-wide rate was 383.60. *Id.* at 946. Moreover, in the Preliminary Results, we noted that "because . . . Shandong Machinery . . . {is} part of the PRC-wide entity, {it is} subject to the PRC-wide rate." *Id.*

We find that no change in the facts has emerged on the record of this review since the Preliminary Results. Accordingly, for the final results, we continue to deny Shandong Machinery a separate rate, thereby including Shandong Machinery in the PRC-wide entity. Since the PRC-wide entity did not provide requested information, thereby impeding the progress

of this review, we continue to apply total FA pursuant to sections 776(a)(2)(A) and (C) of the Act. Moreover, since the requested information is in the possession of the PRC-wide entity, we continue to find that the PRC-wide entity did not cooperate to the best of its ability. Therefore we continue to apply an adverse inference, pursuant to section 776(b) of the Act. As AFA, we continue to apply the rate of 383.60 percent. For a full discussion of our application of AFA to Shandong Machinery and the PRC-wide entity, see Preliminary Results, 72 FR at 942-943. This decision is in accordance with Department practice. See Brake Rotors 04-05 Final at Comment 11.

### **Forecarry and Formost's Issues**

#### **Comment 26: Whether to Apply Facts Available to Forecarry and Formost**

The petitioner states that the Department should continue to apply FA to Forecarry and Formost, pursuant to section 776(a)(1) of the Act. The petitioner contends that, notwithstanding all the opportunities that Forecarry and Formost had to respond to Department's requests for information, their latest submission, in response to the December 19, 2006, supplemental questionnaire, fails to provide the Department with the data it needs to calculate NV and determine whether the U.S. sales were made at or below that NV. The petitioner contends that, in response to the questionnaire, Forecarry and Formost failed to provide supporting records requested by the Department for cost reconciliation. The petitioner lists other deficiencies: (1) Forecarry and Formost failed to document with company records how Formost's inventory ledger tied to its December 2004 inventory records, and how its December 2004 inventory records tied to its December 2004 summary trial balance; (2) Forecarry and Formost failed to document how Formost determined the reported FOP for steel tube used to produce a particular hand truck, and instead acknowledged that its calculation was an estimate that could not be tied to company records; and (3) Forecarry and Formost failed to substantiate the legitimacy of Formost's labor, electricity, by-products, and packing calculations. Due to these continued failures, the petitioner argues that the Department should continue to apply total AFA to Forecarry and Formost in the final results.

The petitioner states that the Department's initial questionnaire asked Forecarry and Formost to provide worksheets that illustrated how the costs reported in Formost's audited financial statements reconcile to the general ledger or trial balance and to the cost accounting system. According to the petitioner, Forecarry and Formost did not submit the reconciliation of Formost's reported FOPs in its original questionnaire response. The petitioner further states that the Department requested these data again in the first supplemental questionnaire, and again Forecarry and Formost did not provide any worksheets demonstrating how the reported factors tied to Formost's books and records. The petitioner contends that the Department asked a third time for this information as part of the second supplemental questionnaire and that, although Forecarry/Formost provided some response, they did not demonstrate how any of the production records or worksheets tie to Formost's normal books and records, nor did they explain how any of the reported FOPs were calculated or show how the reported FOPs tie to Formost's inventory or production records. The petitioner notes that the Department made a third request, and finally

sent a supplemental questionnaire on December 19, 2006, allowing Forecarry to provide more information after the date of the Preliminary Results. The petitioner states that, if the Department decides to accept the data submitted in the January 18, 2007, response, the Department should provide the petitioner with an opportunity to comment on its calculations and the results stemming from that decision, by issuing draft calculations prior to the final results of this administrative review.

In their comments, Forecarry and Formost state that the Department named them as mandatory respondents only after the petitioner withdrew its request for review with respect to other respondents. Forecarry and Formost claim that the supplemental questionnaires received from the Department did not offer sufficient indication that prior submissions were unacceptable to the Department, and that the Department should have informed them of this prior to the Preliminary Results.

Forecarry and Formost argue that they satisfactorily responded to the Department's questionnaire regarding organization, accounting practice, markets, merchandise, and sales of subject merchandise. Forecarry and Formost contend that the information from Forecarry's sales ledgers supports the reported quantity and value of U.S. sales, and reconciles to its financial statement. Second, regarding FOPs, Forecarry and Formost argue that Formost's factory keeps track of production costs and unit costs, not measurement units such as those requested by the Department. Therefore, to respond to the Department's questionnaire, the respondents contend that Formost had no choice but to use information from reports generated outside of its accounting system. Forecarry and Formost further claim that they had assumed that Formost's financial records would not be useful under the Department's NME methodology, and did not realize the Department would require the reconciliation of the FOP database with Formost's accounting system. Forecarry and Formost state that even if the submitted FOP databases do not satisfy the Department's requests, they still meet the statutory requirements for use in the Department's calculations because the FOP databases were timely submitted, include all of the production factors that Formost used to produce subject merchandise, are verifiable, and can be used in the Department's calculations without undue difficulty.

Forecarry and Formost also assert that, since finished parts and shop materials are not tracked once in inventory, they concluded that Formost's raw materials inventory records could not be used to calculate the weight of most materials in the FOP database. Forecarry and Formost state that, for their initial response, they instead disassembled a hand truck and weighed the parts to generate the FOPs reported to the Department. In response to the Department's supplemental request that Forecarry and Formost provide supporting documentation for the reported weights, they provided weights recorded at Formost's receiving dock for three metal FOPs, and revised the FOP database with respect to these FOPs to include the receiving dock weights. Since the three metal FOPs represent the majority of the weight and cost of producing a hand truck, Forecarry and Formost assert that they complied with the Department's request to provide supporting documents for the reported FOPs.

In regard to the reporting of labor hours, Forecarry and Formost claim that since Formost

pays its employees by piece, it had to rely upon the experience of managers and supervisors on the factory floor to estimate the hours worked by employees for each production process, and summed them to estimate the total labor hours needed to produce subject merchandise. Forecarry and Formost argue that, in response to the Department's request for supporting documents, it reported that there were no source documents to support these estimates. The Department subsequently sent Forecarry and Formost a questionnaire that stated that all FOPs had to be supported by documents generated in the ordinary course of business. Forecarry and Formost contend that this was the first time that they were informed of this requirement, which appeared to reject all previously submitted FOPs. Forecarry and Formost state that, in lieu of this requirement, they had alternately tried in good faith to determine the information by other means which they believed to be reasonable and credible.

In rebuttal, the petitioner states that, on January 3, 2006, Forecarry and Formost asked the Department to conduct a review of Forecarry's shipments of hand trucks from the PRC to the United States, and that the petitioner did not request a review of Forecarry. The petitioner states that, therefore, this review of Forecarry's exports of hand trucks to the United States is taking place at Forecarry and Formost's request. The petitioner contends that Forecarry now blames the Department for their failure to respond adequately to requests for information, although Forecarry and Formost acknowledged that they asked the Department for assistance only once in the twelve months between the request for a review and the Preliminary Results, after they decided to forgo the assistance of counsel they had initially hired to provide advice on the preparation of a FOP database. Finally, the petitioner states that Forecarry and Formost acknowledges that they made certain assumptions about how to answer the Department's requests for information – that Forecarry and Formost always understood that some of their FOPs might not be useable by the Department, and that the Department might therefore use some other means to determine costs in those situations. According to the petitioner, Forecarry and Formost implicitly concede that they either knew the data did not adequately respond to the Department's requests for information, or assumed that the data did without bothering to double-check their assumptions with Department personnel.

The petitioner states that the Department asked Forecarry and Formost to provide worksheets to illustrate how the costs reported in Formost's audited financial statements reconciled to the general ledger or trial balance on: (1) May 9, 2006, in the initial questionnaire; (2) August 8, 2006, in the first supplemental questionnaire; (3) October 19, 2006, in the second supplemental questionnaire; and (4) October 24, 2006, in the third supplemental questionnaire. The petitioner states that Forecarry and Formost finally provided a few answers in the last of these responses, but did not demonstrate in any meaningful way how any of the worksheets provided tie to Formost's normal books and records, and did not explain how any of the reported FOPs were calculated. Because of these repeated requests by the Department, and the respondents' January 18, 2007, response to the Department's December 19, 2006, questionnaire, the petitioner contends that the Department provided the respondents with sufficient notice and opportunity to provide worksheets that illustrated how the costs reported in Formost's audited financial statements reconciled to the general ledger or trial balance. Additionally, the petitioner states that the Department, in its December 19, 2006, fourth supplemental questionnaire,

requested that Formost report the COGS listed on its audited financial statement, and use company records to reconcile this amount with the factory-wide COM for the POR, and then reconcile this amount with the POR COM for subject merchandise, and then reconcile this amount with reported FOPs. The petitioner states that the Department provided examples for Formost, and Formost provided figures, but then failed to provide supporting records. Moreover, Formost failed to reconcile the last step, linking the reported FOPs to the POR COM for subject merchandise. The petitioner argues that Forecarry and Formost failed to respond to the Department's requests, and the respondents' excuses for their failures are beside the point, as the Department is required to resort to FA due to these failures, citing section 776(a)(2)(B) of the Act and Nippon Steel.

**Department's Position:** We agree with the petitioner. Sections 776(a)(1) and (2) of the Act provide that the Department shall apply FA if necessary information is not on the record or an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(I) of the Act. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

In the Preliminary Results, the Department found that the FOP database submitted by Forecarry and Formost was not reliable because the respondents did not demonstrate that the reported FOPs were based on Formost's books and records. Rather, the reported FOPs were based primarily on estimated data and/or observed quantities that were unaccompanied by supporting calculation worksheets. See Preliminary Results, 72 FR at 940-942. Although the Department informed Forecarry and Formost of this deficiency, and provided several opportunities to correct it, Forecarry and Formost failed to do so. Therefore, the Department preliminarily applied total FA to the respondents pursuant to sections 776(a)(2)(A), (B), and (C) of the Act.

Pursuant to section 782 of the Act, when the Department has determined that a respondent has not complied with its request, the Department must inform the respondent of the nature of the deficiency and, to the extent practicable, provide the respondent with an opportunity to remedy or explain the deficiency. If the respondent submits further information in

response to such deficiency and the Department finds that such response is not satisfactory, then the Department may, subject to subsection (e), disregard all or part of the original and subsequent responses. In their last submission before the Preliminary Results, dated November 16, 2006, Forecarry and Formost claimed that they revised the methodology for the three metal FOPs to be based on Formost's receiving dock weights, but did not provide supporting documentation that demonstrated how these values were calculated or reconciled to Formost's accounting system. However, because of this claimed revision, the Department elected to provide Forecarry and Formost with a final opportunity to substantiate the reported FOPs by submitting worksheets and records from the relevant workshops to: (1) reconcile the reported FOPs to Formost's normal books and records; and (2) demonstrate how the reported FOPs were calculated.

The Department issued its final supplemental questionnaire on December 19, 2006. In their January 18, 2007, response, Forecarry and Formost failed to reconcile the reported FOPs to Formost's normal books and records, and failed to adequately demonstrate how the reported FOPs were calculated. Regarding the reconciliation, the Department provided Forecarry and Formost with detailed, step-by-step instructions on how to reconcile the reported FOPs with Formost's financial statements. Although the respondents successfully reconciled Formost's fiscal year COGS with the COGS for the POR, they did not reconcile the POR COGS to the POR COM of all products produced, as requested. Instead, the respondents treated POR COGS and POR COM as if they were the same. See respondents' January 18, 2007, response at 5. The Department's questionnaire also requested that Formost reconcile the POR COM of all goods produced with the POR COM of producing hand trucks. Although Forecarry and Formost filled the provided chart with figures, they did not provide any explanation or worksheets showing how they calculated the COM of subject and non-subject merchandise produced during the POR, and did not explain whether there were any allocation of general costs. Further, it appears from the finished goods inventory ledger, which is recorded on a model-specific basis, that the respondents included in the reconciliation chart the COM of hand trucks *shipped* during the POR, rather than *produced*. Id. at 5 and Exhibit 2.

The next step in the reconciliation was to link the POR COM of hand trucks to the total POR cost of steel tube, labor, energy and other inputs consumed to produce hand trucks. As noted above, the finished goods inventory ledger is tracked on a model-specific basis that matches the reported CONNUMs, and includes Formost's inventory cost and quantity of the hand trucks produced. The respondents selected one of the hand truck models and attempted to reconcile the POR inventory cost with the total POR cost of the inputs. Although the respondents filled in the chart provided by the Department, they did not include any discussion, worksheets, or supporting documents showing how Formost calculated the numbers included in the chart, or how these numbers reconcile to Formost's books and records. Without any explanation and supporting documents, the Department is unable to judge the methodology or veracity of this step in the reconciliation.

Lastly, the Department requested that Forecarry and Formost reconcile the total POR cost of each input consumed for hand trucks to the per unit quantity of each input consumed, as

reported in the FOP database. Forecarry and Formost reported twenty FOPs in the submitted section D database. See respondents' January 18, 2007, FOP database, titled "FOREUS08Jan18.xls." Of these FOPs, the respondents attempted a reconciliation of just one FOP, steel tube. In a worksheet provided by the Department in its questionnaire, Formost reported total POR quantity of steel tube supposedly consumed for the selected model of hand truck. But, as noted above, the respondents did not explain how this amount was calculated, nor provide supporting documents. Id. at 6. Moreover, Forecarry and Formost contradicted this amount (i.e., the POR quantity of steel tube consumed to produce the selected model) in a subsequent worksheet. Id. at 8. The provided narrative only served to confuse matters further: "We didn't record separately the total amount and quantity for 'steel tube' {for the model at issue} COM in accounting system. We think it's better to breakdown the produced cost instead of COM." Id. at 6. Although this statement's meaning is not entirely clear, the respondents appear to report that Formost does not keep records of model-specific raw material inventory withdrawals, at least with respect to steel tube. In a subsequent explanation, the respondents stated that using Formost's raw material inventory to calculate steel tube consumption would not achieve an accurate result because Formost may purchase the steel tube rather than self-produce it, if there is not enough steel tube in inventory. Id. at 8. However, Forecarry and Formost made no attempt to include such purchases in the methodology. Thus, it is unclear how Formost derived either of the two quantities of steel tube consumed during the POR contained in the response. Id. at 6 and 8. Based on the above, Forecarry and Formost failed to provide adequate explanation, worksheets, or supporting documentation showing how they calculated the total steel tube quantity consumed for the POR for the selected model. Due to these failures, the Department has no confidence in the reported steel tube FOP. Moreover, the respondents failed to even attempt to reconcile the FOPs for all other raw materials to Formost's books and records, as requested by the Department.

In regard to Forecarry and Formost's claim, included in their November 16, 2006, response, that they provided weights recorded at the receiving dock for three metal FOPs (steel tube, aluminum tube, and steel wire), the Department notes the respondents did not adequately explain the worksheet they provided, or provide supporting worksheets or source documents, for the Department to understand the revised FOPs and how they were calculated. See Forecarry's November 16, 2006 response at Exhibit 2. Moreover, the Department was unable to resolve the November 16, 2006, worksheet after a thorough analysis. The lack of clarity in explaining this worksheet partially motivated the detailed, step-by-step instructions contained in the Department's December 19, 2006, final supplemental questionnaire. For this reason, the Department has no confidence in Forecarry and Formost's claim that they incorporated receiving dock weights into the methodology for the three metal FOPs.

In regard to labor and energy, Forecarry and Formost stated that they could not "specify the quantity for labor and energy since it's too complicated." See respondents' January 18, 2007, response at 6. The FOPs falling under the labor category are direct, indirect, and packing labor, while the FOPs constituting the energy category are electricity, coal, and diesel fuel. Moreover, Forecarry and Formost made no change to the reported consumption rates for nearly all of these FOPs in the last three FOP database submissions to the Department, indicating that

these FOPs remain based upon manager's estimates. See respondents' FOP databases: FOREUS05.xls dated September 14, 2006; FOREUS07.xls dated November 16, 2006; and FOREUS08 Jan18.xls dated January 18, 2007.

Regarding the labor FOPs, Forecarry and Formost stated that these FOPs are the unsupported estimates of Formost's production managers. See Preliminary Results, 72 FR at 941. In response to the Department's December 19, 2006, supplemental questionnaire, the respondents failed to reconcile the total labor time consumed to produce a hand truck to Formost's books and records, and provided no new worksheets or source documents to support their reported labor FOPs. See respondents' January 18, 2007, response at 9-10. Although the respondents provided a chart purporting to demonstrate how Formost calculated the per-unit direct labor time, we note that the total labor time listed in the chart on page 10 contradicts the total labor time provided in the previous chart on page 6 of the January 18, 2007, submission. The respondents provide no explanation of how these two numbers relate to one another, or which one is the appropriate value for use in reporting labor FOPs. Given that there are no new worksheets or supporting documents, and that Formost states that its manager estimates are from one day's worth of production that is then summed across the POR, the Department can only assume that the POR total labor hours reported are merely a projection based upon the observation of a single day, rather than being based upon Formost's wage records. Id. at 10.

For packing labor, the Department requested a worksheet showing the allocation of packing labor to each model of hand truck produced during the POR. See the Department's December 19, 2006, supplemental questionnaire. In their response, Forecarry and Formost explained the packing labor allocation methodology, and revised the reported consumption rate for packing labor. Nevertheless, Forecarry and Formost failed to provide supporting documentation, nor a reconciliation to Formost's books and records, for their claims regarding the number of personnel required to pack a hand truck, amount paid to each person, number of hours packing labor worked per day, or pieces produced. See respondents' January 18, 2007, response at 13. Regarding the pieces produced, it is unclear how Formost calculated the number of pieces produced in a day, as the piece count contained in the narrative's explanation conflicts with the piece count contained in the production report included in the November 16, 2006, response at Exhibit 7. Moreover, it appears that Formost arbitrarily selected three days from which to base production count, rather than using total hand truck production during the POR. Id. at 9 and Exhibit 7. In sum, Forecarry and Formost failed to provide documentation from Formost's books and records to support the values used in its packing labor methodology. For this reason, in addition to the inconsistency regarding production count, the Department has no confidence in the reported packing labor FOP.

For electricity, the Department requested in its December 19, 2006, supplemental questionnaire that Forecarry and Formost demonstrate how they used monthly summary trial balances and electricity invoices to calculate total kilowatt hour consumption and show how they used this total to calculate the reported electricity FOP. Forecarry and Formost reported a total kilowatt hour consumption for the POR, which it allocated to its total production quantity for one model. See respondents' January 18, 2007, response at 11. However, this total kilowatt hour

consumption was completely unsupported by calculation worksheets or electricity invoices. Thus, despite the Department's attempt to decrease the burden on the respondents by only requesting an explanation of, and supporting documentation for, only one of three reported energy FOPs (*i.e.*, coal, diesel fuel, and electricity), Forecarry and Formost failed to meet the Department's request with respect to the electricity FOP.

Forecarry and Formost also failed to provide the requested worksheet reconciling scrap sales to the summary trial balance for the month of the sale, in support of the scrap offset rate. *See* respondents' January 18, 2007, response at 12. The Department also asked for the way Forecarry and Formost adjusted the steel tube, aluminum tube, and steel wire FOPs upward by a certain percent to take account of yield loss when these FOPs were already claimed to be based upon actual gross consumption. *Id.* *See also* respondents' November 16, 2006, response at 10. In response, the respondents reiterated their claim that the FOPs are "based on actual {consumption}," which leaves unanswered the question of why these FOPs were increased to account for scrap. The Department also requested that the respondents explain how the reported scrap sale invoice supported the reported scrap offset rate. Forecarry and Formost responded with the unclear statement that "the scrap {rate} is under . . . per millage, not . . . percentage," indicating its previous response had been in error. *See* respondents' January 18, 2007, response at 12. With respect to the scrap offset, we find that Forecarry and Formost have not responded to the Department's request for an adequate explanation in a meaningful manner.

Due to the failures described above, the Department finds that Forecarry and Formost failed to provide the Department with FOPs that are adequately explained, supported by useable calculation worksheets, and that reconcile to Formost's accounting records. For this reason, the Department continues to resort to total facts otherwise available in determining the margin for the final results, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act. Specifically, Forecarry and Formost: (1) withheld information concerning the consumption of inputs incurred during the POR for producing subject merchandise that the Department repeatedly requested in multiple supplemental questionnaires; (2) although they filed a response to each questionnaire issued by the Department, failed to provide the requested information in the form and manner requested; and (3) significantly impeded the proceeding by failing to provide adequate and meaningful responses.

In their brief and rebuttal brief, Forecarry and Formost claim that the supplemental questionnaires received from the Department did not offer sufficient indication that its prior submissions were unacceptable to the Department, and that the Department should have informed them of this in no uncertain terms, prior to the Preliminary Results. As noted above, the Department issued a supplemental questionnaire on December 19, 2006, to allow Forecarry and Formost a last chance to correct the deficiencies contained in their section D response. However, Forecarry and Formost did not provide adequate explanations to the Department's questions, or supporting documentation that reconciled the reported data to the amounts recorded in Formost's accounting system. Forecarry and Formost did not use this opportunity to comply with the Department's requests. Instead, they provided a response where they, in essence, urged

the Department to use FOPs that could not be supported by Formost's accounting records. See Forecarry's Case Brief at 15-16. As the reported FOPs are not usable, the Department finds it appropriate to continue to apply total FA.

**Comment 27: Whether to Apply Adverse Facts Available to Forecarry and Formost**

Forecarry and Formost state that they encountered great difficulties in preparing their responses, since Formost and Forecarry are small companies acting without legal counsel or consultants. The respondents claim that the Department took no account of this in its Preliminary Results, and instead made assumptions about their ability to supply information. Forecarry and Formost contend that the Department should take these difficulties into account, and either calculate a dumping margin using the submitted data, or apply neutral FA. Forecarry and Formost assert that the Department cannot apply adverse inferences to calculate the dumping margin, because they have acted to the best of their ability to comply with the Department's requests.

Forecarry and Formost contend that it was not reasonable for the Department to assume, as it did in the Preliminary Results, that Forecarry and Formost possessed the records necessary to provide reconcilable FOP information. The respondents state that Formost does not possess records necessary to respond to all of the Department's requests for FOP information in the form demanded, and that could be tied to accounting records. Forecarry and Formost further contend that the Department's request for FOP data in a certain quantitative format was inconsistent with its later request that all data submitted be tied to records maintained in the normal course of the business.

Forecarry and Formost state that they responded in good faith, in a timely manner, and to the best of their ability, with the objective of enabling the Department to determine a separate rate. Formost's FOP methodology, which the Department ultimately rejected, required significant time and substantial resources to complete. Forecarry and Formost state that they considered the Department's supplemental questionnaires to only be requests for clarification of the original submissions, and they claim that the Department never indicated that the initial responses were unacceptable, or that it considered the respondents to be uncooperative. Forecarry and Formost state that they understood that perhaps some of the FOPs might not be useable to the Department, but they received no notification from the Department that it considered Forecarry and Formost to be uncooperative. According to the respondents, it is inappropriate to assign them the same margin as that assigned to two companies that failed to respond to any Department questionnaire in this administrative review. Forecarry and Formost contend that it is inconceivable that their disclosures of business proprietary information and large investment of resources should not result in a lower margin than the PRC-wide entity rate, the assignment of which requires companies to make no disclosures and expend no effort at all.

The petitioner, in its comments, argues that the Department should apply AFA to Forecarry and Formost because the Department repeatedly asked Forecarry and Formost for the data it needed to calculate an accurate dumping margin, and the respondents failed to comply

with the Department's requests on five occasions. The petitioner contends that Forecarry and Formost made no effort, and took no affirmative steps, to contact Department personnel to discuss the requirements of the questions being asked, or the deficiencies of their responses. According to the petitioner, a reasonable and responsible respondent would have recognized that the requested information must be critical to the agency's determination, and would have made every effort to respond. The petitioner asserts that the case brief submitted by Forecarry and Formost fails to even mention the January 18, 2007, submission as support for their claim that they complied with the Department's requests for information. According to the petitioner, this implicitly confirms that the last submission failed to respond adequately to the Department's questions. Therefore, Forecarry and Formost failed to act to the best of their ability through inaction or incorrect action, according to the petitioner, warranting the continued application of the AFA rate of 383.60 percent.

In rebuttal, Forecarry and Formost argue that the petitioner has not alleged any facts that justify the application of AFA. According to Forecarry and Formost, even if the petitioner's allegations are true, neutral FA at most would be justified. Forecarry and Formost contend that the petitioner correctly did not claim in its case brief that Forecarry and Formost failed to cooperate to the best of their ability, but merely asserted that the submitted FOP databases should not be used to calculate a margin. Furthermore, Forecarry and Formost contend that, since they answered all of the Department's questionnaires, provided complete FOP data that can and should be used to calculate the margin, and cooperated with the Department to best of their abilities, the Department may not lawfully apply an adverse inference. In addition, should the Department apply neutral FA, Forecarry and Formost contend that the most appropriate source for neutral FA would be the average of the margins actually calculated in this administrative review.

**Department's Position:** We agree with the petitioner. Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In the Preliminary Results, the Department made the reasonable assumption that Forecarry and Formost possess the records necessary to demonstrate how they calculated the reported FOPs and that by not supplying the requested information, Forecarry and Formost failed to cooperate to the best of their ability. In addition, Forecarry and Formost never argued that Formost was incapable of providing the requested information, and never requested that the Department modify its reporting requirements in accordance with section 782(c)(1) of the Act. Accordingly, because Forecarry and Formost failed to submit useable FOP information, which was specifically requested by the Department, we preliminarily found that Forecarry and Formost did not act to the best of their abilities in this proceeding, within the meaning of section 776(b) of the Act. Therefore, in the Preliminary Results, the Department applied an adverse inference. See Preliminary Results at 942.

On December 19, 2006, the Department provided Forecarry and Formost a final opportunity, of one month's time, to provide useable FOPs after the Preliminary Results. However, Forecarry and Formost continued to not cooperate to the best of their ability by failing

to (1) reconcile the reported FOPs to Formost's normal books and records, and (2) adequately demonstrate how the reported FOPs were calculated. The information submitted by the respondents on January 18, 2007, has not changed the Department's determination that it is appropriate to apply an adverse inference because the Department assumes that Formost possesses the records necessary to provide useable FOPs.

For instance, in their response to the December 19, 2006, supplemental questionnaire, Forecarry and Formost provided a sample of Formost's finished goods inventory ledger showing the quantity and inventory value of hand trucks produced during the POR, recorded on a model-specific basis that matches the reported CONNUMs. See Forecarry's January 18, 2007, response at Exhibit 2. This ledger suggests that Formost has some way of calculating its COM on a model-specific basis, presumably by multiplying the quantity of raw materials used by the remiabi cost of those materials. However, Formost did not attempt to use its cost of finished goods to calculate the quantity of raw materials consumed to produce subject merchandise, but instead reaffirmed its request that the Department rely upon the production manager estimates that it had submitted prior to the Preliminary Results. Id. at 6 and 8. Also, in their November 16, 2006, response, Forecarry and Formost provided the Department with sample raw material inventory records that show that Formost keeps a record of inventory withdrawals of steel and aluminum tube on a very specific basis. See respondents' November 16, 2006, response at Exhibit 6. While the inventory withdrawals were not recorded on the basis of weight, they were recorded based on the diameter, thickness, and length of tube. Forecarry and Formost also listed the theoretical weight of each type of tube on this document, using the physical characteristics of the tube. Id. It appears that Formost could have applied the theoretical weight of various types of steel and aluminum tube to withdrawals of steel and aluminum tube, and thereby calculate the weight of the tube consumed during the POR using its books and records. However, Formost made no attempt to use these records in devising a methodology to calculate consumption of these FOPs based upon its books and records.

Accordingly, because Forecarry and Formost failed to submit useable FOP information, which was not only specifically requested by the Department, but was also fundamental to the dumping analysis, the Department finds that Forecarry and Formost failed to act to the best of their ability, within the meaning of section 776(b) of the Act. Since the Department further finds that Forecarry and Formost reasonably could have responded to the Department's requests for information, the Department continues to find that an adverse inference is warranted in selecting from the facts otherwise available. See Nippon Steel, 337 F.3d at 1382-83.

Forecarry and Formost have argued that the Department should not treat them in the same manner as companies who refuse to cooperate, that is, respondents that make no disclosures and no effort at all. We note first that Forecarry and Formost have made little effort to comply with the Department's requests to support its FOPs using its books and records. Respondents' claim that they made great effort to comply with Department's requests is simply not sustainable through a review of the section D questionnaire responses. Furthermore, FOPs that are not adequately explained, unsupported by accounting records, and which cannot be tied to audited financial statements, may be based upon inaccurate estimates that are self-serving for

the respondent, and designed to take advantage of the Department's antidumping methodology. Therefore, the reporting of such unusable FOPs can in no way be characterized as a sufficient effort, let alone a maximum effort, within the meaning of section 776(b) of the Act. The Department will continue to apply AFA in conformance with its standard practice for respondents who fail to act to the best of their ability.

Section 776(b) of the Act authorizes the Department to use as AFA, information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. As AFA, the Department continues to apply the highest rate from any segment of this administrative proceeding, 383.60 percent, which is the rate currently applicable to all exporters subject to the PRC-wide rate. The selected AFA rate of 383.60 percent is the same rate that the Department assigned to certain hand truck companies in the less-than-fair-value investigation. See Amended Final Determination of Sales at Less Than Fair Value: Hand Trucks and Certain Parts Thereof From the People's Republic of China, 69 FR 65410, 65411 (November 12, 2004).

For a detailed discussion regarding the Department corroboration of the selected AFA rate, see the accompanying Federal Register notice. Because the rate is both reliable and relevant, it has probative value. Accordingly, we determine that the rate of 383.60 percent, which is the highest rate from any segment of this administrative proceeding, is corroborated, in accordance with section 776(c) of the Act.

## **RECOMMENDATION**

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results in the reviews and the final weighted-average dumping margins in the Federal Register.

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

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David M. Spooner  
Assistant Secretary

for Import Administration

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Date