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

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

REGARDING: Issues and Decision Memorandum for the Final Results of
Magnesium Metal from the People's Republic of China

SUMMARY

We have analyzed the comments of the interested parties in the antidumping (“AD”) duty administrative review on Magnesium Metal from the People’s Republic of China (“PRC”). We have analyzed the case and rebuttal briefs of interested parties and made certain changes to our margin calculation. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. A complete list of the issues for which we received comments and rebuttal comments from interested parties is provided below.

BACKGROUND

The mandatory respondent in this administrative review is Tianjin Magnesium International Co., Ltd. (“TMI”). The period of review (“POR”) is April 1, 2006, through March 31, 2007. On March 6, 2008, the Department published Magnesium Metal from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 73 FR 12122 (“Preliminary Results”). On April 7, 2008, the petitioner¹ and TMI filed case briefs.² On

¹ The petitioner in this administrative review is U.S. Magnesium, LLC (the “petitioner”).

² Petitioner’s and TMI’s April 7, 2008, case briefs are hereinafter referred to as the “Petitioner Case Brief” and “TMI Case Brief,” respectively.

April 14, 2008, the petitioner and TMI filed rebuttal briefs.³

LIST OF THE ISSUES

- Comment 1: Whether the Department should assign a combination rate to TMI
- Comment 2: Whether the Department should value the pure magnesium scrap input using the surrogate value for pure magnesium
- Comment 3: Which Indian companies should be used to calculate the surrogate financial ratios
- Comment 4: Whether to use Indian import statistics from World Trade Atlas or domestic prices from Chemical Weekly to value flux
- Comment 5: Whether to use the data from India Bureau of Mines Yearbook to value Steam Coal
- Comment 6: Whether the Department should use the updated China Wage rate

ADMINISTRATIVE DETERMINATIONS AND COURT CASES

Rhodia, Inc. v. United States, 185 F. Supp. 2d 1343 (Ct. Int'l Trade 2001) (“Rhodia I”).

Rhodia Inc. v. United States, 240 F. Supp 2d 1247 (Ct. Int'l Trade 2002) (“Rhodia II”).

Tung Mung Dev. Co. v. United States, 354 F.3d 1371, 1377 (Fed. Cir. 2004) (“Tung Mung”).

Yantai Oriental Juice Co. v. United States, 26 CIT 605 (Ct. Int'l. Trade 2002) (“Yantai Oriental Juice”).

Wuhan Bee Healthy Co., Ltd. v. United States, Slip Op. 05-142 at 5-6 (November 2, 2005) (“Wuhan Bee I”).

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

Import Administration Policy Bulletin 05.1 (April 5, 2005) (“Policy Bulletin 05.1”).

Final Results of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios from Iran, 70 FR 7470 (February 14, 2005) (“Pistachios from Iran”).

Final Results of Antidumping Duty Administrative Review: Freshwater Crawfish Tail Meat from the People's Republic of China, 71 FR 7013 (February 10, 2006) and accompanying Issues and Decision Memorandum (“Crawfish from the PRC 2006”).

³ Petitioner's and TMI's April 14, 2008, rebuttal briefs are hereinafter referred to as the “Petitioner Rebuttal Brief” and “TMI Rebuttal Brief,” respectively.

Amended Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal From the People’s Republic of China, 70 FR 15838 (March 29, 2005) (“Magnesium Metal from the PRC, Amended Determination”).
Final Results of Antidumping Duty Administrative Review: Pure Magnesium From the People’s Republic of China, 71 FR 61019 (October 17, 2006) (“Pure Magnesium from the PRC”).

Customs Ruling HQ 961439, Magnesium Ingot Stub; Ears; Unwrought Magnesium, Ingot; Waste and Scrap, Heading 8104; Top Portion by which Primary Magnesium Ingot is Mechanically Fed into a Grinding Machine; Waste and Scrap (July 30, 1998) (“Customs Ruling”).

Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews: Certain Frozen Warmwater Shrimp From the People’s Republic of China, 72 FR 52049 (September 12, 2007) and accompanying Issues and Decision Memorandum (“Shrimp from the PRC 04-06”).

Final Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of the 2005-2006 Administrative Review: Brake Rotors from the People’s Republic of China, 72 FR 4236 (August 2, 2007) and accompanying Issues and Decision Memorandum (“Brake Rotors from the PRC 05-06”).

Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India, 64 FR 61592 (November 12, 1999) (unchanged in final results) (“Iron Metal Castings from India”).

Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India, 71 FR 45034 (August 8, 2006) and accompanying Issues and Decision (“Lined Paper from India”).

Final Determination of Sales at Less than Fair Value Magnesium in Granular Form from the People’s Republic Of China, 66 FR 49345 and accompanying Issues and Decision Memorandum, (September, 27, 2001) (“Magnesium in Granular Form”).

Pure Magnesium and Alloy Magnesium from the People’s Republic Of China: Final Results of Antidumping Duty New Shipper Administrative Review, 63 FR 3085, 3087 (January 21, 1998) (“Pure Magnesium New Shipper Review” (final)).

Final Results of Antidumping Duty Administrative Review: Persulfates from China, 68 FR 68030 (December 5, 2003) and accompanying Issues and Decision Memorandum (“Persulfates from the PRC”).

Final Determination of Sales at Less than Fair Value of Antidumping Duty Administrative Investigation: Carbazole Violet Pigment 23 from the People’s Republic of China, 69 FR 67304 (November 17, 2004) and accompanying Issues and Decision Memorandum (“Violet Pigment from the PRC”).

Final Determination of Sales at Less than Fair Value of Antidumping Duty Administrative Investigation: Certain Ball Bearings and Parts Thereof from the People's Republic of China, 68 FR 10685 (March 6, 2003) and accompanying Issues and Decision Memorandum ("Certain Ball Bearing from the PRC").

Final Results of the Second Administrative Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 72 FR 13242 (March 21, 2007) and accompanying Issues and Decision Memorandum ("Fish Fillets from Vietnam").

Final Results of the Second Administrative Review and First New Shipper Review: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 72 FR 52052 (September 12, 2007) and accompanying Issues and Decision Memorandum ("Warmwater Shrimp from Vietnam").

Preliminary Results of Antidumping Duty Administrative Review: Certain Malleable Iron Pipe Fittings from the People's Republic of China, 70 FR 76234, 76237-38 (December 23, 2005) ("Malleable Iron Pipe Fittings from the PRC Preliminary").

Final Determination of Sales at Less than Fair Value: Steel Concrete Reinforcing Bars From the People's Republic of China, 66 FR 33522 (June 22, 2001) and accompanying Issues and Decision Memorandum ("Rebar from the PRC").

Final Determination of Sales at Less than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007) and accompanying Issues and Decision Memorandum ("CFS from the PRC").

Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback, and Request for Comments, 71 FR 61718 (October 19, 2006) ("Expected Wages, Request for Comments").

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

Expected Non-Market Economy Wages: Request For Comments on 2007 Calculation, 73 FR 19812 (April 11, 2008) ("Non-Market Economy Wages 2007 Calculation").

2007 Calculation of Expected Non-Market Economy Wages, 73 FR 26363 (May 9, 2008).

Corrected 2007 Calculation of Expected Non-Market Economy Wages, 73 FR 27795 (May 14, 2008)

Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007) and accompanying Issues and Decision Memorandum ("Crawfish from the PRC 2007").

Final Results of Antidumping Duty Administrative Review: Polyethylene Retail Carrier Bags from the People's Republic of China, 72 FR 12762 (March 19, 2007) (“PRCB from the PRC, Final Results 2007”).

Preliminary Results of Antidumping Duty Administrative Review: Pure Magnesium from the People's Republic of China, 71 FR 18067 (April 10, 2006) (“Pure Magnesium from the PRC, Preliminary Results”).

Silicon Metal from the People's Republic of China: Notice of Final Results of 2005-2006 New Shipper Reviews, 72 FR 58641 (October 16, 2007) and accompanying Issues and Decision Memorandum (“Silicon Metal from the PRC”).

Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture From the People's Republic of China, 72 FR 46957 (August 22, 2007) and accompanying Issues and Decision Memorandum (“WBF from the PRC, Amended Final Determination”).

Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order Pursuant to Court Decision: Lawn and Garden Steel Fence Posts from the People's Republic of China (June 14, 2007), 72 FR 32835, 32836 (“Fence Posts from the PRC”).

Final Results of Antidumping Duty Administrative Review: Chlorinated Isocyanurates from the People's Republic of China, 73 FR 159 (January 2, 2008) and accompanying Issues and Decision Memorandum (“Chlorinated Isos from the PRC”).

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) and accompanying Issues and Decision Memorandum (“Lined Paper from the PRC”).

Brake Rotors From the People's Republic of China: Final Results of the Twelfth New Shipper Review, 71 FR 4112 (January 25, 2006) and accompanying Issues and Decision Memorandum (“Brake Rotors from the PRC 12th New Shipper”).

Final Results of the 2005-2006 Antidumping Duty Administrative Review: Saccharin from the People's Republic of China, 72 FR 51800 (September 11, 2007) and accompanying Issues and Decision Memorandum (“Saccharin from the PRC”).

Pure Magnesium and Alloy Magnesium from the People's Republic Of China: Final Results of Antidumping Duty New Shipper Administrative Review, 63 FR 3085, 3087 (January 21, 1998) and accompanying Issues and Decision Memorandum (“Pure Magnesium New Shipper Review” (final)).

Pure Magnesium from the People's Republic of China: Final Results of 2004-2005 Antidumping Duty Administrative Review, 71 FR 61019, (October 17, 2006) (“Pure Magnesium from the PRC 04-05”).

Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 4175, (January 24, 2008) and accompanying Issues and Decision Memorandum (“Lock Washers from the PRC”)

DISCUSSION OF ISSUES

Comment 1: Whether the Department Should Assign a Combination Rate to Tianjin

The petitioner argues that the Department should determine that conditions in this administrative review warrant the issuance of a combination rate to TMI and its only reported supplier. According to the petitioner, Chinese magnesium producers with higher cash deposit rates are in a position to funnel subject merchandise to the United States through TMI because TMI’s preliminary cash deposit rate is lower than the PRC-wide rate. The petitioner notes that there are numerous suppliers whose merchandise TMI, as a trading company, could ship to the United States. The petitioner points to 19 CFR 351.107(b)(1) and Final Rule, stating that the application of a combination rate in this review would be consistent with the purpose of the Department’s regulation to prevent foreign producers from manipulating cash deposit rates. Moreover, the petitioner points to the Policy Bulletin 05.1 in which the Department provided for the use of combination rates in non-market economy (“NME”) investigations to prevent firms from shifting exports to those exporters with the lowest cash deposit rates. The petitioner notes that the Department already applies combination rates in investigations involving market economy and NME countries. The petitioner contends that, as observed by the Court of Appeals for the Federal Circuit (“CAFC”), the use of combination rates serves the “central interests of antidumping law,” which include the avoidance of the “evasion of antidumping duties.” See Tung Mung, 354 F.3d at 1377. According to the petitioner, these concerns are the same whether the case involves imports from a market economy or NME.

The petitioner argues that there is no rational basis to treat administrative reviews differently from original investigations with regard to the application of combination rates because the same incentives and opportunities exist for foreign producers to circumvent antidumping remedies in both situations. Therefore, the petitioner asserts, the Department can and should apply combination rates in NME administrative reviews where evidence of the evasion of high cash deposits exists. The petitioner claims that the facts of this review support the application of a combination rate and are consistent with the reasoning the Department provided when it exercised its discretion to apply a combination rate in Pistachios from Iran. Specifically, the petitioner points out that, as with Pistachios from Iran, this case involves a respondent, TMI, that is a trading company, which is willing to change suppliers from one segment of the proceeding to another. Therefore, the petitioner argues, if TMI receives a low, unrestricted cash deposit rate in this review, TMI is likely to seek additional PRC suppliers for the U.S. market. Furthermore, the petitioner claims that, as with Pistachios from Iran, there may be a substantial difference in this administrative review between the rate applicable to TMI and the PRC-wide rate applicable to all other companies. Consequently, the petitioner asserts, if the final results of this review are consistent with the preliminary results, there will be significant incentive for producers to attempt to evade the payment of higher cash deposit rates by exporting subject merchandise to the United States through TMI. To support its argument the petitioner refers to an article in the trade publication American Metal Market, in which a large PRC producer of pure magnesium stated its intent to take advantage of TMI’s low cash deposit rate

received in a recent administrative review of the antidumping duty order on pure magnesium. The petitioner claims that for these reasons the Department should apply a combination rate to TMI and its sole supplier in this review.

The respondent claims that there is insufficient information on the record to justify the application of a combination rate in this case. The respondent concludes that the Department should decline to exercise its discretion and continue to apply a single deposit rate with regard to TMI for the final results.

Department's Position:

We agree with TMI. For the final results, we have not exercised our discretion to apply a combination rate to TMI. The preamble to the Department's regulations states that "if sales to the United States are made through an NME trading company, we assign a non-combination rate to the trading company. . . ." See Final Rule, 62 FR at 27303. As set forth in section 19 CFR 351.107(b)(1), "{i}n the case of subject merchandise that is exported to the United States by a company that is not the producer of the merchandise, the Secretary may establish a 'combination' cash deposit rate for each combination of the exporter and its supplying producers." In Pistachios from Iran, the Department exercised its discretion and assigned a combination rate to the exporter and its supplier of the subject merchandise based on (1) the similarity of the exporter's U.S. sale subject to the administrative review and the exporter's U.S. sale in the previous new shipper review in which a combination rate was applied; (2) the exporter's normal business practice of selling pistachios only to the U.S. market; (3) the exporter's ability to source the pistachios it sells from a large pool of suppliers; and (4) high cash deposit rates for other producers subject to the order and a high "all others" rate.

Despite our general practice⁴ of not issuing combination rates in administrative reviews, on a case-specific basis, the Department has considered whether it was appropriate to apply a combination rate in an NME antidumping duty administrative review based on the factors examined in Pistachios from Iran. See, e.g., WBF from the PRC, Amended Final Determination at Comment 5; Crawfish from the PRC 2006 at Comment 2. We have examined the facts in the instant review and found that the unique blend of facts that led the Department to apply a combination rate in Pistachios from Iran does not exist here. Specifically, we found that, unlike the exporter in Pistachios from Iran, TMI has not previously participated in a new shipper review. Rather, TMI's only past participation is from the original investigation, where TMI sold a significantly larger quantity of subject merchandise to the United States than in the instant review. Thus, TMI's U.S. sale in the instant review is not similar to its sales from the previous segment of the proceeding. In Pistachios from Iran, the Department considered the fact that the exporter's normal business practice was only to sell to the U.S. market, with the implication that the exporter's normal value would likely be based upon constructed value, rather than comparison market sales prices. In NME cases, unlike market economy cases, it is irrelevant whether the exporter made PRC or third country sales because normal value is always based on the producer's factors of production. Thus, the fact that TMI's normal value may vary

⁴ Policy Bulletin 03.2 covers combination rates in new shipper reviews, not administrative reviews, while Policy Bulletin 05.1 applies to investigations only.

depending upon the supplier, rather than its comparison market prices, is not unusual and warrants no special action. Further, while there is a significant difference between TMI's final dumping margin in the instant review and the PRC-wide entity rate applicable in this proceeding, the Department did not rely solely on such a difference to establish combination rates in Pistachios from Iran. See WBF from the PRC, Amended Final Determination, at Comment 5. Therefore, for these reasons, the instant circumstances do not warrant assigning TMI a combination rate.

Comment 2: Whether the Department should value the pure magnesium scrap input using the surrogate value for pure magnesium

TMI argues that the Department was incorrect when it preliminarily valued pure magnesium scrap using the simple average of the average unit values ("AUVs"), obtained from Indian import statistics, for pure magnesium (the harmonized tariff schedule ("HTS") 8104.11.00) and magnesium scrap and waste (HTS 8104.20.00). For the final results, TMI contends that its pure magnesium scrap input should be valued as waste and scrap, and not as pure magnesium metal or the average of the two categories.

TMI states that pure magnesium scrap is waste resulting from the processing of products such as granular or sheet magnesium, and it must be sold as scrap because it cannot be sold as ingot or other primary form. As such, the respondent maintains, pure magnesium scrap does not command the same value as the primary pure magnesium input. TMI maintains that the fact that the petitioner believes there is no commercial market for pure magnesium scrap in the United States does not mean there is no such market in other countries. The respondent notes that the antidumping duty order for pure magnesium specifically mentions a HTS subheading for scrap which, according to the respondent, supports its contention of the commercial existence of pure magnesium scrap. See Scope of the Order in Pure Magnesium from the PRC.⁵ TMI argues that even if the antidumping duty order were ambiguous as to whether the pure magnesium scrap is included in the HTS subheading for scrap, the legal maxim *ambiguitas contra stipulatorem est* (i.e., doubtful words will be decided against the party using them) applies because the scope definition was suggested by the petitioner.

The respondent also contends that it provided voluminous information on the record regarding its use of pure magnesium scrap. Specifically, the record of this investigation contains many documents (e.g., sales contracts, purchase invoices, inspection reports, material in-slips, daily production reports, and raw materials purchase ledgers) that demonstrate that TMI purchased a commodity described as magnesium scrap of no less than 99.8 percent purity, which is in fact pure magnesium scrap. TMI asserts that, for business purposes, pure magnesium scrap is scrap, understood to be such by both the buyer and the seller. As further proof, TMI asserts that the price paid for scrap is significantly less than the price of primary product (ingot). Finally, the respondent argues that because the single HTS subheading for magnesium waste and scrap is not defined by magnesium content, it necessarily must include pure magnesium scrap as well. Therefore, according to the respondent, for the final results, pure magnesium scrap should be classified under HTS 8104.20, magnesium waste and scrap.

⁵ See TMI Case Brief, at Exhibit BR-2.

The petitioner argues that for the final results the Department should value TMI's pure magnesium scrap input with the HTS subheading for pure magnesium, rather than waste and scrap. The petitioner claims that there is virtually no commercial pure magnesium scrap, and TMI has not provided any real description of the actual pure magnesium input it used to produce alloy magnesium. The petitioner observes that TMI has not shown the commercial existence of pure magnesium scrap even though the respondent has been given many opportunities to provide the requested information. Regarding the four photographs TMI provided allegedly showing the type of pure magnesium scrap it consumed,⁶ the petitioner notes that photos 1 through 3 appear to be turnings and machinings. However, the petitioner claims that turnings and machinings cannot be of pure magnesium because there are no commercial reasons to cast pure magnesium into forms that require trimming or machining. The petitioner contends that TMI failed to describe a processing operation performed on pure magnesium that would produce such "turnings." Moreover, the petitioner contends that the product depicted in photo 4 appears to be a "butt-end" or a "stub." The petitioner asserts that pure magnesium butt-ends or stubs were specifically considered by the U.S. Customs Service ("Customs") in 1998, in Customs Ruling HQ 961439,⁷ and were classified by Customs as unwrought products ("primary manufactured forms similar to ingots"), rather than waste and scrap under the tariff schedule.

The petitioner agrees with TMI that magnesium waste and scrap is a well-known commodity and is a valuable waste material from the manufacture of magnesium products. However, the petitioner emphasizes that magnesium waste and scrap is alloy magnesium-based waste and scrap related to the use of alloy magnesium, and not pure magnesium. As to TMI's assertion that the inclusion of the HTS category for scrap within the scope of the antidumping duty order on pure magnesium indicates that there is pure magnesium scrap, the petitioner disagrees. The petitioner notes that in the notice cited by TMI, the Department specifically stated that "{a}lthough the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive." See Petitioner Rebuttal Brief at 5 citing TMI Case Brief at Exhibit BR-2, emphasis added. Thus, according to the petitioner, the ambiguity asserted by TMI reflects only a clear misreading of the document.

The petitioner concludes that the Department, for the final results, should value the pure magnesium input using the Indian import statistics for pure magnesium (*i.e.*, HTS 8104.11.00), rather than the simple average of the import AUVs for pure magnesium (HTS 8104.11.00) and magnesium scrap and waste (HTS 8104.20.00), as it did for the preliminary results.

Department's Position:

We agree with the petitioner. TMI reported that it purchased two types of scrap during the POR, pure magnesium scrap and alloy magnesium scrap. In the Preliminary Results, the Department valued alloy magnesium scrap with HTS 8104.20, waste and scrap. No party

⁶ See TMI's Third Supplemental Response, dated February 8, 2008, at Exhibit S3-4.

⁷ See Customs Ruling in Exhibit 2 of Petitioner's Third Supplemental Questionnaire Rebuttal (February 22, 2008).

disagreed with the Department's preliminary valuation of alloy magnesium scrap. Therefore, for the final results, the Department will continue to value TMI's alloy magnesium scrap input with HTS 8104.20, waste and scrap.

Regarding TMI's pure magnesium scrap, it is undisputed that this input has a 99.8 percent purity level and that HTS 8104.11 is for magnesium containing at least 99.8 percent by weight of magnesium.⁸ Since the level of magnesium in TMI's input matches the purity level used by HTS 8104.11 to define pure magnesium, the Department has valued this input with HTS 8104.11, pure magnesium. TMI's input contains no impurities or chemical defects that bring its chemistry below 99.8 percent magnesium. We agree with TMI that the antidumping order on pure magnesium does list HTS 8104.20, which is the category for magnesium scrap. However, as stated in the scope of the pure magnesium order "{a}lthough the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive." In reviewing the written description, we note that the scope of the pure magnesium order mentions scrap only once, in the description of the materials that constitute "off-specification pure" magnesium.⁹ Because the scope of the pure magnesium order does not identify the magnesium content of the scrap contained in "off-specification pure" magnesium, we disagree with TMI that inclusion of the HTS subheading for scrap necessarily demonstrates the existence of a category called pure magnesium scrap.

Even though TMI's purchase and internal accounting documents label this input as scrap, none of these documents (*i.e.*, scrap sales agreements, purchase invoices, inspection reports, or inventory records) provide any description of the input other than chemistry. The only documents on the record that purportedly describe the input at issue are four photographs TMI provided as representative of the type of pure magnesium scrap it purchased. We agree with the petitioner that these photographs cannot be relied upon in determining how to value this input because these photographs are not of the actual scrap TMI purchased and consumed. The photographs provide no information as to the chemical composition of the material, nor do they indicate the actual size of the particles. In fact, other than the use of the term scrap on the supplier invoices, there is no evidence on the record that the exact same type of scrap as pictured in these photographs was consumed by TMI to produce magnesium metal. For these reasons, the Department has not relied upon the photographs in determining the correct valuation for this input.

Although the Department has not relied upon TMI's photographs, we note that the parties did discuss these photographs at length in their case and rebuttal briefs. Therefore, we have addressed them here. Assuming that these photographs are, in fact, representative of the type of scrap consumed by TMI, they would seem to indicate that the pure magnesium scrap is a mix of

⁸ See the chemical analysis certificate in Exhibit S2-5 of TMI's October 22, 2007, supplemental response, and TMI's sales agreement in Exhibit S2-18 of November 29, 2007, TMI's supplemental response. According to these documents, the magnesium content of the pure magnesium scrap input is not lower than 99.8%.

⁹ The scope of the pure magnesium order states that "off-specification pure" magnesium has magnesium content greater than 50 percent but less than 99.8 percent magnesium.

different types of scrap such as turnings, rasping, shavings, and larger pieces called “butt-end” or “stubs.” Specifically, the photos 1 through 3 in Exhibit S3-4 of TMI’s February 8, 2008, submission show certain particles that appear to be turnings, machinings, or shavings. At no point has TMI identified a production process for pure magnesium that generates such turnings, machinings, or shavings which TMI alleges have a 99.8 percent purity level. TMI claims that these shavings came from the processing of pure magnesium from downstream products such as granular or sheet magnesium. See TMI’s Case Brief at 3. However, shavings and turnings are normally generated from the machining of metal, and pure magnesium ingots are not normally machined. See Petitioner Case Brief at 17. The respondent compares these shavings to similar particles described by a German magnesium recycler as magnesium waste.¹⁰ We agree that the German recycler classifies this type of product as magnesium shavings, magnesium dross, and magnesium rubbish. However, the process of producing this type of scrap and waste is described by the German recycler as “processing of magnesium alloys,” thus, this particular type of waste is not scrap or waste from a production of pure magnesium. Therefore, the information from the German magnesium recycler provided by TMI does not support the fact that such forms of scrap were produced during production of pure magnesium and constitute pure magnesium scrap. Because TMI has not demonstrated which production process in China produces turnings, machinings, or shavings of pure magnesium, we cannot rely upon photographs 1 through 3 as evidence of pure magnesium scrap.

The fourth photograph provided by TMI appears to be a picture of a “butt-end” or “stub,” which are generated from grinding operations that process pure magnesium ingots into granular pure magnesium. See Petitioner Case Brief at 17. Unlike the first three pictures, both the petitioner and TMI agree that “butt-ends” can be generated from the processing of pure magnesium. However, the petitioner has placed on the record a ruling from Customs indicating that entries of pure magnesium “butt-ends” or “stubs” should be classified under HTS 8104.11, pure magnesium.¹¹ To the extent that TMI may have consumed “butt-ends” or “stubs” of pure magnesium, we note that these items are generated from grinding pure magnesium ingots in to granular pure magnesium and that this is one of the production processes cited by TMI as the source of its pure magnesium scrap. Although the Department is not relying upon the Customs Ruling or the fourth photograph, this ruling supports a finding that pure magnesium “butt-ends” or “stubs,” which TMI reportedly consumed, should be valued with HTS 8104.11.

In sum, we find that TMI’s pure magnesium scrap input should be valued with HTS 8104.11 because this subheading is for material containing 99.8 percent magnesium. Although the Department did not rely upon the photographs submitted by TMI, we note that the photographs of turnings and rasping are most likely from the production of alloy magnesium products, while the photograph of “stubs” is appropriately considered pure magnesium, in accordance with the Customs Ruling.

Comment 3: Which Indian companies should be used to calculate the surrogate financial

¹⁰ See Exhibit S3-5 of TMI’s February 8, 2008, submission.

¹¹ See Exhibit 2 of petitioner’s comments on TMI’s third supplemental questionnaire response, dated February 22, 2008, citing Customs Ruling.

ratios

TMI notes that the Department preliminarily used the financial statements of two Indian aluminum producers, National Aluminum Company Ltd. (“Nalco”) and Hindalco Industries Ltd. (“Hindalco”), to calculate the surrogate financial ratios. The respondent argues that, for the final results, the Department should not use the financial information of Nalco because Nalco’s profit was aberrationally high (i.e., 139 percent) due to the company receiving export subsidies, obtaining the major input (i.e., bauxite) at below market value, and using a captive power plant which generated electricity at below market value. TMI also observes that Nalco is owned by the Government of India and as a state-run company it may make decisions for reasons other than profit maximization. TMI also argues that Nalco should be disregarded because its aluminum operation constitutes only 35 percent of the total profit, and that the actual profit margin for the aluminum division was 29 percent.

TMI asserts that, if the Department continues to utilize Nalco’s financial statements, it should make certain changes to its ratio calculations. First, TMI contends that the overall profit ratio should not be higher than that shown for Nalco’s aluminum division, namely 29 percent. TMI further argues that the values for “closing stock,” “opening stock”, and “change in excise duty on closing stock” should not be included in the material inputs for the period. TMI claims that Nalco’s “goods purchased” and “stores consumed” should not be considered “overhead,” and contributions to employee welfare and benefits should be included in the direct labor. Further, according to TMI, the “other income” in the Nalco’s financial statements should be excluded from the profit calculation because only profit “resulting from the products” should be included.

TMI also notes that, in the investigation of this case, the Department used the financial information of the Bharat Aluminum Company (“Balco”), which has since merged into Sterlite Industries (India) Ltd. (“Sterlite”). Therefore, the respondent suggests, the Department should also include the financial information of Sterlite in the calculation of the financial ratios. Finally, the respondent argues that the Department must calculate financial ratios according to a weighted average rate, rather than a simple average, as it did in the investigation of the case.

In rebuttal, the petitioner argues that the Department should make no change for the final results and continue to calculate the surrogate financial ratios using the financial statements from Hindalco and Nalco. Regarding Nalco, the petitioner contends that TMI’s assertion that Nalco’s profit was aberrationally high is without merit, and its proposed alternative adjustment to profit based on the profit for the aluminum division is contrary to the Department’s policy. The petitioner claims that the Department has an established practice of using surrogate companies’ financial statements without making adjustments to individual line items. See CFS from the PRC at Comment 4. The petitioner argues that TMI’s assertion regarding bauxite costs are speculative, and the respondent’s proposed alternative adjustment to Nalco’s profit for the below market cost of bauxite is contrary to the Department’s policy because the Department has an established practice of not making adjustments to individual line items in surrogate producers’ financial statements. See Rhodia II, 240 F. Supp. 2d at 1250; CFS from the PRC at Comment 4.

The petitioner further contends that the Department normally does not reject financial

statements merely because of self-produced electricity. The petitioner points out that both companies, Hindalco and Sterlite, suggested by TMI, also self-produced electricity. Consequently, the petitioner argues, if the Department were to reject Nalco's financial statements because it self-produced electricity, the Department would have to also reject Hindalco's data for the same reason. The petitioner argues that TMI's proposed adjustment to Nalco's profit for the aberrationally low electricity cost due to the use of captive power generation is contrary to the Department's policy because the Department has an established practice of not making adjustments to individual line items in surrogate producers' financial statements. See Rhodia II, 240 F. Supp. 2d at 1247; CFS from the PRC at Comment 4; WBF from the PRC at Comment 26. The petitioner also argues that the Indian government's ownership interests in Nalco are irrelevant for the Department's analysis. Citing Certain Ball Bearing from the PRC at Comment 1.E, the petitioner asserts that in selecting a surrogate company the Department does not make a distinction as to whether a company is controlled by its government, or how heavily it is influenced by the government.

With regard to TMI's proposed adjustments to the Department's financial ratio calculations, the petitioner argues that these adjustments should be rejected. The petitioner states that the items "closing stock," "work in progress," and "change in excise duty on closing stock" represent raw material costs related to production during the accounting period and should be included in the calculation. See Malleable Iron Pipe Fittings from the PRC Preliminary (unchanged in final results). According to the petitioner, it the Department's practice to treat goods purchased, stores consumed, and contributions to employee benefit programs as overhead items. See Brake Rotors from the PRC 05-06 at Comment 3; Warmwater Shrimp from Vietnam at Comment 5. As for the exclusion of "other income" from the profit calculation, and calculating profit separately only for "products," the petitioner notes that TMI did not explain what it means by "products," and that the Department has an established practice of not making adjustments to individual line items in surrogate products' financial statements. See Rhodia II, 240 F. Supp. 2d at 1250, CFS from the PRC at Comment 4; WBF from the PRC at Comment 26.

Regarding evidence of subsidization, the petitioner points out that not only Nalco, but also Hindalco and Sterlite, received countervailable subsidies during the reported period. However, the export subsidies received by Nalco and Hindalco are *de minimis* (only 1.37 percent and 1.09 percent respectively for Nalco and Hindalco) and should not preclude the Department from using their financial statements for the final results. In support of its argument, the petitioner cites past cases where the Department used the financial statements of surrogate companies which received countervailable subsidies to calculate the financial ratios. See Fish Fillets from Vietnam at comment 9; Persulfates from the PRC at comment 3. The petitioner argues that the sole fact that the surrogate producer was subsidized does not necessarily mean that its financial ratios were skewed to the point of being unusable. See Rebar from the PRC at Comment 8; Violet Pigment from the PRC at Comment 1.

The petitioner also refutes TMI's argument that the weighted-average ratios should be used by stating that the respondent cites no authority for its claim and ignores the fact that the Department's policy is to use a simple average when calculating surrogate financial ratios. The petitioner argues that the Department should reject Sterlite's financial statements because they reflect a consolidated conglomerate where aluminum production represents only 18 percent of

revenue. The petitioner also suggests that the Department reject Malco's financial statements because they are based on a nine-month period rather than a twelve-month period.

In sum, the petitioner claims that the Hindalco and Nalco data are the best available information for calculating surrogate financial ratios in the final results because both companies received only *de minimis* subsidies during the reporting period, when compared to total revenues, and because the Malco and Sterlite financial statements are unusable.

Department's Position:

Section 773(c)(1)(B) of the Act requires the Department to value the factors of production ("FOPs") based "on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority." Section 351.408(c)(4) of the Department's regulations further stipulates that the Department will value materials and overhead, general expenses, and profit using "nonproprietary information gathered from producers of identical or comparable merchandise in the surrogate country."

It is the Department's practice in NME proceedings to obtain surrogate financial ratios using, whenever possible, surrogate-country producers of identical or comparable merchandise, provided that the surrogate data are not distorted or otherwise unreliable. The Department also selects surrogate financial statements that are publicly available, comparable to the respondent's experience, and contemporaneous with the period being reviewed or investigated. The Department also has an established practice of rejecting financial statements of surrogate producers whose production process is not sufficiently comparable to the respondent's production process, whose financial statements are incomplete, who are not profitable or are designated as "sick" by the Indian government, and where the statements show that the company benefited from subsidy programs which the Department has found to be countervailable.

For the final results, we will not rely upon three companies' financial statements that are on the record, namely the financial statement of Hindalco, Nalco, and Sterlite, because these three companies' financial statements identify the receipt of "export and other incentives" or "export incentives" (*i.e.*, "EPCG Scheme", "DEPB Premium", and "Advance License") in the line items "Operating Revenues" or "Other Income." India's EPCG, DEPB, and Advanced License schemes have been found by the Department to each provide a countervailable subsidy. See, *e.g.*, Iron-Metal Castings from India; Lined Paper from India; see also the Department's subsidy enforcement library at <http://ia.ita.doc.gov/esel/eselframes.html>. In Crawfish from the PRC 2007 at comment 1, the Department noted that where it has reason to believe or suspect that a company may have received countervailable subsidies, financial ratios derived from that company's financial statements do not constitute the best available information with which to calculate surrogate financial ratios. Given the record information regarding Hindalco's use of the EPCG program, Nalco's use of the DEPB program, and Sterlite's use of EPCG and Advance License programs, and the fact that we have other acceptable financial statements to use as surrogates, consistent with the Department's decision in Crawfish from the PRC 2007, we have not used Hindalco's, Nalco's, or Sterlite's financial data in our surrogate financial ratio calculations.

We disagree with the petitioner that Malco's financial statements are incomplete. According to the information on page 55 of Malco's audited financial statements¹² the company changed its accounting year from July-June to April-March in fiscal year 2007-2008. Hence, for the financial year 2006-2007, the company had a nine month closing. Therefore, these audited financial statements are, in fact, complete and include year-end adjustments even though they are for a nine-month period.

Malco is a producer of aluminum, which the Department has routinely considered comparable to magnesium¹³ and, as such, satisfies the requirement that the selected surrogate must be a "producer of identical or comparable merchandise in the surrogate country." See 19 CFR 351.408(c)(4). Malco is a profitable producer and its financial statements are contemporaneous with the POR. Further, there is no record evidence that Malco utilized countervailable subsidy programs. Accordingly, for the final results, we have relied on Malco's financial statements as the basis for calculating the surrogate financial ratios.

We note that because we will not use the financial statements of Nalco, Hindalco, or Sterlite for the final results, the issues raised by the parties with regard to these companies, such as weight-averaging their financial ratios, Nalco's profit rate, and below market values of certain inputs are moot. Regarding TMI's arguments that the Department should make certain revisions to the financial ratio calculations the Department preliminarily calculated using Nalco's statements, we reviewed Malco's financial statements to determine whether any of those arguments apply to Malco. First, we note that Malco reports the opening and closing stock of raw materials and work in process. Pursuant to the Department's normal practice, we included the change in raw materials and work in process in our calculation of direct materials cost. See Malleable Iron Pipe Fittings from the PRC Preliminary (unchanged in final results). Second, we note that, contrary to the respondent's claim, it is the Department's practice to treat items such as stores consumed as overhead. See Brake Rotors from the PRC 05-06 at Comment 3. We followed our practice and included stores consumed in Malco's overhead. Third, it is the Department's practice to include employer contributions to employee welfare and benefit programs as overhead items. See Warmwater Shrimp from Vietnam at Comment 3. We followed our practice and included employer contributions to employee welfare and benefit programs in Malco's overhead. However, we included Malco's contributions to a gratuity fund in direct labor because gratuity cost is included in Chapter 5B of the International Labor Organization ("ILO") Yearbook of Labor Statistics, which is the chapter used by the Department in calculating the regression-based PRC wage rate. See Expected Wages, Request for

¹² See TMI's March 26, 2008, submission at Exhibit SVF-3b.

¹³ See Magnesium in Granular Form from the PRC at Comment 3 where the Department states "{i}n this case, we find that the product which is most comparable to magnesium is aluminum." See also Pure Magnesium New Shipper Review" (final), where the Department cites India's status as a "significant" producer of "comparable merchandise (aluminum)" as a key factor in its determination to select India as the surrogate country.

Comments, 71 FR at 61721. Finally, we note that schedule 12 of Malco's financial statements indicates that "other income" is from investment income, which is not related to Malco's general operations. For this reason, we excluded Malco's investment income from our calculations. For additional details on our calculations, see Memorandum from Karine Gziryan, Senior International Trade Compliance Analyst, to the File, "Final Analysis Memorandum for Tianjin Magnesium International Co., Ltd.," dated July 7, 2007.

Comment 4: Whether to use Indian import statistics from World Trade Atlas or domestic prices from Chemical Weekly to value flux input

TMI argues that the Department, for the final results, should use publicly available Indian domestic prices from Chemical Weekly¹⁴ as the best information available to calculate the surrogate value for flux, which is a single input consisting of three types of salt: magnesium chloride, sodium chloride, and potassium. TMI argues that the Department should value the three flux components using domestic prices from Chemical Weekly, rather than the WTA import data, because the Department prefers domestic prices over import prices,¹⁵ Chemical Weekly prices are reliable, have been used in past cases, and cover the entire country for the POR.

Regarding magnesium chloride, the largest of the three components, TMI argues that the surrogate value used in the preliminary results, obtained from WTA import statistics, is aberrationally high compared to other prices, and therefore likely reflects imports of pharmaceutical-grade, rather than industrial grade, magnesium chloride. According to TMI, the domestic price of magnesium chloride shown in Chemical Weekly is significantly less than the AUV obtained from WTA import statistics. TMI argues that the level and stability of the price published in Chemical Weekly during the last four years is corroborated by other sources of public information, such as IndiaInfoline.com, Indian-chemicals.com, and the U.S. Geological Survey.¹⁶ In addition, the respondent observes that export data from World Trade Atlas also show a price level consistent with the domestic prices from Chemical Weekly.¹⁷ The respondent notes that magnesium chloride exists in various forms and has different applications,¹⁸ including industrial and pharmaceutical uses.¹⁹ The respondent contends that the high price contained in the import data from the World Trade Atlas reflects prices of high purity magnesium chloride used in the pharmaceutical industry.

In rebuttal, the petitioner argues that TMI has provided no evidence that the Chemical

¹⁴ See Exhibit SV-3 of TMI's October 5, 2007, submission.

¹⁵ See Yantai Oriental Juice v. United States at al., 26 CIT 605 (Ct. Int'l. Trade 2002).

¹⁶ See Exhibits SV-3 and SV-9e of TMI's October 5, 2007, submission, and Exhibits SVF-1e and SVF-1j from TMI's March 26, 2008, submission.

¹⁷ See Exhibit SVF-1g of TMI's March 26, 2008, submission.

¹⁸ See Exhibits SVR-2c, SVF-1o and SVR-1p of TMIS' March 26, 2008, submission.

¹⁹ See Exhibit SVR-2d and SVF-1k of TMIS' March 26, 2008, submission.

Weekly data are preferable to import statistics. Though TMI suggests that the Department prefers domestic prices, it has provided no evidence demonstrating that the prices in Chemical Weekly reflect only the domestic market and excludes import prices. Given that 91 percent of the imports of magnesium chloride into India are from the PRC, the petitioner contends that unless Chemical Weekly can be shown to exclude import prices, it is possible that PRC prices will be factored into the Chemical Weekly price. The petitioner also states that the Chemical Weekly data offered for the POR had almost no fluctuation in price. The petitioner argues that while published prices may be stable, it is highly unlikely that actual prices are stagnant since India's aggregate price level increased 34 percent since 2000 due to inflation.

The petitioner notes that TMI claims that the WTA import statistics reflect import prices of pharmaceutical grade magnesium chloride while Chemical Weekly prices are for industrial grade magnesium chloride. However, the petitioner contends that TMI has provided no evidence to demonstrate these claims. The petitioner notes that, in fact, the HTS description of chlorides of magnesium is no less specific than the description of the Chemical Weekly data. In addition, according to the petitioner, the Chemical Weekly data proffered by TMI identifies specific cities in India as the source of its price data, which the petitioner believes invalidates the respondent's claim that the prices reflect "the entire country" of India. The petitioner concludes that the Department should use the corrected Indian import statistics data to value the flux components, as that had been the source for the valuation of magnesium chloride in the original investigation of the metal from China.

Department's Position

We agree with TMI, in part. In the Preliminary Results, we valued the three salts constituting flux using import prices from the WTA and applied the weighted-average surrogate value to the single consumption rate for flux. However, due to a computer error in downloading the WTA data, we used incorrect surrogate values for magnesium chloride, potassium chloride and sodium chloride in our calculations. After the Preliminary Results, the petitioner placed on the record the corrected surrogate values for flux components, including a surrogate value for magnesium chloride from WTA import data which is 481 Rs/Kg. The Department agrees with the petitioner's correct valuation of 481 Rs/Kg from WTA import data, and find that the 3.93 Rs/Kg used in the Preliminary Results is not valid.

We have analyzed the information contained on the record for valuing flux. For the final results, we will value all three components of flux with prices obtained from Chemical Weekly, rather than WTA import statistics. Regarding magnesium chloride, we note the WTA import statistics list a total of 11.7 metric tons (MT) imported into India during the POR, of which 10.7 MT is from the PRC. Thus, the surrogate value of 481 Rs/Kg was calculated from just 1 MT of imports. Because 1 MT of the total imports is a very small quantity for this industrial product, we have determined that the WTA import statistics are not the best information available for valuing this input. Therefore, we examined the price information for magnesium chloride from Chemical Weekly, which is a reliable source of information on the record of this review that the Department has used in many past cases. We have reviewed the Chemical Weekly data for magnesium chloride and find that the data are the best available information on the record because not only are they publicly available prices that are contemporaneous with the POR, but

they are also specific to TMI's input and representative of prices throughout India. In light of our finding for magnesium chloride, we also reviewed Chemical Weekly data for the other two salts, sodium chloride and potassium, and similarly find that the prices from Chemical Weekly for these two inputs are publicly available prices, contemporaneous with the POR, and are specific to TMI's inputs. Further, we find the Chemical Weekly data appropriate to value all three salts because all of these salts are components into a single input, flux, and it is therefore preferable that the surrogate values originate from the same source.

Regarding TMI's claim that the Department prefers domestic prices over WTA data, we disagree. The Department considers both sources equally reliable and has no stated preference for selecting one over the other. Rather, the Department considers the case-specific facts and, based upon those facts, selects the best information available so that surrogate values are specific to the input and contemporaneous with the POR. With respect to the petitioner's arguments that TMI failed to substantiate its claim that Chemical Weekly data provides "domestic price information" and covers "entire country" we note that the Department has already addressed these arguments in Lock Washers from the PRC:²⁰

We have specifically found it appropriate to use Chemical Weekly data in multiple cases. The Department found that these data are domestic price quotes which are publicly available. See, e.g., Sebacic Acid Changed Circumstances Review. The Department rejected other price quotes in favor of Chemical Weekly price quotes since Chemical Weekly price quotes are country-wide. See Polyvinyl Alcohol Final ("the Department has a clear preference for using country-wide prices such as those published in Chemical Weekly, as opposed to specific price quotes..."). Thus, the Department continues to find Chemical Weekly to be a reliable source for obtaining surrogate values.

Based upon the facts of the instant record, the Department determines to use prices from Chemical Weekly to value the three salts comprising flux because Chemical Week data are specific to the inputs, reliable, and contemporaneous with the POR.

Comment 5: Whether to use the data from India Bureau of Mines Yearbook to value Steam Coal

TMI notes that the Department valued its steam coal input using the 2004/2005 Tata Energy Research Institute's Energy Data Directory & Yearbook ("TERI data") for grade C, non-coking coal, which has the same thermal value as the steam coal described by TMI. The respondent argues that the TERI data are actually derived from data published by the India Bureau of Mines ("IBM") Yearbook. Since the IBM Yearbook data are the primary source of the coal value, and the TERI data merely restates it, TMI contends that the Department should value its coal input with the IBM Yearbook price. In addition, the respondent observes that Department recently found that coal prices obtained from the IBM Yearbook are of better quality and more reliable compared to WTA import data. See Silicon Metal from the PRC at comment 6.

²⁰ See Lock Washers from the PRC at comment 4.

In rebuttal, the petitioner contends that the respondent's request to use the IBM Yearbook data to value coal should be rejected, as the value listed in the IBM Yearbook is for all coal and lacks the specificity necessary to define accurate pricing. The petitioner states that the price of coal ranges widely based on the specific quality of the coal, and the IBM Yearbook data suggested by TMI does not account for such specificity. Furthermore, the petitioner states that it is very likely that non-core sectors in India, such as the chemical industry, are required to import coal because there is increasing demand for electricity in India, which has caused consumption of coal to be greater than domestic production (thus indicating an increase in imported coal), and that the main Indian coal company reports that 92 percent of its sales are made to two of five core sectors. Since it is likely that non-core sectors would have to import coal, the petitioner argues that the Department should value TMI's coal input using WTA Indian import statistics for HTS subheading 2701.19.20. Lastly, the petitioner suggests that if Indian import statistics are not used, the Department should value the coal using TERI data, as done in the Preliminary Results.

Department's Position:

Section 773(c)(1) of the Act states that "the valuation of the factors of production shall be based on the best available information regarding the values of such factors" In choosing the most appropriate surrogate value from publicly available information, the Department's practice is to consider several factors, including the quality, specificity, and contemporaneity of the data.²¹ For the final results, we continue to value TMI's coal input with the Grade C non-coking coal price from the TERI data. We find the TERI data to be the best information available because TERI data are more specific to TMI's input than the IBM data or WTA import statistics.

We agree with the petitioner that IBM Yearbook data provided by the respondent²² reports value for all coal without specifying the type or quality of the coal. In contrast, TERI data are categorized by major types of coal and useful heat values (UHV) value whereas the IBM Yearbook data are listed under "all coal" and WTA import data are listed under "steam coal" without further specificity. In the instant case, TMI provided the Department with information on the specific type of coal it uses and its UHV.²³ We continue to find that the TERI data are the more appropriate source with which to value the steam coal input for the final results because they are more specific to TMI's reported input.

With respect to petitioner's suggestion that non-core industries are not able to buy coal at the prices listed in the TERI data, and that the industries classified as "core" coal consumers do not include the magnesium industry which is a part of the chemical sector, we note that the Department rejected this argument in Chlorinated Isos from the PRC at Comment 7. In that case,

²¹ See Lined Paper from the PRC at Comment 1; see also Brake Rotors from the PRC 12th New Shipper at Comment 2.

²² See TMI's February 12, 2008, submission at Exhibit 9-A.

²³ See TMI's July 7, 2007, section D response on page D-10.

the Department valued coal with TERI data, rather than Indian import statistics, even though chlorinated isocyanurates is a chemical, and the chemical sector is not a “core” sector. See Chlorinated Isos from the PRC. Similarly, the Department valued coal with TERI data, rather than Indian import statistics, in Saccharin from the PRC, even though saccharin is also a chemical. See Saccharin from the PRC at Comment 3. The use of TERI data over WTA import statistics is evaluated on a case-by-case basis and has been upheld by the CIT. See Wuhan Bee I, 374 F. Supp 2d at 1309-1311.

Furthermore, the Department has consistently found in recent cases that the TERI data are the most appropriate surrogate value for steam coal, notwithstanding “concerns” over the “monopolistic structure of the coal industry in India.”²⁴ In each of the noted recent cases, the Department stated that, although the Department has expressed concerns regarding the monopolistic structure of the coal industry in India, it nevertheless found that TERI steam coal prices are appropriate because they are “representative of the coal industry throughout India.”²⁵ For all of the foregoing reasons, we continue to find that TERI data are the best available data with which to value steam coal for the final results.

Comment 6: The updated China Wage rate

The petitioner, in its rebuttal brief dated April 14, 2008, requests the Department use the recently published revised PRC wage rate in the final results of this administrative review.²⁶ Pursuant to the procedures followed in PRCB from the PRC Final Results, it requests the Department specifically invite comment on the 2007 preliminary calculations from parties to this proceeding, and be prepared to extend the due date for the final results of this review, if necessary, to ensure the revised wage rate will be utilized in the final results.

Department’s Position:

We agree with the petitioner, in part. In Non-Market Economy Wages 2007 Calculation the Department published its request for comments on the preliminary 2007 expected NME wages calculation and stated that the preliminary wage calculation will not be used for antidumping purposes until it has been finalized by the Department following the public comment period. On May 9, 2008, the Department published its final determination and effective date of 2007 Calculation of Expected Non-Market Economy Wages.²⁷ Because the

²⁴ See Saccharin from the PRC at Comment 3; Coated Free Sheet Paper from the PRC at Comment 19; see also, Fence Posts from the PRC 72 FR 32835, 32836, where the Department explained that the CIT sustained the Department’s final results of redetermination in which the Department determined that TERI Data was the best source of a surrogate value for coal because the data were complete, comprehensive (in that they covered all sales of all types of coal made by Coal India Limited and its subsidiaries), and exclusive of duties and taxes.

²⁵ See Wuhan Bee I, 374 F. Supp 2d at 1311.

²⁶ See Non-Market Economy Wages 2007 Calculation.

²⁷ See 2007 Calculation of Expected Non-Market Economy Wages, 73 FR 26363 (May 9, 2008).

Department allowed time for the public to comment on its preliminary calculation and the calculation was finalized on May 9, 2008, the petitioner's argument regarding the extension of this administrative review in order to allow additional time for comments on the preliminary calculation of the 2007 expected NME wages calculation is moot. For the final results of this review the Department will use the final expected PRC wage rate of \$1.04 per hour as shown in the Corrected 2007 Calculation of Expected Non-Market Economy Wages published on May 14, 2008.²⁸

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of this administrative review and the final weighted-average dumping margin in the Federal Register.

AGREE _____ DISAGREE _____

David M. Spooner
Assistant Secretary
for Import Administration

Date

²⁸ See Corrected 2007 Calculation of Expected Non-Market Economy Wages, 73 FR 27795 (May 14, 2008).