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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Grant Aldonas, Under Secretary

FROM: Holly A. Kuga
Acting Deputy Assistant Secretary
for Import Administration Group II

DATE: July 30, 2003

SUBJECT: Issues and Decision Memorandum for the Final Determination of
the Antidumping Duty Investigation of Barium Carbonate from the
People's Republic of China

Summary

We have analyzed the comments in the case and rebuttal briefs submitted by interested parties in the antidumping duty investigation of barium carbonate from the People's Republic of China (PRC). As a result of our analysis, we have made changes in the margin calculations. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is a complete list of the issues in this investigation for which we received comments from the parties:

- Comment 1: Surrogate Value of Barite Ore
- Comment 2: Surrogate Values of Two Types of Coal
- Comment 3: Valuation of Carbon Dioxide
- Comment 4: Valuation of a Minor Input
- Comment 5: Granting Offsets for By-products
- Comment 6: Calculation of Financial Ratios
- Comment 7: Valuation of Rail Freight
- Comment 8: Valuation of Truck Freight
- Comment 9: Deduction of Brokerage and Handling
- Comment 10: Use of Weighted-Average U.S. Prices in Margin Calculation
- Comment 11: Reported Consumption of Coal 1
- Comment 12: Consumption Quantity Questions

Background

On March 17, 2003, the Department of Commerce (the Department) published the Preliminary Determination¹ in the antidumping duty investigation of barium carbonate from the PRC. The period of investigation (POI) is January 1, 2002, through June 30, 2002. We invited parties to comment on the Preliminary Determination.

On July 18, 2003, the respondent Qingdao Red Star Chemical Import & Export Co., Ltd. (Red Star)² and the petitioner Chemical Products Corporation (CPC) filed case briefs. Red Star and the CPC filed rebuttal briefs on July 23, 2003. A hearing was held on July 25, 2003.

Discussion of the Issues

Comment 1: Surrogate Value of Barite Ore

Comment 1a: Consideration of Alleged Subsidy

CPC contends that India is not a suitable source of surrogate values for barite ore because Indian barite ore prices are distorted due to “wide-spread and massive subsidization of mining and production of barite ore in India.” See CPC’s Case Brief at 1. CPC argues that the Government of India (GOI) and the state government of Andhra Pradesh (SAP) maintain a virtual monopoly over the mining and production of barite ore in India and use this position to subsidize barite ore producers with favorable mining leases. CPC notes in particular that 98 percent of total barite ore reserves in India are located in the state of Andhra Pradesh and virtually all barite ore mining leases in this state are held by one 100-percent state-owned corporation, the Andhra Pradesh Mining Development Corporation (APMDC).

CPC asserts that the legislative history is clear that the Department must not rely on subsidized prices as surrogate values in non-market economy (NME) cases. It cites the 1988 House of Representative Conference Report which states that “{i}n valuing {NME} factors, {the Department} shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices.”³ CPC argues that “the Department has recognized that the ‘reason to believe or suspect’ standard does not require a countervailing duty (CVD) investigation in the course of valuing NME factors.” CPC cites Automotive Replacement Glass Windshield from

¹ See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Barium Carbonate From the People’s Republic of China, 68 FR 12664 (March 17, 2003) (Preliminary Determination).

² Guizhou Red Star Development Co., Ltd. (Guizhou Red Star), was the producer of the subject merchandise sold by Qingdao Red Star Chemical Import and Export Company during the POI.

³ H.R. Conf. Rep. No. 100-576 at 590 (1988), reprinted in 1988 U.S.C.C.A.N. 1547,1623.

the People's Republic of China (ARG) in which the Department stated that "Commerce was instructed by Congress to base its decision on information that is generally available to it at the time it is making its determination."⁴ In ARG, the Department found that determining the exact level of the subsidy was unnecessary "because that would require the agency to conduct a formal investigation which was explicitly not envisioned."⁵ See CPC's Case Brief at 11. CPC indicates that the U.S. Court of International Trade (CIT) recently interpreted the "reason to believe or suspect standard" in the China National case as requiring "particular, specific, and objective evidence" of dumping or subsidization.⁶ CPC argues that the record contains more than sufficient "particular, specific, and objective evidence" demonstrating that the GOI and the SAP directly subsidized the production of barite ore in India. See CPC's Case Brief at 12. CPC argues that Indian barite producer, APMDC, benefits from SAP's forgiveness of royalty and rent payments and GOI-mandated mineral royalties and dead rent set at "unreasonably low rates." See *id.* at 12-22. CPC maintains that the SAP and the GOI provide a financial contribution to Indian barite ore producers by granting access to barite ore deposits that the governments control. CPC contends that a benefit (a good or service provided at less than adequate remuneration)⁷ results from this financial contribution which can be demonstrated by a comparison of Indian barite ore prices with other barite ore traded on the world market. CPC compares a price range given for unground petroleum-grade barite ore in Morocco provided in the U.S. Geological Survey Minerals Yearbook with a price of Indian petroleum-grade barite ore reported in the 2000 Indian Minerals Yearbook.⁸ See CPC's Case Brief at 20. CPC also contends that there are significantly higher barite ore prices for "chemical-grade" barite ore prices that are on the record of the instant investigation. See *id.* at 20-21.

CPC argues that the final criterion for a countervailable subsidy, specificity, is easily demonstrated for Indian barite ore, given that the low royalties and non-competitive mining lease system administered by the SAP and the GOI are limited to only a small sector of the Indian economy. CPC asserts that "{o}nly barite ore producers, or at most, the mining industry" can benefit from these subsidies. See *id.* at 21-22.

⁴ See Final Results of Antidumping Investigation of Automotive Replacement Glass Windshield from the People's Republic of China, 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 1.

⁵ See *id.*

⁶ See China National Machinery Import & Export Corporation. v. United States, Court No. 01-01114, 2003 Ct. Intl. Trade LEXIS 41, Slip Op. 2003-16 (decided February 13, 2003) at 18.

⁷ See section 771(5)(E)(iv) of the Tariff Act of 1930, as amended (the Act).

⁸ For U.S. Geologic Service Surveys Mineral Yearbooks (USGS Yearbook), see Red Star's Submission (April 23, 2003) at Exhibits 1-8, the referenced include the barite sections of the USGS Yearbooks issued for 1994-2001. The 2000 Indian Mineral Yearbook is provided in Red Star's Surrogate Value Submission (April 28, 2003) at Exhibit 7.

Red Star states that the Department should reject CPC's argument because it ignores decisions by the Department and the CIT which articulate the legal basis for the Department to have "reason to believe or suspect" that there is subsidization. Red Star asserts that CPC's detailed analysis of the Indian mining industry incorrectly presumes the applicability of the "reason to believe or suspect" standard in this case; that CPC fails to address in sufficient detail, the Department's application of this legal standard and the types of factual information that the Department has accepted to form a "reason to believe or suspect" the existence of a countervailable subsidy that would make a surrogate value unreliable. Red Star contends that CPC is requesting a significant expansion of the Department's practice involving this legal standard as it relates to surrogate information considered in NME cases. Red Star suggests that if CPC's arguments are accepted, the Department will also have to disregard other surrogate value data provided by Indian barium carbonate producers which receive a pass-through benefit from using the allegedly subsidized Indian barite, and that such an expansion of the standard would lead to far more complicated NME cases.

Red Star notes that the Department has used the "reason to believe or suspect" standard to disregard surrogate value data for subsidized exports in instances where the Department has affirmative non-*de minimis* final CVD determinations. See Red Star Rebuttal Brief at 7.⁹ Red Star contends that if a final affirmative CVD decision does not exist on the involved factor input, it has been the Department's practice to not apply the "reason to believe or suspect" standard to subsidy allegations concerning surrogate values. Red Star cites the Department's decision in Folding Metal Tables and Chairs from the People's Republic of China (Tables and Chairs) in which the Department rejected subsidy allegations on a factor input because the Department had not made a final determination in an ongoing investigation of the input product.¹⁰

Red Star asserts that there are no affirmative CVD findings made by the United States or any other country on Indian barite. Red Star argues that to reach such a determination, the Department would have to conduct an actual CVD investigation of Indian barite which, Red Star contends, is what CPC has in effect asked the Department to do. Red Star asserts that the Department has rejected such requests in past cases such as Tables and Chairs. Red Star argues, in this case, that the Department lacks sufficient factual information to initiate such an investigation. Red Star argues that the Department has correctly interpreted the intent of Congress in previous cases when it decided that "information generally available" which could be used as the legal basis "to believe or suspect" subsidization refers to final CVD determinations.

⁹ Red Star cites to ARG.

¹⁰ See Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China, 67 FR 20090 (April 24, 2002) and accompanying Issues and Decision Memorandum at Comment 1. The Department determined that the existence of an ongoing CVD investigation provided insufficient evidence that there was a reason to believe or suspect subsidies because there was no final affirmative determination that there were countervailing subsidies.

Red Star argues that it is wrong to expand the “reason to believe or suspect” standard to allow the rejection of surrogate values based on “mere allegations of actionable domestic subsidies,” noting that the Statement of Administrative Action (SAA) acknowledges that the issue of whether domestic subsidies are “specific” has been heavily litigated.¹¹ Moreover, Red Star notes that the CIT has recognized that all governments intervene in their economies to some degree and that it would be absurd to regard all such interventions as actionable subsidies.¹² Red Star argues that an overly broad standard for a “reason to believe or suspect” would bring a flood of additional allegations in future NME cases which would impede the Department from its primary focus of calculating dumping margins of NME respondents, and shift considerable resources to the investigation of surrogate value sources.

Red Star also objects to CPC’s attempt to apply the “reason to believe or suspect” standard to foreign domestic subsidies because the NME respondents are not in a position to disprove or rebut allegations concerning information that belongs to surrogate producers in other countries, and the involved NME respondents would thus face an irrebuttable presumption. Red Star notes that the Department itself would have no basis to issue a countervailing duty questionnaire to the Indian government in the context of an antidumping investigation involving China.

Red Star argues that there would be “absurd results” if the “reason to believe or suspect” standard arguments made by CPC are accepted. Red Star asserts that to the extent domestic Indian barite is actually subsidized by specific and actionable domestic subsidies, there would be a pass through benefit to Indian barium carbonate producers and other surrogate value data on which the Department depends would be tainted. As a consequence, Red Star contends, the Department might be forced to resort to less suitable surrogate values for overhead, SG&A, and profit.

Red Star notes that in Silicomanganese from the People’s Republic of China (Silicomanganese), the Department denied a respondent’s request to reject surrogate values based on Indian electricity rates, although evidence was provided that showed that these rates were heavily influenced by Indian government influence.¹³ Regarding the provision of electricity in Silicomanganese, while the Department acknowledged the existence of significant government programs targeted at specific industrial users, the Department found that such government intervention was not enough to make the Indian electricity rates unreliable.¹⁴ To be consistent

¹¹ SAA, H.R. Rep. No 103-826 (1994)

¹² Carlisle Tire & Rubber Co. v. United States, 564 F.Supp.834 (CIT 1983).

¹³ See 1997-1998 Administrative Review of: Silicomanganese from the People’s Republic of China: Final Results, 65 FR 31514 (May 18, 2000) and accompanying Issues and Decision Memorandum at Comment 2, A.2, A.3.

¹⁴ Id.

with Silicomanganese, Red Star suggests that in the instant investigation, the Department should accept Indian barite values despite government involvement in barite production.

Department's Position: A decision to disregard prices from a particular country in determining a surrogate value for factor inputs has in the past been based on a reason to believe or suspect that exporters in that country may be subsidized. In such cases, we have relied on information generally available to the Department at the time. That information has typically been the result of final countervailing duty determinations. In light of our past practice in this regard, Red Star correctly notes that the Department has stated in a recent investigation that it would not be appropriate to rely on a preliminary determination to establish whether input prices are subsidized, because these findings are ongoing, incomplete and are subject to change. See Final Determination in the Less Than Fair Value Investigation of Folding Metal Tables and Chairs from the People's Republic of China, 67 FR 20090, (April 24, 2002) (Tables and Chairs), accompanying Issues and Decision Memorandum at Comment 1.

In this investigation, CPC has provided information concerning the possible subsidization of the Indian barite ore industry. In particular, CPC has alleged that the Indian barite ore industry was relieved of royalty payments to the Government of India, and that as a state-owned monopoly, it provides barite ore to downstream producers for less than adequate remuneration. As noted above, the Department declined to rely even on a preliminary determination to establish whether input prices are subsidized in the aforementioned Tables and Chairs investigation. Insofar as the Department has not made a finding or otherwise concluded that subsidies exist in the Indian barite ore industry, we did not disregard the Indian barite ore data as a potential source of surrogate values on the basis of the petitioner's subsidy allegation.

Comment 1b: Chinese v. Indian Ore Characteristics

CPC advances a second argument against the use of Indian barite ore as a source of surrogate factor values, asserting that differences in chemical characteristics of Chinese and Indian barite ore make the Indian ore an inappropriate surrogate. More specifically, CPC argues that information on the record indicates that Indian barite ore is higher in silica impurity levels than the barite ore used by the Red Star. See CPC's Case Brief at 23. CPC recaps information on the record describing problems associated with the use of barite ore with a higher silica content in barium carbonate production based on CPC's direct experience, much of which was presented in the Maudlin Affidavit.¹⁵ See id. at 23-24 and CPC's Submission on Barite Ore (May 23, 2003). In making this second argument, CPC states that "{b}ecause the basic production steps and technologies employed by CPC and Red Star are very similar, CPC's experience in using Indian barite ore is probative in assessing the likelihood that Chinese producers would be able to use Indian barite ore as a substitute in their operations." CPC asserts that the facts in this case are

¹⁵ See CPC's Submission on Barite Ore (May 23, 2003). This submission includes the Maudlin Affidavit which details CPC's actual technical problems with Indian barite it previously purchased.

similar to those that caused the Department to reject manganese ore as a surrogate for manganese ore from the PRC in Silicomanganese.¹⁶ See CPC's Case Brief at 25.

Red Star rejects CPC's position that higher levels of silica in Indian barite are a primary consideration in determining whether Indian barite is suitable as a surrogate value for Chinese barite. Red Star argues that barite as a product "has multiple physical and chemical characteristics that are valued differently depending on intended end-use (e.g., drilling mud, paint, glass)." See Red Star's Rebuttal Brief at 13. Red Star notes that in this case the best surrogate producer would be a barium carbonate producer that sells barium carbonate used in the production of TV glass or brick and tile. The primary consideration for such a producer in purchasing barite, is the level of barium sulfate and not the silica levels. Therefore, Red Star argues, the facts of this case do not resemble those of Silicomanganese cited by CPC because silica impurity levels are not the most important consideration. Actually, according to Red Star, barite ores are comparable according to their chemical grade, which take impurities into account, and the form of the barite (ground or unground). If the silica levels were decisive considerations, according to Red Star, there would be only two sources that match the silica levels specified by CPC: China and the United States. In making the point that silica level is too narrow a criterion to use in selecting which barite is comparable to its Chinese input, Red Star notes that the Indian Mineral Yearbook specifies that Chemical A grade barite ore must have a maximum of 2 percent of silica. Red Star also observes that although the Mauldin Affidavit in CPC's May 23 submission on barite documents one specific shipment which tested at a higher silica level, this testimony provides no rational basis to assume that the test results are representative of all chemical grade barite.

Red Star disputes the assertion in the Mauldin Affidavit that India is not a significant producer of barite ore, arguing that the antidumping action filed by Indian producers of barium carbonate included on the record indicates that Indian companies do produce a significant amount of barium carbonate.¹⁷ Red Star insists that the existence of a significant barium carbonate industry in India demonstrates that the record does not support CPC's claim that the silica content of Indian barite makes it an unsuitable surrogate for barite used by Red Star. Furthermore, Red Star stresses that the Mauldin affidavit identified only Australia as another viable source for chemical grade barite and did not identify Indonesia or any other country as a source of barite with desired silica level. Absent record evidence regarding the silica levels of Indonesian barite, Red Star concludes that CPC's proposed use of silica levels as the decisive factor to select a surrogate value source is unreasonable and unsupported by record evidence.

¹⁶ See Silicomanganese, 65 FR 31514 (May 18, 2000) and accompanying Issues and Decision Memorandum at Comment 3. The Department selected a surrogate basis that the material components of one surrogate were more comparable to the factor than the components of another proposed surrogate.

¹⁷ See Red Star Surrogate Value Submission (April 28, 2003) at Exhibit 8 which includes "Preliminary Findings" for the Indian antidumping investigation of Chinese barium carbonate.

Department's Position: The Department disagrees with CPC that evidence on the record regarding the relative quality of Chinese and Indian barite ore requires that all Indian barite data should be disregarded as a source of surrogate values and for the final determination has not disregarded Indian barite data on the basis that it is not comparable to the Red Star input. Both parties profess to support the principle that the Department should select a barite ore surrogate as close as possible in its physical and chemical characteristics to what Red Star actually uses, a principle consistent with section 773(c)(1)(B) of the Act that stipulates "the valuation of the factors of production shall be 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." The question which we must address here is whether there is sufficient evidence on the record to determine that Indian barite ore in general is of such an inferior quality to Chinese ore that the two are not comparable for surrogate value purposes, and therefore, Indian barite ore should be disregarded.

We recognize from information on the record that CPC's own experience with shipments of Indian and Chinese barite ore has shown that in the case of CPC's specific purchases, the Indian barite was significantly inferior to Chinese barite as an input for barium carbonate production. While we do not dispute CPC's assessment that higher levels of silica in the Indian ore that it used made the Indian product an unsuitable input in its facility, we cannot conclude from its experience with specific purchases, that all Indian barite is equally tainted with silica or otherwise unsuitable. We find nothing on the record to substantiate that CPC's purchases are representative of Indian barite ore in general. The 2001 Indian Mineral Yearbook indicates that 36 percent of barite ore consumed in India went to chemical industry uses (39,000 MT out of a total consumption of 108,400 MT), second only to barite going to oil drilling (57 percent).¹⁸ We find that the amount of barite ore going to chemical applications is an indication that comparable Indian surrogates could be found. While we recognize that Indian production of barium carbonate is much smaller than like production in China, despite plentiful reserves of Indian ore, we do not agree with CPC's argument that this constitutes additional evidence that Indian ore in general is unsuitable as a surrogate. If this was the case, the reported consumption of barite ore by the Indian chemical sector would be difficult to explain, particularly given the limited imports of barite ore documented by CPC.¹⁹ We also note that even if we were to accept CPC's arguments that the quality of Indian ore rules out its use as a surrogate, we have no comprehensive evidence on the record to suggest that barite ore from any other country is more comparable to the Chinese ore.

Comment 1c: Surrogate Value for Barite Ore

CPC argues that the Department should continue to use Indonesian import statistics obtained from the World Trade Atlas to value barite ore in the Department's final determination because chemical industry applications were the largest single end use category for barite ore imported

¹⁸ See Red Star's Submission on Barite Ore (May 1, 2003) at Exhibit 1, Table 8.

¹⁹ See Petition at Exhibit 14.

into Indonesia in 2000, according to the Indonesian Central Bureau of Statistics cited in the www.miningtrading.com website.²⁰ Furthermore, CPC asserts that the Indonesian import values are supported by price quotes on the record.

Red Star argues that, pursuant to the statutory directive that the Department select the best available information on the record to value factors of production,²¹ the Department should reject the barite ore surrogate value used in the Preliminary Determination and use a surrogate that more closely corresponds with the barite ore actually used by Red Star. Red Star argues that in light of the Department's improved record of this factor, including verification findings, it would be inappropriate for the Department to continue to use the Indonesian import data which is "tainted" by values for ground barite, which Red Star maintains to be quite different from what it characterizes as the "crude barite" or lump, unground barite ore that is actually used in Red Star's barium carbonate production. Red Star maintains that the Department properly selected India as the primary surrogate country for this investigation because India's economy is economically comparable to that of the PRC and India is also a significant producer of barium carbonate. Accordingly the Department should use factor values from other surrogate countries such as Indonesia only when there are no appropriate surrogate values from the primary surrogate country (India). It argues that the Department should focus on the following questions when it sets out to identify the best available information regarding surrogate values for barite ore:

- 1) What type of barite ore did Red Star actually use to produce barium carbonate?
- 2) What evidence exists on the record of barite ore values in India that are publically available, contemporaneous with the POI, and reflect the barite ore category used by Red Star?
- 3) If no suitable Indian barite ore value is found, does the record include barite ore data from another comparable country that provides value information on the same of barite that is used by Red Star?

Red Star argues that during verification the Department conducted a thorough review of Guizhou Red Star's entire production facilities and observed the input of barite ore in the production process: Guizhou Red Star "mixes the lumps of barite ore and ground coal by placing the appropriate amount of barite ore lumps in a pile and adding the appropriate amount of coal."²² Red Star highlights the fact that, unlike CPC, its producer has a fragmenting and screening stage in which it breaks down the "crude" barite ore and coal mixture. Given that Red Star starts its production process for barium carbonate with an input of unground lump barite ore, it argues that the surrogate value for its barite ore input should be a value that does not include values for

²⁰ See Red Star's Factors Submission (April 28, 2003) at Exhibit 9.

²¹ 19 U.S.C. § 1677b(c)(1) or Section 773(c)(1)(B) of the Act.

²² See Memorandum from Scott Lindsay and Kristina Boughton, International Trade Compliance Analysts to Gary Taverman, Office Director: Verification of Sales and Factors of Production Data Submitted by Qingdao Red Star Chemical Import & Export Co., Ltd. (July 11, 2003) (Verification Report) at 8.

ground barite ore. See Red Star's Case Brief at 6. It asserts that the Department has recognized that it would be inappropriate to use surrogate values for a product that are not comparable to the actual factor of production, citing Final Results of the Administrative Review: Freshwater Crawfish Tail Meat from the People's Republic of China, 67 FR 19546 (April 22, 2002) in the accompanying Issues and Decision Memorandum at Comments 1 and 2.²³ On this basis, Red Star asks that the Department select a surrogate value for barite ore that "is specifically comparable in physical form and chemical grade to the extent possible." See Red Star's Case Brief at 6.

Red Star stresses the importance of recognizing that barite ore has multiple distinguishable physical and chemical characteristics and compares the characteristics of API drilling mud grade with barite ore used for chemical or glass products. See Red Star's Case Brief at 6. Red Star also asserts that the end-uses of barite ore are diverse. Red Star suggests that even where barite ore purchasers share a common end-use, the sort of barite ore these end-users purchase may vary. Red Star argues that its own use of crude unground lump barite ore, in contrast to CPC's apparent purchase of further processed ore to produce the same product, is an example of this diversity. It argues that the Department's review of the production processes of both Red Star and CPC has put the Department in a position to recognize the differences between the use of further processed and unground ore.

Red Star argues that the Department should consider all available Indian surrogate values for barite ore and that any number of Indian barite ore data sources would provide appropriate surrogate values because they are publicly available, contemporaneous with the POI and correspond to the specific type of ore used by Red Star.

Indian barite ore data from the Monthly Statistics of Mineral Production from the Indian Bureau of Mines, Mining and Mineral Statistics is Red Star's first choice for Department consideration. It asserts that the primary unground barite ore valued in this publication is the same type that Red Star uses for its production of barium carbonate. Red Star contends that the absence of an indication that the ore reported in this publication is "run-of-the-mine" suggests some minimal processing, and that CPC's argument against this data²⁴ relies on a mistaken assumption that Red Star uses ore that is significantly processed before it is used as an input in the production process for barium carbonate.

Barite ore data from the Indian Mineral Yearbook is Red Star's second choice for a surrogate value. It notes that the Indian Mineral Yearbook specifies that "off-color {barite} is used for manufacturing chemicals or as drilling mud after pulverization."²⁵ Red Star observes that the

²³ In this final results, the Department applied a surrogate value for live crawfish based only on Australian yabbies that are under 40 grams because yabbies over 40 grams are sold in the fresh market and are not used for processing.

²⁴ See CPC's Submission (February 13, 2003) at 4.

²⁵ See Red Star's Factors Submission (April 28, 2003) at 5 and Exhibit 7.

publication also provides values for A and B grade chemical grades of barite ore and lists specifications for these grades and others.²⁶

Third, Red Star suggests that the Department consider the Indian barite ore price quote submitted by CPC in the administrative review of Barium Chloride from the Peoples Republic of China.²⁷ Red Star points out that this is a price quote for Indian barite ore received by CPC in 1994 that both CPC and the Department found acceptable as a surrogate value in a Barium Chloride administrative review and questions why CPC is arguing against the use of Indian barite ore surrogate values in the instant investigation.²⁸ Red Star asserts that CPC should not be allowed to arbitrarily decide when alleged problems with the quality of the Indian ore should be overlooked as irrelevant. Although there are more contemporaneous data on the record, Red Star argues that the 1994 Indian price could be deemed reasonable to use because of the stability in barite prices generally and from India specifically since 1994. Red Star notes that the amount of the 1994 price quote is consistent with Indian unground barite ore prices reported in the USGS Reports for the year 1996 through 2001.²⁹ Red Star proposes that the 1994 price could be regarded as an upper benchmark because it reflects a price of barite ore used by CPC which, in Red Star's estimation, uses more processed ore.

Red Star's fourth alternative is barite ore price data derived from Indian export statistics. Red Star notes that the Department has used export statistics in previous cases when non-aberrational import statistics were not available,³⁰ adding that CPC has already recognized the Indian import statistics for barite ore appear to be aberrationally high.³¹ Indian export statistics are also appropriate because India is among the world's top barite ore producers after China and the United States and, as such, is not only self-sufficient in terms of supplying domestic consumption, but is also a major exporter. Red Star points out that CPC has identified Indian export prices in the USGS reports as providing a "useful benchmark."³² See Red Star's Case Brief at 13-14.

As a fifth option, Red Star discusses the derivation of a barite ore value from the financial statements of Kores India, Ltd. (Kores), an Indian company proposed as a surrogate producer that previously produced barium carbonate. Red Star argues that Kores was an actual producer of

²⁶ See Red Star's Submission (May 1, 2003) at Exhibit 1, Tables 7 and 9.

²⁷ See Barium Chloride From the People's Republic of China: Final Results and Rescission in Part of Antidumping Duty Administrative Review, 68 FR 12669 (March 17, 2003) (Barium Chloride).

²⁸ See Red Star's Submission (April 17, 2003) at Exhibit 1 showing Memorandum of Surrogate Values Used for the Preliminary Results of the Administrative Review of Barium Chloride from the People's Republic of China (October 25, 2002) at 3 and Appendix 4.

²⁹ See Red Star's Factors Submission (April 28, 2003) at 7 and Exhibit 2.

³⁰ See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Ferrovandium from the People's Republic of China, 67 FR 45088 (July 8, 2002).

³¹ See Petition for the Imposition of Antidumping Duties under Sections 731 and 732 of the Act in the matter of Barium Carbonate from the People's Republic of China (September 30, 2002) Volume I at 13.

³² See CPC's Submission (February 13, 2003).

barium carbonate that consumed barite ore for that purpose and the value of the barite ore it purchased can be calculated from Kores financial statements on the record.³³ See Red Star's Case Brief at 14-15.

Red Star also discusses alternative barite ore surrogate values from Indonesia, reiterating its assertion that Indonesian import statistics used in the Preliminary Determination are unsuitable because they include ground as well as unground barite ore. See id. at 17. Furthermore, the Department's use of Indonesian barite ore data is problematic because record evidence indicates that Indonesia is not a significant producer.³⁴ Red Star argues that if the Department decides that there is no suitable data from India, it should consider alternative Indonesian data reflecting local and imported ore prices in Indonesia from the www.miningtrading.com website. See Red Star's Case Brief at 18.

CPC responds that chemical properties such as the relative percentage of barium sulfate and other "impurities" are more important to purchasers than whether it is ground or unground, adding that Red Star itself has stated, "{p}urchasers of chemical/glass grade barite ore are more concerned about the percentage levels of barium sulfate and other constituent chemical/minerals."³⁵ CPC asserts that "other grades of barite ore, such as petroleum-grade barite ore used in well drilling operations, are of substantially lower purity and would not be appropriate surrogates for chemical grade barite ore. See CPC's Rebuttal Brief at 3. While conceding that physical characteristics of the barite ore have some relevance, CPC maintains that they are much less important than the composition and grade of the ore because that determines whether it can actually be used to manufacture barium carbonate.

CPC suggests that Red Star's arguments are weakened by its misunderstanding regarding the type of barite ore that CPC purchases. CPC's past purchases of barite ore from foreign suppliers located in China, Australia and India, among others, "have always been the same unground barite ore as that used by Qingdao Red Star." See id. at 4. CPC states that it maintains its own crushing and grinding equipment to process the ore, and that simple logic would dictate that ore be shipped in lump form because ground ore is more expensive to ship. CPC asserts that grinding does not improve the purity levels in the ore, but is merely a simple matter of reducing the ore to the desired size for introduction into the reducing kiln. While agreeing that the Department should attempt to find surrogate values for unground ore, CPC reiterates that altering the physical form is of minor importance relative to the chemical purity requirements. CPC maintains that the record contains detailed and specific information on chemical grade ore from China that the Department can use to identify suitable surrogates,³⁶ and suggests its own

³³ See Red Star's Surrogate Value Submission (February 10, 2002) at Exhibit 2 (page 29, Schedule R).

³⁴ See e.g. Red Star Surrogate Value Submission (April 23, 2003) which includes USGS Mineral Yearbook tables showing world production.

³⁵ See Red Star's Case Brief at 7.

³⁶ See CPC's Submission on Barite Ore (May 23, 2003), which includes a chemical assay of chemical grade Chinese barite ore which showed levels of barium sulfate of about 96 percent and very low levels of impurities particularly with respect to iron and silica.

Australian price quote submitted in the petition as an example of a suitable surrogate value based on unground ore.

CPC dismisses Red Star's discussion of various Indian barite ore prices as largely irrelevant because Red Star wrongly assumes 1) that the quality of Indian barite ore is comparable to the quality of Chinese; and 2) the Indian barite ore prices are appropriate surrogates for market economy costs. CPC maintains that the arguments presented in its case brief demonstrate that neither assumption is correct. It reiterates that Indian barite ore, even when rated as chemical grade, contains in excess of 3 percent of silica while the Chinese ore has half that amount.³⁷ It cites the Kirk-Othmer Encyclopedia of Chemical Technology's observation that "barite ore should contain the lowest possible amount of iron and silicon compounds (ideally, less than 1%), since these react with the barium to form insoluble compounds that seriously decrease the efficiency of the operation."³⁸ CPC also refers to its own experience with both Chinese and Indian ore as a case in point demonstrating the shortcomings of Indian ore. See CPC's Rebuttal Brief at 7.

CPC also dismisses the suggestion that the manufacture of barium carbonate in India supports the applicability of Indian barite ore as a surrogate. On the contrary, CPC suggests that the Indian barium carbonate producers have a much smaller output than the Chinese largely because of the poor quality of the Indian ore. See id. at 8. Additionally, even if the Department disregarded CPC's arguments regarding quality differences, Indian ore would still be unsuitable because its prices are influenced by government subsidies to the barite ore mining industry, whereby CPC reviews its subsidization arguments presented in its case brief. See id. at 8-11.

In its rebuttal, CPC concludes that the Department should use either the Indonesian import data used in the Preliminary Determination or the price quote from an Australian producer included in the petition. CPC supports the use of the Indonesian data because Indonesia is a country recognized by the Department to be at a comparable level of economic development to China, and also because Indonesia is a significant importer and consumer of chemical-grade barite ore. See id. at 11. CPC argues that the price level of the Indonesian imports is supported by the Australian price quote, and that the www.miningtrading.com website indicates that chemical-grade barite ore used in Indonesia is priced higher than the petroleum-grade ore. The other prices cited by Red Star from the same website are based on the potential production from a mine not yet developed and are too speculative to be used. See id. at 12. CPC argues for the use of the Australian price even though Australia is not a surrogate country, reasoning that barite ore is an internationally traded commodity and thus concerns related to using a country outside the list of surrogates are reduced.

Red Star rejects CPC's assertion that the Department should continue to use the Indonesian import statistics to value Red Star's barite based on its position that the barite ore covered by the Indonesian import statistics is overly broad and includes both ground and unground barite. Red Star emphasizes that the Department verified that Red Star uses unground barite ore and,

³⁷ See id.

³⁸ See CPC's Submission (June 16, 2003) at Exhibit 2.

therefore, it is inappropriate to use a surrogate value source that incorporates inflated values for ground ore. It states that the Department has recognized in other cases that it is inappropriate to use import statistics that do not distinguish between the crude and refined material factor in question.³⁹ Red Star notes that the website www.miningtrading.com provides barite information linked to the applications and thus can be used as a benchmark.⁴⁰ It argues that this data should not be used as the basis of an actual surrogate value because it does not identify the NME countries from which the barite was sourced, nor does it break down the forms (ground and unground) in which the chemical grades may have been sold.

Red Star states that CPC's proposed price quote for chemical grade barite from Australia is inappropriate because Australia is not economically comparably to China. Moreover, there is no evidence that the price quote was accepted by CPC, and without proof that any party accepted the quote, it has little value as a surrogate. Red Star also notes that in Notice of Final Determination of Sales at Less Than Fair Value; Honey from the People's Republic of China, 66 FR 50608 (October 4, 2001) and accompanying Issues and Decision Memorandum at Comment 4, the Department indicated that price quotes are less preferable than data that is based on a wide range of prices because industry-wide values are more representative of prices and costs. Red Star observes that the Australian price fails to indicate the form of the barite being offer and suggests that it may be for a less comparable ground form of barite.

Finally, Red Star submits that a review of CPC's own prices of barite from U.S. sources undermines the usefulness of CPC's barite data. It suggests that the Department should verify the reported prices of CPC's domestic ore and argues that, to the extent the Department considers CPC's domestic ore prices as benchmarks, only costs specific to the ore in its crude unprocessed form should be considered.

The Department's Position

The clear preference of the Department in an NME case is normally to "value all factors in a single surrogate country," pursuant to 351.408(c)(2). As discussed above, CPC argued that barite ore from India in general is not a viable surrogate for Red Star's barite ore, because: 1) the chemical quality of Indian barite ore, as it applies to the manufacture of barium carbonate, is not comparable to the quality of Chinese ore; and 2) Indian barite ore prices are distorted by government subsidization. We determined that neither of CPC's arguments against the use of Indian barite is sufficiently strong for the Department to rule out consideration of Indian barite ore. Therefore, as a first choice, we examined all available Indian barite ore data. However, as we will explain below, none of the Indian data satisfied all of our surrogate criteria and we were obliged to consider several options in a second surrogate country, Indonesia. In the end, we have returned to the Indonesian import statistics used in the Preliminary Determination as the most reliable source of prices actually paid for comparable barite ore in a market economy.

³⁹ See Notice of Preliminary Determination of Sales at Less Than Fair Value: Refined Brown Aluminum Oxide (Otherwise Known as Refined Brown Corundrum or Brown Fused Alumina) from the People's Republic of China, 68 FR 23966 (May 6, 2003).

⁴⁰ See Red Star's Factors Submission (April 28, 2003) at Exhibit 9.

The task of selecting an appropriate barite ore surrogate is complicated by the wide diversity in quality, form and application of barite ore sold in the international market. In accord with the arguments of both parties, we attempted to find data that reflected contemporaneous values of chemical grade ore in lump form for which there was a reasonable level of confidence that the values reflected prices paid on actual transactions. We also looked for data that we knew included multiple transactions in order to obtain a more representative value for the entire POI. The Indian Mineral Yearbook indicates that chemical grade barite had a minimum range of 90 to 97 percent of barium sulfate and maximum impurities of 2 percent silica and 0.1 percent of iron.⁴¹ The website www.miningtrading.com showed chemical grade barite with a minimum barium sulfate range of 92-96 percent.⁴² We confirmed at verification that Red Star purchases its barite in lump form. We also compared the surrogate values to other world prices, such as those in the USGS Mineral Yearbook to assess reasonableness.

We first considered available Indian surrogates. We rejected the values from the Indian Bureau of Mines - Monthly Statistics of Mineral Production because although it did not specify what type of barite ore is covered, it appears to report all barite mined.⁴³ We recognize that Red Star buys “crude” ore in the sense that it is not ground, but Red Star has acknowledged that the barium sulfate content of its lump ore must at least be at the chemical grade minimum. We have no indication of barium sulfate content of the barite reported in the Monthly Statistics of Mineral Production. The Monthly Statistics of Mineral Production average value of \$8.05/MT when compared to other Indian prices for chemical and even the more prevalent oil drilling grade barite seems low compared to Indian prices in the 2000 Indian Mineral Yearbook for specifically identified grades. Additionally, we note in the introduction to this publication that values are provided by mine owners and may be based on cost of production which suggests that they do not necessarily reflect actual commercial transactions.⁴⁴

We considered the “domestic markets” prices for off-color lump with the +94 percent barium sulfate reported for 1999-2000 in the 2000 Indian Mineral Yearbook issued by the Indian Bureau. Although the form and the barium sulfate content of this product suggest an appropriate match to Red Star barite, we were unable to determine whether this value was based on actual prices paid or prices offered and also were unable to determine whether the prices were based on a sufficiently representative sample. We did not consider “A” Grade, SG-4.25 reported for 2001-2002 in the 2001 Indian Mineral Yearbook because the specific gravity designation indicates that it is oil drilling grade and, thus, not necessarily suitable to chemical applications. We also do not know whether the “A” grade is based on prices paid or whether it represents an adequate sample. We also do not know if Indian Mineral Yearbook include imports from NME countries.

⁴¹ See Red Star’s Surrogate Value Submission (April 28, 2002) at Exhibit 7.

⁴² See id. at Exhibit 11.

⁴³ See Red Star’s Surrogate Value Submission (February 10, 2002) at Exhibit 1.

⁴⁴ See Red Star’s Surrogate Value Submission (April 28, 2003) at Exhibit 7.

We also considered the price quote submitted by CPC which was used in the 2000-2001 administrative review of Barium Chloride from the People's Republic of China.⁴⁵ It reflects a price quote to CPC made in 1994. From the documentation provided, it is not clear whether the transaction took place. Although this was acceptable to the Department and CPC in the Barium Chloride review, we decided that in this case, we would prefer a larger, more representative and more contemporaneous sample of prices on which to base our surrogate value. In addition, we note that in this Barium Chloride review, the only participating respondent was rescinded for lack of shipments and the Department applied adverse facts available to all other producers and exporters.⁴⁶ Therefore, due to the facts available nature of that particular review, the selected barite surrogate was not subject to in-depth scrutiny and the administrative record was never fully developed for that review.

We have examined the referenced Indian export values reported in the USGS Yearbooks and find that they do have the advantage of being identified by grade and sales terms.⁴⁷ However, while we regard these export (or U.S. import) prices to provide a useful benchmark in the world market, we prefer not to use a U.S. price to develop a surrogate value for a Chinese input. Also, we did not find any prices in the USGS data specifically linked to chemical-grade barite.

We examined the value of barite ore that can be derived from the financial statements of the Indian chemical producer Kores.⁴⁸ While we disagree with CPC's assertion that the fact that Kores no longer produces barium carbonate automatically disqualifies this value, we are uncertain whether Kores devoted all of its barite ore inventory to barium carbonate production. Also, it is not clear from the financial statements how Kores valued the material inputs. Finally, the value is specific to the company and our preference in this case is a value based on a broader sample of the market.

In the Indonesian market, we examined the values taken from the Central Bureau of Statistics table of Indonesian consumption of barite by industrial sector for 1999 and 2000 as reported on the www.miningtrading.com website. This source provided a specific value for the chemical sector which we regard as a useful world market benchmark. However, we decided against the use of these data as a basis for surrogate values because we lacked adequate information on how they were derived.

We rejected Australian price quote prepared by CPC because it represented a transaction between an Australian producer and a U.S. customer. We do not consider the United States to be a potential surrogate country for the PRC. After much searching, we returned to the Indonesian import statistics taken from the World Trade Atlas and used in the Preliminary Determination as the best available information to calculate a surrogate value for Red Star's barite ore. We

⁴⁵ See Red Star's Surrogate Value Submission (April 17, 2003) at Exhibit 1.

⁴⁶ See Barium Chloride From the People's Republic of China: Final Results and Rescission in Part of Antidumping Duty Administrative Review, 68 FR 12669 (March 17, 2003)

⁴⁷ See Red Star's Surrogate Value Submission (April 23, 2003) at Exhibits 1-8.

⁴⁸ See Red Star's Surrogate Value Submission (February 10, 2002) at Exhibit 2 (page 29, Schedule R).

recognize that these import statistics may include some forms and grades of barite not applicable to Red Star's input, since the Indonesian tariff classification for barite is a basket category. We have attempted to address this concern in part by excluding what appear to be aberrationally high values for imports from the United Kingdom and Japan. Indonesia is one of the countries recognized as a suitable source of surrogate values for PRC factors based on its level of economic development.⁴⁹ As has been highlighted in numerous other NME cases, the import statistics are based in general on actual prices paid. Moreover, this is the only source that provides both a broad base of actual values, as well as a mechanism by which we can identify the source countries, which allows us to exclude barite ore sourced in NME countries.

Comment 2: Surrogate Values of Coal Used in Different Stages of Production

CPC argues that for the final the Department should revise its calculation to match Monthly Statistics of Foreign Trade of India (MSFTI) import values with the types of coal actually consumed by Red Star in the different stages of production which include both steam coal to generate heat energy and another type of coal used to supply fixed carbon in the chemical reduction of barite ore to soluble barium sulfide. CPC argues that these different applications of coal require different physical characteristics in the coal used. See CPC's Case Brief at 29. Based on information placed on the record since the Preliminary Determination, CPC states that it makes no sense to value the coal used as a source of fixed carbon using MSFTI values for steam coal. CPC argues that the Department should use the MSFTI values for the actual coal used as the carbon source as provided in the its submission of April 28, 2003, at Exhibit 1, asserting that this data satisfies the criteria of quality, specificity and contemporaneity commonly applied by the Department in selecting surrogate values.

CPC notes Red Star's criticism that the MSFTI values in question are aberrantly high and based on only small quantities of the product. It maintains that the only relevant question regarding the MSFTI statistics is whether the quantities reported as imports in this category are representative of ordinary commercial transactions. CPC claims that Red Star has not provided evidence that these are not typical commercial quantities and highlights that the MSFTI statistics represent purchases from several market economies.

CPC also rejects Red Star's claim that the MSFTI values selected by CPC are aberrantly high compared to U.S. domestic prices for the same type of coal. CPC asserts that this is irrelevant because the United States is not a potential surrogate country for the PRC and, thus, U.S. prices have no probative value in determining whether MSFTI prices are probative in India.

Red Star argues that for the final determination the Department should value steam coal and anthracite coal using Indian domestic prices from the TERI Energy Directory and Yearbook 2001-2002 (TERI data). It notes that the TERI data are not exactly contemporaneous with the POI, but that the same is true with the import data for steam coal used by the Department in the Preliminary Determination. Red Star asserts that in the past the Department has shown a preference for using domestic price data for coal, rather than import data, when both data sources

⁴⁹ See memorandum from Jeffrey May, Director, Office of Policy to Gary Taverman, Director, Office 5, regarding Request for a List of Surrogate Countries, dated December 11, 2002.

are found to lack contemporaneity, citing Redetermination Pursuant to Court Remand in Yantai Oriental v. United States.⁵⁰ Red Star contends that the fact pattern regarding coal valuation in the instant investigation is nearly identical to the situation in Yantai and that no evidence on the record suggests that the TERI data domestic prices are distorted. Red Star argues that since neither the import data used for the Preliminary Determination nor the TERI data are contemporaneous to the POI, the Department should follow the practice affirmed in the Yantai case and value coal using TERI domestic coal prices in lieu of import prices. Red Star suggests that the Department would get a more precise factor value match by selecting surrogate values for steam coal and other coal used as a carbon source based on specific UHVs which are listed in the TERI data. See Red Star's Case Brief at 20-21.

CPC questions the applicability of prices reported in the TERI data advocated by Red Star as a source of surrogate values for certain Red Star coal factors. It notes that while the specific type of coal used as a carbon source in the reducing kiln (coal 1) is not identified by name in the TERI data, Red Star appears to suggest in its case brief that a basket category of "non-coking" coals in the TERI data provides an appropriate surrogate. CPC states that the assertion that the "non-coking" coals reported in the TERI data are suitable surrogates for coal 1 is puzzling because in this category CPC only finds values for "steam coal," "slack coal," and "run-of-the-mine" coal. It asserts that "{s}team coal is clearly not the same" as what is used in coal 1 and contends that there is no way to determine what is in the other categories. It notes that the price data for "non-coking" coals shown in the TERI data is based on heat values, which CPC contends is an irrelevant consideration for the coal used in coal 1.

CPC argues that the specificity of the MSFTI data by itself is enough to make it superior to the TERI data for surrogate purposes. It states that the MSFTI data are also more contemporaneous, dating from April 2002, while the latest TERI values are from January 2001. CPC also states that the TERI data are apparently based on prices listed by one company and asserts that it is unclear whether these data are from a price list or represent actual transactions. It asserts that the MSFTI data represents a range of actual market transactions.

Finally, CPC asserts that Red Star's submission containing the surrogate value data was untimely as it was submitted on June 18, 2003, six weeks after the April 28, 2003, regulatory deadline for submission of publicly available information to value factors of production in this investigation.

Red Star argues that the Department should reject CPC's request that we value anthracite coal using MSFTI statistics, asserting that the MSFTI values are aberrationally high. It observes that the MSFTI data for anthracite show values seven times higher than those found in U.S. import data even though the United States has a per capita GDP 70 times higher than that of India. It also argues that since India is a major coal producer, India's imports of anthracite coal are presumably high-grade coal that is further processed and intended for specialized applications.

⁵⁰ See Yantai Oriental Juice Co. v. United States, 00-00309 (Department of Commerce, November 15, 2002) (redetermination pursuant to court remand) (Yantai) (citing Final Results: Creatine Monohydrate from the People's Republic of China, 67 FR 10982 (March 11, 2002); and Final Results and Partial Recession of Antidumping Administrative Review: Certain Preserved Mushrooms from the People's Republic of China, 67 FR 46173 (July 12, 2002)).

Red Star also points to statistics that indicate the anthracite values found in the MSFTI data are on average 500 percent higher than U.S. domestic prices.⁵¹ See Red Star's Rebuttal Brief at 18. Red Star asserts that CPC has not attempted to show that the U.S. import statistics, Energy Information (EIA) data and other world coal market publications are inappropriate benchmarks. It states that CPC's use of U.S. export prices for anthracite as a benchmark may not be appropriate because these data may be tainted by export subsidies, noting that export subsidies are one reason the Department is reluctant to use export data.⁵² On this basis, Red Star argues that U.S. import statistics and U.S. domestic prices are clearly preferable to export statistics as benchmarks for anthracite. If the Department decides to consider U.S. export data as a benchmark, Red Star recommends that the Department adjust the data to exclude factors that distort the average export value, such as small volume exports to certain countries, on the basis that they are not representative. Additionally, Red Star urges the Department to determine whether the export data represent further-processed anthracite coal instead of basic raw anthracite that Red Star claims to use in its normal production.

Red Star concludes that even if MSFTI data were not aberrational, they should be rejected because reliable domestic price data are available in the TERI data. Under the Department's established practice, Red Star asserts, the Department prefers domestic price data to import data if all other factors are equal. See Red Star's Case Brief at 18-21. Red Star insists that the TERI data for coal provide another distinct advantage insofar as the prices in this publication are differentiated by UHV. Red Star states that the UHV levels correspond to the anthracite's kilocalories which can, in turn, be traced to carbon content.⁵³ It also contends that the TERI data do not appear aberrational when compared to both U.S. import prices or domestic prices.

Department's Position: We agree with CPC that to the extent the appropriate data are available, the Department should base its selection of surrogate values on coal varieties that correspond to the type of coal actually used in each relevant stage of the production process. Red Star has provided the Department with information on the specific types of coal it uses in each stage of production which specifies that as a carbon source in the barium sulfate reducing kiln (Coal 1), to heat the lime kiln (Coal 3)⁵⁴ and for drying (Coal 5), it uses anthracite coal.⁵⁵ We therefore attempted to find a surrogate value for anthracite coal. However, because no suitable value could be found, we have continued to rely on our steam coal value for all of the coal factors.

We agree with Red Star that the MSFTI values proposed by CPC are aberrationally high. First of all, we disagree with CPC's assertion that Red Star did not present any evidence that the MSFTI

⁵¹ See Red Star's Submission (May 8, 2003) at Exhibit 8.

⁵² See Certain Preserved Mushrooms from the People's Republic of China, 66 FR 31204 (June 11, 2001).

⁵³ See Red Star's Submission (June 18, 2003) at Exhibit 3.

⁵⁴ Anthracite is also used for the lime kiln (Coal 3), but due to our decision to use a carbon dioxide input in place of the upstream inputs discussed below, we are no longer valuing Coal 3.

⁵⁵ See Red Star's Submission (February 19, 2003) at 10.

values are aberrationally high compared to Indian domestic prices. Although we are not using the TERI data as a surrogate source to value any of the coal inputs, for reasons discussed below, we believe the data provide a credible benchmark for Indian domestic coal prices including prices for higher UHV coals which might include anthracite. In any case, in the TERI data, even the most expensive Grade A coal is approximately 30 dollars/MT, considerably less than the MSFTI average of 407 dollars/MT. In the Philippines, the only other surrogate country for which anthracite imports are reported, we found POI imports of 43,902 tons of anthracite at an average price of 29 dollars/MT which, based on the price and the size of the sample, would also suggest that the Indian import prices at 407 dollars/MT for the POI are aberrational. Although CPC disputes the probative value of U.S. import prices for anthracite coal in the Indian context, we consider these data to be a valid benchmark in the context of the world market against which we should compare the MSFTI data. In the POI, the U.S. anthracite imports averaged 40 dollars/MT for 258,809 tons of imports. We also note that the average 407 dollars/MT for the Indian imports is based on a volume of 196 tons during the POI. We believe that the relatively small volume of Indian anthracite imports is itself a cause for concern as it raises questions about how representative the MSFTI data actually are.

Regarding the TERI data, we decided not use this information because linkage of the types of coal listed in this source to anthracite was uncertain since the data did not specifically identify anthracite by name. While we do not dispute Red Star's point that a higher UHV is one characteristic of anthracite coal,⁵⁶ we agree with CPC that there is simply not enough information in this data source to link the coal listed to the anthracite that Red Star uses. High UHV is only one characteristic of anthracite coal. We share CPC's concern that the price information appears to be based on one company's data and it is not clear on what the listed prices are based.

Regarding the anthracite import data into the Philippines, we decided it would be counterintuitive to accept a value lower than our steam coal surrogate value, given what we know about the anthracite used by Red Star, particularly in the reducing kiln where a high fixed carbon content is crucial. We know that the steam coal category itself includes both anthracite and bituminous coal.⁵⁷ On this basis, we have to continue to value the anthracite coal factors using our steam coal surrogate as a reasonable alternative to the MSFTI data, the import data from the Philippines and the domestic values in the TERI data.

CPC is correct in noting that Red Star's TERI data provided on June 18, 2003 was submitted long after the regulatory deadline of April 28, 2003 for submission of data concerning factor values. However, due to the late scheduling of verification in this investigation which extended the deadline for all other factual information later than would normally be the case, the Department decided to accept different factor value data from both Red Star and CPC after the

⁵⁶ See Red Star's Submission (June 18, 2003).

⁵⁷ See, e.g., www.iea.org/stat/defs/sources/coal.htm where it is noted that the general category of "steam coal" includes all anthracite and bituminous coals not included under coking coal.

April 28, 2003 deadline.⁵⁸ The Department determined that the additional information provided in these submissions was necessary for our analysis on which the final determination is based. As the Federal Circuit Court has held, the basic purpose of the antidumping statute is to determine current margins “as accurately as possible.” See, e.g., Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (Fed. Cir. 1990). Section 773(c)(1)(B) of the Act provides more specific guidance in stating that “the valuation of the factors of production shall be 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.” While it is the normal practice of the Department to enforce its regulatory deadlines for the submission of information, the specific circumstances of this investigation in which the verification was significantly delayed, led us to accept information after the deadline for purposes of a more complete analysis.

Comment 3: Valuation of Carbon Dioxide

CPC states that the Department should value carbon dioxide as a direct input into Guizhou Red Star’s production process rather than valuing the upstream inputs (limestone and coal) used to produce the carbon dioxide as the Department did in its Preliminary Determination. CPC argues that this would be consistent with the Department’s policy and practice on valuing self-produced inputs as set out in Vietnamese Catfish.⁵⁹ In the preliminary determination of that case, the Department explained that its preference is to value the inputs actually used by producers in NME cases with two exceptions: where the valuation of the upstream inputs would lead to unnecessary complications in the Department’s calculations, or where a significant portion of costs would not be captured in the valuation of the upstream inputs (for example, when the production of the upstream inputs involves significant capital costs which are not reflected in the overhead of the surrogate financial ratios).⁶⁰

CPC claims that the instant case falls under both of these exceptions. With regard to the first exception, CPC maintains that valuing the upstream inputs of limestone and coal creates unnecessary complications in the cost buildup. CPC cites what it characterizes as the “absurd outcome” of calculating the cost of production of carbon dioxide offset by the value of the by-product, quicklime, based on Red Star’s reported material consumption and by-product production rates. See CPC Brief at 33 in which CPC relies on proprietary information to explain its position regarding the “absurd outcome.” CPC alleges that this result is likely due to Guizhou Red Star’s misreporting of the consumption quantities for the upstream inputs, in that it is chemically impossible for Guizhou Red Star to have produced the amount of the by-product

⁵⁸ CPC submitted new public information on factor values with its May 23, 2003 comments regarding the valuation of coal.

⁵⁹ See Notice of Preliminary Determination of Sales at Less Than Fair Value: Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 4986 (January 31, 2003) (Vietnamese Catfish).

⁶⁰ See id.

claimed using the reported amounts of limestone and coal.⁶¹ According to CPC, Red Star's reported input volumes indicates that Red Star regularly exceeded the theoretical yield limits imposed by the chemical formula for the production of this by-product, evidence that Red Star understated the volume of its inputs.

With regard to the second exception, CPC asserts that the production of carbon dioxide from limestone and coal is a capital intensive process requiring a kiln, furnace, transport fans, scrubbers, compressors, storage tanks, and transport mechanisms, in addition to equipment required to treat the by-products produced in the lime kiln. On the other hand, CPC points out, the financial statements on the record for Victory Chemicals and Athiappa Chemicals, two Indian producers of barium carbonate, indicate that these producers use soda ash (sodium carbonate, Na_2CO_3) instead of carbon dioxide in the production of barium carbonate, and that this method does not require the significant capital investments necessary for carbon dioxide production. Therefore, CPC reasons, the Indian producers are not at the same level of vertical integration as Guizhou Red Star and applying surrogate financial ratios for factory overhead and selling, general, and administrative expenses (SG&A) based on their financial statements would not reflect Guizhou Red Star's true costs.

Having met not just one but both of the Department's stated exceptions to valuing an NME producer's actual inputs, CPC concludes that the Department should value the self-produced input itself, carbon dioxide, for calculating the normal value of barium carbonate manufactured by Guizhou Red Star. Furthermore, CPC asserts that doing so would be consistent with the Department's practice of valuing self-produced gases based on the value of the gas rather than the upstream inputs, citing, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From the People's Republic of China, 67 FR 35,479 (May 20, 2002) and Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China, 66 FR 49632 (September 28, 2001) (Hot-Rolled Steel), where according to CPC the Department noted that valuing the finished direct input avoids the complexity that would result from conducting "in essence two investigations, one into the production of the subject merchandise and another into the production of the inputs into certain factors."⁶²

Finally, CPC states that the information necessary to calculate the consumption factor of carbon dioxide is currently on the record, having been provided by Guizhou Red Star in its final supplemental questionnaire response. In addition, CPC has placed on the record a price quote for carbon dioxide, used by the Department for calculating surrogate values in previous investigations.

⁶¹ CPC provided chemical formulas from the Kirk-Othmer Encyclopedia of Chemical Technology to demonstrate that to produce the amount of by-product reported by Red Star would require higher levels of upstream inputs.

⁶² See Hot-Rolled Steel and the accompanying Issues and Decision Memorandum at Comment 2.

Red Star argues that the Department should continue to value Red Star's actual factors of production in self-producing carbon dioxide.⁶³ Red Star claims that valuing the upstream inputs used to produce carbon dioxide is consistent with the Department's practice prior to the decision in Hot-Rolled Steel. For example, in Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic, 62 FR 61964, 61976 (November 20, 1997) (Carbon Steel Plate), the Department stated

the value of the subject merchandise in this case is more accurately measured if the self-produced gases are valued based on the actual inputs used to make these gases. In NME cases, the Department selects the surrogate values that reflect best the costs that would have been incurred in producing the subject merchandise if the costs of such production had been determined by market forces. It is the Department's practice to collect data on all direct inputs actually used to produce the subject merchandise, including any indirect inputs used in the in-house production of any direct input.

Moreover, Red Star claims that the two exceptions to the Department's policy of valuing self-produced intermediate inputs are not applicable in this case. First, Red Star insists that CPC has twisted the intent of the Department's first exception, which was intended to avoid having to conduct two investigations (as stated in Hot-Rolled Steel) which would be excessive and unnecessary. It was meant to avoid procedural burdens rather than substantive results unfavorable to petitioners. In addition, Red Star argues that any rationale for avoiding unnecessary complicated multi-layered investigations is not applicable to the instant proceeding, because the Department successfully verified Red Star's reported inputs of limestone and coal, as well as the resultant by-product. Red Star also dismisses CPC's argument that valuing the upstream inputs leads to absurd results, stating that there is nothing absurd about the possibility of producing a product that has low production costs but has the additional benefit of generating a by-product/co-product that has a high market value.

In response to CPC's claims that it is chemically impossible for Red Star to achieve its claimed results in the production of carbon dioxide, Red Star argues that CPC's allegations are speculative and factually unsupported. Red Star argues instead that the Department should rely on its verification findings, as it has in past cases where a party has argued that reported material yield rates were "not chemically possible," citing Sebacic Acid from the People's Republic of China, 59 FR 28053 (May 31, 1994). Red Star further argues that CPC's reliance on standard chemical formulas is contrary to the Department's practice of relying on a company's actual production records rather than standard formulas. See Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium from the People's Republic of China, 67 FR 71137 (November 29, 2002) (Ferrovanadium) and the accompanying Issues and Decision Memorandum at Comment 6.

⁶³ In support of its argument, Red Star cites extensively to Anshan Iron & Steel Co., Ltd. v. United States, Slip Op. 03-83 (CIT July 16, 2003) (Anshan). As of July 30, 2003, this decision had yet to be released by the Court, according to its website www.cit.uscourts.gov/slip_op/slip-op.html, and was therefore unavailable to the Department or to CPC. As a result, we have not included a summarization of Red Star's arguments based on that case.

As to the second exception for not valuing self-produced inputs, Red Star argues that there is no evidence that Red Star's production of carbon dioxide leads it to be more capital intensive than the Indian producers used by the Department to calculate financial ratios. Red Star suggests that between two producers, one might invest an amount to design, build and operate several kilns used solely in the production of barium carbonate, while a second might invest an equal amount of capital to design, build and operate the same number of kilns, but use some for barium carbonate production and others for carbon dioxide production. Based on the record of the instant case, Red Star asserts that there is no evidence to indicate definitively whether either of the Indian surrogates produced or purchased carbon dioxide. In light of the lack of evidence before the Department in this case, Red Star urges the Department to reject CPC's argument in favor of valuing carbon dioxide and, instead, continue to value all of Red Star's reported factors, including those used to produce carbon dioxide.

As a final matter, Red Star argues that the record lacks an appropriate surrogate value for carbon dioxide in the form in which that Red Star uses it. Specifically, the price quote proposed by CPC is for carbon dioxide in liquid form, whereas Red Star uses gaseous carbon dioxide. Red Star likens this situation to Manganese Metal From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 65 FR 30067 (May 10, 2000), where the Department declined to use price quotes for ammonia gas because the PRC producers used liquid ammonia. Accordingly, Red Star claims there is no suitable surrogate value with which to value gaseous carbon dioxide. However, if the Department chooses to value carbon dioxide, Red Star suggests that the Department use an average of the two price quotes submitted in this case, one from CPC and another from Red Star, which were used by the Department in a previous investigation.

Department's Position: For the final determination, to ensure that we capture all costs associated with carbon dioxide production, we are valuing the carbon dioxide produced by Red Star instead of the upstream inputs. In the matter of valuing self-produced inputs, the Department clarified its position in Vietnamese Catfish,⁶⁴ where we stated that, in general, the Department will value upstream inputs. There are, however, two limited exceptions to this general rule. First, in some cases a respondent may report factors used to produce an intermediate input that account for a small or insignificant share of total output. In such cases, any increased accuracy in our overall calculations that would result from valuing (separately) each of those factors may be so small that it would not justify the additional burden of doing so. Accordingly, in those instances, the Department would value the intermediate input directly.

Second, in certain circumstances, it is clear that attempting to value the factors used in a production process yielding an intermediate product would lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup. For example, in a previous case⁶⁵ we addressed whether we should value a respondent's factors used in extracting iron ore – an input to its wire rod factory. In that instance, the Department determined that, if it were to use those factors, it would not sufficiently account for the capital

⁶⁴ See Vietnamese Catfish, 68 FR 4986, 4993(January 31, 2003).

⁶⁵ See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Ukraine, 67 FR 55785 (August 30, 2002).

costs associated with the iron ore mining operation given that the surrogate used for valuing production overhead did not have mining operations. Thus, because ignoring this important cost element would distort the calculation, the Department declined to value the inputs used in mining iron ore and valued the iron ore instead.⁶⁶ We acknowledge the Department's position in Carbon Steel Plate referenced by Red Star. As clarified in Vietnamese Catfish, the Department continues its practice generally of valuing upstream inputs. However, as the practice has developed in the more recent cases cited here, we find that in certain situations it is more appropriate to value the direct input rather than the upstream inputs.

We find that it is appropriate to value carbon dioxide under the second exception described above. During verification we toured Red Star's production facility, including its production of carbon dioxide. Carbon dioxide production most likely involves additional capital costs associated with the operation of the lime kiln. We are relying on the financial statements of Indian barium carbonate producer Athiappa and nowhere in its financial statements is there any indication that it produces carbon dioxide. In fact, the evidence leads us to conclude that it does not use carbon dioxide to produce barium carbonate because of its reported material costs for soda ash, which also can be used to make barium carbonate. By applying a surrogate value to carbon dioxide, we are capturing the capital costs associated with its production. Further, our application of surrogate values to the gaseous carbon dioxide used by Red Star is consistent with our practice of valuing self-produced gases argon, nitrogen, and oxygen as finished products, rather than valuing the upstream inputs used in their production. See Hot-Rolled Steel, accompanying Issues and Decision Memorandum at Comment 2.

We believe Red Star's reference to Ferrovanadium is not applicable in the instant case because the Department was referring to situations where it may be necessary to adjust amounts reported from a company's normal books and records when those amounts are based on standard costs rather than actual costs, saying that actual costs are more accurate. Nevertheless, our determination to value carbon dioxide renders moot CPC's claims that applying the chemical formula for the by-product generated in the production of carbon dioxide to Red Star's reported input volumes yields "absurd" results, as well as Red Star's argument in favor of relying on the actual verified amounts for the upstream inputs. As a surrogate value for carbon dioxide we have applied, as suggested by Red Star, the average of the price quotes submitted on the record by CPC and Red Star.

Comment 4: Valuation of Minor Input

CPC points out that Red Star failed to report a raw material input that it uses in the production of barium carbonate. CPC claims that the input is crucial to the production of barium carbonate and used regularly, satisfying the Department's criteria for reporting and valuing material inputs. CPC points to exhibits from verification that show the input's use in the production process and show that Red Star regularly records this input's use. CPC claims that Red Star's failure to report this input should result in the Department using adverse facts available to compute the

⁶⁶ Red Star cited to the CIT decision in Anshan as evidence that the Court ruled against the Department's practice. Because that decision has not yet been released by the Court, and is not available to the Department, we have not addressed it here.

consumption quantity of this input over the POI. The verification exhibit shows the quantity used in March 2002, but CPC argues that there is no way to tell if this number is representative. See CPC's Case Brief at 39-41.

Since the Department was not able to verify the consumption of this input, CPC suggests that the Department double the reported monthly consumption of the minor input as shown in the verification exhibit and multiply it by six to determine the POI consumption amount. CPC also argues that the Department should select the highest value for this input or use MSFTI data for the value and assume that Guizhou Red Star must transport this input from the nearest port of importation by railway. See CPC's Case Brief at 41-42.

Red Star claims that the verification exhibit CPC refers to reflects both raw materials and indirect materials treated as overhead. It claims that it properly treated the minor input as overhead in its response, based on the quantity consumed. Therefore, Red Star insists that adverse facts available is not warranted in this situation. However, if the Department decides to value this input, Red Star argues that there is no reason to double the quantity as CPC requested, nor to choose the highest value. See Red Star's Rebuttal Brief at 29-30. See also Analysis Memorandum for Barium Carbonate from the PRC (July 30, 2003) for further details about the minor input.

Department's Position: We agree with CPC that we should value the minor input and we agree with Red Star that we should not use adverse facts available to do so. At verification, we questioned Red Star about its use of the minor input and Red Star indicated that it captures the input's costs in its overhead. To value overhead, however, we are relying on data from an Indian producer of barium carbonate. This producer does not capture the minor input in its overhead, rather it values the minor input as a raw material in its financial statements. Because the overhead ratio we are using does not capture the costs of the minor input, we must value the minor input separately for it to be captured in our margin calculation.

We find that the use of facts available is warranted in valuing this input pursuant to 776(a) since the necessary information is not available on the record of this administrative review. Since we have determined to value overhead using data from an Indian producer of barium carbonate, and this producer does not account for the cost of the minor input used in its overhead, and because Red Star did not place surrogates to value this input for the entire POI on the record, we determine that the use of the facts otherwise available to value this input are necessary. We have determined not to apply an adverse inference pursuant to 776(b) since we find that Red Star did not fail to cooperate to the best of its ability since it did comply with the Department's request for information at verification.

As facts available the methodology we used involved multiplying the one month quantity that is on the record by six to calculate the quantity used during the POI. Because we do not know the actual quantity consumed, we found that this method takes into consideration any variation that may occur in consumption and we note that this quantity assumes that the factor is purchased each month. We valued this quantity by averaging the values of the three types of the minor input found in the MSFTI for the POI because we do not know what type Red Star's uses. We calculated transportation costs as the shorter of the longest reported supplier distance or the

nearest port of importation, as is our normal practice. See Court of Appeals for the Federal Circuit's decision in Sigma Corp. v. United States, 117 F. 3d 1401, 1407-1408 (Fed. Cir. 1997).

Comment 5: Granting of Offsets for By-products

CPC argues that the Department should grant an offset to cost for only one of the recovered by-products reported by Red Star: sulfur. CPC requests that the Department not grant an offset for any of the other three by-products: quicklime, off-grade barium carbonate, and barium sulfate waste.

First, should the Department decide to value carbon dioxide directly, rather than its upstream inputs of limestone and coal, see Comment 3, then, CPC points out, there is no need to grant an offset for the by-product of the carbon dioxide production process, quicklime, because the value of all inputs and by-products of the process will be captured in the price for carbon dioxide. Furthermore, CPC alleges, the factor for quicklime provided by Red Star is not reliable because, based on the acknowledged chemical reaction in the lime kiln, it is impossible that the reported quantity of this by-product could have been produced with the reported quantity of limestone. Even with 100 percent efficiency in the kiln, CPC explains, the reported production of quicklime is still above the theoretical maximum yield.

Second, CPC maintains that the Department should continue to decline to value off-grade barium carbonate as it should be considered subject merchandise and not a by-product of the production process. In support of this, CPC points out that the reported use of this by-product is the same as first-quality subject merchandise.

Lastly, CPC contends that the Department should continue to deny an offset for barium sulfate waste. CPC asserts that the definition of "a waste product is one that has minimal or no value compared to the main product that is produced." See CPC's Case Brief at 43. Because the only possible surrogate value for barium sulfate waste on the record is one for pure barium sulfate, CPC states it would be inaccurate for the Department to value the by-product using this price.

According to Red Star, the Department verified the reported factors of each of the four recovered by-products produced by Red Star and is, therefore, required to value and grant offsets for all of them. With regard to barium sulfate waste, Red Star alleges that the Department misunderstood the information on the record and was apparently misled by CPC's arguments that the MSFTI data valuing barium sulfate was inappropriate for Red Star's barium sulfate by-product. More specifically, Red Star refers to CPC's comments in its February 19, 2003, submission which stated that barium sulfate has two principal applications: as a white pigment and as a contrast media for x-rays. However, Red Star points out, the Explanatory Notes to the Harmonized Commodity Description and Coding System (Explanatory Notes), from which CPC got its information, also list several common industrial uses for barium sulfate such as in the production and preparation of textiles and paper and, Red Star claims, these applications do not require pure barium sulfate. Furthermore, Red Star argues, CPC provided a partial quote from the Explanatory Notes suggesting that barium sulfate "{o}ccurs as a white powder" while the barium sulfate Red Star produces is a "black sludge." See Red Star's Case Brief at 26 quoting CPC's Submission (February 19, 2003) at 3-4. Again, Red Star points out, the Explanatory Notes in

fact state that barium sulfate can also occur as a thick paste, and, Red Star contends, “[a] ‘thick paste,’ of course, is comparable to ‘sludge.’” See Red Star’s Case Brief at 27. In addition, according to Red Star, the Explanatory Notes indicate that barium sulfate in the form of a thick paste is included in the MSFTI import data. Therefore, Red Star concludes, the Department should use the data currently on the record from MSFTI to value the barium sulfate by-product and grant an offset to Red Star’s costs.

With regard to off-grade barium carbonate, Red Star states that the Department could follow one of three reasonable methodologies for valuing this by-product. The first and preferred methodology, according to Red Star, is to use the value for prime-grade barium carbonate. Red Star claims that this would be consistent with the Department’s approach in the Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part: Fresh Garlic from the People’s Republic of China, 68 FR 4758 (January 30, 2003) where the Department used the surrogate value for the primary finished product, fresh garlic, to value a by-product, garlic sprouts.

The next best methodology, Red Star argues, is to apply some adjustment factor to the value for prime-grade barium carbonate to account for the material differences between it and the off-grade barium carbonate by-product. This methodology was considered in the Bulk Aspirin from the People’s Republic of China; Final Results of Antidumping Duty Review, 68 FR 6710 (February 10, 2003) and accompanying Issues and Decision Memorandum where, Red Star asserts, the Department was willing “to adjust its calculation methodology when faced with mismatched chemical concentration levels between a reported raw material input and the surrogate value used to value that same input.” See Red Star’s Case Brief at 29.

Should the Department decline to value off-grade barium carbonate using either of the above two methodologies, then, according to Red Star, the Department should include the production amount of this by-product in the barium carbonate total production denominator used to calculate Red Star’s individual raw material consumption ratios.

CPC argues that Red Star did not provide sufficient evidence during verification that it actually sold barium sulfate waste, quicklime, or off-grade barium carbonate during the POI. CPC argues that “[i]n past cases, the Department has required that respondents prove the actual amounts of by-products sold during the POI, including invoices and receipts for the actual sales.” See CPC’s Rebuttal Brief at 17. However, CPC contends, Red Star only demonstrated that it had recorded the offsets in its own books and did not show when it was actually paid or credited for the sale of the merchandise. Therefore, according to CPC, Red Star is not entitled to an offset for any of these by-products.

Specifically regarding barium sulfate waste, CPC reiterates its argument that Red Star’s proposed surrogate value for this by-product from MSFTI is not appropriate. According to CPC, the Explanatory Notes specifically state that the value from MSFTI covers barium sulfate which has been “obtained by precipitating a solution of barium chloride with sulphuric acid or an alkali sulphate.” Because Red Star’s barium sulfate waste has been obtained through a reaction of barite ore and coal, CPC reasons, it is not covered under this heading. Furthermore, CPC claims

that all of the uses for barium sulfate listed in the Explanatory Notes are for “a white pigment,” and could not be carried out with Red Star’s barium sulfate, which is a black sludge.

Even if Red Star’s barium sulfate waste could be classified under the heading for barium sulfate in the MSFTI data, CPC contends that the Department would have to disregard the data as being aberrationally high. According to CPC, the average value of the barium sulfate imports from this source is \$830.64 per metric ton, which may be appropriate for the “high-purity precipitated barium sulfate, which is used for medical applications and for . . . specialized color applications” but is “ludicrous” for the waste product produced by Red Star. See CPC’s Rebuttal Brief at 19.

Moreover, CPC claims that the evidence on the record supports the conclusion that barium sulfate waste is a liability rather than an asset to market economy producers. According to CPC, the documentation from the Department’s tour of CPC’s plant in Cartersville, Georgia, shows that the barium sulfate generated from the reduction kiln is a hazardous waste and costs approximately \$23 per metric ton for treatment and disposal. See Memorandum to the File from David Layton and Kristina Boughton (May 14, 2003) at 10-11. While CPC concedes that this is a U.S. value, it also asserts that it is the only true market-economy value for this by-product on the record. In the absence of increasing Red Star’s costs for disposal of this by-product, CPC argues, the Department should at the least not grant an offset for it.

CPC provides additional reasoning as to why the Department should also not grant an offset for quicklime. CPC claims that quicklime is not a direct by-product of the production of barium carbonate but of the production of carbon dioxide. Citing the Department’s decision in the Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Ukraine, 67 FR 55785 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comment 5, where the Department determined that a by-product offset was not warranted, CPC argues that unless the by-product is inescapably generated in the production of the final product, it “is not properly construed to be produced directly as a result of the production of the subject merchandise.” Because the Department’s policy is “to only grant by-product credits for by-products actually produced as a result of the production process,” an offset for quicklime should not be granted to Red Star. Id., citing CTL Plate from China, 62 FR at 61997.

Red Star counters that CPC’s argument that no offsets should be granted for Red Star’s by-products except sulfur would require the Department to ignore the record evidence and its own verification findings.

Red Star states that CPC appears to be making the argument that offsets should not be granted for either off-grade material or seconds, such as off-grade barium carbonate, or waste products, such as barium sulfate waste. However, Red Star contends, the Department has a well-established history of giving credits for both of these types of products in nonmarket economy cases. As examples, Red Star points to Notice of 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), where the Department granted offsets for finished steel seconds that were either sold or reused, and to Notice of Final Results Antidumping Duty New Shipper Review: Freshwater Crawfish Tail Meat from the People’s Republic of China, 68 FR 43085 (July 21, 2003), where

the Department granted an offset for a waste product, crawfish shells, that were generated as a result of the production process. Furthermore, Red Star states, there are appropriate surrogate values for all of Red Star's claimed by-products on the record. Therefore, according to Red Star, the Department must follow its own policy and practice by granting full credit for all four reported and verified by-products.

Department's Position: Regarding the by-product quicklime, we agree with CPC. Because we are valuing the self-produced input carbon dioxide directly, there is no need to value the inputs used to produce the carbon dioxide nor the by-product of this process, quicklime. See Comment 3 above for a more detailed explanation.

Regarding the off-grade barium carbonate, we agree with CPC in part and with Red Star in part. We agree with CPC that off-grade barium carbonate falls under the scope of this investigation which states that it covers "barium carbonate, regardless of form or grade." Because this material is subject merchandise, it cannot also be considered a by-product and, therefore, is not entitled to an offset. However, we agree with Red Star that, having verified the reported quantity of off-grade barium carbonate, the Department should attempt to find a reasonable methodology to incorporate it into the calculation of normal value in the final determination. In this case, the most appropriate methodology is the third approach suggested by Red Star as described above. We are increasing the total POI production quantity of barium carbonate originally reported by Red Star by the amount of off-grade barium carbonate produced during the same period. This new total is being used as the denominator in calculating the consumption ratios for each of the raw material inputs and other factors, such as electricity and labor, reported by Red Star.

Finally, with respect to the barium sulfate waste, we agree with Red Star in part and CPC in part. We agree with Red Star that, having verified the reported quantity of this by-product, and that it was sold during the POI, the Department should attempt to grant an offset to Red Star's costs for it. This is the Department's normal practice in NME proceedings. The fact that it is a "waste" for Red Star, does not preclude it from having some value to another person. However, we agree with CPC that the proposed value from MSFTI submitted by Red Star is not appropriate for this by-product. The MSFTI data on the record is for barium sulfate, Harmonized Tariff System (HTS) heading 2833.27. The description of barium sulfate in the Explanatory Notes is inconsistent with Red Star's description of its own barium sulfate waste. First, while we agree with Red Star that a "thick paste" could be the same as a "sludge," Red Star has not offered any explanation as to why barium sulfate is only described as white and its own waste is described as black. Second, the reported end use of Red Star's waste is not among, nor similar to, any of the listed uses in the Explanatory Notes. Therefore, Red Star's claim that its own barium sulfate by-product is included within this category has no support on the record. In light of the fact that the sole surrogate value on the record is unusable, and that there are no other possible surrogate values on the record for the Department to consider, we are declining to grant an offset for barium sulfate waste.

Comment 6: Calculation of Financial Ratios

According to CPC, the Department should calculate factory overhead, SG&A, and profit ratios by averaging the financial ratios of two Indian barium carbonate producers, Victory Chemicals and Athiappa Chemicals, for the fiscal year ending March 31, 2001. Although in its Preliminary Determination the Department used Victory Chemicals' data from the fiscal year ending March 31, 2000, CPC alleges that the annual reports for both Victory Chemicals and Athiappa Chemicals cover only the 2000-2001 fiscal year and contain auditor's notes for only that period. Therefore, CPC claims, it would be inappropriate to continue to use the earlier data for Victory Chemicals because the missing notes could affect how the Department would interpret the report. Furthermore, CPC claims, the Department prefers to use data more contemporaneous with the POI when choosing among data of equal quality, as articulated in the Notice of Final Determination of Sales at Less Than Fair Value: 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 at 11. In addition, because Victory Chemicals experienced a loss during the fiscal year ending March 31, 2001, CPC contends that the surrogate profit ratio should be based on Athiappa Chemicals' experience alone. Citing the Department's decision in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2000-2001 Administrative Review, Partial Rescission of Review, and Determination to Revoke Order, in Part, 67 FR 68990 (November 14, 2002) and accompanying Issues and Decision Memorandum at 11-12, CPC states that the fact that a company experiences a loss, does not deem the rest of that company's data unusable for calculating surrogate financial ratios. Regarding the financial statements of Kores, a third Indian producer of barium carbonate, which are also on the record, CPC claims that they should not be used because this company was not a producer of barium carbonate during the POI, and because during the fiscal year ending March 31, 2001, sales of barium carbonate accounted for less than one percent of Kores' total sales volume.

Red Star agrees with CPC that the Department should use the financial ratios of both Victory Chemicals and Athiappa Chemicals for the fiscal year ending March 31, 2001, to calculate overhead, SG&A, and profit. Furthermore, Red Star also agrees with CPC that Victory Chemicals' profit should not be included because the company experienced a loss during this period. However, Red Star disagrees with CPC regarding the use of Kores' financial statements. Red Star concedes that Kores' data from the fiscal period ending March 21, 2000, are less contemporaneous than the data from the other two producers, and that the Department has demonstrated a preference for data more contemporaneous with the POI. Nevertheless, Red Star argues, the Department does have the discretion to use these older data and has shown that it is willing to combine the financial statements from different periods in calculating ratios, e.g., Brake Rotors From the People's Republic of China: Preliminary Results of Third New Shipper Review and Preliminary Results and Partial Rescission of Second Antidumping Duty Administrative Review, 64 FR 73007 (December 29, 1999).

Red Star also counters CPC's argument that Kores' financial data should not be used because barium carbonate is not a significant part of Kores' production. Red Star points out that the Department has used the financial data of companies whose production or sales of identical merchandise were relatively small compared to their total production or sales, e.g., Notice of

Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China, 65 FR 33805 (May 25, 2000) and accompanying Issues and Decision Memorandum at Comment 4. Furthermore, Red Star argues, Kores was a petitioner in the Indian antidumping duty investigation of barium carbonate from China in which at least seven Indian industry members were identified. Red Star estimates Kores' sales to be approximately 10-15 percent of India's total sales of barium carbonate, which it considers to be a significant percentage. In addition, Red Star points out that the diversity of Kores' products is comparable to the diversity of the products manufactured by the Red Star group of affiliated companies, making it even more appropriate for the Department to use Kores' financial statements. Red Star urges the Department to use a simple average of all three producers' financial ratios for calculating overhead and SG&A, and a simple average of just Athiappa Chemical's and Kores' ratios for profit.

Department's Position: We agree with CPC in part and Red Star in part. We agree with both parties that the Department should use the financial statements of Athiappa Chemicals, a significant producer of the subject merchandise in the Department's primary surrogate country, to calculate surrogate financial ratios for Red Star. We disagree, however, that the most appropriate year to use is that ending March 31, 2001. CPC has placed on the record Athiappa Chemicals' financial statements for the fiscal year ending March 31, 2002, which includes the director's report and notes for this same period, as well as data for the prior year. We see no reason to use the prior year when we have complete financial information for a period that is contemporaneous with the POI. As explained and supported by CPC above, all else being equal, the Department prefers to use more contemporaneous data.

We also disagree with both parties that we should use Victory Chemical's financial statements for the year ending March 31, 2001. While this information is more contemporaneous with the POI than that of the previous year (which the Department used in its Preliminary Determination), Victory Chemicals experienced a loss during the 2000-2001 fiscal year. It is the Department's preference not to use any of the financial information from a given year during which a company experienced a loss. See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation, 68 FR 6885 (February 11, 2003) and accompanying Issues and Decision Memorandum at Comment 9. In this case, the Department has information on the record for another company, Athiappa Chemicals, that did not experience a loss. With regard to Victory Chemicals' 1999-2000 data which the Department used in the Preliminary Determination, again, we find it is not necessary to use these older data when there are more contemporaneous data on the record.

Finally, we agree with CPC that we should not include the financial statements of Kores in our calculation of surrogate financial ratios. However, our reason for doing so is different than the reasons expressed by CPC. CPC states that the Department should not use Kores' financial information because it was not a producer of barium carbonate during the POI. While this is true, the Department also has information on the record for Kores' fiscal year ending March 31, 2001, when Kores was indeed a producer of the merchandise under investigation. (Although Red Star argues in its rebuttal brief that the Department should use Kores' 1999-2000 financial data, this information has not been placed on the record by any party to the proceeding.) CPC also argues that Kores' financial information should not be used because its sales of subject

merchandise comprised an insignificant portion of its total sales. As Red Star points out, the Department has used the financial statements of companies for which the subject merchandise was a small percentage of their total sales. However, in this case we have financial statements on the record, Athiappa Chemicals among them, for companies that are primarily producers of barium carbonate. Therefore, there is no need to rely on Kores' financial information because superior financial information is available. In conclusion, for the reasons stated above, we are deriving surrogate financial ratios solely from the 2001-2002 financial statements of Athiappa Chemicals for purposes of the final determination.

Comment 7: Valuation of Rail Freight

CPC states that the Department should use the Indian Railways Rate Table (Rate Table) to value rail freight instead of the rates published in the Reserve Bank of India Bulletin (RBI Bulletin) upon which the Department relied in its Preliminary Determination. CPC argues that the Rate Table is superior to the RBI Bulletin because it is more contemporaneous with the POI, having an effective date of April 1, 2003, while the latest data in the RBI Bulletin is from 1999-2000. In addition, CPC points out that the Rate Table contains more specific freight data than the RBI Bulletin. The Department used an average rate per ton per kilometer from the RBI Bulletin. The Rate Table, however, provides rates for 150 commodities per 100 kilograms for specific distance ranges up to 5000 kilometers. As to the proper rate to use from the table, because barium carbonate is not among the 150 commodities listed, CPC contends that the Department should use the rate for calcium phosphate because, among the commodities that are listed in the Rate Table, it is the closest one to barium carbonate in terms of tariff classification (*i.e.*, barium carbonate is under HTS subheading 2836 and calcium phosphate is under HTS subheading 2835).

Red Star argues that among the 150 commodities listed in the Rate Table, the most appropriate one to use to calculate a surrogate rail freight value is bicarbonate of soda because its HTS subheading of 2836.30 is closer to the subheading of barium carbonate than is that of calcium phosphate. Red Star also states that the Department should use an average of the rates for a trainload and a wagonload.

Department's Position: We agree with Red Star. In its final determination, the Department is utilizing the rail freight rates from the Indian Railway Rate Table that were placed on the record by CPC because this information is more contemporaneous than that used in the Preliminary Determination. However, we are using the commodity rate for bicarbonate of soda, as suggested by Red Star, rather than that for calcium phosphate, as suggested by CPC. To the extent that HTS subheadings are useful for identifying similarities in products, as argued by CPC and not rebutted by Red Star, we agree with Red Star that the HTS subheading for bicarbonate of soda is closer to that of barium carbonate than is the subheading of calcium phosphate. In the absence of further information regarding "trainload class" and "wagonload class" which would indicate that one rate was preferable to the other, we are averaging the two rates together, as suggested by Red Star.

Comment 8: Valuation of Truck Freight

CPC states that the Department should update the truck freight value it used in the Preliminary Determination. The Department calculated a surrogate truck freight value using rates published in the Financial Express newspaper in February 2000. CPC has placed new rates on the record published by the same source during the POI.

Furthermore, CPC argues, the Department should not consider the truck freight rates placed on the record by Red Star on June 18, 2003, because this information was submitted after the Department's deadline for submitting factor values. CPC claims that Red Star has not explained why it could not submit the information by the established deadline and that, because there is timely and suitable truck freight data on record, this is "not a case where the Department's need for the information outweighs the lateness of the submission." See CPC's Rebuttal Brief at 24.

According to Red Star, the Department should use neither set of Financial Express truck freight rates, but instead use the rates that it submitted from the April 2002 edition of the Indian publication Iron and Steel Newsletter. Red Star points out that the rates used by the Department in the Preliminary Determination are two years out of date, and the rates subsequently put on the record by CPC, although contemporaneous with the POI, are not representative of the entire period. Red Star claims that CPC selectively chose certain higher truck rates while ignoring other lower rates, such as those of May 19 and June 16, 2002, of the same publication, which are also contemporaneous to the POI. This selectivity, Red Star contends, throws doubt on the reliability and completeness of the 2002 Financial Express data currently on the record. Therefore, according to Red Star, the Department should use the Iron and Steel Newsletter data, which is contemporaneous as well as complete and representative. Specifically, Red Star states that this source provides truck freight quotes between three major cities and over 25 destinations, while Financial Express is limited to rates from just Mumbai to various destinations, 19 of which were used in the Preliminary Determination. Red Star also argues that the Iron and Steel Newsletter data are for "heavy consignments" (e.g., barium carbonate) and that they are listed as "indicative per metric ton rates" suggesting that the rates are based on average quotes over an extended period of time." See Red Star's Case Brief at 23. Moreover, this source was recently used to value truck freight in Notice of Preliminary Results of Antidumping Duty New Shipper Review: Honey from the People's Republic of China, 68 FR 33099 (June 3, 2003).

CPC counters that it calculated a truck freight rate using all of the quotes from the Financial Express articles it placed on the record for which it could identify the distance between cited city pairs. While CPC may not have submitted every available set of price quotes published by Financial Express during the POI, CPC points out that it is not required to place information on the record that is favorable to Red Star. CPC argues that each party to the proceeding had the opportunity to submit publicly available factor value information. Furthermore, CPC states, the Department should not reject the data simply because it is more favorable to CPC's interests, but should make a determination based on whether the information is "superior in terms of quality, specificity, and contemporaneity, to the data used in the Preliminary Determination." See CPC's Rebuttal Brief at 23-24.

Red Star rebuts CPC's argument that the Department should reject the Iron and Steel Newsletter truck rates because they were placed on the record after the deadline imposed by the Department by pointing out that both parties submitted data after the original deadline. Furthermore, Red Star argues that section 351.301(b)(1) of the Department's regulations allow factual information to be submitted up until seven days before the beginning of verification, and that Red Star's submission of truck rates met this deadline. According to Red Star, the delay in verification allowed all parties the opportunity to submit new factual information and sufficient time to review it.

Department's Position: We agree with CPC in part and with Red Star in part. We agree with CPC that the Department should update the Financial Express truck freight quotes that it used in the Preliminary Determination with quotes from the POI. However, we agree with Red Star that the rates submitted by CPC do not include all the publicly available quotes published by this source covering the POI. Although CPC is correct in that it is not its responsibility to submit factor value information that is adverse to its interests, it is the Department's responsibility to use the best available information to value the factors. In this case, the information submitted by CPC is from an easily accessible website and obtaining from it a more complete set of truck freight quotes does not impose a substantial burden on the Department. In addition to those already on the record, we have obtained truck freight quotes published by Financial Express on January 19, May 19, and June 9, 2002. Regarding the quotes published on June 16, 2002, referenced by Red Star, and already placed on the record by CPC, we are unable to include them in our calculation of a truck freight rate because we are unable to locate the applicable distances between any of the cited city pairs.

In making our determination, the Department has taken into consideration all of the information on the record regarding truck freight rates, including that submitted on June 18, 2003, by Red Star. While, in accordance with 19 CFR 351.301(c)(3)(I), the Department had set the deadline of April 28, 2003, for submission of publicly available information to value the factors of production, we have subsequently decided to accept information submitted after this deadline by both parties as discussed above in the Department's Position for Comment 3. Nevertheless, we have declined to use the truck freight information from the Iron and Steel Newsletter submitted by Red Star for the following reasons. First, this source specifies that the quotes are for "heavy consignments," which Red Star claims applies to barium carbonate. However, there is nothing on the record that indicates this term is applicable to barium carbonate or any of the inputs transported to Red Star for barium carbonate production. The fact that these quotes appear in a publication for the steel industry places further doubt about the suitability of them for the chemical industry. On the other hand, the quotes from Financial Express do not specify that they are for any type of cargo except that which is transported in a nine-ton truck.

Second, the quotes from the Iron and Steel Newsletter are from a single date, April 24, 2002. Although Red Star claims that the language "rates given are indicative per MT rates" in this publication suggests that they are "based on average quotes over an extended period of time," we do not find this argument convincing. See Red Star's Case Brief at 23. The publication also states that the quotes are "as on 24/04/2002," which suggests only that they were applicable on that particular day. In contrast, the Financial Express rates on the record, as supplemented by the Department, include eight sets of weekly rates. Thus, it is our determination that the Financial

Express information is the highest quality truck freight information currently available and, therefore, we are calculating a surrogate truck freight rate based solely on these price quotes.

Comment 9: Deduction of Brokerage and Handling

CPC argues that the Department should deduct an amount for brokerage and handling from the U.S. price. CPC asserts that the fact Red Star's brokerage and handling activities were handled by its own employees does not exclude Red Star from accounting for associated expenses in its calculation of its export price. It notes that section 772(c)(2) of the Act requires that the gross unit price must be reduced by "the amount . . . attributable to any additional costs, charges, or expenses . . . which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States." It asserts that in the case of Red Star, these expenses are represented by the services of its employees who handle the company's brokerage and handling activities. CPC states that because these expenses are incurred in the PRC, a non-market economy, a market economy surrogate must be found to value Red Star's brokerage and handling. CPC cites as a precedent, the treatment of one respondent, Wanxiang, in a recent administrative review of TRBs from the People's Republic of China⁶⁷ in which the Department determined that Wanxiang's brokerage and handling expenses must be deducted from the gross unit price of U.S. sales, even when these activities were performed by Wanxiang employees. CPC noted in this case that the Department revised Wanxiang's reported SG&A labor expenses to avoid double counting, and deducted an appropriate amount for brokerage and handling from the gross unit U.S. price.⁶⁸

Red Star did not take a position on this issue.

Department's Position: We agree that pursuant to section 772(c)(2) of the Act that brokerage and handling should be deducted from the U.S. gross unit price. Our selection of a surrogate value for brokerage and handling is explained in the Memorandum to Gary Taverman, Office Director, from David Layton, Tisha Loeper-Viti, and Kristina Boughton, International Trade Compliance Analysts, Re: Factors of Production Valuation for Final Determination (July 30, 2003).

Comment 10: Use of Weighted-Average U.S. Price in Margin Calculations

Red Star claims that the Department did not follow its own normal methodology in calculating the Preliminary Determination margin. According to Red Star, the Department's normal practice in investigations is to compare, by control number, a weighted-average net U.S. export price to a weighted-average normal value. Instead, Red Star alleges, the Department used an incorrect formula in its calculations which zeroed out any negative margins and resulted in the exclusion of "any negative margin benefits that may have occurred on some sales of a particular control

⁶⁷ See 2000-2001 Administrative Review of Tapered Roller Bearings from the People's Republic of China: Final Results, 67 FR 68990 (November 14, 2000) and accompanying Issues and Decision Memorandum at Comment 12.

⁶⁸ See id.

number.” See Red Star’s Case Brief at 31. Red Star argues that the Department must correct its methodological error to calculate an accurate dumping margin using weighted-average net U.S. prices.

Department’s Position: We agree that the Department made an error in its Preliminary Determination calculations as described by Red Star, above. This error has been corrected for the final determination.

Comment 11: Reported Consumption of Coal 1

CPC insists that the amount of coal 1 Red Star reported for the calcining kiln is below the theoretical minimum quantity required by the laws of chemistry. CPC claims that at least four carbon atoms are needed per each unit of barite ore and that the reduction of barite ore occurs by reaction with carbon monoxide gas. CPC states that Guizhou Red Star claims that it uses two carbon atoms in this process. CPC has placed on the record technical articles⁶⁹ supporting its claim that four carbon atoms are needed per molecule of barite ore. To get the four carbon atoms, CPC states that the consumption of coal 1 reported by Guizhou Red Star should be doubled. See CPC’s Case Brief at 51-54.

CPC claims that the verification exhibits do not contain proof of the barite ore and coal being weighed nor any records of payment or invoices. Therefore, CPC argues that it is not possible to substantiate the amount of coal 1 used by Guizhou Red Star during the POI. CPC also argues that the weighing process described for the fragmenting procedure in the Verification Report would not provide any information about the proportions contained in the mixture and there is no evidence the mixture is weighed after it is fragmented. Furthermore, CPC claims the handwriting on the log that records the weight of each load of ore or coal placed into the mixing pile is suspicious. See CPC’s Case Brief at 54-56.

CPC urges the Department to adjust coal 1 consumption figures using neutral facts available so that the coal 1 consumption amount is based on the theoretical minimum requirements of chemistry. While in Kerr-McGee Chemical Corp. v. United States, 985 F. Supp. 1166 (Ct. Int’l Trade 1997) (Kerr-McGee), the Department relied on verified data that CPC termed “unrealistically low,” CPC contends that the situation does not apply to this case. CPC argues that unlike in Kerr-McGee, there is no unique input used in the barium carbonate production process that could reduce Guizhou Red Star’s minimum requirements for coal 1. Also, according to CPC, the Department consulted experts in the Kerr-McGee case and received corroboration that CPC’s arguments were speculative. CPC says it has requested that the Department contact experts in the instant case but that it does not appear that the Department has done so. Again, CPC contends the circumstances of this case are dissimilar enough to merit different treatment from the prior case. See CPC’s Case Brief at 56-59.

⁶⁹ CPC cites the third and fourth editions of the Kirk-Othmer Encyclopedia of Chemical Technology and the article “Factors Influencing the Reduction of Barium Sulphate,” from the Journal of Chemical Technology and Biotechnology (1988).

Red Star points out that in its June 3, 2003 supplemental response it explained, with chemical formulas, how its consumption factors are an accurate representation of the inputs it used to produce barium carbonate. Red Star claims that different chemical reactions occurring in various areas of the reducing kiln and temperature differences within the kiln result in different types of reactions that affect the output amount. Red Star reminds the Department that it verified these input amounts. Red Star also claims CPC's cited chemical formula is misleading because it ends with a large concentration of carbon monoxide. It claims it is unreasonable to assume that a large amount of carbon monoxide⁷⁰ would be the end result of its reducing kiln process; it says its chemical reaction ends with barium sulfide and carbon dioxide as the main gases produced from the reducing kiln process. See Red Star's Rebuttal Brief at 38-40.

Red Star argues that CPC's allegation assumes there is only one way to produce barium carbonate and that CPC has not directly challenged the chemical formula explanation that Guizhou Red Star reported. Regarding the cites to chemical textbooks and research articles, Red Star insists that the fact that there might be a "standard" chemical formula by which barium carbonate is produced does not preclude that other formulas are technically impossible. It also points out that these references do not state that there is only one way to produce barium carbonate. See Red Star's Rebuttal Brief at 41.

Red Star also points out that the record shows that the verification exhibits contain documents related to the weighing process used by Guizhou Red Star for its barite ore and coal 1 mixture. It cites Production Verification Exhibit 4, which includes a month's sample of the log that Red Star uses to record the amount of barite ore received from the supplier and placed in the mixing pile. As to there not being proof of post-mixing weighing, Red Star argues that the Department is not obligated to document every aspect of verification and that verification exhibits do not have to be exhaustive. It also points out that in its June 3, 2003, supplemental response it explained how pre-weighing of the mixture ensures that it can reliably mix the coal and ore in proper proportion based on a recipe developed from production experience. See Red Star's Rebuttal Brief at 42-43.

Regarding the suspicious handwriting, Red Star replies that in the normal course of business it is reasonable and possible that data entries were made at the end of a shift by one individual, who did not necessarily collect the weight data. Red Star says that the Department should rely on its verification findings and reject CPC's comments as speculative and unsupported by the record. See Red Star's Rebuttal Brief at 43.

Finally, when referring to Kerr-McGee, according to Red Star, CPC's claim that a unique factor input is missing for the instant case fails to recognize the technical explanation Red Star placed on the record regarding its chemical process. See Red Star's Rebuttal Brief at 45-46.

Department's Position: We agree with Red Star. Based on our verification findings, the factory correctly reported the amounts of barite ore and coal it used to produce the subject merchandise during the POI. We checked the factory's reported material amounts at verification using standard verification procedures such as: (1) examining the factory's production cost and

⁷⁰ Several of the formulas CPC refers to in its case brief also end with carbon dioxide and barium sulfide.

consumption usage reports; (2) examining entries in the factory's material inventory ledger to determine whether the factory under-reported its material usage; (3) examining material draw tickets from the workshop producing the subject merchandise to determine actual usage; (4) examining the log used to weigh the barite ore and coal mixture before it enters the fragmenting process; and (5) tying the material inventory ledger to the factory's financial statements.

While we acknowledge that CPC has made a strong theoretical case supporting its "chemically impossible" theory, it has only indirectly challenged the chemical formula explanation that Guizhou Red Star placed on the record. There is no information on the record that directly challenges Guizhou Red Star's complete explanation of its chemical process: that there are different chemical reactions occurring in various areas of the reducing kiln and that the temperature differences within the kiln result in different types of reactions that affect the output amount. Further, in Red Star's Submission (June 3, 2003), it explained how the amount of coal it reported resulted in the amount of barium carbonate it produced, including pointing out that the energy input it uses acts as another source of fixed carbon for the reducing kiln process. In addition, the research articles CPC has placed on the record do not deny that there are multiple reactions that can take place in the reduction kiln and do not state that the formulas cited are the only possible ways of making barium carbonate. Overall, CPC's theoretical arguments do not controvert the Department's findings at verification.

With regard to other arguments raised, we note that payment records and invoices are irrelevant with regard to consumption amount in response to CPC's pointing out that these records are not included in the verification exhibits. We also believe the Verification Report explains in more detail than CPC cited how the mixing process works prior to the fragmenting stage of the production process, and we note that there is evidence of this procedure on the record.⁷¹

After careful analysis of our verification findings and of the information provided by all the parties to this proceeding, we do not find sufficient evidence to support CPC's contention that the consumption amounts reported by the factory are inaccurate. Nevertheless, if the case goes to order and a review is initiated, we will revisit this issue if raised by an interested party in the context of such review.

Comment 12: Consumption Quantity Questions

CPC argues that a review of the verification exhibits for raw material consumption raises questions about whether the consumption quantities used by Guizhou Red Star are actual figures or calculated estimates based on preset formulas. For example, CPC points to the description of the fragmenting and screening process as written in the Verification Report. It claims that the way the barite ore and coal mixture is weighed and the number of times it is weighed on a daily basis, as implied by the description, should result in there being certain characteristics present in the amounts that Red Star reported. CPC asks the Department to compare Guizhou Red Star's consumption amounts to the tractor techniques observed at verification to decide if they are reasonable. CPC states that at its factory, where input quantities are controlled with a high

⁷¹ See Verification Report at Production Verification Exhibits 4 and 6.

degree of mechanized precision, its consumption amounts for ore and coke contains the characteristics it refers to due to differences in particle size, ore composition, and kiln operating conditions. See CPC's Case Brief at 59-65.

CPC questions the verified amounts for the coal used in the calcining kiln, the coal needed for the lime kiln, and the kerosene used in the calcined granular barium carbonate production based on their lack of certain characteristics. CPC recommends that the Department consult experts to determine whether the consumption amounts Red Star provided are feasible. CPC recommends using facts available if the Department determines that Guizhou Red Star's figures cannot be relied upon. See CPC's Case Brief at 59-65.

Red Star argues that CPC has failed to cite anything, including textbook formulas, to support its allegations that Guizhou Red Star's reported consumption figures are unreliable. It claims that the Department conducted a thorough verification of Guizhou Red Star, reviewing production cost and consumption usage records, material inventory ledgers, material withdrawal tickets, and tied these primary source documents to the figures recorded in its accounting records, which were tied to the factory's financial statements. Red Star cites five previous cases where the Department has relied on its verification findings in the light of petitioner allegations that consumption amounts or yield factors were impossible. Red Star argues that the Department should reject CPC's speculative arguments. See Red Star's Rebuttal Brief at 44-46.

Department's Position: We agree with Red Star. Based on our verification findings, the factory correctly reported all of the materials it used to produce the subject merchandise during the POI. We checked the factory's reported material amounts at verification using standard verification procedures such as: (1) examining the factory's production cost and consumption usage reports; (2) examining entries in the factory's material inventory ledger to determine whether the factory under-reported its material usage; (3) examining material draw tickets from the workshop producing the subject merchandise to determine actual usage; and (4) tying the material inventory ledger to the factory's financial statements. These procedures enable us to verify that the consumption amounts being reported are accurate.

We note that it is difficult to determine what is normal variation in any operation, yet CPC's theoretical arguments do not controvert the Department's actual findings at verification. After careful analysis of our verification findings and of the information provided by all the parties to this proceeding, we do not find sufficient evidence to support CPC's contention that the consumption amounts reported by the factory are inaccurate. See also Comment 11.

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination in the *Federal Register*.

Agree_____

Disagree_____

Joseph A. Spetrini
Acting Assistant Secretary
for Grant Aldonas, Under Secretary

Date