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June 25, 2010

MEMORANDUM TO: Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Woven Electric Blankets from the People's Republic of China: Issues and Decision Memorandum for the Final Determination

SUMMARY

The Department of Commerce (the "Department") has analyzed the case and rebuttal briefs submitted by interested parties in the above-referenced investigation. As a result of our analysis, we have made changes in the margin calculation for the final determination. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

Background

On February 3, 2010, the Department published its preliminary determination in the investigation of certain woven electric blankets from the People's Republic of China ("PRC").[1] We invited parties to comment on our Preliminary Determination. Petitioner[2] and Hung Kuo Electronic (Shenzhen) Company Limited ("Hung Kuo"), the mandatory respondent in this investigation, submitted case briefs on April 1, 2100, and rebuttal briefs on April 6, 2010.

Below is the complete list of the issues in this antidumping duty investigation for which we received comments.

[1] See Certain Woven Electric Blankets From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 5567 (February 3, 2010) ("Preliminary Determination").
[2] Petitioner in this investigation is Jarden Consumer Solutions.

LIST OF THE ISSUES

DISCUSSION OF THE ISSUES

Comment 1: Application of Partial Adverse Facts Available – Hung Kuo

- Petitioner believes that Hung Kuo's dumping margin should be based on total adverse facts available ("AFA") and argues that the record developed at the Department's verification indicates that Hung Kuo withheld critical information and deliberately reported incorrect data in an attempt to manipulate and understate the dumping margin.

- Petitioner argues that total AFA is warranted because Hung Kuo: (1) reported the factors of production ("FOPs") for all controller parts using standard, rather than actual consumption quantities, despite Hung Kuo's assertions to the contrary; (2) failed to provide accurate actual consumption quantities for its controller part inputs at verification; (3) grossly overstated the percentage of its market economy ("ME") purchases of the heating wire and integrated circuit inputs; (4) drastically understated the per-unit consumption quantities reported for the heating wire and non-woven textile inputs, and relied on an unsupported allocation methodology to report per-unit consumption quantities for other FOPs; (5) failed to report the fact that it used tollers to produce a significant portion of its woven textile input, and;

(6) reported inaccurate per-piece weights used to report certain FOPs examined at verification.

- Additionally, Petitioner argues that Hung Kuo failed to report a U.S. sale and was unable to demonstrate that it reported all components of ocean freight.

- Hung Kuo believes that the record shows that it cooperated fully during this investigation and, therefore, AFA is not warranted.

- Hung Kuo claims that it accurately reported per-unit consumption quantities for its controller parts using standard consumption quantities, and that it was unable to report these quantities using its inventory records because they reflect only estimated consumption quantities. Hung Kuo states that it voluntarily brought an inadvertent error, regarding the quantity of ME purchases of heating wire and integrated circuits, to the Department's attention.

- Hung Kuo also argues that it voluntarily disclosed an error that caused it to understate the reported per-unit consumption quantities for heating wire and non-woven textile, and that it used a reasonable allocation methodology to report per-unit consumption quantities other FOPs such as glue and tin bar. Furthermore, Hung Kuo argues that the corrected FOPs for heating wire and non-woven textile have been verified by the Department and should be used in the agency's final margin calculation.

- Hung Kuo claims that it reasonably interpreted the Department's questionnaire as not requiring the identification of tollers used to produce a raw material input (i.e., woven textile) and that it is unclear that the Department would have required FOP data from its tollers.

- Hung Kuo argues that the discrepancies found between the reported per-piece weights of certain inputs and the per-piece weights of these inputs measured at verification were insignificant.

- With respect to Petitioner's claim regarding the unreported U.S. sale, Hung Kuo asserts that the sale was, in fact, a sale to a U.S. affiliate, and was properly unreported because the sale was not made to an unaffiliated U.S. customer until after the period of investigation ("POI").

- Hung Kuo did not comment on Petitioner's claim that it did not report all components of ocean freight.

Department's Position:

The Department agrees with Petitioner, in part. As discussed below, the record of this investigation indicates that Hung Kuo: (1) made misstatements regarding its reporting of FOP data for all of the raw material inputs used to produce electronic controllers and provided FOP data for these controller parts that could not be verified; (2) was not able to demonstrate that it reported all expenses incurred for ocean freight services purchased from an ME service provider; and (3) submitted ME purchase data that could not be verified. Nevertheless, we find that that a significant portion of Hung Kuo's FOPs and U.S. sales data have been verified and can be relied upon to calculate a dumping margin. Accordingly, we find that the application of partial, rather than total, AFA is warranted.

FOP Data for Controller Parts

In determining whether to apply AFA to Hung Kuo's reported FOP data for its electronic controller parts, the Department considered the following record evidence. In its October 27, 2009, Section D questionnaire response, Hung Kuo described its reporting methodology in a way that raised questions as to whether it had reported the majority of its FOPs (i.e., those for controller parts), using standard usage rather than actual consumption. Specifically, in explaining its reporting methodology for electronic controller parts, Hung Kuo stated that "the vast majority of {its} per-unit inputs can reasonably and accurately be reported without consideration of monthly data (i.e., by weighing the individual components)…."[3] In a November 10, 2009, supplemental questionnaire the Department requested that Hung Kuo confirm that it "reported all FOP data based on actual consumption as recorded in {its} books and records maintained in the ordinary course of business" or to explain why it had not done so. To confirm that Hung Kuo's reported per-unit consumption accurately reflected the quantity of inputs that were lost or wasted, the Department also requested that Hung Kuo explain how it allocated any variance between the standard consumption amounts and the consumption reflected in Hung Kuo's books and records. In its November 24, 2009, response to the Department's supplemental questionnaire, Hung Kuo indicated that it had provided the Department with a revised FOP database "based on actual usage," rather than standard usage.[4] Hung Kuo further explained that its reported per-unit consumption amounts had not changed because "with any defective electronic item purchased, suppliers will replace Hung Kuo with a new {electronic item}."[5]

However, despite having previously certified that Hung Kuo reported all FOP data on the basis of actual consumption, Hung Kuo revealed for the first time during the Department's verification of its revised FOP database that it had, in fact, reported the consumption for all electronic controller inputs on the basis of standard consumption.[6] Thus, the record developed in the instant investigation demonstrates that Hung Kuo made

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[3] See Hung Kuo's October 27, 2009, Section D questionnaire response at 1.
[4] See Hung Kuo's November 24, 2009, supplemental questionnaire response at 2.
[5] See id.
[6] See Memorandum to The File from Drew Jackson and David Edmiston, International Trade Compliance Specialists, through Howard Smith, Program Manager, AD/CVD Operations, Office 4, concerning, "Verification of the Questionnaire Responses of Hung Kuo Electronics (Shenzhen) Company Limited," ("PRC Verification Report"), dated March 25, 2010 at 26.

a misstatement that it had reported all FOPs, including those for controller parts, on the basis of actual consumption.

During verification, and for the first time in this proceeding, Hung Kuo officials also offered explanations concerning why Hung Kuo's inventory records did not permit the company to report consumption quantities for electronic controller parts on the basis of actual consumption. Specifically, Hung Kuo officials stated that "the records maintained in the ordinary course of business do not permit Hung Kuo to report the consumption of electronic components using raw material inventory records, rather than its standard consumption quantities because its inventory records do not reflect the exact number of individual pieces of electronic components."[7] We note that the Department's questionnaire, which was issued to Hung Kuo on September 3, 2009, contained the following instructions:

> If you are unable to respond to this questionnaire within the specified time limits *or are unable to provide the information in the form required, please contact the official(s) in charge of this investigation*. We will attempt to accommodate any difficulties that you encounter in answering this questionnaire. (Emphasis added)

The Department's September 3, 2009 questionnaire also requested that Hung Kuo bring any questions that it may have had regarding the calculation of the consumption quantities reported for FOPs to the attention of the Department *before* the company prepared its FOP response.[8] Thus, the Department requested that Hung Kuo notify the Department of any difficulties the company may have had in reporting FOP data months before the Department's verification of Hung Kuo's responses, which commenced on February 1, 2010. Hung Kuo, however, did not inform the Department that it had any difficulties providing the requested FOP data and, as noted above, reported that it had provided FOP data on the basis of actual consumption.

During verification, the Department provided Hung Kuo with the opportunity to reconcile its reported consumption of electronic controller parts to the company's inventory records for selected FOPs. However, the results of these verification tests showed significant discrepancies between Hung Kuo's reported per-unit consumption and the per-unit consumption reflected in Hung Kuo's inventory records.[9] When asked about the details of its inventory system, Hung Kuo officials explained that the person who understood the details of the inventory system was not present at verification.[10]

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[7] See id.
[8] See the Department's September 3, 2009, Questionnaire at D-1.
[9] See PRC Verification Report at 28-29.
[10] See id. at 27.

Ocean Freight

Additionally, the Department considered the following information in determining whether application of AFA to Hung Kuo's reported per-unit ocean freight is warranted. In the Preliminary Determination, the Department increased Hung Kuo's per-unit ocean freight expense to reflect origin receiving charges ("ORC"), automated manifest system ("AMS") fees, and documentation fees charged by service providers that were not included in Hung Kuo's ocean freight calculation.[11] At verification, Hung Kuo officials claimed that they had reported ORC, AMS, and documentation fees to the Department as U.S. brokerage and handling expenses rather than ocean freight expenses.[12] During verification, the Department selected transactions and provided Hung Kuo with an opportunity during verification to demonstrate that it had actually reported these expenses to the Department but Hong Kuo was unable to do so.[13]

ME Purchases

Finally, with respect to the quantity of heating wire and integrated circuit inputs purchased from ME suppliers,[14] the Department considered the following information in determining whether the application of AFA is warranted. At verification, after the opportunity to present minor corrections had passed, Hung Kuo company officials presented revised data regarding ME purchases of heating wire and integrated circuits, which differed significantly from that reported to the Department.[15] However, the revised ME purchase percentages provided by Hung Kuo were based on value rather than quantity data, and the quantity of ME purchases reflected in Hung Kuo's purchase records are significantly different than those reported to the Department in the company's October 27, 2010 Section D questionnaire response.[16]

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or

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[11] See Memorandum to The File from Drew Jackson, International Trade Compliance Specialist, through Howard Smith, Program Manager, AD/CVD Operations, Office 4, concerning, "Surrogate Value Memorandum," dated January 26, 2010 at 6-7, and Attachment X.
[12] See PRC Verification Report at 33.
[13] See id.
[14] The Department requires respondents to provide data on the quantity and purchase price of inputs sourced from ME suppliers in order to value these inputs. In accordance with the Department's practice, as outlined in Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716 (October 19, 2006), where at least 33 percent of an input was sourced from ME suppliers and purchased in an ME currency, the Department will use actual weighted-average purchase prices to value these inputs. Where the quantity of the input purchased from ME suppliers during the period was below 33 percent of its total volume of purchases of the input during the period, the Department will weight-average the weighted average ME purchase price with an appropriate surrogate value. See id. See also, Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 68568 (December 28, 2009) and accompanying Issues and Decision Memorandum at Comment 2.
[15] See PRC Verification Report at 32-33.
[16] See id.

any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available, i.e., the Department may apply AFA, when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.[17] Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.[18] Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[19] The Court of Appeals for the Federal Circuit ("CAFC") has elaborated on the "failure to act to the best of its ability" standard set forth under section 776(b) of the Act. Specifically, the CAFC held that the ordinary meaning of "best" means "one's maximum effort," and that the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do.[20] The CAFC indicated that inadequate responses to agency inquiries "may suffice" as a basis for finding that a respondent has failed to cooperate to the best of its ability.[21] Compliance with the "best of its ability" standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.[22]

As a result of Hung Kuo's reporting failures, significant information needed to calculate an accurate margin is missing from the record of this investigation. Because Hung Kuo's reporting methodology for electronic controller parts does not account for any loss of components due to damage or wastage,[23] we find that accurate information regarding the quantity of raw materials[24] employed in producing woven electric blanket electronic controllers has been withheld by Hung Kuo. Moreover, none of the FOP data for electronic controller parts reported by Hung Kuo could be verified. Thus, pursuant to section 776(a)(2)(A) and (D) of the Act we find that the use of facts otherwise available

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[17] See Statement of Administrative Action ("SAA"), accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1, at 870. See also, Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation, 65 FR 5510, 5518 (February 4, 2000).
[18] See section 776(b) of the Act.
[19] See the SAA at 869-70.
[20] See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382 (Fed. Cir. 2003).
[21] Id. at 1383.
[22] Id. at 1182.
[23] While Hung Kuo claims no yield loss occurs in the production of controller parts because its suppliers of controller parts replace all defective items, we note that yield loss also occurs through loss and damage that is not solely attributable to the supplier.
[24] Section 773(c)(3) of the Act defines FOP as including the quantities of raw materials employed in producing merchandise.

is warranted to calculate the value of Hung Kuo's electronic controller parts.

In addition, information regarding (1) specific ocean freight expenses (i.e., ORC, AMS, and documentation fees), and (2) the quantity and purchase price of heating wire and integrated circuits sourced from an ME supplier, could not be verified. Therefore, pursuant to section 776(a)(2)(D) of the Act we find that the use of facts otherwise available is warranted to determine Hung Kuo's ocean freight expense and the surrogate value of Hung Kuo's heating wire and integrated circuit inputs.

Furthermore, in selecting from among the facts otherwise available, we have determined, pursuant to section 776(b)(2) of the Act, that it is appropriate to use an adverse inference because Hung Kuo failed to cooperate by not acting to the best of its ability to comply with a request for information. Specifically, Hung Kuo made misstatements regarding its methodology for reporting FOP data for electronic controller parts. Moreover, Hung Kuo failed to provide verifiable information concerning certain ocean freight expenses, and the quantity of heating wire and integrated circuits purchased from its ME suppliers. The information sought by the Department regarding ocean freight expenses and ME input purchases was within Hung Kuo's control and could have been reported to the Department. Accordingly, we have determined that Hung Kuo failed to cooperate by putting forth its maximum effort to obtain the data and, hence, has not acted to the best of its ability to comply with a request for information. Therefore, we have determined that it is appropriate to use adverse inferences in selecting from the facts otherwise available on which to base Hung Kuo's dumping margin. Accordingly, we have applied AFA and increased Hung Kuo's reported per-unit consumption of electronic controller parts to account for yield loss by a factor derived from information obtained at verification.[25]
In addition, as AFA, we have increased Hung Kuo's total reported average per-unit ocean freight expense using information contained in ocean freight invoices submitted by Hung Kuo to account for certain expenses charged by service providers that could not be verified (i.e., ORC, AMS, and documentation fees),[26] and we have attributed these additional expenses to all ocean freight services purchased by Hung Kuo. Finally, we have also applied AFA and selected the higher of the surrogate value or the ME purchase price reported by Hung Kuo to value heating wire and integrated circuits.[27]

As discussed above, while the Department finds that the limited application of partial AFA is appropriate, we find that the record does not support Petitioner's remaining claims regarding Hung Kuo's reported data, which are discussed below, and therefore, the Department has not applied AFA to these data. First, although it is true that Hung Kuo initially understated the per-unit consumption quantities reported for heating wires and non-woven textile, the revised, increased, quantities have been verified (while these

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[25] See Memorandum to The File from Drew Jackson, International Trade Compliance Specialist, through Howard Smith, Program Manager, AD/CVD Operations, Office 4, concerning, "Analysis Memorandum for Final Determination," dated June 25, 2010 .
[26] See id.
[27] See id.

quantities were verified, as noted above, the percentage of ME purchases of heating wire could not be verified). [28] Second, contrary to Petitioner's claim that the allocation methodology used to report certain FOPs for subject merchandise is unsupported, the factors used by Hung Kuo to allocate consumption to these inputs have been verified by the Department.[29] Third, although Petitioner was correct in its assertion that Hung Kuo did not report that the company used tollers to process some of the woven textile consumed in the production of woven electric blankets, we find that Hung Kuo's normal production process does not include the production of woven textile and, accordingly, Hung Kuo reasonably interpreted the Department's questionnaire as not requiring the disclosure of tollers used to produce what the company considers to be a raw material input. Moreover, the Department has verified that all of Hung Kuo's woven textile used to produce subject merchandise, including that produced by a toller, was properly included in the per-unit consumption reported for this input, and thus there is no indication that Hung Kuo's reported per unit consumption of woven textile is understated. [30] Fourth, we find no evidence that the per-piece weight discrepancies observed at verification reflect either gross distortions or reporting failures.[31] Fifth, contrary to Petitioner's claim, we find no evidence that the PRC Verification Report indicates an unreported U.S. sale; rather, the record indicates that the sale in question was made to Hung Kuo's U.S. affiliate, Biddeford Blankets LLC ("Biddeford Blankets"), at the end of the POI.[32] The Department found no evidence of unreported sales during the verification of Biddeford Blankets.[33] Accordingly, the Department finds that the application of AFA to this information is not warranted and has relied on Hung Kuo's reported data in the final determination.

Comment 2: Financial Statements Used to Derive Manufacturing Overhead, Selling, General and Administrative Expenses, and Profit

- Petitioner argues that the Department should value overhead, selling, general, and administrative ("SG&A") expenses, and profit using the financial data of the following Indian companies: (1) Bajaj Electricals Limited ("Bajaj"); (2) Hicks Thermometers India Limited ("Hicks"); and (3) Poly Medicure Limited ("Poly"). Specifically, Petitioner argues that Hung Kuo's production process, which consists primarily of assembly work, is more similar to that of Hicks and Poly, producers of small medical devices, and Bajaj, a producer of appliances, lighting, and fans, than that of the two producers of non-electric blankets whose financial

[28] See PRC Verification Report at 23-24.
[29] See PRC Verification Report at 23-24.
[30] See PRC Verification Report at 23-24.
[31] See PRC Verification Report at 34-36.
[32] See PRC Verification Report at 10-15, and Exhibits 7 and 10.
[33] See Memorandum to The File from Drew Jackson and David Edmiston, International Trade Compliance Specialists, through Howard Smith, Program Manager, AD/CVD Operations, Office 4, concerning, "Verification of the Questionnaire Responses of Hung Kuo Electronics (Shenzhen) Company Limited's (Hung Kuo) U.S. Affiliate, Biddeford Blankets LLC (Biddeford Blankets)," dated March 25, 2010 at 9, and Exhibit 7.

statements were used in the Preliminary Determination, Bawa Woollen and Spinning Mills Limited ("Bawa") and Prakash Woollen Mills Limited ("Prakash").

- Petitioner further argues that, unlike the Bawa and Prakash statements used in the Preliminary Determination, the Bajaj statement is contemporaneous with the POI.

- Hung Kuo argues that the Department should continue to rely on the financial statements of Bawa and Prakash rather than Bajaj, Hicks, and Poly, which do not produce merchandise comparable to woven electric blankets.

- Hung Kuo further argues that the Department should reject the Bajaj and Hicks statements because these businesses are primarily trading companies that lack significant production activities.

- Hung Kuo argues that the production processes employed by Hicks and Bajaj are not similar to the one used by Hung Kuo to produce woven electric blankets. Hung Kuo further argues that the Bajaj statement lacks any information about the company's production process and, thus, there is no basis to conclude that its production process is comparable to Hung Kuo's.

- Hung Kuo argues that manufacturing electric blankets from woven fabric shells is a significant component of its production process, and that this disproves Petitioner's claim that Hung Kuo's production process is predominately assembly work.

- In addition, Hung Kuo argues that the Bajaj and Poly financial statements must be rejected because these statements indicate that the companies benefitted from countervailable subsidies.

Department's Position:

We disagree with Petitioner and, for the reasons explained below, have continued to derive manufacturing overhead, SG&A expenses, and profit using the 2007-2008 financial statements of Bawa and Prakash, two Indian producers of woven non-electric blankets, in the final determination.

To determine the valuation of FOPs, which include the surrogate financial ratios, the Department is directed to rely on "the best available information" regarding the values of such factors in an ME country or countries considered to be appropriate by the agency.[34] However, because the statute is silent concerning what record data constitutes the "best available information," the Department is afforded "wide discretion" in its application of

[34] See sections 773(c)(1) and (4) of the Act.

those statutory guidelines.[35] In choosing surrogate financial ratios, it is the Department's policy to use data from ME surrogate companies based on the "specificity, contemporaneity, and quality of the data."[36] Guidance regarding surrogate values for manufacturing overhead, general expenses, and profit is provided by section 351.408(c)(4) of the Department's regulations, which states that these values will normally be based on publicly available information from companies that are in the surrogate country and that produce merchandise that is identical or comparable to the subject merchandise.[37] While the statute does not define "comparable merchandise," it is the Department's practice, where appropriate, to apply a three-prong test that considers: 1) physical characteristics; 2) end uses; and 3) production processes.[38] Consistent with Congress's intent, the Department will "avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices" in the calculation of a surrogate value for a particular FOPs.[39] Pursuant to its practice, the Department calculates the surrogate financial ratios based on contemporaneous financial statements, when available, from companies producing comparable merchandise in the surrogate country.[40] However, where the Department has a reason to believe or suspect that the company producing comparable merchandise may have received actionable subsidies, the agency may consider that the financial ratios derived from that company's financial statements are less representative of the financial experience of the relevant industry than the ratios derived from financial statements that do not contain evidence of subsidization.[41] Consequently, the Department does not rely on financial statements where there is evidence that the company has received countervailable subsidies and there are other sufficiently reliable and representative data on the record for purposes of calculating surrogate financial ratios.

The Department has reviewed the financial statements of all companies under consideration and has determined that while none of the companies produce merchandise that is identical to woven electric blankets; Bawa and Prakash produce merchandise that is sufficiently comparable to woven electric blankets (i.e., non-electric woven blankets).

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35 See Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999) (citations omitted).

36 See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006) ("Lined Paper Final") and accompanying Issues and Decision Memorandum at Comment 1.

37 See, e.g., Lined Paper Final and accompanying Issues and Decision Memorandum at Comment 1.

38 See Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 48612 (July 25, 2002) and accompanying Issues and Decision Memorandum at Comment 5.

39 See Omnibus Trade and Competitiveness Act of 1988, H.R. Conf. Rep. No. 100-576 (1988), at 590-91; and see, e.g., Third Administrative Review of Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 46565 (September 10, 2009) and accompanying Issues and Decision Memorandum at Comment 3b.

40 See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010) and accompanying Issues and Decision Memorandum at Comment 13.

41 See id.

Specifically, the Department finds that non-electric blankets share similar physical characteristics and end uses as non-electric blankets. By contrast, the Department finds that the small appliances produced by Bajaj and the medical devices produced by Hicks and Poly do not share the same physical characteristics and end uses as woven electric blankets. Additionally, we find that none of the companies under consideration produce goods using a production process that is comparable to the process used by Hung Kuo to produce woven electric blankets, which involves, inter alia, the cutting, trimming, and stitching of woven fabric and the assembly of controller parts. For these reasons, we find that Bawa and Prakash represent the only producers of sufficiently comparable merchandise on the record of this investigation.

The financial statements of Bawa,[42] Prakash, Hicks, and Poly cover the period April 1, 2007, through March 31, 2008, and, therefore, are not contemporaneous with the POI, which is October 1, 2008 through March 31, 2009. The financial statement of Bajaj covers the period April 1, 2008, through March 31, 2009, which overlaps the POI, and is, therefore, contemporaneous with the POI.

The Department has carefully reviewed the financial statements of all companies under consideration and finds that two of them provide evidence of having benefitted from subsidies the Department has previously found to be countervailable.[43] Specifically, record evidence indicates that Bajaj benefitted from the Duty Entitlement Passbook scheme, and Bajaj benefitted from the Export Promotion Capital Goods Scheme. Conversely, there is no indication that Bawa, Prakash, or Hicks benefitted from countervailable subsidies.

Based on our examination of the financial statements at issue in light of the statutory directive to base the valuation of the FOPs on the best available information, we continue to find that the statements of Bawa and Prakash provide the most appropriate source of surrogate financial data. Although the Bawa and Prakash financial statements are not contemporaneous with the POI, we find these statements to be a better surrogate value source than the financial statements of Bajaj, Hicks, and Poly. Specifically, unlike Bawa and Prakash, we have determined that Bajaj, Hicks and Poly do not produce merchandise sufficiently comparable to Hung Kuo's exported electric blankets. We have also determined that, consistent with Congress's intent, it would be inappropriate for the

[42] On April 20, 2010, the Department rejected rebuttal surrogate value information, case briefs, and rebuttal briefs filed by Hung Kuo because they contained untimely filed new factual information, including the 2008-2009 financial statement of Bawa, an Indian producer of non-electric blankets, which Hung Kuo proposed as a surrogate value source for manufacturing overhead, SG&A expenses and profit. Hung Kuo refiled versions of these submissions without the new factual information on April 22, 2010. On May 7, 2010, Hung Kuo submitted a written request that the Department reconsider its decision to reject the 2008-2009 Bawa financial statement. On May 26, 2010, the Department notified Hung Kuo that it would not accept the untimely filed 2008-2009 Bawa statement. Accordingly, the only statement for Bawa on the record of this proceeding is the one that covers the fiscal year ending 2008.

[43] See, e.g., Commodity Matchbooks From India: Final Affirmative Countervailing Duty Determination, 74 FR 54547 (October 22, 2009).

Department to select the Bajaj and Poly financial statements as the best available information because of evidence that these companies benefitted from countervailable subsidies. Accordingly, because the record contains other more suitable financial statements (i.e., those of Bawa and Prakash), we find that the statements of Bajaj and Poly are not the best available information on the record of this proceeding. For the foregoing reasons, the Department has continued to value overhead, SG&A and profit using the financial statements of Bawa and Prakash for the final determination.

Comment 3: The Classification of Certain Expenses Contained in the Bawa Financial Statement Used to Derive Manufacturing Overhead, Selling, General and Administrative Expenses, and Profit

- Hung Kuo argues that the Department should classify fabrication and garnet cutting expenses listed in the Bawa financial statement as labor, rather than manufacturing overhead expenses to avoid double counting labor expenses.

- Hung Kuo further argues that the Department's decision in Certain Frozen and Canned Warmwater Shrimp[44] to exclude from manufacturing overhead processing and freezing charges recorded in the financial statement of a surrogate company compels the Department to exclude the fabrication and garnet cutting expenses from manufacturing overhead in the instant proceeding.

- Petitioner argues that there is no basis to classify fabrication and garnet cutting expenses listed in the Bawa financial statement as labor because the Bawa statement lists a separate line item for direct labor.

Department's Position:

We disagree with Hung Kuo and have continued to classify fabrication and garnet cutting expenses as manufacturing overhead for the final determination. In deriving surrogate financial ratios, "it is the Department's longstanding practice to avoid double-counting costs *where the requisite data are available to do so*."[45] (Emphasis added). However, with respect to surrogate financial statements used to derive the surrogate financial ratios, it has been our longstanding practice to not make adjustments to the financial statement data, as doing so may introduce unintended distortions into the data rather than achieving greater accuracy.[46] Moreover, the CAFC has recognized that valuation of factory

[44] See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 FR 70997 (December 8, 2004) ("Certain Frozen and Canned Warmwater Shrimp") and accompanying Issues and Decision Memorandum at Comment 7b.

[45] See, e.g., Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 72 FR 58642 (October 16, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

[46] See Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007) and accompanying Issues and Decision Memorandum

overhead is dependent on the facts present and data available to the Department in each case.[47]

In determining whether line item expenses listed in the financial statement of a surrogate company should be classified as either manufacturing overhead or labor, the Department will examine the financial statement to determine whether the company records direct labor expenses as a separate line item. For example, the Department will treat subcontracting expenses as manufacturing overhead expenses if the surrogate financial statement contains separate labor and energy line-items.[48] The Department has stated that the premise of this practice is the presumption that if there are separate labor and energy line-items, the relevant costs for these inputs would be included in those line-items (and therefore not in the subcontracting expenses line-item).[49]

We find that the Department's prior analysis with respect to subcontracting expenses is analogous to the fabrication and cutting charges at issue. In the instant proceeding, the Department reviewed the financial statement of Bawa and determined that the company clearly accounts for direct labor as a separate line item from fabrication and garnet cutting. Consequently, we have determined there is no evidence to support Hung Kuo's claim that treating fabrication and garnet cutting expenses as manufacturing overhead results in double counting in this proceeding. We disagree with Hung Kuo that the Department's decision in Certain Frozen and Canned Warmwater Shrimp to exclude from manufacturing overhead the processing and freezing charges recorded in the financial statement of a surrogate company compels the Department to exclude the fabrication and garnet cutting expenses from manufacturing overhead in the instant proceeding. In Certain Frozen and Canned Warmwater Shrimp, the Department found that "{r}espondents provided sufficient evidence to show that … the surrogate financial company used to derive the surrogate financial ratios, includes a significant amount of

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at Comment 4; Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 2 (stating that because the Department cannot adjust the line items of the financial statements of any given surrogate company, we must accept the information from the financial statement on an "as-is" basis in calculating the financial ratios); Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China, 66 FR 49345 (September 27, 2001) and accompanying Issues and Decision Memorandum at Comment 4 ("[I]n calculating overhead and SG&A, it is the Department's practice to accept data from the surrogate producer's financial statements in toto, rather than performing a line-by-line analysis of the types of expenses included in each category.").

[47] See Magnesium Corp. of America v. United States, 166 F.3d 1364, 1372 (Fed. Cir. 1999) ("As factory overhead is composed of many different elements, the cost for individual items may depend largely on the accounting method used by the particular factory. Given these uncertainties, the broad statutory mandate directing Commerce to use, "to the extent possible," the prices or costs of factors of production in a comparable market economy country does not require item-by-item accounting for factory overhead.").

[48] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009) and accompanying Issues and Decision Memorandum at Comment 16.

[49] See id.

expenses {that} are in the form of labor …,"[50] and, consequently, we excluded processing and freezing charges from manufacturing overhead to avoid double counting labor. Conversely, in the instant proceeding, the Department finds that the Bawa financial statement lacks sufficient information to determine the types of expenses included in the fabrication and garnet cutting expenses. For the foregoing reasons, the Department has continued to classify these expenses as manufacturing overhead, rather than labor, for the final determination.

Comment 4: The Treatment of Certain Movement Expenses Contained in the Prakash Surrogate Financial Statement

- Hung Kuo argues that the Department should exclude Prakash's freight and cartage expenses from the SG&A ratio to avoid double counting movement expenses, and notes that in other proceedings the Department has excluded these movement expenses from its surrogate financial expense calculation.[51]

- Petitioner did not comment on this issue.

Department's Position:

We agree with Hung Kuo that the Prakash freight and cartage charges should be excluded from the SG&A calculation. In deriving appropriate surrogate values for overhead, SG&A, and profit, the Department typically examines the financial statements on the record of the proceeding and categorizes expenses as they relate to materials labor, energy, factory overhead, SG&A and profit, and excludes certain expenses (e.g., movement expenses) consistent with the Department's practice of accounting for these expenses elsewhere.[52] In so doing, it is the Department's longstanding practice to avoid double-counting costs where the requisite data are available to do so.[53] We include freight expenses in our margin calculations for each company; therefore, to also include them in our calculation of the surrogate SG&A financial ratio that is then used in these margin calculations would result in double counting.[54] Accordingly, for the final determination, we have excluded freight and cartage charges from the surrogate SG&A

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[50] See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 FR 70997 (December 8, 2004) and accompanying Issues and Decision Memorandum at Comment 7b.

[51] See Hung Kuo's April 1, 2010 case brief (redacted on April 22, 2010) at 37("Hung Kuo Case Brief") (citing Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008) ("Lightweight Thermal Paper") and accompanying Issues and Decision Memorandum at Comment 3).

[52] See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007) and accompanying Issues and Decision Memorandum at Comment 1.

[53] See Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 72 FR 58642 (October 16, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

[54] See Lightweight Thermal Paper and accompanying Issues and Decision Memorandum at Comment 3.

ratio calculation.

Comment 5: Surrogate Value for Alphanumeric LEDs

- Hung Kuo argues that the Department should value alphanumeric LEDs, used in Hung Kuo's production of the controller input, using the Indian HTS category for light emitting diodes,[55] rather than the Indian HTS category for "electric filament or discharge lamps,"[56] which was selected in the Preliminary Determination. Hung Kuo states that the LEDs it uses are inexpensive, mass produced, bulk-purchase items and argues that the HTS category used to value LEDs in the Preliminary Determination resulted in an aberrational value of USD 7.94 per piece.

- Hung Kuo further argues that Indian Infodrive data demonstrates that the vast majority of goods classified under the HTS category used in the Preliminary Determination were not LEDs, and that any LED imported under that HTS was incorrectly classified. By contrast, Hung Kuo argues that Indian Infodrive data supports the selection of Hung Kuo's proposed HTS category, which the Department selected in the Preliminary Determination to use as the surrogate value for neon bulbs, another type of LED used by Hung Kuo at USD 0.26 per piece.

- Petitioner argues that the Department should continue valuing LEDs using the Indian HTS selected for the Preliminary Determination. Petitioner, which argues that the application of total AFA or partial AFA to all controller parts, including LEDs is appropriate, contends that Hung Kuo should not be rewarded for reporting an unreliable FOP by receiving a lower surrogate value in the final determination.

- Petitioner further argues that the Department should not use Indian Infodrive data as a benchmark to evaluate other potential World Trade Atlas ("WTA") surrogate values because there are significant discrepancies between the Infodrive data and the WTA data. Alternatively, Petitioner argues that the Infodrive data for the HTS category proposed by Hung Kuo indicate that some goods similar to the input used by Hung Kuo have per-unit values that are even higher than the per-unit surrogate value used in the Preliminary Determination, thus implying that the surrogate value used in the Preliminary Determination was not overstated.

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[55] The complete Indian HTS category description is "diodes, transistors, and similar semi-conductor devices; photosensitive semi-conductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light emitting diodes; mounted piezo-electric crystals; light emitting diodes (electro-luminescent)."

[56] The complete Indian HTS category description is "electric filament or discharge lamps, including sealed beam lamp units and ultra-violet or infrared laps, arc lamps (other)."

Department's Position:

Based on re-examination of the record evidence regarding the alphanumeric LEDs used by Hung Kuo in its production of woven electric blankets, the Department agrees with Hung Kuo and, for the final determination, has valued the alphanumeric LEDs using WTA data for the Indian HTS category proposed by Hung Kuo. Specifically, there is no record evidence indicating that Hung Kuo's alphanumeric LEDs are electric filament or discharge lamps. Because a plain reading of the two HTS category descriptions under consideration indicates that the WTA data for the Indian HTS category proposed by Hung Kuo is more specific to the input used by Hung Kuo, there is no need for the Department to also rely on the Indian Infodrive data to make this determination. For the foregoing reasons, the Department finds that the WTA data for the Indian HTS category proposed by Hung Kuo (the HTS category for light emitting diodes) constitutes the best information available for valuing LEDs.

Comment 6: International Movement Expenses

- Hung Kuo argues that, in the Preliminary Determination, the Department improperly applied international freight expenses to sales delivered to Hung Kuo's U.S. customer at the PRC port. Hung Kuo states that its U.S. customer was individually responsible for international freight expenses for these sales and that the Department should not apply international freight expenses to these sales in the final determination.

- Petitioner has not commented on this issue.

Department's Position:

The Department has reviewed its preliminary margin calculation and agrees with Hung Kuo. For the final determination, the Department has not applied international freight expenses to U.S. sales made on a free on board (PRC port) basis.

Comment 7: Calculation of Normal Value Using FOP Data That Reflect both Semi-Finished and Finished Goods

- Hung Kuo argues that the Department should calculate normal value using FOP data that reflects the production quantity of both finished and semi-finished goods entered into inventory rather than FOP data derived from a production quantity that excluded semi-finished goods, which was used in the Preliminary Determination.[57]

[57] Hung Kuo submitted two FOP databases to the Department. One FOP dataset reflects only the production quantity of finished woven electric blankets while the other FOP dataset reflects a larger production quantity consisting of both semi-finished and finished woven electric blankets.

- Hung Kuo argues that that the scope of this investigation includes {certain} semi-finished goods, and that the semi-finished goods entered into inventory are subject merchandise that should be included in the Department's margin calculation.

- Hung Kuo notes that the Department verified the production quantities of both finished and semi-finished goods, and found that the consumption quantities used in the calculation of the FOPs for woven textile included the raw material inputs used to produce both finished and semi-finished goods entered into inventory.

- Hung Kuo argues that the numerator (consumption quantity) and the denominator (production quantity) used in the FOP calculation should include semi-finished goods. Moreover, Hung Kuo states that the Department's practice is to include the production quantity of semi-finished goods in the calculation of the FOPs, particularly when semi-finished goods are considered in-scope merchandise.[58]

- Petitioner argues that, while the scope of the investigation includes semi-finished goods, Hung Kuo sold no semi-finished goods to U.S. customers, and, consequently, Hung Kuo's CONNUM-specific FOPs should exclude data for the production semi-finished goods.

- Petitioner further argues that Hung Kuo's FOPs have already been reduced to account for work-in-process, and thus there is no indication that using the smaller denominator FOP database would produce an inaccurate result.

- Petitioner argues that Hung Kuo's accounting records are critically flawed because Hung Kuo was not able to provide a satisfactory explanation as to how the company's system determines consumption and production data. Petitioner further argues that Hung Kuo's consumption and production records reveal inconsistencies.

Department's Position:

The Department agrees with Hung Kuo and has calculated normal value using FOP data that includes the production quantity of both semi-finished and finished woven electric blankets. At verification, the Department found that in addition to work-in-process, Hung Kuo records the quantity and value of both semi-finished and finished goods entered into inventory.[59] Hung Kuo's total reported consumption includes the quantity of materials used to produce both semi-finished and finished goods that are entered into inventory.[60] Accordingly, the record indicates that the FOP data derived by using the

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[58] See Hung Kuo Case Brief at 28 (citing First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 57995 (November 10, 2009) and accompanying Issues and Decision Memorandum at Comment 5).
[59] See PRC Verification Report at 18.
[60] See id. at 21

production quantity of both semi-finished and finished goods accurately reflect a numerator and denominator calculated on the same basis. By contrast, if the Department used data that excluded the production quantity of semi-finished goods, the result would be distorted, overstated FOPs.

We note that neither the fact that semi-finished goods are included within the scope of the investigation, nor the fact that Hung Kuo made no sales of semi-finished goods to U.S. customers, have any bearing on the Department's determination in this matter. Rather, the Department's finding is based on record evidence indicating that excluding the production quantity of semi-finished goods from the calculation of normal value would inaccurately reflect Hung Kuo's production experience and would prevent the calculation of an accurate margin.

Further, the Department disagrees with Petitioner's assertion that Hung Kuo's FOPs have already been reduced to account for work-in-process. As noted above, Hung Kuo accounts for work-in-process separately from semi-finished goods.

Additionally, the Department disagrees with Petitioner that Hung Kuo's production and consumption records for woven textile cannot be relied upon. While the Department found significant problems at verification with Hung Kuo's FOP data for electronic controller parts, (see "Application of Partial Adverse Facts Available – Hung Kuo" section, above) these problems did not extend to Hung Kuo's records for woven textile. Thus, we disagree with Petitioner's conclusion that Hung Kuo's woven textile production and consumption records, which were obtained at verification, reveal significant discrepancies that render these records unreliable.[61]

For the foregoing reasons, the Department has determined the calculation of normal value using FOP data that includes the production quantity of both semi-finished and finished woven electric blankets is appropriate.

Comment 8: Unit of Measure Conversion for Certain Inputs

- Petitioners state that the Department should convert Hung Kuo's FOPs for "SCR," transistors, and neon bulbs from kilograms per-piece to units per-piece in the agency's margin calculation because the surrogate values selected for these inputs are reported in units, rather than kilograms.

- Hung Kuo has not commented on this issue.

Department's Position:

The Department agrees with Petitioner and has converted Hung Kuo's FOPs for SCR,

[61] Petitioner's argument relies on Hung Kuo's proprietary information. See Final Analysis Memorandum, which is dated concurrently with this memorandum, for further discussion of this issue.

transistors, and neon bulbs from kilograms per-piece to units per-piece in the agency's margin calculation for the final determination.

Comment 9: Surrogate Value for Acrylic/Polyester Blend Woven Textile

- Petitioner argues that Hung Kuo's acrylic/polyester blend fabric is properly classifiable under two Indian HTS categories representing woven fabrics of acrylic fibers mixed with other artificial fibers, rather than the simple average of the Indian HTS categories for polyester [62](HTS 5512.19.10) and acrylic[63] (HTS 5512.29.10) textiles, which were selected by the Department as a blended fabric surrogate value in the Preliminary Determination.

- Petitioner states that the record indicates that most of Hung Kuo's acrylic/polyester blend blankets contain more acrylic than polyester fiber and argues that this supports the selection of Indian HTS categories for other woven fabrics which use synthetic staple fibers composed of acrylic[64] (HTS 5515.21.90) and/or other synthetic fibers[65](HTS 5515.29.90) to value this input.

- Hung Kuo argues that the Department should continue to value acrylic/polyester blend textile using an average of the two HTS categories used in the Preliminary Determination.

- Hung Kuo argues that the two HTS categories proposed by Petitioner reflect small quantities of imports and are, therefore, aberrational.

- Moreover, Hung Kuo contends that the HTS categories proposed by Petitioner do not reflect the textile inputs actually used by Hung Kuo because the fabric classified under these HTS categories need only contain some amount of acrylic fiber, which must be mixed with manmade or "other" fibers, which may include, acetate, latex, nylon, rayon, or animal hair.

Department's Position:

The Department disagrees with Petitioner and has made no change to its valuation of Hung Kuo's acrylic/polyester blend woven textile input for the final determination. The

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[62] The full description for this Indian HTS category is "woven fabrics of synthetic staple fibres containing 85% or more by weight of synthetic staple fibres, containing 85% or more by weight of *polyester* synthetic staple fibres, dyed." (Emphasis added).
[63] The full description for this Indian HTS category is "woven fabrics of synthetic staple fibres containing 85% or more by weight of synthetic staple fibres, containing 85% or more by weight of *acrylic* synthetic staple fibres, dyed." (Emphasis added).
[64] The full description for this Indian HTS category is "other woven fabrics of synthetic staple fibres, of acrylic or modacrylic staple fibers, mixed mainly or solely with man-made filaments, other."
[65] The full description for this Indian HTS category is "other woven fabrics of synthetic staple fibres, of acrylic or modacrylic staple fibers, other."

acrylic/polyester blend woven textile used by Hung Kuo contains polyester staple fibers and is dyed.[66] Therefore, we have concluded that the textile blends represented by the Indian HTS numbers selected by the Department in the Preliminary Determination remain the most similar to the textile blends used by Hung Kuo in its production process. Conversely, the woven fabrics described by the Indian HTS categories proposed by Petitioner expressly exclude fabrics composed of dyed fibers[67] and there is no indication that the fabrics described by these HTS categories are actually composed of polyester blends. For these reasons, the Department finds that the HTS categories used to value Hung Kuo's acrylic/blend fabric in the Preliminary Determination are more specific to the input actually used by Hung Kuo.

Comment 10: Calculation of Indirect Selling Expenses Applied to Hung Kuo's CEP Sales

Comment 10(a): Application of Sale-Specific Indirect Selling Expense Ratios

- Hung Kuo argues that the Department should apply two different indirect selling expense ("ISE") ratios to its constructed export price ("CEP") sales to avoid overstating the ISEs attributable to direct sales, which did not pass through the warehouse of Hung Kuo's U.S. sales affiliate, Biddeford Blankets. Specifically, Hung Kuo argues that the Department should apply one ISE ratio that includes all ISEs to CEP sales made through the warehouse of Biddeford Blankets, and a second ISE ratio, which excludes warehouse-specific expenses, to CEP sales that did not pass through the U.S. warehouse.

- Petitioner argues that the Department should apply one consistent ISE ratio to all of Hung Kuo's U.S. CEP sales. Petitioner states that once the Department determines a selling expense to be an indirect, rather than a direct, expense, the agency conducts no further inquiry to determine whether expenses should be further attributed to a particular group of sales.

Department's Position:

The Department agrees with Hung Kuo and has applied sale-specific ISE ratios to Hung Kuo's CEP sales for the final determination. While the Act does not outline a particular methodology for calculating ISEs, the Department has, however, allowed respondents to exclude certain expenses from reported ISEs once they have met the burden of proving that an adjustment is warranted.[68] At verification, the Department confirmed that Biddeford Blankets did not incur warehousing expenses for direct CEP sales because

[66] See Hung Kuo's January 6, 2010 supplemental questionnaire response at 29.
[67] Dyed fabrics are expressly classified under Indian HTS category (5515. 21.30 and 5515.29.30).
[68] See Stainless Steel Sheet and Strip in Coils From Mexico: Final Results of Antidumping Duty Administrative Review, 75 FR 6627 (February 10, 2010) and accompanying Issues and Decisions Memorandum at Comment 4.

these sales did not pass through the U.S. warehouse. In addition, the Department has reviewed Hung Kuo's proposed reduction to the ISE ratio for direct sales and has confirmed that they are limited to warehouse related expenses. Accordingly, we believe that Hung Kuo has demonstrated that its proposed reduction to the ISE ratio applied to direct CEP sales is warranted.

Comment 10(b): Treatment of Accrued Bad Debt Expenses

Hung Kuo contends that the Department should reduce total CEP ISE expenses by excluding the bad debt provision reflected in its records because Biddeford Blankets did not incur expenses for unpaid sales during the POI.

Petitioner argues that the Department should apply one consistent ISE ratio to all of Hung Kuo's U.S. CEP sales. Petitioner states that once the Department determines a selling expense to be an indirect, rather than a direct expense, it conducts no further inquiry to determine whether expenses should be further attributed to a particular group of sales.

In addition, Petitioner argues that the Department should continue to include the bad debt provision in CEP ISEs because it reflects Biddeford Blankets' estimate of the accounts receivable that the affiliate will not receive and, thus, affects the affiliate's profitability. Petitioner also states that the Department's practice is to treat bad debt expenses as ISEs because they are incurred regardless of whether a particular sale results in nonpayment.

Department's Position:

We disagree with Hung Kuo and have not excluded the bad debt allowance of its U.S. affiliate from the ISE ratio applied to U.S. sales for the final determination. Hung Kuo has not demonstrated that a reduction to ISEs for the amount of bad debt provisions recorded in the financial statement of Biddeford Blankets is warranted. In calculating the ISE ratio applied to CEP sales, the Department is interested in capturing all ISEs that relate to POI sales.[69] The amount accrued by Biddeford Blankets for bad debt represents the bad debt expenses recognized by Biddeford Blankets for sales made during the POI. Moreover, our inclusion of Hung Kuo's bad debt allowance is consistent with Department practice.[70] Accordingly, we find that it is appropriate to include this accrued amount for bad debt in the ISE ratio applied to direct CEP sales

[69] See Stainless Steel Sheet and Strip in Coils From Mexico; Preliminary Results of Antidumping Duty Administrative Review and Intent Not To Revoke Order in Part, 74 FR 39622 (August 7, 2009) and accompanying Issues and Decision Memorandum at Comment 4.

[70] See Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review, 65 FR 30068 (May 10, 2000) and accompanying Issues and Decision Memorandum at Comment 4; see also Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 7513 (February 13, 2006).

Comment 10(c): Treatment of President's Salary

- Hung Kuo argues that compensation for Biddeford Blankets' president recorded on the company's income statement should be reduced by 50 percent because more than half of his time was devoted to working as the president of Biddeford Blankets' affiliate, Microlife USA, that markets and distributes medical devices. Hung Kuo argues that this 50 percent reduction of Biddeford Blankets' president's salary is consistent with proceedings in which the Department accepted a reduction of total ISEs based on the activities of company personnel.[71]

- Petitioner argues that the Department should include in its ISE ratio calculation all compensation expenses incurred by Biddeford Blankets. Petitioner notes that 100 percent of Biddeford Blankets' president's salary was incurred by Biddeford Blankets and contends that the fact that Biddeford Blankets' affiliate, Microlife USA, may have benefitted from the president's services is not relevant to the Department's analysis.

Department's Position:

The Department disagrees with Hung Kuo and has continued to include the full amount of compensation earned by the president of Biddeford Blankets in the agency's calculation of the ISE ratio applied to Hung Kuo's reported CEP sales.

As noted above, respondents bear the burden of proving that proposed adjustments to ISEs are warranted.[72] We find that Hung Kuo has not met its burden of proving that its reported reduction to its reported ISE ratio is warranted. The entire amount of compensation paid to the president of Biddeford Blankets that is recorded in the company's audited financial statements represents a business expense attributed solely to Biddeford Blankets by the auditor. The Department finds no record evidence that contradicts the opinion expressed by Biddeford Blankets' auditor that the compensation is fully attributed to Biddeford Blankets. We disagree with Hung Kuo's assertion that the Department's acceptance of sales personnel activity based allocation methodology in Citric Acid supports a finding in the instant case that Hung Kuo's proposed reduction is reasonable. In Citric Acid, the respondent allocated a portion of ISEs incurred by an affiliated company located outside of the United States to U.S. sales on the basis of an estimated percentage of time that its employees spent on activities associated with selling subject merchandise to the United Stated during the POI. The issue in Citric Acid did not involve the question of whether the selling expenses that were incurred by the affiliated

[71] See Hung Kuo Case Brief at 34 (citing Notice of Final Determination of Sales at Less Than Fair Value: Citric Acid and Certain Citrate Salts from Canada, 74 FR 16843 (April 13, 2009)("Citric Acid")).
[72] See Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review, 75 FR 6627 (February 10, 2010) and accompanying Issues and Decisions Memorandum at Comment 4.

company and recognized in that company's records should be considered expenses unrelated to the company. By contrast, in the instant investigation, Hung Kuo is asking the Department to allocate a portion of Biddeford Blankets' expenses to another affiliated company, Microlife USA, even though these expenses were recorded in Biddeford Blankets' records and treated as part of Biddeford Blankets' operating expenses in its audited financial statements. Thus, Hung Kuo's proposed activity-based allocation methodology is significantly different than the one which the Department accepted in Citric Acid. For the foregoing reasons, we find that the exclusion from the ISE ratio of 50 percent of the compensation paid to the president of Biddeford Blankets is not warranted.

Comment 11: Surrogate Value for Power Cords

- Hung Kuo argues that the Department should value Hung Kuo's power cords using WTA data for electric conductors, for a voltage not exceeding 1000 volts, fitted with connectors and insulated with plastic.

- Hung Kuo argues that the Department inappropriately valued power cords in the Preliminary Determination by using an Indian HTS category that excludes plastic power cords of the kind used by Hung Kuo.

- Hung Kuo argues that the Department should not reject Hung Kuo's proposed HTS category merely because the WTA describes the category as electric conductors that are "used for Telecomm." Rather, Hung Kuo argues that the phrase "used for Telecomm." is ambiguous and states that the WTA does not set forth the official description of what is covered by the tariff listing.

- Hung Kuo further contends that the official Indian government description of the HTS category (which it placed on the record), as opposed to the WTA description of the HTS category, does not identify the goods classified under Hung Kuo's proposed Indian HTS as electric conductors used for telecommunications equipment.

- Petitioner argues that the Indian HTS category that Hung Kuo advocates only includes connectors used for telecommunications.

- Petitioner further argues that the HTS category descriptions provided by Hung Kuo should not be relied upon because there is no information about when the descriptions were in effect. Petitioners state that the WTA data and accompanying descriptions are current and, therefore, the record indicates that Hung Kuo's proposed HTS category includes only power connectors used in telecommunications equipment.

Department's Position:

The Department disagrees with Hung Kuo and has made no change to the surrogate value for its power cord inputs[73] for the final determination. The WTA provides POI-specific Indian HTS category descriptions. By contrast, the Indian HTS descriptions provided by Hung Kuo cannot be linked to the POI, because the documents are undated and do not indicate when the descriptions were in effect. As noted, the WTA description for the Indian HTS category that Hung Kuo proposes as a surrogate value for power cords is limited to power cords used for telecommunications devices. Accordingly, the Department finds that Hung Kuo's proposed surrogate value is less specific to the input in question than the surrogate value used in the Preliminary Determination. Thus, we have determined that the Indian HTS category selected in the Preliminary Determination remains the best available information on the record for the surrogate valuation of Hung Kuo's power cord input.

Comment 12: Hung Kuo's Reported FOPs for Woven Textile Used to Produce King Size Electric Blankets

- Hung Kuo argues that the Department should rely on Hung Kuo's reported FOP for king size woven textile because the Department has verified the corrected per-unit consumption quantity for this input.

- Petitioner argues that, despite submitting revised FOPs, Hung Kuo has reported inaccurate FOP data for king size woven textile in its small denominator database and, therefore, the application of FA is warranted. Moreover, Petitioner argues that an adverse inference is warranted due to Hung Kuo's continued failure to report an accurate FOP for this input.

Department's Position:

The Department agrees with Hung Kuo and has relied on its reported per-unit consumption quantity for woven textile used to produce king size blankets in the final determination. As noted in the "Application of Partial Adverse Facts Available – Hung Kuo" section, above, the Department has verified Hung Kuo's reported per-unit consumption quantities for woven textile, including the woven textile used to produce king size woven electric blankets.

Comment 13: Valuation of Labor

- Hung Kuo argues the Department's wage rate violates section 773(c) of the Act

[73] In the Preliminary Determination, the Department valued Hung Kuo's reported power cord inputs using the Indian HTS category for "Othr Elctr Condctrs Fitted Wth Connectors Fr 80V Vltge <= 1000" (HTS No. 8544.42.90) .

and the CIT's ruling in Allied Pacific Food[74] and Taian Ziyang Food Co.[75] Hung Kuo urges the Department to use the hourly wage rate for India from the International Labour Organization ("ILO"), which is published on the Department's website and has been placed on the record of this investigation.

- Hung Kuo argues that the CAFC in Dorbest II[76] rejected the Department's regression based wage rate analysis for valuing labor in NME cases and instructed the Department to value labor using data only from one or more ME countries that are 1) economically comparable to the NME being investigated and 2) significant producers of comparable merchandise.

- Hung Kuo contends that Dorbest II makes clear that the Department is required to value labor in one or more of the six countries found to be economically comparable to the PRC in this investigation. Hung Kuo further argues that Dorbest II precludes the Department from using wage rates from countries other than the six that were found to be economically comparable to the PRC.

- Hung Kuo argues that a country must be a net exporter of comparable merchandise or a major exporter to the United States to justify relying on that country's export volume in order to find that it is a significant producer of comparable merchandise. Hung Kuo contends that of the six countries originally found to be economically comparable to the PRC by the Department, only India has been shown to be a net exporter of comparable merchandise. Hung Kuo argues that to rely on export volume alone would be flawed and points out that five countries, in fact, placed on the record by the Department had zero blanket exports altogether in 2009. Therefore, Hung Kuo argues that because there is only one net exporter, India, it alone can be considered a significant producer of comparable merchandise. Consequently, the Department should only rely on Indian wage rates to value labor.

- Hung Kuo states, however, that if the Department determines that net export data are unnecessary and the export data placed on the record of this investigation are sufficient to demonstrate significant production, only Indonesia and India can reasonably be considered significant producers of comparable merchandise. Therefore, Hung Kuo argues that it would be reasonable to value labor based on the average of Indonesian and Indian wage rates.

- Prior to the CAFC's Dorbest II ruling, Petitioner argued that the Department should continue to value labor pursuant to 19 CFR 351.408(c)(3) because the final

[74] See Allied Pacific Food (Dalian) Co. Ltd. v. United States, 587 F. Supp. 2d 1330 (CIT 2008) ("Allied Pacific").
[75] See Taian Ziyang Food Co, Ltd. v. United States, 637 F. Supp. 2d 1093, 1136 (CIT 2009)("Taian Ziyang Food Co.").
[76] See Dorbest Ltd. v. United States, 604 F.3d 1363, 1371 (May 14, 2010) ("Dorbest II").

order has not been issued in the cases cited by Hung Kuo, nor have all appellate rights been exhausted. Petitioner further noted that the CIT has previously affirmed the Department's wage rate methodology in Dorbest I.[77]

- Thereafter, Petitioner argues that the CAFC in Dorbest II recognized that if the Department finds that data from countries that are economically comparable to the PRC and produce comparable merchandise are not available or usable, the Department is permitted to use the best available information, which may include data from a country that is not economically comparable or may not produce comparable merchandise.

- Petitioner asserts that India should not be used as the sole source of wage rates because the Indian data appears to be aberrational when compared to 1) the rates of other economically comparable countries and 2) the actual wages that Hung Kuo paid its direct labor.

- Petitioner argues that the most appropriate methodology for valuing labor would be to use a simple average of the following seven countries that have gross national incomes ("GNIs") that are at similar levels with the PRC and also have wage rates on the record of this investigation: Albania, Colombia, Guatemala, India, Nicaragua, Sri Lanka, and Ukraine. Further, while Petitioner acknowledges that some of these counties have export values that are relatively small, it contends that this should not be taken as a definitive indicator that these countries are not significant producers of comparable merchandise.

Department's Position:

As a consequence of the CAFC's ruling in Dorbest II, the Department is no longer relying on the regression-based wage rate described in 19 CFR 351.408(c)(3). The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. For this final determination, we have calculated an hourly wage rate to use in valuing Hung Kuo's reported labor input by averaging earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.

Hung Kuo argues that the Department should use the hourly wage rate for India from the ILO (or an average of the hourly wage rates for India and Indonesia) as an alternative to our previous regression-based wage rate. The Department disagrees. While information from a single surrogate country can reliably be used to value other FOPs, wage data from a single surrogate country does not constitute the best available information for purposes of valuing the labor input due to the variability that exists between wages and GNI. While there is a strong worldwide relationship between wage rates and GNI, too much variation exists among the wage rates of comparable MEs. As a result, we find reliance

[77] See Dorbest Ltd. v. United States, 547 F. Supp. 2d 1321 (CIT 2008) ("Dorbest I").

on wage data from a single country to be unreliable and arbitrary. For example, when examining the most recent wage data, even for countries that are relatively comparable in terms of GNI for purposes of factor valuation (e.g., countries with GNIs between USD 950 and USD 4100), the wage rate spans from USD 0.41 to USD 2.08.[78] Additionally, although both India and Guatemala have GNIs below USD 2,500, and both could be considered economically comparable to the PRC, India's observed wage rate is USD 0.47, as compared to Guatemala's observed wage rate of USD 1.14 – over double that of India.[79] There are many socio-economic, political and institutional factors that cause the variance in wage levels between countries. For this reason, and because labor is not traded internationally, the cross-country variability in labor rates, as a general rule, does not characterize other production inputs or impact other factor prices. Accordingly, the large variance in these wage rates illustrates the arbitrariness of relying on a wage rate from a single country. For these reasons, the Department maintains its longstanding position that, even when not employing a regression methodology, more data are still better than less data for purposes of valuing labor. Accordingly, the Department's has employed a methodology that relies on a larger number of countries in order to minimize the effects of the variability that exists between wage data of comparable countries.

To achieve a labor value that is based on the best available information with which to value labor for this final determination, we have relied on labor data from several countries determined to be both economically comparable to the PRC, and significant producers of comparable merchandise.

First, in order to determine the economically comparable surrogate countries from which to calculate a surrogate wage rate, the Department looked to the Surrogate Country Memo.[80] Early in this investigation, the Department selected six countries for consideration as the surrogate country for this investigation. To determine which countries were at comparable levels of economic development to the PRC, the Department placed primary emphasis on GNI.[81] The Department relies on GNI to generate its initial list of countries considered to be economically comparable to the PRC. In this investigation, the list of potential surrogate countries found to be economically comparable to the PRC included India, the Philippines, Indonesia, Colombia, Thailand, and Peru. The Department used the high- and low-income countries identified in the Surrogate Country Memo list as "bookends" and then identified all countries with World Bank-reported per capita incomes (using the 2007 GNIs from the 2009 Expected Wages

[78] See "Expected Wages of Selected NME Countries," revised in December 2009, available at <http://ia.ita.doc.gov/wages/index.html>.
[79] See "Expected Wages of Selected NME Countries," revised in December 2009, available at <http://ia.ita.doc.gov/wages/index.html>.
[80] See Letter to All Interested Parties from Howard Smith, Program Manager, AD/CVD Operations, Office 4, concerning, "Antidumping Duty Investigation of Certain Woven Electric Blankets from the PRC," dated October 30, 2009, at Attachment 1 (this attachment contains the Memorandum to Howard Smith, Program Manager, AD/CVD Operations, Office 4, from Kelly Parkhill, Acting Director for Policy, concerning, "Request for List of Surrogate Countries for an Antidumping Duty Investigation Certain Woven Electric Blankets from the PRC," dated October 28, 2010 ("Surrogate Country Memo")).
[81] See 19 CFR 351.408(b).

of Selected NME Countries) that placed them between these "bookends". This resulted in 50 countries, ranging from India with USD 950 GNI to Colombia with USD 4,100.

Regarding the second criterion of "significant producer," the Department identified all countries which have exports of comparable merchandise (defined as HTS 630110) between 2007 and 2009. After screening for countries that had exports of comparable merchandise, we found that 16 of the 50 countries designated as economically comparable to the PRC are also significant producers. In this case, we have defined a "significant producer" as a country that has exported comparable merchandise from 2007 through 2009. We disagree with Hung Kuo that *only* net exporters or major exporters to the United States can be considered significant producers.[82] The antidumping statute and regulations are silent in defining a "significant producer," and the antidumping statute grants the Department discretion to look at various data sources for determining the best available information. <u>See</u> section 733(c) of the Act. Moreover, while the legislative history provides that the "term 'significant producer' *includes* any country that is a significant net exporter",[83] it does not preclude reliance on additional or alternative metrics. In practice, the Department has relied on other indices for determining whether a country is a significant producer. For example, in <u>Wooden Bedroom Furniture from the PRC</u>[84], the Department relied on production data for selecting the primary surrogate country. In this case, we have relied on countries with exports of comparable merchandise as significant producers.

For purposes of valuing wages in this investigation, the Department determines the following 16 countries to be both economically comparable to the PRC, and significant producers of comparable merchandise: Albania, Colombia, Ecuador, Guatemala, India, Indonesia, Morocco, Namibia, Nicaragua, Peru, the Philippines, Sri Lanka, Swaziland, Thailand, Tunisia, and Ukraine.

Third, from the 16 countries that the Department determined were both economically comparable to the PRC and significant producers of comparable merchandise, the Department identified those with the necessary wage data. In doing so, the Department has continued to rely upon ILO Chapter 5B data "earnings", if available, and "wages" if not.[85] We used the most recent data within five years of the base year (2007) and

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[82] <u>See</u> Hung Kuo Case Brief, at 9-10.

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

[84] <u>See</u> <u>Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review</u>, 75 FR 9581, 9584 (March 3, 2010).

[85] The Department maintains its current preference for "earnings" over "wages" data under Chapter 5B. However, under the previous practice, the Department was typically able to obtain data from somewhere between 50-60+ countries. Given that the current basket now includes 16 countries, the Department found that our long-standing preference for a robust basket outweighs our exclusive preference for "earnings" data. We note that several countries that met the statutory criteria for economic comparability and significant production, such as Indonesia and Thailand, reported only a "wage" rate. Thus, if earnings data is unavailable from the base year (2007) of the previous five years (2002-2006) for certain countries that are economically comparable and significant producers of comparable merchandise, the Department will

adjusted to the base year using the relevant Consumer Price Index.[86] Of the 16 countries that the Department has determined are both economically comparable and significant producers of comparable merchandise, four countries, *i.e.*, Morocco, Namibia, Swaziland, and Tunisia, were not used in the wage rate valuation because there was no earnings or wage data available. The remaining countries reported either earnings or wage rate data to the ILO within the last five years.

The Department relied on data from the following countries to arrive at its wage rate in this final determination: Albania, Colombia, Ecuador, Guatemala, India, Indonesia, Nicaragua, Peru, the Philippines, Sri Lanka, Thailand, and Ukraine. The Department calculated a simple average of the wage rates from these 12 countries. This resulted in a wage rate derived from comparable economies that are also significant producers of the comparable merchandise, consistent with the CAFC's ruling in Dorbest II and the statutory requirements of section 773(c) of the Act.

Recommendation

Based on the results of verification and our analysis of the briefs submitted by interested parties, we recommend adopting all of the positions as described above. If these recommendations are accepted, we will publish this final determination in the Federal Register.

Agree _____ Disagree _____

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Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

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(date)

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use "wage" data, if available, from the base year or previous five years. The hierarchy for data suitability described in the 2006 Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, (October 19, 2006) ("Antidumping Methodologies") still applies for selecting among multiple data points within the "earnings" or "wage" data. This allows the Department to maintain consistency as much as possible across the basket.

[86] Under the Department's regression analysis, the Department limited the years of data it would analyze to a two-year period. See Antidumping Methodologies, 71 FR at 61720. However, because the overall number of countries being considered was bigger, relying on two years of data still provided a much larger pool than we have now from which the Department could calculate a labor value. Because the number of economies from which we may draw data is now smaller, the Department believes it is acceptable to review ILO data up to five years prior to the base year as necessary (as we have previously), albeit adjusted using the Consumer Price Index. See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 FR 37761, 37762 (June 30, 2005). In this manner, the Department will be able to capture the maximum amount of countries that are significant producers of comparable merchandise, including those countries that choose not to report their data on an annual basis.