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MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Polyester Staple Fiber from the People's Republic of China: Issues and Decision Memorandum for the Final Results of 2008/2009 Administrative Review

SUMMARY:

We have analyzed the comments submitted in the administrative review of certain polyester staple fiber ("PSF") from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes from the Preliminary Results.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this review for which we received comments on the Preliminary Results:

General Comments:
Comment 1: Surrogate Value for Labor
Comment 2: Surrogate Value for Brokerage & Handling
Comment 3: Brokerage & Handling in Market Economy Purchase Price
Comment 4: Zeroing

Certain Separate Rate Companies Comments:
Comment 5: Separate Rate Assignment

BACKGROUND:

The merchandise covered by this administrative review is certain PSF from the PRC as described in the "Scope of the Order" section in the Preliminary Results. The period of review ("POR") is June 1, 2008, through May 31, 2009. On July 14, 2010, the Department published the

[1] See Certain Polyester Staple Fiber From the People's Republic of China: Notice of Preliminary Results and Preliminary Rescission, in Part, of the Antidumping Duty Administrative Review, 75 FR 40777 (July 14, 2010) ("Preliminary Results").

Preliminary Results. In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on our Preliminary Results.

On August 3, 2010, the Department placed certain export data and wage rate data on the record of this administrative review and invited interested parties to comment on these data. On September 1, 2010, Certain Separate Rate Companies[2] filed a case brief regarding what antidumping duty rate should be assigned to them. Also on September 1, 2010, Ningbo Dafa Chemical Fiber Co., Ltd. ("Ningbo Dafa"), Cixi Santai Chemical Fiber Co., Ltd. ("Cixi Santai"), Certain Separate Rate Companies, Consolidated Textiles, Inc., Fibertex Corporation, and Stein Fibers Limited (collectively, "Respondents") filed separate case briefs addressing the other case issues. On October 26, 2010, the Department issued a memorandum regarding the Department's proposed industry-specific wage rate methodology for the final results and invited interested parties to comment. On November 5, 2010, Ningbo Dafa and Cixi Santai filed comments on the Department's industry-specific wage rate methodology. On November 10, 2010, DAK Americas LLC ("Petitioner") filed rebuttal comments.

Comment 1: Surrogate Value for Labor

Respondents' Case Brief Arguments:

- The wage rate data the Department placed on the record include countries that are not significant producers of PSF and date back as far as 2002. Instead, the Department should use the 2007 wage rate for the spinning industry from the primary surrogate country, India, to calculate Respondents' dumping margins.
- The 2007 International Labor Organization ("ILO") Indian wage rate under "Occupational wages" for the spinning industry meets all of the standard criteria traditionally used by the Department for selecting surrogate values ("SVs"). The Indian labor rates for the spinning industry are far superior to country-wide data for numerous countries, most of which have not been approved by Import Administration's Office of Policy as being economically similar to the PRC.
- The Indian labor data for the spinning industry are publicly available, more specific and more contemporaneous than the data the Department placed on the record.
- There is no record evidence to suggest that the ILO data for the spinning industry are tax-inclusive, therefore the presumption is that Respondents' Indian spinning industry data are tax-exclusive.
- The Department should follow its long-standing policy to value all factors in the primary surrogate country, including labor, using only the Indian data on the record.
  The data provided by the Department from multiple countries do not meet the test for best available information.

[2] Cixi Sansheng Chemical Fiber Co., Ltd., Hangzhou Best Chemical Fibre Co., Ltd., Hangzhou Huachuang Co., Ltd., Hangzhou Sanxin Paper Co., Ltd., Nantong Luolai Chemical Fiber Co., Ltd., NanYang Textiles Co., Ltd., Zhejiang Waysun Chemical Fiber Co., Ltd., Cixi Waysun Chemical Fiber Co., Ltd., and Zhaoqing Tifo New Fiber Co., Ltd. (collectively, the "Certain Separate Rate Companies").

Respondents' Supplemental Arguments:

- The country chosen by the Department as the prime surrogate country in this review, India, is not on the Department's list of countries that it believes to be significant producers of PSF. In addition, Bosnia and Herzegovina, Ecuador, Egypt, Jordan, Macedonia, or Ukraine are not among the list of countries that the Department has determined to be comparable to the PRC in terms of economic development.[3]
- The Department's proposed methodology to define "significant producer" as any country having exports of PSF at any time during the POR, regardless of quantity, defies the clear language of 19 U.S.C. 1677b(c)(4).
- However, the Department, having determined that India is the primary surrogate country for the PRC in this review, has no logical reason to go beyond Indian values when selecting the appropriate surrogate labor rate.
- The Department should adhere to its longstanding preference to derive SVs from the primary surrogate country if there is useable data from that country and use Indian data exclusively for determining the SV for labor.
- Respondents state that they are members of the Chinese textile industry, in contrast to the wage rates for the chemical industry proposed by the Department. It is inappropriate to use a labor rate for any broader chemical industry classification, especially as neither Ningbo Dafa nor Cixi Santai is a virgin producer of PSF from raw chemicals.
- It is inappropriate to use labor rate data from the ten countries suggested by the Department in the industry-specific wage rate calculation because of their miniscule production compared to world production.

Petitioner's Rebuttal Arguments:

- The Department is not restricted to relying on wage rate data solely for India, as urged by Respondents, in completing its analysis.[4]
- The Court of International Trade ("CIT"), in Globe Metallurgical, recognized the Department's broad discretion to choose from among various sources of SVs, including from sources other than the primary surrogate market economy ("ME").[5]
- Using only India's wages as reported under "Occupational wages," would result in an inaccurate, incomplete wage rate that would also no longer retain parity with the derivation of financial ratios.
- In Activated Carbon, the Department determined that, with respect to labor rates, the "best available information" comes from the use of data from multiple countries.[6]
- The Department should continue to rely on export statistics as a valid indicator of industry presence. In Activated Carbon, the Department clearly rejected Respondents' argument that wage rates for other countries cannot be used either (1) because they are

[3] See Preliminary Results, 75 FR at 40778.
[4] See Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review, 70 FR 34448 (June 14, 2005), and accompanying Issues and Decision Memorandum at 18.
[5] See Globe Metallurgical, Inc. v. U.S., 350 F. Supp. 2d 1148, 1159-60 (2004).
[6] See Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review, 75 FR 70208 (November 17, 2010), and accompanying Issues and Decision Memorandum at 31 ("Activated Carbon").

not on the Department's list of countries that it believes to be significant producers of PSF or (2) because export volumes were not the proper indicia for selection.[7]

Department's Position:

In Dorbest Ltd. v. United States, 604 F.3d 1363, 1372 (Fed. Cir. 2010) ("Dorbest"), the Court of Appeals for the Federal Circuit ("CAFC") invalidated the Department's regulation, 19 CFR 351.408(c)(3), which directs the Department to value labor using a regression-based method. As a consequence of the CAFC's decision, the Department is no longer relying on the regression-based wage rate. The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. For the final results of this review, we have calculated an hourly wage rate in valuing Ningbo Dafa's and Cixi Santai's reported labor input by averaging industry-specific earnings and/or wages in countries that are economically comparable to the PRC.

Section 773(c)(4) of the Tariff Act of 1930, as amended (the "Act"), requires the Department "to the extent possible" to use "prices or costs of factors of production in one or more market economy countries that are (A) at a level of economic development comparable to that of the non-market economy country, and (B) significant producers of comparable merchandise." Accordingly, to calculate a wage rate, the Department first looked to the Surrogate Country Memo issued in this proceeding to determine countries that were economically comparable to the PRC.[8]

In analyzing economic comparability, the Department places primary emphasis on gross national income ("GNI"). Consistent with 19 CFR 351.408, the Department places primary emphasis on GNI in determining economically comparable surrogate countries.[9] In the Preliminary Results, the Department selected six countries for consideration as the primary surrogate country for this review based on the Surrogate Country Memo.[10] From the list of countries contained in the Surrogate Country Memo, the Department used the country with the highest GNI (*i.e.*, Colombia) and the lowest GNI (*i.e.*, India) as "bookends" for economic comparability. The Department then identified all countries in the World Bank's World Development Report with per capita GNIs for 2007 that fell between the "bookends." This resulted in 52 countries, ranging from India (with USD 950 GNI) to Colombia (with USD 4,100 GNI), that the Department considers economically comparable to the PRC.[11]

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[7] Id. at 34.

[8] See Department's Letter to all Interested Parties: Antidumping Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China: Surrogate Country List, dated February 18, 2010 ("Surrogate Country Memo").

[9] The Department notes that 19 CFR 408(b) specifies that the "Department places primary emphasis on per capita {gross domestic product ("GDP"}." However, it is Departmental practice to use "per capita GNI, rather than per capita GDP, because while the two measures are very similar, per capita GNI is reported across almost all countries by an authoritative source (the World Bank), and because the Department believes that the per capita GNI represents the single best measure of a country's level of total income and thus level of economic development." See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, Fn. 2 (October 19, 2006) ("Antidumping Methodologies").

[10] The Department notes that these six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC. See Surrogate Country Memo.

[11] See The Department's October 26, 2010, Wage Rate Data.

Next, regarding the "significant producer" prong of the statute, the Department identified all countries which have exports of comparable merchandise (defined as exports under HTS 5503.20, the six-digit HTS code identified in the scope of the order)[12] between 2007 and 2009.[13] In this case, we have defined a "significant producer" as a country that has exported comparable merchandise between 2007 through 2009. After screening for countries that had exports of comparable merchandise, we determine that 19 of the 52 countries designated as economically comparable to the PRC are also significant producers. Accordingly, for purposes of valuing wages for the final results, the Department determines the following 19 countries out of 52 countries designated as economically comparable to the PRC are also significant producers of comparable merchandise: Bosnia and Herzegovina, Colombia, Ecuador, Egypt, El Salvador, Guatemala, India, Indonesia, Jordan, Macedonia, Morocco, Nicaragua, Nigeria, Peru, the Philippines, Sri Lanka, Thailand, Ukraine, and Yemen.[14] The Department finds that a country's ability to export comparable merchandise is indicative of substantial production because it is producing merchandise at a level that surpasses its internal consumption. The antidumping duty ("AD") statute and regulations are silent in defining a "significant producer," and the AD statute grants the Department discretion to look at various data sources for determining the best available information. See section 773(c) of the Act. Thus, in administering this provision, the Department has the discretion to consider all reasonable data on the administrative record in determining if a country is a "significant producer" of comparable merchandise, including information as to the countries that have sufficient production to permit export of that merchandise to other countries.[15]

The Department then identified which of these 19 countries also reported the necessary wage data to the ILO. In doing so, the Department has continued to rely upon ILO Chapter 5B "earnings," if available and "wages" if not.[16] We used the most recent data available (2008) and went back five years, resulting in wage data from 2003-2008. We then adjusted the wage data for countries where it was available to the POR using the relevant Consumer Price Index ("CPI").[17] Of the 19 countries that the Department has determined are both economically

[12] See Preliminary Results, 75 FR at 40778.
[13] The export data is obtained from Global Trade Atlas.
[14] See id.
[15] The legislative history of the Act provides that the term 'significant producer' may include 'any country that is a significant net exporter,' but by no means does it prevent consideration of other relevant information as well. See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Conf. Rep. No. 576, 590, 100th Cong. 2nd Sess. (1988), reprinted in 134 Cong. Rec. H2031 (daily ed. April 20, 1988).
[16] 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 fewer countries, the Department found that our long-standing preference for a robust basket outweighs our exclusive preference for "earnings" data. Thus, if earnings data is unavailable from the base year (2008) or the previous five years (2003-2008) for certain countries that are economically comparable and significant producers of comparable merchandise, the Department will use "wage" data, if available, from the base year or previous five years. The hierarchy for data suitability described in the 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.
[17] 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 in the regression methodology was much larger than the list of countries now being considered in the Department's calculations, the pool of wage rates from which we could draw from two years-worth of data was still significantly larger than the pool from which we may now draw using five years worth of data (in addition to

comparable and significant producers, nine countries, *i.e.*, Colombia, El Salvador, Guatemala, India, Morocco, Nicaragua, Nigeria, Sri Lanka, and Yemen were omitted from the wage rate valuation because there were no earnings or wage data available. The remaining countries reported either earnings or wage rate data to the ILO within the prescribed six-year period.[18] With regard to Respondents' arguments that the Department should use only the wage rate for the primary surrogate country (India), while information from a single surrogate country can reliably be used to value other factors of production ("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 across wages from countries with similar GNI. Using the high- and low-income countries identified in the Surrogate Country Memo as bookends provides more data points, which the Department prefers. While there is a strong worldwide relationship between wage rates and GNI, too much variation exists among the wage rates of comparable MEs.[19] As a result, we find reliance on wage data from a single country is not preferable where data from multiple countries are available for the Department to use.

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 4,100), the hourly wage rate spans from USD 0.77 to USD 3.45.[20] Additionally, although both the Philippines and Indonesia have GNIs below USD 2,000, and both could be considered economically comparable to the PRC, Indonesia's observed wage rate is USD 0.77, as compared to the Philippines's observed wage rate of USD 3.45 – over four times that of Indonesia.[21] There are many socio-economic, political and institutional factors, such as labor laws and policies unrelated to the size or strength of an economy, that cause significant variances in wage levels between countries. For this reason, and because labor is not traded internationally, the variability in labor rates that exists among otherwise economically comparable countries is a characteristic unique to the labor input. Moreover, the large variance in these wage rates illustrates why it is preferable to rely on data from multiple countries for purposes of valuing labor. The Department thus finds that reliance on wage data from a single country is not preferable where data from several countries are available. For these reasons, the Department maintains its long-standing position that, even when not employing a regression methodology, more data are still better than less data for purposes of valuing labor. Accordingly, in order to minimize the effects of the variability that exists between wage data of comparable countries, the Department has employed a methodology that relies on as large a number of countries as possible and also meets the statutory requirement that a surrogate be derived from a country that is economically comparable and also a significant producer. Indeed, for this reason, although the Department is no longer using a regression-based methodology to value labor, the

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the base year). 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 CPI. 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. See also The Department's October 26, 2010, Wage Rate Data at 4 for the CPI data used in the instant case.

[18] See ILO's Yearbook of Labor Statistics.

[19] See e.g., ILO, Global Wage Report: 2009 Update, (2009) at 5, 7, 10. http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_116500.pdf.

[20] See The Department's October 26, 2010 Wage Rate Data.

[21] See id.

Department has determined that reliance on labor data from multiple countries, as opposed to labor data from a single country, constitutes the best available information for valuing the labor input.[22]

We further disagree with Respondents' argument that the Department is limited to the specific countries listed in the Surrogate Country Memo when selecting data for the labor value. The Department has had to seek additional information in light of the CAFC's recent decision in Dorbest. Moreover, the Surrogate Country Memo states that it was not intended as an exhaustive list of economically comparable countries or only those countries considered economically comparable to the PRC. In accordance with our statutory obligation, and in response to the CAFC's decision in Dorbest, the Department has only included data from countries determined to be economically comparable with the PRC and significant producers of comparable merchandise. Unless wage data from economically comparable countries were unavailable,[23] it would be contrary to both the statutory directives of section 773(c) of the Act, and binding precedent set forth in Dorbest, to rely on data from non-economically comparable countries. In this review, however, wage data are available from several economically comparable countries.

Based on the selection methodology set forth above, the Department has determined it is most appropriate to rely on industry-specific wage data reported by ILO for the final results. Determinations as to whether industry-specific ILO datasets constitute the best available information must necessarily be made on a case-by-case basis. In making these determinations, the Department considers a number of factors such as the appropriateness of the ILO industry-specific data in light of the subject merchandise and the availability of industry-specific data.

Because an industry-specific dataset relevant to this proceeding exists within the Department's preferred ILO source, and because, absent evidence to the contrary, the industry-specific data would be at least more specific to the subject merchandise than the national manufacturing data, the Department used industry-specific data to calculate a surrogate wage rate for the final results, in accordance with section 773(c)(1) of the Act. Thus, the Department determines to calculate the wage rate using a simple average of the data provided to the ILO under Sub-Classification 24 of the ISIC-Revision 3 standard by countries determined to be both economically comparable to the PRC and significant producers of comparable merchandise. We have determined that this is the best available information from which to derive the surrogate wage rate based on the analysis set forth below.

The ISIC code is maintained by the United Nations Statistical Division and is updated periodically. The ILO, an organization under the auspices of the United Nations, utilizes this classification for reporting purposes. Currently, wage and earnings data are available from the ILO under the following revisions: ISIC-Rev.2, ISIC-Rev.3, and ISIC-Rev.4. The ISIC code establishes a two-digit breakout for each manufacturing category, and also often provides a

[22] Both the statute and our regulations recognize the need to source factor data from more than one country. Although 19 CFR 351.408(c)(2) of the Department's regulations provides that the Department will *normally* source the FOPs from a single surrogate country, the language in the regulation provides sufficient discretion for the Department to address situations in which sourcing an FOP from a single source is not preferable. Use of the word "normally" means that this is not an absolute mandate. As we explained, the unique nature of the labor input warrants a departure from our normal preference of sourcing all factor inputs from a single surrogate country.

[23] See Dorbest, 604 F.3d at 1372.

three- or four-digit sub-category for each two-digit category. Depending on the country, data may be reported at either the two-, three- or four-digit subcategory.

Due to concerns that the industry definitions may lack consistency between different ISIC revisions, the Department finds that averaging wage rates within the same ISIC revision (i.e., not mixing revisions) constitutes the best available information for the final results/determination.

It is the Department's preference to use data reported under the most recent revision, however, in this case we found that none of the countries found to be economically comparable and significant producers reported data pursuant to ISIC-Rev.4. Accordingly, in this case, we turned to the industry definitions contained in ISIC-Rev.3 to find the appropriate classification for PSF. Under the ISIC-Revision 3 standard, the Department identified the two-digit series most specific to PSF as Sub-Classification 24, which is described as "Manufacture of chemicals and chemical products." The explanatory notes for this sub-classification state that this sub-classification includes the "manufacture of artificial or synthetic filament tow and staple fibres, not carded or combed."[24] Accordingly, for this review, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 24 of the ISIC-Revision 3 standard by countries determined to be economically comparable to the PRC and significant producers of comparable merchandise. Additionally, when selecting data available from the countries reporting under ISIC-Revision 3, Sub-Classification 24, we used the most specific wage data available within this revision. While, the Department prefers to use the most specific wage data available within the selected ISIC revision, because no country that was considered economically comparable and a significant producer reported earnings or wage data below the two-digit level, the Department has relied on the two-digit sub-classification in our industry-specific wage rate calculation.

The Department disagrees with Respondents that the Indian labor data for the spinning industry is more specific than the data placed on the record by the Department. The record indicates that the labor data proposed by Respondents is based on spinning, weaving and finishing industry for cotton textiles, not PSF.[25] On the other hand, the labor methodology proposed by the Department contains data from the classification for the manufacture of artificial or synthetic fiber that is specific to PSF.[26] Moreover, Respondents' classification of PSF production in the spinning industry is based on synthetic fiber products that are excluded from the scope of the antidumping duty order.[27] The scope clearly states that the following product is excluded from the scope: "PSF for spinning and generally used in woven and knit applications to produce textile and apparel products."[28] Therefore, we also find Respondents' references to out-of-scope products for industry classification and argument unpersuasive and inappropriate for purposes of valuing labor rate for the production of PSF.

From the 19 countries that the Department determined were both economically comparable to the PRC and significant producers of comparable merchandise, the Department identified those

[24] See The Department's October 26, 2010 Wage Rate Data at Attachment 2.
[25] See Respondents' August 3, 2010, Surrogate Value Submission at Exhibit 13.
[26] See The Department's October 26, 2010 Wage Rate Data at 3, Attachment 1 and 2.
[27] See Respondents' November 5, 2010 submission at 5.
[28] See Preliminary Results, 75 FR at 40778.

with the necessary wage data. Of these 19 countries, the following 10 reported industry-specific data under the ISIC-Revision 3, under Classification 24, "Manufacture of chemicals and chemical products:" 1) Bosnia and Herzegovina; 2) Ecuador; 3) Egypt; 4) Indonesia; 5) Jordan; 6) Macedonia; 7) Peru; 8) Philippines; 9) Thailand; and 10) Ukraine. The following nine, however, did not report wage data on an industry-specific basis: 1) Colombia, 2) El Salvador, 3) Guatemala, 4) India, 5) Morocco, 6) Nicaragua, 7) Nigeria, 8) Sri Lanka, and 9) Yemen. Accordingly, these nine countries are not included in our wage rate calculation.

Based on the foregoing methodology, the revised wage rate to be applied in the final results is 2.21 USD/Hour. This wage rate is derived from comparable economies that are also significant producers of the comparable merchandise, consistent with the CAFC's ruling in Dorbest and the statutory requirements of section 773(c) of the Act.

Comment 2: Surrogate Value for Brokerage & Handling

Respondents' Comments:

- The World Bank Study used by the Department for the Preliminary Results is not the best available information for the valuation of brokerage and handling ("B&H") because it is overly broad, non-specific, and non-contemporaneous to Respondents' actual circumstances, as well as based upon hypothetical parameters for a hypothetical company that is not comparable to Respondents.
- Ningbo Dafa and Cixi Santai do not export by letters of credit ("LC") and do not pay brokers to set up LCs. They are major exporters that export hundreds of 40 foot, fully-loaded containers per month all over the world and have the leverage to obtain their brokers' best pricing for B&H.
- Respondents placed publicly listed contemporaneous LC fees on the record which they believe shows that the vast amount of the document preparation cost cited in the World Bank study for India is attributable to LC charges, and not to actual B&H costs.
- Respondents do not use export LCs to secure their shipments to the U.S. If the Department uses the World Bank Study for the final results, then the Department must deduct the full amount for the LCs from the total B&H listed to arrive at a net B&H expense.
- The World Bank Study covers 17 regions in India and all of them are included in the summary B&H cost figures used by the Department. Only 4 of the 17 regions have ports comparable to the Port of Ningbo, where Ningbo Dafa and Cixi Santai are located. If the Department continues using the World Bank Study for the final results, it should average B&H costs of only those four ports.
- Respondents submitted data for the final results that is more contemporaneous than the figures used by the Department in the Preliminary Results.

No other interested party commented on this issue.

Department's Position:

In valuing the FOPs, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate ME country. The Department's criteria for selecting SV information are normally based on the use of publicly available information, and the Department considers several factors, including the quality, specificity, and contemporaneity when choosing the most appropriate data.[29] Additionally, it is the Department's precedent to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs on a case-by-case basis. As there is no hierarchy for applying the above-mentioned principles, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" available surrogate value is for each input.[30]

We find that, of the information available on the record, Doing Business 2010: India, published by the World Bank, is the best available source for valuing Ningbo Dafa's and Cixi Santai's B&H costs. We first note that while Respondents argue extensively on the differences of their companies to the parameters of the World Bank study, Respondents have not demonstrated how the alternative sources for SVs are better than the World Bank study in any regard that the Department considers other than contemporaneity. Contrary to Respondents' assertions, the data from the World Bank study are publicly available, specific to the costs in question, and represent a broad-market average. We also find that the data are contemporaneous because they are from the seven months following the POR.[31]

The Doing Business 2010: India data are more specific in identifying the types of B&H costs they cover than the data proposed by Respondents from individual Indian companies examined by the Department in various administrative reviews. The "Trading Across Borders" page from the study provides specific cost breakdowns for document preparation, customs clearance, and ports and terminal handling. We do not have information on the record indicating whether the B&H costs submitted by Respondents, and reported by individual Indian companies in various administrative reviews, include all of these costs in lump sum. The World Bank data has a distinct advantage in explicitly breaking out and demonstrating these relevant costs are appropriately included.

We determine that for B&H costs, the World Bank study is a more broad-based survey of costs in the Indian market and, thus, constitutes a more credible and representative source, than the data that are limited to the experiences of individual Indian companies or four Indian ports. We note that the cost data have an official nature, in that they represent statistical analysis by the World Bank, an international organization. In past cases, we have found international

[29] 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) and accompanying Issues and Decision Memorandum at Comment 3.

[30] See Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

[31] The CIT has held that contemporaneity is not a compelling factor where the alternative data is only a year-and-a-half distant from the POR. See Hebei Metals & Minerals Import & Export Corp. v. U.S., 366 F. Supp. 2d 1264, 1275 (CIT March 10, 2005).

organization publications to be reliable and credible sources of information.[32] Additionally, we confirmed the broad-based and representative nature of the statistics and found that the Doing Business 2010: India survey includes information from 17 different locations in India.

For all the above mentioned reasons, we continue to find Doing Business 2010: India published by the World Bank constitutes the best available information for valuing B&H. Respondents correctly note that the study assumes payment is by LC and the time and cost for issuing and securing a LC is included in the value. As Respondents demonstrated that Ningbo Dafa and Cixi Santai do not export by LC, we have accordingly deducted the necessary costs of securing LC based on the schedule of charges published by the Bank of India.[33]

Comment 3: Brokerage & Handling in Market Economy Purchase Price

Respondents' Comments:

- The Department has not applied the B&H cost reasonably to inputs because it applied an added movement expense to 100 percent of the unit values when record evidence indicates that the majority of PET flakes and other market purchases were not imported and did not incur this movement expense; the Department should only add B&H to the market-purchased flakes and then weight-average that with the domestically purchased flakes.
- While they do not contest that they incurred additional B&H costs for their ME purchases, Respondents argue that when the Department applies the ME price to an entire category of inputs purchased with ME currency, the B&H costs should only be added to the portion that was imported. For the remaining portion that was sourced domestically, the Department should value that portion with the ME price without the B&H cost.

No other interested party commented on this issue.

Department's Position:

Pursuant to 19 CFR 351.408(c)(1), when a non-market economy ("NME") producer purchases inputs from an ME and pays for the inputs with an ME currency, the Department normally uses the average actual price paid by the NME producer for these inputs to value the input in question. In instances where the NME producer purchases a portion of its inputs from an ME supplier with an ME currency, the Department will use the ME average actual purchase price to value the entire input when the total volume of the ME input purchased from all ME sources during the

[32] See, e.g., Frontseating Service Valves From the People's Republic of China: Final Determination of Sales at Less than Fair Value and Final Negative Determination of Critical Circumstances, 74 FR 10886 (March 13, 2009); see also Memorandum to the File through Scot T. Fullerton, Program Manager, Office 9, From Jerry Huang, International Trade Analyst, Office 9: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China ("PRC"): Surrogate Values for the Preliminary Results, dated July 7, 2010, at 11.

[33] See Memorandum to the File through Paul Walker, Acting Program Manager, Office 9, From Jerry Huang, Case Analyst, Office 9: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China: Surrogate Values for the Final Results, dated January 10, 2011, at 2 and Attachment 1 and 2.

period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period.[34]

For the Preliminary Results, to calculate an accurate delivered cost for the average ME purchase price, we included the B&H cost incurred by Ningbo Dafa and Cixi Santai for their ME purchases to their invoiced price. Consistent with the Department's regulation and practice,[35] we applied this total delivered cost derived from Ningbo Dafa's and Cixi Santai's ME purchase experience to 100 percent of those inputs where there were sufficient amounts that were purchased from ME suppliers, even as the majority or a portion of those inputs were sourced domestically. For the final results, for those inputs that meet the Department's ME purchase threshold we continue to find that it is appropriate to apply the total delivered cost from their ME purchase experience to 100% of those inputs.

Comment 4: Zeroing

Respondents' Comments:

- The Department's practice of zeroing violates U.S. obligations under the AD Agreement and GATT 1994.
- U.S. government should comply with its international obligations to the World Trade Organization ("WTO") and the Department should decline to zero negative margins in the final results of this review.

No other interested party commented on this issue.

Department's Position:

Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value ("NV") exceeds the export price or constructed export price of the subject merchandise." Outside the context of AD investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when NV is greater than export price ("EP") or constructed export price ("CEP"). As no dumping margins exist with respect to sales where NV is equal to or less than EP or CEP, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of the statute.[36]

Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." The Department applies these sections by aggregating all individual dumping

[34] See Antidumping Methodologies.
[35] See First Administrative Review of Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 1336 (January 11, 2010).
[36] See, e.g., Timken Co. v. U.S., 354 F.3d 1334, 1342 (Fed. Cir. 2004) ("Timken"); Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), cert. denied 126 S. Ct. 1023, 163 L. Ed. 2d 853 (Jan. 9, 2006) ("Corus I").

margins, each of which is determined by the amount by which NV exceeds EP or CEP, and dividing this amount by the value of all sales.

The use of the term aggregate dumping margins in section 771(35)(B) of the Act is consistent with the Department's interpretation of the singular "dumping margin" in section 771(35)(A) of the Act as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the NV permitted to offset or cancel out the dumping margins found on other sales.

This does not mean that non-dumped sales are disregarded in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped merchandise examined during the POR: the value of such sales is included in the denominator of the weighted-average dumping margin, while no dumping amount for non-dumped merchandise is included in the numerator. Thus, a greater amount of non-dumped merchandise results in a lower weighted-average margin.

The CAFC explained in Timken that denial of offsets is a "reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to mask sales at less than fair value."[37] As reflected in that opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner interpreted by the Department. No U.S. court has required the Department to demonstrate "masked dumping" before it is entitled to invoke this interpretation of the statute and deny offsets to dumped sales.[38] Notwithstanding one NAFTA Panel's decision in Stainless Sheet and Strips in Coils from Mexico, as discussed above, U.S. courts have affirmed the Department's decision to not offset non-dumped merchandise.[39]

Respondents have cited WTO dispute-settlement reports ("WTO reports") finding the denial of offsets by the United States to be inconsistent with the AD Agreement. As an initial matter, the CAFC has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act ("URAA").[40] Congress has adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports. See 19 U.S.C. 3538. As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute. See 19 U.S.C. 3538(b)(4) (implementation of WTO reports is discretionary). Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports.[41] With regard to the denial of offsets in administrative reviews, the United States has not employed this statutory procedure.

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[37] See Timken, 354 F.3d at 1343.
[38] See, e.g., Timken, 354 F.3d at 1343; Corus I, 395 F.3d 1343; Corus Staal BV v. U.S., 502 F.3d 1370, 1375 (Fed. Cir. 2007) ("Corus II"); and NSK Ltd. v. U.S., 510 F.3d 1375 (Fed. Cir. 2007) ("NSK").
[39] See id.
[40] See Corus I, 395 F.3d at 1347-49; accord Corus II, 502 F.3d at 1375; NSK, 510 F.3d 1375.
[41] See 19 U.S.C. 3533(g); see, e.g., Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006) ("Zeroing Notice").

With respect to United States-Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing), WT/DS294/AB/R (April 18, 2006), the Department has modified its calculation of weighted-average dumping margins when using average-to-average comparisons in antidumping investigations. See Zeroing Notice. In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews.[42]

With respect to United States-Measures Relating to Zeroing and Sunset Reviews, WT/DS322/AB/R (Jan. 9, 2007), and United States-Continued Existence and Application of Zeroing Methodology, WT/DS350/AB/R (Feb. 9, 2009), the steps taken in response to these reports do not require a change to the Department's approach of calculating weighted-average dumping margins in the instant administrative review. For all these reasons, the various WTO Appellate Body reports regarding zeroing do not establish whether the Department's denial of offsets in this administrative review is consistent with U.S. law. Accordingly, and consistent with the Department's interpretation of the Act described above, in the event that any of the export transactions examined in this review are found to exceed NV, the amount by which the price exceeds NV will not offset the dumping found in respect of other transactions.

Comment 5: Separate Rate Assignment

Certain Separate Rate Companies' Comments:

- The Department should assign Certain Separate Rate Companies de minimis rates if the mandatory respondents are assigned de minimis rates because the mandatory respondents represent the two largest exporters by volume, and there is no better evidence on the record of this review of a more accurate method or factual basis upon which the separate rate can be calculated.
- Amanda Foods demonstrates that the law does not preclude the assignment of a de minimis rate to the separate rate companies for the final results.[43] The Department has assigned the separate rate companies de minimis margins in at least two previous cases.[44]

No other interested party commented on this issue.

Department's Position:

In the Preliminary Results, the Department assigned a 4.44 percent rate from the investigation as the separate rate for those companies receiving a separate rate in this administrative review. For these final results, the Department will continue to use the 4.44 percent rate as the separate rate.

[42] See id, 71 FR at 77724.
[43] See Amanda Foods (Vietnam Ltd.) v. U.S., Court No. 08-00301, Slip. Op. 10-69 (Ct. Int'l Trade June 17, 2010).
[44] See Brake Rotors From the People's Republic of China: Final Results of 2006-2007 Administrative and New Shipper Reviews and Partial Rescission of 2006-2007 Administrative Review, 73 FR 32678 (June 10, 2008)("Brake Rotors"); Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 73 FR 24220 (May 2, 2008)("Honey from Argentina").

The statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for individual examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in this regard, in cases involving limited selection based on exporters accounting for the largest volumes of trade, has been to weight-average the rates for the selected companies excluding zero and de minimis rates and rates based entirely on adverse facts available ("AFA"). Generally we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not individually examine in an administrative review. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or de minimis margins or any margins based on total facts available. Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, de minimis, or based on total facts available, we may use "any reasonable method" for assigning the rate to non-selected respondents. One method that section 735(c)(5)(B) of the Act contemplates as a possibility is "averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated."

Based on the facts of this case, we determine that a reasonable method for determining the margin for the Certain Separate Rate Companies in this review is the average of the margins, other than those which are zero, de minimis, or based on total facts available, that we found for the most recent period in which there were such margins, i.e., the original investigation. While the statute contemplates that we may use an average of the zero, de minimis and AFA rates determined in an investigation, we have available in this review information that would not be available in an investigation, namely rates from prior proceedings. We have determined that it is more appropriate in this review to use a calculated rate from a previous segment as this method does not rely on zero, de minimis or facts available margins and there is no reason to find that it is not reasonably reflective of potential dumping margins for the non-selected companies. See Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, H. Doc. 316, 103d Cong., Vol. 1 (1994) at 873.

We find that because we have not found that the PSF industry is homogenous; Certain Separate Rate Companies' reliance on Brake Rotors is inapposite. In Brake Rotors, the Department found that the industry was homogenous and thus the assignment of de minimis rates was appropriate. This case is distinguishable from Brake Rotors, because the Department has not determined nor have Certain Separate Rate Companies provided the evidence needed to support a finding that the industry is homogeneous.

We also note that notwithstanding the methodology adopted in Honey from Argentina, the Department's more recent practice has been not to apply the de minimis rate as the "All Others" rate in ME cases or as the separate rate in NME cases.[45] As can be seen in recent cases, the

[45] See e.g., Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part, 73 FR 52823 (September 11, 2008) and accompanying Issues and Decision Memorandum at Comment 6 ("Ball Bearings"); and Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 11349 (March 17, 2009) and accompanying Issues and Decision Memorandum at Comment 6 ("Fish Fillets from Vietnam").

Department has found that based on case-specific reasons, using a calculated rate from a prior segment is more reasonable and appropriate than basing the separate rate on de minimis or zero. While Respondents correctly note that the Department assigned de minimis rates in Honey from Argentina, it is the only case in which the Department has done so in recent history. In cases post-dating Honey from Argentina (Fish Fillets from Vietnam, Ball Bearings), the Department has relied on other methodologies to determine the rate for non-reviewed companies relying upon case specific reasons. We find that with respect to Amanda Foods, this is not binding precedent and it is ongoing case before the CIT.

We find that the separate rate from the investigation is more appropriate because it is a rate averaged from the margins of recycled and virgin production processers of PSF. This is critical given that the production methods are vastly different because the main inputs (bottle flakes versus chemicals) are not remotely similar materials which necessarily require different production equipment. Moreover, Certain Separate Rate Companies in this administrative review includes both recycled and virgin producers of PSF. Therefore, having a recent separate rate that captures both production processes better represents the PSF industry.

Therefore, for the reasons describe above, for these final results, the Department is assigning a separate rate of 4.44 percent, which was the separate rate in the investigation.

RECOMMENDATION

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

AGREE_____ DISAGREE_____

_____
Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

_____
Date